FOLLOW-UP MECHANISM FOR THE
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CONVENTION AGAINST CORRUPTION
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# REPUBLIC OF HAITI

## FINAL REPORT

(Adopted at the March 14, 2019 plenary session)

## SUMMARY

Bearing in mind that Haiti was not party to the MESICIC at the time of the Second Round of the Mechanism, this report contains a comprehensive review of the implementation of the provisions of the Inter-American Convention against Corruption chosen by the Committee of Experts of the MESICIC for the Second Round and for the Fifth Round.

The provisions selected for the Second Round are those contained in paragraphs 5 and 8 of Article III of the Inter-American Convention against Corruption, which refer, respectively, to the systems for hiring public servants and government procurement of goods and services and for protecting public servants and private citizens who in good faith report acts of corruption, and the acts of corruption contemplated in Article VI of the same Convention.

For the Fifth Round, the provisions selected are those contained in paragraphs 3 and 12 of Article III of the Convention regarding, respectively, measures to establish, maintain, and strengthen instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, and the study of other preventive measures that take into account the relationship between equitable compensation and probity in public service.

The review was conducted in accordance with the Convention, the Report of Buenos Aires, the Committee's Rules of Procedure, and the methodologies it has adopted for conducting on-site visits and for the Fifth Round, including the criteria set out therein for guiding the review based on equal treatment for all states parties, functional equivalence, and the common purpose of both the Convention and the MESICIC of promoting, facilitating, and strengthening cooperation among the states parties in the prevention, detection, punishment, and eradication of corruption.

To conduct the review, the materials available were: Haiti's response to the questionnaire, information culled by the Technical Secretariat, and, importantly, the information gathered during the on-site visit to Haiti, from October 9 to 11, 2018, by representatives of Argentina and Panama, as countries pertaining to the review subgroup for Haiti. That visit served, with the support of the Technical Secretariat of the MESICIC, to specify, clarify, and supplement the information provided by Haiti, as well as to listen to the views of civil society organizations regarding the topics under review, which helped to ensure that the Committee had objective and thorough information on those matters.

With respect to the implementation in Haiti of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for the Second Round of Review, based on the methodology of the Fifth Round, and bearing in mind the information provided in the response to the questionnaire and during the on-site visit, the Committee made recommendation with respect to the following:

With respect to the systems for hiring public servants, the Committee recommended that, inter alia, Haiti consider: ensuring that its provisions clearly specify those positions that may, exceptionally, be filled through discretionary appointments; ensuring that public servants hired under contract may not access to vacant positions through internal competitions, but only though external competitions; strengthening the Human Resources Management Office (OMRH) with the independence, powers, and authority for it to fully perform its function as a regulatory and oversight body supervising enforcement of the laws and regulations on the hiring of public servants that govern the ministries and other public institutions within its sphere of competence; consider the possibility of establishing an advisory body on matters relating to the Civil Service; adopting provisions to regulate the hiring of personnel in the legislative and judicial branches of government, including its oversight and supervisory body; and compiling and publishing

statistics on the results of government hiring procedures, so as to identify challenges and recommend corrective measures, where necessary.

As regards the systems for government procurement of goods and services, the Committee recommended, inter alia, that Haiti consider: consolidating public procurement rules and regulations in a single, general, and comprehensive body, so as to make them easier to understand and apply; developing and implementing a set of sanctions specifically for procurement authorities who fail to comply with their public procurement obligations; establishing a national public register of contractors for works, goods, and services; adopting provisions to encourage civil society participation in the monitoring and oversight of public procurement activities; establishing objective criteria to govern the use of exceptional procurement procedures for a "supplementary work that turns out to be necessary"; adopting cooperation mechanisms for the various public institutions empowered to detect and suppress illegal awarding of public contracts; adopting appropriate measures to ensure that the use of direct procurement options abides strictly by the law, so that open, competitive tender is the rule, as the law requires; and compiling and publishing statistics on the results of public procurement procedures, so as to identify challenges and recommend corrective measures, where necessary.

With respect to the systems for protecting public servants who in good faith report acts of corruption, the Committee recommended, *inter alia*, that Haiti consider: adopting a comprehensive legal and regulatory framework for protecting public servants who in good faith report acts of corruption through either administrative or criminal channels; adopting mechanisms for protecting all whistleblowers and their families, not just physically, but also in relating to their working conditions, particularly when the whistleblower is a public servant and the acts of corruption may involve supervisor or colleagues; and establishing a simplified, readily accessible process for filing applications for protection measures for whistleblowers and witnesses of acts of corruption.

With respect to acts of corruption, the Committee recommended considering, *inter alia*: adjusting and/or supplementing certain legal provisions related to the criminal conduct described in Article VI.1 of the Convention, so as to ensure that they cover all the facets envisioned in that Article; strengthening the Anti-Corruption Unit (“ULCC”) and providing it with the resources it needs to do its job; adopting mechanisms to enable that Unit to keep track of suits on alleged acts of corruption that they refer to the various judicial bodies; and compiling statistics on the results of proceedings related to acts of corruption, so as to identify challenges and recommend corrective measures, where necessary.

For the analysis of the first provision selected for the Fifth Round, which, as envisaged in Article III (3) of the Convention, concerns instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, in keeping with the methodology for this Round, the State under review chose the personnel of the Directorate-General of Budget (hereinafter “DGB”) and of the General Customs Administration (hereinafter “AGD”).

This review sought to determine whether, in relation to those groups of personnel, provisions and/or measures have been adopted to ensure proper understanding of their responsibilities and the ethical rules that govern their activities, the manner and timing of that instruction, the programs envisaged for that purpose, the bodies with responsibilities in that regard, and objective results obtained from the application of those provisions and/or measures governing the activities of the personnel of the aforementioned institutions. At the same time, it took note of any difficulties and/or shortcomings in accomplishing the object of that provision of the Convention.

Some of the recommendations made, for Haiti to consider, in that regard, have to do, for instance, with: establishing a formal training program for both DGB and AGD personnel, to ensure their mandatory

participation in the training and induction programs dealing with their functions and the ethical rules that govern their activities, whereby that formal program should include the courses offered and a timetable, it should be taught either on-line or in person, it must enable all employees to understand their functions and the rules that go with them, and it must include end-of-training evaluations; and with establishing a governing body responsible for defining, directing, orienting, advising, or supporting the mechanisms used to ensure that DGB and AGD personnel are advised of their functions and the ethical rules that govern their activities, and seeing that all that is accomplished in full and abiding by the provisions and/or measures governing these matters.

In keeping with the above Methodology, the review of the second provision selected for the Fifth Round, envisaged in Article III (12) of the Convention, sought to determine whether the State has studied further preventive measures that take into account the relationship between equitable compensation and probity in Civil Service and whether it has established objective and transparent guidelines for determining civil servant remunerations. On that basis, it was recommended that Haiti adopt the Public Administration remuneration system required by the applicable legal provision; that it establish a legal framework for the remuneration of officials in the Legislature and the Judiciary, based on objective and transparent criteria; and that it publish the salary scale used for civil servant remuneration.

**COMMITTEE OF EXPERTS OF THE FOLLOW-UP MECHANISM ON IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION (MESICIC)**

# REPORT ON THE IMPLEMENTATION IN THE REPUBLIC OF HAITI OF THE PROVISIONS OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION SELECTED FOR REVIEW FOR THE SECOND AND FIFTH ROUND[1]
# REVISED VERSION

## INTRODUCTION

### 1. Content of the Report[2]

[1] This report presents, first, a review of implementation in the Republic of Haiti of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for the Second Round of Review. The provisions selected for review in the Second Round are those contained in Article III, paragraph 5 of the Convention (systems for government hiring and public procurement of goods and services); Article III, paragraph 8 (systems for protecting civil servants and private citizens who, in good faith, report acts of corruption); and Article VI (acts of corruption).

[2] Second, this report will refer to implementation of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the MESICIC for the Fifth Round of Review. The provisions selected are those contained in paragraphs 3 and 12 of Article III of the Convention regarding *"instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities*" and *"the study of other preventive measures that take into account the relationship between equitable compensation and probity in Public Service."*

### 2. Ratification of the Convention and adherence to the Mechanism

[3] According to the official records of the OAS General Secretariat, the Republic of Haiti ratified the Inter-American Convention against Corruption on April 14, 2004, and deposited the respective instrument of ratification on June 7, 2004.

[4] In addition, the Republic of Haiti signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on December 9, 2010.

## I. SUMMARY OF INFORMATION RECEIVED

[1] Bearing in mind the Republic of Haiti was not a party to the MESICIC when the Second Round of MESICIC was conducted, the present draft preliminary report was prepared in accordance with articles 23 (a) and 28 of the Committee's Rules of Procedure, and according to the Methodology for Follow-Up on the Recommendations Formulated and Provisions Reviewed in the Second Round and for the Analysis of the Convention Provisions Selected for the Fifth Round (document SG/MESICIC/doc.438/15 rev. 1) and the Format of the country reports (document SG/MESICIC/doc.439/15 rev. 1); the last two of these documents were adopted by the Committee at its Twenty-Fifth Meeting, held at OAS Headquarters in Washington D.C., United States of America, from March 16-20, 2015.

[2] Chapter XII of the Methodology provides that "*The methodology adopted by the Committee for the Second Round of Review shall apply to States that were not party to the Mechanism when that Round was conducted, in respect of review of the provisions of the Convention selected for that round. The foregoing notwithstanding, the review will also take note, with regard to the provisions selected for the Second Round, of any difficulties in their implementation and of the technical cooperation needs of those States."*

## 1. Response of the Republic of Haiti

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Haiti, in particular from the Anti-Corruption Unit (in French, "*Unité de lutte contre la corruption*"), which was evidenced, *inter alia*, in the Response to the Questionnaire, in the constant willingness to clarify or complete its contents, and in the support for the on-site visit referred to below. Together with its Response, Haiti sent the provisions and documents it considered pertinent. That response, along with said provisions and documents, may be consulted at the following web page: http://www.oas.org/en/sla/dlc/mesicic/paises-rondas.html?c=Haiti&r=2.

[6] The Committee also notes that the country under review gave its consent for the on-site visit, in accordance with provision 5 of the *Methodology for Conducting On-site Visits*. As members of the preliminary review subgroup, the representatives of Argentina and Panama conducted the on-site visit from October 9 to 11, 2018, with the support of the MESICIC Technical Secretariat. The information obtained during the visit is included in the appropriate sections of this report and the agenda of meetings is appended thereto, in keeping with provision 34 of the *Methodology for Conducting On-Site Visits*.

[7] For its review, the Committee took into account the information provided by the Republic of Haiti up to October 11, 2018, the date on which the aforementioned visit ended, as well as that provided and requested by the Secretariat and the members of the review subgroup to carry out its functions, in keeping with the *Rules of Procedure and Other Provisions*; the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fifth Round*; and the *Methodology for Conducting On-Site Visits*.

## 2. Documents and information received from civil society organizations and/or, inter alia, private-sector organizations, professional associations, academics, and researchers.

[8] The Committee did not receive within the time limit set in the schedule for the Fifth Round documents from civil society organizations as envisaged by Article 34(b) of the Committee's Rules.

[9] Nevertheless, in the course of the on-site visit conducted in the country under review information, was collected from representatives of civil society organizations, professionals, and academia invited to participate in meetings to that end, pursuant to provision 27 of *the Methodology for Conducting On-site Visits*. A list of those persons is included in the agenda for the visit, which is appended hereto. Pertinent parts of this information are reflected in the appropriate sections of this report.

# II. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE SECOND ROUND

## 1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)

### 1.1 SYSTEMS FOR HIRING GOVERNMENT OFFICIALS

#### 1.1.1. Existence of a legal framework and/or other measures and mechanisms for ensuring compliance with them

[10] The Republic of Haiti has a set of provisions relating to the hiring of Civil Service personnel:

[11] – Constitutional provisions applicable to the Public Administration in general, such as those contained in Article 234 of the Constitution of the Republic of Haiti of 1987, which establishes that "*the Haitian Civil Service is the instrument by which the State carries out its missions and achieves its objectives and to ensure its viability, it must be managed honestly and efficiently."* The Constitutional Law Amending the 1987 Constitution clarifies what is meant by National Public Administration: it comprises the Administration of the State and the Administration of Territorial Collectivities ("*collectivités territoriales"*).

[12] Article 160 of the 1987 Constitution of the Republic of Haiti assigns to the Prime Minister the function of appointing and dismissing public officials as *per* the provisions of the Constitution and laws on the general regulations on the Civil Service. According to Article 171, Ministers may appoint certain categories of agents in the Civil Service by delegation of the Prime Minister, according to the conditions set by the legislation regulating the Civil Service. Pursuant to Article 142 of the 1987 Constitution of the Republic of Haiti, the President of the Republic appoints the Director General of the Civil Service and the board of autonomous agencies ("*organismes autonomes*").

[13] Article 236.2 of the Constitution defines the Civil Service. It establishes the Civil Service as a career, regulated by the principles of aptitude, merit and discipline (Article 236-1). Public officials are exclusively be in the service of the State (Article 236.2) and may be hired only *"by competition or by meeting other conditions prescribed by the Constitution and by law*" (Article 236.2). Likewise, the Constitution states that officials are required to "*strictly observe the norms and ethics established by the laws that govern the Civil Service*" (Article 235) and that public officials are do not belong to particular branch of the Civil Service, but to the Civil Service as a whole, "*which puts them at the disposal of various state bodies*" (Article 237). Article 240 provides a list of the positions that may not give rise to a career in the Civil Service.

[14] – Legal provisions applicable to the Central Administration of the State (in French, "*Administration centrale de l'État*") as a whole, such as those contained in the Decree of May 17, 2005, on the Organization of the Central Administration of the State, which establishes the institutional structure of the Executive Branch. The decree divides the Administration of the State into four components: the Central Administration, judicial bodies, legislative bodies, and bodies representing independent institutions (Article 3). It reiterates some matters mentioned in the Constitution regarding the hiring of public officials, including the Prime Minister's power to appoint them (Article 26) to "*fill public positions within the limits set by the Constitution*" (Article 26.1). Thus, the Prime Minister "*directly appoints and dismisses public officials in accordance with the Constitution and the laws that govern the Civil Service*" (Article 28). The Prime Minister may likewise delegate that power to appoint to a minister "*with authority to provide personnel for certain public positions within the structure of the ministry under his or her charge, in accordance with the procedures established in the laws governing the Civil Service*" (Article 40.1). Disciplinary power is also assigned to the Prime Minister to "*manage the careers of public agents in accordance with the laws that govern the Civil Service*" (Article 26.2).

[15] Article 70 establishes a Human Services Directorate or Department within each ministry. It provides that the Human Resources Directorate or Department shall be in permanent contact with all units in its ministry, as well as with the Human Resources Management Office ("*Office de Management des Ressources Humaines*", hereinafter "OMRH"), in order to be able to fulfill its mission, which includes, *inter alia*, recruitment of personnel, career planning, and monitoring, as well as guaranteeing implementation of and compliance with the laws that govern the Civil Service (Article 72). The Human Resources Directorate or Department is also responsible for planning staffing levels and the assignment of personnel (Article 72).

[16] The OMRH, for its part, is an inter-ministerial strategic coordination body (Article 110) that is responsible for "*sectoral policy consistency*" and "*traversal policy control*" (Articles 109-110). It ensures, among other things, "*the performance of the Civil Service system through regulations and evaluation measures*." The OMRH also formulates policies in the field of human resources development and oversees the functioning of the Civil Service system as well as the harmonization administrative procedures (Article 113).

[17] The Superior Council of the Administration and the Civil Service (*"Conseil Supérieur de l'Administration et de la Fonction Publique",* hereinafter, "CSAFP") is responsible for examining general matters relating to the development and implementation of the measures to modernize public services, including human resource management (Articles 103 and 104). It is composed of various ministers and persons who are "*chosen for their specific skills*" (Article 105). They are appointed by a Decree of the Prime Minister (Article 106).

[18] Finally, the Supreme Court of Accounts and Administrative Disputes ("*Cour Supérieure des Comptes et du Contentieux Administratif"* hereinafter*, "CSC/CA"*) guarantees judicial oversight of appeals brought by public officials and contractual agents (Article 160). Said appeals do not "*result in the suspension of administrative decisions*," but the Court may, nevertheless, "*respond to a request to postpone the implementation of an administrative decision*."

[19] – Legal provisions applicable to the National Public Administration and public officials, such as those established in the Decree of May 17, 2005, in respect to the review of the General Statutes of the Civil Service, which governs the management of public positions (Article 1) and establishes the core principles governing the recruitment of officials. First, the decree defines "*public agent*" as anyone who has been appointed or awarded a contract under public law to "*occupy a position on behalf of a public institution or of a person pertaining to the National Public Administration*" (Article 4).

[20] The National Public Administration includes both permanent and temporary positions, both of which are filled by public officials (Article 2). Permanent positions meet a permanent need and are filled by personnel known as public officials or staff (Article 6), whereas temporary positions meet occasional needs and are filled by public contract personnel.

[21] Public officials are formally appointed to a permanent position in the National Public Administration (Article 7). Thus, the term public official refers to "any public agent of Haitian nationality designated to fill a full-time permanent position with a definitive appointment to one of the levels in the administrative hierarchy" (Article 8). "The Civil Service is comprised of all public agents with public official status" (Article 9).

[22] Like the Constitution, the decree establishes the Civil Service as a career, regulated by law and based on aptitude, merits, and discipline (Article 10). Finally, Article 11 lists functions that do not grant access to the career in Civil Service. For the most part, those functions are political jobs or entail political responsibilities.

[23] As regards contractual public agents, the decree (Article 13) establishes that they shall hold temporary positions under specific public law contracts. Public contract agents serve in the Administration for a limited period specified in the contract (Article 13). The contract assigns the agent to a given public institution and establishes the terms and conditions of employment corresponding to his or her field (Article 13.1). The contract may not exceed "*the bounds of the current fiscal year*" and may only be extended by means of an expressly granted authorization (Article 14).

[24] The principles governing human resources in the Civil Service are listed in Article 19: equal access, impartiality, and equity in decision making; impartiality and neutrality in the performance of functions; competence, honesty, respect for legality, and the criminal responsibility of public officials.

[25] Based on those principles, public agents may only be hired through competition and subject to other requirements established in the Constitution and in the aforementioned decree (Article 16). Temporary public agents under contract constitute the exception thereto (Article 16). That said, the latter may, nevertheless, become public officials, if they so desire, subject to the terms and conditions established in the decree (Article 18).

[26] Articles 20 to 46.1 of the decree address institutional arrangements in the Civil Service. Based on those arrangements, three bodies manage public administration affairs: the Superior Council of the Administration and Civil Service, the Human Resources Management Office, and the Directorates or Departments of Human Resources within the ministries and the public institutions governed by the aforementioned decree (Article 22). Article 21 also contemplates the possibility of establishing consultative bodies in the Civil Service with a view to ensuring observance and enforcement of the decree.

[27] Articles 23 and 24 draw on the articles in the Decree of May 17, 2005, on the Organization of the Central Administration of the State and reaffirm the function attributed to the Superior Council of the Administration and Civil Service of formulating and evaluating "*general public policies for public administration and human resources*," as well as the composition of its members (Article 24).

[28] Articles 25 to 31 describe the functions of the Human Resources Management Office (hereinafter "OMRH"), which reports to the Superior Council of the Administration and Civil Service (Article 27). The OMRH is responsible for "*overall management of Civil Service personnel*" and "*career service officials*" (Article 27). As a regulating body, the OMRH is primarily charged with "*overseeing enforcement of the laws and regulations governing the Civil Service*" (Article 30).

[29] According to Article 25, the OMRH addresses all general issues relating to the Civil Service, especially those to do with "*the recruitment of officials*", including proposals for definitive appointments (Article 26) and proposals regarding the "*promotion and organization of professional branches based on institutions' missions and objectives*." Consequently, the OMRH is required to keep a central register with information on public officials' careers (Article 28). Given that, for the hiring of officials, the OMRH is responsible for organizing competitions under directions from the Superior Council of the Administration and Civil Service (Article 29), it has to be regularly notified of decisions relating to movements of personnel (Article 27).

[30] For its part, the Directorates or Departments of Human Resources in the various ministries and other public institutions governed by the decree in question "*shall ensure day-to-day management of the personnel providing public services and shall organize their careers*" (Article 32). Such management and organization shall abide by the provisions of the decree and OMRH directives (Article 32). Therefore, the Directorates or Departments of Human Resources must "*systematically provide all personnel in the administration concerned with a list of vacant posts*" and submit a report to the OMRH (Article 34). Subsequently, the OMRH publishes decisions relating to hiring, appointment, promotion and retirement of public officials, pursuant to Article 33.

[31] Finally, according to Articles 46 and 46.1, the Supreme Court of Audits and Administrative Litigation "*shall be the judicial organ to deal with any challenge by Administration officials or contract personnel that gives rise to an appeal under administrative law* (*recours contentieux*)." Presentation of the appeal before the Court shall follow the "*procedures established by law regarding the way the Court is organized and operates*" (Article 46.1).

[32] The regulations on access to the Civil Service are found in Articles 47-49. According to Article 47, access to the Civil Service "*is based essentially on merit, with no discrimination as to color, race, sex, or political or religious opinion*." To access the Civil Service, a candidate must be a Haitian national, exercising his or her civil and political rights, demonstrate good conduct and moral integrity, and meet required standards of professional competence and physical aptitude (Article 48). The admission process comprises three stages: recruitment and selection; a trial period; nomination and entitlement (definitive appointment) (Article 49).

[33] The first (recruitment and selection) stage is defined in Articles 50 to 57. Article 50 establishes the recruitment objective, namely "*selection through competition of candidates for Civil Service who are well suited to perform specific functions*." Article 51 point out that the competitions may be internal or external, organized "*either through tests, degrees, or both tests and degrees, depending on the nature of the positions to be filled*." The various types of competition are established by Decree of the Prime Minister (Article 52). Internal competitions are open, on the one hand, to *"public contract personnel who want to be appointed as public officials (civil servants) and, on the other, to public officials wanting to be promoted to a higher category*" (Article 53). External competitions are "*open to anyone outside the Administration who meets the requirements and wishes to submit his or her candidacy to the Civil Service*" (Article 54). The various ministries and institutions governed by the aforementioned decree must present the OMRH with a list of their staffing needs, either with a view to increasing the number of officials, or replacing those that resign, die, are dismissed, placed on hold (*mis en disponibilité*) or retired, or else abandon their post (Article 55). They must also notify the OMRH of "*the availability of budgetary resources to cover the positions*" for which they want to hire officials (Article 56).

[34] The second stage is the trial period. A person hired for the trial period is defined as "*any candidate for the position that is admitted for a trial period in a permanent Public Administration position*" (Article 58). Article 59 establishes that the minimum duration for the trial period shall be three months and that it shall under no circumstances exceed six months. Some public contract personnel and experienced professionals seeking to join the Civil Service may, in any case, be exempted from the trial period (Article 60). Specific statutes shall determine the conditions permitting exemption from the trial period when a definitive appointment is made (Article 60). The trial period enables the unit in the Administration to which the official is assigned to evaluate her or his "*administrative and professional know-how and respect for the general principles of Civil Service*" (Article 61). At the end of the trial period, the head of the administration concerned shall submit a report to the OMRH (copied to the official), with a proposal for his or her appointment, extension of the trial period, or else dismissal from the post (Article 62).

[35] The third stage, which includes entitlement and (definitive) appointment, is described in Articles 64 to 69. In this case, the person hired for the trial period acquires *"the status of public official after his or her performance has been evaluated as satisfactory, and entitlement via an act of appointment by the competent authority to a given level of the administrative hierarchy*" (Article 64). That act of appointment shall indicate "*the position, the instituting hiring the official, and the date of her or his incorporation into the service*" (Article 65). The ministries and public institutions concerned must immediately remit the certificate of entry into the service to the OMRH and the Ministry of Economy and Finance (Article 67). A duplicate file is kept for each official; one copy is for the OMRH and the other is for the institution to which the official was assigned (Article 68). The file must include "*all the documents relating to the official's administrative status*" (Article 69). These documents are "*registered, numbered, and classified in serial order*" (Article 69).

