MECHANISM FOR FOLLOW-UP ON THE IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION
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COSTA RICA

FINAL REPORT

(Adopted at the September 16, 2021 plenary session)

SUMMARY

This Report contains a comprehensive review of the implementation in the Republic of Costa Rica of Article XVI of the Inter-American Convention against Corruption, on bank secrecy, which was selected by the Committee of Experts of the MESICIC for the Sixth Round; and follow-up on implementation of the recommendations formulated to the Republic of Costa Rica in the Third Round, which refer respectively to: denial or prevention of favourable tax treatment for expenditures made in violation of anticorruption laws (Article III, paragraph 7 of the Convention)**;** prevention of bribery of domestic and foreign government officials (Article III, paragraph 10 of the Convention); illicit enrichment (Article IX of the Convention); transnational bribery (Article VIII of the Convention); notification (Article X of the Convention); and extradition (Article XIII of the Convention0.

The review was conducted in accordance with the Convention, the Report of Buenos Aires, the Committee's Rules of Procedure, and the Methodologies adopted for Conducting On-site Visits and for the Sixth 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.

The review was carried out mainly taking into account the Response to the Questionnaire of the Republic of Costa Rica and information gathered during the virtual on-site visit conducted between April 5 to 8, 2021, by the representatives of Panama and Peru, with the support of the Technical Secretariat. During that visit, the information furnished by the Republic of Costa Rica was clarified and supplemented with the opinions of civil society organizations.

With regard to the implementation of the recommendations that were formulated to the Republic of Costa Rica in the Report of the Third Round, based on the Methodology for the Sixth Round and bearing in mind the information provided in the Response to the Questionnaire and during the virtual on-site visit, the Committee made a determination as to which of those recommendations have been satisfactorily implemented, which require additional attention, which need to be reformulated, and which are no longer valid.

Some of the recommendations formulated in the Third Round that remain valid or have been reformulated regarding the **denial or prevention of favorable tax treatment for expenditures made in violation of anticorruption laws** include the following: elaborate manuals that contain, or include in existing ones, guidelines that expressly indicate the manner to review applications for tax benefits, in particular, how to verify that applications contain the established requirements and confirm the veracity of the information provided therein, so that the origin of the expenditures or payments on which they are based can be determined; strengthen the measures to ensure that competent authorities responsible for processing applications for tax benefits have access the sources of information they need to conduct reviews and detect expenditures and payments of sums made in violation of anti-corruption legislation and intended to be used obtain favorable tax treatment; develop computer programs that facilitate data consultation and cross-checking of information, when required for the performance of such functions; develop inter-institutional coordination mechanisms that ensure that competent authorities obtain, in a timely manner, the collaboration they need from other public authorities to confirm the information contained in applications for tax benefits and establish the authenticity of the documents provided; strengthen training, induction and continuing education programs for tax authorities responsible for processing applications for taxes benefits designed specifically to inform them of the different methods used to disguise payments for corruption and instruct them on the manner to detect such payments in such applications; and strengthen the channels of communication that enable competent authorities to promptly inform those who must decide whether to

grant requested tax benefits and report to them any anomalies detected or irregularity that could affect their decision, including adopting measures necessary to automate the process and ensure that relevant authorities are required to use such channels.

Some of the recommendations formulated in the Third Round that remain valid or have been reformulated regarding the **prevention of bribery of domestic and foreign government officials** include the following: strengthen the relevant provisions and measures to ensure that that "professional secrecy" is not an obstacle for professionals whose activities are regulated by the Code of Professional Ethics of Certified Public Accountants and Certified Public Accountants of Costa Rica to report to the competent authorities any acts of corruption that they detect in the course of their work; adopt the relevant provisions or measures to ensure that the obligation to report is expressly established in all cases in which a Certified Public Accountant exercises any of the functions authorized by the Law Creating the Association of Public Accountants, Law N° 1038 of August 19, 1947, in any of its modalities; adopt the relevant provisions or measures to ensure that "professional secrecy" is not an obstacle for a private accountant or public accountant, who performs any function related to the detection of bribery of national and foreign government officials, to bring to the attention of the competent authorities any acts of corruption that they detect in the course of their work and ensure in addition that such obligation to report to the competent authorities is expressly established; develop manuals, guidelines or directives on the manner in which accounting records should be reviewed to detect sums paid for corruption; implement computer programs that allow ready access to the information needed to verify the truthfulness of accounting records and their substantiating documentation; establish institutional coordination mechanisms to facilitate timely collaboration from other institutions or authorities as necessary to perform such verification or to establish the authenticity of the substantiating documentation; develop training programs for officials of the bodies or agencies responsible for preventing and/or investigating violations of measures aimed at ensuring the accuracy of accounting records, specifically designed to alert them to the methods used to disguise payments for corruption through such records and instruct them on how to detect them; as well as train government officials in bodies responsible for preventing noncompliance with measures designed to ensure the accuracy of accounting records and for detecting corrupt payments disguised in those records, through training programs specifically tailored to those officials, given the particular role and functions they perform in this regard.

Some of the recommendations formulated in the Third Round that remain valid or have been reformulated regarding the **prevention of transnational bribery** include the following: strengthen the existing procedures and indicators used by the organs and agencies charged with the investigation and/or prosecution of the offense of transnational bribery, to analyze the objective results obtained in this area; and strengthen the existing procedures and indicators used by the organs and agencies charged with the requesting and/or providing assistance and cooperation in relation the offense of transnational bribery, to analyze the objective results obtained in this area.

With respect to new developments in the Republic of Costa Rica in relation the implementation of provisions on the prevention of transnational bribery, as provided in the Convention, the Committee formulated the following recommendations: adopt appropriate measures to strengthen the provisions regulating the procedure for conducting a criminal investigation into the crime of transnational bribery; develop coordination mechanisms, as well as channels of communication between the judicial authorities responsible for keeping the Judicial Delinquents Register up to date and those government authorities responsible for enforcing the disqualification penalties referred to in Law N° 9699, in order to ensure that the latter are notified of those legal entities that have been sanctioned for transnational bribery and therefore able to enforce the disqualification sanctions imposed on the corresponding delinquent legal entities; publish the list of legal persons that have been sanctioned for transnational bribery, as described in Article VIII of the Convention on the website of the appropriate public authority, ensuring that it is easily accessible; authorize the appropriate government authorities not just to monitor compliance with

regulations on this matter, but also to ensure that the disqualification penalties referred to in Law N° 9699 are enforced by the corresponding government authorities; adopt appropriate provisions and measures to define the circumstances in which a reduction of the penalty referred to in Article 12(a) of Law N° 9699 applies; adopt appropriate provisions and measures to define the circumstances in which a legal entity may benefit from a reduction of the penalty referred to in Article 12(b) of Law N° 9699, especially when a person collaborates with the competent authorities in connection with an investigation into possible illicit acts; adopt appropriate provisions and measures to define the circumstances in which a legal entity may benefit from a reduction of the penalty referred to in Article 12(b) of Law N° 9699, especially when a person collaborates with the competent authorities in connection with an investigation into possible illicit acts; and adopt appropriate provisions and measures to define the scope of the collaboration referred to in Article 12(b) of Law N° 9699 in order to clarify what is needed to achieve the effective and productive collaboration it refers to, detailing, to that end, the criteria that the collaborator must meet, as well as the results expected from that collaboration, for a reduction of the penalty to be granted.

Some of the recommendations formulated in the Third Round that remain valid or have been reformulated regarding **illicit enrichment** include the following: strengthen the procedures and indicators used by the bodies or agencies responsible for investigating and/or prosecuting the crime of illicit enrichment in order to analyze the objective results obtained in this area; as well as those by the bodies or agencies responsible for requesting and/or providing assistance and cooperation in relation to the crime of illicit enrichment in order to analyze the objective results obtained in the same area.

In addition, based on the review of new developments in the Republic of Costa Rica in relation to the implementation of the provisions of the Convention selected for the Third Round, the Committee formulated recommendations on aspects such as: provide the Public Ethics Prosecutor's Office (PEP) with the necessary financial resources to enable it to fully perform its functions, including to continue to develop training programs and workshops needed on the detection, investigation and prosecution of acts of corruption, particularly those of illicit enrichment; and develop training programs, training and workshops needed on the detection, investigation and prosecution of acts of corruption, particularly those of illicit enrichment; and develop training, education and refresher programs specifically designed to instruct public officials in the bodies for the prevention, detection and investigation of the crime of illicit enrichment on the application of the new Law N° 9699.

Some of the recommendations formulated in the Third Round that remain valid or have been reformulated regarding **extradition** include: adopt the necessary measures to ensure that the requesting State is informed in a timely manner of the outcomes in cases in which extradition is denied on the grounds that Costa Rica exercises jurisdiction over the offense in question; and select and develop, through the appropriate organs or agencies, procedures and indicators that make it possible to verify the follow up on the recommendations formulated to the country under review in this area; and select procedures and indicators to analyze the objective results obtained in relation to extradition requests formulated to other States Parties to the Convention, regarding the investigation or prosecution of the offenses established in accordance with the Convention, including the measures that have been adopted in response to similar requests from other States Parties.

For the review of the provisions selected in the Sixth Round referring to **bank secrecy**, some of the recommendations formulate include: adopt the pertinent standards or measures to ensure that the Convention may be invoked as a basis for providing the requested information to the requesting State when such information has been requested for the purposes of a proceeding relating to an act of corruption and which is related to bank secrecy, including in cases where there is no bilateral treaty between the two States, without being able to rely on the latter to refuse to provide such information, in accordance with the provisions of Article XVI of the Convention; adopt a consolidated regulation to the effect that assistance

requested by another State Party may not be refused on the ground of bank secrecy when such assistance is requested for the purpose of proceedings relating to an act of corruption; extend the relevant rules or measures to ensure that the requesting State Party is obliged not to use the information protected by bank secrecy received from the requested State Party for any purpose other than the proceedings for which it was requested, unless authorized by the requested State Party; expand the relevant provisions or measures aimed at having a procedure whereby all its competent authorities may transmit requests for assistance or information received from other States Parties, when such assistance is related to bank secrecy and not only in tax matters, and has been requested for the purposes of a proceeding relating to an act of corruption, providing for the requirements, deadlines and, as far as possible, the use of electronic means, to ensure that the requesting States Parties receive the information they require in an expeditious, efficient and effective manner; broaden the relevant provisions or measures aimed at defining the procedure by which all its competent authorities may transmit requests for assistance or information received from other States Parties, when such assistance is related to bank secrecy and not only in tax matters, and has been requested for the purposes of a proceeding relating to an act of corruption, providing for the requirements, deadlines and, as soon as possible, the use of electronic means, to ensure that requesting States Parties receive the information they require in an expeditious, efficient and effective manner and to extend the relevant rules or measures that establish sanctions for those public authorities and financial entities that fail to provide information or the related deadlines, when a requesting State Party requests assistance in obtaining information and that such information has been requested for the purposes of a proceeding relating to an act of corruption and is related to bank secrecy.

COMMITTEE OF EXPERTS OF THE FOLLOW-UP MECHANISM ON THE IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION

REPORT ON FOLLOW-UP ON IMPLEMENTATION IN THE REPUBLIC OF COSTA RICA OF THE RECOMMENDATIONS FORMULATED AND PROVISIONS REVIEWED IN THE THIRD ROUND, AND ON THE PROVISION OF THE CONVENTION SELECTED FOR REVIEW IN THE SIXTH ROUND[1]

INTRODUCTION

1. Content of the Report

[1] As agreed, upon by the Committee of Experts (hereinafter "Committee") of the Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) at its Thirty-Fourth Meeting of the Committee of Experts,[2] this Report will first refer to follow up on implementation of the recommendations formulated to Costa Rica in the Report of the Third Round.[3]

[2] Second, where applicable, it will refer to new developments in Costa Rica with regard to the provisions of the Inter-American Convention against Corruption (hereinafter "Convention") selected for the Third Round, and regarding such matters as the legal framework, technological developments, and results, and, if applicable, appropriate observations and recommendations will be formulated.

[3] Third, it will address implementation of the Convention provisions selected by the Committee of Experts of the Mechanism for the Follow-up of Implementation of the same (MESICIC) for the Sixth Round of review. That provision corresponds to Article XVI of the Convention on Bank Secrecy, which reads: "*1. The Requested State shall not invoke bank secrecy as a basis for refusal to provide the assistance sought by the Requesting State. The Requested State shall apply this article in accordance with its domestic law, its procedural provisions, or bilateral or multilateral agreements with the Requesting State. 2. The Requesting State shall be obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the Requested State*."[4]

[4] Fourth, it will refer to best practices, where applicable, that the country under review has wished to voluntarily share regarding implementation of the Convention provisions selected for the Third and Sixth Rounds.

2. Ratification of the Convention and adherence to the Mechanism

[5] According to the official records of the OAS General Secretariat, Costa Rica ratified the Inter-American Convention against Corruption on May 9, 1997 and deposited the instrument of ratification on June 3, 1997.

[6] In addition, Costa Rica signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2001.

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[1] This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on September 16, 2021, at its Thirty-Sixth meeting, held at OAS Headquarters, September 13 - 16, 2021.

[2] See the Minutes of the Thirty-Fourth Meeting of the Committee.

[3] Report on the Implementation in the Republic of Costa Rica of the Convention Provisions Selected for Review in the Third Round, and on Follow-Up to the Recommendations Formulated to that Country in Previous Rounds, ("Report of the Third Round").

[4] Interamerican Convention Against Corruption, Article XVI.

I. SUMMARY OF INFORMATION RECEIVED

1. Response of Costa Rica

[7] The Committee wishes to acknowledge the cooperation that it received throughout the review process from Costa Rica, and in particular, from the Office of the Prosecutor for Public Ethics (*Procuraduría de la Ética Pública*), which was evidenced, inter alia, in the Response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its Response, Costa Rica sent the provisions and documents it considered pertinent.[5]

[8] The Committee also notes that Costa Rica gave its consent for the on-site visit, in accordance with item 5 of the *Methodology for Conducting On-Site Visits*.[6] As members of the preliminary review subgroup, the representatives of Peru and Panama conducted the on-site visit virtually from April 5 - 8, 2021, with the support of the MESICIC Technical Secretariat. The information obtained during that visit is included in the appropriate sections of this Report, and the agenda of meetings is attached hereto, in keeping with provision 34 of the above-mentioned *Methodology*.

[9] For its review, the Committee took into account the information provided by Costa Rica until April 8, 2021; which was requested by the Secretariat and by the members of the review subgroup to carry out their functions in keeping with the Rules of Procedure and Other Provisions; the Methodology for Review of the Implementation of the Recommendations Formulated and the Provisions Examined in the Third Round and the Provisions selected for the Sixth Round;[7] and the Methodology for Conducting On-Site Visits.[8]

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

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

[11] Additionally, during the on-site visit to the country under review from April 5-8, the Committee gathered information from civil society and private sector organizations, professional associations, academics, and researchers who were invited to participate in the meetings held for that purpose, pursuant to provision 27 of the Methodology for Conducting On-Site Visits. A list of invitees is included in the agenda of the on-site visit, which is annexed to this Report. This information is reflected in the appropriate sections of this Report.

I. FOLLOW UP ON IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE THIRD ROUND AND NEW DEVELOPMENTS WITH REGARD TO THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THAT ROUND

[12] First, the Committee will discuss progress, information, and new developments in Costa Rica in relation to the implementation of the recommendations formulated to them and the measures suggested to

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[5] The documents annexed to the Response to the Questionnaire of the Sixth Round of the Republic of Costa Rica may be can be consulted on the Anticorruption Portal of the Americas.
[6] Methodology for Conducting On-site Visits.
[7] Ibid.
[8] Ibid.

them by the Committee for implementation in the Report from the Third Round,[9] and it will proceed to take note of those that received satisfactory treatment and those that require attention by the country under review. In addition, where appropriate, it will address the continued validity of those recommendations and, as applicable, restate or reformulate them, pursuant to the provisions of Section V of the Methodology adopted by the Committee for the Sixth Round.[10]

[13] In this section, the Committee will also take note, where appropriate, of any difficulties in implementing the above recommendations and measures to which the country under review may have drawn attention, as well as of its technical cooperation needs to that end.

[14] Second, it will refer to new developments in Costa Rica in relation to the Convention provisions selected for the Third Round in such areas as legislative frameworks, technological developments, and results, and proceed to make any observations and recommendations that may be required.

1. DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT FOR EXPENDITURES MADE IN VIOLATION OF ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)[11]

1.1. Follow up to the Implementation of the Recommendations Formulated in the Third Round

Recommendation suggested by the Committee:

Strengthen the standards for the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws.

Measure a) suggested by the Committee:

Consider adopting the measures deemed appropriate to make it easier for the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining such treatment, such as the following:

Measure a) i):

Manuals, guidelines or directives that will guide them in reviewing those applications, so that they are able to verify that the applications contain the established requirements, to confirm the truthfulness of the information provided, and to determine the origin of the expenditures or payment on which the claims are based.

[15] With respect to the aforementioned measure, in its Response to the Questionnaire,[12] and during the on-site visit, the country under review presented the following information and new developments, which the Committee notes as steps that contribute to progress in the implementation of the said measure, the following:

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[9] Report of the Third Round (Republic of Costa Rica).
[10] Methodology of the Sixth Round.
[11] For the purposes of this Report, the MESICIC Committee of Experts has considered favorable tax treatment to be all tax exemptions and any item deductible for determining the tax base for income and other tax, that give rise to reductions in the amount of tax in the taxpayer's favor. See Methodology for the Sixth Round.
[12] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 14.

[16] – The issuance of two manuals and protocols drafted by the Office of the Director General of Taxation to facilitate detection of bribes with a view to disallowing tax deduction and remitting information to the judicial authorities regarding the possible commission of a crime: the "Manual for Detecting Signs of Bribery or Corruption During Tax Audits"[13] of 2017 and the "Procedure for Processing Crimes Different from those Characterized in Article 92 of the Code of Tax Rules and Procedures"[14] of 2019.

[17] – The training given to tax auditors in 2018 and 2020 on how to use the manuals and protocols issued.[15]

[18] During the on-site visit, the representatives of the Ministry of Finance (Office of the Director General of Taxation and Director General of Finance) reported that the aforementioned manuals established guidelines for tax officials on how to detect signs of possible cases of sums of money paid that could constitute bribes or payments for corrupt purposes.

[19] Here, the "Manual for Detecting Signs of Bribery and Corruption During Tax Audits"[16] (hereinafter, "Manual") serves as a practical guide helping tax officials identify suspect disbursements that could stem from bribes, "so as to be able to refuse a tax reduction and ensure that those payments are reported to the corresponding judicial authorities,"[17] both within Costa Rica and abroad.[18] Accordingly, the manual provides guidance to tax officials regarding indicators of possible payments due to bribery or corruption that they may encounter in the performance of their duties, the importance of taking them into account in planning a review, and how to recognize them when they come up in the course of a review.[19] If, in the course of an audit and based on its findings, a tax official detects circumstantial evidence of bribery or corruption, he or she must bring it to the attention of the competent judicial authority, through the channels established to that end.[20]

[20] For its part, the "procedure for processing cases of crimes other than those characterized in Article 92 of the Code of Tax Rules and Procedures,"[21] provides for a uniform procedure for addressing and processing complaints regarding crimes other than that characterized in Article 92 of the aforementioned Code.[22] The document establishes the procedure to be followed by the tax authorities for notifying the judicial authorities of the signs of acts they detect in the performance of their functions that are considered to be illegal (e.g., acts constituting crimes of corruption), but that are deemed to be different from those giving rise to tax crimes, in order for them to be investigated.[23] That procedure includes conducting an investigation and an analysis of the assessment and possible presentation of the facts to the corresponding authorities, the preparation of a report, notification of the judicial authorities, and follow-up to that notification.[24]

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[13] Manual for Detecting Signs of Bribery and Corruption During Tax Audits.
[14] Procedure for Processing Crimes Different from those Characterized in Article 92 of the Code of Tax Rules and Procedures.
[15] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 14.
[16] Manual for Detecting Signs of Bribery and Corruption During Tax Audits.
[17] Ibid., p. 2.
[18] Ibid.
[19] Ibid., p. 9.
[20] Ibid.
[21] Procedure for Processing Crimes Different from those Characterized in Article 92 of the Code of Tax Rules and Procedures.
[22] Article 92 of the Code of Tax Rules and Procedures, Law Nº 4755 of May 3, 1971, on fraud committed against the Public Treasury, establishes the following: "Anyone who, by act or omission, defrauds the Treasury with a view to obtaining a financial benefit for himself/herself or a third party, by evading payment of taxes, sums retained or that should have been retained, or revenue on account of retributions in kind, or by unlawfully obtaining rebates or receiving tax benefits in the same manner, shall, in cases in which the amount of the fraud, the unpaid amount of withholdings, or revenue due, or the amount of the unlawfully obtained or received taxed benefits exceeds five hundred basic monthly wages, be punished with imprisonment for between five and ten years."
[23] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 16.
[24] Procedure for Processing Crimes Different from those Characterized in Article 92 of the Code of Tax Rules and Procedures.

[21] At the same time, the representatives of the Office of the Deputy Public Prosecutor for Probity, Transparency and Anticorruption (FAPTA) reported during the on-site visit that they do not have any manuals or guidelines on this matter. However, the representatives indicated that Administrative Circular 01-ADM-2018 of the Office of the Attorney General of the Republic provides guidelines for filing complaints regarding capital that surfaces without any obvious legal grounds and the circumstances in which those complaints should be filed, and that will need to be assessed by prosecutors in the Public Prosecutors' Office (*Ministerio Público*).

[22] In light of the above, the Committee takes note of the steps taken by the country under review to implement the above measure. In this regard, the Committee observes that the above-mentioned Manual explains how to identify and detect suspect disbursements that could come from payments of bribes and provides guidelines for tax officials regarding indicators for possible bribery or corruption payments that they may encounter in the course of a review, as well as the way to recognize them when they are found during a tax audit procedure, whereby the goal is to deny their deductibility and to ensure that those payments are reported to the corresponding authorities. Accordingly, the Committee notes that the country under review adopted measures to help the competent authorities detect money paid for corrupt purposes, in case an attempt is made to use them to obtain such benefits, and that the drafting of the Manual constitutes major progress and is a valuable tool. Despite that, the Committee observes that the Manual does not specifically establish how a review of a request for tax benefits must be conducted. Nor does it describe the requirements for granting those tax benefits. The Manual does, however, describe a set of indicators to be examined during a tax audit that could help tax officials ascertain the origin of expenditure or payments for corrupt purposes. At the same time, even though the Code of Tax Rules and Procedures provides for material offenses due to omission, inaccuracy, unlawful requests for compensation or reimbursement, or receipt of disbursements that are not allowed under Article 81,[25] the Committee did not find any guidelines as to how to determine the veracity of the information provided in applications for tax benefits. Nor did it find guidelines on how to verify the validity of the original documents and trace connections to back-up documents. For that reason, the Committee deems it necessary that the country under review to give additional attention to implementation of measure i) of foregoing recommendation, which will be reformulated to reflect the fact that there are already manuals on the subject, and to achieve greater clarity regarding its scope. To that end, it will underscore the fact that the recommendation focuses mostly on review of applications to obtain tax benefits. (See recommendation 1.4.1 in Section 1.4 of Chapter II of this Report).

Measure a) ii):

The possibility of accessing the sources of information necessary to conduct those verifications and confirmations, including requests for information from financial institutions.

[23] With respect to the aforementioned measure, in its Response to the Questionnaire,[26] the country under review did not present information or new developments. However, during the on-site visit, the country under review presented information related to the implementation of the aforementioned measure. In this regard, the Committee notes, as steps that contribute to progress in the implementation of the said measure, the following:

[24] The Ministry of Finance (Office of the Director General of Taxation and Office of the Director General of Finance) pointed to two mechanisms for accessing information needed to verify and ascertain

[25] Code of Tax Rules and Procedures, Law Nº 4755 of May 3, 1971, Article 81.
[26] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p.13-21.

the forementioned applications: the information may be requested via a formal request for information or, if it is information held by financial institutions, via a judicial order.

[25] On this matter, the Committee observes that the above constitute relevant steps for implementing measure ii) of foregoing recommendation. In this regard, the Committee notes that the country under review has mechanisms geared to ensuring access to the information needed to verify and confirm data. Accordingly, the competent authorities may request information from third parties, including information held by financial institutions, via a judicial order. Nevertheless, even though the country under review has mechanisms for facilitating access to information, the Committee notes that the State did not explain or describe those mechanisms. For instance, the Committee had no indication regarding the scope of the information that can be requested by using those mechanisms, nor the rules to be followed or formalities or other requirements to be met to access such data, depending on the context and nature of the information. Moreover, it is unclear whether the aforementioned mechanisms specifically facilitate detection, by the competent authorities, of behavior designed to obtain tax benefits for payments made that violate laws against corruption or access to the sources of information needed to verify and ascertain applications for tax exemption benefits, nor whether, if they do, how they do so. At the same time, the Committee was able to assess whether other ways exist to access those sources of information, such as inter-agency agreements, aimed at promoting cooperation and facilitating the sharing of information amongst authorities, data gathering mechanisms, access to databases, and so on. Bearing in mind that the country under review did not provide information that would enable the Committee to assess the practical use made of those mechanisms, nor evaluate the extent of access to those source of information, the Committee reiterates the need for the country under review to give special attention to implementation of measure ii) of the foregoing recommendation, which will be reformulated in such a way as to strengthen the means of accessing those sources of information. (See recommendation 1.4.2 in Section 1.4 of Chapter II of this Report).

Measure a) iii):

Computer programs that facilitate data consultation and cross-checking of information whenever necessary for the purpose of fulfilling their functions.

[26] With respect to the aforementioned measure, in its Response to the Questionnaire,[27] the country under review did not present information or new developments. However, during the on-site visit, the country under review presented information related to the implementation of the aforementioned measure. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the said measure, the following:

[27] In its presentation during the on-site visit, the Ministry of Finance (Office of the Director General of Taxation and Office of the Director General of Finance) mentioned the Fiscal Management Improvement Project with the World Bank aimed at Modernizing and Digitizing the Technological Systems used in the Ministry of Finance,[28] with a view to facilitating the payment of taxes, reducing tax evasion, making expenditure more efficient, simplifying debt management, and bolstering institutional culture at the Ministry.[29] The Ministry also referred to the use or the EXONET System required by Executive Decree N°

[27] Ibid.
[28] Presentation of the Ministry of Finance (Office of the Director General of Taxation and Office of the Director General of Finance) during the on-site visit (April 6, 2021). See also the Approval of Loan Contract N° 9075-CR to finance the Fiscal Management Improvement Project with the World Bank titled "Modernizing and Digitizing the Technological System of the Ministry of Finance known as *Hacienda Digital para el Bicentenario*") between the Government of the Republic of Costa Rica and the International Bank for Reconstruction and Development," Law Nº 9922 of November 21, 2020.
[29] Presentation of the Ministry of Finance, "Hacienda Digital para el Bicentenario", File Nº 22.016 November 2020.

31611-H of January 29, 2004,[30] to handle the exemptions it grants specifically through the Office of the Director General of Finance.[31] This system allows the beneficiary of an exemption to register his or her personal data in the system and to file an application for exemption electronically, along with the information needed to fill in the form, the legal basis for the application, and supporting documents. Once the application has been processed, the beneficiary using the system can keep track of and access her or his applications. For their part, those responsible for approving and supervising applications can use the system for accepting or denying them. According to the representatives, this electronic system represents a huge advance compared to paperwork and has already demonstrated its benefits by ensuring more expeditious and secure processing of applications.

[28] The Committee takes notes of the steps taken by the country under review to implement the above measure. Accordingly, the Committee acknowledges the usefulness of this technological tool for expediting the processing of applications. However, the Committee notes that, although the system speeds up tax officials' access to taxpayer information, and probably also the process of consulting data, the country under review did not actually specify whether the aforementioned system makes it easier to consult or cross-compare data, and, if it does, how it does so. Therefore, the Committee reiterates the need for the country under review to give additional attention to the implementation of measure ii) of the foregoing recommendation, which will be reformulated with a view to broaden the measures that facilitate access to those sources of information. (See recommendation 1.4.3 in Section 1.4 of Chapter II of this Report).

Measure a) iv):

Institutional coordination mechanisms that will provide the timely collaboration needed from other authorities, and such aspects as certifying the authenticity of the documents submitted with the applications.

[29] With respect to the aforementioned measure, in its Response to the Questionnaire,[32] the country under review did not present information or new developments. However, during the on-site visit, the country under review presented information related to the implementation of the aforementioned measure. In this regard, the Committee notes, as steps that contributes to progress in the implementation of the said measure, the following:

[30] The Ministry of Finance (Office of the Director General of Taxation and Office of the Director General of Finance) underscored, in its presentation during the on-site visit, the importance, at the international level, of the following institutional coordination mechanisms: the Tax Inspectors Without Borders Programme (OECD-UNDP); the International Tax Inspection Network: and the Inter-Agency Working Group on Bribery (2017).[33] At the national level, the ministry representatives mentioned the Agreement between the Ministry of Finance and the Supreme Court of Justice (2015), which establishes coordination and cooperation ties via an interagency commission to bolster efforts to combat tax fraud and tax crimes, the Transparency and Final Beneficiaries Register[34] of the Ministry of Finance and the Central Bank enables those bound by the Law to Improve Efforts to Combat Tax Fraud, Law Nº 9416 of December 14, 2016,[35] to provide and regularly update the information regarding their shareholders and final

[30] Executive Decree N° 31611-H of January 29, 2004 and Amendment to Executive Decree N° 39037-H of May 13, 2015, authorizing the Exemptions Department of the Office of the Director General of Finance to use the EXONET electronic information system to process beneficiaries' applications for tax exemptions.
[31] Ibid.
[32] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p.13-21.
[33] Presentation of the Ministry of Finance (Office of the Director General of Taxation and Office of the Director General of Finance) during the on-site visit (April 6, 2021).
[34] Enabling Regulation to the Transparency and Final Beneficiaries Register, Executive Decree N° 41040 -H of April 5, 2018.
[35] Law to Improve Efforts to Combat Tax Fraud, Law Nº 9416 of December 14, 2016.

beneficiaries, Internal Affairs Unit,[36] which is responsible for ensuring in-house transparency and the appropriate use of sensitive information in the Ministry of Finance via the investigation of reports and cases of corruption to the detriment of the State and its taxpayers, as well as the Revenue Coordinating Commission of the Ministry of Finance, in which several directorates participate.[37]

[31] The Committee takes notes of the steps taken by the country under review to implement the above measure and of the need to continue to give attention to its implementation, bearing in mind that there are other public institutions in the country under review that lack those interagency coordination mechanisms. For that reason, the Committee reiterates its recommendation that the country under review consider continuing to develop interagency coordination mechanisms that enable the competent authorities to, easily and promptly, elicit from other public institutions the collaboration they need to verify the information provided in applications for tax benefits, and to establish the authenticity of the supporting documents. The Committee will also take this opportunity to reformulate the recommendation and make it more precise. (See recommendation 1.4.4 in Section 1.4 of Chapter II of this Report).

Measure a) v):

Training programs designed specifically to alert officials to the methods used to disguise payments for corruption and to instruct them in ways of detecting such payments in the applications.

[32] With respect to the aforementioned measure, in its Response to the Questionnaire,[38] and during the on-site visit, the country under review presented the following information and new developments, which the Committee notes as steps that contribute to progress in the implementation of the said measure, the following:

[33] The Ministry of Finance (Office of the Director General of Taxation and Office of the Director General of Finance) underscored the training given to tax officials regarding use of the aforementioned "Manual to Detect Signs of Bribery or Corruption during tax audit procedures"[39] of 2017, and the "Procedure for Processing Cases of Crimes Other than those Characterized in Article 92 of the Code of Tax Rules and Procedures" [40] of 2019.

[34] For its part, the Office of the Deputy Public Prosecutor for Probity, Transparency and Anticorruption (FAPTA) drew attention, during the on-site visit, to the combined course (*curso bimodal*) designed to identify online corruption offenses, which is expected to train 200 tax auditors in legal aspects. It also indicated that there have been delays with regard to the training courses.

[35] Here, the Committee notes the major effort undertaken to implement the manual and its guidelines and provide training to officials in connection with enabling regulations and associated guidelines. In this regard, the Committee takes notes of the steps taken by the country under review to implement the above measure, and of the need for it to continue to give addition to its implementation. Given that the Committee did not have an opportunity to corroborate that information, or review the material relating to those training courses, it was unable to assess the content of those training programs and determine whether they are specifically designed to alert government officials to the methods used to disguise corrupt payments and to

[36] Rules of Procedure governing the Organization and Functions of the Internal Affairs Advisory Unit of the Ministry of Finance, Executive Decree Nº 41198-H of June 1, 2018.
[37] Presentation of the Ministry of Finance (Office of the Director General of Taxation and Office of the Director General of Finance) during the on-site visit (April 6, 2021).
[38] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 15.
[39] Manual for Detecting Signs of Bribery and Corruption During Tax Audits.
[40] Procedure for Processing Crimes Different from those Characterized in Article 92 of the Code of Tax Rules and Procedures.

instruct them on how to detect those payments in applications. For this reason, the Committee reiterates the need for the country under review to give attention to the implementation of measure a) v) of the foregoing recommendation. In addition, the Committee will reformulate the recommendation so that it focuses on strengthening said training programs. (See recommendation 1.4.5 in Section 1.4 of Chapter II of this Report).

Measure a) vi):

Channels of communication so that they may promptly report to those who must decide on favorable treatment and warn them of the anomalies detected or of any irregularity that could affect the decision.

[36] With respect to the aforementioned measure, in its Response to the Questionnaire,[41] the country under review did not present information or new developments. However, during the on-site visit, the country under review presented information and new developments related to the implementation of the aforementioned measure. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the said measure, the following:

[37] The Office of the Deputy Public Prosecutor for Probity, Transparency and Anticorruption (FAPTA) mentioned in its presentation during the on-site visit that there is a channel of communication with the Office of the Director General of Taxation of the Ministry of Finance for keeping it informed regarding convictions for bribery,[42] but that currently no investigations are underway relating to bribes, and that this may possibly be due to officials' lack of technical know-how. For its part, the Ministry of Finance mentioned the electronic "Denuncie Ya" and "TRAVI (Trámites Virtuales/Virtual Processing)" platforms.

[38] Nevertheless, the Committee considers that it is not clear whether these instruments authorize or contemplate the competent authorities notifying decision-makers regarding the granting of the benefits requested, anomalies, or irregularities that are detected, and that may impact the decision-making process, as requested in the measure under review. On this, the country under review did not submit specific information. The Committee notes the progress made by the country under review in creating the aforementioned electronic platforms. However, the Committee deems it necessary to strengthen channels of communication that enable the competent authorities to promptly notify decision-makers about the granting of requested benefits, anomalies detected, or any irregularity that could impact the decision, including measures needed to automate the use of these means and request that they be used by the appropriate authorities. Furthermore, the Committee will reformulate the recommendation so that it focuses on strengthening said communication channels. (See recommendation 1.4.6 in Section 1.4 of Chapter II of this Report).

Measure b suggested by the Committee:

Select and develop, through the tax authorities responsible for processing applications for favorable tax treatment, as well as the other authorities or entities that have responsibility in this area, procedures and indicators, when appropriate and where they do not yet exist, to analyze the objective results obtained in this regard and to follow-up on the recommendations formulated in this report in relation thereto

[39] With respect to the aforementioned measure, in its Response to the Questionnaire,[43] and during the on-site visit, the country under review presented the following information and new developments, which

[41] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p.13-21.
[42] Presentation of the Office of the Deputy Public Prosecutor for Probity, Transparency and Anticorruption (FAPTA) during the on-site visit (April 6, 2021).
[43] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 17-21.

the Committee notes as a step that contributes to progress in the implementation of the said measure, the following:

[40] The country under review indicated in its Response to the Questionnaire that the Office of the Director General of Finance of the Ministry of Finance conducts investigations to determine whether there are signs of improper use and allocation of goods and services that have been exempted in accordance with the procedure for establishing ineffectiveness, set forth in Article 37 f) of the Law Regulating All Exemptions Currently in Effect, their Repeal and Exceptions, Law Nº 7293 of March 31, 1992 on exemptions and their effectiveness "in order to be able to totally or partially set aside a tax exemption previously granted in accordance with due process, and in addition to ensure that any irregularity is reported to the appropriate body within or outside the sphere of competence of the Ministry of Finance."[44]

[41] On that same occasion, the country under review pointed out that the Ministry of Finance is working on a bill intended to organize and systematize exemptions comparable to the one referring to tax treatment and to ensure that sectors operate on an equal footing "to eliminate distortions and enforce general measures in the rules governing current and future exemptions."[45] According to the Ministry of Finance, this bill Nº 19531 is being reviewed by the Legislative Assembly.

[42] As such, the Committee notes of the steps taken by the country under review to implement the above measure. However, considering that the bill has not yet become law, the Committee reiterates the need for the country under review to continue to give attention to the implementation of measure b) of the foregoing recommendation. the recommendation that the country under review consider continuing with the measures it adopted. (See recommendation 1.4.7 in Section 1.4 of Chapter II of this Report).

1.2 New Developments with respect the Provisions of the Convention on the Denial or Prevention of Favourable Tax Treatments for Expenditures made in Violation of Anticorruption Laws (Article III (7) of the Convention)

1.2.1 New Developments with respect to the Legal Framework

[43] Regarding new progress made with the regulatory framework, the country under review pointed out that, in 2016, a paragraph was added to Article 12 of the Enabling Regulations to the Income Tax Law.[46] That paragraph provides that "under no circumstances shall gifts made by the taxpayer or companies related to the taxpayer on behalf of government or private sector employees, with a view to expediting or facilitating a transnational or national transaction, be deducted from gross income."[47] In addition, Article 9.1 of the Income Tax Law, Law N° 7092 of April 21, 1988[48] on non-deductible expenses, was added to Law N° 9635 of 2018. Later on, Article 12 bis in the aforementioned regulations was added, listing cases in which deductions from gross income are not allowed.

1.2.2 New Developments with respect to Technology

[44] The country under review did not present new developments related to technological aspects either in its Response to the Questionnaire[49] or during the on-site visit.

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[44] Ibid., p. 17-18.
[45] Ibid., p. 18.
[46] Enabling Regulations to the Income Tax Law, Executive Decree N° 18445- H of September 9, 1988, Article 12.
[47] Ibid.
[48] Income Tax Law, Law N° 7092 of April 21, 1988, Article 9.
[49] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p.13-21.

1.3 Results

[45] The country under review did not present in its Response to the Questionnaire[50] information regarding results on the application of the norms and/or other measures that apply in this matter, nor did it provide statistical information during the on-site visit.

[46] Given that the Committee does not have additional information presented in such a way as to allow it to make a comprehensive assessment of the results of the application of the norms and/or other measures related to the denial of favorable tax treatment for expenditures made in violation of the anticorruption laws, and that it has not received any further information on this matter during the on-site visit, the Committee will formulate a recommendation for the country under review to compile statistical information, disaggregated annually, on steps taken to prevent, investigate and punish conduct intended to elicit favourable tax treatment on account of payments that contravene anti-corruption laws. Information may include aspects such as the number of verifications carry out by authorities responsible for processing such applications; the number of administrative and/or criminal investigations regarding the violation of these provisions and/or other measures that have been initiated or completed; and the number of sanctions imposed as a result thereof, in order to identity challenges and adopt corrective measures, where necessary. (See recommendation 1.4.8 in Section 1.4 of Chapter II of this Report).

1.4 Recommendations

[47] In light of the observations formulated in Sections 1.1, 1.2 y 1.3 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

1.4.1 Develop manuals that contain, or include in existing ones, guidelines that expressly indicate the manner to review applications for tax benefits, in particular, how to verify that applications contain the established requirements and confirm the veracity of the information provided therein, so that the origin of the expenditures or payments on which they are based can be determined. (See paragraph 22 in Section 1.1 of Chapter II of this Report).

1.4.2 Strengthen measures to ensure that competent authorities responsible for processing applications for tax benefits have access the sources of information they need to conduct reviews and detect expenditures and payments of sums made in violation of anti-corruption legislation and intended to be used obtain favorable tax treatment. (See paragraph 25 in Section 1.1 of Chapter II of this Report).

1.4.3 Develop computer programs that facilitate data consultation and cross-checking of information, when required for the performance of such functions. (See paragraph 28 in Section 1.1 of Chapter II of this Report).

1.4.4 Develop inter-institutional coordination mechanisms that ensure that competent authorities obtain, in a timely manner, the collaboration they need from other public authorities to confirm the information contained in applications for tax benefits and establish the authenticity of the documents provided. (See paragraph 31 in Section 1.1 of Chapter II of this Report).

1.4.5 Strengthen training, induction and continuing education programs for tax authorities responsible for processing applications for taxes benefits designed specifically to inform them of the different methods used to disguise payments for corruption and instruct them on the manner to

[50] Ibid.

detect such payments in such applications. (See paragraph 35 in Section 1.1 of Chapter II of this Report).

1.4.6 Strengthen the channels of communication that enable competent authorities to promptly inform those who must decide whether to grant requested tax benefits and report to them any anomalies detected or irregularity that could affect their decision, including adopting measures necessary to automate the process and ensure that relevant authorities are required to use such channels. (See paragraph 38 in Section 1.1 of Chapter II of this Report).

1.4.7 Select and develop, through the tax authorities responsible for processing applications for favourable tax treatment, as well as other competent authorities or entities in this area, procedures and indicators, when appropriate and where they do not yet exist, to analyze the objective results obtained in this regard and to follow-up on the recommendations formulated in the report in relation thereto. (See paragraph 42 in Section 1.1 of Chapter II of this Report).

1.4.8 Compile annually detailed statistics on steps taken to prevent, investigate and punish conduct intended to elicit favourable tax treatment on account of payments made in violation of anti-corruption laws. Information may include aspects such as: the number of verifications carry out by authorities responsible for processing such applications; the number of administrative and/or criminal investigations regarding the violation of these provisions and/or other measures that have been initiated or completed; and the number of sanctions imposed as a result thereof, in order to identity challenges and adopt corrective measures, where necessary. (See paragraph 46 in Section 1.3 of Chapter II of this Report).

2. PREVENTION OF BRIBERY OF DOMESTIC AND FOREIGN GOVERNMENT OFFICIALS (ARTICLE III (10) OF THE CONVENTION)

2.1. Follow up on the Implementation of the Recommendations Formulated in the Third Round

Recommendation suggested by the Committee:

Strengthen the standards for the prevention of bribery of domestic and foreign government officials.

Measure a) suggested by the Committee:

Adopt, in accordance with its legal framework, and by such means as it deems appropriate, pertinent measures to ensure that "professional secrecy" is not an obstacle for professionals whose activities are governed by the Code of Ethics of the College of Public Accountants of Costa Rica to bring to the attention of the appropriate authorities any acts of corruption that they discover in the course of their work.

[48] With respect to the aforementioned measure of the foregoing recommendation, in its Response to the Questionnaire,[51] and during the on-site visit, the country under review presented the following information, which the Committee notes as steps that contribute to progress in the implementation of the said measure, the following:

[49] – Article 10(b) of the Code of Professional Ethics of the Certified Public Accountant[52] and its amendments relating to professional secrecy and possible acts of corruption. This Article provides for

[51] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 21-22.
[52] Code of Professional Ethics of the Certified Public Accountants, Regulation N°37 of December 15, 2014, Article 10(b), as amended by Special Session, N° 16-2019 of October 16, 2019.

confidential information being disclosed when such disclosure is required by a court or by law, both for legal procedures and in order to notify the appropriate authorities of any breaches of the law that may arise and should be disclosed,[53] while observing the duty to abide by Article 203 of the Criminal Code on professional secrecy.[54] It is worth noting the scope of application of the Code of Professional Ethics of the Certified Public Accountant. Indeed, it applies to all licensed public accountants, "simply by virtue of their status as chartered accountants, regardless of the nature of their activity or their specialty, either when engaging in independent practice or when they are serving as government officials or practicing another profession."[55]

[50] This information was corroborated by representatives of the Office of the Deputy Public Prosecutor for Probity, Transparency and Anticorruption (FAPTA) during the on-site visit. On that same occasion, information was provided regarding the Law establishing the Association of Certified Accountants, Law N° 1038 of August 19, 1947, and more particularly, Article 2, which defines a person who practices public accounting and Article 7 on the specific functions of public accountants.[56] In addition, regarding the scope of aforementioned Article 10,[57] the representatives explained that its provisions apply to certified public accountants.

[51] Reference was also made to Article 281 of the Code of Criminal Procedure, Law N° 7594 of April 10, 1996,[58] regarding the obligation to report crimes that are to be prosecuted ex officio by "government officials or public servants who become aware of them in the performance of their duties,"[59] as well as by "persons who by law, order of the authorities, or legal ruling, are responsible for managing, administering, looking after, or overseeing the assets or interests of an institution, entity, or person, in respect of offenses committed to their detriment or to the detriment of the assets (*masa*) or property placed in their charge or subject to their oversight, if they become aware of the act in the performance of their duties."[60]

[52] In addition to the above, the representatives underscored Articles 8(k) and 10(g) of the Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, on the voluntary adoption by a legal person of an optional organizational, crime prevention, management, and control model.[61] That model should seek to establish a set of internal rules for preventing, detecting, and dealing with offenses that should be prevented, taking into account, to that end, the size, line of business, complexity, and financial capacity of the legal entity, as well as the risks inherent in its activities.[62] Thus, the model needs to make it possible to identify the activities or processes that trigger or increase the risk of those crimes being committed and to establish, for preventive purposes, the corresponding protocols, codes of ethics, rules, and procedures that enable persons pertaining to the legal entity to plan and carry out their tasks and work in such a way as to prevent the commission of such crimes.[63] In addition to preventing, detecting, and dealing with crimes, the model adopted must provide for the obligation to notify the competent authorities of the offenses envisaged in the law. In this regard, mention must be made of Article 8(k), which establishes that the aforementioned model shall include, inter alia,

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[53] Ibid.
[54] Code of Criminal Procedure, Law N° 7594 of April 10, 1996, Article 203.
[55] Code of Professional Ethics of the Certified Public Accountants, Regulation N° 37 of December 15, 2014, Postulate I.
[56] Ley de Creación del Colegio de Contadores Públicos, Ley N° 1038 del 19 de agosto de 1947, Articles 2 and 7.
[57] Code of Professional Ethics of the Certified Public Accountant, Regulation N°37 of December 15, 2014, Article 10(b), as amended in Special Session, N° 16-2019 of October 16, 2019. Article 10, as amended in Special Session, N° 16-2019 of October 16, 2019.
[58] Code of Criminal Procedure, Law N° 7594 of April 10, 1996, Article 281.
[59] Ibid.
[60] Ibid.
[61] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Articles 8(k) and 10(g).
[62] Ibid., Article 8.
[63] Ibid., Articles 8(a) and 8(b).

external audits of its accounts, as established in the enabling regulations to the law or when the authorities in the Ministry of Finance so require,[64] as well as the outside auditor's obligation to report any apparently illicit items found during those external audits to the Public Prosecutors' Office. Similarly, with regard to the organizational, crime prevention, management, and control models adopted by small and medium-sized legal entities,[65] Article 10(g) requires inclusion of the same obligation of the external auditor to report to the Public Prosecutors' Office any apparently illicit findings he or she may detect during an external audit.[66]

[53] Regarding the aforementioned provisions, the representatives of the Office of the Deputy Public Prosecutor for Probity, Transparency and Anticorruption (FAPTA) took advantage of the on-site visit to underscore their very limited scope and stressed, above all, the fact that they apply to very specific cases. On this matter, the representatives highlighted, for instance, the limited scope of Article 10 of the Code of Professional Ethics of the Certified Public Accountant,[67] which is restricted mainly to cases in which disclosure is required by a judicial authority or the law, thereby covering only the functions performed by Certified Public Accountants (hereinafter "CPA"). With respect to Article 281 of the Code of Criminal Procedure, Law N° 7594 of April 10, 1996, on the obligation to report,[68] the representatives said that they considered its application quite restrictive and added that it was a legal imperative. As for the application of Articles 8(k) and 10(g) of the Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019,[69] the representatives explained that, in addition to being optional, the regulation does not cover legal persons that have not adopted the models it refers to. In that sense, the application of Articles 8(k) and 10(g) is limited to just those legal persons that voluntarily adopted a model.

[54] In the end, the representatives of the Office of the Deputy Public Prosecutor for Probity, Transparency and Anticorruption (FAPTA) reached the conclusion that professional secrecy applies in numerous cases, apart from the exceptions provided for in the regulations for submitting evidence or filing a report based on a judicial order or legal requirement. In that regard, the representatives consider the regulations do not cover all the scenarios encountered by government officials and that said obligation to report, as established in the current regulations, applies to specific cases that meet the conditions of Article 281 of the Code of Criminal Procedure[70] or of Articles 8 and 10 of the Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019,[71] thereby failing to cover many scenarios that CPA face. While some rules do exist, the representatives stated that there is also room for improvement and for strengthening regulations with a view to ensuring that professional secrecy does not exempt officials from reporting a crime.

[55] In this regard, the presentation by the representatives of the Office of the Prosecutor for Public Ethics (PEP) during the on-site visit also echoed some of these concerns, so that they underscored that

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[64] Ibid., Article 8(k).
[65] For the purposes of the Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, small and medium-sized legal entities are those with the characteristics described (or their equivalents for another type of organization) in the Law to Strengthen Small and Medium-Sized Enterprises, de Law N° 8262 of May 2, 2002, and other legislation in force.
[66] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Article 10 (g).
[67] Code of Professional Ethics of the Certified Public Accountant, Regulation N°37 of December 15, 2014, Article 10(b), as amended in Special Session, N° 16-2019 of October 16, 2019. Article 10, as amended in Special Session, N° 16-2019 of October 16, 2019.
[68] Code of Criminal Procedure, Law N° 7594 of April 10, 1996, Article 281.
[69] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Articles 8(k) and 10(g).
[70] Code of Criminal Procedure, Law N° 7594 of April 10, 1996, Article 281.
[71] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Articles 8(k) and 10(g).

Articles 8(k) and 10(g) of the Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019,[72] create an obligation to report only for public accountants in the cases referred to in the law.

[56] Finally, the Association of Public Accountants of Costa Rica pointed out during the on-site visit that the Code of Professional Ethics of the Certified Public Accountant[73] only applies to CPA and that private accountants are not covered by it. The representatives of the country under review explained that each association, including the Association of Public Accountants of Costa Rica, has its own code of ethics. In the case of private sector accountants, the Professional Code of Ethics of Certified Private Accountants applies. On this matter, the representatives of the Association of Public Accountants of Costa Rica[74] indicated that an effort is being made to create synergies between the associations and they gave as one example the fact that they will participate in events organized by the Inter-American Accounting Association (AIC)[75] in May 2021.

[57] The Committee take notes of the steps taken by the country under review to implement the above measure. The Committee recognizes that the aforementioned legislative amendments helped advance implementation of measure a) of the above recommendation. However, the Committee deems it necessary that the country under review continue to give attention to implementation of measure a) of the foregoing recommendation, which it will also reformulate so as to broaden its scope and gear it towards strengthening the relevant provisions or measures to ensure that "professional secrecy" is not an obstacle preventing professionals whose activities are regulated by the Professional Code of Ethics of Certified Public Accountants from notifying the competent authorities of the acts of corruption they detect in the course of their duties. (See recommendation 2.4.1 in Section 2.4 of Chapter II of this Report).

[58] In addition to the above, the Committee considers that the country under review could benefit from introducing a provision expressly stablishing the obligation to report in all cases in which Certified Public Accountant detects a crime when performing any of the functions assigned to him or her in the Law Establishing the Association of Public Accountants, Law N° 1038 of August 19, 1947,[76] regardless of the type of function, thereby ensuring that said obligation to report applies both to cases established in the regulations and those not covered by the regulations currently enforced and enabling them to be included within the scope of the recommendation. (See recommendation 2.4.2 in Section 2.4 of Chapter II of this Report).

[59] The Committee further considers that it is not clear whether this obligation to report mentioned in the measure extends to private sector accountants involved in detecting bribery of national and foreign government officials. For that reason, bearing in mind that the Professional Code of Ethics of Certified Public Accountants of Costa Rica does not apply to them and there is uncertainty as to whether private sector accountants are subject to the models mentioned, the Committee will formulate a recommendation to the country under review that it consider adopting appropriate rules or measures in accordance with its internal legal framework, through such means as it deems appropriate, to ensure that "professional secrecy" is not an obstacle preventing a private sector accountant involved in detecting the bribery of national and foreign government officials from notifying the competent authorities of acts of corruption detected in the course of his or her work, thereby ensuring, moreover, that said obligation to report to the competent authorities is expressly established. (See recommendation 2.4.3 in Section 2.4 of Chapter II of this Report).

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[72] Ibid.
[73] Code of Professional Ethics of the Certified Public Accountant, Regulation N° 37 of December 15, 2014, Postulate I.
[74] Professional Code of Ethics of Certified Private Accountants, Article 1.
[75] Website of the Inter-American Accounting Association (AIC).
[76] Law establishing the Association of Public Accountants, Law N° 1038 of August 19, 1947.

Measure b) suggested by the Committee:

Consider adopting the measures it deems appropriate to facilitate the work of the organs or bodies responsible for preventing or investigating noncompliance with measures for safeguarding the accuracy of accounting records, and to help them detect amounts paid for corruption that are concealed in those records, such as the following:

Measure b) i):

Review methods, including account inspections and analysis of periodically requested information, by which to detect anomalies in accounting records that could indicate the payment of sums for corruption.

[60] With respect to the aforementioned measure of the foregoing recommendation, in its Response to the Questionnaire,[77] and during the on-site visit, the country under review presented the following information, which the Committee notes as steps that contribute to progress in the implementation of the said measure, the following:

[61] During the on-site visit, the Office of the Prosecutor for Public Ethics referred to the incorporation into criminal law, via the Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019,[78] of Article 368 bis of the Criminal Code, Law N° 4573 of May 4, 1970 on the criminal offense known as "falsification of accounting records" and the corresponding sanctions.[79] Mention was also made of the Enabling Regulation to Title II of Law N° 9699 Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, known as "optional model for organization, crime prevention, management and control" (Executive Decree N° 42399-MEIC-MJP of June 4, 2020), which establishes the intervals at which reviews must be conducted as well as what must be verified.[80]

[62] For its part, the Association of Public Accountants of Costa Rica, referred, during the on-site visit, to application of the International Auditing and Assurance Standards (IAAS) issued by the International Federation of Accountants (IFAC). Those auditing standards contained in the Handbook of International Quality Control, Auditing, Review, Other Assurance, and Related Services Pronouncements were adopted by the Governing Board of the Association of Public Accountants of Costa Rica, under the powers vested in it by Article 14 of the Law Governing the Public Accountants Profession and Creation of the Association of Public Accountants of Costa Rica, Law N° 1038 of August 19, 1947,[81] through Circular N°03-2014.[82] In particular, the representatives of the country under review stressed that IAAS 240 addresses the responsibilities of the auditor regarding fraud in an audit of financial statements. The standard establishes the responsibility of auditors to achieve reasonable certainty that the financial statements as a whole are free from material errors, whether caused by fraud or by mistake.[83] Moreover, regarding the responsibilities of the CPA as an auditor with respect to fraud detected when auditing financial statements in connection with risks of material impropriety due to fraud, the Association of Public Accountants of Costa Rica

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[77] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 21-22.
[78] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Article 39.
[79] Criminal Code, Law N° 4573 of May 4, 1970, Article 368 bis.
[80] Regulation to Title II of the Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, entitled "Optional Model of Organization, Crime Prevention, Management and Control" (Executive Degree N° 42399-MEIC-MPJ of the Ministry of Justice and Peace).
[81] Law establishing the Association of Public Accountants, Law N° 1038 of August 19, 1947, Article 14.
[82] Guide to Implementing Quality Control for Firms or Offices of Public Accountants and Independent Professionals, Circular N° 03-2014 of November 10, 2014.
[83] Presentation of the Association of Public Accountants of Costa Rica during the on-site visit (April 7, 2021).

explained that the CPA must apply related standards IAAS 315 and 330 due to risk assessments and relatively important errors.[84]

[63] With regard to external audits, the Ministry of Finance stated during the on-site visit that the officials responsible for conducting them as well as those of the Office of the Comptroller General of the Republic may check the accounting ledgers and their annexes for tax purposes and to ascertain that public funds have been used correctly.[85]

[64] The Committee takes note of the steps taken by the country under review to implement the above measure as well as the need to continue to give attention to its implementation. Likewise, given that it lacks further information for determining the extent to which those international auditing standards are mandatory in the country under review and mainly constitute a tool to be used with minimum requirements to implement a quality control system designed principally for audits and reviews of financial information,[86] the Committee will reiterate measure b) i) of the foregoing recommendation, which will also be reformulated to ensure that relevant provisions or measures are adopted to strengthen those review methods. (See recommendation 2.4.4 in Section 2.4 of Chapter II of this Report).