[36] There are some exceptions, such as appointments to positions in directorates in ministries and in autonomous agencies of an administrative, cultural, and scientific nature that are left to the discretion of the competent authorities (Article 66). Article 66 stipulates that Category A officials, namely those that

"*perform a function requiring conceptualization, analysis, synthesis, preparation, coordination and management skills"* and have a university degree at, at least Bachelor's level, shall have priority for appointment to those positions. However, the Article provides that the competent authorities may resort to personnel outside the Civil Service if the needs of the service so warrant.

[37] Articles 76-100 deal with the structure and classification of officials and jobs. Pursuant to the Constitution, Article 76 specifies that "*officials are not members of any particular Government agency*" but are members of the Civil Service, "*which makes them available to the various Government agencies*." Consequently, under Article 77, it is up to the State to ensure that *"the regulatory situation of officials is organized according to career service rules*," which involves assigning entitlement of all officials to a grade within the administrative hierarchy (Article 77.1). Officials subject to the same specific statutes established by Decree of the Prime Minister (Article 78) and who *"meet the requirements for the same ranks pertain to particular categories of position, based on the principal cross-cutting or sectoral professional branches needed for the performance of the State's principal missions*" (Article 79). Therefore, as provided for in Article 80, special statutes determine the rules governing officials within the same category of positions, such as: level of studies and professional requirements at the time of recruitment, type and form of competition, definitive appointment within a given grade, the number of steps within each grade, and the seniority needed to complete each level, as well as the various ways they can be promoted. Article 81 mentions that special statutes cannot repeal provisions contained in the decree "*except in specifically envisaged cases*."

[38] According to Article 87, the Labor Force Projection Table is the tool used to plan jobs. Thus, the Projection Table *"determines the number and quality of jobs needed to do the work of each public administration or institution*" whose personnel are governed by said decree, as well as "*changes in the work force over the medium term*." The ministries and public institutions propose the Table to the OMRH (Article 87). The jobs listed in the Labor Force Table are identified "*according to the standard name assigned to them, their location within the administrative structure, and the corresponding professional profile*."

[39] Articles 90 to 94 describe in greater detail the four categories of jobs labeled "*Categories A, B, C, and D"* (Article 89). Article 90 specifies that "*the job category to which an official is assigned shall depend on his/her recruitment level*." Therefore, the job category is a pointer to factors needed for recruitment. For instance, Category A jobs "*shall be filled by officials performing work that involves conceptualization, analysis, synthesis, preparation, coordination, and management skills*. *Access to this category is open to those who possess a university degree of, at least, B.A. level"* (Article 91). Category B jobs correspond to positions "*filled by officials performing implementation tasks (travail d'application) requiring at least a university-level education, backed by a certificate of having completed secondary school and done at least three (3) years of higher education*" (Article 92). Category C and D jobs are filled by officials doing manual execution jobs (*travail d'exécution*). The minimum requirement for Category C jobs is completion of the "third grade of basic education" (Article 93). For Category D jobs, it is only necessary to have completed first grade of basic education (Article 94). Job categories are further subdivided into different grades and steps. Article 98 provides for the possibility of an official "*changing his or her professional category based on the academic training and professional requirements envisaged*" in the decree and special statutes. Article 90 stipulates that "*the transition from a lower to a higher professional category is achieved through competition*." Certain provisions regarding the duties and obligations of officials have some affinity with the present Chapter. This applies, in particular, to Article 166, the purpose of which is to require that an official perform his/her functions and comply with duties and obligations under the provisions of the aforementioned decree, and to Article 168, which establishes that an official is "*obliged to serve the general interests of the Republic with loyalty, dedication, honesty, discretion, efficiency, effectiveness, impartiality, diligence, and selflessness, while abiding by the Constitution and the laws and regulations in force*."

[40] In addition, Articles 182 to 186 refer to discipline and provide for the possibility that an official who fails to meet her/his obligations under the decree may be liable to disciplinary sanctions (Article 182). Thus, disciplinary action "*shall follow failure by an official to comply with his or her professional obligations or obligations relating to his status as a public official*." Specifically, Article 184 stipulates the following: "*Failure to comply with the duties and obligations of a public official set forth in this decree shall constitute a disciplinary offense subject to a disciplinary punishment, without prejudice, where applicable, to any reparation required as a result of the official's civil liability and to the penalties applicable to common crimes under the Penal Code*." According to Article 187.1, the choice of punishment "*shall depend on the principle that it, and its severity, be proportional to the seriousness of the offense.*" Articles 188 to 190 list a range of sanctions that may be imposed on an official failing to perform his functions as required by the provisions of the aforementioned decree. In the case of public contract personnel, disciplinary sanctions must be specified in the corresponding contract (Article 187).

[41] Articles 201 to 206 provide public officials with a series of mechanisms through which they can appeal against "*administrative decisions considered to be arbitrary or illegal*" (Article 201). These appeal remedies include motions for reconsideration and administrative litigation proceedings. Thus, according to Article 204, "*the Superior Council of the Administration and Civil Service constitutes the highest body for motions to reconsider all decisions affecting public officials' careers, after exhaustion of all appeals for reconsideration and administrative remedies filed with the competent authorities*." The OMRH is the body that "*receives and processes challenges filed by officials with regard to their careers before the Superior Council of the Administration and Civil Service*" (Article 31). A public official may, if he or she so wishes, go beyond reconsideration and administrative appeals (Article 206) and file an appeal under administrative law, that is to say, a judicial appeal, before the Supreme Court of Audits and Administrative Litigation.

[42] – Legal provisions applicable to the Public Administration, such as those contemplated in the Decree of April 2, 2013, establishing the Procedures and Methods for Organizing Competitions for Entry into the Civil Service can be applied in connection with the recruitment process. Accordingly, the decree aims to rationalize management of the human resources assigned to different Civil Service institutions, standardize hiring procedures in order to guarantee strict application of the principles of equal access, equity, impartiality, neutrality, and transparency in the Civil Service, and provide qualified human resources for effective implementation of public policies (Article 5). Article 6 points out that recruitment for permanent positions in the Civil Service is done through competitions based, among other considerations, on the principles of "equal access by all citizens to the Civil Service," "impartiality and equity in the recruitment process," and "neutrality, competence, honesty and criminal liability of public officials."

[43] According to Article 8, the purpose of recruitment is to equip the Civil Service with "*public agents to fill the permanent positions in the administration contemplated in the budget of the Republic and the temporary positions for which contract personnel is hired, without any kind of discrimination.*" This process entails both internal and external recruitment (Article 9) and is preceded by a call for the presentation of candidacies: the administrative act through which the Public Administration notifies citizens of "vacant and available positions and invites interested parties to register to participate in tests of competence and in the selection and appointment of candidates (Article 7). The provisions of the decree apply to both internal and external hiring of career civil servants and contract personnel (Article 9).

[44] Pursuant to Articles 9.1 and 9.2, external recruitment is that open to "*resident citizens of Haiti applying for the first time for a job in the Civil Service and to public contract personnel performing the functions of a position who wish to be appointed to it as career civil servants* (*désireux d'être titularisés*)," while internal recruitment is directed at officials applying for a promotion, either within the Administration or in another Civil Service institution. Article 9.2 stipulates that internal recruitment may only be used "*when the merits required for a position and the necessary experience are to be found among personnel of*

*the corresponding administration*." In addition, an internal recruitment process must be carried out with the same standards of transparency and rigor established in Article 9. Exceptions are made when the nature of the function or needs of the service so warrant, or when the officials in the administration in question lack the skills required for performance of the function. Following an official opinion issued by the OMRH, internal hiring procedures may, as of that moment, be opened up to include contract personnel (Article 9.2).

[45] The merit principle, as the standard governing admission to the Civil Service pursuant to Article 11, requires that admission be based solely on external or internal competition, in respect of qualifications (*titres*) or tests (*épreuves*). Nevertheless, competition based solely on degrees or other qualifications may apply to certain positions that need to be filled by experienced professionals. Following approval by the OMRH, the latter may be exempted from a written evaluation, but shall be required to pass an interview before they are hired (Article 11). That Article points out, moreover, that test-based competitions are for candidates "*whose aptitude and skills for performing a job must be demonstrated by the administration of an evaluation test, followed by an interview*."

[46] To initiate competitions organized by the hiring ministry or agency and to guarantee that the OMRH can perform its function as a regulatory body and thereby "*guarantee observance of the established legal and regulatory framework*" (Article 15), the Directorate or Department of Human Resources must first provide the OMRH with a list of staffing needs, the terms of reference of the positions to be filled, and the corresponding budget, in order to elicit authorization to begin the recruitment process (Article 14). Likewise, Article 61 provides that, in order for the OMRH to project and plan human resources as of the first week in October of each year, it must be given a list of positions, which can then be updated in March.

[47] Articles 19 to 23 clarify certain aspects of the role played by the OMRH, as the body responsible for "*coordinating and supervising external and internal hiring for positions in the various ministries and agencies making up the Civil Service*" (Article 19). Consequently, the OMRH participates at all stages of the recruitment process conducted by the hiring ministries or agencies (Article 20). The OMRH also assists with the "*preparation and correction of exams, publication of results, the trial period and the definitive appointment to office stage*" (Article 21). Although each ministry or institution is responsible for organizing recruitment under the supervision and with the technical advice of the OMRH, the latter may also "*depending on the human resource needs expressed and the type of profile sought, open up the hiring process to candidates throughout the national territory or else restrict it to candidates from a given geographical area"* (Article 26).

[48] Articles 24 to 29 refer to procedures and different types of recruitment. Obviously, to access a Civil Service job, a candidate needs to personally take part in the hiring process (Article 24). Article 27 provides that the measures relating to the organization of the recruitment process should take at least three months prior to the "*date envisaged for admitting candidates to a trial period, following selection*." To take part in the recruitment process, the candidate needs to prove that "*he or she meets the requirements set forth in the Decree of May 17, 2005, in respect to the review of the General Statutes of the Civil Service as well as the requirements of the job he or she is applying for that were specified in the call for the submission of candidacies*." Article 29 describes the stages in the recruitment process and supplements the stages provided for in the aforementioned decree: a) the call for the submission of candidacies; b) organization of the selection jury; c) the selection process; d) the trial period; e) appointment; and f) definitive appointment as the incumbent of a permanent position.

[49] Articles 30 and 31 refer to the call for submission of candidacies and what it should include. That call for submission of candidacies must indicate: "*the nature and title of the positions to be filled; b) a brief description of the tasks to be carried out; c) the professional and academic requisites for the job; d) the location of the job; e) the date, time and place at which registration shall begin and end; f) the documents required; g) the procedure for depositing the file containing the candidate's application; and h) the basic*

*salary and other perks and benefits*" (Article 30). For contract personnel, the process is based on the candidate's merits and "comprises the call for submission of candidacies and selection, followed by the signing of a contract between the selected candidate and the competent authority of the government agency doing the hiring" (Article 31). Pursuant to Article 20, the OMRH shall be responsible for publishing the call for submission of candidacies. Accordingly, the OMRH guarantees publication of it in the media, on its web page, and on the websites of the ministry or agency doing the hiring (Article 20).

[50] Articles 32 to 42 establish how the selection jury is to be organized, that is to say, the phase subsequent to the call for submission of candidacies. The selection jury is formed by the administrative unit that expressed the need to hire personnel (Article 32). It comprises the following three members: in the case of a ministry, a representative of the Office of the Minister, a representative of the Office of the Director General, and a Representative of the Directorate or Department of Human Resources; in the case of an autonomous agency, the jury includes a representative of the minster responsible for it (Article 33). The OMRH shall be responsible for ensuring the competence and ethical conduct of the members of the selection jury (Article 34). Article 35 bans all persons holding political jobs or positions from participating in the recruitment process as members of the selection jury. Under Article 36, the jury "*shall guarantee the coordination and execution of the recruitment process, especially the preparation of tests, in accordance the requirements established*" by the decree. The jury receives and examines the candidates' files (Article 37). Next, the jury announces admission to the competition, "*after having verified that the candidacies received meet the requirements for the positions mentioned in the call for submission of candidacies.*"

[51] Article 37 provides that only candidacies that meet the requirements for entry into the Civil Service (Article 25) and have provided "*the corresponding proofs thereof within the specified deadlines shall be admitted to the competition*." For admissibility to be verified, candidacies must be submitted in writing along with the information and documents requested in the call for submission of candidacies (Article 38). Article 38 stipulates that members of the jury may, by signing a certificate to that effect, eliminate from the competition any "*candidacies that are submitted late or else include false or incomplete documents*." Consequently, the administration involved shall deliver to each candidate, after presentation of his or her candidacy, "*a form acknowledging receipt of the file, indicating the time, date, and documents received, and specifying the position for which the candidacy was submitted*."

[52] Article 40 establishes the channels or means by which candidates may be informed of their admission to the competition. They may be notified "*through an announcement published by the institution for the recruitment, by the OMRH, and via the media (press).*"The convocation to the competition must state the nature, level and number of exams to be taken by candidates and "*be published at least eight days prior to the actual date of the exams, indicating the time, place, and date*" on which candidates must present themselves (Article 40).

[53] Following the competition, the jury shall proceed to select candidates. Articles 43 to 46 refer specifically to that selection process, which comprises "correcting the tests, evaluation, announcement of the results, and the interview" (Article 43). Candidates that have passed the exam shall be named on a list "*classified according to descending order of performance"* (Article 43). The other candidates "*classified immediately after those passed by the jury shall be placed on a waiting list*" (Article 43).

[54] The OMRH is responsible for publishing results (Article 17). Article 17 provides that the results of the external recruitment competition shall be published: "*a) in a wide-circulation daily newspaper; b) on the OMRH website; c) on the website of the hiring ministry or agency; and d) in announcements posted at the entrance to the ministry or agency doing the hiring*." Article 18 specifies the contents required in the publication of results: "*the results announcement shall contain the names of the persons that passed the test with their respective average scores on the classification list and the names of the candidates classified*

*immediately after them in order of precedence, who shall be placed on a waiting list and whom the administration may call upon in the event of one or more of the selected candidates resigning.*"

[55] In addition, pursuant to Article 44, only candidates "*that have passed with the requisite approval score shall be admitted for interview*." Article 44 adds that the Public Administration must respect the order in which the candidates were classified because the only candidates that may be admitted for a trial period are those who "*obtained the regulatory average score and were placed in order of precedence on the list of those who passed, taking into account the number of vacant or available jobs.*"

[56] Article 45 establishes the requirements for the interview. All candidates must be interviewed under the same conditions (Article 45). The idea is "*to ascertain the candidates' degree of maturity, in light of the level of responsibility required for the job.*" The list of candidates that passed the oral evaluation test must "*be transmitted by the Directorate or Department of Human Resources of the administration concerned to the OMRH for admission to the trial period*" (Article 45). The OMRH shall transmit to the Prime Minister *"the list of candidates selected and authorized to begin the trial period,"* once it has been verified that they meet the required criteria (Article 23). Finally, pursuant to Article 46, *"a candidate who has successfully completed the recruitment process through to and including the interview shall, before being definitively appointed to a permanent full-time position at a specific grade in the administrative hierarchy, undergo a trial period of three months, but no more than six months in a Civil Service institution."*

[57] Lastly, Article 59 contains measures designed to guarantee the application of these new provisions. Those measures stipulate that the administrative authorities of Civil Service institutions shall *"keep the OMRH abreast of the results of applying these new provisions and of any measures that need to be adopted to strengthen the recruitment process."*

### 1.1.2. Adequacy of the legal framework and/or other measures and mechanisms for ensuring compliance with them

[58] As regards the constitutional and legal provisions relating to the systems for hiring Civil Service personnel examined by the Committee, based on the information available to it, it transpires that, taken together, they constitute a set of suitable measures for promoting the purposes pursued by the Convention.

[59] Despite that, the Committee deems it appropriate to make a few comments regarding the advisability of supplementing and adjusting certain provisions related to the aforementioned systems.

- As regards the National Executive Branch, the Committee observes as follows:

[60] First, the Committee notes that Article 66 of the Decree of May 17, 2005, in respect to the review of the General Statutes of the Civil Service, allows the competent authorities to exercise discretion with regard to appointments for managerial positions of an administrative, cultural, and scientific nature in the ministries and autonomous entities. Although priority is accorded to Category "A" officials, the Article nevertheless allows for recourse to executives outside the Civil Service when the needs of the service so warrant (underlining added).

[61] Now, Article 4 of the Decree of April 2, 2013, establishing Procedures and Methods for Organizing Competitions for Entry into the Civil Service clearly establishes that a person appointed to a permanent position in decentralized services (*services déconcentrés*) or the "*autonomous agencies of an administrative, cultural, and scientific nature that report to them, shall have the status of a public official as defined in the Decree of May 17, 2005, in respect to the review of the General Statutes of the Civil Service*. Likewise, the Committee notes Article 125 of the Decree of May 17, 2005 on the Organization of

the Central Administration of the State, which similarly stipulates that those public agents are also subject to the provisions regulating the Civil Service, even though they may benefit from a specific statute applying to them.

[62] In other words, those agents are regarded as public officials with all the rights and obligations that go with a Civil Service career. Consequently, this opens up the possibility of a person outside the Civil Service being appointed to a managerial position that confers civil servant status, based on the discretionary conditions of entry that constitute exceptions to the general rule governing appointment to the Civil Service based on entry through competition and the merit principle.

[63] With the above in mind, the Committee considers it advisable for the country under review to consider amending the Decree of May 17, 2005, in respect to the review of the General Statutes of the Civil Service, to ensure that its terms clearly and specifically identify the positions that, based on the nature of the functions they perform, the high level of trust required, or for some other duly substantiated reason, may, exceptionally, be filled through discretionary appointments, as well as directives detailing the way such positions may be filled through this alternative recruitment procedure, in such a way as to safeguard the principles of openness, equity, and efficiency upheld in the Convention. The Committee will make a recommendation in that regard. (See recommendation 1.1.4.1 in Section 1.1.4 of Chapter II of this report.)

[64] Second, the Committee deems it appropriate to refer to Article 53 of the Decree of May 17, 2005 and to Article 9.2 of the Decree of April 2, 2013. These Articles provide an opportunity for contract personnel *"wishing to obtain definitive appointment as public officials"* (Article 53) to take part in an internal competition or when *"the nature of the functions or needs of the service so warrant, or when the officials in a particular administration lack the skills required to do the job"* (Article 9.2).

[65] The above-mentioned rules thus establish a path whereby contract personnel, with no definitive standing in the administrative hierarchy of the Civil Service can take part in an internal competition open to officials who previously participated and passed an exam and the evaluations needed to enter the Civil Service. This in practice means that contract personnel without civil servant status benefit from an unjustified advantage thanks to an exceptional procedure vis-a-vis persons outside the Civil Service who may also meet the requirements for presenting themselves as candidates for the vacant positions.

[66] Accordingly, the Committee deems it important that the country under review consider adopting, in connection with the Decree of May 17, 2005, in respect to the review of the General Statutes of the Civil Service and the Decree of April 2, 2013, through the relevant legal and/or administrative procedures, provisions to guarantee that public agents under contract cannot access vacant positions in the Civil Service through internal competitions and to ensure that they are only allowed to take part in external competitions, in accordance with the recruitment process envisaged for the general public and based on the merit principle upheld in the Convention. The Committee will formulate a recommendation in this regard. (See recommendation 1.1.4.2 in Section 1.1.4 of Chapter II of this report.)

[67] Third, the Committee considers it relevant to bear in mind the importance of a forward-looking approach to managing jobs, in respect of the recruitment practices established n Articles 55 and 56 of the Decree of May 17, 2015, which require the administrative authorities in the various ministries and public institutions governed by said Statutes to provide the OMRH with a list of their staffing needs (Article 55) and to organize the budgetary resources for said jobs (Article 56). In the same vein, according to Articles 14 and 61 of the Decree of April 2, 2013, planning for the competitions begins each year after the lists of staffing needs have been drawn up, along with the terms of reference of the jobs to be filled and the corresponding budget appropriations (Article 14), as of the first week in October (Article 61).

[68] The Committee observes that, although under the aforementioned rules, the planning stage is indispensable to initiate the recruitment process, the fact that there is currently no effective mechanism for forcing ministries and public institutions, through their human resources directorates or departments, to comply with the foregoing articles and submit the list of their staffing needs to the OMRH by the established deadlines, means that the country under review needs to consider strengthening the authority of the OMRH. This is also important considering its role in the centralized and systematic publication of both, internal and external competitions. As such, the country under review should consider strengthening the OMRH in such a way as to ensure its independence and that it is vested with the powers and spheres of competence inherent to its functions, including the authority to coordinate administrative and inter-ministerial moves, and with the human, technical, and financial resources needed, subject to the availability of resources, for it to fully perform its functions as the body responsible for regulating, monitoring, and supervising enforcement of the laws and standards governing the ministries and other public institutions within its remit. The Committee will make a recommendation in that regard. (See recommendation 1.1.4.3 in Section 1.1.4 of Chapter II of this report.)

[69] Fourth, given that one of the selection criteria is ensuring that there is a proper match between, on the one hand. the demands of the position and the criteria guiding the selection jury during the selection process and, on the other, the functions that a particular candidate will be supposed to perform on the job, the Committee wishes to stress the importance of the country under review considering the publication of a positions manual containing a summary of the functions and requirements for filling vacancies, so that persons meeting those requirements can participate in the selection process, through outreach channels, including the OMRH website. The Committee will make a recommendation in that regard. (See recommendation 1.1.4.4 in Section 1.1.4 of Chapter II of this report.)

[70] Fifth, the Committee deems it advisable that the country under review consider the possibility of establishing an advisory body within the Civil Service to ensure compliance with and full enforcement of the Decree of May 17, 2005, which provides the possibility of establishing such a body in Article 21. The Committee will make a recommendation in that regard. (See recommendation 1.1.4.5 in Section 1.1.4 of Chapter II of this report.)

- As regards the Legislative Branch, the Committee observes as follows:

[71] First, the Committee notes the absence of rules governing the recruitment and appointment of public employees for jobs in the Legislature. The Committee deems it necessary that, through its competent authorities, the country under review consider adopting rules that establish the bases for recruitment and selection procedures in accordance with the skills required for exercising the responsibilities inherent in the various jobs that need to be performed in the Legislative Branch of government, including its oversight and supervisory body, so as to ensure that recruitment and selection abide by the principles of openness, equity, and efficiency upheld in the Convention, as well as to assign the corresponding body the power to oversee and ensure compliance with the laws and regulations governing the hiring of personnel in the Legislative Branch. The Committee will make a recommendation in that regard. (See recommendation 1.1.4.6 in Section 1.1.4 of Chapter II of this report.)

- As regards the Judiciary, the Committee observes as follows:

[72] First, the Committee notes the absence of rules governing the recruitment and appointment of public employees for jobs in the Judiciary. The Committee deems it necessary that, through its competent authorities, the country under review consider adopting rules that establish the bases for recruitment and selection procedures in accordance with the skills required for exercising the responsibilities inherent in the various jobs that need to be performed in the Judiciary, including its oversight and supervisory body, so as to ensure that recruitment and selection processes abide by the principles of openness, equity, and efficiency

upheld in the Convention, as well as to assign the corresponding body the power to oversee and ensure compliance with the laws and regulations governing the hiring of personnel in the Judicial Branch. The Committee will make a recommendation in that regard. (See recommendation 1.1.4.7 in Section 1.1.4 of Chapter II of this report.)

### 1.1.3. Results associated with the legal framework and/or other measures and mechanisms for ensuring compliance with it.

[73] Neither in its Response to the Questionnaire nor during the on-site visit did the country under review provide information on objective results regarding the hiring of public servants. Furthermore, during the on-site visit, the representatives of the OMRH pointed out that data on results are not easy to come by; nor are they compiled in a single document, due to the fact that electronic records are not kept and there is no comprehensive computerized system covering the whole of the Civil Service.