[65] In addition, considering that the "Optional Model for organization, Crime prevention, management and control" contains some review methods found in the regulations of the country under review, the Committee will formulate a recommendation that the country under review prepare handbooks, guides, or guidelines to help those expected to apply that Model to their review methods and to provide guidance as to how accounting records should be reviewed in order to detect corrupt payments and thereby make the information referred to in the standard more accessible. (See recommendation 2.4.5 in Section 2.4 of Chapter II of this Report).

Measure b) ii):

Investigation tactics, such as follow-up on expenditures, crosschecking of information and accounts, and requests for information from financial entities in order to determine if such payments occurred.

[66] With respect to the aforementioned measure of the foregoing recommendation,[87] in its Response to the Questionnaire, the country under review did not present information or new developments. However, during the on-site visit, the country under review presented information related to the implementation of the aforementioned measure. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the said measure, the following:

[67] As regards open government and, in particular, the sworn statements received by the Office of the Comptroller General of the Republic, the representatives of the country under review pointed out that they conduct two types of audit. One the one hand, they check the reasonable nature of the information contained in the sworn statement, using an automated method. The Office of the Comptroller General of the Republic then cross-compares the information to detect falsehoods or inconsistencies. According to the representatives of the country under review, some 14-20 cases are re-checked each year. Many of these cases are cleared up, others are investigated, and in some cases administrative proceedings are initiated. In 2019, for example, two cases were remitted to the Public Prosecutors' Office. As for sanctions, the representatives of the country under review indicated that the Office of the Comptroller General of the

[84] Ibid.
[85] Presentation of the Ministry of Finance during the on-site visit (April 7, 2021).
[86] Guide to Implementing Quality Control for Firms or Offices of Public Accountants and Independent Professionals, Circular N° 03-2014 of November 10, 2014, Preamble.
[87] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 21-24.

Republic also processes a number of punishment procedures, including some related to inconsistencies in the sworn statements. The Office of the Comptroller General of the Republic has reported inaccuracies due to inconsistency and one case in which a conviction was handed down by a court of first instance, which is currently being processed; therefore, the country under review cannot comment further on it.

[68] Considering that the information provided is limited to the framework of sworn statements provided by government officials and is not geared to a more general assessment of investigation tactics designed to detect corrupt payments in accounting records, the Committee take notes of the need for the country under review to continue to give attention to the implementation of measure b) ii) of the foregoing recommendation, which will be reformulated to focus on broadening those investigation tactics. (See recommendation 2.4.6 in Section 2.4 of Chapter II of this Report). In addition, given that the country under review was unable to provide specific data regarding the opening of investigations and sanctions, the Committee was unable to assess measurable impacts.

Measure b) iii):

Manuals, guidelines or directives on the manner in which accounting records should be reviewed to detect sums paid for corruption.

[69] With respect to the aforementioned measure, in its Response to the Questionnaire,[88] the country under review did not present information or new developments. Nor did it present any information during the on-site visit. Considering that the Committee has no information regarding manuals, guides, guidelines indicating how accounting records should be reviewed in order to detect corrupt payments, the Committee deems necessary that the country under review give attention to the implementation of measure b) iii) of the foregoing recommendation. (See recommendation 2.4.7 in Section 2.4 of Chapter II of this Report)

Measure b) iv):

Computer programs that allow ready access to the information needed to verify the truthfulness of accounting records and their substantiating documentation, and the possibility of obtaining information from financial institutions for this purpose.

[70] Neither in its Response to the Questionnaire,[89] nor during the on-site visit, did the country under review present information and new developments with respect to the foregoing measure. Therefore, the Committee takes note of the need for the country under review to give attention to measure b) ii) of the foregoing recommendation. (See recommendation 2.4.8 in Section 2.4 of Chapter II of this Report).

Measure b) v):

Institutional coordination mechanisms to facilitate timely collaboration from other institutions or authorities as necessary to perform such verification or to establish the authenticity of the substantiating documentation.

[71] Neither in its Response to the Questionnaire,[90] nor during the on-site visit did the country under review present information or new developments with respect to the aforementioned measure. Taking this into consideration, the Committee notes the need for the country under review to give attention to measure

[88] Ibid.
[89] Ibid.
[90] Ibid.

b) v) of the foregoing recommendation. (See recommendation 2.4.9 in Section 2.4 of Chapter II of this Report).

Measure b) vi):

Training programs for their employees, designed specifically to alert them to the methods used to disguise bribes in accounting records, and to instruct them on ways of detecting such payments.

[72] With respect to the aforementioned measure, in its Response to the Questionnaire,[91] the country under review did not present information or new developments. However, during the on-site visit, the country under review presented the following information, which the Committee notes as steps that contribute to progress in the implementation of the said measure, the following:

[73] During the on-site visit, the Office of the Prosecutor for Public Ethics (PEP) stated that it provided training to auditors, lawyers and accountants of the Ministry of Finance on preventing and investigating transnational bribery and offences committed in the course of duty. Those training courses were conducted with a view to familiarizing participants with investigation techniques and useful evidence when performing taxpayer audits, and with methods for detecting any irregularities they may contain. The training courses also address the subject of government officials' duty to report irregularities. However, the representatives of the Office of the Prosecutor for Public Ethics (PEP) highlighted the lack of training provided to prevention and detection bodies, including to public servants in the judiciary, such as judges, and other government officials in the executive branch, such as prosecutors.[92] Another challenge reported has been the lack of financial resources.[93]

[74] For its part, the Association of Public Accountants of Costa Rica reported, in November 2018, that strategic training was given to taxpayers working in Designated Nonfinancial Activities and Professions in order to increase compliance with obligations relating to attempts to counter money laundering and the financing of terrorism. The representatives of the Association also mentioned that a talk was given in January 2019 regarding taxpayers working in the activities mentioned in Articles 15 and 15 bis of the Law on Narcotics, Psychotropic Substances, Unauthorized Drugs, Related Activities, Money Laundering, and the Financing of Terrorism, Law N°7786 of April 30, 1998.[94] More recently, in March, a bulletin was published on additions and amendments to the Transparency and Final Beneficiaries Register,[95] Nº DGT-ICD-R-06-2020 of March 26, 2020 (March 2021). As regards the number of those who received training, the Association reported that those data are published in its annual report, posted on its website.

[75] During the on-site visit, the representatives of the Ministry of Finance pointed out that a circular was issued in January 2021 to the whole Ministry regarding Articles 14 and 15 of the Law to Improve Efforts to Combat Tax Fraud, Law N° 9416 of December 14, 2016,[96] which alludes to the obligation of the Public Administration to File a Complaint to the Public Prosecutors' Office aimed at suspending the offending government official in either the Ministry of Finance, the Central Bank of Costa Rica, or the Costa Rican Drug Institute (ICD)[97] and to the functions of the Directorate (or Unit) of Internal Affairs,

[91] Ibid.
[92] Ibid.
[93] Ibid.
[94] Law on Narcotics, Psychotropic Substances, Unauthorized Drugs, Related Activities, Money Laundering, and the Financing of Terrorism, Law N°7786 of April 30, 1998, Articles 15 and 15 bis.
[95] Joint Generally Applicable Resolution for the Transparency and Final Benefits Register, Resolution Nº DGT-ICD-R-06-of March 26, 2020.
[96] Law to Improve Efforts to Combat Tax Fraud, Law N° 9416 of December 14, 2016, Articles 14-15.
[97] Ibid., Article 14.

including those relating to the investigation of complaints, corruption cases and irregular tax-related behavior or acts.[98]

[76] The Ministry of Justice and Peace (MJP) also explained that training is provided to government officials, as part of the Open Government approach, with the participation of the Training and Development Center (CECADES) of the Office of the Director General of the Civil Service and the Office of the Prosecutor for Public Ethics (PEP).[99]

[77] The Committee takes note of the efforts of the Office of the Prosecutor for Public Ethics (PEP) to train officials, and specifically to draw their attention to investigation techniques, the evidence to look for when conducting tax audits, the methods for detecting irregularities, and the duty of public servants to report them. Nevertheless, the Committee was unable either to corroborate that information, or review the material relating to that training. For that reason, the Committee was unable to assess the content of those training programs or to review the content of training programs the other public authorities that took part in the on-site visit. Consequently, the Committee was unable to assess their scope, and to determine what measures are specifically geared to alerting government officials to the methods used, in accounting records, to disguise corrupt payments and to instruct them on ways to detect them. Therefore, the Committee reiterates the need for the country under review to continue to give attention to the implementation of measure b) vi) of the foregoing recommendation, which will be reformulated with the view to clarifying its scope and the target audience for those programs. (See recommendation 2.4.10 in Section 2.4 of Chapter II of this Report).

[78] In addition, in view of the fact that the Office of the Prosecutor for Public Ethics (PEP) drew attention to the lack of training for prevention and detection bodies in this field, the Committee will formulate a recommendation that the country under review consider training government officials in bodies responsible for preventing failure to comply with measures designed to guarantee the accuracy of accounting records and to detect corrupt payments hidden in those records, through training programs specifically tailored to their needs, bearing in mind the role and particular functions they perform in this regard. (See recommendation 2.4.11 in Section 2.4 of Chapter II of this Report). Furthermore, given that the country under review also commented on the lack of training for government officials in judicial bodies, such as judges and prosecutors, the Committee will formulate a recommendation to the country under review along the same lines, so that it considers providing training for these public servants as well. (See recommendation 2.4.12 in Section 2.4 of Chapter II of this Report).

[79] In the same vein, in view of the fact that the Office of the Prosecutor for Public Ethics (PEP) said that one of its challenges was lack of funding, including the lack of financial resources for providing the training needed in this field, the Committee will formulate a recommendation for the country under review to strengthen the human and financial resources required by the Office of the Prosecutor for Public Ethics (PEP), so that it can continue to develop and offer its training programs, and ensure that its officials can fully perform their functions, in order to prevent bribery of domestic and foreign public officials, as provided for in the Convention. (See recommendation 2.4.13 in Section 2.4 of Chapter II of this Report).

[80] Finally, the Committee considers that the country under review could benefit from selecting, updating and disseminating data and indicators to analyze and verify the results of the training activities conducted, such as the level and number of participants, the dates and frequency with which the courses are offered, the names of the government officials in the institutions taking part, and the content of the courses, as well as other aspects, with the view to identify challenges and adopting correcting measures, as

[98] Ibid., Article 15.
[99] Presentation of the Ministry of Justice and Peace (MJP) during the on-site visit (April 7, 2021).

applicable. The Committee will formulate a recommendation in that regard. (See recommendation 2.4.14 in Section 2.4 of Chapter II of this Report).

Measure c) suggested by the Committee:

Hold awareness campaigns targeted at persons responsible for keeping accounts and verifying their accuracy, as to the importance of observing the rules issued to guarantee the truthfulness of those records and the consequences of violation, and implement training programs designed specifically for internal comptrollers in publicly held companies and other types of associations who are required to keep accounts, to instruct them in ways of detecting acts of bribery in the course of their work.

[81] Neither in its Response to the Questionnaire,[100] nor during the on-site visit did the country under review present information and new developments with respect to the aforementioned measure. In light of the foregoing, the Committee considers it necessary for the country under review to give attention to measure c) of the foregoing recommendation. In addition, the Committee considers it advisable to reformulate the measure in two separate recommendations, considering that it contains two related but independent elements. (See recommendations 2.4.15 and 2.4.16 in Section 2.4 of Chapter II of this Report).

Measure d) suggested by the Committee:

Consider holding awareness and integrity promotion campaigns that target the private sector and consider adopting measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption.

[82] With respect to the aforementioned measure of the foregoing recommendation, in its Response to the Questionnaire,[101] the country under review did not present information or new developments However, during the on-site visit, the country under review presented the following information, which the Committee notes as steps that contribute to progress in the implementation of the said measure, the following:

[83] During its on-site visit, the Ministry of Justice and Peace (MJP) reported that in March 2021, in cooperation with the International Chamber of Commerce of Costa Rica (ICC Costa Rica), it organized a session called "Intersectoral Actions and Responsible Business Behavior in the response to COVID-19" as part of the OECD Global Anti-Corruption & Integrity Forum (OECD).[102] In addition, a campaign was conducted called "Campaign to Prevent the Crime of Transnational Bribery," comply with the Ministry's mandate to prevent violence and crime, and to promote peace. To that end, the Ministry provided downloadable graphics and videos on its website[103] aimed at raising awareness regarding transnational bribery, and preventing and reporting it, among those working for large corporations, small and medium-sized enterprises (SMEs), foundations, associations, state-owned enterprises and non-state enterprises, as well as the general public.[104] The infographics are designed to inform the public regarding the nature of transnational bribery and disseminate the content of the new Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019,[105] that is to say, the legal entities subject to it, the offenses it covers, related investigation procedures, and the penalties that may be incurred.[106] The infographics and videos are designed to explain why it is important to be familiar with

[100] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 21-24.
[101] Ibid.
[102] Presentation of the Ministry of Justice and Peace (MJP) during the on-site visit (April 7, 2021).
[103] Campaign to Prevent the Crime of Transnational Bribery of the Ministry of Justice and Peace (MJP).
[104] Ibid.
[105] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019.
[106] Campaign to Prevent the Crime of Transnational Bribery of the Ministry of Justice and Peace (MJP).

Law N° 9699 and to show the industries that most frequently commit transnational bribery crimes, and the actions that can be taken to prevent their commission and to mitigate these risks, such as the establishment of an optional 'Model for Organization, Crime prevention, Management and Control.[107] The campaign also addresses other related aspects, such as transnational bribery in connection with the COVID-19 Pandemic, and includes an addition of the program "*Hablamos de Justicia y Paz sobre el Soborno Transnacional*" ("Let Us Talk About Justice and Peace in connection with Transnational Bribery").[108]

[84] On that same occasion, reference was made to the communication partnerships network between the Ministry of Economy, Industry and Commerce, the Association of Public Accountants of Costa Rica, and the Bar Association of Costa Rica.[109] Using that channel in 2020, the Ministry of Economy, Industry and Commerce invited representatives of the Association of Public Accountants of Costa Rica and the Bar Association of Costa Rica to take part in the strategy to disseminate and raise awareness regarding the Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019.[110] In addition, the Ministry of Justice and Peace pointed out that it has a list of email subscribers interested in the subject of preventing bribery.[111] Currently, more than 200 subscribers received emails on the subject.[112]

[85] The Committee notes the efforts of the country under review to disseminate information regarding the new Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019,[113] and to raise public awareness of its content while, at the same time including civil society participants in its dissemination strategy. The Committee also noted the willingness of the country under review to raise awareness in the public sector regarding transnational bribery issues via "Campaign to Prevent Transnational Bribery," as well as to propose actions through which the private sector can take steps to prevent the crimes referred to in the Law and adopt the voluntary Model for organization, crime prevention, management and control referred to in the Law. The Committee takes note of steps taken by the country under review to implement measure d) of the above recommendation. However, the Committee observes that the measures taken by the country under review are primarily focused on preventing transnational bribery and less concerned on preventing the bribery of national government officials. For this reason, the Committee reiterates the need for the country under review to continue giving attention to the implementation thereto, which will be reformulated to take into account the fact that an awareness campaign targeting the private sector regarding the bribing of foreign government officials has already been conducted and that, as regards the drafting of manuals and guides, the Committee has already made a recommendation regarding the drafting of a manual or guide on applying the "Optional Model for Organization, Crime Prevention, and Control: Best practices proposed by the country under review". (See recommendation 2.4.17 in Section 2.4 of Chapter II of this Report).

Measure e) suggested by the Committee:

Select and develop, through the authorities responsible for preventing and/or investigating violations of measures designed to safeguard the accuracy of accounting records and protect their contents, as well as the other authorities or entities that have responsibility in this area, procedures and indicators, when

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[107] Ibid.
[108] Ibid.
[109] Presentation of the Ministry of Justice and Peace (MJP) during the on-site visit (April 7, 2021).
[110] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019; Presentation of the Ministry of Justice and Peace (MJP) during the on-site visit (April 7, 2021).
[111] Presentation of the Ministry of Justice and Peace (MJP) during the on-site visit (April 7, 2021).
[112] Subscription via 'prevencionsoborno@mj.go.cr'.
[113] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019; Presentation of the Ministry of Justice and Peace (MJP) during the on-site visit (April 7, 2021).

appropriate and where they do not yet exist, to analyze the objective results obtained in this regard and to follow-up on the recommendations formulated in this report in relation thereto.

[86] With respect to the aforementioned measure of the foregoing recommendation, in its Response to the Questionnaire,[114] the country under review did not present information or new developments. However, during the on-site visit, the country under review presented the following information, which the Committee notes as steps that contribute to progress in the implementation of the said measure, the following:

[87] During the on-site visit, the Office of the Prosecutor for Public Ethics (PEP) reported that the Association of Public Accountants of Costa Rica, the Ministry of Finance (General Directorate of Taxation), the Comptroller General of the Republic (CGR) and the Public Prosecutor's Office, are the bodies responsible for preventing and investigating the violation of measures aimed at ensuring the accuracy of accounting records, according to their respective competencies.[115] In that regard, the Office of the Prosecutor for Public Ethics (PEP) explained that this is an inter-institutional task in which each association plays a different role. Both the Association of Public Accountants of Costa Rica and the Association of Private Accountants of Costa Rica, have a preventive role in relation to the training of public accountants and private accountants, respectively.[116] However, as regards of the violation of measures, each professional association is responsible for investigating and imposing disciplinary measures on public and private accountants, as the case may be.[117] For its part, with respect to violation of measures, the Comptroller General of the Republic (CGR) investigates and imposes disciplinary penalties on internal auditors working in government institutions.[118] The Ministry of Finance (Office of the Director General of Taxation), deals with violation of administrative measures, It investigates and imposes administrative tax-related sanctions,[119] whereas the Public Prosecutors' Office is responsible for criminal matters relating to the commission of tax crimes and others relating to the falsification of accounting records.[120] As regards the bodies responsible for verifying observance of the recommendations formulated in the Third Round Report, the Office of the Prosecutor for Public Ethics (PEP) indicated that it is the only body in charge.

[88] In respect thereof, the Committee takes notes of the steps taken by the country under review to implement measure e) of the foregoing recommendation. However, bearing in mind that the Committee was unable to discern which inhouse accounting oversight mechanisms are in place to ensure that the accounting records of Commercial Corporations and other kinds of associations are accurate, which procedures and indicators need to be checked and verified to ensure that they are properly carried out, and taking into account the lack the existence of data on investigations and sanctions in this area, the Committee reiterates the need for the country under review to continue to give attention to the implementation thereto, which will be reformulated with a view to clarify its scope and indicating and showing what elements are already in place in the country under review. (See recommendation 2.4.18 in Section 2.4 of Chapter II of this Report).

2.2 New Developments with respect to the Provision of the Convention on the Prevention of Bribery of Domestic and Government Officials (Article III (10) of the Convention)

2.2.1 New Developments with respect to the Legal Framework

[114] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 21-24.
[115] Presentation of the Office of the Prosecutor for Public Ethics (PEP) during the on-site visit (April 7, 2021).
[116] Ibid.
[117] Ibid.
[118] Ibid.
[119] Ibid.
[120] Ibid.

[89] The country under view did not include in its Response to the Questionnaire, new developments with respect to its legal framework, except for those referred to in the previous section.

2.2.2 New Developments with respect to Technology

[90] Nor in its Response to the Questionnaire,[121] nor during the on-site visit did the country under review present new developments with respect to technology in relation to the prevention of bribery of national and foreign government officials.

2.3 Results

[91] In its Response to the Questionnaire,[122] the country under review did not provide data on the results of applying standards and/or other measures to prevent the bribing of national and foreign government officials. However, during the on-site visit the country under review mentioned that there are some statistics that can be found on the website of the Association of Public Accountants of Costa Rica.[123]

[92] The Committee, in view of the fact that it does not have information by which to assess results in that regard, will formulate a recommendation for the country under review to compile and disseminate annually detailed statistics on the steps it has taken to prevent, investigate, and punish its noncompliance, such as the number of inspections or periodic or sample reviews of the companies' accounting records; the number of criminal and/or administrative investigations for violations of those rules and/or other measures initiated and concluded; and the number of sanctions imposed as a result of them, in order to identify challenges and adopt corrective measures, where appropriate. (See recommendation 2.4.19 in Section 2.4 of Chapter II of this Report).

2.4 Recommendations

[93] In light of the observations formulated in sections 2.1, 2.2, and 2.3 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

2.4.1 Strengthen the relevant provisions or measures, accordance with its domestic law and through the means it deems appropriate, to ensure that "professional secrecy" is not an obstacle for professionals whose activities are regulated by the Code of Professional Ethics of Certified Public Accountants and Certified Public Accountants of Costa Rica to report to the competent authorities any acts of corruption that they detect in the course of their work. (See paragraph 57 in Section 2.1 of Chapter II of this Report).

2.4.2 Adopt the relevant provisions or measures, in accordance with its domestic law and through the means it deems appropriate, to ensure that the obligation to report is expressly established in all cases in which a Certified Public Accountant or Certified Public Accountant exercises any of the functions authorized by the Law Creating the Association of Public Accountants, Law N° 1038 of August 19, 1947, in any of its modalities. (See paragraph 58 in Section 2.1 of Chapter II of this Report).

2.4.3 Adopt the relevant provisions or measures, in accordance with its domestic law, through the means it deems appropriate, to ensure that "professional secrecy" is not an obstacle for a Private Accountant or Public Accountant, who performs any function related to the detection of bribery

[121] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 21-24.
[122] Ibid.
[123] Webpage of the Association of Public Accountants of Costa Rica.

of national and foreign government officials, to bring to the attention of the competent authorities any acts of corruption that they detect in the course of their work and ensure in addition that such obligation to report to the competent authorities is expressly established. (See paragraph 59 in Section 2.1 of Chapter II of this Report).

2.4.4 Adopt the relevant provisions or measures, in accordance with its domestic law, through the means it deems appropriate, to strengthen review methods, including account inspections and analysis of periodically requested information, by which to detect anomalies in accounting records that could indicate the payment of sums for corruption. (See paragraph 64 in Section 2.1 of Chapter II of this Report).

2.4.5 Develop manuals, handbooks or guidelines to orient those who have to apply the optional "Model for Organization, Crime Prevention, Management and Control" on its review methods, including the manner to review accounting records in order to detect sums paid for corruption. (See paragraph 65 in Section 2.1 of Chapter II of this Report).

2.4.6 Broaden investigation tactics, such as follow-up on expenditures, cross-checking of information and accounts, and requests for information from financial entities in order to determine if such payments occurred. (See paragraph 68 in Section 2.1 of Chapter II of this Report).

2.4.7 Develop manuals, guidelines or directives on the manner in which accounting records should be reviewed to detect sums paid for corruption. (See paragraph 69 in Section 2.1 of Chapter II of this Report).

2.4.8 Implement computer programs that allow ready access to the information needed to verify the truthfulness of accounting records and their substantiating documentation, and the possibility of obtaining information from financial institutions for this purpose. (See paragraph 70 in Section 2.1 of Chapter II of this Report).

2.4.9 Establish institutional coordination mechanisms to facilitate timely collaboration from other institutions or authorities as necessary to perform such verification or to establish the authenticity of the substantiating documentation. (See paragraph 71 in Section 2.1 of Chapter II of this Report).

2.4.10 Develop training programs for officials of the bodies or agencies responsible for preventing and/or investigating violations of measures aimed at ensuring the accuracy of accounting records, specifically designed to alert them to the methods used to disguise payments for corruption through such records and instruct them on how to detect them. (See paragraph 77 in Section 2.1 of Chapter II of this Report).

2.4.11 Train government officials in bodies responsible for preventing noncompliance with measures designed to ensure the accuracy of accounting records and for detecting corrupt payments disguised in those records, through training programs specifically tailored to those officials, given the particular role and functions they perform in this regard. (See paragraph 78 in Section 2.1 of Chapter II of this Report).

2.4.12 Train government officials working in judicial bodies responsible for preventing the bribing of national and foreign government officials, such as judges in the judicial branch and prosecutors in the executive branch, through training programs specifically tailored to those officials, given

the particular role and functions they perform in this regard. (See paragraph 78 in Section 2.1 of Chapter II of this Report)

2.4.13 Strengthen the human and financial resources required by the Public Ethics Prosecutor's Office (PEP), so that it can continue to develop and offer its training programs and ensure that its officials can fully perform their functions, in order to prevent bribery of domestic and foreign public officials, as provided for in the Convention. (See paragraph 79 in Section 2.1 of Chapter II of this Report).

2.4.14 Compile, update, and disseminate data and indicators needed to analyze and verify the results of the training activities conducted, the level and number of participants, the dates and frequency with which courses are conducted, the names of the government officials and institutions that participated, and the content of the courses, as well as other aspects, with a view to identifying challenges and taking corrective steps, as necessary. (See paragraph 80 in Section 2.1 of Chapter II of this Report).

2.4.15 Hold on a regular basis awareness campaigns targeted at persons responsible for keeping accounts and verifying their accuracy, as to the importance of observing the rules issued to guarantee the truthfulness of those records and the consequences of violation. (See paragraph 81 in Section 2.1 of Chapter II of this Report).

2.4.16 Implement training programs designed specifically for internal comptrollers in publicly held companies and other types of associations who are required to keep accounts, to instruct them in ways of detecting acts of bribery in the course of their work (See paragraph 81 in Section 2.1 of Chapter II of this Report).

2.4.17 Hold awareness and integrity promotion campaigns that target the private sector, especially on the prevention of bribery of national government officials and consider adopting measures such as developing manuals and guidelines for companies on best practices that should be implemented to prevent corruption. (See paragraph 85 in Section 2.1 of Chapter II of this Report).

2.4.18 Establish internal accounting controls to ensure the accuracy of the accounting records of corporations and other types of associations, as well as the procedures and indicators that must be observed and verified to ensure that they are in proper form. (See paragraph 88 in Section 2.1 of Chapter II of this Report).

2.4.19 Compile and disseminate annually detailed statistics on the steps it has taken to prevent, investigate, and punish its noncompliance, such as: the number of inspections or periodic or sample reviews of the companies' accounting records; the number of criminal and/or administrative investigations for violations of those rules and/or other measures initiated and concluded; and the number of sanctions imposed as a result of them, in order to identify challenges and adopt corrective measures, where appropriate. (See paragraph 92 in Section 2.3 of Chapter II of this Report).