[74] The Committee underscores the importance of replying in full to the questions posed in the questionnaire regarding results and, given the lack of the information needed to evaluate outcomes in this area, deems it necessary that the country under review consider compiling and publishing detailed annual statistics on the results of the processes by which civil servants are hired that clearly state the number and percentage of public servants (both contract personnel and public officials) hired via contracts, freely appointed, or hired through merit-based selection processes (external or internal competition). Those statistics should also indicate the number of vacancies to be filled in a given year and, in relation thereto, how many merit-based selection processes were started, completed, or suspended; how many candidates presented themselves to take part in those processes; and how many actually joined the Civil Service as a result of them; the purpose of such statistics being to identify challenges and, if necessary, recommend corrective measures. The Committee will make a recommendation in that regard. (See recommendation 1.1.4.8 in Section 1.1.4 of Chapter II of this report.)

### 1.1.4. Conclusions and recommendations

[75] The Republic of Haiti has considered and adopted measures intended to establish, maintain, and strengthen the systems of government hiring, as indicated in Section 1.1 of Chapter II of this report.

[76] Bearing in mind the comments made in sections 1.1.2 and 1.1.3 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

1.1.4.1 Consider amending the Decree of May 17, 2005, in respect of the review of the General Statutes of the Civil Service, through pertinent legal and/or administrative procedures, to ensure that its rules that specifically identify the positions that, based on the nature of the functions they perform, the high level of trust required, or for some other duly substantiated reason, may, exceptionally, be filled through discretionary appointments, as well as directives detailing the way such positions may be filled through this alternative recruitment procedure, in such a way as to safeguard the principles of openness, equity, and efficiency upheld in the Convention. (See Chapter II, Section 1.1.2, paragraph 63 of this report.)

1.1.4.2 Consider adopting, through pertinent legal and/or administrative procedures, provisions to guarantee that public agents under contract cannot access vacant positions in the Civil Service through internal competitions and to ensure that they are only allowed to take part in external competitions, in accordance with the recruitment process envisaged for the general public and based on the merit principle upheld in the Convention. (See Chapter II, Section 1.1.2, paragraph 66 of this report).

1.1.4.3 Consider strengthening the authority of the OMRH so as to ensure that this office is independent and it is vested with the powers and competencies inherent to the functions it performs, including those related to coordinating administrative and inter-ministerial initiatives**,** such as the centralized and systematic publication of competitions, as well as the human, technical, and financial resources it needs, subject to the availability of resources, to be able to fully perform its regulatory and control function and to oversee enforcement of the laws and regulations governing the ministries and other public institutions within its remit. (See Chapter II, Section 1.1.2, paragraph 68 of this report).

1.1.4.4 Publish job descriptions using a positions manual containing a summary of the functions and requirements for filling vacancies, so that persons meeting those requirements can participate in the selection process, through outreach channels, including the OMRH website. (See Chapter II, Section 1.1.2, paragraph 69 of this report.)

1.1.4.5 Consider the possibility of establishing an advisory body to guarantee compliance with and full enforcement of the Decree of May 17, 2005, in respect to the review of the General Statutes of the Civil Service, which provides for the possibility of establishing such a body in Article 21. (See Chapter II, Section 1.1.2, paragraph 70 of this report.)

1.1.4.6 Consider adopting and/or amending the relevant provisions, through pertinent legal and/or administrative procedures, to regulate the hiring of personnel for the Legislative Branch that stipulate the conditions governing the merit-based selection process, including its oversight and supervisory body, in such a way as to ensure that those selection processes abide by the principles of openness, equity, and efficiency upheld in the Convention. (See Chapter II, Section 1.1.2, paragraph 71 of this report)

1.1.4.7 Consider adopting and/or amending the relevant provisions, through pertinent legal and/or administrative procedures, to regulate the hiring of personnel for the Judicial Branch that stipulate the conditions governing the merit-based selection process, including its oversight and supervisory body, in such a way as to ensure that those selection processes abide by the principles of openness, equity, and efficiency upheld in the Convention. (See Chapter II, Section 1.1.2, paragraph 72 of this report)

1.1.4.8 Compile and publish detailed annual statistics, in a manner which facilitates and promotes access to information, on the results of the processes by which civil servants are hired that clearly state the number and percentage of public servants (both contract personnel and public officials) hired via contracts, freely appointed, or hired through merit-based selection processes (external or internal competition). Those statistics should also indicate the number of renewed contracts and their duration, in the case of public agents, if any; the number of vacancies to be filled in a given year and, in relation thereto, how many merit-based selection processes were started, completed, or suspended; how many candidates presented themselves to take part in those processes; and how many actually joined the Civil Service as a result of them; the purpose of such statistics being to identify challenges and, if necessary, recommend corrective measures. (See Chapter II, Section 1.1.2, paragraph 74 of this report).

## 1.2. SYSTEMS FOR GOVERNMENT PROCUREMENT OF GOODS AND SERVICES

### 1.2.1 Existence of a legal framework and/or other measures and mechanisms for ensuring compliance with them

[77] The Republic of Haiti has a set of provisions relating to systems for government procurement of goods and services:

[78] – Provisions with constitutional status establishing the Supreme Court of Accounts and Administrative Disputes as the body to be consulted regarding all matters relating to draft contracts, agreements and conventions of a financial and commercial nature in which the State is a party.

[79] – Legal provisions such as those contained in the Law of March 12, 2014 on the Prevention and Repression of Corruption, Article 5.12, which provides that *"whoever assigns, approves, enters into or deliberately executes a public contract that contravenes the regulations governing the award of public contracts shall be punished with imprisonment."*

[80] Legal provisions such as those contained in the Law of June 10, 2009, establishing the General Rules Governing Public Procurement and Public Works Concession Agreements (hereinafter, "Law of June 10, 2009"), the aim of which is to establish general rules regarding public procurement procedures, and how they are executed and regulated, for amounts that equal or exceed the thresholds established for public procurement, as well as the general rules applicable to public works concession agreements (Article 1). In addition, Article 1 of the aforementioned law lists the basic principles governing public procurement: *"(1) free access to public procurement; (2) equal treatment of candidates and transparency in procedures; (3) observance of ethical standards; (4) efficiency in public expenditure."* Article 2 defines the scope of the law. Its provisions apply to public procurement and public works concession agreements entered into by the State, territorial collectivities, autonomous agencies, State-owned enterprises, and mixed (State and private) enterprises, in which the public sector has a majority financial stake (Article 2.1). The law also applies to public procurement and public works concession agreements entered into by legal entities governed by private law acting on behalf of the State (Article 2.2), and when the contracts are backed by State financial assistance or a State guarantee (Article 2.3). The law shall not apply to national defense and security-related contracts, public contracts derived from application of the Law on the State of Emergency, or procurement carried out via a mere memo or invoice (Article 3).

[81] Articles 5 to 18 deal with the principal interested parties involved in public procurement, such as the agencies responsible for executing it and the regulatory agencies that supervise and approve it.

[82] Article 5 establishes a "*Person in charge of the contract*" within each procurement authority, whose job it is to set in motion the procedures governing the awarding and execution of public contracts and of public works concession agreements. That person is also responsible for preparing annual projected public procurement project plans in line with budget appropriations and for remitting those plans to the National Public Procurement Commission (Article 5). The latter is responsible for approving the contracts signed by the contracting parties (Article 5). Under no circumstance may "*expenditure amounts be split or the value of tenders be understated to evade the rules that would normally apply to them*" (Article 5).

[83] Article 6 establishes a "*Ministerial Public Procurement Committee*" within each ministry and a "*Specialized Public Procurement Committee*" within the other institutions forming part of the National Public Administration. The function of the ministerial and specialized committees is to conduct the investigations and consultations needed to prepare the tender documents and draft files, examine draft amendments, and inform bidders whether their bids have been accepted or rejected (Article 7). The committee must also submit a quarterly report to the CNMP on contracts awarded and formulate recommendations for improving the public procurement system (Article 7).

[84] Article 8 provides that every time a contract is awarded a "*Committee responsible for opening statements of proposals and evaluating bids*" must be established in each procurement authority. Article 8.1 establishes the composition of that Committee, which shall comprise experts from the ministries, outside

consultants, and two independent observers from outside the public sector, who shall be bound by the principle of neutrality and the duty to keep the Committee's deliberations confidential. The Committee for examining proposals and evaluating bids shall be responsible for pre-qualification, opening the envelopes containing proposals and evaluating bids, as well as for naming the (provisionally) successful bidders (Article 8-2).

[85] Article 9 establishes the National Public Procurement Commission as a regulatory organ of the National Public Administration. Said Commission shall ensure "*regulation and oversight of the system for public procurement and public works concession agreements, without prejudice to other State oversight bodies exercising the general powers vested in them.*" (Article 9) Under the Prime Minister's jurisdiction (Article 9), the Commission shall, pursuant to Article 10, draw up the "*regulations governing public procurement and public works concession agreements in line with public procurement policy*"; provide the procurement authorities with: "*detailed guidelines, standard bidding documents, and standard contract formats for the procurement of goods, services, and work and for public works concession agreements*"; keep a "*database that can be accessed by all procuring entities and that contains a list of contractors and providers, along with information regarding their performance and integrity*" (Article 10.6); satisfy itself that "*the thresholds set for different types of contracts*" and "*the public procurement standards established by law and by regulations are observed*"; and register the contract approved by the competent authority in the Supreme Court of Accounts and of Administrative Disputes. The CNMP likewise exercises oversight functions. It may "*impose administrative sanctions in cases of proven irregularities in the awarding and execution of public contracts*", "*publish a quarterly list of companies or suppliers guilty of serious noncompliance with clauses in procurement contracts that cannot continue to participate in them on the terms established by the law and by regulations*," and "*issue expert opinions in connection with extrajudicial settlement of disputes arising from the approval or execution of public procurement through the Dispute Settlement Committee*." Articles 11-13 establish the composition of the National Public Procurement Commission (CNMP) (Article 11), requirements for being a member of the said Commission (Article 13), and the selection process involving comparison of files and evaluation of the candidates in a public hearing (Article 12). The ways in which the CNMP is organized and operates are stipulated in a decree adopted by the Council of Ministers (Article 15).

[86] Articles 19-26 establish the terms and conditions governing access to public procurement. Thus, under Article 19, candidates who possess "*the technical competence needed to execute a public contract or a public works concession agreement, including experience of having done so*" may participate in public procurement procedures and enter into public works concession agreements. Candidates must substantiate their technical competence as stipulated in the bidding documents (Article 19). Candidates must, in addition, show proof of economic and financial solvency (Article 20). The procurement authorities are entitled to request that bidders submit a certificate of qualification awarded "*in accordance with the objective and transparent criteria established by laws and regulations currently in effect*" (Article 21). According to Article 21-1, *"the procurement authority may not demand presentation of a certificate testifying to a particular bidder's technical competence in a discriminatory manner."*

[87] Articles 22 and 23 describe terms and conditions establishing incapacity and incompatibility. For example, mention is made of legal entities declared or proven to be bankrupt; individuals convicted of an offense or crime; legal entities or individuals who have been temporarily disqualified by the CNMP from participating in public procurement for having provided false information or for serious failure to comply with contractual obligations; legal entities that have fulfilled their tax or social security obligations; and individuals or legal entities subject to the sanctions provided for in said law (Article 22). Also excluded from the bidding process are certain legal entities and individuals that may find themselves in a conflict of interest: companies in which members of the procurement authority or the committee responsible for opening proposal envelopes and evaluating bids "*have a financial stake of any kind*"; legal entities affiliated with consultants who helped prepare bidding documents or answer queries; public officials and agents of

the procurement authority and their spouses and parents; public and local government officials and their spouses; members and personnel of the Judiciary and their spouses; members of the Legislature and their spouses; members of the Executive and their spouses, representatives or agents (Article 22). In order to avoid any possibility of a conflict of interest, Article 23 presents a list of legal entities and individuals banned from bidding processes.

[88] Articles 27 to 38 describe the various public procurement procedures. There are three types of procedure: general procedures (Articles 28 to 32.1), exceptional procedures (Articles 33 to 34.3), and specific procedures (Articles 35-38).

[89] In all cases, "*contracts must be awarded either through an open or restricted tender (call for bids), or in two states, or else by agreement between the parties and direct procurement, to the exclusion of any other procedure, pursuant to the provisions*" of the Law of June 10, 2009 (Article 17). As regards what should be considered to be below public procurement threshold amounts, Article 27 establishes that the procurement authority may "*resort to consultation procedures with providers or ask them to name prices provided that the procedures used comply with the principles"* set forth in the aforementioned law and with "*public accounting standards and guarantee effective competition*."

[90] The general procedures are those carried out through open tenders. A tender is defined in Article 28: "*a tender is the procedure through which the procurement authority chooses the bid that meets the specified requirements, is considered the most advantageous, without bargaining and based on objective criteria already disclosed to bidders in the bidding documents."* According to Article 29, "*tenders may be open, be preceded by pre-qualification, be restricted, or be carried out in two stages*." A tender is open when all the bidders (candidates), with the exception of those cited in the aforementioned Articles 22 and 23, may submit a bid (Article 29-1). An open tender may also be preceded by pre-qualification when the work to be performed or the services to be provided are "*complex*" or "*demand specific technical skill.*" An open tender is called a two-phase tender when, in a first phase, bidders are invited to "*submit technical proposals, with no indication of price, based on general principles regarding performance concepts or standards, that may later be clarified or be subject to technical and/or financial adjustments in the course of discussions with the procurement authority*," and then, in a second phase, bidders are invited to "*submit the technical proposal together with a breakdown of prices, based on the bidding documents previously revised by the procurement authority*" (Article 32). Pursuant to Article 32-1, recourse may not be had to this type of procedure if the contract is "*highly complex*" or else if it must be "*awarded on the basis of performance criteria and not on criteria based on detailed technical specifications*." As with an open tender, the two-stage tender process may be "*preceded by pre-qualification*"(Article 32).

[91] Article 29-1 reaffirms that, as a general rule, tenders should be open. Any other kind of procurement should continue to be exceptional (Article 29-1) and cannot be used except for "*contracts in which the amount involved is below the thresholds set for public procurement*" or else for "*any other specific circumstances provided for in this law*." Those thresholds are set by a decree adopted in the Council of Ministers and based on a recommendation by the CNMP, "*depending on economic developments and the demands of the contracts, following the issuance of an opinion by the Supreme Court of Accounts and Administrative Dispute*s" (Account 30). In all cases, Article 29-1 requires the procurement authority to substantiate its decision and to notify the CNMP thereof.

[92] Articles 33 to 34-3 address the exceptional procedures, which include restricted tenders (Article 33) and procurement by mutual agreement or direct procurement (Article 34-1). According to Article 33, a tender shall be regarded as restricted when the only bidders allowed are those that the procurement authority has invited. The number of bidders allowed to participate must, however, "*guarantee real competition,*" following which the process must be subject to open tender procedures (Article 33). Generally speaking, this type of procedure shall only be only permitted "*when the goods, work, and services are so complex or*

*specialized that they can only be provided by a limited number of enterprises, providers, or contractors*" (Article 33-1). Recourse to this type of procedure must be based on criteria established in advance by the CNMP (Article 33-1). The procurement authority must file "*a no-objection request before awarding the contract*" (Article 33-1). As regards awarding contracts by mutual agreement or through direct procurement, Article 34 defines it as a situation "*in which the procurement authority enters —in advance and with no prior competitive tender—into conversations it deems useful with a company, supplier, or a particular contractor*." Article 34-1 establishes the conditions required for resorting to those procedures. In particular, it singles out cases in which "*needs can only be met through the provision of services requiring the use of a patent, license, or exclusive rights*," that are only to be found "*in a single company, provider, or contractor*" (Article 34-1.1); cases involving an "*emergency due to unforeseeable circumstances or force majeure that prevent compliance with the time frames stipulated for tenders*" (Article 34-1.2); "*the case of a substantiated emergency in which a contract has to be executed by the procurement authority itself instead of by a company, supplier, or contractor that is unable to comply with the contract*" (Article 34-1.3); and cases in which it transpires that a contract previously awarded via a tender needs an additional contract due to an unforeseen circumstance arising for reasons that have nothing to do with the parties (Article 34-1.4). More precisely, Article 34-1.4 stipulates that recourse may be had to a private contract "*for supplies, services, or works supplementing those addressed in an initial contract executed by the same party, provided that the initial contract was awarded through a tender, that the supplementary contract refers to supplies, services, or works that were not contemplated in the initial contract but which turned out to be necessary due to an unforeseen circumstance unrelated to the parties, and provided that those supplies, services, or works cannot be hived off, technically or financially, from the principal contract*." Article 34-2 bans the procurement authority from invoking the occurrence of an "*emergency to justify a delay, lack of foresight, or negligence*" in order to elude its obligation to opt for competitive procedures.

[93] Articles 35 to 58 describe the specific public procurement procedures. The specific procedures apply to the procurement of intellectual services (Article 35), public contracts based on order slips (*marché de clientèle*) (Article 37), and contracts with clients (Article 38). Public procurement for intellectual services "carried out after competition among the pre-qualified candidates, based on their aptitude for providing the services, following a public statement of interest (Article 35). Selection is based on a consultation file containing "*the terms of reference, the invitation to bid indicating the selection criteria and how they will be applied in detail, and the draft contract*" (Article 35). This selection is also based on the "*technical quality of the proposal, the firm's experience, the competence of the experts, the proposed work method, and the total cost of the proposal, either based on a pre-determined budget (and the consultant's proposals regarding the best way to use it) or based on the best financial proposal put forward by the candidates that achieved a minimum technical qualification score*" (Article 35-1). Article 35-2 refers to circumstances in which the services "*are exceptionally complex*" or "*trigger proposals that are difficult to compare*", which justifies selecting a consultant based solely on the technical quality of the proposal. Intellectual services contracts may give rise to direct procurement when the service requires "*selecting a particular consultant due to his or her unique skills or when it is necessary to continue using the same consultant*" (Article 35-3). A contract based on order slips is described in Article 37. "Its purpose is to enable the procurement authority to cover its annual needs for supplies and services, the exact quantities of which cannot be predicted at the start of the year but which exceed storage capacity" (Article 37). This type of contract must be approved by the CNMP (Article 37), its duration may not exceed one year, and it is renewable only twice (Article 37). Also required is an indication of "*the maximum and minimum limits to the total amount of services to be provided*"; those limits must be expressed in value terms (Article 37). Article 38 establishes that a supply contract is a particular form of contract through which "*the procurement authority commits to entrusting (to a contractor), for a limited time not to exceed one year (renewable twice only), execution of all or part of particular categories of supplies*." This kind of contract is used "*in accordance with order slips issued in response to emerging needs*" (Article 38).

[94] Articles 30 to 40-1 establish the rules governing publication of tenders under the supervision of the CNMP. Pursuant to Article 39, these contracts "*must be announced in the form of a tender and made known in the same way to the public by an announcement in a widely circulated daily newspaper or, failing that, in a local and/or international newspaper, and in electronic format.*" The same obligation applies to prequalification announcements (Article 39). Article 39 further stipulates that failure to publish "*automatically annuls the procedure*."

[95] Articles 41 to 47 refer to the bidding documents. Under Article 41, procuring entities must begin by specifying the nature and extent of what is needed "*prior to any tender or any direct procurement procedure*." Thus, the Article points out that the "*the exclusive purpose of the contract entered into by the procurement authorities must be to satisfy those needs*." All public procurement procedures must comply with applicable public finance rules and the process must "*be subject to the availability of sufficient budgetary resources and to compliance with the regulations governing expenditure by government agencies*" (Article 41-1). Pursuant to Article 42, the bidding documents must include the "*instructions to bidders, the bidding model, and the notebook of specific clauses based on standard models developed*" by the CNMP, as well as the Code of Ethics. Article 43 addresses the contents of the pre-qualification folder. It shall contain the "*information relating to the work, supplies, and provision of services relating to pre-qualification, a precise description of the conditions and criteria for pre-qualification, and the time frames for notifying candidates of the outcomes*." It shall also include references relating to similar contracts and other indicators (Article 43). Once the announcement has been published, the procurement authorities may not make changes to it, unless an exceptional circumstance occurs that does not alter the core conditions of the contract (Article 42-1).

[96] Articles 48 and 49 provide details regarding the reception of bids. In the case of open and restricted tenders, no more than thirty calendar days are allowed for the presentation of bids (Article 48). Article 49 stipulates that that deadline "*may be reduced to fifteen days*" in duly substantiated emergency cases and with the authorization of the CNMP.

[97] Articles 50 to 54 refer to the content and presentation of bids and opening of envelopes containing proposals. For instance, Articles 50 to 52 deal with the way bidders' files are to be presented (Article 52), the documents that should be attached to the file, including the bidder's certificate of commitment (Article 50) and the bidding guarantee, except in the case of intellectual services (Article 51). As regards the opening of the envelopes containing proposals, Article 53 stipulates that the opening session must be public and commence no later than "*thirty minutes after the deadline for the submission of bids.*" The Committee for opening and appraising proposals shall immediately proceed to check the supporting documents, assess the admissibility of the bids, and evaluate the bidders (Article 53).

[98] Articles 55 to 61 described the procedure for evaluating and awarding public contracts. Article 55 stipulates that "*the committee for opening the envelopes and evaluating bids shall proceed, with all due confidentiality and within a time frame compatible with the validity of the bids, to conduct a technical and financial analysis, as well as classify the bids based on the criteria established in the bidding documents.*" According to Article 57, the award shall be made based on the financial and technical criteria established in the bidding documents in order to determine which bid is the most advantageous, except as regards provisions applicable to intellectual services contracts. Article 57-1 specifies that the evaluation criteria, such as "*usage costs, execution time frame, payment schedule*" must be objective "*with regard to the purpose of the contract, as well as quantifiable and expressed in monetary terms.*" The evaluation must, moreover, conform to a "*model for evaluating and comparing bids*" established by the CNMP (Article 57-1). After making its selection, the bid evaluation committee shall prepare a provisional award report and reach its decision regarding contracts that match or exceed the CNMP thresholds for intervention, for initial oversight of procedures (Article 60). Article 60 provides that "*the successful bidder shall be notified of the*

*award of the contract*" and, parallel to that, the bidders that were not selected shall be informed of "*the substantiated decision to reject their bid*."

[99] Articles 62 to 66 describe the validation of the procedure, and the signing, approval, and entry into force of the contract. Article 62 establishes that the CNMP shall validate the procedure for contracts below its intervention thresholds and sets the deadline by which it must issue an opinion. Once the CNMP has validated the procedure, the contract may be signed by "*the person in charge of the contract and by the successful bidder to which it was awarded*" (Article 63). At that point, the winner is informed of the Code of Ethics and asked for his commitment to abide by it (Article 63). Then, depending on the nature of the procurement authorities, the public contract is "*transmitted to a competent authority*" other than the authority that signed it (Article 64). Once approved, the contract "*is again transmitted by the procurement authority" to the CNMP to finalize the validation process*" (Article 64). Article 62-4 confirms that "*any contract awarded within the sphere of competence of the CNMP but not presented to it for validation by the procurement authority shall be considered null and void.*" The CNMP may refuse to approve a contract by issuing a substantiated decision to that effect (Article 64-1). The aforementioned Article point out that that refusal "*may only be imposed in cases with no or insufficient credits or due to incorrect budgetary allocation*" (Article 64-1). Denial of approval may, however, be contested by the procurement authority (Article 64.2). Finally, Article 65 provides that "*the procurement authority must notify the holder of the approved and validated contract*" within the deadlines established in the aforementioned article. The contract shall be considered to be in effect as of the time the holder is notified or as of a subsequent date agree t by the parties (Article 66). Article 66 then goes on to stipulate that "*final notification of the awarding of the contract shall be published with due diligence by the procurement authority on the terms set forth in Article 39.*"

[100] Articles 90 to 94 deal with fraudulent practices, infringements, and sanctions. Article 90 prohibits fraudulent practices and acts of corruption by all those who in some way intervene in the chain leading to the awarding public contracts and public works concession agreements, including both bidders and the holder of contracts. Article 91 states that infringements committed by bidders and contractors shall give rise to the corresponding administrative sanctions, imposed by the CNMP. Articles 91 to 91.3 describe a range of infringements that trigger exclusion from public procurement for periods ranging from six months upwards or withdrawal of a bid. Article 93, for its part, describes infringements by agents of a procurement authority. They include, for instance, seeking or attempting to obtain a benefit for a particular bidder, intervening at any stage in the awarding of a contract to an enterprise in which the agent has a stake, splitting expenditure with a view to eluding the normally applicable type of procedure, participating in a contract not approved by the competent entity, and failing to meet the obligation to plan contracts and publish that plan each year. Article 94 specifies that the disciplinary sanctions incurred by public agents shall be determined in accordance with their status as public agents. They may, for instance, be liable to "*replacement or temporary or definitive exclusion from monitoring and overseeing public contracts.*"

[101] Articles 95 to 95-5 refer to the appeal proceedings available. Article 95 establishes the Dispute Settlement Committee as the appeals body in litigation cases. According to Article 95-1, the purpose of the Committee is to investigate "*reasonable steps that might be taken to arrive at an amicable settlement or take a substantiated decision on disputes that arise in connection with procurement procedures or selection of the bidder awarded a contract*" Article 95-1). Article 95-2 establishes the composition of the Committee and at the same time determines by decree the powers vested in it and its modus operandi. Finally, Article 95-5 stipulates that "*the decisions of the Dispute Settlement Committee may be appealed before the Supreme Court of Accounts and Administrative Disputes*."