3. TRANSNATIONAL BRIBERTY (ARTICLE VIII OF THE CONVENTION)

3.1. Follow up on the Implementation of the Recommendations Formulated in the Third Round

Recommendation 3.1 suggested by the Committee:

Strengthen the existing procedures and indicators used by the organs and agencies charged with the investigation and/or prosecution of the offense of transnational bribery, and with requesting and/or providing assistance and cooperation with respect thereto, to analyze the objective in this area.

[94] With respect to the aforementioned recommendation, in its Response to the Questionnaire,[124] and during the on-site visit, the country under review presented the following information, which the Committee notes as steps that contribute to progress in the implementation of the said measure, the following:

[95] - Adoption of the new Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019 (hereinafter "Law N° 9699) governing the criminal liability of legal entities for crimes contemplated in the Law on Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004,[125] ("Law N° 8422") including, inter alia, transnational bribery characterized as a crime in Article 55.[126] In addition to assigning criminal liability, the new law establishes "the procedure for investigating and establishing said criminal liability, determining the corresponding criminal sanctions and how they are executed, and the circumstances in which this law is applicable."[127]

[96] During the on-site visit, the representatives of the Office of the Prosecutor for Public Ethics (PEP) pointed out, with regard to the bodies responsible for investigating the crime of transnational bribery, that it is the Public Prosecutors' Office is the body in charge of investigating, with the help of the Judicial Investigation Agency (OIJ).[128] As regards objective results obtained in investigating this crime the country under review reported during the on-site visit that the Office of the Prosecutor for Probity, Transparency, and Anticorruption had conducted two investigations into acts that could constitute the crime of transnational bribery.[129] One investigation is under way and the other has been dismissed.[130] In both cases, the State was represented by the Office of the Prosecutor for Public Ethics.[131]

[97] As for the authorities responsible for trying the crime of transnational bribery, the Office of the Prosecutor for Public Ethics (PEP) explained that the judges of the criminal court of financial affairs (*Tribunal Penal de Hacienda*) were responsible for trying them at the lower court level, while the Appeals Court of the Second Judicial Circuit of San Jose Goicoechea is the body responsible for hearing appeals.[132] As for the appeal for annulment and appeal for a review of judgement the Criminal Cassation Chamber is the body responsible.[133] However, the representatives of the Office of the Prosecutor for Public Ethics (PEP) explained that a special separate procedure exists for cases involving very senior officials (*Miembros de Supremos Poderes*).[134] As regards objective outcomes, the Office of the Prosecutor for Public Ethics (PEP) reported that the Judiciary has a planning department which keeps statistics on criminal cases and results.[135] However, the country under review did not provide those data.

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[124] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 24-27.
[125] Ibid., p. 24; Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Article 1.
[126] Law on Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004, Article 55.
[127] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Article 1 on the object of the law. Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 24-25.
[128] Presentation of the Office of the Prosecutor for Public Ethics (PEP) during the on-site visit (April 8, 2021).
[129] Ibid.
[130] Ibid.
[131] Ibid.
[132] Ibid.
[133] Ibid.
[134] Ibid.; Law on Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004, Article 43.
[135] Ibid.

[98] As regards the bodies responsible for requesting and providing the assistance and cooperation contemplated in the Convention in connection with transnational bribery, the Office of the Prosecutor for Public Ethics is the body that acts as the Central Authority for the purposes of the Convention[136] On the other hand, the Office for Assistance and International Relations of the Public Prosecutors' Office (OATRI) is responsible for processing applications for assistance and cooperation regarding transnational bribery with the help of prosecutors from the Public Prosecutors' Office for gathering and compiling information requested by the Requesting State.[137] In this regard, Office for Assistance and International Relations of the Public Prosecutors' Office (OATRI) of the Office of the Attorney General of the Republic (FGR) is mandated to promote and coordinate international legal cooperation on criminal matters. It specified that its functions include processing and following up on requests for legal assistance in criminal matters and letters rogatory, and providing support for coordination with the central authorities involved in cooperation procedures.[138] As for concrete results obtained thanks to the assistance and cooperation requested and provided, especially with respect to transnational bribery, the country under review did not provide any additional information.

[99] With respect to this recommendation, notwithstanding the observations that the Committee may have on the subject in the section corresponding to new developments, the Committee takes note of the steps taken for its implementation. Nevertheless, neither the bodies responsible for investigating and/or trying the crime of transnational bribery, nor the organs in charge of providing assistance and cooperation in this field provided information regarding the procedures and indicators they used to analyze the objective outcomes obtained in practice from applying the regulations relating to this crime. For that reason, the Committee was unable to assess those procedures and indicators, and whether or not they have been strengthened, for its analysis of objective outcomes achieved in this area.

[100] Likewise, from the information available, particularly the afore mentioned outcomes, the scant number of investigations of the crime of transnational bribery and of cases brought to court and that have led to a judgement, it is not possible to determine the extent to which those procedures and indicators have contributed in practice to effective analysis of the afore mentioned outcomes, as required by the recommendation.

[101] Based on the above observations, the Committee notes the need for the country under review to continue to give attention to the implementation of the above recommendation. The Committee will also take this opportunity to reformulate it, bearing in mind that it contains two separate references relating to transnational bribery: 1) the investigation of the crime and associated trial; 2) the corresponding assistance and cooperation. (See recommendations 3.4.1 and 3.4.2 in Section 3.4 of Chapter II of this Report).

3.2 New Developments with respect to the Provision of the Convention on Transnational Bribery

3.2.1 New developments with respect to the legal framework

a. Scope

[136] Ibid.
[137] Ibid.
[138] Presentation of the Office for Assistance and International Relations of the Public Prosecutors' Office (OATRI) during the on-site visit (April 8, 2021); Administrative Circular of the Office of the Attorney General of the Republic, Public Prosecutors' Office of Costa Rica, Judiciary 06-ADM-2017.

[102] In its Response to the Questionnaire,[139] the country under review referred to adoption of the Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019,[140] as a new development in the regulatory framework relating to transnational bribery. That new Law regulates the criminal liability of legal entities in respect of crimes contemplated in the Law Against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004,[141] including *inter alia* the transnational bribery characterized as a crime in Article 55.[142]

[103] In this regard, the Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019[143] has provisions on the subject that apply to legal entities, particularly:

- *Provisions on legal entities bound by the law:*

[104] Article 2, which establishes the legal entities to which the law applies: "Legal entities subject to Costa Rican or foreign private law that are domiciled, resident or operating in the country,"[144] As well as, "State-owned and non-state enterprises and autonomous institutions that have international commercial relations and commit the crime of transnational bribery or the offences of receiving, legalizing, or concealing of assets that are the proceeds of transnational bribery."[145] This same article also includes the legal obligation to avoid committing the crimes covered by the Law Against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004,[146] on pain on being held criminally liable.

- *Provisions regarding the crime of transnational bribery:*

[105] Article 37 which amends Article 55 of the Law Against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004.[147] The aforementioned article amends the legal definition of the crime of transnational bribery in Article 55 as follows:

[106] "Whoever offers, promises or grants – either directly or via an intermediary, – a government official of another State, regardless of the level of government, entity or public enterprise in which he or she is working, or an official or representative of an international organization directly or indirectly any gift in money, virtual currency, or movable or immovable property, securities, retribution, or undue advantage, either for that official or another individual or legal entity, with a view to that official using his office to perform, delay, or omit any act or who unlawfully uses his or her influence derived from his office over another official shall be punished with between four and twelve years imprisonment."[148]

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[139] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 24-27.
[140] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019.
[141] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 24; Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Article 1.
[142] Law Against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004, Article 55.
[143] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019.
[144] Ibid., Article 2.
[145] Ibid. The complete list of legal entities that are subject to this law may also be found in Article 2; Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 26.
[146] Ibid., p. 24; Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Article 1.
[147] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Article 37; Law Against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004, Article 55.
[148] Law Against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004, Article 55.

[107] If the crime is committed by an individual, he or she shall be fined up to 2000 basic monthly wages.[149]

[108] If the bribery is committed in order for the official to commit an act that contravenes his or her duties, the punishment shall be between four and twelve years of imprisonment.

[109] The same penalty shall apply to whomever accepts or receives the aforementioned gift, retribution, or advantage.[150]

- *Provisions establishing transnational bribery as a punishable offence in the Criminal Code:*

[110] Article 38, which amends Article 7 of the Criminal Code, Law N° 4573 of May 4, 1970[151] in respect of transnational bribery, as contemplated in Article 55 of Law N° 8422[152] and amended by Article 37 of Law N° 9699,[153] as an international crime punishable in the Criminal Code under Costa Rican Law, regardless of the provisions in effect in the place where the punishable offence was committed and the nationality of the perpetrator.[154]

- *Provisions regarding criminal investigations in this area:*

[111] Article 14, which establishes the procedure for conducting a criminal investigation into an accused legal entity[155] and which provides that "criminal proceedings against the legal entity must be processed in the same file in which the criminal proceedings are processed against the individual connected with the legal entity."[156] In the event that "the individual cannot be identified, the process and file on the case shall continue in respect of the legal entity."[157]

[112] – Articles 16 to 21, which govern procedure aspects from the time the legal entity is summonsed[158] until its appearance,[159] as well as such factors as prescription of legal action against the offences to which the above law applies.[160]

- *Provisions regarding ways to assign criminal responsibility to legal entities:*

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[149] The Superior Council of the Judicial Branch defined the base salary of Clerk 1, (reassigned to "Administrative Assistant 1"), as of January 1, 2021, as ¢462,200.00 (four hundred sixty-two thousand two hundred Colones), as provided in Circular Nº 287-2020, of Session Nº 119-20 of the Superior Council of the Judicial Branch, held on December 15, 2020. The history of base salaries may be consulted on the website of the Ministry of Finance. The exchange rate for both, the purchase and sale of the United States Dollar issued by the Central Bank of Costa Rica may be viewed on its website. As of September 13, the corresponding amount for the base salary of Clerk 1 (Administrative Assistant 1) is $742.41 USD (purchase exchange rate) or $734.94 USD (sale exchange rate).
[150] Ibid.; Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 26-27.
[151] Criminal Code, Law N° 4573 of May 4, 1970, Article 7.
[152] Law Against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004, Article 55.
[153] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Article 37.
[154] Criminal Code, Law N° 4573 of May 4, 1970, Article 7.
[155] Ibid., Article 14.
[156] Ibid.
[157] Ibid.
[158] Ibid., Article 16.
[159] Ibid., Article 19.
[160] Ibid., Article 16.

[113] – Article 4, which attributes criminal liability to legal entities bound by the aforementioned law, establishes three grounds on which a legal entity shall be considered criminally liable:[161]

[114] "a) For crimes committed in the name or on behalf of legal entities, and that benefit them directly or indirectly, by their legal representatives or by those who, acting on their own or as members of a body pertaining to the legal entity, who are authorized to take decisions on behalf of the legal entity or have general organizational and oversight powers within the entity.

[115] b) For crimes committed in the exercise of activities by legal entities and on behalf of them and to the direct and indirect benefit, by those who, being subject to the authority of the individuals mentioned in the previous paragraph, were able to commit the acts concerned because of serious failure to observe the duties of supervising, controlling and monitoring their activity in light of the specific circumstances of the case.

[116] c)For crimes committed in the name and on behalf of those entities, and to their direct or indirect benefit, by intermediaries separate from the legal entity, but hired or urged by their legal representatives or by those who, acting on their own or as members of a body pertaining to the legal entity are authorized to take decisions on behalf of the legal entity because their serious failure to comply with the duties of supervising, controlling and monitoring their activity in light of the specific circumstances of the case."[162]

[117] However, Article 4 explains that those legal entities "shall not be criminally liable in cases in which the individuals referred to in the foregoing paragraphs committed the crime to their own advantage or in favor of the third party, or if the representation in vote by the agent was false, without prejudice to any civil or administrative liability they might incur.[163]

- *Provisions on penalties applicable to legal entities:*

[118] – Article 11, which establishes the categories of penalty and the corresponding criminal sanctions.[164] The principal penalties include *inter alia* a fine of between 1000 and 10000 basic monthly wages,[165] with the exception of legal entities comprised by small and medium sized enterprises,[166] in which case the fine shall be between 30 and 200 basic monthly wages; legal entities responsible for an offence relating to an administrative procurement procedure, in which case the above mentioned fine shall be imposed or a fine of up to ten percent (10%) of the amount bid, or in the event that the contract is awarded, whichever is the larger amount along with disqualification to take part in government procurement procedures for ten years; State-owned and non-state owned enterprises, and autonomous institutions, in which case the amount of the fine will depend on possible impairment of the provision of public services leading to an economic burden. Other penalties contemplated in Article 11 include the loss or suspension

[161] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Article 4. Article 2 establishes the legal entities to which the law applies.
[162] Ibid.
[163] Ibid.
[164] Ibid., Article 11.
[165] The Superior Council of the Judicial Branch defined the base salary of Clerk 1, (reassigned to "Administrative Assistant 1"), as of January 1, 2021, as ¢462,200.00 (four hundred sixty-two thousand two hundred Colones), as provided in Circular Nº 287-2020, of Session Nº 119-20 of the Superior Council of the Judicial Branch, held on December 15, 2020. The history of base salaries may be consulted on the website of the Ministry of Finance. The exchange rate for both, the purchase and sale of the United States Dollar issued by the Central Bank of Costa Rica may be viewed on its website. As of September 13, the corresponding amount for the base salary of Clerk 1 (Administrative Assistant 1) is $742.41 USD (purchase exchange rate) or $734.94 USD (sale exchange rate).
[166] In particular, the reference is to those legal entities comprised by small and medium-sized enterprises contemplated in Article 10 of the Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019.

of benefits or government subsidies for a period if between three and ten years; disqualification from receiving subsidies and government aid for procurement or to take part in government competitive bidding or tenders or in any other activity involving the State, for a period of between three and ten years; disqualification from receiving benefits or tax or social security incentives, for a period of between three and ten years; total or partial cancelation of its operating license, concessions or government contracts obtained as a result of the offence, and the dissolution of the legal entity.[167] As for accessory penalties, Article 11 envisages "publication in the official government gazette or other national circulation daily of an abstract from the judgement containing the final conviction,"[168] along with payment of the costs of said publication.[169]

[119] – Article 13 establishes the criteria for determining the penalty based on the accusation.[170] Apart from the circumstances surrounding the crime factors to be taken into account include: the quantity and hierarchical status of the persons involved in the crime; commission of the crime directly by owners, directors or managers; the nature, dimension, and economic strength of the legal entity, the seriousness of the elicit act and its national or international repercussions; the possibility that the penalties may seriously impair the public interest or the provision of a public service; the existence and effective implementation of an organizational model, crime prevention, management and control; the amount of money or securities involved in the commission of the crime; and the seriousness of the social consequences.

[120] – Article 12 establishes the attenuating circumstances that may give rise to less criminal liability.[171] Some attenuating circumstances that could give rise to a reduction of up to 40% of the penalty include: reporting the possible offence to competent authorities, before becoming aware of the judicial proceedings against it; collaborating with investigation into the facts, and providing at any stage in the process, new and decisive evidence throwing light on the criminal liabilities derived from the investigative facts of the case; adopting, prior to the beginning of oral proceedings, effective measures to prevent and disclose crimes that might be committed in future using the means or under the coverage of the legal entity concerned: and demonstrating that, prior to the commission of the crime, the legal entity adopted and effectively implemented and organizational, crime prevention, management and control model that proves appropriate for preventing crimes of the nature of the one committed or for significantly reducing the risks of their being committed.[172]

[121] – Article 29 on the Official Register of Criminals (*Registro Judicial de Delincuentes*), which establishes that it must "record the convictions and alternative measures handed down against legal entities in enforcement of" the aforementioned law, once the conviction judgment has become final.[173]

- *Provisions on forfeiture*

[122] – Article 28 on forfeiture provides that it shall be regulated in accordance with Article 110 of the Criminal Code Law N° 7593 of April 10, 1996,[174] which states as follows: "the crime induces the loss, in favor of the State of the instruments used to commit it and the assets or securities resulting from it, or that constitute for the perpetrator an advantage derived from that crime, excluding those to which the offended party or third parties are entitled."[175]

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[167] Ibid., Article 11; Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 25.
[168] Ibid.
[169] Ibid.
[170] Ibid., Article 12.
[171] Ibid., Article 13.
[172] Ibid.
[173] Ibid., Article 29.
[174] Ibid., Article 28; Criminal Code, Law N° 4573 of May 4, 1970, Article 110.
[175] Criminal Code, Law N° 4573 of May 4, 1970, Article 110.

- *Provisions regarding the duty to engage in international cooperation:*

[123] – Article 31, which establishes the duty to cooperate and provides that "the Costa Rican State shall cooperate with other States in respect of investigations and procedures the purpose of which in accord with the goals pursued by this law regardless of what they are called."[176]

- *Provisions regarding the adoption on an organizational crime prevention, management, and control model*

[124] – Article 6, which calls for the adoption of an organizational crime prevention, management, and control model by legal entities, as an in-house mechanism to combat corruption and in-house control mechanism, which is optional.[177]

[125] – Article 8 referring to models adopted by legal entities in general provides that they must "bear a relation to the risks inherent in the activity carried out by the legal entity, its size, line of business, complexity, and economic strength, with a view to preventing, detecting, correcting, and notifying the corresponding authorities of the criminal offences covered" by the afore mentioned law.[178] The same article establishes the minimum content of those models.[179]

[126] – Article 10, which likewise establishes the minimum content of the models adopted by legal entities comprised by small and medium-sized enterprises.[180]

b. Observations

[127] The Committee wishes to acknowledge the new regulatory developments that have taken place in the country under review with the view to continuing to update and strengthen its legal framework regarding the crime of transnational bribery referred to Article VIII of the Convention. In particular, the Committee acknowledges the efforts made by the country under review to strengthen its legal framework regarding transnational bribery by approving the new Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, regarding the criminal liability of legal entities[181] with respect to the offense contemplated in the Law against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004.[182] They include transnational bribery, characterized as an offence in Article 55 of Law N° 8422.[183]

[128] In this regard, the Committee wished above all to highlight the Amendment to the Criminal definition of transnational bribery undertaken in 2019 with the adoption of the new Law N° 9699.[184] The

[176] Ibid., Article 31.
[177] Ibid., Article 6; Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 25.
[178] Ibid., Article 8.
[179] Ibid.
[180] Ibid., Article 10. For the purposes of the Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, the legal entities comprised by small and medium-sized enterprises of those with the aforementioned characteristics or their equivalents for other kinds of organizations in the Law for Strengthening Small and Medium-Sized Enterprises, Law N° 8262 of May 2nd, 2002, and other laws in force.
[181] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Article 1.
[182] Ibid., p. 24; Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Article 1.
[183] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Article 37.
[184] Ibid., Article 1.

Committee notes that Article 37 of Law N° 9699[185] amended Article 55 of Law N° 8422,[186] which defines the crime of transnational bribery. In this regard, it should be pointed out that Article 55 of Law N° 8422 was reviewed by the Committee during the Third Round[187] and was the reason why the Committee found that the country under review characterized transnational bribery as a crime contemplated in Article VIII of the Convention.[188]

[129] For that reason, the Committee deems it necessary to reconsider Article 55 of Law N° 8422,[189] in light of the legislative amendments introduced by Article 37 of Law N° 9699,[190] to ascertain whether they impacted the new definition of the crime of transnational bribery in the legal framework and, hence, the definition of the crime in the country under review, bearing in mind the provisions contemplated in this regard in Article VIII of the Convention.

[130] To that end, the Committee considers it appropriate to determine whether the crime of transnational bribery is contained in the new text of Article 55 of Law N° 8422,[191] and is still in keeping with Article VIII of the Convention.

[131] In this regard, it is worth recalling Article VIII of the Convention, which establishes that:

[132] "Subject to its Constitution and the fundamental principles of its legal system, each State Party shall prohibit and punish the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions."[192]

[133] The Committee notes that the provisions regarding characterization of transnational bribery in Article VIII of the Convention largely coincide with the description of the crime contained in the new text of Article 55 of Law N° 8422 and its provisions. Thus, the Committee considers that, generally speaking, they constitute a set of provisions that help promote the purposes of the Convention.

[134] The Committee likewise observes that the provisions of Article 55 of Law N° 8422,[193] occasionally go beyond what the Convention establishes,[194] and include new aspects. The Committee notes that Article 55 contemplates, in addition to the government official from another State and government entities and enterprises, officials from an international organization and their intermediaries.[195] Furthermore, as regards

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[185] Law against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004, Article 55.
[186] Report of the Third Round (Republic of Costa Rica), p.12-13.
[187] Article 55 of the Law against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004 at the time the of Third Round of Review was carried out read as follows: "A prison term of between two and eight years shall apply to anyone who offers or gives to an official of another state, irrespective of the level of government or public agency or company in which he is employed, or to an officer of an international organization or entity, directly or indirectly, any gift, reward, or undue benefit, be it for the official or for another person, for that official, in the use of his position, to make, delay, or omit to perform any action or to unduly bring to bear the influence derived from his position with respect to any other official. The punishment shall be between three and ten years if the bribe is given for the official to perform an action contrary to his duties. - The same punishment shall apply to anyone who requests, accepts, or receives such a gift, reward, or benefit." Report of the Third Round (Republic of Costa Rica), p.12.
[188] Interamerican Convention against Corruption, Article VIII.
[189] Report of the Third Round (Republic of Costa Rica), p.12-13.
[190] Law against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004, Article 55.
[191] Report of the Third Round (Republic of Costa Rica), p.12-13.
[192] Interamerican Convention against Corruption, Article VIII.
[193] Law against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004, Article 55.
[194] Ibid.
[195] Interamerican Convention against Corruption, Article VIII.

the consideration of "any object of pecuniary value or other benefits" contemplated in the Convention,[196] the Committee notes that the country under review included in the definition of the offence new factors that apply to current circumstances. For example, Article 55 includes any gift, being it in the form of movable or immovable property, cash, virtual currency.[197] In addition, with regard to the item of value or benefit that the official may receive "in exchange for that official carrying out or omitting any act in the performance of his or her public functions,"[198] the Committee notes that the scope of application of Article 55 is much wider in the sense that the benefit is both for the official concerned and for another individual or legal entity in return for the commission or omission of an act by that official including delaying that act, be it in the exercise of his or her own functions or those of another official as a result of the exertion of unlawful influence based on his or her position. [199] At the same time, the Committee notes that the country under review has increased the penalties, including fines, for that crime.[200] The Committee also notes that Article 55 includes both the act of offering or promising an unlawful benefit on behalf of a government official or a third party unrelated to the act of accepting or receiving a benefit of any kind.[201]

[135] Generally speaking, the Committee considers that the new developments in the regulations in the country under review regarding international bribery constitute steps that have helped perfect the legal definition of the crime of transnational bribery, in accordance with Article VIII of the Convention. Nevertheless, the Committee considers that certain observations regarding them are appropriate:

[136] It is worth recalling that, in addition to amending the definition of the crime of transnational bribery, Law N° 9699 also establishes new rules concerning the criminal liability of legal entities.[202] In this regard, it recognizes the criminal liability of legal persons and establishes "the procedure for the investigation and attribution of such responsibility, the determination of the corresponding criminal sanctions that apply and the enforcement thereof, [203] as well as the circumstances in which Law N° 9699 is applicable.[204]

[137] As regards the provisions relating to criminal investigations in this field, the Committee notes that Article 14 provides for the procedure to be used for conducting a criminal investigation into an accused legal entity.[205] Nevertheless, the Committee considers that it is still not clear which stages of the process or sequences of activities need to be conducted for proper criminal investigations. Here, the Committee considers that the country under review could benefit from establishing more robust standards in this regard, above all with respect to the low number of recommendations referred to during the on-site visit. The Committee will formulate a recommendation to the country under review that it adopt appropriate measures to strengthen the provisions governing the procedure for conducting a criminal investigation into the crime of transnational bribery. (See recommendation 3.4.3 in Section 3.4 of Chapter II of this Report).

[138] In addition, the Committee considers that it could be beneficial for the country under review to develop and implement a handbook of procedures so that the officials responsible for criminal investigations into the crime of transnational bribery have a tool containing an established process following the same steps, controls, and criteria thereby ensuring that those activities are conducted in a

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[196] Ibid.
[197] Law against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004, Article 55.
[198] Interamerican Convention against Corruption, Article VIII.
[199] Law against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004, Article 55.
[200] Ibid.
[201] Ibid.
[202] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Article 1 on the object of the law.
[203] Ibid.
[204] Ibid.; Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 24-25.
[205] Ibid., Article 14.

uniform manner. The Committee will formulate a recommendation in this respect. (See recommendation 3.4.4 in Section 3.4 of Chapter II of this Report).

[139] With respect to the provisions regarding attribution of criminal liability to legal entities, the Committee observes that Article 4 broadly contemplates three scenarios for attributing such responsibility: 1) a crime committed in the name or on behalf of the legal entity, legal representatives of the legal entity and for their direct or indirect benefit, by their representatives or persons authorized to take decisions for them; 2) a crime committed in the course of the legal entity's activities or on its behalf, and for its direct or indirect benefit; 3) a crime committed in the name or on behalf of the legal entity and for its direct or indirect benefit, by intermediaries outside the legal entity, but hired or incited by its legal representative or by those who are authorized to take decisions on its behalf.[206] However, if the crime was committed by an individual involved in one of these scenarios, to his or her own advantage or on behalf of a third party the legal entity shall be exempted from said criminal liability.[207]

[140] The Committee deems it appropriate to make some observations regarding Article 4. First, regarding the application of Article 4, the Committee notes that it does not explicitly consider the criminal liability of the legal entity when an individual pertaining to it, be it a legal representative or a member of the board or senior management authorized to take decisions on its behalf or endowed with general organizational and oversight powers, directs or authorizes a person of lower hierarchical standing to commit a crime, including bribery. Here, the Committee will formulate a recommendation to the country under review that it consider adopting pertinent provisions and measures to ensure that the attribution of criminal liability of the legal entity is envisaged in its regulations when an individual pertaining to it, who is a legal representative or member of the board of directors or senior management authorized to take decisions on behalf of the entity or with general organizational and management powers, directs or authorizes a person of lower hierarchical standing to commit one of the crimes referred to in Law N° 9699, especially the crime of transnational bribery. (See recommendation 3.4.5 in Section 3.4 of Chapter II of this Report).

[141] Second, the Committee notes that Article 4(4) does not attribute criminal liability to the legal person when the offense is committed by a natural person, for his or her own benefit or for the benefit of a third party. However, the said legal entity could benefit from this crime, regardless of whether the intention is to obtain a benefit for oneself or for a third party. In this regard, the Committee considers that it is not clear whether, under these circumstances, that is to say when a benefit derives from the crime by chance, criminal liability of the legal entity applies. The Committee will formulate a recommendation that the country under review consider adopting appropriate provisions and measures to ensure that the attribution of criminal liability of the legal entity is contemplated in its regulations when an individual commits a crime referred to in Law N° 9699, especially the crime of transnational bribery, to his or her own advantage or on behalf of a third party, which also happens to result in a benefit for the legal entity, even though the crime was not committed on its behalf. (See recommendation 3.4.6 in Section 3.4 of Chapter II of this Report).

[142] Third, with respect to the second and third item contemplated in Article 4, the Committee notes that Article 4 considers the case of individuals who may have committed crimes due to serious failures to comply by persons responsible for supervision, control and monitoring their activities. Here, the Committee points out that this could imply that legal entities are not responsible in all cases of noncompliance, but only for noncompliance that meets the degree of seriousness specified in Article 4(b) and (c). The threshold referred to in Article 4, that is to say "serious failure to comply," appears to be incompatible with the provisions of Article 2 of the same law that imposes a legal duty to avoid the commission[208] of all the crimes

[206] Ibid., Article 4.
[207] Ibid.
[208] Ibid., Article 2.

contemplated in Law N° 8422,[209] as envisaged in Article 1 of Law N° 9699 on its objective and scope. [210] Article 2 also provides for the assigning of criminal lability to the legal entity, if this is not done[211] and not just in cases in which noncompliance is regarded as "serious". Here, the Committee considers that this threshold could turn out to be onerous and difficult to comply with. In view of the above, the Committee will formulate a recommendation to the country under review that it consider adopting pertinent provisions and measures to ensure that its regulations contemplate assignment of criminal liability to the legal entity when an individual occupying a lower position in the hierarchy commits a crime referred to in Law N° 9699, especially the crime of transnational bribery, when this crime is due to a failure to prevent or a failure to comply with the duty of the authority responsible for supervision, control and monitoring, irrespective of the seriousness of the offence. (See recommendation 3.4.7 in Section 3.4 of Chapter II of this Report).

[143] As regards to provisions on penalties applicable to legal entities, the Committee notes the steps taken by the country under review to ensure that its regulations on the subject include clear and specific sanctions,[212] as well as well-defined criteria designed to help judges determine an appropriate penalty based on the accusation.[213] To that end, the Committee notes that certain factors are considered for making that determination,[214] including attenuating factors that the judge can assess with a view to reducing that penalty,[215] that take into account specific circumstances surrounding the crime. Nonetheless, the Committee wishes to make a series of observations.

[144] With regard to the sanctions contemplated in Article 11 applicable to delinquent legal entities, such as; disqualification in taking part in government procurement procedures for ten years; the loss or suspension of state subsidies; disqualification from obtaining subsidies and government aid for procurement or taking part in competitive processes or bids or in any other activity associated with the State, for between three and ten years; and disqualification from receiving benefits or tax or social security incentives, the Committee notes that they require close coordination between several government authorities. Here, the Committee considers that the country under review could benefit from developing coordination mechanisms as well as channels of communication, among the judicial authorities responsible for updating the Judicial Register of Criminals and Government Authorities responsible for enforcing the disqualifications sanctions referred to Law N° 9699, with a view to ensuring that the latter are notified of legal entities that have been sanctioned for transnational bribery thereby, enabling them to enforce the afore mentioned disqualification sanctions imposed on the delinquent legal entities concerned. (See recommendation 3.4.8 in Section 3.4 of Chapter II of this Report).

[145] The country under review could also consider publishing the list of public entities that have been sanctioned for transnational bribery as referred to in Article VIII of the Convention, on the website of the appropriate government authority and making sure that it is easy to access. The Committee will also formulate a recommendation in this regard. (See recommendation 3.4.9 in Section 3.4 of Chapter II of this Report).

[146] The Commission further considers that it would be beneficial that the country under review have an oversite or supervisory body in this area. To that end, the country under review could consider authorizing the appropriate government authorities not only to check compliance with the regulations in this field but also to ensure that the disqualification sanctions referred to in Law N° 9699 are monitored by

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[209] Law against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004.
[210] Ibid.; Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Article 2.
[211] Ibid.
[212] Ibid., Article 11.
[213] Ibid., Article 13.
[214] Ibid.
[215] Ibid., Article 12.

the correspondent government authorities. The Committee will formulate a recommendation in this regard. (See recommendation 3.4.10 in Section 3.4 of Chapter II of this Report).

[147] With respect to Article 12 establishing the circumstances attenuating criminal liability,[216] the Committee deems it appropriate to issue some general observations. To begin with, the Committee considers that the provisions on attenuating factors are imprecise with respect to the legal requirements that need to be met to benefit from a reduction of up to 40% of the penalty referred to earlier. Moreover, it is unclear whether there are causes that exempt legal entities from criminal liability or whether some of those attenuating circumstances may preclude the criminal liability of the legal entity in question, or whether it has effectively been demonstrated that the persons in those entities have complied with the obligations contemplated in Law N° 9699, including those mentioned in Article 4. Here, the Committee considers it best that the country under review clarify aspects of its regulations in this field and that it adjust its regulations to overcome this lack of clarity. In light of the above, the Committee will make more specific observations and recommendations regarding these aspects.

[148] Regarding the provisions of Article 12(a) establishing that a report by a legal entity regarding its own possible criminal conduct to the competent authorities may be considered to be an attenuating factor, provided that the report predates its knowledge of the existence of a judicial proceeding against it,[217] the Committee notes that those provisions could be misused by legal entities seeking a reduction of the penalty or to evade their criminal liability. For that reason, the Committee will formulate a recommendation that the country under review consider adopting appropriate provisions and measures to limit the circumstances under which a reduction in the sanction applies, especially when a legal entity reports a possible crime to the competent authorities before becoming aware of the existence of a legal proceeding against it. Those provisions could define conditions that could be taken into account such as: the need for the report to be made by the legal entity itself; the need for the report to refer to a possibly criminal conduct that the competent authorities are unaware of; and the fact that no investigation is underway regarding it. The Committee will formulate a recommendation in this regard. (See recommendation 3.4.12 in Section 3.4 of Chapter II of this Report).

[149] With respect to Article 12(b) regarding collaboration by a member of a legal entity in an investigation as a factor reducing its criminal liability,[218] the Committee considers that generally speaking it is not clear what requirements the person collaborating must meet in order for the legal entity to benefit from a reduction of the penalty of up to 40% mentioned in Law N° 9699. The Committee is likewise not clear regarding the type of collaboration expected from the person cooperating with the investigation or the required level of collaboration with the competent authorities in order to benefit from the aforementioned reduction of the penalty. Here, it is worth noting that Article 12(b) specifies, nonetheless that said collaboration includes providing "new and decisive evidence for clarifying the criminal liabilities derived from the acts under investigation."[219] Despite that, the Committee notes the overall lack of clarity regarding the aforementioned aspects.

[150] At the same time, the Committee considers that it would be important that the country under review to consider limiting the application of this article to ensure that it only applies to cases that the competent authorities consider appropriate, especially when a 40% reduction of the penalty is contemplated. In this regard, the Committee will formulate a recommendation addressed to the country under review that it consider adopting appropriate rules and measures defining the circumstances under which a legal entity can benefit from the reduction of the penalty referred to in Law N° 9699, especially when a person/entity

[216] Ibid.
[217] Ibid., Article 12(a).
[218] Ibid.
[219] Ibid., Article 12(b).

cooperates with the competent authorities in connection with an investigation into possible illicit acts, contemplating to that end measures defining the application of Article 12(b) and achieving a better understanding of the circumstances to which it applies for that, consideration could be given, for instance, to defining such aspects as the person/entities that are eligible or ineligible to cooperate with the competent authorities and any related grounds for ineligibility; the crimes referred to in Law N° 9699 that are excluded, if any; the obligations of the person/entity cooperating with respect to participation in the investigation and the competent authorities; and the conditions for granting a reduction of the penalty as well as any reasons for denying. The Committee will formulate a recommendation to the country under review to this regard. (See recommendation 3.4.12 in Section 3.4 of Chapter II of this Report).

[151] In the same vein, the Committee considers that it would be best to define the scope of collaboration so as to achieve greater clarity regarding what is required for effective and productive collaboration. Here, the Committee considers that the country under review could consider the criteria that the collaborating person/entity needs to meet (e.g., being aware of the circumstances surrounding the planning or commission of the crime or if it has already been committed, the circumstances in which it was planned or executed; being able to identify the perpetrators and accomplices of the crime committed; being able to identify the location or final destiny of the instruments, assets, effects, and proceeds of the crime); as well as the result expected from said collaboration (e.g., avoiding the commission or continuation of the crime; substantially reducing the scope or consequences of its commission; preventing or neutralizing future actions or damage that could occur when the crime is being committed; achieving the instruments, proceeds, or assets derived from the crime, etc.), including the degree of effectiveness or importance of the collaboration required, in order to grant the reduction of the penalty referred to in Law N° 9699 due to effective collaboration. The Committee will formulate a recommendation in this regard. (See recommendation 3.4.13 in Section 3.4 of Chapter II of this Report).

[152] In addition, in connection with the provisions of Article 12(c) relating to adoption of "effective measures to prevent and disclose crimes that could be committed in future using the means or undercover of the legal entity"[220] prior to the start of oral proceedings, the Committee considers that it would be best for the country under review to clarify what kind of effective measures could give rise to a reduction of the penalty. The Committee will formulate a recommendation that the country under review clarify this aspect of its regulations. (See recommendation 3.4.14 in Section 3.4 of Chapter II of this Report).

[153] At the same time, regarding the provisions on forfeiture, the Committee observes that Article 28 of Law N° 9699[221] and Article 110 of the Criminal Code, Law N° 7593of April 10, 1996,[222] do not take into account the value of the proceeds from the crime of transnational bribery. In other words, the provisions do not consider the possibility of confiscating assets whose value derives from the proceeds of the crime or imposing fines matching the value of the profits from the crime. This may be problematic in cases in which the proceeds of the crime have been spent, lost, or destroyed. The Committee will formulate a recommendation to the country under review that it consider adopting appropriate rules and measures to allow for the possibility of confiscating assets whose value derives from the proceeds of the crime or imposing fines corresponding to the value of the profits from the crime. (See recommendation 3.4.15 in Section 3.4 of Chapter II of this Report).

[154] The Committee will also formulate a recommendation that the country under review prepare and disseminate, in friendly and easily accessible format, detailed statistics compiled annually regarding the number of confiscations carried out in connection with transnational bribery cases, the number of penalties

[220] Ibid., Article 12(c).
[221] Ibid., Article 28.
[222] Criminal Code, Law N° 4573 of May 4, 1970, Article 110.

imposed and the corresponding amounts. (See recommendation 3.4.16 in Section 3.4 of Chapter II of this Report).

3.2.2 New developments with respect to technology

[155] Nor in its Response to the Questionnaire,[223] or during the on-site visit did the country under review present new developments with respect to technology in relation to transnational bribery.

3.3 Results

[156] The country under review did not present in its Response to the Questionnaire[224] information on results of the application of rules and/or other measures in relation to transnational bribery. However, during the on-site visit, the country under review presented the following information that it deemed relevant, of which the Committee notes the following:

[157] As regards the outcomes of investigation into the crime of transnational bribery, as mentioned above, the country under review reported during the on-site visit that the Office of the Public Prosecutor for Probity, Transparency and Anticorruption (FAPTA) had conducted two investigations into acts that could constitute the crime of transnational bribery.[225] One is being investigated and the other was dismissed.[226] In both cases, the Office of the Prosecutor for Public Ethics (PEP) represented the State as a victim.[227]

[158] As for outcomes following trials for this crime, as explained in Section 3.1, the Office of the Prosecutor for Public Ethics reported that the Judiciary has a planning department which keeps statistics on criminal case files and their outcomes. However, the country under review did not provide that data.

[159] Regarding the duty to engage in international cooperation established in Article 31 in connection with investigations and procedures relating to crimes referred to Ley N° 9699, including the crime of transnational bribery,[228] the Committee notes that the country under review did not provide data either during the on-site visit nor after it on this matter. The Committee will therefore formulate a recommendation for the country under to compile and disseminate, through electronic means and in a user-friendly, readily accessible, and easy-to-understand format, statistical information disaggregated annually on the number of requests for mutual assistance made to other States Parties for the investigation or prosecution of transnational bribery; how many of those requests were granted and how many denied; and on the number of requests made to it by other States Parties for the same purpose and how many of those requests were granted and how many denied, in order to identify challenges and take corrective measures, as appropriate. (See recommendation 3.4.17 in Section 3.4 of Chapter II of this Report).

[160] Given that the Committee also lacks data on investigations, particularly as regards transnational bribery, the Committee will formulate a recommendation for the country under review to compile and disseminate in a user-friendly format and an easily accessible manner detailed statistics compiled on an annual basis on investigations initiated into transnational bribery, 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 adopt

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[223] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 24-27.
[224] Ibid.
[225] Presentation of the Office of the Prosecutor for Public Ethics (PEP) during the on-site visit (April 8, 2021).
[226] Ibid.
[227] Ibid.
[228] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Article 31.

corrective measures, as appropriate. (See recommendation 3.4.18 in Section 3.4 of Chapter II of this Report).

[161] In addition, given that it lacks further information enabling it to fully assess the results of investigating transnational crime, the Committee will formulate a recommendation for the country under review to compile and disseminate, in a user-friendly format and an easily accessible manner statistical information, disaggregated annually, on the number of cases that 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 adopt corrective measures, as appropriate. (See recommendation 3.4.19 in Section 3.4 of Chapter II of this Report).

[162] It should be pointed out, with respect to the foregoing recommendations, that the civil society organization, Asociación Costa Rica Integra, pointed out, during the on-site visit the difficulties associated with bringing transnational bribery crimes to trial.[229] On this, the representative of the Asociación Costa Rica Integra indicated that in practice few cases are brought to trial and even fewer reach the judgement phase, be it a conviction or an acquittal. The representative added that penalties are also infrequent. As far as he knew, no conviction has resulted from laws on transnational bribery.

3.4 Recommendations

[163] In light of the observations formulated in sections 3.1, 3.2 y 3.3 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

3.4.1 Strengthen the existing procedures and indicators used by the organs and agencies charged with the investigation and/or prosecution of the offense of transnational bribery, to analyze the objective results obtained in this area. (See paragraph 101 in Section 3.1 of Chapter II of this Report).

3.4.2 Strengthen the existing procedures and indicators used by the organs and agencies charged with the requesting and/or providing assistance and cooperation in relation the offense of transnational bribery, to analyze the objective results obtained in this area. (See paragraph 101 in Section 3.1 of Chapter II of this Report).

3.4.3 Adopt appropriate measures to strengthen the provisions regulating the procedure for conducting a criminal investigation into the crime of transnational bribery. (See paragraph 137 in Section 3.2.1 of Chapter II of this Report).

3.4.4 Develop and implement a procedures manual so that officials in charge of said criminal investigations into the offence of transnational bribery have a tool that contains a well-defined process with uniform steps, checks, and criteria thereby ensuring that those activities are consistent. (See paragraph 138 in Section 3.2.1 of Chapter II of this Report).

3.4.5 Adopt appropriate provisions and measures to ensure that regulations contemplate attribution of criminal liability to the legal entity when an individual pertaining to it, whether he or she be a legal representative or a member of the board, or a high level manager, high enough in rank to be authorized to take decisions on behalf of the legal entity or with general organizational and oversight powers, directs or authorizes a person of a lower rank in the hierarchy to commit one of the crimes referred to in Law N° 9699, especially the crime of transnational bribery. (See paragraph 140 in Section 3.2.1 of Chapter II of this Report).

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[229] Presentation of the Asociación Costa Rica Integrate during the on-site visit (April 5, 2021).

3.4.6 Adopt appropriate provisions and measures to ensure that the regulations include assignment of criminal liability to the legal entity when an individual commits one of the crimes referred to in Law N° 9699, especially the crime of transnational bribery, to his or her own advantage or on behalf of a third party, which also by chance results in a benefit for the legal entity, regardless of the fact that it was not committed on its behalf. (See paragraph 141 in Section 3.2.1 of Chapter II of this Report).

3.4.7 Adopt appropriate provisions and measures to ensure that the regulations include attribution of criminal liability to the legal entity when an individual in it of lower rank in the hierarchy commits one of the crimes referred to in Law N° 9699, especially the crime of transnational bribery, when this crime is due to a failure to prevent it or management's failure to comply with its supervisory, oversight, or monitoring duties, regardless of the seriousness of that failure (See paragraph 142 in Section 3.2.1 of Chapter II of this Report).

3.4.8 Develop coordination mechanisms, as well as channels of communication between the judicial authorities responsible for keeping the Judicial Delinquents Register up to date and those government authorities responsible for enforcing the disqualification penalties referred to in Law N° 9699, in order to ensure that the latter are notified of those legal entities that have been sanctioned for transnational bribery and therefore able to enforce the disqualification sanctions imposed on the corresponding delinquent legal entities. (See paragraph 144 in Section 3.2.1 of Chapter II of this Report).

3.4.9 Publish the list of legal persons that have been sanctioned for transnational bribery, as described in Article VIII of the Convention, on the website of the appropriate public authority, ensuring that it is easily accessible. (See paragraph 145 in Section 3.2.1 of Chapter II of this Report).

3.4.10 Authorize the appropriate government authorities not just to monitor compliance with regulations on this matter, but also to ensure that the disqualification penalties referred to in Law N° 9699 are enforced by the corresponding government authorities. (See paragraph 146 in Section 3.2.1 of Chapter II of this Report).

3.4.11 Adopt appropriate provisions and measures to define the circumstances in which a reduction of the penalty referred to in Article 12(a) of Law N° 9699 applies. (See paragraph 148 in Section 3.2.1 of Chapter II of this Report).

3.4.12 Adopt appropriate provisions and measures to define the circumstances in which a legal entity may benefit from a reduction of the penalty referred to in Article 12(b) of Law N° 9699, especially when a person collaborates with the competent authorities in connection with an investigation into possible illicit acts. (See paragraph 150 in Section 3.2.1 of Chapter II of this Report).

3.4.13 Adopt appropriate provisions and measures to define the scope of the collaboration referred to in Article 12(b) of Law N° 9699 in order to clarify what is needed to achieve the effective and productive collaboration it refers to, detailing, to that end, the criteria that the collaborator must meet, as well as the results expected from that collaboration, for a reduction of the penalty to be granted. (See paragraph 151 in Section 3.2.1 of Chapter II of this Report).

3.4.14 Adopt appropriate provisions and measures to ensure that regulations specify the measures referred to in Article 12(c) of Law N° 9699 "for preventing and disclosing crimes that may be committed in future using the means, or under the cover of, the legal entity" that can be adopted and

implemented prior to the start of oral proceedings by an accused legal entity so that it can benefit from the reduction of the penalty mentioned therein. (See paragraph 152 in Section 3.2.1 of Chapter II of this Report).

3.4.15 Adopt appropriate provisions and measures to ensure that regulations specify the possibility of confiscating assets whose value derives from the proceeds of the crime or of imposing fines matching the value of the profits derived from the crime. (See paragraph 153 in Section 3.2.1 of Chapter II of this Report).

3.4.16 Prepare and disseminate, in friendly and easily accessible format, detailed statistics compiled annually regarding the number of confiscations carried out in connection with transnational bribery cases, the number of penalties imposed and the corresponding amounts. (See paragraph 154 in Section 3.2.1 of Chapter II of this Report).

3.4.17 Compile and disseminate, in friendly and easily accessible format, detailed statistics compiled annually regarding the number of reciprocal assistance requests made to other States party for the investigation or trying of transnational bribery cases; how many requests were granted and how many denied; and the number of requested filed with it, for the same purpose, by other States party, and how many were granted and how many denied, with a view to identifying challenges and adopting corrective measures, as needed. (See paragraph 159 in Section 3.3 of Chapter II of this Report).

3.4.18 Compile and disseminate, through electronic means and in a user-friendly, readily accessible, and easy-to-understand format, statistical information disaggregated annually on investigations initiated into transnational bribery, 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 adopt corrective measures, as appropriate. (See paragraph 160 in Section 3.3 of Chapter II of this Report).

3.4.19 Compile and disseminate, through electronic means and in a user-friendly, readily accessible, and easy-to-understand format, statistical information disaggregated annually on the number of cases that are before the courts, on 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 adopt corrective measures, as appropriate. (See paragraph 161 in Section 3.3 of Chapter II of this Report).

4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

4.1. Follow up on the Implementation of the Recommendations Formulated in the Third Round

Recommendation 4.1 suggested by the Committee:

Strengthen the existing procedures and indicators used by the organs and agencies charged with the investigation and/or prosecution of the offense of illicit enrichment, and with requesting and/or providing assistance and cooperation with respect thereto, to analyze the objective results obtained in this area.

[164] With respect to the aforementioned recommendation, in its Response to the Questionnaire,[230] the country did not present information or new developments. However, during the on-site visit, the country

[230] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica).

under review presented the following information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the said recommendation, the following:

[165] During the on-site visit, the Office of the Prosecutor for Public Ethics (PEP) explained which bodies are in charge of requesting and providing the assistance and cooperation envisaged in the Convention in connection with illicit enrichment. It reported that it is the body in charge in this area and that it also acts as the Central Authority for the purposes of the Convention.[231] However, the Office of Assistance and International Relations of the Public Prosecutors' Office (OATRI) is the body that processes requests for assistance and cooperation. It works with public prosecutors to gather and compile the information needed by the Requesting State.[232] In essence, much of the work is of coordination in nature between both, the Office of the Prosecutor for Public Ethics (PEP) and the Office of Assistance and International Relations of the Public Prosecutors' Office (OATRI).

[166] More specifically, with respect to this recommendation regarding the indicators available for analyzing the findings obtained during the investigation and trials involving the crime of illicit enrichment, the representatives of the Office of the Deputy Public Prosecutor for Probity, Transparency and Anticorruption (FAPTA) stated that they pay particular attention to the number of cases being investigated, the cases in which there are defendants, and those that are settled. The representatives added that it would be useful if those indicators also included parallel investigations initiated with other countries.[233]

[167] As regards the procedures and indicators used to analyze the objective results obtained by the bodies responsible for requesting or providing assistance and cooperation from and to other States parties for investigating and trying the crime of illicit enrichment, the country under review did not provide information.

[168] The Committee notes the steps taken by the country under review to advance implementation of the foregoing recommendation. Thus, the Committee observes that the country under review developed a number of indicators enabling it to assess the results of investigations and trials of the crime of illicit enrichment. Nevertheless, the Committee was unable to discern whether those indicators have been strengthened and if so, how they have strengthened or impacted analysis of outcomes.

[169] Along the same lines, bearing in mind that the country under review did not provide more information regarding assistance and cooperation requested from or provided to other States parties or about the procedures and indicators used to analyze actual outcomes, the Committee was unable to assess or determine whether they have been strengthened or have yielded better analysis of achievements in this area.

[170] For this reason, the Committee reiterates the need for the country under review to continue to give attention to the implementation thereto. In addition, the Committee will take this opportunity to reformulate the recommendation, bearing in mind that it contains two separate factors related to illicit enrichment: 1) investigation of the crime and the trying thereof; 2) the corresponding assistance and cooperation provided (See recommendations 4.4.1 and 4.4.2 in Section 4.4 of Chapter II of this Report).

4.2. New Developments with respect to the Provisions of the Convention of Illicit Enrichment

4.2.1 New developments with respect to the legal framework

[231] Presentation of the Office of the Prosecutor for Public Ethics (PEP) during the on-site visit (April 8, 2021).
[232] Ibid.
[233] Presentation of the Office of the Deputy Public Prosecutor for Probity, Transparency and Anticorruption (FAPTA) during the on-site visit (April 8, 2021).

a. Scope

[171] In its Response to the Questionnaire,[234] The country under review did not include new developments regarding its regulatory framework in connection with the crime of illicit enrichment. However, during the on-site visit, the country under review did refer to adoption of the Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019,[235] (hereinafter "Law N° 9699") as a new development in its regulatory framework on this matter. The new law regulates the criminal liability of legal entities in respect of the crimes contemplated in the Law Against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004,[236] (hereinafter "Law N° 8422") including *inter alia*, illicit enrichment which is characterized as a crime in Article 45 thereof and which reads as follows:[237] "A sentence of imprisonment between three and six years shall be imposed on those who, illegitimately taking advantage of the exercise of public office or the custody, exploitation, use or administration of public funds, services or assets in any form or type of management, themselves or via another individual or legal entity, increase their net worth, acquire assets, enjoy rights, pay debts, or get rid of liabilities impairing their net worth or that of legal entities in which they have a share of the equity either directly or via other legal entities."[238]

[172] Law N° 9699[239] also contains provisions regarding the crime of illicit enrichment, especially:

- *Provisions relating to the crime of illicit enrichment:*

[173] – Article 37 of Law N° 9699 amending Article 47 of Law N° 8422 on the reception, legalization, or concealment of assets.[240] More specifically, the effect of article 37 is to amend Article 47 of Law N° 8422, so that it reads as follows: "A sentence to imprisonment of between one and eight years shall be imposed on whoever hides, safeguards, transforms, invests, transfers, exercises custody over, administers, acquires, or lends assemblance of legitimacy to property, assets or rights, knowing that they derive from illicit enrichment or criminal activities committed by a government official using the office, means and opportunities that are available to him or her thanks to that office. When the assets, money or rights derive from the crime of transnational bribery the afore mentioned conduct shall be subject to the same penalty, regardless of where the crime was committed and of whether it is characterized in that location as a crime of transnational bribery."[241]

b. Observations

[174] The Committee wishes to acknowledge the new regulatory developments in the country under review designed to move ahead with establishment of provisions regarding the illicit enrichment referred to Article IX of the Convention.[242]

[175] Nevertheless, the Committee wishes to draw attention to certain considerations regarding the usefulness of supplementing, developing, and/or adjusting certain provisions referring to those new

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[234] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 24-27.
[235] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019.
[236] Ibid., p. 24; Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Article 1.
[237] Law against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004, Article 45.
[238] Ibid.
[239] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019.
[240] Law against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004.
[241] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Article 37.
[242] Interamerican Convention against Corruption, Article IX.

developments, without prejudice to the observations formulated by the Committee in foregoing Section 4.11 regarding follow-up on implementation of the recommendation made to the country under review in the Third Round Report.[243]

[176] Concerning the legislative amendments and new provisions of Law N°9699, the Committee points specially to Article 37,[244] amending Article 47 of Law N° 8422 on the receipt, legalization, or concealment of assets.[245] Here it is worth recalling that Article 47 stipulated the following during the Third Round: "A sentence to imprisonment of between one and eight years shall be imposed on whoever hides, safeguards, transforms, invests, transfers, exercises custody over, administers, acquires, or lends assemblance of legitimacy to assets or rights, knowing that they derive from illicit enrichment or criminal activities committed by a government official using the office, means and opportunities that are available to him or her thanks to that office."[246]

[177] Here, the Committee notes that the provisions of Article 47 of Law N° 8422[247] were amended to include, apart from assets and rights, the legitimization of assets derived from the illicit enrichment of a government official, whether as a result of the functions he or she performs or as a result of other opportunities derived from his or her office.

[178] It should be pointed out that, during the on-site visit, the representatives of the Office of the Prosecutor for Public Ethics (PEP) drew attention to difficulties with enforcing Law N° 9699. One issue was the lack of financial resources for it to continue its work relating to training programs, workshops, and talks on matters to do with the prevention, detection, and punishment of corruption. Here, the representatives pointed to the need to provide more training for government officials in corruption prevention and detection bodies.[248] For its part, the Office of the Deputy Public Prosecutor for Probity, Transparency and Anticorruption (FAPTA) stated that the lack of training had made it difficult to conduct parallel investigations into legal entities and individuals. In that regard, the Office of the Deputy Public Prosecutor for Probity, Transparency and Anticorruption (FAPTA) mentioned that an effort had been made to provide training on this matter to the Public Prosecutors' Office. To that end, too, the Office of the Deputy Public Prosecutor for Probity, Transparency and Anticorruption (FAPTA) reported that it had taken part in presentations with the Regulatory Compliance Commission of the Bar Association of Costa Rica[249] and the Network of Officials responsible for enforcing anti-corruption laws in Latin America and the Caribbean (Red LAC LEN).[250] The representatives also pointed to the need for training for the Judicial Investigation Agency (OIJ).[251] In the same vein, the PEP underscored the lack of training in the Judiciary and insisted during the on-site visit on the need to train judges and public prosecutors in this area.[252]

[179] In light of the above, the Committee deems it appropriate to make some recommendations to the country under review based on its comments during the on-site visit. Thus, the Committee will recommend that that the country under review consider strengthening the appropriate measures to endow the Office of the Prosecutor for Public Ethics (PEP) with the financial resources it needs to fully perform its functions,

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[243] Report of the Third Round (Republic of Costa Rica), p. 14 -15.
[244] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019, Article 37.
[245] Law against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004, Article 47.
[246] Law against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004, Article 47 (version in force on May 7, 2008).
[247] Law against Corruption and Illicit Enrichment in Public Office, Law N° 8422 of October 6, 2004, Article 47.
[248] Presentation of the Office of the Prosecutor for Public Ethics (PEP) during the on-site visit (April 8, 2021)
[249] Presentation of Office of the Deputy Public Prosecutor for Probity, Transparency and Anticorruption (FAPTA) during the on-site visit (April 8, 2021).
[250] Ibid.
[251] Ibid.
[252] Presentation of the Office of the Prosecutor for Public Ethics (PEP) during the on-site visit (April 8, 2021).

including providing the training needed for the detection, investigation, and trying of acts of corruption, especially illicit enrichment offenses. (See recommendation 4.4.3 in Section 4.4 of Chapter II of this Report). The Committee will likewise make a recommendation to the country under review that it prepare educational, training, and refresher courses specifically for government officials in the bodies charged with preventing, detecting, and investigating the crime of illicit enrichment on enforcement of the new Law N° 9699. (See recommendation 4.4.4 in Section 4.4 of Chapter II of this Report). Finally, the Committee will also recommend that the country under review prepare educational, training, and refresher courses specifically for judges and public prosecutors on the new Law N° 9699, and its enforcement in relation to acts of corruption, especially those involving illicit enrichment. (See recommendation 4.4.5 in Section 4.4 of Chapter II of this Report).