[102] – Legal provisions applicable to public procurement regulatory and oversight bodies, such as those provided for in the Decree of May 25, 2012, establishing Thresholds for Awarding Contracts and Thresholds for Intervention by the CNMP Depending on the Nature of the Public Contract Concerned. The

decree sets the threshold amounts for public procurement. Article 2 establishes the thresholds that need to be met for Public Administration institutions to conduct procurement proceedings, depending on the nature of the procurement: 1) 40,000,000.00 gourdes for the procurement of works; 2) 25,000,000.00 gourdes for procurement of equipment; 3) 20,000,000.00 gourdes for hiring services and consultants.

[103] Article 6 stipulates that the procurement authority may conduct public procurement procedures in the amount of eight million (8,000,000.00) gourdes in accordance with the thresholds established by type of public procurement, pursuant to Article 27 of the Law of June 10, 2009, and resort to "*consultation procedures with providers or request them to name prices, provided that the procedures used abide by the principles of equal treatment of candidates, competition, transparency, observance of ethical standards, and efficiency in public expenditure, and are in line with public accounting rules*." In the case of amounts not exceeding eight million (8,000,000.00) gourdes, the procurement authorities may engage in public procurement through a memo or invoice (Article 6).

[104] Article 7 determines the amounts and cases in which the CNMP intervenes to ensure compliance with the procurement thresholds established in Articles 2, 3, 4-1, 4-2, and 5 of the decree.

[105] – Legal provisions such as those contained in the Decree of November 4, 2009, establishing the Rules for the Implementation of the General Regulations pertaining to Public Procurement and Public Works Concession Agreements, with a view to regulating in greater detail how said law is to be implemented. Articles 2 and 3 regulate in detail the fundamental principles to be observed in connection with public procurement: freedom of access to public procurement, equal treatment of candidates, transparency of the procedures, observance of ethical standards, and efficiency in public expenditure, as well as the obligation to ensure openness, issue calls for bids, and selected the best bid.

[106] Articles 4 to 4-2 underscore the importance of determining procurement needs and imposing that obligation on the procurement authority. Accordingly, Article 4 provides that the nature and volume of procurement needs must be established in advance and that the supplies, services and work procured must "*match those needs and those needs only*." The procurement authority may request technical services to conduct preliminary studies (Article 4-2).

[107] Articles 5 to 5-3 obligate the procurement authorities to draw up an annual public procurement plan covering all procurement envisaged for the fiscal year in question. Article 5-2 establishes the time frame for starting the tendering procedure for draft contracts listed in the annual procurement plan, while Article 5-3 requires the person in charge of that procurement to assess the estimated amounts of supplies, services or work needed and to guarantee "*the existence of sufficient budget appropriations and observance of public accounting rules."*

[108] Articles 11 to 14-1 address the documents constituting a contract, their contents, and the duration of contracts. Procurement contracts must be awarded in writing and form part of a "*single file in which the bidding conditions and the tender*" constitute the contract (Article 11). According to Article 11-1, after the call for submission of bids, public contracts must comprise *"a tender, a certificate signed by the bidder who submits his/its bid and abides by the provisions of the contract*." Likewise, the tender must contain "*the bidder's commitment not to grant anyone involved in the tender procedure any improper reward, in cash or in kind, either directly or through intermediaries, with a view to being awarded the contract, along with a commitment to observe the provisions of the Code of Ethics governing public procurement*" (Article 11-2). The terms and conditions governing execution of contracts shall be stated in the bidding conditions (Article 12). Article 13 sets forth the detailed mandatory requirements, such as the method for awarding the contract, the definition of the purpose of the contract, the list of contract documents and the price and/or the terms on which it will be determined. Article 14 establishes the duration of a contract, which in principle

may not exceed one year, "*taking into account the nature of the services and the need to periodically re-open the call for submission of bids*."

[109] Articles 15 to 19 refer to the contract prices. Articles 16 to 16-3 describe how prices shall be determined. Articles 17 to 19 distinguish between set (fixed) prices and those subject to adjustments and specify ways in prices may be revised. The bidding conditions "*establish the amounts of remunerated services as a percentage of controlled expenses that cannot be exceeded*" (Article 16-3) and "*specify the price revision formula*" (Article 18-1).

[110] Articles 20 to 22 establish the form and conditions of additional clauses, that is to say, initial amendments to a contract after it has been notified, and the limits thereto. Article 20-2 points out aspects that may not be amended. Article 21 stipulates that "*an increase or reduction in the whole set of equipment, work, or services, including any intellectual services that may derive from one or more additional clauses, shall, under no circumstances, exceed thirty percent (30%) of the initial contract amount, after applying possible update and revision clauses.*"

[111] Articles 23 to 24 provide detailed regulations for order slip contracts and supplies contracts. Article 23 specifies that the procurement authority may resort to order slip contacts when it cannot, for economic, technical, and financial reasons, "*determine in advance the total volume and pace of orders of supplies and routine services required to meet those needs.*" The purchase order establishes "*the minimum and maximum quantity of supplies or fixed-value services that may be requested in a given period that does not exceed the payment appropriations period*" (Article 23). Article 23-1 indicates that "*the maximum amount of supplies or services that may be requested through purchase orders may not exceed the established minimum amount multiplied by four*." Article 24 stipulates that the procurement authority may resort to a supplies contract in which it commits to relying on a provider of supplies or services in the event that it is unable to calculate needs in advance and the pace at which purchase order will be issued. The procurement authority may, therefore, "*as needs arise*," entrust to the provider of supplies or services, "*orders relating to a particular category of supplies or services, without indicating the quantity or total value of the orders*" (Article 24). Article 26 sets a limit on the duration of order slip and supplies contracts: *"order slip contracts and supplies contract shall be entered into for a one-year period, renewable through an amendment, for up to a maximum of three year."* These contracts must also be approved by the CNMP (Article 26).

[112] Articles 28 to 43-1 describe the public procurement bodies and their spheres of competence: the person in charge of the contract (Articles 28-29), the authorities responsible for approving contracts (Articles 30 to 30-1), the committees responsible for opening proposals and evaluating bids (Articles 35-42), and the CNMP (Articles 43 to 43-1).

[113] Articles 44 to 45-1 establish the conditions governing candidates' access to public procurement, while Articles 46 to 48 address incompatibilities and disqualifications from public procurement.

[114] Article 49 specifies the information and documentation to be provided. Thus, "*any candidate applying for a public contract shall demonstrate that he/she/it has the legal, technical, and financial capacity required to execute the contract, by submitting all the corresponding documents and certificates listed in the call for submission of bids file*" (Article 49). A statement must be included indicating intention to submit an application for a contract, along with a note presenting the candidates and indicating his/her/its human and technical resources, certificates of having paid social security contributions and taxes, a sworn statement that the candidate is not involved in bankruptcy proceedings, a declaration certifying that the candidate is apprised of the Code of Ethics and commits to abiding by it, a bid guarantee, if required, and any other document useful for determining the candidate's technical and financial capacity (Article 49).

[115] Articles 64 to 64-5 establish the thresholds and scope of the procedures. According to Article 65, it is incumbent upon the procurement authority to estimate "*the value of the contracts for the purpose of applying thresholds*." The estimated value "*must take into account the overall value of the works associated with one and the same operation, irrespective of whether it includes one or more works*" (Article 65-1). Article 65-5 provides that "*the procurement authority may, under no circumstance, split expenditures or undervalue contracts in order to preclude application to them of the rules to which they are subject pursuant to the Law of June 10, 2009."*

[116] Articles 66 to 60 describe the rules on openness and communications. Accordingly, procurement authorities are required to publish each year "*a general notice pointing out public contracts whose estimated amounts exceed applicable thresholds*" and "*contracts scheduled to be tendered in the course of the fiscal year, based on the annual public procurement plan drawn up pursuant to Articles 5 to 5-3 of the aforementioned decree"* (Article 66). Article 66-1 provides that all contracts awarded by tender must be "*preceded by a call for submission of bids conducted in accordance with the standard model provided for in the decree establishing standard documents for tenders*." General announcements regarding public contracts and notices of tenders must be published *"in a large-circulation newspaper, on the radio, and, if necessary, through posters*" (Article 67). They shall also likewise be "*published electronically on the website of the procurement authority and the website of the National Public Procurement Commission"* (Article 67).

[117] Articles 70 to 73 regulate the contents of the bidding documents and the pre-qualification file. Article 70 provides that "*the bidding documents, prepared as a draft by the ministerial or specialized committee for public procurement, shall contain, regardless of the procedure chosen, all the tools and documents that bidders need for consultation and information*." That includes documents relating to the terms and conditions governing the call for submission of bids, such as the reference to the invitation to bid and the regulations establishing the procedure, the documents that will constitute the future contract, such as the model form for bids, the set of general administrative clauses, the set of general technical clauses, and any information that may help candidates formulate their bids. Article 71 provides that the ministerial committee or specialized committee, as the case may be, shall submit drafts of tenders to the CNMP for approval.

[118] Articles 74 to 76 establish the criteria for evaluating bids. Thus, in keeping with Article 74, the best offer is to be determined in light of *"price and other criteria, such as usage costs, technical performance, and delivery or execution date*." Those criteria are to be *"listed in the tender documents and expressed in monetary terms"* (Article 74). The tender documents indicate whether the bid *"can be accepted on the base of price"* (article 74). In accordance with Article 74-1, the assessment of the bidder presenting the best offer is examined *"in consideration of the technical and professional guarantees contained in the bid and the bidder's financial situation."* Articles 76 and 76-1 deal with abnormally low bids that the Bid Assessment Committee can reject by means of a grounded decision (Article 76). A bid is deemed abnormally low when it is 25% below the confidential provisional budget or very high when it is more than 25% above that budget (Article 76). Article 76-1 establishes the mechanisms a bidder can use to justify an abnormally low price.

[119] Articles 77 to 104 deal with bidding procedures. Article 77 defines bidding as *"the procedure whereby a contracting authority awards a contract, after requesting a tender, without negotiation, from the bidder meeting the qualification conditions and having presented the best offer, based on criteria expressed in monetary terms previously made available to the candidates."* Article 78 provides that bidding is the normal way in which contracts are awarded. Consequently, the contracting authorities *"are to use it as the preferred method"* (Article 78).

[120] Articles 81 and 82 stipulate the way in which offers are to be presented: by means of a bidding process (Article 81). Articles 83 to 86 provide details on how bids are to be received, together with how bids and candidacy applications are to be presented, bearing in mind *"the complexity of the contract and the time needed to preparer offers"* (Article 83). Article 86 sets deadlines for cases of duly justified emergencies, the use of which must be previously authorized by the CNMP.

[121] Articles 87 and 88 describe the procedure that is to follow a fruitless bidding procedure or a bidding procedure that was halted.

[122] Articles 89 to 89-2 address requests for tenders. Bidding procedures are to be made public by publishing a call for tenders in the terms provided for in Articles 66 and 67, cited above. The call for tenders, prepared in accordance with the model tender document, must include the following elements: *"the purpose of the contract, the place and date where the list of conditions is to be published or how to obtain those documents, the place and deadline for receiving bids, the time during which bidders are bound by their offers, the evidence of quality and competence to be submitted by candidates, and the amount of the performance bond, if any"* (Article 89-1). Article 89-2 sets deadlines for requesting additional information on the call for tenders and the tender documents from the person responsible for the contract.

[123] Articles 90 to 91-1 deal with the opening of bids. Only bids *"received no later than the date and time set for the presentation of bids"* in the request for tenders may be opened (Article 90). Those received *"after the deadline must be returned to the bidders unopened*" (Article 91). Article 90-2 determines the time when bids are to be opened at a public meeting. Bidders *"who presented a bid are authorized by the contracting authority to attend or be represented at the opening of bids"* (Article 91).

[124] Articles 92 to 93-2 deal with the admissibility, analysis, evaluation, and comparison of bids. Before continuing with the analysis and evaluation, the Bid Assessment Committee *"shall conduct a preliminary evaluation to determine whether the bids are in line with the demands of the request for tenders"* (Article 92). The Committee then determines whether the bids comply *"with the conditions and specifications in the conditions document*" and rejects those that do not. Article 93 prohibits any exchange of information and any negotiation between the Committee and the bidders *"between the bid presentation deadline and the date on which the temporary bidder of the contract is announced, breaches thereof being punishable by the temporary exclusion of the bidders and disciplinary sanctions against the members of the Committee*" (Article 93). The Committee then conducts a *"detailed evaluation according to the criteria set*" in Articles 74 to 76-2 referred to above and included in the tender documents (Article 93-2). It is then proposed that the contract be awarded to the bidder who presented the best offer and met the qualification criteria set out in the tender document (Article 93-2).

[125] Articles 94 to 100 described the procedure for open tenders with pre-qualification. Article 94-1 stipulates that "*pre-qualification of candidates shall be conducted exclusively based on their capacity to execute the contract satisfactorily and in accordance with the following criteria: 1) references to similar contracts; 2) the material and human resources that candidates possess for executing the contract; and 3) candidates' financial capacity."* Article 97 provides that the Committee for Opening Proposals and Evaluating Bids "*shall appraise the evidence showing the candidates' qualifications based on the criteria established in the bidding documents and shall draw up a report on the evaluation of the tenders.*" The list of pre-qualified candidates selected by the procurement authority must be validated by the CNMP (Article 97-1). Next, "*the person in charge of the contract shall write to the candidates that were not selected notifying them of the results of the processing of pre-qualification applications and shall, simultaneously write to all pre-qualified candidates, sending them the bidding documents and an invitation to bid. The person in charge of the contract shall provide any candidate who so requests with the reasons why his/her/its candidacy was rejected*" (Article 97.1).

[126] Articles 101 to 102 describe the procedure for two-stage open tenders, applied "*in the case of highly complex contracts or when the person responsible for the contract wishes to make a selection based on performance criteria and not on the basis of detailed technical specifications*" (Article 101).

[127] Articles 103 to 104 refer to the restricted tender procedure, which can only be used with CNMP approval to award the following contracts: *"1) contracts that can only be executed by a small number of already identified enterprises; 2) contracts resulting from an unsuccessful tender, pursuant to Article 87 (1) of the decree."* The procurement authority is required to guarantee a genuinely competitive procedure through "*written consultation with several bidders*" (Article 103-2).

[128] Articles 105 to 107 refer to direct procurement. Direct procurement is defined as a "*situation in which the person in charge of the contract enters into a commitment, without competition and following discussions he or she deems useful, with a previously identified contractor or service provider."* This kind of public contract may only be approved with contractors "*that agree to submit to specific price control during the performance of their services.*" Article 106 specifies the cases in which this type of contract may be used and reiterates the content of Article 34 of the aforementioned Law of June 10, 2009.

[129] Articles 123 to 126-2 refer to the contract award decision. The Committee for Opening Proposals and Evaluating Bids shall prepare, pursuant to Article 123, "*a bid evaluation report describing the circumstances in which the bids were analyzed*" and shall put forward "*a proposal for classifying the bids received and awarding the contract, that may not be made public or disclosed to the candidates or any other person not qualified to participate in the evaluation procedure."* The evaluation report, together with the bids, is then sent to the CNMP (Article 124). Article 124-1 specifies the contents of the draft contract that: *"1) defines the nature and scope of the needs to be satisfied and the expected amount of the transaction; 2) establishes the overall state of the market, the price envisaged, and the terms and conditions expected to govern execution of the contract; 3) substantiates the choice of method by which the contract is to be awarded, and, where applicable, use of the time frame applicable to emergency cases or direct procurement procedures; 4) details the procedure followed; 5) lists the names of bidders that were not selected and the reasons why their bids were rejected."* Following evaluation by the CNMP, "*the person in charge of the contract shall notify the winning bidder in writing of the award of contract; at the same time inform the other bidders that their bids were turned down; and proceed to finalize the draft contract for signing by the contracting parties and approval by the competent authority"* (Article 125). Once the contract has been signed by the contracting parties and approved by the competent authority, it is sent to the CNMP for final validation (Article 126). The CNMP then transmits it to the CSC/CA to elicit its expert opinion in favor (Article 126-1). After the CSC/CA has issued its opinion in favor, "*the CNMP shall proceed to validate the contract and send it to the person in charge of the contract for execution*" (Article 126-2).

[130] Articles 127 to 128 contain the rules relating to notification of the validation of the contract and to the dissemination of information regarding the awarding of the contract.

[131] Articles 219 to 220-1 refer to internal and ex-post audits. Thus, under Article 219, *"in each procurement authority, the internal control body must guarantee strict compliance with the legal and regulatory provisions applicable to public contracts*." Article 220 establishes that the person responsible for the contract must submit a quarterly report on all public contracts entered into during the quarter, regardless of thresholds. Article 220-1 establishes that "*this report provides a list of unsuccessful enterprises, specifying the nature of the deficiencies detected any other information*" required by the CNMP.

[132] – Legal provisions such as those contained in the Decree of November 4, 2009, giving full effect to the Code of Ethics Applicable to Agents Involved in Public Procurement and Public Works Concession Agreements, which establishes standards that heighten the moral criteria that govern the public procurement and awarding of public contracts process and serves to remind those participants of the conduct expected of them and of the sanctions that may be incurred by bidders, holders of public contracts, and agents in the procuring entities for infringement committed and banned practices (Article 1). The purpose of the Code of Ethics is to promote transparency, competition, and the right of appeal and to facilitate the development of a culture of integrity and effectiveness in procedures (Article 1). It stipulates the obligations of participants in public procurement, for both bidders and holders of contracts and for the procuring entities and their agents.

[133] Articles 5 to 7 refer to the ban on obstacles to competition. Thus, under Article 6, the procurement authority must observe: "*the principle of competitiveness in the awarding of public contracts*." To that end, the procurement authority must: *"1) avoid granting unwarranted advantages through favoritism or illegal acquisition of interests; 2) base its comparison of bids exclusively on measurable criteria explained to bidders prior to the submission of their bids; 3) ensure that public procurement and public works concession procedures are exempt from intervention by higher public authorities or any other person not included in the list of actors recognized in the regulations; 4) refrain from exerting influence on the decisions taken by the actors involved by avoiding any material participation in operations and limiting their role to approval of the documents submitted by subordinates in the hierarchy who are required to go through their supervisors* (*actes posés en amont par les subordonnés* )" (Article 6).

[134] Article 16 deals with the oversight exercised by the procurement authority. Here, the procurement authority must "*ensure that its agents enforce the laws and regulations prohibiting fraudulent practices and acts of corruption, punish guilty agents acting within its sphere of competence, and propose to the Public Procurement Commission the imposition of sanctions on bidders and holders of public contracts and public works concession agreements that commit offenses*."

[135] Articles 17 to 20 establish the sanctions applicable to bidders and holders of public contracts. Article 17 provides that: *"without prejudice to applicable civil and criminal sanctions, the procurement authority must propose to the National Public Procurement Commission that it exclude from public procurement and public works concession agreements for a period of between six months and two years all bidders that, when they submit their bids, have committed the following offenses: 1) deliberate inexactitudes in the certificates and supporting documents contained in the file accompanying the tender or in a bid; 2) presentation by the bidder of false information or statements or the use of deceit that could influence the outcome of the procedure for awarding public contracts or public works concession agreements; 3) an attempt by the bidder to exert influence on the evaluation of bids or the decision to award a contract*." Similarly, pursuant to Article 18, the procurement authority must propose to the CNMP that it exclude from public procurement for a period of two to five years any bidder committing the following offenses during the awarding of public contracts: *"1) falsehoods or exaggeration in respect of professional or financial guarantees submitted by the bidder; 2) collusion by bidders aimed at artificial pricing of bids, without free and open competition; 3) over-invoicing and/or false invoicing by the contract holder; 4) any other deceitful or fraudulent schemes, in addition to the punishments provided for in other laws."*

[136] Article 19 establishes offenses that call for the withdrawal or revocation of the validation of public contracts: *"1) failure of the contract holder to comply with the provisions of the contract and/or the service orders delivered to it during execution of the contract; 2) any other misconduct by the contract holder that could undermine normal execution of the public contract."*

[137] Finally, Article 21 lists the sanctions that may be imposed on public agents in the procurement authorities. Article 21 stipulates that "*the procurement authority must impose on public agents the*

*disciplinary sanctions provided for in the General Statutes of the Civil Service for committing the following offenses in the public procurement process or in execution of public works concession contracts and agreements: 1) obtaining or attempting to elicit benefits for a bidder or holder of a public contract or public works concession agreement; 2) intervening at any stage in the awarding of a contract or public work concession agreement to award it to an enterprise in which they possess or maintain a stake; 3) splitting expenditures so as to elude the normally applicable procurement method or to apply a procurement procedure without the approval of the National Public Procurement Commission; 4) deliberately tilting the award of a contract or public works concession agreement in favor of a bidder temporarily precluded for taking part in public procurement or public works concession agreements that has not been approved by the National Public Procurement Commission; 5) repeatedly failing to comply with the obligation to plan and prepare the bidding procedure file."*

[138] Regarding the existence of documented procedures for the performance of its tasks, the CNMP has produced the following set of guidelines, manuals, and other standard documents to assist procurement authorities with the preparation of bidding documents and of the report on the analysis and evaluation of bids, as well as materials on the ethical conduct expected of all those involved in the public procurement process: standard documents on the evaluation of bids and on monitoring the execution of public contract; a standard document on bids relating to the execution of works; a standard format for applications to provide consultancy services and model contracts; a standard bidding document for the procurement of supplies; a standard bidding document for the provision of services; a standard bidding document for the procurement of I.T. equipment and office computerization; standard bidding documents for two-stage tenders relating to public works concession agreements; the set of general administrative clauses applicable to public works contracts; the set of general administrative clauses applicable to public procurement of intellectual services; a set of general administrative clauses applicable to public works concession agreements.

### 1.2.2. Adequacy of the legal framework and/or other measures and mechanisms for ensuring compliance.

[139] As regards the constitutional and legal provisions relating to the systems for public procurement of goods and services, the Committee, based on the information available to it, was able to ascertain that, taken together, they constitute a set of suitable measures for promoting the purposes pursued by the Convention.

[140] Despite that, the Committee deems it appropriate to make a few comments regarding the advisability of supplementing and adjusting certain provisions related to the aforementioned systems.

[141] First, the Committee observes that public procurement legislation is dispersed in a variety of laws, decrees, and other regulations. In that sense, the Committee considers that the country under review would benefit from a compilation of its rules and regulations within a single, concise body that would facilitate their enforcement by officials and be clearer and more comprehensible for all those involved in public procurements and citizens in general. Bearing in mind that, as reported by representatives of the CNMP during the on-site visit, the Republic of Haiti has already moved ahead with actions designed to reform, update, and modernize its legal framework in this sphere, the Committee will make a recommendation aimed at ensuring that the country under review consider adopting a comprehensive set of public procurement regulations (See recommendation 1.2.4.1 in Section 1.2.4 of Chapter II of this report).[3]

[3] During the meeting of the subgroup with the State under review, held on March 8, 2019, Haiti reported that it has already produced the compilation of its rules and regulations mentioned in this paragraph. That information was not taken into account for this report because it was presented after the deadline set by the Committee for submitting the information under review. (See Section I of this report, "Summary of Information Received.")

[142] Second, the Committee deems it pertinent to bear in mind that, during the on-site visit, representatives of the CNMP pointed to the absence of sanctions specifically for procurement authorities that fail to comply with their public procurement-related obligations, such as submitting the following information: annual projection plans (Article 5-4 of the Law of June 10, 2009); quarterly reports on contracts entered into, including the recommendations for improving the public procurement system (Article 7-8 of the Law of June 10, 2009); and the list of bidders and contract holders associated with banned practices (Article 16-6 of the Code of Ethics). Likewise, there are currently no sanctions covering cases in which the procurement authorities fail to publish final notices of contracts (Article 66 of the Law of June 10, 2009). In light of the foregoing, the Committee will make a recommendation. (See recommendation 1.2.4.2 in Section 1.2.4 of Chapter II of this report).

[143] Third, bearing in mind that, as reported by representatives of the CNMP during the on-site meeting, it has not yet proved possible to fully implement Article 10-6 of the Law of June 10, 2009, which establishes as one of the functions of the CNMP maintaining a database accessible to all procuring entities and containing "a list of contractors and supplies along with information regarding their performance and integrity," which would provide a basis for a national public register, mandatory for all government branches and institutions, of contractors for works, goods, and services, the Committee will make a recommendation in that regard. (See recommendation 1.2.4.3 in Section 1.2.4 of Chapter II of this report.)

[144] Worth noting in regard to the above is the information provided by the CNMP during the on-site visit that, although the above-mentioned register has not been fully constructed, the CNMP is in contact with the Ministry of Commerce and Industry, which is due to send it the list of registered enterprises and has published a registration form on its website.

[145] The Committee considers that the Republic of Haiti should continue its efforts to develop a national public register of contractors, using, for example, I.T. technology to establish, update, and consult it. Apart from data regarding the performance and integrity of contractors, this register could, pursuant to Article 10.6 of the Law of June 10, 2009, include their sphere of work or specialty, their technical and financial capacity, type of enterprise, and other information deemed relevant. The branches of government and public institutions should be required to use the Register, with a view to promoting the principles of openness, equity, and efficiency upheld in the Convention.

[146] Fourth, bearing in mind that, based on information provided by the CNMP during the on-site visit, the CNMP does not always receive the support it needs from the procurement authorities in order to comply effectively with its obligation to keep an up-to-date list of excluded and/or penalized contractors, as required under Articles 91.1, 91.2, and 91-4 of the Law of June 10, 2009, in line with Article 220-1 of the Decree of November 4, 2009 and Articles 17 to 19 of the Code of Ethics, and that it would be best if that information also included the reasons for the exclusion and/or sanction. In addition, as part of the review and in connection with the on-site visit, the Committee proceeded to consult the website, which is supposed to contain the blacklist (https://cnmp.gouv.ht/listenoire/index), but did not any mention of any provider or contractor. When asked about this during the on-site visit, the CNMP reported that the list was up-to-date, but the information had to be remitted by the procuring agencies. In light of the foregoing, the Committee will make a recommendation in that regard. (See Recommendation 1.2.4.4 in Section 1.2.4 of Chapter II of this report.)

[147] With regard to the above, it is worth adding that, according to Article 91 of the Law of June 10, 2009, the CNMP may impose administrative sanctions on bidders and holders of contracts for offenses committed and exclude them from public procurement processes. However, it is up to the procurement authority to provide the CNMP with the list of bidders and holders of contracts that have committed offenses

(Article 16-5 of the *Code of Ethics*) or that are guilty of serious failures to comply with procurement contract clauses (Articles 220 to 220-1 of the Decree of November 4, 2009).

[148] Fifth, the Committee, taking into account the importance of the CNMP receiving in a timely manner from the contracting authorities the quarterly reports on the contracts concluded, including the recommendations to improve the public procurement system, provided in the article 7-8 of the Law of June 10, 2009, as well as to give timely disclosure to them[4] in order to guarantee the principle of openness enshrined in the Convention, will make a recommendation to the country under review (see recommendation 1.2.4.5 of section 1.2.4 of chapter II of this report.)

[149] Sixth, bearing in mind the absence of provisions encouraging civil society participation in the monitoring and oversight of public procurement activities, together with the fact that the CNMP highlighted that lack of participation during the on-site visit, and in consideration of the importance of raising awareness within civil society of public procurement activities and the importance in this of civil society being aware of those activities, the Committee considers that the adoption of such provisions and the publication of information on public procurement would be useful in upholding the principles of disclosure, equity, and efficiency enshrined in the Convention. For that reason, it will make a recommendation to the country under review in that regard. (See Recommendation 1.2.4.6 in Section 1.2.4 of Chapter II of this report).

[150] In connection with this, it should be noted that during the on-site visit, civil society representatives spoke of difficulties in accessing public contracts that had been awarded.

[151] Seventh, the Committee notes the absence of provisions regarding implementation of oversight systems for each specific public works contract that, after taking its size into account, provide for inspection or direct supervision of contract execution by the contracting entity or a body designated by it; allow social accountability or citizen oversight activities; establish the a duty to report at regular intervals on the status of contract execution; and make it possible to determine whether the expected cost-benefit ratio was in fact achieved and whether the quality of the works matched the stipulations agreed upon. The Committee will make a recommendation in that regard. (See recommendation 1.2.4.7 in Section 1.2.4 of Chapter II of this report.)

[152] Eighth, the Committee deems it relevant to bear in mind that, during the on-site visit, representatives of the CNMP singled out the need for its personnel to receive training specifically tailored to public procurement processes. The Committee wishes to underscore the importance of such training for both CNMP personnel and for public agents and officials responsible for handling and managing the processes involved in public procurement or goods, works, and services, so as to ensure that they are better positioned to fully enforce the regulations concerning public procurement. The Committee will make a recommendation in that regard. (See recommendation 1.2.4.8 in Section 1.2.4 of Chapter II of this report.)

[153] Worth noting in relation to the above is that an academic participating in the on-site visit suggested the need to implement a comprehensive and sustainable strategy for boosting the capacity of officials responsible for public procurement.

[154] Ninth, the Committee notes with respect to Article 34-1.4 of the Law of June 29, 2009, which allows direct procurement in the case or a "*supplementary work that turns out to be necessary*", that not only does said law lack a more detailed and precise description of such a work; it also fails to indicate objective criteria for using this exceptional direct procurement method. Article 34-1.4 only indicates, as

[4] The last quarterly report that was published on the website of the CNMP was in 2013. The report corresponds to the 2004-2005 period. If filters are not applied, so as to view all published reports, a total of four published quarterly reports can be found.

conditions for its use, that the supplementary work must derive from unforeseen circumstances for which the [parties are not responsible and that it must be technically and economically inseparable from the principal contract. In light of the foregoing, the Committee will make a recommendation. (See recommendation 1.2.4.9 in Section 1.2.4 of Chapter II of this report.)

[155] Tenth, taking into account that, with respect to Article 34-1.4 of the Law of June 29, 2009, which allows direct procurement in the case or a "*supplementary work that turns out to be necessary*", current legislation does not specifically establish limits to the maximum percentage of the value of the principal contract that may be negotiated or to the number of supplementary works that can be added in relation to the contract or principal work, the Committee will make a recommendation in that regard to the country under review. (See recommendation 1.2.4.10 in Section 1.2.4 of Chapter II of this report.)

[156] Eleventh, the Committee observes the lack of mechanisms for cooperation among the various bodies responsible for different aspects of public procurement. In its reply to the questionnaire,[5] the Republic of Haiti pointed expressly to the nonexistence of cooperation mechanisms between the CNMP, the CSC/CA, and the ULCC, and between them and the procurement authorities that would make it possible to detect and suppress the illegal awarding of public contracts, pursuant to Article 5.12 of the Law of March 12, 2014 on the Prevention and Repression of Corruption. The Committee will make a recommendation in that regard. (See recommendation 1.2.4.11 in Section 1.2.4 of Chapter II of this report.)

[157] Twelfth, bearing in mind that, during the on-site visit, the representatives of the CNMP reported that they were unaware of the outcomes of their complaints of public procurement irregularities filed with the competent judicial authorities, given the absence of mechanisms for them to follow-up on outcomes, the Committee will make a recommendation to the country under review in that regard. (See recommendation 1.2.4.12 in Section 1.2.4 of Chapter II of this report.)

### 1.2.3. Results associated with the legal framework and/or other measures and mechanisms for ensuring compliance therewith.

[158] In its reply to the questionnaire,[6] the Republic of Haiti provides the following information, regarding procurement carried out using the system described in the Law of June 10, 2009:

Table: Distribution of approved contracts
by type of contract (Fiscal year 2016-2017)

| ***Nature of the Contract*** | ***Contracts approved*** | | ***Amounts of the approved contracts*** | |
|---|---|---|---|---|
| | ***Number*** | ***Percentage*** | ***Value (gourdes)*** | ***Percentage*** |
| *Work* | 4 | 5.88% | 1,070,675,239.84 | 9.72% |
| *Services* | 2 | 2.94% | 232,363,065.00 | 2.11% |
| *Supplies* | 58 | 85.29% | 9,625,727,824.16 | 87.37% |
| *Intellectual services* | 4 | 5.88% | 88,157,682.82 | 0.80% |
| ***Total*** | ***68*** | ***100.00%*** | ***11,016,923,811.82*** | ***100.00%*** |

[159] As noted by the country under review in its reply to the questionnaire,[7] for the 2016-2017 period, the number of contracts relating to finished public works is especially low compared to those for the purchase of supplies. The Committee observes that supplies contracts predominate in public procurement

[5] Response by the Republic of Haiti to the questionnaire, pages 16 and 17.
[6] Response by the Republic of Haiti to the questionnaire, page 14.
[7] Response by the Republic of Haiti to the questionnaire, page 14.

and account for 85.29% of the total number of contracts approved by the CNMP. In value terms, they amount to 9.6257 billion gourdes, that is 87.37% of the total. These statistics highlight the much smaller part played by other kinds of contracts.

[160] In its response to the questionnaire,[8] the Republic of Haiti also provided the following information on the distribution of contracts approved for 2016-2017, by type of award.

**Distribution of the approved contracts**
**by type of contract (Fiscal year 2016-2017)**

| ***Award procedure*** | ***Contracts approved*** | | ***Amounts of the approved contracts*** | |
|---|---|---|---|---|
| | ***Number*** | ***Percentage*** | ***Value (gourdes)*** | ***Percentage*** |
| *Call for submission of bids (open tender)* | 24 | 35.29% | 786,419,428.99 | 7.14% |
| *Call for statements of interest* | 4 | 5.88% | 88,157,682.82 | 0.80% |
| *Mutual agreement* | 40 | 58.82% | 10,142,346,700.00 | 92.06% |
| **Total** | **68** | **100.00%** | **11,016,923,811.82** | **100.00%** |

[161] According to the foregoing Table, in fiscal year 2016-2017, the procurement authorities used three different public procurement procedures. These were: Open Tender, Statement of Interest, and Mutual Agreement. The Committee note that a significant number of public institutions resorted to mutual agreement procurement. In fact, 40 of the 68 contracts entered into (58.8% of all contracts) were by mutual agreement. In value terms they amounted to 10.15 billion gourdes, that is to say, more than 90% of the total value of public contracts. Twenty-four contracts were arrived at through open tender procedures which, even though they are supposed to be used as general rule according to Article 29.1 of the Law of June 10, 2009, accounted for 35.29% of contracts and, in value terms, only 7.14% of the total value of the contracts.

[162] With regard to the above information (especially that contained in the second Table), the Committee notes that although, according to its analysis, the system envisioned in the Law of June 10, 2009 expressly stipulates that, as a general rule, a contractor shall be selected via a public tender or public competitive process (Article 29.1), in practice direct procurement was the most used procedure in fiscal year 2016-2017. In light of the foregoing, the Committee will make a recommendation. (See recommendation 1.2.4.13 in Section 1.2.4 of Chapter II of this report.)

[163] Bearing in mind that the country under review submitted only the above information regarding outcomes related to the systems for public procurement of goods and services, the Committee considers that it would be useful, for the purpose of identifying challenges and, if necessary recommending corrective measures, for the country under review to consider compiling detailed annual statistic on the results of said system in respect of such aspects as sanctions imposed for infringing procurement rules; and the procurement procedures used, indicating, for instance, the percentage of contracts awarded through general procedures (open tenders or calls for bids with pre-qualification), exceptional procedures (restricted tenders), and specific procedures (intellectual services contracts, order slips contracts, and supplies

[8] Response by the Republic of Haiti to the questionnaire, page 14.

contracts) and emergency procedures. The Committee will make a recommendation to the country under review in that regard. (See recommendation 1.2.4.14 in Section 1.2.4 of Chapter II of this report.).

**1.2.4. Conclusions and recommendations**

[164] The Republic of Haiti has considered and adopted measures aimed at creating, maintaining, and strengthening systems for public procurement of goods and services in keeping with Chapter II, Section 1.2.1 of this report.

[165] In light of the comments made in Sections 1.2.2 and 1.2.3 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

1.2.4.1 Consider adopting such measures as are needed to consolidate public procurement regulations in a single general and comprehensive volume, so as to facilitate their application by the public officials called upon to do so and to make them clearer and more understandable for those involved in public procurement and for the general public; being guided in that process by the principles of openness, equity, and efficiency called for in the Convention. (See paragraph 141 of Section 1.2.2 of Chapter II of this report.)

1.2.4.2 Consider developing and implementing, through the appropriate authority, a set of sanctions applicable to procurement authorities that fail to comply with their public procurement-related obligations. (See paragraph 142 of Section 1.2.2 of Chapter II of this report).

1.2.4.3 Establish a national public register of contractors for works, goods, and services that shall be mandatory for all branches of government and public institutions and shall also contain data on the contractors' performance and integrity, as required under Article 10-6 of the Law of June 10, 2009. It could also specify their field of work or specialty, type of enterprise, and other information deemed pertinent, in order to guarantee the principles of openness, equity, and efficiency upheld in the Convention. (See paragraph 1438 in Section 1.2.2 of Chapter II of this report.)

1.2.4.4 Adopt pertinent measures to allow the contracting authorities to send the CNMP, within the established deadlines, their quarterly reports, indicating not only, as applicable, the bidders and holders of public contracts who allegedly committed breaches or serious violations of the clauses of public contracts, but also the reasons justifying the imposition of sanctions and/or the disqualification from contracting adopted with respect to them, so that the CNMP is fully able to meet its obligation of keeping the blacklist up to date and performing effective preventive oversight. (See paragraph 146 in Section 1.2.2 of Chapter II of this report.).

1.2.4.5 Adopt the necessary measures to ensure that, in addition to the contracting authorities sending the CNMP, within the established deadlines, their quarterly reports on contracts entered into, including their recommendations for improving the public procurement system, as provided for in Article 7 of the Law of June 10, 2009, those reports are publicized on a timely basis on the CNMP website and are easily accessible, in order to uphold the principle of disclosure enshrined in the Convention. (See paragraph 148 of Section 1.2.2 of Chapter II of this report.)

1.2.4.6 Consider adopting provisions encouraging civil society participation in the monitoring and oversight of public procurement activities and adopting measures to that end, such as civil society awareness campaigns to encourage it to play an active part in said monitoring and oversight. (See paragraph 149 in Section 1.2.2 of Chapter II of this report).

1.2.4.7 Consider adopting provisions regarding implementation of oversight systems for each specific public works contract that, after taking its size into account, provide for inspection or direct supervision of contract execution by the contracting entity or a body designated by it; allow social accountability or citizen oversight activities; establish the a duty to report at regular intervals on the status of contract execution; and make it possible to determine whether the expected cost-benefit ratio was in fact achieved and whether the quality of the works matched the stipulations agreed upon. (See paragraph 151 in Section 1.2.2 of Chapter II of this report.)

1.2.4.8 Adopt the necessary measures to train the public agents and public officials responsible for public procurement and Civil Service concession contracts, including those of the CNMP, on a regular basis and free of charge, whether on-site and/or distance, within available resources. (See paragraph 152 in Section 1.2.2 of Chapter II of this report.)

1.2.4.9 Consider adopting measures that establish objective criteria for using this exceptional direct procurement method provided for in Article 34-1 of the Law of June 10, 2009, in the case of a "supplementary work that turns out to be necessary"; guided to that end by the principles of openness, equity, and efficiency upheld in the Convention. (See paragraph 154 in Section 1.2.2 of Chapter II of this report.)

1.2.4.10 Consider adopting provisions to specify exactly the maximum percentage that a complementary project can reach as a proportion of the principal contract, or the maximum number of additional projects that can be accumulated without exceeding the value percentage, with respect to the use of the special direct contracting mechanism provided for in Article 34-1 of the Law of June 10, 2009. (See paragraph 155 in Section 1.2.2 of Chapter II of this report.)

1.2.4.11 Adopt cooperation mechanisms between the CNMP, the CSC/CA, and the ULCC, and between them and the procurement authorities, that would make it possible to detect and suppress the illegal awarding of public contracts, pursuant to Article 5.12 of the Law of March 12, 2014 on the Prevention and Repression of Corruption. (See paragraph 156 in Section 1.2.2 of Chapter II of this report.)

1.2.4.12 Adopt mechanisms to enable the CNMP to follow up on complaints regarding irregularities in public procurement filed with the competent judicial authorities, so as to ascertain the outcomes of those complaints, identify challenges, and recommend corrective measures, where necessary. (See paragraph 157 in Section 1.2.2 of Chapter II of this report.)

1.2.4.13 Have the appropriate authority adopt measures guaranteeing that direct procurement is used in strict application of the exceptions provided for by law, so that the procedure used as a general rule is open tender, as provided for in Article 29-1 of the Law of June 10, 2009. (See paragraph 162 in Section 1.2.3 of Chapter II of this report.)

1.2.4.14 Compile detailed annual statistics on the results of public procurement systems in respect of such aspects as sanctions imposed for infringing procurement rules; the procurement procedures used, indicating, for instance, the percentage of contracts awarded through general procedures (open tenders or calls for bids with pre-qualification), exceptional procedures (restricted tenders), specific procedures (intellectual services contracts, order slips contracts, and supplies contracts) and emergency procedures, in such a way that said information can help identify challenges and recommend corrective measures, where necessary. (See paragraph 163 in Section 1.2.3 of Chapter II of this report.)

## 2. SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO, IN GOOD FAITH, REPORT ACTS OF CORRUPTION (ARTICLE III (8) OF THE CONVENTION)

### 2.1. Existence of a legal framework and/or other measures

[166] The Republic of Haiti has provisions on protecting public servants and private citizens who, in good faith, report acts of corruption.

[167] – Legal provisions, such as those contained in the Law of March 12, 2014 on the prevention and repression of corruption. Article 18 provides for the adoption of a law "*that establishes the legal framework for protection to which whistleblowers and witnesses of acts of corruption, as well as experts, can resort and refer to. This protection also extends to family members who may be exposed to threats or reprisals.*" The aforementioned Article establishes that "*anyone who resorts to revenge, intimidation, or threats against a witness, expert, whistleblower, or victim, or against his or her spouse, children, parents, or any other person close to them shall be punished with imprisonment for between one and three years and payment of a fine of between one hundred and fifty thousand and two hundred and fifty thousand gourdes"* (Article 18). If the revenge should result in permanent disability or death (murder), the criminal shall be punished in accordance with the provisions of the Penal Code (Article 18).

[168] – Legal provisions, such as those contained in the Decree of September 8, 2004 that establish an Administrative Body called the Anti-Corruption Unit ("ULCC") (hereinafter "Decree of September 8, 2004"). Article 19 provides that the Director General of the ULCC must guarantee *"protection of the identity of the persons involved as well as that of witnesses in a whistleblowing context; that mechanisms be set up to guarantee protection of the information gathered that is linked to the report of irregularities; and that no reprisal is carried out against informants or whistleblowers."*

[169] The ULCC, as the institution responsible for the fight against corruption, also has a Complaints and Whistleblowing Service ("*Service de Plaintes et de Dénonciations*") that receives all reports of acts of corruption within the Public Administration. Citizens can also report these acts to the departmental directorates of the ULCC. In addition, there are provisions to ensure the protection of the identity of these persons, if necessary.

### 2.2. Adequacy of the legal framework and/or other measures

[170] With respect to legal provisions for the protection of public officials and private citizens who, in good faith, report acts of corruption, that the Committee has examined based on the information available to it, they can be said to constitute a set of measures relevant for promoting the purposes of the Convention.

[171] Nevertheless, the Committee deems it advisable for Haiti to consider supplementing, developing, or adapting existing provisions, through appropriate legislative and administrative procedures, in line with its Constitution and the fundamental principles of its legal order, regarding the protection of civil servants and private citizens who in good faith report acts of corruption, and bearing in mind the criteria established in the Model Law approved by the Committee for Facilitating and Encouraging the Reporting of Acts of Corruption and Protecting Whistleblowers and Witnesses.[9] Accordingly, the country under review should consider the following:

[172] First, the Committee observes that, in general, the country under review lacks a comprehensive legal framework for protecting civil servants and private citizens who in good faith report acts of corruption

[9] Available at: http://www.oas.org/juridico/PDFs/ley_modelo_proteccion.pdf.

through both administrative and criminal law channels. The Committee will formulate recommendations in this regard. (See Recommendations 2.4.1 and 2.4.2 in Section 2.4 of Chapter II of this report.)

[173] It is to be noted with regard to the above that, although Article 18 of the Law of March 12, 2014 on the Prevention and Repression of Corruption provides for the adoption of a law defining the protection framework to which whistleblowers and witnesses of acts of corruption may have recourse, that law has not been adopted. In the on-site visit, the country under review reported that the ULCC had prepared a preliminary bill in that regard and that the text of it would be presented to members of civil society in November 2018 with a view to eliciting their opinions and suggestions before submitting the bill to the Council of Ministers for approval.

[174] For his part, an academic present during the on-site visit also mentioned the need to come up with the aforementioned regulation and pointed out that a proposal along those lines had been put forward in 2013, but had not been approved.

[175] Second, the Committee observes that current legislation does not contain provisions on protection mechanisms specifically for persons reporting acts of corruption subject to investigation in administrative processes and judicial proceedings. The Committee will formulate recommendations in this regard. (See Recommendations 2.4.3 and 2.4.4 in Section 2.4 of Chapter II of this report.)

[176] Worth noting in respect of the above is that the country under review pointed out in its response to the questionnaire[10] that, although Article 19.3 of the Decree of September 8, 2004 provides for the application of witness protection mechanisms by the Director of the ULCC, those mechanisms have not yet been established.

[177] Third, the Committee considers that protection measures must cover all whistleblowers and their families, not just in terms of their bodily integrity, but also in connection with their workplace conditions, particularly when the person is a public servant and the acts of corruption might involve his supervisor or co-workers. The Committee will make a recommendation in that regard. (See recommendation 2.4.5 in Section 2.4 of Chapter II of this report.)

[178] Fourth, the Committee observes that during the on-site visit, the representatives of the ULCC informed the Committee of a system of "alert boxes" that was to be implemented in 2018. The Committee, at the time this report was being drafted, had received no information that would allow it to determine whether or not that mechanism has been implemented. For that reason, it considers it important that the country under review consider broadening mechanisms for whistleblowing, such as anonymous reporting of acts of corruption that do not require a court order or whistleblower protection and the installation of alert boxes in public institutions, subject to the availability of resources, to ensure the personal safety and the confidentiality of the identity of public officials and private citizens who, in good faith, report acts of corruption. The Committee will make a recommendation in that regard. (See recommendation 2.4.6 in Section 2.4 of Chapter II of this report.)