4.2.2 New developments with respect to technology

[180] Neither in its Response to the Questionnaire,[253] nor during the on-site visit did the country under review present new developments with respect to technology in relation to illicit enrichment.

4.3. Results

[181] In its Response to the Questionnaire,[254] the country under review did not provide information on results of the application of provisions and/or other measures to address the crime of illicit enrichment. Nevertheless, during the on-site visit, the Office of the Deputy Public Prosecutor for Probity, Transparency, and Anticorruption (FAPTA) did provide data it deemed relevant in this regard. The Committee wishes to underscore the following:

[182] Concerning criminal investigations, the country under review said that 154 investigations had begun and that no proceedings had been suspended in the past five years.[255] Of those cases, 3 had prescribed, 42 had been dismissed and archived, and 46 were under way.[256] Seventeen accusations had been filed and 311 files resolved, including cases resolved prior to the period under review.[257]

[183] In order to make a better assessment of the results achieved in this regard, and given that the Committee does not have those data broken down by year, the Committee will, with a view to being able to achieve a comprehensive appraisal of those data in connection with enforcement of the law on the crime of illicit enrichment and, in particular, investigation into that conduct, formulate a recommendation to the country under review to compile and disseminate, in a user-friendly and easily accessible format, detailed and annually compiled statistical information on the investigations initiated, making it possible to establish how many have been suspended; how many have prescribed; how many have been archived; how many are being processed; and how many have been referred to the competent authority for resolution, in order to identify challenges and adopt corrective measures, as appropriate. (See recommendation 4.4.6 in Section 4.4 of Chapter II of this Report).

[184] Likewise, given that the Committee does not have those data broken down by year, which would enable it to achieve a comprehensive appraisal of the results of enforcement of the law on the crime of illicit enrichment in terms of trials of offenders, it will formulate a recommendation that the country under review to compile and disseminate, in a user-friendly and easily accessible format, detailed and annually compiled statistical information that makes it possible to establish the number of cases in the courts that are ongoing,

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[253] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica).
[254] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica).
[255] Presentation of Office of the Deputy Public Prosecutor for Probity, Transparency and Anticorruption (FAPTA) during the on-site visit (April 8, 2021).
[256] Ibid.
[257] Ibid.

suspended, prescribed, filed without a decision having been adopted, ready for a decision to be adopted, or that have already been the subject of a decision on the merits and the acquittal or conviction of said decision, in order to identify challenges and adopt corrective measures, when appropriate. (See recommendation 4.4.7 in Section 4.4 of Chapter II of this Report).

[185] Furthermore, given that the country under review did not provide data on the assistance and cooperation that it requests and provides, particularly as regards illicit enrichment, the Committee will formulate a recommendation for the country under review to compile and disseminate, in a user-friendly and easily accessible format, annually compiled information that makes it possible to establish the number of mutual assistance requests formulated to other States Parties for the investigation or prosecution of illicit enrichment; how many of them were granted and how many were denied; and the number of requests formulated to it by other States Parties for the same purpose and how many of them were granted and how many were denied, in order to identify challenges and adopt corrective measures, when appropriate. (See recommendation 4.4.8 in Section 4.4 of Chapter II of this Report).

4.4 Recommendations

[186] In light of the observations formulated in Sections 4.1, 4.2 y 4.3 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendation:

4.4.1 Strengthen the procedures and indicators used by the bodies or agencies responsible for investigating and/or prosecuting the crime of illicit enrichment in order to analyze the objective results obtained in this area. (See paragraph 170 in Section 4.1 of Chapter II of this Report).

4.4.2 Strengthen the procedures and indicators used by the bodies or agencies responsible for requesting and/or providing assistance and cooperation in relation to the crime of illicit enrichment in order to analyze the objective results obtained in this area. (See paragraph 170 in Section 4.1 of Chapter II of this Report).

4.4.3 Strengthen the appropriate measures to endow the Office of the Prosecutor for Public Ethics (PEP) with the financial resources it needs to fully perform its functions, including being able to prepare training programs and workshops needed to help detect, investigate, and try acts of corruption, especially illicit enrichment offenses. (See paragraph 179 in Section 4.2.1 of Chapter II of this Report).

4.4.4 Prepare educational, training, and refresher courses to provide guidance to government officials in bodies responsible for preventing, detecting, and investigating illicit enrichment on how to enforce new Law N° 9699. (See paragraph 179 in Section 4.2.1 of Chapter II of this Report).

4.4.5 Prepare educational, training, and refresher courses designed specifically to provide guidance to judges and public prosecutors regarding new Law N° 9699 and its enforcement in respect of acts of corruption, especially illicit enrichment offenses. (See paragraph 179 in Section 4.2.1 of Chapter II of this Report).

4.4.6 Compile and disseminate, in a user-friendly and easily accessible format, detailed and annually compiled statistical information on the investigations initiated, making it possible to establish how many have been suspended; how many have prescribed; how many have been archived; how many are being processed; and how many have been referred to the competent authority for resolution, in order to identify challenges and adopt corrective measures, as appropriate. (See paragraph 183 in Section 4.3. of Chapter II of this Report).

4.4.7 Compile and disseminate, in a user-friendly and easily accessible format, detailed and annually compiled statistical information that makes it possible to establish the number of cases in the courts that are ongoing, suspended, prescribed, filed without a decision having been adopted, ready for a decision to be adopted, or that have already been the subject of a decision on the merits and the acquittal or conviction of said decision, in order to identify challenges and adopt corrective measures, when appropriate. (See paragraph 184 in Section 4.3 of Chapter II of this Report).

4.4.8 Compile and disseminate, in a user-friendly and easily accessible format, annually compiled information that makes it possible to establish the number of mutual assistance requests formulated to other States Parties for the investigation or prosecution of illicit enrichment; how many of them were granted and how many were denied; and the number of requests formulated to it by other States Parties for the same purpose and how many of them were granted and how many were denied, in order to identify challenges and adopt corrective measures, when appropriate. (See paragraph 185 in Section 4.3 of Chapter II of this Report).

5. NOTIFICATION OF CRIMINALIZATION OF TRANSNATIONAL BRIBERY AND ILLICIT ENRICHMENT (ARTICLE X OF THE CONVENTION)

5.1. Follow up on the Implementation of the Recommendations Formulated in the Third Round

[187] No recommendations were formulated to the country under review with respect to this provision of the Convention.

6. EXTRADITION (ARTÍCLE XIII OF THE CONVENTION)

6.1. Follow up on the Implementation of the Recommendations Formulated in the Third Round

Recommendation 6.1 suggested by the Committee:

Continue adopting the measures necessary for the requesting state to be informed in a timely manner with respect to the disposition of cases where extradition is denied based on Costa Rica exercising jurisdiction over the offense in question.

[188] With respect the aforementioned recommendation, in its Response to the Questionnaire,[258] the country under review did not present information or new developments. However, during the on-site visit, the country under review presented the following information, which the Committee notes as steps that contribute to progress in the implementation of the said recommendation, the following:

[189] Regarding the foregoing recommendation, the Office for Assistance and International Relations of the Public Prosecutors' Office (OATRI) explained during the on-site visit that, in the absence of a treaty, this matter is regulated by the Law on Extradition, Law N° 4795 of July 16, 1971,[259] (hereinafter "Law N° 4795"), which establishes, inter alia, the terms, procedure, and effects of extradition.[260] As regards the deadlines for issuing a ruling on a request for extradition, Article 9(f) states that the court competent for handing down a ruling granting or denying the request shall have 10 days in which to do so.[261] Regarding the court's decision, Article 9(g) establishes that "an appeal to a higher court must be filed within three

[258] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica).
[259] Law on Extradition, Law N° 4795 of July 16, 1971, Article 1.
[260] Ibid.
[261] Ibid., Article 9(f).

days of the day of notification of the resolution."[262] Once three working days have elapsed without any party appealing the judgment, that judgment shall be final. If an appeal is allowed, the court shall grant the parties five days for the hearing, after which it shall have no more than 15 days to issue the corresponding ruling.[263]

[190] As regards notification of the Requesting State of the result of its application for extradition, Law N° 4795 provides that said State shall be notified of the decision taken by the court competent for issuing a resolution granting or denying the request for extradition, via the Executive Branch, pursuant to Article 5.[264]

[191] For its part, the Office of the Procurator General of the Republic (PGR) provided more information regarding the provisions of Article 6(4) of the Criminal Code, Law N° 457, of May 4 1970,[265] introduced by the Law to Strengthen Anti-Terrorism Legislation, Law N° 8719 of March 4, 2009,[266] which prompted the previous recommendation made in the Third Round.[267] Here, it is worth recalling that Article 6(4) provides for the initiation of proceedings for acts committed abroad and application of Costa Rican law when those acts "were committed by a Costa Rican."[268] On this matter, the Office of the Procurator General of the Republic (PGR) also explained that subparagraph 4 was added to Article 6 to allay international concerns regarding the impunity that could possible result from the ban on extraditing nationals.[269] The concern was that if they were not extradited, they would not face trial for crimes committed outside the national territory.[270] The Office of the Procurator General of the Republic (PGR) stated that Costa Rica tried to solve that problem by incorporating the "active personality" (*personalidad activa*) principle in its legal framework, in such a way as to ensure that Costa Ricans can be tried by local courts for crimes they commit abroad in cases in which extradition is denied by virtue of their Costa Rican nationality.[271] Regarding this issue, the Committee considers that Article 3(a) of Law N° 4795 should also be mentioned, as it precludes extradition when "at the time the punishable offense was committed, the person whose extradition is requested was a Costa Rican by birth or by naturalization. In such cases, he or she shall be tried by national courts."[272] Finally, the Office of the Procurator General of the Republic (PGR) added that thus far it lacks statistics showing how many cases there have been in which a Requesting State has asked for the extradition of a Costa Rican who committed a crime in its territory and was not extradited because he or she was Costa Rican.[273]

[192] In this regard, the Committee notes the steps taken by the country under review to move ahead with implementation of the foregoing recommendation. The Committee observes that Article 5 of Law N° 4795 establishes the obligation to notify the Requesting State as to the outcome of its request for extradition.[274] With respect to deadlines, they apply only to when the competent court resolving the matter must grant or deny the request for extradition, at the lower court level[275] and upon appeal.[276] Here, the Committee

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[262] Ibid., Article 9(g).
[263] Ibid.; Presentation of the Office for Assistance and International Relations of the Public Prosecutors' Office (OATRI) during the on-site visit (April 8, 2021).
[264] Ibid., Article 5.
[265] Criminal Code, Law N° 4573 of May 4, 1970, Article 6, subparagraph 4.
[266] Law to Strengthen Anti-Terrorism Legislation, Law N° 8719 of March 4, 2009.
[267] Report of the Third Round (Republic of Costa Rica), p.17-18.
[268] Criminal Code, Law N° 4573 of May 4, 1970, Article 6, subparagraph 4.
[269] Presentation of the Office of the Procurator General of the Republic (PGR) during the on-site visit (April 8, 2021).
[270] Ibid.
[271] Ibid.
[272] Law on Extradition, Law N° 4795 of July 16, 1971, Article 3(a).
[273] Presentation of the Office of the Procurator General of the Republic (PGR) during the on-site visit (April 8, 2021).
[274] Law on Extradition, Law N° 4795 of July 16, 1971, Article 5.
[275] Ibid., Article 9(f).
[276] Ibid., Article 9(g).

observes that the provisions of Article 9(g) allow the parties 3 days, from the date of notification, to appeal the judgment. However, even though Law N° 4795 refers to notification of the parties, including the Requesting State, of the outcome of the request for extradition, neither Article 9 nor Article 5 actually prescribe in general terms a deadline for notifying that State of said outcome. Nor is there one in cases in which extradition is denied because the country under review exercises its competence to deal with the crime in question. For these reasons, the Committee reiterates the need for the country under review to continue to give attention to the implementation thereto. (See recommendation 6.4.1 in Section 6.4 of Chapter II of this Report). Furthermore, given that no deadlines are explicitly set in the regulations for informing the Requesting State of the outcome of its request for extradition, or of the content of the resolution issued by the court competent for granting or denying it, the Committee will formulate an additional recommendation in this regard. (See recommendation 6.4.2 in Section 6.4 of Chapter II of this Report).

Recommendation 6.2 suggested by the Committee:

Select and develop, through the competent organs or agencies, procedures and indicators, when appropriate and where they do not yet exist, to verify the follow up to the recommendations formulated in this report with respect to this area; and to analyze objective results obtained in relation to requests for extradition formulated to other States Parties to the Convention, for the investigation or prosecution of the crimes that have been criminalized pursuant thereto and the steps that have been taken to respond to similar requests from other States Parties.

[193] With respect to the aforementioned recommendation, in its Response to the Questionnaire,[277] the country under review did not present information or new developments. However, during the on-site visit the country under review presented the following information that it deemed relevant to the foregoing recommendation:

[194] The representatives of the Office of the Procurator General of the Republic (PGR) pointed out during the on-site visit that the organs or bodies involved in extradition procedures are the Ministry of Foreign Affairs, the Office of Technical Advice and International Relations of the Public Prosecutors' Office, the Office of the Procurator General of the Republic (PGR), which represents the interests of stakeholders in the country under review and only participates in passive extraditions, the Secretariat of the Supreme Court of Justice, the Criminal Law Court that processes passive extraditions, and the criminal court or tribunal handling active extraditions in the jurisdiction in which the person liable to extradition resides.[278]

[195] However, with regard to this recommendation, none of the pertinent organs or bodies provided information regarding the procedures and indicators they use to verify follow-up to the recommendations formulated in the Third Round Report on this matter. Nor did they furnish information regarding the procedures and indicators they use to analyze objective outcomes obtained in connection with requests for extradition filed with other States parties to the Convention, regarding the investigation or prosecuting of crimes defined in the Convention, including the steps taken in response to such requests by other States parties.

[196] Given that it lacks the additional information it would need to assess the above-mentioned procedures and indicators, the Committee deems it necessary that the country under review address the foregoing recommendation. In addition, the Committee will take this opportunity to reformulate it, bearing in mind that it contains to related, but separate, elements: 1) the procedures and indicators used to verify follow-up to the recommendations made in this regard in the Third Round; and 2) the procedures and

[277] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica).
[278] Presentation of the Office of the Procurator General of the Republic (PGR) during the on-site visit (April 8, 2021).

indicators used to analyze the objective outcomes obtained in respect of requests for extradition filed with other States Parties to the Convention, regarding the investigation or prosecution of crimes defined in it, including the steps taken in response to similar requests from other States parties. (See recommendations 6.4.3 and 6.4.4 in Section 6.4 of Chapter II of this Report).

Recommendation 6.3 suggested by the Committee:

Consider adopting the appropriate measures in order to benefit from a greater use of the Inter-American Convention against Corruption in extradition cases, which could consist of, among other measures, the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area.

[197] Neither its Response to the Questionnaire,[279] nor during the on-site did the country under review present information and new developments with respect to the aforementioned recommendation. As a result, the Committee will reiterate the need for the country under review to continue to give attention to recommendation 6.3. (See recommendation 6.4.5 in Section 6.4 of Chapter II of this Report).

6.2. New Developments with respect to the Provision of the Convention on Extradition

6.2.1 New developments with respect to the legal framework

[198] Neither in its Response to the Questionnaire,[280] nor during the on-site visit did the country under review present new developments with respect to its legal framework in relation to extradition.

6.2.1 New developments with respect to technology

[199] Neither in its Response to the Questionnaire,[281] nor during the on-site visit did the country present new developments with respect to technology in relation to extradition.

6.3 Results

[200] The country under review did not present in its Response to the Questionnaire,[282] information on results on the applications of norms and/or measures in relation to extradition. However, during the on-site visit, the country under review presented the following information which it considered relevant:

[201] The Office for Assistance and International Relations of the Public Prosecutors' Office (OATRI) provided data regarding the number of active and passive extraditions from 2016 to 2020.[283] On this, the country under review reported having had several successful experiences in which it had managed to bring to trial persons extradited from their country of origin for crimes committed on Costa Rican soil.[284] However, the country under review explained in this connection that none of those extradition cases concerned corruption offenses.[285] Accordingly, the country under review pointed out that it lacks experience

[279] Ibid.
[280] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica).
[281] Ibid.
[282] Ibid.
[283] Presentation of the Office of Assistance and International Relations of the Public Prosecutors' Office (OATRI) during the on-site visit (April 8, 2021).
[284] Ibid.
[285] Ibid.

in that field. It explained that most cases had to do with homicides, robbery, violence, and other criminal acts.[286]

[202] Given that it lacks additional processed information that would enable it to make a comprehensive assessment of the results of enforcing rules and/or other measures related to extradition on account of offenses defined in the Convention, the Committee will formulate a recommendation to the country under review that, once it has acquired experience in this field, it compile and disseminate, in a user-friendly and readily accessible format, detailed annual statistics on requests for extradition filed with other States parties in connection with the investigation or prosecution of the crimes referred to in the Convention, indicating how many of its requests were accepted and how many denied; likewise, how many of those requests made to it by other States parties it accepted or denied, with a view to identifying challenges and adopting corrective measures, as needed. (See recommendation 6.4.6 in Section 6.4 of Chapter II of this Report).

6.4 Recommendations

[203] In light of the observations formulated in sections 6.1, 6.2 and 6.3 of Chapter II of this report, the Committee suggests that the country under view consider the following recommendations:

6.4.1 Adopt such measures as are needed to ensure that the Requesting State is notified in a timely fashion of the outcome in cases in which extradition is denied because Costa Rica exercises its competence over the offense in question. (See paragraph 192 in Section 6.1 of Chapter II of this Report).

6.4.2 Adopt appropriate measures to ensure that the Requesting State is notified in good time of the outcome of its request for extradition, as well as of the content of the resolution handed down by the competent court granting or denying the request, and set deadlines for this in its regulations. (See paragraph 192 in Section 6.1 of Chapter II of this Report).

6.4.3 Select and develop, through the competent organs or agencies, procedures and indicators, when appropriate and where they do not yet exist, to verify the follow up to the recommendations formulated in this report with respect to this area. (See paragraph 196 in Section 6.1 of Chapter II of this Report).

6.4.4 Select and develop, through the competent organs or agencies, procedures and indicators, to analyze objective results obtained in relation to requests for extradition formulated to other States Parties to the Convention, for the investigation or prosecution of the crimes that have been criminalized pursuant thereto and the steps that have been taken to respond to similar requests from other States Parties. (See paragraph 196 in Section 6.1 of Chapter II of this Report).

6.4.5 Consider adopting the appropriate measures in order to benefit from a greater use of the Inter-American Convention against Corruption in extradition cases, which could consist of, among other measures, the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area. (See paragraph 197 in Section 6.1 of Chapter II of this Report).

[286] Ibid.

6.4.6 Compile detailed statistics, disaggregated annually, on extradition requests made to other States Parties for investigation or prosecution of corruption offenses, indicating how many have been accepted and how many denied; and, likewise, with the requests that it has received from those States for the same purpose, indicating how many it has accepted and how many it has denied, in order to identify challenges and adopt corrective measures, as appropriate. (See paragraph 202 in Section 6.3 of Chapter II of this Report).

I. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON THE IMPLEMENTATION BY THE COUNTRY UNDER REVIEW OF THE CONVENTION PROVISIONS SELECTED FOR THE SIXTH ROUND

1. BANK SECRECY (ARTICLE XVI OF THE CONVENTION)

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

[204] The Republic of Costa Rica has a set of provisions and/or measures in relation to bank secrecy, among which the following should be noted:

[205] – The Political Constitution of the Republic of Costa Rica, Law N° 0 of November 7, 1949, Article 24 of which guarantees the right to privacy, freedom, and secrecy of communications[287] by establishing the "inviolability of private documents and the written, oral, or any other type of communications of the inhabitants of the Republic."[288]

[206] – Constitutional jurisprudence which, in Ruling N° 13750-2010 of August 20, 2010, created the legal concept of bank secrecy derived from the right to privacy established in the Constitution in the following terms: "Intimately linked to this limitation is banking secrecy, understood as the duty imposed on any financial intermediation entity not to disclose the information and data it possesses on its customers through any banking transaction or banking contract it has entered into with them, especially in the case of current accounts, since Article 615 of the Commercial Code expressly rules that it is covered in such circumstances […]."[289]

[207] – The Commercial Code, Law N° 3284 of April 30, 1964, Article 265 of which stipulates that the superintendencies of the financial system may, by means of authorization from a competent judicial authority, request any individual or corporation not supervised by them provide access to information contained in accounting ledgers or other documents.[290]

[208] – Article 615, which provides that current bank accounts are inviolable and that banks may provide information about them only on request of or with the written authorization of the owner or by order of the competent judicial authority.[291]

[209] – Reform Law N° 9746 of October 16, 2019 amending the Law regulating the Securities Market, the Organic Law of the Judiciary, the Organic Law of the Central Bank of Costa Rica, the Criminal Code, the Commercial Code, the Law Regulating the Insurance Market and the Private Supplementary Pension System Regime, which amends Article 615 of the Commercial Code, Law N° 3284 of April 30, 1964, by adding that "The General Superintendency of Financial Entities (SUGEF) shall provide the General

[287] Political Constitution of the Republic of Costa Rica, Law N° 0 of November 7, 1949, Article 24.
[288] Ibid.
[289] Ruling N° 13750-2010 of 10:53 a.m. on August 20, 2010, Constitutional Chamber.
[290] Commercial Code, Law N° 3284 of April 30, 1964, Article 265.
[291] Ibid., Article 615.

Superintendency of Securities (SUGEVAL) with such information on bank accounts, orders, and transactions as the latter may request in order to comply with information requests, in accordance with the terms of a Multilateral Agreement of Understanding in compliance with the applicable legislation and regulations signed between the Superintendency and foreign authorities belonging to the International Organization of Securities Commissions."[292]

[210] – The Law on the Search, Seizure, and Examination of Private Documents and Interception of Communications, Law N° 7425 of August 9, 1994, the first article of which regulates the competence of the courts of law and provides that they "may authorize the search, seizure, or examination of any private document when it is absolutely indispensable for the clarification of criminal matters brought before them."[293]

[211] – Article 2, on the powers of judges, provides that they "may order the search, seizure, and examination of any private document, on an *ex officio* basis, at the request of the police authority in charge of an investigation, the Public Prosecution Service, or any of the parties to the proceedings."[294]

[212] – Article 3, which establishes the requirements for a seizure, search, or examination warrant on pain of nullification.[295]

[213] – The Code of Tax Norms and Procedures, Law N° 4755 of May 3, 1971, Article 105 of which provides that "all individuals and public or private corporate bodies shall be obliged to provide the Tax Administration with the information foreseeably relevant for tax purposes."[296]

[214] – Article 106 bis, which provides that "financial institutions[297] shall provide the Tax Administration with information on their customers, including information on transactions, operations, and balances,"[298] to the extent that the information is foreseeably relevant for tax purposes.[299]

[215] – Article 106 ter, which establishes the procedure for requesting information from financial institutions.[300] Under this article, requests by the Tax Administration shall be made through the Director General of Taxation and must be submitted in writing to the contentious administrative court,[301] in accordance with Article 110, paragraph 5, of the Organic Law of the Judicial Branch.[302] It provides for a period of five working days for the judge to approve or deny a request for information in compliance with

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[292] Reform Law N° 9746 of October 16, 2019 amending the Law Regulating the Securities Market, the Organic Law of the Judicial Branch, the Organic Law of the Central Bank of Costa Rica, the Criminal Code, the Commercial Code, the Law Regulating the Insurance Market and the Private Supplementary Pension System Regime, Article 10.

[293] Law on the Search, Seizure, and Examination of Private Documents and Interception of Communications, Law N° 7425 of August 9, 1994, Article 1, Pursuant to Article 1, the following are considered private documents for the purposes of the law: "correspondence by post, fax, telephone, computers, or any other means; videos, cassettes, tapes, discs, diskettes, writings, books, memorials, records, plans, drawings, pictures, x-rays, photographs, and any other form of recording information of a private nature, used in a representative or declaratory capacity, to illustrate or prove something."

[294] Ibid., Article 2.

[295] Ibid., Article 3.

[296] Code of Tax Norms and Procedures, Law N° 4755 of May 3, 1971, Article 105.

[297] Ibid., Article 106 bis b). The term "financial institution" includes all those entities that are regulated, supervised, or overseen by the following bodies, as appropriate: the General Superintendency of Financial Entities, the General Superintendency of Securities, the Superintendency of Pensions, the General Superintendency of Insurance, or any other superintendency or agency that may be created in the future and which is under the responsibility of the National Financial System Supervisory Council.

[298] Ibid., Article 106 bis.

[299] Ibid.

[300] Ibid., Article 106 ter.

[301] Ibid., Article 106 ter, subparagraph 1).