[179] Fifth, the Committee observes that the country under review lacks mechanisms for reporting the threats or reprisals that whistleblowers may face, indicating the authorities responsible for processing protection requests and the bodies responsible for providing such protection. The Committee will make a recommendation in that regard. (See recommendation 2.4.7 in Section 2.4 of Chapter II of this report.)

[180] Sixth, the Committee notes that the current legal framework does not establish protection mechanisms for witnesses of acts of corruption.

[10] Response by the Republic of Haiti to the questionnaire, page 18.

[181] Seventh, the Committee observes that the country under review lacks mechanisms to facilitate, where applicable, international cooperation in the field of protection for public servants and private citizens who, in good faith, report acts of corruption, including the technical assistance and mutual cooperation envisaged in the Convention, along with the sharing of experiences, training, and mutual assistance. Therefore, the Committee will make a recommendation to the country under review in that regard. (See recommendation 2.4.8 in Section 2.4 of Chapter II of this report.)

[182] Eighth, the Committee observes that the country under review lacks provisions establishing a simplified, readily available process for filing applications for protection measures for whistleblowers and witnesses of acts of corruption. Therefore, the Committee will make a recommendation to the country under review in that regard. (See recommendation 2.4.9 in Section 2.4 of Chapter II of this report.)

[183] Finally, the Committee considers that any legal framework should contain provisions to punish, through administrative channels, noncompliance with protection rules and/or obligations. Therefore, the Committee will make a recommendation to the country under review in that regard. (See recommendation 2.4.10 in Section 2.4 of Chapter II of this report.)

### 2.3. Results of the legal framework and/or other measures

[184] In its response to the questionnaire,[11] the Republic of Haiti indicated that setting up the ULCC "5656" hotline for anonymous whistleblowing over the phone had led to a marked increase in the number of complaints and reports and that in fiscal year 2014-2015 the ULCC had received 261 calls via that line. Nevertheless, during the on-site visit, the country under review explained that not all those calls were denunciations, that said hotline had ceased to operate as of February 2016, due to technical issues, and that Haiti lacked the resources to put it back in service.[12]

[185] With regard to the above, bearing in mind, first, the usefulness of the "5656" hotline as a mechanism for anonymous whistleblowing, the Committee will make a recommendation to the country under review for it to consider ensuring the resources necessary to guarantee its permanent operation. (See recommendation 2.4.11 in Section 2.4 of Chapter II of this report.)

[186] Second, bearing in mind that it has no information regarding results of the whistleblower protection measures which, according to Article 19 of the Decree of September 8, 2004, which established the ULCC, are the responsibility of that Unit, the Committee will make a recommendation to the country under review in that regard. (See recommendation 2.4.12 in Section 2.4 of Chapter II of this report.)

### 2.3. Conclusions and recommendations

[187] The Republic of Haiti has considered and adopted certain measures aimed at creating, maintaining, and strengthening systems to protect public servants and private citizens who in good faith report acts of corruption, as described in Chapter II, section 2.1 of this report.

[188] In light of the comments made in Sections 2.2 and 2.3 of Chapter III of this report, the Committee suggests that the country under review consider the following recommendations:

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[11] Response by the Republic of Haiti to the questionnaire, page 18.

[12] In its observations to the preliminary draft report, the country under review reported that the "5656" hotline is now fully operational and has been functioning since January 2019.

2.4.1 Consider adopting a comprehensive legal and regulatory framework that provides protection for public servants and private citizens who in good faith report acts of corruption in the administrative sphere, including protecting their identity, in accordance with the Constitution and the fundamental principles of its domestic legal order, guided by the criteria outlined in the Model Law, approved by the Committee, to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses. (See paragraph 172 of Section 2.2 of Chapter II of this report.)

2.4.2 Consider adopting a comprehensive legal and regulatory framework that provides protection, in the criminal law system, for public servants and private citizens who in good faith report acts of corruption, including protecting their identity, in accordance with the Constitution and the fundamental principles of its domestic legal order, guided by the criteria outlined in the Model Law, approved by the Committee, to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses. (See paragraph 172 of Section 2.2 of Chapter II of this report.)

2.4.3 Consider adopting provisions that establish protection measures for persons reporting acts of corruption subject to investigation in administrative proceedings. (See paragraph 175 of Section 2.2 of Chapter II of this report.)

2.4.4 Consider adopting provisions that establish protection measures for persons reporting acts of corruption subject to investigation in judicial proceedings. (See paragraph 175 of Section 2.2 of Chapter II of this report.)

2.4.5 Considering adopting, through appropriate legislative or administrative procedures, measures to protect all whistleblowers and their families, not just in terms of their bodily integrity, but also in connection with their workplace conditions, particularly when the person is a public servant and the acts of corruption might involve his supervisor or co-workers. (See paragraph 177 of Section 2.2 of Chapter II of this report.)

2.4.6 Consider broadening mechanisms for whistleblowing, such as anonymous reporting of acts of corruption that do not require a court order or whistleblower protection and the installation of alert boxes in public institutions, subject to the available resources, to ensure the personal safety and the confidentiality of the identity of public officials and private citizens who, in good faith, report acts of corruption. (See paragraph 178 of Section 2.2 of Chapter II of this report.)

2.4.7 Consider adopting provisions to establish mechanisms for reporting threats or reprisals made against whistleblowers, indicating the authorities responsible for processing protection requests and the agencies responsible for providing such protection. (See paragraph 179 of Section 2.2 of Chapter II of this report.)

2.4.8 Consider adopting provisions to establish mechanisms to facilitate, where applicable, international cooperation in the field of protection for public servants and private citizens who, in good faith, report acts of corruption, including the technical assistance and mutual cooperation envisaged in the Convention, along with the sharing of experiences, training, and mutual assistance. (See paragraph 181 in Section 2.2 of Chapter II of this report.)

2.4.9 Consider establishing a simplified, readily available process for filing applications for protection measures for whistleblowers and witnesses of acts of corruption. (See paragraph 182 of Section 2.2 of Chapter II of this report.)

2.4.10 Consider adopting, through appropriate legislative or administrative procedures, provisions to punish, through administrative channels, noncompliance with protection rules and/or obligations, indicating which authorities are responsible for imposing sanctions/punishment. (See paragraph 183 of Section 2.2 of Chapter II of this report.)

2.4.11 Consider adopting, through the appropriate authority and subject the availability of resources, measures designed to guarantee the necessary resources for the permanent operation of the "5656" telephone hotline. (See paragraph 185 of Section 2.3 of Chapter II of this report.)

2.4.12 Compile annual statistics on the number of measures adopted by public authorities to protect whistleblowers and witnesses, broken down by act of corruption and, based on the findings, identify and consider adopting specific measures to ensure effective implementation. (See paragraph 186 of Section 2.2 of Chapter II of this report.)

## 3. ACTS OF CORRUPTION (ARTICLE VI (1) OF THE CONVENTION)

### 3.1. Existence of/provisions for a legal framework and/or other measures.

[189] The Republic of Haiti has adopted measures aimed at legally defining the acts of corruption referred to in Article VI.1 of the Convention. They include:

- **Provisions of a general nature**

[190] – Legal provisions, such as those contained in the Law of March 12, 2014 on the Prevention and Repression of Corruption (hereinafter the "Law of March 12, 2014"), the purpose of which is to harmonize "*national legislation with international conventions on the subject to which the Republic of Haiti is a party*" (Article 1).

[191] Article 2 provides for extending the law's scope of application to the actors involved in corruption to cover: *"any individual, legal entity, nongovernmental organization (NGO), as well as any national or foreign private sector company, foreign public agent, agent or officer of an international organization who has taken part as the perpetrator, instigator, accomplice or accessory after the fact in an act of corruption*." Article 2 also provides in relation to the law's scope of application that: "*the law covers the act, by any person, of making, directly or indirectly, offers, promises, gifts, favors or granting advantages to any of the persons referred to in paragraph 1 of this Article, and, in general, to anyone vested with government authority in charge of a Civil Service mission or who holds elective office, for that person himself (or herself) or any other person, in exchange for unlawful collaboration in connection with his or her function, mission, or mandate.*" Article 2 likewise indicates that the law "*also covers the act, by any person, of soliciting, accepting, or approving, at any time, directly or indirectly, offers, promises, gifts, favors, or advantages, for himself (or herself) or for any other person, with a view to using his or her real or supposed influence to obtain or arrange to obtain from any person, department, organ or institution in the Public Administration any distinction, job, contract, or any other measure in his or her favor.*"

[192] Articles 3 and 4 provide definitions of certain terms used in this field. Concretely, Article 3 defines corruption as follows: "*Corruption shall be construed as any use or abuse made to their own or other persons' benefit of their function or occupation by the persons mentioned in Article 2 of the present law, to the detriment of the State, an autonomous entity, independent institution, territorial collectivities* [...]." Article 5 defines public agent as: "*any person performing a legislative, executive, administrative, or judicial mandate, who was appointed or elected, on a permanent or temporary basis, to either a remunerated or unpaid position, at any level of the administrative hierarchy."* The Article also defines official or public

servant as: *"any public agent designated to fill a full-time permanent position, with a definitive appointment to one of the levels in the administrative hierarchy"* (Article 4).

[193] – Legal provisions, such as those contained in the Decree of September 8, 2004, establishing an Administrative Body called the Anti-Corruption Unit (ULCC) (hereinafter the "*Decree of September 8, 2004"*), Article 4 of which requires guaranteeing the ULCC mandate of "*taking steps to ensure application of the Inter-American Convention against Corruption and according priority to the most frequently reported acts of corruption*."

- **As regards Article VI(1)(a):**

[194] Article 5.6 of the Law of March 12, 2014 deals with bribery, as follows: *"Bribery: any official, public agent, or any other representative of the State who, in the exercise of his or her functions, asks for or accepts an illicit payment, that is to say, an item of value or any other asset offered in return for granting an illicit or improper benefit, shall be punished with imprisonment for between one and five years and a fine equal to three times the value of the amount received, in addition to confiscation by the State of the amount or value of the bribe."*

[195] Article 11 of the Law of March 12, 2014, which amends Article 137 of the Penal Code, establishes sanction to be imposed on any public agent who authorizes or receives any offer in return for performing an act pertaining to his or her functions, even if that act is admissible: "*any public agent, official in the National Public Administration, member of the public force or magistrate who accepts offers or promises, or who receives offers or gifts in return for performing an act pertaining to his or her function or job, even when the act is admissible but not covered by his or her wage, shall be punished with imprisonment, pursuant to Article 20 of the Penal Code, and with a fine of five hundred thousand gourdes, without prejudice to applicable disciplinary sanctions."*

[196] Article 12 of the Law of March 12, 2014, the purpose of which is to amend Article138 of the Penal Code, punishes a civil servant who refrains from performing an act included in his functions in exchange for an offer and applies the same punishment as that envisaged in aforementioned Article 11, which amends Article 137 of the Penal Code.

- **As regards Article VI(1)(b):**

[197] Article 14 of the Law of March 12, 2014, amending Article 40 of the Penal Code, has to do with aspects relating to the granting or offering referred to Article VI.1 (b) of the Convention and states that: *"anyone who coerces or attempts to coerce via deeds or threats, or to corrupt with promises, offers, gifts, or favors, any public agent, official, member of the security forces, or a judge in order to obtain either an opinion in favor, or documents, statements, certificates or untruthful estimates, or a position, job, contract, or any other benefit shall be punished with imprisonment, pursuant to Article 20 of the Penal Code, as well as a fine of between five hundred thousand and one million gourdes.*"

- **As regards Article VI(1)(c):**

[198] Article 5.5 of the Law of March 12, 2014, states that: "*abuse of office is when a public official makes improper use of his function or position, that is to say, commits, in the exercise of his functions, an act that violates laws in order to obtain an improper benefit for himself or for another person or entity*." The same Article adds that when a public official is guilty of misusing his office, he shall be "*punished with imprisonment and a fine of two hundred thousand gourdes.*"

- **As regards Article VI(1)(d):**

[199] Article 46 of the Penal Code punishes the hiding of proceeds from an offense and stipulates as follows: "*those who knowingly have hidden, in whole or in part, the proceeds withdrawn, diverted or obtained by means of an offense or crime shall be punished as accessories after the fact.*" Article 44 of the Penal Code provides that an accessory after the fact shall be sentenced to the same punishment as the perpetrator of the crime.

- **As regards Article VI(1)(e):**

[200] With respect to the Law of March 12, 2014, the text of Article 5.6 on the repression of bribery includes the participation of instigators and accessories after the fact: *"the perpetrator of the bribe, the instigators or accomplices after the fact shall be sentenced to the same punishments as the beneficiary."*

[201] With respect to the provisions of the Penal Code, Article 44 provides that "*the accessories after the fact shall be served the same punishment as the perpetrators of that crime or offense, unless otherwise provided by law.*" For its part, Article 45 stipulates that: *"the following shall be punished as accessories after the fact characterized as a crime or offense: persons who through gifts, promises, threats, misuse of authority or power, collusion, or deceit caused that act or gave instructions to commit it; persons who acquired weapons, instruments, or other means that contributed to the act, knowing that they would help serve that purpose; persons who, knowingly, helped or lent assistance to the perpetrator(s) of the act, in the deeds that consummated the crime,* [...] *even if the crime being plotted or instigated was not in fact committed."* Finally, above-mentioned Article 46 on the hiding of proceeds also punishes the accessories after the fact

**3.2. Adequacy of the legal framework and/or other measures**

[202] With respect to the provisions criminalizing the acts of corruption provided for in Article VI(1) of the Convention, that the Committee has examined, the Committee sees, on the basis of the information available to it, that they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

[203] Nevertheless, the Committee deems it appropriate to make certain observations regarding the advisability of the Republic of Haiti considering adjusting and/or supplementing certain provisions on the subject, in light of the following:

[204] First, the Committee observes that Article 5.6 of the Law of March 12, 2014 on bribery does not take into account the "requiring or indirect acceptance" factor contemplated in Article VI.1 of the Convention. The Committee will make a recommendation in that regard. (See recommendation 3.4.1 in Section 3.4 of Chapter II of this report.)

[205] Second, the Committee observes that Article 5.6 of the Law of March 12, 2014 does not take into account the conduct of a public agent, a public servant or any other representative of the State who refrains from performing an act in the exercise of his functions in exchange for a payment made as a bribe. The Committee will make a recommendation in that regard. (See recommendation 3.4.2 in Section 3.4 of Chapter II of this report.)

[206] Third, the Committee notes that Article 5.6 of the Law of March 12, 2014, dealing with bribery, does not cover the possibility of the illicit payment, item of value or any other asset offered being "*for himself or for another person or entity*," as provided for in Article VI.I of the Convention. The Committee

will make a recommendation on this point. (See recommendation 3.4.3 in section 3.4 of Chapter III of this report.)

[207] Fourth, the Committee notes that the terms "*any article of monetary value*" and "*other benefit*" used in Article VI.1 of the Convention are broader than the terms "*offers, promises, gifts, or favors*" used in Articles 11 and 12 of the Law of March 12, 2014. The Committee will make a recommendation in that regard. (See recommendation 3.4.4 in Section 3.4 of Chapter II of this report.)

[208] Fifth, the Committee notes that Article 14 of the Law of March 12, 2014, which sanctions anyone who bribes or attempts to bribe, through promises, gifts, or favors, any public agent, public servant, member of the public force or magistrate, with a view to obtaining a series of benefits mentioned in the Article in question, fails to take into account the indirect offering or granting provided for in the Convention. The Committee will make a recommendation in that regard. (See recommendation 3.4.5 in Section 3.4 of Chapter II of this report.)

[209] Sixth, the Committee observes that Article 5.5 of the Law of March 12, 2014, which legally defines misuse of office as an offense, fails, in its present wording, to take into account the conduct of a public official who, in the performance of his functions, omits to do something in exchange for a benefit for himself or another person. The Committee will make a recommendation in that regard. (See recommendation 3.4.6 in Section 3.4 of Chapter II of this report.)

[210] Seventh, the Committee observes that, although the hiding of proceeds is characterized as a crime in Article 46 of the Penal Code, no legislative provision criminalizes the deliberate enjoyment of the proceeds of acts of corruption, either in the Law of March 12, 2014, or in the Penal Code. The Committee will make a recommendation in that regard. (See recommendation 3.4.7 in Section 3.4 of Chapter II of this report.)

[211] Worth noting, with respect to the foregoing observations, is that, in its response to the questionnaire,[13] the country under review pointed out that some aspects of the acts of corruption addressed in Article VI of the Convention have not been taken into account in the offenses contemplated in the law of March 12, 2014 and that therefore said law should be revised. It also said that Parliament was currently discussing a draft new Penal Code.

[212] Eighth, the Committee considers it worth pointing out that, during the on-site visit, the representatives of the ULCC stated that said oversight body does not have either the human or the financial resources it needs to fully perform its mission and go about its work, despite the Committee's recommendations during the Fourth Round of Review. The ULCC representatives also pointed out that the dearth of resources was affecting the Unit's work. In light of the foregoing, the Committee will make a recommendation (See recommendation 3.4.8 in Section 3.4 of Chapter II of this report).

### 3.3. Results of the legal framework and/or other measures

[213] In its response to the questionnaire,[14] the Republic of Haiti provided information regarding the number of investigations conducted by the ULCC into alleged acts of corruption. Those investigations led to charges being brought against some public officials. According to the response to the questionnaire, 35 investigations were referred to the Public Prosecution Service for the initiation of criminal proceedings, which happened once the provisions of the Law of March 12, 2014 were adopted. However, the Republic of Haiti also pointed out, in said response, that trials for acts of corruption are infrequent.

[13] Response by the Republic of Haiti to the questionnaire, pages 21 and 22.
[14] Response by the Republic of Haiti to the questionnaire, page 21.

[214] With regard to the above, it is worth mentioning that, during the on-site visit, representatives of the ULCC said that there were no mechanisms enabling them to follow-up on suits into alleged acts of corruption that they refer to the various judicial bodies concerned and to hear about the outcomes, which would help them identify challenges and adopt corrective measures, if necessary. In light of the foregoing, the Committee will make recommendations. (See recommendations 3.4.9 and 3.4.10 in Section 3.4 of Chapter II of this report).

[215] At the same time, with respect to the above, it is also worth mentioning that an academic present during the on-site visit pointed out that although the ULCC had referred 38 investigations to the judicial authorities responsible for seeing that justice is done, only one case is known to have led to a conviction.

[216] During the on-site visit, the ULCC representatives provided additional information on the number or investigations carried out by the Unit up to the date of the on-site visit. They told the Committee that 78 investigations had been initiated between October 2013 and September 2018, of which 64 were currently closed and 14 still pending. They said that, thus far, the ULCC had submitted 39 investigation reports to the Government Commissar.

[217] After the on-site visit, the Republic of Haiti also provided information on the number of lawsuits brought against perpetrators of acts of corruption, the number of those convicted or acquitted, and the number of proceedings pending. According to information provided by prosecutors' offices to first instance and appeals courts, 57 suits were brought against perpetrators of acts of corruption; 5 people were convicted and 30 acquitted. Nine cases, involving 22 people, were still pending.

[218] The following statistical Table provides a breakdown of the foregoing information.

- **Cap-Haitien Court of First Instance**

| Number of proceedings initiated | Number of proceedings pending | Number of convictions | Number of acquittals |
|---|---|---|---|
| 11 | 2 (11 persons) | 0 | 0 |

- **Saint-Marc Court of First Instance**

| Number of proceedings initiated | Number of proceedings pending | Number of convictions | Number of acquittals |
|---|---|---|---|
| 15 | 1 (6 persons) | 0 | 9 |

- **Gonaïves Court of First Instance**

| Number of proceedings initiated | Number of proceedings pending | Number of convictions | Number of acquittals |
|---|---|---|---|
| 3 | 0 | 0 | 3 |

- **Port-de-Paix Court of First Instance**

| Number of proceedings initiated | Number of proceedings pending | Number of convictions | Number of acquittals |
|---|---|---|---|
| 1 | 1 | 0 | 0 |

- **Port-au-Prince Court of First Instance**

| Number of proceedings initiated | Number of proceedings pending | Number of convictions | Number of acquittals |
|---|---|---|---|
| 5 | 0 | 1 | 4 |

- **Hinche Court of First Instance**

| Number of proceedings initiated | Number of proceedings pending | Number of convictions | Number of acquittals |
|---|---|---|---|
| 10 | 4 | 4 | 2 |

- **Port-au-Prince Court of Appeals**

| Number of proceedings initiated | Number of proceedings pending | Number of convictions | Number of acquittals |
|---|---|---|---|
| 2 | 0 | 0 | 2 |

- **Gonaïves Court of Appeals**

| Number of proceedings initiated | Number of proceedings pending | Number of convictions | Number of acquittals |
|---|---|---|---|
| 10 | 0 | 0 | 10 |

[219] The Committee notes, with respect to the above statistics, that they do not fully reflect the number of legal proceedings initiated or the number of those still pending, nor the number of convictions and acquittals for acts of corruption, given that said data do not encompass all of the 18 courts of first instance spread across the 10 departments of the Republic of Haiti, or all of the country's five courts of appeal.

[220] During the on-site visit, the ULCC representatives pointed out how difficult it was to compile the above information from the public prosecutors' offices all over the Republic of Haiti, each of which is independent. The ULCC representatives underscored the fact that the problem was that not all those public prosecutors' offices at different locations in the country report their data to the ULCC. In addition to stressing the importance of replying in full to the questions posed in the questionnaire regarding results, and given that it has no more information to go by for a comprehensive evaluation of outcomes than that shown above, the Committee will make a recommendation in that regard to the country under review. (See recommendation 3.4.11 in Section 3.4 of Chapter II of this report).

**3.4. Recommendations**

[221] The Republic of Haiti has adopted measures aimed at defining as criminal offenses the acts of corruption provided for at Article VI(1) of the Convention, as described in Chapter III, section 3.2 of this report.

[222] In light of the comments made in Sections 3.2 and 3.3 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

3.4.1 Consider amending and/or supplementing Article 5.6 of the Law of March 12, 2014, relating to Article VI.1.a of the Convention, in such a way that it includes the "*indirect solicitation or*

*acceptance*" referred to in said paragraph. (See paragraph 204 of Section 3.2 of Chapter II of this report.)

3.4.2 Consider amending and/or supplementing Article 5.6 of the Law of March 12, 2014, relating to Article VI.1.a of the Convention, in such a way that it includes an "*omission in the discharge of his duties*" referred to in said paragraph. (See paragraph 205 of Section 3.2 of Chapter II of this report.)

3.4.3 Consider adapting and/or supplementing Article 5.6 of the Law of March 12, 2014, relating to paragraph (a) of Article VI.I of the Convention, so that it includes that the benefit of the bribe can be "*for himself or for another person or entity*," as provided for in that paragraph. (See paragraph 206 in section 3.2 of Chapter II of this report.)

3.4.4 Consider amending and/or supplementing Articles 11 and 12 of the Law of March 12, 2014, amending Articles 137 and 138 of the Penal Code, relating to Article VI.1.a of the Convention, in such a way that they include "*other benefits, such as gifts, favors, promises, or advantages*" referred to in said paragraph. (See paragraph 207 of Section 3.2 of Chapter II of this report.)

3.4.5 Consider amending and/or supplementing Article 14 of the Law of March 12, 2014, relating to Article VI.1.b of the Convention, in such a way that it includes the "*indirect offering or granting*," referred to in said paragraph. (See paragraph 208 of Section 3.2 of Chapter II of this report.)

3.4.6 Consider amending and/or supplementing Article 5.5 of the Law of March 12, 2014, relating to Article VI.1.c of the Convention, in such a way that it includes "*any act or omission in the discharge of his duties*" referred to in said paragraph. (See paragraph 209 of Section 3.2 of Chapter II of this report.)