[302] Organic Law of the Judicial Branch, Law Nº 8 of 1937, Article 110, subparagraph 5.

the requirements set out in the Code and to issue a resolution authorizing the Tax Administration to directly request the information from the financial institution.[303]

[216] – Article 106 quater, which sets out the procedure for requesting financial information in exchanges of information with other jurisdictions under the terms of an international convention.[304]

[217] – Article 115, which deals with the use of the information and states that "the information obtained or collected may only be used for the tax purposes of the Tax Administration itself, which is prohibited from transferring or forwarding it to other offices, agencies, or public or private institutions."[305] However, without prejudice to the duty of secrecy, the Tax Administration shall be empowered, in the exercise of its legal powers for the enforcement of the tax system, to become aware of transactions aimed at legitimizing capital and to communicate them to the Public Prosecutor's Office for the relevant purposes.[306]

[218] – Article 115 bis, on the exchange of information with other jurisdictions, which provides that the prohibition provided for in Article 115 shall not preclude the "transfer or use of all the necessary information requested by the common courts or by tax administrations of other countries or jurisdictions with which Costa Rica has an international agreement providing for the exchange of information on tax matters in any of its modalities."[307] In this regard, "the form of exchange of information and the procedures that will be followed to gather the requested information will be those established in the international agreement in question and in Costa Rican law."[308]

[219] – The Organic Law of the Central Bank of Costa Rica, Law N° 7558 of November 27, 1995, Article 132 of which prohibits the superintendencies from disclosing information from the entities they supervise.[309] It also sets the exceptions to this prohibition, which include, among others, information requested by the order of a competent judicial authority,[310] by the office of the Comptroller General of the Republic in the exercise of its powers,[311] in accordance with the amendments provided for in Article 67 of the Law against Corruption and Illicit Enrichment in Public Service, Law N° 8422 of October 6, 2004, by the Costa Rican Narcotics Institute in the exercise of its powers to combat money laundering and the funding of terrorism,[312] and by the General Superintendency of Securities (SUGEVAL) to address "information requests in accordance with the terms of a Multilateral Agreement of Understanding in compliance with the applicable legislation and regulations that has been signed between the Superintendency and foreign authorities belonging to the International Organization of Securities Commissions."[313]

[220] – The Law regulating the Securities Market, N° 7732 of December 17, 1997, Article 8 of which sets out the powers of the Superintendent.[314] Under Article 8(r), it falls to the Superintendent to "provide the cooperation and information requested by foreign authorities and agencies for the fulfillment of their respective functions, in keeping with the terms of the agreement or instrument for cooperation and information exchanges signed between the Superintendency and the foreign authorities."[315] The agreement

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[303] Code of Tax Norms and Procedures, Law N° 4755 of May 3, 1971, Article 106 ter.
[304] Ibid., Article 106 quater.
[305] Ibid., Article 115.
[306] Ibid.
[307] Ibid., Article 115 bis.
[308] Ibid.
[309] Organic Law of the Central Bank of Costa Rica, Law N° 7558 of November 27, 1995, Article 132.
[310] Ibid., Article 132(b).
[311] Ibid., Article 132(e).
[312] Ibid., Article 132(f).
[313] Ibid., Article 132(g).
[314] Law Regulating the Securities Market, N° 7732 of December 17, 1997, Article 8.
[315] Ibid., Article 8(r).

must be known to and approved by the National Financial System Supervisory Council (CONASSIF) and signed by the Superintendent.[316] Article 8(r) specifies the information that must be included.[317] Requests for assistance must also be "confidential and may only be used in accordance with the terms set in the aforementioned instruments for cooperation and information exchanges, which shall also provide for the principle of reciprocity."[318] With respect to the summoning of persons, the Superintendent, or his/her appointees, "may summon or request information from representatives or employees of the supervised entities and enterprises or third persons when necessary for compliance with its commitments of cooperation and information exchange with foreign authorities and agencies, in accordance with the terms of the agreement or instrument signed for the purpose by the Superintendency with them."[319] In addition, with regard to the seizure of documents, the superintendent may also request the criminal judge to order the seizure of all "documents, mails, storage places, be they physical or virtual, and their respective processors from persons or entities that may have knowledge or information related to the object of the Superintendency's actions or to the international assistance in question."[320]

[221] – Article 108, which provides that the information about their customers to which market participants have access "shall be confidential and may not be used for personal gain or for the benefit of others, or for purposes other than those for which it was requested."[321]

[222] – Article 151, on exchanges of information, which provides that "the superintendencies may exchange all types of information with other national and foreign financial supervisory agencies and may participate in joint supervisory activities."[322] To this end, the superintendencies must "enter into cooperation and information exchange agreements that provide for the principle of reciprocity and establish that, in the case of confidential information, the supervisory body concerned shall be subject to information disclosure prohibitions comparable to those specified"[323] in the Law Regulating the Securities Market, Law N° 7732 of December 17, 1997.[324] In addition, information shared under a cooperation and information sharing agreement shall be considered "an exception to informational self-determination."[325] Similarly, requests for assistance and cooperation, including joint supervision activities, together with the information and documents received by the superintendencies from foreign authorities and agencies, "shall be confidential and may only be used in accordance with the terms agreed on in the aforesaid cooperation and information exchange instruments, which shall provide for the principle of reciprocity."[326]

[223] – Article 166, which establishes the obligation of confidentiality and the persons subject to it,[327] and which provides that financial information on regulated entities and the transactions of organized markets

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[316] Ibid.
[317] Ibid.
[318] Ibid.
[319] Ibid.
[320] Ibid. Seizures shall be subject to the formalities set forth in the Law on the Search, Seizure, and Examination of Private Documents and Interception of Communications, Law N° 7425 of August 9, 1994.
[321] Ibid., Article 108.
[322] Ibid., Article 151.
[323] Ibid.
[324] Ibid.
[325] Ibid. That exception must be in accordance with the terms of Article 8 of the Law on the Protection of Individuals in relation to the Processing of Personal Data, Law N° 8968 of July 7, 2011.
[326] Ibid., Article 166, as amended by Article 1 of the Reform Law N° 9746 of October 16, 2019 amending the Law Regulating the Securities Market, the Organic Law of the Judicial Branch, the Organic Law of the Central Bank of Costa Rica, the Criminal Code, the Commercial Code, the Law Regulating the Insurance Market and the Private Supplementary Pension System Regime.
[327] Ibid. To enforce sanctions, Article 167 provides that the Superintendency must also follow, to the extent possible, the procedure set forth in Articles 151 *et seq*. of the Organic Law of the Central Bank of Costa Rica, Law N° 7558 of November 27, 1995 and, complementarily, the provisions of the General Law on Public Administration, Law N° 6227 of May 2, 1978. Article 168 establishes the sanctioning power of the Superintendency and stipulates that its exercise shall be "independent of any other actions and liabilities, be they civil or criminal, that may arise from the punishable acts." The Superintendency must notify the

may only be disclosed in the cases provided for in the regulations in force or in the context of a disclosure of public interest or by court order.[328] Likewise, they must maintain "the confidentiality of requests for information and assistance made to them by foreign authorities and agencies, as well as that of information received from such authorities or agencies, in accordance with the terms of the agreements or instruments signed for such purposes."[329]

[224] – Article 171, which sets out the functions of the National Financial System Supervisory Council (CONASSIF);[330] in particular, subparagraph (i), which establishes as one of its functions the regulation of the exchanges of information and cooperation that the different superintendencies may carry out among themselves for purposes of "international cooperation based on agreements signed with their foreign counterparts."[331]

[225] – The Law Regulating the Insurance Market, Law N° 8653 of July 22, 2008, Article 2(r) of which regulates the General Superintendency of Insurance (SUGESE), which has the power to "request the criminal judge to order the seizure of documents, mails, storage places, be they physical or virtual, and their respective processors from persons or entities that may have knowledge or information related to the object of the Superintendency's actions or to the international cooperation in question, under the terms of Article 151 of Law N° 7732, the Law Regulating the Securities Market."[332]

[226] – The Law to Improve the Fight Against Tax Fraud, N° 9416 of December 14, 2016, Article 8 of which, on information custody and access, states that the Central Bank of Costa Rica shall control the necessary access for the Ministry of Finance[333] and the Costa Rican Narcotics Institute (ICD).[334] Any request for information from the Central Bank must be expressly made by the Ministry of Finance or by the Costa Rican Narcotics Institute, when information is required on the beneficial owners of legal persons or legal arrangements. Requests must meet all the established requirements.[335]

[227] – Article 9, on the legitimate grounds for the use of information, which states that information within its scope of application "shall not be considered covered by banking secrecy, but shall be deemed confidential in accordance with the provisions of the Code of Tax Rules and Procedures, Law N° 4755 of May 3, 1971, as amended."[336] Thus, in order to discharge its functions, the Ministry of Finance may request information to the extent that it is foreseeably relevant for tax purposes, in order to exchange information under the provisions of international instruments.[337] The information may not, however, be used for any purpose other than that for which it was requested.[338] Similarly, the Costa Rican Narcotics Institute (ICD) may also request the Central Bank of Costa Rica for information from the database in compliance with its

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Public Prosecution Service, as promptly as possible, when in the exercise of its functions it becomes aware of "of facts that may be suspected of constituting an offense."

[328] Ibid.

[329] Ibid.

[330] Ibid., Article 171.

[331] Ibid., Article 171, subparagraph i) as amended by Article 3 of the Reform Law N° 9746 of October 16, 2019 amending the Law Regulating the Securities Market, the Organic Law of the Judicial Branch, the Organic Law of the Central Bank of Costa Rica, the Criminal Code, the Commercial Code, the Law Regulating the Insurance Market and the Private Supplementary Pension System Regime.

[332] Law Regulating the Insurance Market, Law N° 8653 of July 22, 2008, Article 29. In addition, such seizures shall be subject to the formalities set forth in the Law on the Search, Seizure, and Examination of Private Documents and Interception of Communications, Law N° 7425 of August 9, 1994.

[333] Ibid., Article 8 b).

[334] Ibid., Article 8 c).

[335] Ibid., Article 8.

[336] Ibid., Article 9.

[337] Ibid., Article 9 a), subparagraph 3).

[338] Ibid., Article 9.

legal authority.[339] In this case, the Costa Rican Narcotics Institute "must be supported by a prior and duly justified administrative decision, which may be required by the competent judicial authority."[340]

[228] – Article 10, which sets the requirements for requesting information for both the Ministry of Finance and the Costa Rican Narcotics Institute (ICD).[341] If any of those requirements are absent, "the Central Bank of Costa Rica shall reject the request on an *ex officio* basis, with a notification of the requirements that have not been met."[342]

[229] – The Law on Narcotics, Psychotropic Substances, Unauthorized Drugs, Related Activities, Money Laundering, and Financing of Terrorism, N° 7786 of April 30, 1998, Article 24 of which stipulates that financial institutions must pay particular attention to suspicious transactions.[343] Similarly, Article 25 provides for confidential and immediate notification by financial institutions and individuals or legal entities engaged in commercial and professional non-financial activities, to the Costa Rican Narcotics Institute's Financial Intelligence Unit (FIU), if there are suspicions of transactions that could represent a "risk of money laundering, terrorism funding, or arising from or related to unlawful activity, including transactions derived from transfers to or from abroad."[344]

[230] – Article 31, which provides that "entities of the national financial system shall endeavor to sign the international cooperation agreements available to them that guarantee the free transfer of data relating to accounts opened in other States and linked to investigations, prosecutions, and proceedings"[345] involving the offenses established therein or other related crimes, as well as offenses against financial administrative laws or regulations.[346]

[231] – Article 32, which provides that the "legal provisions concerning banking, stock exchange, or tax information shall not constitute an impediment to complying with the stipulations"[347] of the law "when the judicial or administrative authorities in charge of investigating the crimes typified"[348] therein request such information.[349]

[232] – Article 63, which provides for the imprisonment for public servants or private persons working in the financial system who, having in their custody confidential information related to investigations into drug trafficking, money laundering, or the funding of terrorism, "authorize or carry out the destruction or disappearance of this information, without complying with the legal requirements."[350]

[233] – Article 124, which states that the information gathered by the Financial Intelligence Unit (FIU) "shall be confidential and for the exclusive use of the investigations conducted" by the Institute.[351] The article further provides that such information may be disclosed to the "Public Prosecution Service, the judges of the Republic, national and foreign police forces, counterpart financial analysis units, and the

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[339] Ibid., Article 9, b).
[340] Ibid., Article 9.
[341] Ibid., Article 10.
[342] Ibid.
[343] Law on Narcotics, Psychotropic Substances, Unauthorized Drugs, Related Activities, Money Laundering, and Financing of Terrorism, N° 7786 of April 30, 1998, Article 24.
[344] Ibid., Article 25.
[345] Ibid., Article 31.
[346] Ibid.
[347] Ibid., Article 32.
[348] Ibid.
[349] Ibid.
[350] Ibid., Article 63, as amended by Article 2(1)(b) of the Law to Strengthen Anti-Terrorism Legislation, Law N° 8719 of March 4, 2009.
[351] Ibid., Article 124.

administrative and judicial authorities of other countries with competence in this area."[352] Officials failing to comply with this provision shall be subject to the penalties set out in the Criminal Code.[353]

[234] – Adoption of the Inter-American Convention against Corruption, Law N° 7670 of April 17, 1997, the first article of which approves, in each of its parts, the verbatim text of the Convention signed by the Republic of Costa Rica in Caracas, Venezuela, on March 29, 1996.[354]

[235] – Executive Decree N° 32090 of April 21, 2004, which establishes the Office of the Public Ethics Prosecutor as the competent authority to act as the Central Authority when dealing with matters related to the Convention.[355]

[236] – The multilateral treaties and bilateral agreements signed by the country under review and the Exchange of Notes for the exchange of information related to banking secrecy, and in which banking secrecy cannot be invoked to refuse the provision of legal assistance.[356]

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

[237] The provisions relating to bank secrecy that the Committee has analyzed on the basis of the information available to it can be seen to offer a set of relevant measures for promoting the purposes of the Convention.

[238] However, the Committee considers it appropriate to offer the following comments:

[239] The Committee recognizes the Republic of Costa Rica's adoption of the Convention, which was duly approved in its entirety by the Legislative Assembly through Law N° 7670 of April 17, 1997,[357] in accordance with Article 7 of the Constitution concerning the incorporation of public treaties and international conventions into domestic law.[358] Thus, the Convention's provisions, including Article XVI, are a part of the national positive law of the country under review, with a higher normative authority than the laws enacted by the Legislative Assembly[359] and situated in the domestic legal order below the national Constitution, in accordance with Article 6 of the General Law on Public Administration, Law N° 6227 of May 2, 1978.[360] Accordingly, taking the foregoing into account, in cases in which information is requested for proceedings related to an act of corruption in which bank secrecy is involved, the country under review is required to provide it to the requesting state, as provided for in Article XVI of the Convention, given that the provisions of the Convention are part of its domestic legal system and with a higher position in the hierarchy than the laws enacted by the Legislative Assembly.[361]

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[352] Ibid.
[353] Ibid.
[354] Law adopting the Inter-American Convention against Corruption, Law N° 7670 of April 17, 1997, Article 1.
[355] Executive Decree designating the Office of the Prosecutor for Public Ethics as the Central Authority for Channeling Mutual Assistance and Technical Cooperation provided for in the Inter-American Convention against Corruption, Executive Decree N° 32090 of April 21, 2004.
[356] For information on the multilateral treaties and bilateral agreements signed by the Republic of Costa Rica, please refer to the Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 6-8.
[357] Law adopting the Inter-American Convention against Corruption, Law N° 7670 of April 17, 1997, Article 1.
[358] Political Constitution of the Republic of Costa Rica, Law N° 0 of November 7, 1949, Article 7, and as amended by the sole Article of Constitutional Reform, Law N° 4123 of May 31, 1968.
[359] Ibid.
[360] General Law on Public Administration, Law N° 6227 of May 2, 1978, Article 6.
[361] Political Constitution of the Republic of Costa Rica, Law N° 0 of November 7, 1949, Article 7, and as amended by the sole Article of Constitutional Reform, Law N° 4123 of May 31, 1968.

[240] In addition, the Committee notes that the Republic of Costa Rica has signed a number of multilateral treaties, such as the Convention, and other bilateral agreements that are intended to facilitate exchanges of information relating to bank secrecy and in which bank secrecy cannot be invoked as grounds to refuse the provision of judicial assistance.[362] It should be noted that those international instruments regulate this type of international cooperation and empower the States Parties, including the country under review, to request all types of banking or financial documents, through cooperation between them by means of the various oversight bodies; it should also be noted that bank secrecy may not be used as grounds to refuse such a request in circumstances of that kind.

[241] In addition to the foregoing, and continuing with the topic of international cooperation, the Committee notes the country under review's observance of the principle of international reciprocity. In this regard, as explained in the country's Response to the Questionnaire, the principle of reciprocity can be used as a legal basis for providing legal assistance to those States that reciprocally provide the same international cooperation in this area.[363] Thus, according to the country under review, a treaty with the Republic of Costa Rica is not necessary to receive this type of legal assistance when requested, the principle of reciprocity being the legal basis for the country under review to provide legal assistance. With this in mind, the Committee takes note of the efforts of the country under review to encourage international interaction and cooperation among States.

[242] At the same time, from the point of view of domestic law, the country under review has legislation applicable to various financial entities governing the obligation to provide legal cooperation in this area, such as, for example, Law N° 9746 of October 16, 2019, amending Article 615 of the Commercial Code, Law N° 3284 of April 30, 1964, which provides that "the General Superintendency of Financial Entities (SUGEF) shall provide the General Superintendency of Securities (SUGEVAL) with such information on bank accounts, orders and transactions as the latter may request in order to meet information requests, in accordance with the terms of a Multilateral Agreement of Understanding signed between the Superintendency and foreign authorities belonging to the International Organization of Securities Commissions that is in compliance with the applicable legislation and regulations."[364] Likewise, Article 265 of the Commercial Code, Law N° 3284 of April 30, 1964, provides that the financial system's superintendencies may, by means of an authorization from the competent judicial authority, require any individual or entity not supervised by them to grant access to information contained in accounting ledgers and other documents.[365] Similarly, under Article 615, banks may provide information on current accounts on an order from the competent judicial authority.[366]

[243] With respect to access to confidential information by court order, the country under review has the Law on the Search, Seizure, and Examination of Private Documents and Interception of Communications, Law N° 7425 of August 9, 1994, which provides in its first article that courts of law "may authorize the search, seizure, or examination of any private document when it is absolutely indispensable for the clarification of criminal matters brought before them."[367]

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[362] For information on the multilateral treaties and bilateral agreements signed by the Republic of Costa Rica, please refer to the Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 6-8.
[363] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 6.
[364] Reform Law N° 9746 of October 16, 2019 amending the Law Regulating the Securities Market, the Organic Law of the Judicial Branch, the Organic Law of the Central Bank of Costa Rica, the Criminal Code, the Commercial Code, the Law Regulating the Insurance Market and the Private Supplementary Pension System Regime, Article 10.
[365] Commercial Code, Law N° 3284 of April 30, 1964, Article 265.
[366] Ibid., Article 615.
[367] Law on the Search, Seizure, and Examination of Private Documents and Interception of Communications, Law N° 7425 of August 9, 1994, Article 1.

[244] In tax matters, Article 106 quater of the Code of Tax Rules and Procedures, Law N° 4755 of May 3, 1971, allows the Tax Administration to request financial information from a financial entity or any other entity carrying out any type of financial activity, provided that it is foreseeably relevant for tax purposes and is required for compliance with international instruments that provide for the exchange of information.[368]

[245] With regard to the supervised entities, Article 132 of the Organic Law of the Central Bank of Costa Rica, Law N° 7558 of November 27, 1995, states that information required by the order of a competent judicial authority, the office of the Comptroller General of the Republic in exercise of its powers, and the Superintendency General of Securities (SUGEVAL) to attend to "information requests in accordance with the terms of a Multilateral Agreement of Understanding signed between the Superintendency and foreign authorities belonging to the International Organization of Securities Commissions that is in compliance with the applicable legislation and regulations" is exempt from the confidentiality rule.[369]

[246] Reference can also be made to the Law Regulating the Securities Market, Law N° 7732 of December 17, 1997, Article 8.r of which provides that it is the responsibility of the Superintendent to "provide the cooperation and information requested by foreign authorities and agencies for the fulfillment of their respective functions, in keeping with the terms of the agreement or instrument for cooperation and information exchanges signed between the Superintendency and the foreign authorities,"[370] provided that the agreement is known to and approved by the National Financial System Supervisory Council (CONASSIF) and signed by the Superintendent.[371] Also worthy of note is Article 151, on exchanges of information, which provides that "the superintendencies may exchange all types of information with other national and foreign financial supervisory bodies […]."[372] To this end, the superintendencies must "enter into cooperation and information exchange agreements that provide for the principle of reciprocity […]."[373] Even more importantly, information shared under a cooperation and information sharing agreement is considered "an exception to informational self-determination."[374] In addition, a criminal judge may be requested to order the seizure of all types of documents belonging to persons or entities that may have knowledge or information related to the actions of the Superintendency or the international assistance in question.[375]

[247] Likewise, Article 29(r) of the Law Regulating the Insurance Market, N° 8653 of July 22, 2008, stipulates that it is for the General Superintendency of Insurance (SUGESE) to request the criminal judge to order the seizure of documents or information related to the actions of the Superintendency or of the international cooperation in question pursuant to Article 151 of the abovementioned Law Regulating the Securities Market, Law N° 7732 of December 17, 1997.[376] The disclosure of information relating to regulated entities and transactions on organized markets may only be made by court order or in the cases provided for in the regulations in force."[377]

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[368] Code of Tax Norms and Procedures, Law N° 4755 of May 3, 1971, Article 106 quáter,
[369] Organic Law of the Central Bank of Costa Rica, Law N° 7558 of November 27, 1995, Article 132 b).
[370] Law Regulating the Securities Market, Law N° 7732 of December 17, 1997, Article 8 r).
[371] Ibid.
[372] Ibid., Article 151.
[373] Ibid. Such exceptions must be in accordance with the terms of Article 8 of the Law on the Protection of Individuals in relation to the Processing of Personal Data, Law N° 8968 of July 7, 2011..
[374] Ibid.
[375] Ibid. The seizure shall be subject to the formalities set forth in the Law on the Search, Seizure, and Examination of Private Documents and Interception of Communications, Law N° 7425 of August 9, 1994.
[376] Law Regulating the Insurance Market, Law N° 8653 of July 22, 2008, Article 29, subparagraph r). The terms referred to may be found in Article 151 of the Law Regulating the Insurance Market, Law N° 8653 of July 22, 2008.
[377] Ibid.

[248] Other similar provisions found in the legislation of the country under review include Article 9 of the Law to Improve the Fight against Tax Fraud, Law N° 9416 of December 14, 2016, concerning access to information held by the Central Bank, which provides that the Ministry of Finance or the Costa Rican Narcotics Institute (ICD) may request information provided that it is foreseeably relevant for tax purposes in order to exchange information in accordance with the provisions of international instruments.[378] Additionally, Article 9 stipulates that the information within its scope "shall not be considered to be covered by banking secrecy, but shall be deemed confidential."[379]

[249] Likewise, Article 31 of the Law on Narcotic Drugs, Psychotropic Substances, Unauthorized Drugs, Related Activities, Money Laundering, and Financing of Terrorism, Law N° 7786 of April 30, 1998, requires the institutions of the national financial system to "sign international cooperation agreements available to them that guarantee the free transfer of data relating to accounts opened in other States and linked to investigations, prosecutions, and proceedings"[380] involving the offenses established therein or other related crimes, as well as offenses against financial administrative laws or regulations.[381] In addition, according to Article 32, legal provisions governing banking, stock market, or tax information may not constitute an impediment to providing information when requested by the judicial or administrative authorities responsible for an investigation.[382] Despite the fact that information gathered by the Financial Intelligence Unit (FIU) is confidential and is for exclusive use in investigations, Article 124 provides that such information may be disclosed to the Public Prosecution Service, the judges of the Republic, national and foreign police forces, counterpart financial analysis units, and the administrative and judicial authorities of other countries with competence in the matter.[383]

[250] In relation to the foregoing, the Committee recognizes as a step in progress in the implementation of Article XVI of the Convention, the practice described by the Republic of Costa Rica in relation to entering into international legal instruments. It also recognizes the fact that the principles set forth in the Convention are part of the domestic law of the country under review, together with the importance of the principle of international reciprocity to mitigate the legal vacuum that may exist with States that do not have a multilateral or bilateral treaty, thus allowing it to provide requesting States with the information requested on the basis of this principle of customary law. That notwithstanding, the Committee believes it would be useful for the country under review to consider the need for this international assistance to require a more specific legal basis. In addition, the Committee believes that the country under review could benefit from having more explicit rules in this regard, to further clarify how these international principles are transposed into domestic law and how they operate together to ensure that the requested information is provided. Based on the foregoing observations, the Committee will formulate a recommendation for the country under review to consider adopting the pertinent norms or measures aimed at ensuring that the Convention may be invoked as the principal basis for providing the requested information to the Requesting State, when such information has been requested for the purposes of a proceeding relating to an act of corruption and which relates to bank secrecy, even in cases where there is no bilateral treaty between the states, in accordance with the provisions of Article XVI of the Convention. (See recommendation 1.4.1 in Section 1.4 of Chapter III of this Report).

[251] With respect to domestic law, the Committee notes that the legal framework of the country under review covers the duty of bank secrecy, the regulated entities, those who are guaranteed this protection, as

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[378] Law to Improve the Fight against Tax Fraud, Law N° 9416 of December 14, 2016, Article 9 a), subparagraph 3).
[379] Ibid.
[380] Law on Narcotics, Psychotropic Substances, Unauthorized Drugs, Related Activities, Money Laundering, and Financing of Terrorism, N° 7786 of April 30, 1998, Article 31.
[381] Ibid.
[382] Ibid., Article 32.
[383] Ibid.

well as certain circumstances that constitute exceptions to that duty. Indeed, the Committee notes the existence of regulations on the enforcement and lifting of bank secrecy. The Committee notes, however, that those regulations are dispersed, sometimes expressed according to the institution that holds the information is held or the scope of its activities and, at other times, according to the nature of the information requested. This results in the enforcement of fairly constrained rules with a well-defined scope. In view of the foregoing, the Committee notes the variety of regulatory instruments covering the precepts dedicated to bank secrecy and its lifting, as well as their different scopes. The Committee believes that this could lead to a non-uniform enforcement of the law, in addition to opening up the possibility of an unclear application of the law as to the circumstances in which bank secrecy can be lifted. The Committee therefore believes that the country under review could benefit from developing a general concept of the applicable regulations expressed in a consolidated law. For this reason, and in order to eliminate the possibility of omissions or inconsistent enforcement, the Committee believes that the country under review could benefit from establishing a consolidated law governing bank secrecy exceptions. The Committee will therefore formulate a recommendation for the country under review to consider adopting a consolidated law to ensure that assistance requested by another State Party cannot be refused on the grounds of bank secrecy when that assistance is requested for proceedings involving an act of corruption, in accordance with Article XVI of the Convention. (See recommendation 1.4.2 in Section 1.4 of Chapter III of this Report).

[252] With respect to the obligation of the Convention's States Parties to refrain from using the information protected by bank secrecy they receive for any purpose other than the proceedings for which it was requested, unless authorized by the requested State Party, the Committee takes note of Article 115 of the Code of Tax Rules and Procedures, Law N° 4755 of May 3, 1971, which provides that the information obtained or collected may only be used for tax purposes of the Tax Administration itself and may not be transferred or forwarded to other offices, agencies, or public or private institutions,[384] and of Article 108 of the Securities Market Regulatory Law, N° 7732 of December 17, 1997, which establishes the confidential nature of the information received and stipulates that it may not be used for purposes other than those for which it was requested.[385] The Committee also notes Article 151, which states that the information and documentation that the superintendencies receive from foreign authorities and agencies shall be confidential and may only be used in accordance with the terms agreed to in the aforesaid international instruments.[386] The Committee also notes Article 9 of the Law to Improve the Fight Against Tax Fraud, Law N° 9416 of December 14, 2016, which states that the information may not be used for any purpose other than that for which it was requested.[387] In the same vein, the Committee takes note of Article 124 of the Law on Narcotic Drugs, Psychotropic Substances, Unauthorized Drugs, Related Activities, Money Laundering, and Financing of Terrorism, Law N° 7786 of April 30, 1998, which establishes the confidential nature of the information received and its exclusive use for investigations.[388]

[253] However, the Committee notes that the principle enshrined in the Convention applies only to certain institutions and in very specific cases. For this reason, the Committee considers that the country under review could benefit from adopting relevant rules or measures to ensure a wider application of the principle and to ensure that the rules or measures adopted are enforced in all institutions involved with these matters. In this respect, the Committee will formulate a recommendation for the country under view to broaden the existing appropriate measures to ensure that the requesting State Party is obliged not to use information protected by bank secrecy received from a State Party on which a request for information is served for any purpose other than that for which it was requested, unless duly authorized by that State Party, in accordance

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[384] Code of Tax Norms and Procedures, Law N° 4755 of May 3, 1971, Article 115.
[385] Law Regulating the Securities Market, Law N° 7732 of December 17, 1997, Article 108.
[386] Ibid., Article 151.
[387] Law to Improve the Fight against Tax Fraud, Law N° 9416 of December 14, 2016, Article 9.
[388] Law on Narcotics, Psychotropic Substances, Unauthorized Drugs, Related Activities, Money Laundering, and Financing of Terrorism, N° 7786 of April 30, 1998, Article 124.

with the provisions of Article XVI of the Convention. (See recommendation 1.4.3 in Section 1.4 of Chapter III of this Report).