3.4.7 Consider establishing as a criminal offense, the deliberate exploitation of the proceeds of any of the acts referred to in Article VI.1 of the Convention, in accordance with paragraph "d" of the same Article. (See paragraph 210 of Section 3.2 of Chapter II of this report.)

3.4.8 Strengthen the ULCC, guaranteeing it, subject to the availability of resources, the infrastructure it needs for the proper performance of its functions, as well as what it needs to attract and retain the necessary financial and human resources, particularly in its regional offices. (See paragraph 212 of Section 3.2 of Chapter II of this report.)

3.4.9 Consider adopting mechanisms to enable ULCC to follow up on investigations into alleged acts of corruption that it refers to the different judicial authorities, so as to ascertain the outcomes of those investigations, identify challenges, and recommend corrective measures, where necessary. (See paragraph 214 in Section 3.2. of Chapter II of this report.)

3.4.10 Compile detailed annual statistics on proceedings initiated by the ULCC into acts of corruption, so as to determine how many have been suspended, how many have prescribed, how many have been archived, how many are ongoing, and how many have been referred to the competent authority for a decision, in order to identify challenges and, where necessary, recommend corrective measures. (See paragraph 214 of Section 3.2 of Chapter II of this report.)

3.4.11 Compile detailed annual statistics on judicial proceedings relating to acts of corruption, so as to determine how many are ongoing, suspended, prescribed, archived without a decision adopted, ready for a decision, or have had a decision adopted on merits, and whether the decision was to acquit or convict, in order to identify challenges and, where necessary, recommend corrective measures. (See paragraph 220 of Section 3.3 of Chapter II of this report.)

## 4. GENERAL RECOMMENDATIONS

[223] Based on the review and comments made throughout this report, the Committee suggests that the Republic of Haiti consider the following recommendations:

4.1 Design and implement, when appropriate, training programs for the civil servants responsible for enforcing the systems, standards, measures and mechanisms referred to in this report, in order to ensure that they are adequately understood, managed and put into practice.

4.2 Select and develop procedures and indicators, when appropriate and where they do not presently exist, to analyze the results of the systems, standards, measures and mechanisms considered in this report, and to verify follow-up to the recommendations made herein. (See Chapter II of this report, Sections 1.1.3, 1.2.3, 2.3 and 3.3).

# III. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE FIFTH ROUND

## 1. INSTRUCTIONS TO GOVERNMENT PERSONNEL TO ENSURE PROPER UNDERSTANDING OF THEIR RESPONSIBILITIES AND THE ETHICAL RULES GOVERNING THEIR ACTIVITIES (ARTICLE III, PARAGRAPH 3 OF THE CONVENTION)

[224] In keeping with the *Methodology* agreed upon by the Committee for its analysis of the provision selected for the Fifth Round, which is contained in Article III (3) of the Convention and concerns measures to create, maintain, and strengthen "*instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities*," the country under review chose the personnel of the Office of the Director General of Budget (*Direction Générale du Budget*, hereinafter "DGB") and the General Customs Administration *(Administration Générale des Douanes*, hereinafter "AGD") because it considers them to be the main groups warranting a review, given the importance of their functions.[15]

[225] What follows is a brief description of the two aforementioned public-sector entities that will be analyzed in this section with regard to their activities related to the Convention provision cited in the preceding paragraph.

[226] - The DGB is a decentralized State agency, reporting to the Ministry of Economy and Finance and responsible for ensuring a priori administrative oversight of the Government's budgetary operations (Article 79). Its financial oversight officials are to be found in all institutions pertaining to the National Public Administration (Article 79).

[227] - The AGD is a decentralized State agency, reporting to the Ministry of Economy and Finance and responsible for collecting customs duties and enforcing customs legislation (Article 298).

### 1.1 Existence of provisions in the legal framework and/or other measures.

[228] The Republic of Haiti has a set of provisions and/or measures on instruction to government personnel in the Office of the Director General of Budget (DGB) and in the General Customs

[15] See the response of the Republic of Haiti to the questionnaire for the Fifth Round, page 23.

Administration (AGD) to ensure proper understanding of their responsibilities and the ethical rules governing their activities, notable among which are the following:

- **Provisions with constitutional, legal, and other juridical status applicable to personnel in the Office of the Director General of Budget (DGB), including, in particular:**

[229] – The Constitution of the Republic of Haiti of 1987, Article 235 of which calls for strict observance of the rules and ethical standards established for public officials.

[230] – The constitutional law amending the 1987 Constitution, which amends Article 223 of the Constitution of the Republic of Haiti of 1987 and states the following*: "Oversight of execution of the Budget Law is assured by Parliament, the CSC/CA, and all the other institutions contemplated in the law."*

[231] – The Law of May 4, 2016 replacing the Decree of February 16, 2005 on the Process of drawing up and executing budget laws (hereinafter, the "Law of May 4, 2016"):

[232] Article 79, which provides that the DGB will be responsible for *a priori* administrative oversight of the Government's budgetary operations.

[233] Articles 80 to 82, which describe the powers invested in the DGB's financial oversight officials and Article 101, which establishes their responsibilities.

[234] – The Decree of June 6, 2006, establishing the Special Statutes of the Professional Body of Inspectors in the General Inspectorate of Finance (IGF), Public Accountants in Treasury, and Budget Financial Controllers (hereinafter the "Decree of June 6, 2006"):

[235] Article 39, which provides that "*ethical and professional conduct standards shall be specified and defined for each body by a Decision of the Minister, which shall have the same status and affect as an internal Rule of Procedure* [...]*."*

[236] – The Decree of May 17, 2005, in respect to the review of the General Statutes of the Civil Service.

[237] With respect to training, Articles 35-45 referring to training bodies, stipulate as follows:

[238] Article 35: *"The State may provide initial training for public officials and foster the development of professions within the Public Administration through sectoral and intersectoral professional courses."*

[239] Article 36: *"Training and skills enhancement courses for public officials may be provided abroad or at the national training centers provided for that purpose."*

[240] Article 40: *"The State will also provide ongoing training and skills enhancement for public officials during their career, based on changes in their professional sector and the new technologies deployed in the Public Administration."*

[241] Article 42: the OMRH "*shall determine how to select the public officials who shall benefit from training courses, professional training and skill enhancement internship programs, based on the administration's training plan."*

[242] Article 43: *"Skills enhancement means improving knowledge and techniques in an already acquired specialty."*

[243] Article 45: *"The ministries and public intitutions whose personnel are governed by this decree shall establish in collaboration with the OMRH a periodic training and skills enhancement plan for their personnel."*

[244] As regards permission to receive professional training, the Committee notes that Articles 111 to 114 stipulate that:

[245] Article 111: *"The Administration shall grant government officials a training permit based on the needs of the Civil Service."*

[246] Article 112: *"Public officials shall receive training and skill enhancement geared to the purposes pursued by the Civil Service."*

[247] Article 113: *"The Special Statutes shall determine how to select the public officials to benefit from the training courses and from professional training internships."*

[248] Article 114: "*Skills enhancement shall be assured by registering public officials in training courses organized by training institutions in Haiti or abroad."*

[249] As regards ethical standards, Articles 165 to 181 address the duties and obligations of public officials. They include notably:

[250] Article 168: *"A public official is obliged to serve the general interests of the Republic with loyalty, devotion, honesty, discretion, efficiency, effectiveness, impartiality, diligence, and selflessness, in accordance with the Constitution and legal and regulatory provisions in effect."*

[251] Article 172: *"Public officials are obliged to abide strictly by the rules and ethical standards set forth in this decree."*

[252] – The Decree of April 2, 2013, establishing the Standards of Professional Conduct Applicable to Civil Servants, Articles 12 to 17 of which establish the general standards of ethics and professional conduct that apply to all public officials, while Articles 18 to 20 establish their professional responsibilities.

[253] As for the way in which DGB personnel are notified of their responsibilities and functions, to ensure that they are properly informed of their responsibilities, the country under review[16] stated in its response to the questionnaire: *"The texts establishing the responsibilities of different categories of civil servants do indeed exist. However, they are not published on these institutions' websites to ensure ample dissemination."*

[254] As for the moment(s) when government personnel are notified of their responsibilities and functions, in its reply to the questionnaire the country under review[17] had the following to say: *"Financial oversight officials have received training at ENAF (the National School of Financial Administration)."*

[255] During the on-site visit, the DGB representative confirmed that public officials can become financial oversight officials only after receiving training at ENAF but added that such training was insufficient because it is not specifically geared to any particular job or the functions that go with it. The DGB representative went on to say that there was a lack of access to the training needed for his job and

[16] See the response of the Republic of Haiti to the questionnaire for the Fifth Round, page 24.
[17] See the response of the Republic of Haiti to the questionnaire for the Fifth Round, page 24.

that, in practice, appropriate knowledge of his responsibilities came from contact with a more senior financial oversight official in the service.

[256] As for the existence of introductory (induction), training, or instructional programs and courses for personnel on how to perform their responsibilities or functions appropriately and, particularly, for making them aware of the risks of corruption inherent in the performance of said functions, the country under review[18] reported as follows, in its reply to the questionnaire: *"Pursuant to Circular No. 004 of April 1, 2015 on mandatory induction sessions for new Civil Service personnel, it is requested that any recently hired public officials receive an induction briefing. Ongoing training sessions are also organized on a regular basis."*

[257] During the on-site visit, the DGB representative mentioned that the aforementioned Circular is not retroactive. It can only be applied to new financial oversight officials, not those already occupying the position. As for ongoing training, the DGB representative mentioned that accessing training poses a considerable challenge. The DGB representative added that there are indeed training programs and courses, but they are not available on a regular basis due to lack of resources and operate more on an emergency management basis. In addition, the DGB representative stressed the importance of training in light of the fact that the ENAF courses are not geared to the functions that financial oversight officials perform. If they were, that would enable those officials to be more efficient.

[258] As regards the use of modern communication technology to inform personnel of their responsibilities and functions and to counsel them regarding how they should go about their work, the country under review[19] mentioned in its response to the questionnaire that "*the texts establishing public officials' responsibilities are not posted on the websites of the institutions concerned.*"

[259] Concerning bodies to which personnel can turn for information or to dispel doubts about how to perform their responsibilities and functions properly, in its response to the questionnaire, the country under review[20] wrote: "*a public official must first approach his or her immediate supervisor to be informed or to dispel doubt as to how to go about her or his functions."*

[260] As regards the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed about their responsibilities and functions, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to enforce the norms and/or measures in force in this regard, in its response to the questionnaire, the country under review[21] commented: "*That is the job of the Director general* [...] *of the of the Office of the Director General of Budget (for financial oversight officials)* [...]."

[261] As for the manner in which personnel are advised of the ethical rules governing their activities (with an indication as to whether this should be done verbally or in writing and whether records are kept of those instructions, no relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[262] Regarding the moment(s) at which personnel are advised of the ethical rules governing their activities (with an indication as to whether this is done when they start work or at some later point; when a change in their functions involves a different set of applicable ethic rules; or only when those rules change), no relevant information was provided by the country under review in its Response to the Questionnaire.

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[18] Ibid. p. 24.
[19] See the response of the Republic of Haiti to the questionnaire for the Fifth Round, page 24.
[20] Ibid. p. 24.
[21] Ibid. p. 24.

[263] During the on-site visit, the DGB representative pointed out that there is no code of ethics for financial oversight officials and that they let themselves be guided by the general ethical standards governing the Civil Service. The representative also mentioned that a draft code is being developed that will apply to all three government finance entities.

[264] With respect to the existence of induction, training, or instruction programs and courses for personnel on the ethical rules governing their activities and, in particular, on the consequences of noncompliance with them for both the Civil Service and for wrongdoers, no relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[265] With regard to the use of modern communication technology to make personnel aware of the ethical rules governing their activities and to counsel them as to their scope and meaning, no relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[266] Concerning the matter of whether there are bodies that personnel can go to in order to elicit information or dispel any doubts they may have about the scope or interpretation of the ethical rules governing their activities, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[267] Finally, as regards the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to enforce the norms and/or measures in force in this regard, no additional and relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

- **Provisions with legal and other juridical status applicable to personnel in the General Customs Administration, including, in particular:**

[268] The Customs Code, Article 324 of which stipulates as follows: *"The internal workings of the General Customs Administration, with respect to the rights and duties of public officials and employees, their classification and appointment, their recruitment, promotion, and selection, skills enhancement, qualification and advancement, discipline, rewards, and termination of functions shall all be regulated in accordance with the provisions of the Law on the General Statues of the Civil Service."*

[269] – The Decree of May 17, 2005, in respect to the review of the General Statutes of the Civil Service, Articles 35 to 45 and 111 to 114 of which refer to training and skills enhancement, while Articles 165 to 181 refer to public officials' duties and obligations.

[270] – The Decree of April 2, 2013, establishing the Standards of Professional Conduct Applicable to Civil Servants, Articles 12 to 17 of which establish the general standards of ethics and professional conduct that apply to all public officials, while Articles 18 to 20 establish their professional responsibilities.

[271] As for the way in which AGD personnel are notified of their responsibilities and functions, to ensure that they are properly informed of their responsibilities, the country under review[22] stated in its response to the questionnaire: *"The texts establishing the responsibilities of different categories of civil*

[22] See the response of the Republic of Haiti to the questionnaire for the Fifth Round, page 24.

*servants do indeed exist. However, they are not published on these institutions' websites to ensure ample dissemination."*

[272] As for the moment(s) when personnel are notified of their responsibilities and functions, in its reply to the questionnaire the country under review[23] had the following to say: *"In addition to the description of functions attached to their appointment letter, customs agents undergo a trial period in which they are informed of the various customs procedures."*

[273] During the on-site visit, the representatives of the AGD stated that new customs agents may be informed of their responsibilities and functions in writing, when they receive their appointment letter, or verbally by the Human Resources Department when they take up the job.

[274] As for the existence of introductory (induction), training, or instructional programs and courses for personnel on how to perform their responsibilities or functions appropriately and, particularly, for making them aware of the risks of corruption inherent in the performance of said functions, the country under review[24] reported as follows, in its reply to the questionnaire: *"Pursuant to Circular No. 004 of April 1, 2015 on mandatory induction sessions for new Civil Service personnel, it is requested that any recently hired public officials receive an induction briefing. Ongoing training sessions are also organized on a regular basis."*

[275] During the on-site visit, the AGD representatives mentioned the existence of the National Customs School, at which future customs agents receive training prior to being assigned to their posts. Apart from the School, they reported that period training sessions are organized. More senior customs agents take courses at ENAF, take part in training sessions on international conventions in this field, and attend international seminars, such as those organized by the World Customs Organization (WCO).

[276] During the on-site visit, the AGD representatives also mentioned that a record is kept of changes in an agent's functions. The AGD likewise reported that there was an obligation to inform the agent regarding his new appointment, when his responsibilities change, and that at that point, training may be provided. The AGD pointed out that sometimes refresher training is provided to bring customs agents up to date, but that does not always happen. The OMRH authorizes and supervises the training.

[277] With respect to the risks of corruption inherent in the performance of functions, the AGD representatives pointed out that an effort is made to make agents aware of the risks of corruption inherent in the tasks they perform but that no formal training was provided in that regard.

[278] As regards the use of modern communication technology to inform personnel of their responsibilities and functions and to counsel them regarding how they should go about their work, the country under review[25] mentioned in its response to the questionnaire: *"the texts establishing public officials' responsibilities are not posted on the websites of the institutions concerned."*

[279] Concerning bodies to which personnel can turn for information or to dispel doubts about how to perform their responsibilities and functions properly, in its response to the questionnaire, the country under review[26] wrote: *"a public official must first approach his or her immediate supervisor to be informed or to dispel doubt as to how to go about her or his functions."*

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[23] See the response of the Republic of Haiti to the questionnaire for the Fifth Round, page 24.
[24] Ibid. p. 24.
[25] See the response of the Republic of Haiti to the questionnaire for the Fifth Round, page 24.
[26] Ibid. p. 24.

[280] As regards the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed about their responsibilities and functions, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to enforce the norms and/or measures in force in this regard, in its response to the questionnaire, the country under review[27] commented: "*that is the job of the director general* [...] *of the General Customs Administration (for customs agents)* [...]*."*

[281] As for the manner in which personnel are advised of the ethical rules governing their activities (with an indication as to whether this should be done verbally or in writing and whether records are kept of those instructions, no relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[282] Regarding the moment(s) at which personnel advised of the ethical rules governing their activities (with an indication as to whether this is done when they start work or at some later point; when a change in their functions involves a different set of applicable ethic rules; or only when those rules change), no relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[283] With respect to the existence of induction, training, or instruction programs and courses for personnel on the ethical rules governing their activities and, in particular, on the consequences of noncompliance with them for both the Civil Service and for wrongdoers, no relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[284] During the on-site visit, the AGD representatives said that there is a course on ethical standards and the customs agents must be aware of the sanctions imposed for illegal practices. They also said that awareness campaigns are conducted to discourage illicit practices. The AGD representatives added that the idea behind them was to dissuade agents from committing illicit practices and to encourage sound ones.

[285] With regard to the use of modern communication technology to make personnel aware of the ethical rules governing their activities and to counsel them as to their scope and meaning, no relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[286] Concerning the matter of whether there are bodies that personnel can go to in order to elicit information or dispel any doubts they may have about the scope or interpretation of the ethical rules governing their activities, no relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

[287] Finally, as regards the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to enforce the norms and/or measures in force in this regard, no relevant information was provided by the country under review, either in its Response to the Questionnaire or during the on-site visit.

### 1.2 Adequacy of the legal framework and/or other measures

[27] Ibid. p. 24.

[288] In light of the above, the Committee finds insufficient provisions and/or measures for providing instruction to personnel in the public-sector entities selected by the country under review to ensure proper understanding of their responsibilities and the ethical rules governing their activities.

[289] However, the Committee considers it appropriate to make a number of observations in relation to those provisions and/or other measures.

- **As regards the provisions and/or other measures applicable to personnel of the Office of the Director General of Budget (DGB) and the General Customs Administration (AGD), the Committee observes:**

[290] First, that, although the Decree of May 17, 2005 contains provisions referring in general to the training of public officials, in any event there are no provisions and/or measures specifically geared to providing to DGB and AGD personnel so as to ensure that they have an adequate grasp of their responsibilities. The Committee will therefore make recommendations to the country under review in that regard. (See Recommendations 1.4.1 and 1.4.12 of Section 1.4 of Chapter III of this report).

[291] Second, the Committee observes that the Republic of Haiti does not have provisions and/or measures intended to give instruction[s] to DGB and AGD personnel to ensure proper understanding of the ethical rules governing their activities. The Committee will therefore offer recommendations to the country under review in that regard. (See Recommendations 1.4.2 and 1.4.13 of Section 1.4 of Chapter III of this report).

[292] Third, the Committee observes that for DGB and AGD personnel training is not formally structured in such a way as to ensure mandatory participation in training and induction courses for recently hired personnel. The Committee deems it appropriate that the country under review consider conducting the courses offered, along with a timetable to ensure that they are taught, be it in face-to-face sessions or on line, so that all personnel have a sound understanding of their responsibilities and the functions they are expected to perform. It might also consider end-of-training evaluations. The Committee will offer recommendations to the country under review in that regard. (See Recommendations 1.4.3 and 1.4.14 of Section 1.4 of Chapter III of this report).

[293] Fourth, the Committee observes that the country under review lacks a formal training program for providing instructions to DGB and AGD personnel regarding the ethical rules governing their activities. It therefore deems it useful that the country under review consider establishing a formal training program to provide instruction[s] to DGB and AGD personnel regarding the ethical rules governing their activities, that includes the courses offered along with a timetable to ensure that they are taught when personnel take up their functions, when those functions change, when a different set of ethical rules is to be applied, or when those rules are altered. It might also consider end-of-training evaluations. The Committee will offer recommendations to the country under review in that regard. (See Recommendations 1.4.4 and 1.4.15 of Section 1.4 of Chapter III of this report).

[294] Fifth, the Committee observes that the country under review lacks training and induction programs and courses or instructions to DGB and AGD personnel on how best to comply with their responsibilities and functions and, in particular, courses or instructions designed to make them aware of the risks of corruption inherent in the performance of their functions. The Committee therefore deems it useful for the country under review to consider including in the training programs for personnel under the authority of the DGB and AGD modules dealing with knowledge of the risks of corruption germane to their functions, as well as with the consequences and sanctions for those who commit acts of corruption. The Committee will offer recommendations to the country under review in that regard. (See Recommendations 1.4.5 and 1.4.16 of Section 1.4 of Chapter III of this report).

[295] Sixth, the Committee observes that the country under review lacks a governing body within the DGB and AGD to which personnel can go to elicit information or dispel any doubts they may have as to the appropriate way to fulfill their responsibilities and functions. The Committee therefore deems it necessary for the country under review to consider establishing, within the DGB and AGD, an authority to which personnel may turn for information and help with dispelling any doubts they may have about the appropriate performance of their responsibilities and functions. The Committee will offer recommendations to the country under review in that regard. (See Recommendations 1.4.6 and 1.4.17 in Chapter III of this report).

[296] Seventh, the Committee observes that the country under review lacks a governing body within the DGB and AGD to which personnel can go to elicit information or dispel any doubts they may have regarding the ethical rules governing their activities. The Committee therefore thinks it would be useful for the country under review to consider establishing, within the DGB and AGD, an authority (a person or an entity) to which personnel may turn for information and help with dispelling any doubts they may have about the ethical rules governing their activities. The Committee will formulate recommendations in that regard. (See recommendation 1.4.7 and 1.4.18 in Chapter III of this report.)

[297] Eighth, the Committee notes that the country under review lacks a governing body within the DGB and AGD responsible for establishing, directing, advising, or supporting mechanisms to ensure that personnel are informed of their functions and responsibilities, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to ensure compliance with the norms and/or measures in force in this regard. The Committee therefore deems it important that the country under review consider establishing a governing body within the DGB and AGD responsible for establishing, directing, advising, or supporting mechanisms to ensure that personnel are informed of their functions and responsibilities, and for overseeing that this is done thoroughly, along with measures or actions that can be taken to ensure compliance with the provisions and/or measures governing these matters. The Committee will offer recommendations to the country under review in that regard. (See Recommendations 1.4.8 and 1.4.19 in Chapter III of this report).

[298] Ninth, the Committee notes that the country under review lacks a governing body within the DGB and AGD responsible for establishing, directing, advising, or supporting mechanisms to ensure that DGB and AGD personnel are informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to ensure compliance with the norms and/or measures in force in this regard. The Committee therefore deems it important that the country under review consider establishing a governing body within the DGB and AGD responsible for establishing, directing, advising, or supporting mechanisms to ensure that personnel are informed of the ethical rules governing their activities, and for overseeing that this is done thoroughly, along with measures or actions that can be taken to ensure compliance with the provisions and/or measures governing these matters. The Committee will offer recommendations to the country under review in that regard. (See Recommendations 1.4.9 and 1.4.20 in Chapter III of this report).

### 1.3 Results

[299] Neither in its response to the questionnaire nor during the on-site visit did the country under review provide statistical information on the results of the instruction given to personnel of the Office of the Director General of Budget (DGB) and the General Customs Administration (AGD) to ensure adequate understanding of their responsibilities and of the ethical standards governing their activities. With the above in mind, the Committee will make recommendations in that regard to the country under review. (See Recommendations 1.4.10, 1.4.11, 1.4.21, and 1.4.22 of Section 1.4 of Chapter III of this report).

### 1.4 Conclusions and recommendations

[300] On the basis of the analysis conducted in foregoing sections, the Committee suggests that the country under review consider the following recommendations with respect to implementation in the Republic of Haiti of Article III (3) of the Convention:

1.4.1 Adopt any measures needed to ensure proper understanding of the responsibilities governing their activities on the part of personnel in the Office of the Director General of Budget (DGB) and provide them with a copy thereof or links to the websites where they can be consulted. (See paragraph 290 in Section 1.2 of Chapter III of this report.)

1.4.2 Adopt any measures needed to ensure proper understanding of the ethical standards governing their activities on the part of personnel in the DGB and provide them with a copy thereof or links to the websites where they can be consulted. (See paragraph 291 in Section 1.2 of Chapter III of this report.).

1.4.3 Establish a formal training program for DGB personnel, in order to ensure mandatory participation in face-to-face or online training or induction programs for recently hired personnel that should include the courses offered and a timetable so that all personnel can understand their responsibilities and the functions they are expected to perform. There should also be end-of-formal- raining evaluations for DGB personnel. (See paragraph 292 in Section 1.2 of Chapter III of this report.)

1.4.4 Establish a formal training program containing instructions on the ethical rules governing their activities for DGB personnel that should include the courses offered and a timetable to ensure that they are taught: when they take up office, whenever there is a change in their functions, when a different set of ethical rules is applied, or when those rules are altered. There should also be end-of-formal-raining evaluations for DGB personnel. (See paragraph 293 in Section 1.2 of Chapter III of this report.)

1.4.5 Include in training programs for personnel under the authority of the DGB modules dealing with knowledge of the risks of corruption inherent in the performance of their functions and with the consequences and sanctions for those involved in acts of corruption. (See paragraph 294 in Section 1.2 of Chapter III of this report.)

1.4.6 Appoint a person or entity within the DGB to whom personnel can turn for information or to dispel any doubts they may have regarding the appropriate way to comply with their responsibilities and functions. (See paragraph 295 in Section 1.2 of Chapter III of this report.)

1.4.7 Appoint a person or entity within the DGB to whom personnel can turn for information or to dispel any doubts they may have regarding the ethical rules governing their activities. (See paragraph 296 in Section 1.2 of Chapter III of this report.)

1.4.8 Consider establishing a governing organ responsible for defining, steering, giving guidance on, or supporting the manner in which DGB personnel are to be informed of their responsibilities and functions and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to ensure compliance with the norms and/or measures in force in this regard. (See paragraph 297 in Section 1.2 of Chapter III of this report.)

1.4.9 Consider establishing a governing organ responsible for defining, steering, giving guidance on, or supporting the manner in which DGB personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or steps such

bodies can adopt to ensure compliance with the norms and/or measures in force in this regard. (See paragraph 298 in Section 1.2 of Chapter III of this report.)

1.4.10 Compile detailed annual statistics on the results of instructions imparted to personnel of the DGB to ensure proper understanding of their responsibilities, covering such aspects as: number of induction, training, or instruction programs and courses for that purpose; periodicity or frequency with which they are imparted and the number of civil servants taking part; number of handbooks for civil servants on their ethical rules, and to alert them to the risks of corruption inherent in the performance of the functions; number of inquiries by civil servants on the ethical rules governing their activities that were answered, and the use of modern communication technologies for that purpose; number of activities undertaken to ascertain if the objective of ensuring that those ethical rules are understood has been achieved; and number of measures or actions undertaken by the authorities or bodies responsible for seeing that instructions to that end are properly conveyed, so as to ensure compliance with provisions and/or measures adopted in that regard; the purpose of such statistics being to identify challenges and, if necessary, recommend corrective measures. (See Chapter III, Section 1.2, paragraph 299 of this report).

1.4.11 Compile detailed annual statistics on the results of instructions imparted to personnel of the DGB to ensure proper understanding of the ethical rules governing their activities, covering such aspects as: number of induction, training, or instruction programs and courses for that purpose; periodicity or frequency with which they are imparted and the number of civil servants taking part; number of handbooks for civil servants on their ethical rules, and to alert them to the risks of corruption inherent in the performance of the functions; number of inquiries by civil servants on the ethical rules governing their activities that were answered, and the use of modern communication technologies for that purpose; number of activities undertaken to ascertain if the objective of ensuring that those ethical rules are understood has been achieved; and number of measures or actions undertaken by the authorities or bodies responsible for seeing that instructions to that end are properly conveyed, so as to ensure compliance with provisions and/or measures adopted in that regard; the purpose of such statistics being to identify challenges and, if necessary, recommend corrective measures. (See Chapter III, Section 1.2, paragraph 299 of this report).

1.4.12 Adopt any measures needed to ensure proper understanding of their responsibilities on the part of personnel in the General Customs Administration (AGD) and provide them with a copy thereof or links to the websites where they can be consulted. (See paragraph 290 in Section 1.2 of Chapter III of this report.)

1.4.13 Adopt any measures needed to ensure proper understanding of the ethical standards governing their activities on the part of personnel in the General Customs Administration (AGD) and provide them with a copy thereof or links to the websites where they can be consulted. (See paragraph 291 in Section 1.2 of Chapter III of this report.)

1.4.14 Establish a formal training program for AGD personnel, in order to ensure mandatory participation in face-to-face or online training or induction programs for recently hired personnel that should include the courses offered and a timetable so that all personnel can understand their responsibilities and the functions they are expected to perform. There should also be end-of-formal- raining evaluations for AGD personnel. (See paragraph 292 in Section 1.2 of Chapter III of this report.)

1.4.15 Establish a formal training program containing instructions on the ethical rules governing their activities for AGD personnel that should include the courses offered and a timetable to ensure that they are taught: when they take up office, whenever there is a change in their functions, when a different set of ethical rules is applied, or when those rules are altered. There should also be end-

of-formal-raining evaluations for AGD personnel. (See paragraph 293 in Section 1.2 of Chapter III of this report.)

1.4.16 Include in training programs for personnel under the authority of the AGD modules dealing with knowledge of the risks of corruption inherent in the performance of their functions and with the consequences and sanctions for those involved in acts of corruption. (See paragraph 294 in Section 1.2 of Chapter III of this report.)

1.4.17 Appoint a person or entity within the AGD to whom personnel can turn for information or to dispel any doubts they may have regarding the appropriate way to comply with their responsibilities and functions. (See paragraph 295 in Section 1.2 of Chapter III of this report.)

1.4.18 Appoint a person or entity within the AGD to whom personnel can turn for information or to dispel any doubts they may have regarding the ethical rules governing their activities. (See paragraph 296 in Section 1.2 of Chapter III of this report.)

1.4.19 Consider establishing a governing organ responsible for defining, steering, giving guidance on, or supporting the manner in which AGD personnel are to be informed of their responsibilities and functions and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to ensure compliance with the norms and/or measures in force in this regard. (See paragraph 297 in Section 1.2 of Chapter III of this report.)

1.4.20 Consider establishing a governing organ responsible for defining, steering, giving guidance on, or supporting the manner in which AGD personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to ensure compliance with the norms and/or measures in force in this regard. (See paragraph 298 in Section 1.2 of Chapter III of this report.)

1.4.21 Compile detailed annual statistics on the results of instructions imparted to personnel of the AGD to ensure proper understanding of their responsibilities, covering such aspects as: number of induction, training, or instruction programs and courses for that purpose; periodicity or frequency with which they are imparted and the number of civil servants taking part; number of handbooks for civil servants on their ethical rules, and to alert them to the risks of corruption inherent in the performance of the functions; number of inquiries by civil servants on the ethical rules governing their activities that were answered, and the use of modern communication technologies for that purpose; number of activities undertaken to ascertain if the objective of ensuring that those ethical rules are understood has been achieved; and number of measures or actions undertaken by the authorities or bodies responsible for seeing that instructions to that end are properly conveyed, so as to ensure compliance with provisions and/or measures adopted in that regard; the purpose of such statistics being to identify challenges and, if necessary, recommend corrective measures. (See Chapter III, Section 1.2, paragraph 299 of this report).

1.4.22 Compile detailed annual statistics on the results of instructions imparted to personnel of the AGD to ensure proper understanding of the ethical rules governing their activities, covering such aspects as: number of induction, training, or instruction programs and courses for that purpose; periodicity or frequency with which they are imparted and the number of civil servants taking part; number of handbooks for civil servants on their ethical rules, and to alert them to the risks of corruption inherent in the performance of the functions; number of inquiries by civil servants on the ethical rules governing their activities that were answered, and the use of modern communication technologies for that purpose; number of activities undertaken to ascertain if the objective of ensuring that those ethical rules are understood has been achieved; and number of measures or

actions undertaken by the authorities or bodies responsible for seeing that instructions to that end are properly conveyed, so as to ensure compliance with provisions and/or measures adopted in that regard; the purpose of such statistics being to identify challenges and, if necessary, recommend corrective measures. (See Chapter III, Section 1.2, paragraph 299 of this report).

## 2. STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE (ARTICLE III, PARAGRAPH 12 OF THE CONVENTION)

### 2.1 STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE

[301] In its response to the questionnaire,[28] the country under review reports that no studies have been conducted on prevention measures that give due consideration to the relationship between equitable remuneration and probity in service.

### 2.2 ESTABLISHMENT OF OBJECTIVE AND TRANSPARENT CRITERIA TO DETERMINE COMPENSATION FOR PUBLIC SERVANTS

#### 2.2.1 Existence of a legal framework and/or other measures

[302] The Republic of Haiti has a set of provisions for determining civil servant remunerations, in particular:

[303] - The Decree of May 17, 2005, in respect to the review of the General Statutes of the Civil Service, which establishes the post classification and remuneration systems in the Civil Service.

[304] As regards the classification system, Article 100 provides that "*a posts classification system based on degree of complexity and professional requisites shall be established by a decree of the Prime Minister.*"

[305] Articles 89 to 94 address the subdivision of Civil Service jobs into work categories. Article 89 provides that "*public officials shall be grouped into four (4) work categories listed in descending order using the first four letters of the French alphabet. These are the bodies in categories A, B, C, and D*." According to Article 90 "*which employment category an official belongs depends on the level for which he or she was recruited.*" Articles 91-94 describe in greater detail the four employment categories designated by the categories A, B, C, and D. Category A jobs are those "h*eld by officials performing work that involves conceptualization, analysis, synthesis, preparation, coordination, and management skills. Access to this category is open to those who possess a university degree of, at least, B.A. level"* (Article 91). Category B jobs correspond to positions "*filled by officials performing implementation tasks (travail d'application) requiring at least a university-level education, backed by a certificate of having completed secondary school and done at least three (3) years of higher education*" (Article 92). Category C and D jobs are filled by officials doing manual jobs (*travail d'exécution*). The minimum requirement for Category C jobs is completion of the "*third grade of basic education*" (Article 93). For Category D jobs, it is only necessary to have completed first grade of basic education (Article 94).

[306] According to Article 95, *"job categories are further subdivided into different grades and steps."* The grade is the personal status (title) conferred on a public official entitling him or her to occupy, in order of priority and merit, a series of positions in the hierarchy of permanent Civil Service positions (Article

[28] See the response of the Republic of Haiti to the questionnaire for the Fifth Round, page 27.

96). Each job has a title. The step facilitates *"each official's personal classification according to a differentiation based on seniority. It also facilitates calculation of the remuneration within each employment class.*" (Article 97).

[307] As regards the remuneration system, Article 160.1 provides that "the remuneration system applicable to the Public Administration shall be worked out by the Office of Management and Human Resources together with the Ministry of Economy and Finance. That system shall be "*established by a Decree of the Prime Minister*" (Article 160.2) and *"shall include the following: a) a wage scale; b) bonuses and benefits"* (Article 161). Moreover, the bonuses arrangements "shall accompany the wage scale" (Article 161.1)

[308] Articles 159 and 160 relate to the wages of public officials in the Central Administration of the State. Article 160 provides that *"the State shall guarantee that an official is entitled, after service, to a salary or a salary calculated on the basis of a salary scale index applicable to his or her administrative standing."* Article 159 further stipulates that "an official's salary is not negotiable by him or her, nor is it subject to any discretionary and subjective judgment of the administration employing the official."

### 2.2.2. Adequacy of the legal framework and/or other measures

[309] With respect to the provisions on the establishment of objective and transparent guidelines for determining civil servant remunerations that the Committee has examined, the Committee considers it pertinent, on the basis of the information available to it, to offer the following observations:

[310] First, bearing in mind that the country under review reported in its response to the questionnaire[29] and during the on-site visit, that the remuneration system applicable to the Public Administration provided for in Article 160.1 of the Decree of May 17, 2005 has not yet been adopted, the Committee will make a recommendation for the country under review to consider adopting the system and, further, that the said system contain the salary scale and bonuses and benefits referred to in the aforementioned Article and include objective and transparent criteria for determining remuneration. The Committee will formulate a recommendation in that regard. (See recommendation 2.2.3.1 in Chapter III of this report.)

[311] Worth noting with regard to the above is that, during the on-site visit, representatives of the OMRH mentioned that they are working to reform the remuneration system for public officials in the Central Administration of the State and that the reform will include, inter alia, a post classification system and a new salary scale that will take into consideration several factors not included in the "pay scale" currently being applied.

[312] Second, the Committee notes the absence of rules governing the remuneration of officials in the Judiciary. The Committee deems it necessary that, through the appropriate authorities, the country under review consider adopting a legal framework that establishes the ground rules for remuneration of these officials based on the skills required to discharge the responsibilities inherent in a number of positions in the Judiciary, in such a way as to establish objective and transparent criteria in that area. Such a legal framework could include the designation or establishment of a governing body to supervise its enforcement. The Committee will formulate a recommendation in that regard. (See recommendation 2.2.3.2 in Chapter III of this report.)

[313] Third, the Committee likewise notes the absence of rules governing the remuneration of officials in the Legislature. The Committee deems it necessary that, through the appropriate authorities, the country

[29] See the response of the Republic of Haiti to the questionnaire for the Fifth Round, pp. 27-28.

under review consider adopting a legal framework that establishes the ground rules for remuneration of these officials based on the skills required to discharge the responsibilities inherent in a number of positions in the Legislature, in such a way as to establish objective and transparent criteria in that area. Such a legal framework could include the designation or establishment of a governing body to supervise its enforcement. The Committee will formulate a recommendation in that regard. (See recommendation 2.2.3.3 in Chapter III of this report.)

[314] Fourth, given that the "pay scale" used for the remuneration of public officials is not posted on the Internet,[30] and that it was not provided either in the response by the country under review to the questionnaire or during the on-site visit, the Committee will make a recommendation in that regard (See Recommendation 2.2.3.4 in Chapter III of this report).

### 2.2.3 Conclusions and recommendations

[315] On the basis of the analysis conducted in foregoing sections, the Committee offers the following recommendations with respect to implementation in the Republic of Haiti of Article III (12) of the Convention:

2.2.3.1 Adopt the remuneration system applicable to the Public Administration provided for in Article 160.1 of the Decree of May 17, 2005, in such a way that it contain, in addition to the salary scale and bonuses and benefits referred to therein, objective and transparent criteria for determining remuneration. (See paragraph 310 in Section 2.2.2 of Chapter III of this report.)

2.2.3.2 Consider establishing a legal framework with respect to remuneration policy that establishes objective and transparent criteria to determine fair compensation for public servants in the Legislative Branch, which could include the designation or establishment of a governing body to supervise their application. (See paragraph 312 in Section 2.2.2 of Chapter III of this report.)

2.2.3.3 Consider establishing a legal framework with respect to remuneration policy that establishes objective and transparent criteria to determine fair compensation for public servants in the Judiciary, which could include the designation or establishment of a governing body to supervise their application. (See paragraph 313 in Section 2.2.2 of Chapter III of this report.)

2.2.3.4 Post the salary scale used for the remuneration of public officials on the website of the OMRH and/or of the Ministry of Economy and Finance to ensure that it is easily accessible. (See paragraph 314 in Section 2.2.2 of Chapter III of this report.)

## IV. BEST PRACTICES

[316] The country under review did not put forward any best practices in relation to the Convention provisions selected for the Second and Fifth Rounds of Review.

[30] The Technical Secretariat attempted to no avail to find this "pay scale" on the website of the Ministry of Economy and Finance.

**ANNEX**

**AGENDA FOR THE ON-SITE VISIT TO HAITI**

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| **Monday, October 8, 2018** | |
| 3:00 p.m – 3:30 p.m.<br>Place: Conference Room of the Anti-Corruption Unit (ULCC) | **Coordination meeting of representatives of the country under review, the member states of the subgroup, and the Technical Secretariat** |
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| 4:00 p.m. – 4:30 p.m.<br>Place: Hotel Marriott | **Coordination meeting** between representatives of the members states of the subgroup and the Technical Secretariat |
| **Tuesday, October 9, 2018** | |
| 10:00 a.m. – 1:00 p.m.<br>Place: Convention Center of Banque de la République d'Haiti (BRH) | **Meetings with civil society organizations and/or, inter alia, private sector organizations, professional organizations, academics or researchers** |
| 10:00 a.m. – 11:00 a.m. | **First meeting**:<br>Topics for the Second and Fifth Rounds of Review<br>• **Systems of government hiring, training, and remuneration**<br>Participants:<br>Confédération des Travailleurs Haïtiens (CTH)<br>▪ Mr. Jacques BELZIN, President<br>Confédération Nationale des Éducateurs et Éducatrices d'Haïti (CNEH)<br>▪ Ms. Rose Thérèse Magalie GEORGES, General Secretary |

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| 11:00 a.m. – 12:00 noon | **Second meeting**:<br>Topics of the Second Round of Review:<br>• **Systems for government procurement of goods and services**<br>Participants:<br>Academics<br>▪ Mr. Frédéric Gérald CHERY, Academic<br>▪ Mr. Dunel LAURENT, Civil Engineer, Specialist in Public Procurement . |
| 12:00 noon – 1:00 p.m. | **Third meeting:**<br>Topics of the Second Round of Review:<br>• **Whistleblower protection systems and acts of corruption**<br>Participants:<br>Initiative de la Société Civile (ISC)<br>▪ M. Rosny DESROCHERS, Coordinator |
| 1:00 p.m. – 2:30 p.m. | **Lunch** |
| 2:30 p.m. – 5:30 p.m.<br>Place: Convention Center of Banque de la République d'Haiti (BRH) | **Meetings with government authorities on implementation of the provisions of the Convention selected for review in the Second and Fifth Rounds of Review** |
| | **Topics of the Second Round of Review:** |
| 2:30 p.m. – 5:30 p.m.<br>Place: Convention Center of Banque de la République d'Haiti (BRH) | **Panel 1: Government hiring systems** |

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| | • **Fundamental principles and legal framework**<br>• **Institutional structure for hiring**<br>• **Recruitment process**<br>• **Temporary appointments**<br>• **Job descriptions**<br>• **Publication of vacancies**<br>• **Appeal remedies**<br>• **Results**<br>• **Challenges** |
| | Participants:<br><br>Human Resources Management Office (OMRH)<br><br>▪ Mr. Henry BOUCICOT, Coordinator of the Civil Service |
| 5:30 p.m. – 6:00 p.m. | **Informal meeting** with representatives of the member states of the subgroup and the Technical Secretariat. |
| **Wednesday, October 10, 2018** | |
| 9:00 a.m. – 12:30 p.m.<br><br>Place: Convention Center of Banque de la République d'Haiti (BRH) | **Panel 2: Systems for government procurement of goods and services** |
| | • **Public procurement systems**<br>• **Authorities directing or administering oversight systems and mechanisms**<br>• **Register of contractors**<br>• **Electronic media and information systems**<br>• **Identification of selection criteria**<br>• **Appeal remedies**<br>• **Results**<br>• **Challenges** |
| | Participants:<br><br>National Public Procurement Commission (CNMP) |

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| | ▪ Mr. Florient JEAN-MARI, Coordinator<br>▪ Ms. Sandra TOUSSAINT JOSEPH, Member<br>▪ Mr. Dalbert CLAUDE, Principal Secretary<br>▪ Ms. Jovena SAINT-CYR, Technical Secretary |
| 12:30 p.m. – 2:00 p.m. | **Lunch** |
| 2:00 p.m – 3:30 p.m.<br><br>Place: Convention Center of Banque de la République d'Haiti (BRH) | **Panel 3: Acts of corruption** |
| | • **Legal framework**<br>• **Appeals**<br>• **Results**<br>• **Challenges** |
| | Participants:<br><br>Anti-Corruption Unit (ULCC)<br><br>▪ Major David BASILE, Director General<br>▪ Ms. Yvlore PIGEOT, Director of Operations<br>▪ Ms. Marie Carmen ST-SURRIN MICHEL, Administrative and Financial Director<br>▪ Mr. Ronald MATHURIN, Attorney |
| 3:30 p.m. – 5:30 p.m.<br><br>Place: Convention Center of Banque de la République d'Haiti (BRH) | **Panel 4: Systems for protecting public servants and private citizens who in good faith report acts of corruption** |

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| | • **Mechanisms for reporting acts of corruption**<br>• **Mechanisms for reporting threats or reprisals**<br>• **Protection of whistleblowers and witnesses**<br>• **Results**<br>• **Challenges** |
| | Participants:<br><br>Anti-Corruption Unit (ULCC)<br><br>▪ Major David BASILE, Director General<br>▪ Ms. Yvlore PIGEOT, Director of Operations<br>▪ Ms. Marie Carmen ST-SURRIN MICHEL, Administrative and Financial Director<br>▪ Mr. Ronald MATHURIN, Attorney |
| 5:30 p.m. – 6:00 p.m.<br><br>Place: Convention Center of Banque de la République d'Haiti (BRH) | **Informal meeting** with representatives of the member states of the subgroup and the Technical Secretariat |
| **Thursday, October 11, 2018** | |
| | **Topics of the Fifth Round** |
| 9:00 a.m. – 10:30 a.m.<br><br>Place: Convention Center of Banque de la République d'Haiti (BRH) | **Panel 5: Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities** |

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| | • **Provisions and/or measures for giving instructions to personnel to ensure proper understanding of their responsibilities**<br>• **The manner in which personnel are advised of their responsibilities and functions**<br>• **Use of modern communication technology**<br>• **Results**<br>• **Challenges** |
| | Participants:<br><br>Office of the Director-General of Budget (DGB)<br><br>▪ Loroll MAURIVAL, Director<br><br>General Customs Administration (AGD)<br><br>▪ Mr. Robert CONAND MASSÉ, Director General of Legal Affairs |
| 11:00 a.m. – 12:30 p.m.<br><br>Place: Convention Center of Banque de la République d'Haiti (BRH) | **Panel 6: Studies of prevention measures that give due consideration to the relationship between equitable remuneration and probity in public service** |
| | • **Legal framework**<br>• **Control mechanisms**<br>• **Pay scales** |
| | Participants:<br><br>Human Resources Management Office (OMRH)<br><br>▪ Mr. Elie JEAN-PHILIPPE, Coordinator<br>▪ Mr. Wisner THOMAS, Coordinator of the Public Administration<br>▪ Mr. Henry BOUCICOT, Coordination of the Civil Service |
| 12:30 p.m. – 2:00 p.m. | **Lunch** |

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| 2:00 p.m – 3:30 p.m.<br><br>Place: Convention Center of Banque de la République d'Haiti (BRH) | **Informal meeting** with representatives of the member states of the subgroup and the Technical Secretariat |
| 2:30 p.m. – 5:00 p.m.<br><br>Place: Convention Center of Banque de la République d'Haiti (BRH) | **Final meeting** with representatives of the country under review, the members states of the subgroup, and the Technical Secretariat |

**OFFICIALS WHO ACTED AS CONTACTS IN THE COUNTRY UNDER REVIEW IN COORDINATING THE ON-SITE VISIT, AS WELL AS REPRESENTATIVES OF THE MEMBER STATES OF THE PRELIMINARY REVIEW SUBGROUP AND OF THE MESICIC TECHNICAL SECRETARIAT WHO TOOK PART IN THE VISIT**

**COUNTRY UNDER REVIEW:**

**REPUBLIC OF HAITI**

David Basile
Director General, Anti-Corruption Unit

Yvlore Pigeot
Director of Operations, Anti-Corruption Unit

**MEMBER STATES OF THE REVIEW SUBGROUP:**

**ARGENTINA**

Laura Geler

National Director of Public Ethics, Anti-Corruption Office and Lead Expert for the Committee of Experts of the MESICIC

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National Director of Strategic Affairs, Anti-Corruption Office and Lead Expert for the Committee of Experts of the MESICIC

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