[254] With respect to the procedure and requirements for requesting information from the competent authorities of the country under review, the Committee takes note of Article 106 ter of the Code of Tax Rules and Procedures, Law N° 4755 of May 3, 1971, which establishes the procedure for requesting financial information from financial entities and the requirements that such requests must meet.[389] It also stipulates that the judge will have to review the request to ensure that it meets all the requirements before issuing, within five working days and provided that the request complies with the necessary formalities, a resolution authorizing the Tax Administration to forward the request for information directly to the financial institution.[390] As regards the applicable deadlines, Article 106 ter stipulates that financial institutions shall have up to ten working days to provide the information requested by the Tax Administration.[391]

[255] With respect to the procedure for requesting financial information to be exchanged internationally with other jurisdictions under an international convention, the Committee takes note of Article 106 quater, which authorizes the Tax Administration to "transfer information obtained from financial institutions to other jurisdictions in accordance with the terms of the international instrument that provides for the exchange of information."[392] In such cases, Article 115 provides that "the method of information exchange and the procedures to be followed to gather the requested information shall be those established in the international agreement in question and in Costa Rican law."[393] The Committee notes, however, that this is limited to information on tax matters.

[256] In addition, the Committee takes note of Article 10 of the Law to Improve the Fight against Tax Fraud, N° 9416 of December 14, 2016, which sets out the requirements for information requests by both the Ministry of Finance and the Costa Rican Narcotics Institute (ICD), as well as the responsibility of the Central Bank of Costa Rica to verify that the requests comply with all those requirements.[394]

[257] The Committee also takes note of Articles 17 and 19 of the Law on Narcotic Drugs, Psychotropic Substances, Unauthorized Drugs, Related Activities, Money Laundering, and Financing of Terrorism, Law N° 7786 of April 30, 1998, which require financial institutions to comply with requests addressed to them by judges concerning information and documentation necessary for investigations and procedures concerning the offenses defined in the law, allowing that information to in turn be shared with the competent authorities of other States.[395]

[258] In addition, the Committee notes that on many occasions the regulations stipulate that the institution may only request financial information from financial institutions by means of an order from a competent judicial authority or the authorization of a criminal judge ordering the seizure of the relevant documents, and that the procedures and requests for information must be respected in accordance with the terms of the international instrument signed and the Costa Rican legislation in force.[396]

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[389] Code of Tax Norms and Procedures, Law N° 4755 of May 3, 1971, Article 106 ter.
[390] Ibid.
[391] Ibid.
[392] Ibid., Article 106 quater.
[393] Ibid.
[394] Law to Improve the Fight against Tax Fraud, Law N° 9416 of December 14, 2016, Article 10.
[395] Law on Narcotics, Psychotropic Substances, Unauthorized Drugs, Related Activities, Money Laundering, and Financing of Terrorism, N° 7786 of April 30, 1998, Article 17.
[396] Reform Law N° 9746 of October 16, 2019 amending the Law Regulating the Securities Market, the Organic Law of the Judicial Branch, the Organic Law of the Central Bank of Costa Rica, the Criminal Code, the Commercial Code, the Law Regulating the Insurance Market and the Private Supplementary Pension System Regime, Article 10.

[259] Although the requirements for requesting financial information from the competent authorities or financial institutions are detailed in the regulations, including in some cases the time limits to be respected in presenting that information, the Committee notes that this is not always the case: on other occasions, the requirements that requests for information must meet are not explicitly stated. Similarly, when an order from a competent judicial authority is needed to access the requested information, the procedure for obtaining that authorization through an order is not clear, nor are the requirements that the requesting authority must satisfy before the judge in order to obtain the order. The Committee also notes that nowhere in the regulations is the use of electronic means for such purposes encouraged. In this regard, the Committee believes that the country under review could benefit from the use of new technological tools to ensure that requesting States Parties receive the requested information in an expeditious, efficient and effective manner. Based on the foregoing observations, the Committee will formulate a recommendation to the country under review so that it consider expanding the relevant standards or measures aimed at defining the procedure by which its competent authorities may request information from financial entities located in its territory in an expeditious, efficient and effective manner, providing for requirements, deadlines and, as far as possible, the use of electronic means, when such information is related to bank secrecy and not only in tax matters, and has been requested by a State Party for the purposes of a proceeding related to an act of corruption. (See recommendation 1.4.4 in Section 1.4 of Chapter III of this Report).

[260] Along the same lines, the Committee will formulate a recommendation for the country under review to expand the appropriate norms or measures aimed at defining the procedure by which all its competent authorities can transmit requests for assistance or information received from other States Parties, when such assistance is related to bank secrecy and not only in tax matters, and has been requested for the purposes of a proceeding relating to an act of corruption, providing for the requirements, deadlines and, as far as possible, the use of electronic means, to ensure that the requesting States Parties receive the information they require in an expeditious, efficient and effective manner. (See recommendation 1.4.5 in Section 1.4 of Chapter III of this Report).

[261] With respect to sanctions for public authorities and financial institutions that fail to provide requested information, the Committee notes that although the regulations provide for sanctions, they are aimed more at protecting the duty of bank secrecy and punishing those that fail to comply with this duty. Thus, the sanctions are not designed to ensure that bank secrecy is not invoked to avoid providing the required information. In this regard, the Committee notes that only the Code of Tax Rules and Procedures, Law N° 4755 of May 3, 1971, provides monetary penalties for financial institutions that fail to provide the competent authorities with requested information.[397] The Committee believes it would be useful for the country under review to expand the relevant standards or measures to indicate the legal consequences of noncompliance and the related deadlines. In this regard, the Committee will formulate a recommendation for the country under review to consider expanding the relevant norms or measures that establish sanctions for those public authorities and financial entities that fail to comply with the provision of information or related deadlines, when a requesting State Party requests assistance in obtaining information and that said information has been requested for the purposes of a proceeding related to an act of corruption and is related to bank secrecy. (See recommendation 1.4.6 in Section 1.4 of Chapter III of this Report).

[262] With regard to the grounds for refusing a request to lift bank secrecy, the Committee notes that only the Code of Tax Rules and Procedures, Law N° 4755 of May 3, 1971, provides domestically for a period of five working days for the judge to approve or deny a request for information in accordance with the requirements set down in the Code and to issue a decision authorizing the Tax Administration to request the information directly from a financial institution. The Committee notes, however, that this is limited to

[397] Code of Tax Norms and Procedures, Law N° 4755 of May 3, 1971, Article 106 ter.

the domestic sphere and to tax information. The Committee further notes that there is no provision requiring the substantiation of the decision to grant or refuse the resolution.[398]

[263] In addition, the Committee notes that the country under review indicated in its response to the Questionnaire that the Republic of Costa Rica does not permit the denial of requests for assistance or information in this area.[399] All that is allowed is the requesting of additional information from the requesting State Party in cases in which there is a lack of the elements that would make it possible to effectively substantiate the request before a judge of the country under review.[400] In such cases, the country under review will request additional information from the requesting State so that it can effectively follow up on and comply with the request.

[264] However, the Committee notes the absence of rules expressly regulating such cases. For example, the Committee notes that there are no rules in the current legislation that set a specific time limit for informing the requesting State Party about the existence of shortcomings in its request for assistance or information. In view of this, the Committee will formulate a recommendation that the country under review consider adopting the appropriate norms or measures aimed at ensuring timely reporting when a request for assistance or information is refused due to a deficiency in the request, the other requesting State Party shall be given the opportunity to provide a response as soon as possible and to provide the additional information requested by the country under review, thus allowing the country under review to respond more effectively to the request and the requesting State Party to receive the assistance or information requested within a reasonable period of time, both for the country under review and for the Requesting State. (See recommendation 1.4.7 in Section 1.4 of Chapter III of this Report).

[265] Similarly, the Committee believes it would be advisable for the country under review to consider adopting the appropriate norms or measures to ensure that requests for assistance or information presented to the country under review are generally complied with within a reasonable period of time, thus ensuring that the requesting State Party receives the requested assistance or information in a timely manner, when the assistance or information requested relates to bank secrecy and has been requested for the purposes of a proceeding related to an act of corruption. (See recommendation 1.4.8 in Section 1.4 of Chapter III of this Report).

[266] The Committee also notes that there are also no rules in place to cover the refusal of a request for assistance or information from another requesting State Party on the grounds of such shortcomings as the obligation of the country under review to indicate the reason for the decision, the rule on which it is based, the information or elements missing from the request, and whether there is any recourse against the decision before an authority other than the one that adopted it. The Committee will formulate a recommendation in this regard. (See recommendation 1.4.9 in Section 1.4 of Chapter III of this Report).

[267] In addition, the Committee notes that in its response to the Questionnaire, the country under review indicated that there are no authorities in the Republic of Costa Rica responsible for ensuring compliance with the rules governing this matter. Given that the country under review does not have a control or oversight body to ensure that the competent authorities comply with the rules and measures governing the processing of requests for assistance or information from other States Parties, the Committee shall formulate a recommendation in this regard so that the country under review considers adopting the appropriate norms or measures aimed at determining the authorities competent to ensure compliance with the standards and/or measures related to the processing of requests for assistance or information from other

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[398] Ibid.
[399] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p. 10.
[400] Ibid., p. 9.

States Parties for the purpose of a proceeding related to acts of corruption, when it is related to bank secrecy. (See recommendation 1.4.10 in Section 1.4 of Chapter III of this Report).

[268] Similarly, the Committee will also formulate a recommendation to ensure that those authorities are also empowered to impose sanctions on public institutions and financial entities located in its territory that do not comply with the relevant provisions. (See recommendation 1.4.11 in Section 1.4 of Chapter III of this Report).

[269] In addition, the Committee notes that in order to comply with a request for assistance or information from a requesting State Party, the country under review needs cooperation among its financial institutions that hold the requested information, including the central authority responsible for receiving and processing such requests. Since multiple authorities are required to respond to requests for assistance or information, the Committee believes that the country under review could benefit from adopting coordination and communication mechanisms. Accordingly the Committee will formulate a recommendation to the country under review to adopt the appropriate measures to establish coordination mechanisms between the financial institutions located in the country under review that possess the requested information and the central authority responsible for receiving and processing requests for assistance or information from another State Party for the purpose of a proceeding related to acts of corruption when it is related to bank secrecy, providing, as soon as possible, efficient communication mechanisms such as the use of electronic means. (See recommendation 1.4.12 in Section 1.4 of Chapter III of this Report).

[270] In addition, with respect to the formalities, requirements, and procedures in place for the competent authorities of other States Parties to the Convention to request the information required to lift bank secrecy from financial institutions established in its territory and from the Office of the Public Ethics Prosecutor, the Committee considers that the State could benefit from publishing that information on the appropriate institutional web pages, including the contact details of those authorities. Accordingly, the Committee will formulate a recommendation to the country under review to adopt the appropriate measures to ensure that the standards containing the procedure for processing requests for assistance or information from other States Parties for the purpose of a proceeding involving acts of corruption, when this relates to bank secrecy, are published on the web page of the corresponding authority, in such a manner that they are easily accessible, as well as the competent authorities for such processing, as well as the competent authorities to ensure compliance with such standards once they are established. (See recommendation 1.4.13 in Section 1.4 of Chapter III of this Report).

1.3 Results of the legal framework and/or other measures

[271] In its Response to the Questionnaire, with respect to the number of requests for assistance received from other States Parties involving information covered by bank secrecy, the country under review reported that 73 had been received between 2015 and October 22, 2020.[401] With respect to the number of requests for assistance denied, the country under review indicated that it did not deny any requests for assistance during that same period.[402] The Committee notes, however, that those figures do not reflect the requests for assistance received on the basis of the Convention. The Committee will therefore formulate a recommendation for the country under review to prepare detailed, annually compiled statistical information, indicating the number of requests made to it by other States Parties that were either denied or accepted, in order for it to be able to assess the results of implementing the rules and/or measures regarding assistance relating to bank secrecy in proceedings involving acts of corruption. (See recommendation 1.4.14 in Section 1.4 of Chapter III of this Report).

[401] Ibid., p. 10.
[402] Ibid.

[272] As regards the number of requests for assistance involving information protected by bank secrecy sent to other States Parties, in its response the country under review indicated that 62 such requests were processed between 2015 and 2020.[403] No requests for assistance from other States Parties under bank secrecy were denied during this same period. The Committee notes, however, that the figures given refer to other conventions. Accordingly, prepare detailed, annually compiled statistical information, indicating the number of requests made to other States Parties that were either denied or accepted, in order for it to be able to assess the results of implementing the rules and/or measures regarding assistance relating to bank secrecy in proceedings involving acts of corruption (See recommendation 1.4.15 in Section 1.4 of Chapter III of this Report).

[273] Finally, with respect to the number of sanctions imposed on financial institutions for noncompliance with the rules related to the processing of bank secrecy assistance, the country under review report that no such sanctions were imposed.[404] In view of the fact that it does not have information that would allow it to make a comprehensive assessment of the penalties imposed on financial institutions and public authorities for noncompliance with the rules governing the processing of assistance requests, the Committee will formulate a recommendation for the country under review to prepare detailed, annually compiled statistical information on the number of penalties imposed on financial institutions and public authorities for noncompliance with the rules for processing assistance, in order to identify challenges and, as appropriate, take corrective measures. (See recommendation 1.4.16 in Section 1.4 of Chapter III of this Report).

Convention or Letter of Request	**2015**		**2016**		**2017**		**2018**		**2019**		**2020**	
	active	passive	active	passive	active	passive	active	passive	active	passive	active	passive
Nassau	7	7	7	5	1	14	13	6	8	1	9	6
Viena	-	3	-	3	-	4	-	1	-	-	1	2
Palermo	-	2	3	1	2	3	2	-	-	-	1	1
TALM	-	-	-	2	-	-	-	-	-	-	-	-
Letter of R.	1	3	1	2	2	4	1	-	-	-	-	1
UN C.	-	-	-	-	-	-	1	2	2	-	-	-
Total:	**8**	**15**	**11**	**13**	**5**	**25**	**17**	**9**	**10**	**1**	**11**	**10**

Source: OATRI. Oficio 798-OATRI-FGR-2020, Octobre 22, 2020

1.4 Conclusions and recommendations

[274] Based on the analysis of the implementation in the country under review of the provision of Article XVI of the Convention set out in the previous sections, the Committee offers the following conclusions and recommendations:

[275] **The Republic of Costa Rica has adopted certain measures relating to assistance involving bank secrecy as provided for in Article XVI of the Convention, in accordance with Chapter III, section 1.1, of this report.**

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[276] In light of the comments offered in sections 1.2 and 1.3 of Chapter III of this report, the Committee suggests that the Republic of Costa Rica consider the following recommendations:

1.4.1 Consider adopting the appropriate norms or measures aimed at ensuring that the Convention may be invoked as the principal basis for providing the requested information to the Requesting State, when such information has been requested for

[403] Ibid., p. 11.
[404] Ibid.

the purposes of a proceeding relating to an act of corruption and which relates to bank secrecy, even in cases where there is no bilateral treaty between the states, in accordance with the provisions of Article XVI of the Convention. (See paragraph 250 in Section 1.2 of Chapter III of this Report).

1.4.2 Consider adopting a consolidated law to ensure that assistance requested by another State Party cannot be refused on the grounds of bank secrecy when that assistance is requested for proceedings involving an act of corruption, in accordance with the provisions of Article XVI of the Convention. (See paragraph 251 in Section 1.2 of Chapter III of this Report).

1.4.3 Broaden relevant norms or measures to ensure that the Requesting State Party is obliged not to use information protected by bank secrecy received from a State Party on which a request for information is served for any purpose other than that for which it was requested, unless duly authorized by that State Party, in accordance with the provisions of Article XVI of the Convention. (See paragraph 254 in Section 1.2 of Chapter III of this Report)

1.4.4 Expand the relevant norms or measures aimed at defining the procedure by which its competent authorities may request information from financial entities located in its territory in an expeditious, efficient and effective manner, providing for requirements, deadlines and, as far as possible, the use of electronic means, when such information is related to bank secrecy and not only in tax matters, and has been requested by a State Party for the purposes of a proceeding related to an act of corruption. (See paragraph 260 in Section 1.2 of Chapter III of this Report).

1.4.5 Expand the relevant norms or measures aimed at defining the procedure by which all its competent authorities can transmit requests for assistance or information received from other States Parties, when such assistance is related to bank secrecy and not only in tax matters, and has been requested for the purposes of a proceeding relating to an act of corruption, providing for the requirements, deadlines and, as far as possible, the use of electronic means, to ensure that the requesting States Parties receive the information they require in an expeditious, efficient and effective manner. (See paragraph 261 in Section 1.2 of Chapter III of this Report).

1.4.6 Expand the relevant norms or measures that establish sanctions for those public authorities and financial entities that fail to comply with the provision of information or related deadlines, when a requesting State Party requests assistance in obtaining information and that said information has been requested for the purposes of a proceeding related to an act of corruption and is related to bank secrecy. (See paragraph 262 in Section 1.2 of Chapter III of this Report).

1.4.7 Adopt the relevant norms or measures aimed at ensuring that, when a request for assistance or information is denied due to a deficiency in the request, the other requesting State Party is informed within a specified period of time to give it the opportunity to respond as soon as possible and provide the additional information requested by the country under review, thus allowing the country under review to respond to the request more effectively and, for the requesting State Party, to receive the assistance or information requested within a reasonable period of time. (See paragraph 265 in Section 1.2 of Chapter III of this Report).

1.4.8 Adopt the relevant norms or measures designed to ensure that requests for assistance or information presented to the country under review are generally complied with within a reasonable period of time, thus ensuring that the requesting State Party receives the requested assistance or information in a timely manner, when said assistance or information relates to bank secrecy and has been requested for the purposes of a proceeding related to an act of corruption. (See paragraph 266 in section 1.2 of Chapter III of this Report).

1.4.9 Adopt the relevant norms or measures that provide, when a request for assistance or information from another requesting State Party is denied due to a deficiency, the obligation of the country under review to indicate the reason for the decision, the regulation on which it is based, the information or elements missing from the request, as well as whether there is any recourse against this decision before an authority other than the one that adopted it. (See paragraph 267 in Section 1.2 of Chapter III of this Report).

1.4.10 Adopt the appropriate norms or measures aimed at determining the competent authorities to ensure compliance with the norms and/or measures relating to the processing of requests for assistance or information from other States Parties for the purpose of a proceeding relating to acts of corruption, when this is related to bank secrecy. (See paragraph 268 in Section 1.2 of Chapter III of this Report).

1.4.11 Adopt the pertinent regulations or measures aimed at ensuring that said competent authorities are also empowered to impose sanctions on those public institutions and financial entities located in its territory that do not comply with the relevant regulations. (See paragraph 269 in Section 1.2 of Chapter III of this Report).

1.4.12 Adopt the appropriate measures to establish coordination mechanisms between the agencies of the financial institutions located in the country under review that possess the requested information and the Central Authority responsible for receiving and processing requests for assistance or information from another State Party for the purpose of a proceeding related to acts of corruption when it is related to bank secrecy, providing, as soon as possible, efficient communication mechanisms such as the use of electronic media. (See paragraph 270 in Section 1.2 of Chapter III of this Report).

1.4.13 Adopt the appropriate measures to ensure that the rules containing the procedure for processing requests for assistance or information from other States Parties for a proceeding related to acts of corruption, when this is related to bank secrecy, are published on the web page of the corresponding authority, in such a way that they are easily accessible, as well as the competent authorities for such processing, as well as the competent authorities to ensure compliance with such rules once they are established. (See paragraph 271 in Section 1.2 of Chapter III of this Report).

1.4.14 Prepare detailed, annually compiled statistical information, indicating the number of requests made to it by other States Parties that were either denied or accepted, in order for it to be able to assess the results of implementing the rules and/or measures regarding assistance relating to bank secrecy in proceedings involving acts of corruption. (See paragraph 272 in Section 1.3 of Chapter III of this Report).

1.4.15 Prepare detailed, annually compiled statistical information, indicating the number of requests made to other States Parties that were either denied or accepted, in order for it to be able to assess the results of implementing the rules and/or measures regarding assistance relating to bank secrecy in proceedings involving acts of corruption. (See paragraph 273 in Section 1.3 of Chapter III of this Report).

1.4.16 Prepare detailed, annually compiled statistical information on the number of sanctions imposed on financial institutions and public authorities for noncompliance with the rules for processing assistance, in order to identify challenges and, as appropriate, take corrective measures. (See paragraph 274 in Section 1.3 of Chapter III of this Report).

IV. BEST PRACTICES

[277] The country under review did not explicitly identify any best practices regarding implementation of the provisions of the Convention selected for the Third and Sixth Rounds.[405] Notwithstanding the foregoing, in Committee recognizes as a good practice the optional "Model for Organization, Crime Prevention, Management and Control", provided for in the Law on the Liability of Legal Entities for Domestic Bribery, Transnational Bribery and other Offenses, Law Nº 9699 of June 10, 2019.[406]

[405] Response to the Questionnaire of the Sixth Round (Republic of Costa Rica), p.11-12.
[406] Law on the Liability of Legal Entities for Domestic and Transnational Bribery and other Crimes, Law N° 9699 of June 10, 2019.

ANNEX

AGENDA OF THE ON-SITE VISIT TO THE REPUBLICA OF COSTA RICA

Thursday, March 25, 2021	
11:10 hrs. – 11:20 hrs. *(Time: Washington, D.C.)* 10:10 hrs. – 10:20 hrs. *(Time: Panama/Peru)* 09:10 hrs. – 09:20 hrs. (*Time: Costa Rica)*	**Coordination meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat**
11:20 hrs. – 11:30 hrs. *(Time: Washington, D.C.)* 10:20 hrs. – 10:30 hrs. *(Time: Panama/Peru)* 09:20 hrs. – 09:30 hrs. (*Time: Costa Rica)*	**Coordination meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat**

Monday, April 5, 2021	
11:00 hrs. – 13:30 hrs. *(Time: Washington, D.C.)* 10:00 hrs. – 12:30 hrs. *(Time: Panama/Peru)* 09:00 hrs. – 11:30 hrs. *(Time: Costa Rica)*	**Meetings with civil society organizations and/or, inter alia, private sector organizations, professional organizations, academics or researchers**

Follow-Up of the Recommendations of the Third Round and Topics of the Sixth Round	
11:00 hrs.– 13:00 hrs. *(Time: Washington, D.C.)* 10:00 hrs. – 12:00 hrs. *(Time: Panama/Peru)* 9:00 hrs. – 11:00 hrs. *(Time: Costa Rica)*	**Topics** ▪ *Denial or prevention of favourable tax treatment for expenditures made in violation of anticorruption laws (Article III, paragraph 7 of the Convention)* ▪ *Prevention of bribery of domestic and foreign government officials (Article III, paragraph 10 of the Convention)* ▪ *Illicit enrichment (Article IX of the Convention)* ▪ *Transnational bribery (Article VIII of the Convention)* ▪ *Extradition (Article XIII of the Convention)* ▪ *Bank secrecy (Article XVI of the Convention)* ***Participants*** *Bar Association of Costa Rica* ▪ Olman Ulate Calderón, Director ▪ Carlos Villegas Méndez, Director *Asociación Costa Rica Integra* ▪ Andrés Araya Montezuma, Executive Director
13:00 hrs. – 15:00 hrs. *(Time: Washington, D.C.)* 12:00 hrs. – 14:00 hrs. *(Time: Panama/Peru)* 11:00 hrs. – 13:00 hrs. *(Time: Costa Rica)*	**Break**
	Meetings with Government Authorities: Bank Secrecy (Topic of the Sixth Round)
15:00 hrs.– 17:30 hrs. *(Time: Washington, D.C.)*	**Panel 1** ▪ *Bank Secrecy (Article XVI of the Convention)*

14:00 hrs. – 16:30 hrs. *(Time: Panama/Peru)* 13:00 hrs. – 15:30 hrs. *(Time: Costa Rica)*	○ Legal framework ○ Competent authorities ○ Use of technology ○ Results ○ Challenges **<u>Participants</u>** *Costa Rican Institute on Drugs (Financial Intelligence Unit (ICD - UIF)* ▪ Román Chavarría Campos, Head of the Financial Intelligence Unit *National Financial System Oversight Council (CONASSIF)* ▪ Rodrigo Hidalgo Pacheco, Legal Advisor *Superintendency General of Financial Institutions (SUGEF)* ▪ Elisa Solís Chacón, Legal Director *Superintendency General of Securities (SUGEVAL)* ▪ María Lucía Fernández Garita, Superintendent ▪ Ileana Ramírez Loría, Attorney *Superintendency General of Insurance (SUGESE)* ▪ Tomás Soley Pérez, Superintendent ▪ Harlams Ocampo Chacón, Legal Coordinator *Central Bank of Costa Rica (BCR)* ▪ Manfred Sáenz Montero, Legal Director *National Bank of Costa Rica (BNCR)* ▪ Hilel Zomer Befeler, Specialist attorney *Ministry of Finance (Office of the Director General of Taxation and Office of the Director General of Finance) (MH)* ▪ Lindsay Redondo Campos, Office of the Director General of Customs ▪ Luis Javier González, Official in the Office of the Director General of Finance

	▪ Miguel Solís Sánchez, Official in the Office of the Director General of Taxation ▪ Natalie Artavia Chavarría, Head of the Advisory Unit on Internal Affairs *Office of the Prosecutor for Public Ethics (PEP)* ▪ Evelyn Hernández Kelly, Attorney *Office for Assistance and International Relations of the Public Prosecutors' Office (OATRI)* ▪ Henry Carmona Zúñiga, Assistant Public Prosecutor *Deputy Public Prosecutor's Office for Fraud Cases (FAF)* ▪ Sergio Castillo Quesada, Public Prosecutor ▪ Miguel Ramírez López, Deputy Public Prosecutor
17:30 hrs. – 17:45 hrs. *(Time: Washington, D.C.)* 16:30 hrs. – 16:45 hrs. *(Time: Panama/Peru)* 15:30 hrs. – 15:45 hrs. *(Time: Costa Rica)*	**Informal meeting** between the representatives of the member states of the subgroup and the Technical Secretariat
<u>Tuesday, April 6, 2021</u>	
11:00 hrs. – 13:30 hrs. *(Time: Washington, D.C.)* 10:00 hrs. – 12:30 hrs. *(Time: Panama/Peru)* 09:00 hrs. – 11:30 hrs. *(Time: Costa Rica)*	**Meetings with Government Authorities: Follow-up on the Recommendations of the Third Round**
11:00 hrs. – 13:30 hrs.	**<u>Panel 2</u>**

(Time: Washington, D.C.) 10:00 hrs. – 12:30 hrs *(Time: Panama/Peru)* 9:00 hrs. – 11:30 hrs. *(Time: Costa Rica)*	▪ *Denial or prevention of favourable tax treatment for expenditures made in violation of anticorruption laws (Article III, paragraph 7 of the Convention)* o Progress with implementing the recommendations formulated in the Third Round, difficulties, new developments, and results. **<u>Participants</u>** *Office of the Deputy Public Prosecutor for Probity, Transparency and Anticorruption (FAPTA)* ▪ Carlos Meléndez Sequeira, Deputy Public Prosecutor ▪ Diana Hernández Gamboa, Public Prosecutor ▪ Kathia Azofeifa Sánchez, Deputy Public Prosecutor *Office of the Deputy Public Prosecutor for Tax, Customs, and Intellectual Property Crimes* ▪ Eida Solís Loría, Tax Prosecutor *Ministry of Finance (Office of the Director General of Taxation and Office of the Director General of Finance) (MH)* ▪ Lindsay Redondo Campos, Office of the Director General of Customs ▪ Luis Javier González, Official in the Office of the Director General of Finance ▪ Miguel Solís Sánchez, Official in the Office of the Director General of Taxation ▪ Natalie Artavia Chavarría, Head of the Advisory Unit on Internal Affairs
13:30 hrs. – 13:45 hrs. *(Time: Washington, D.C.)* 12:30 hrs. – 12:45 hrs. *(Time: Panama/Peru)* 11:30 hrs. – 11:45 hrs.	**Informal meeting** between the representatives of the member states of the subgroup and the Technical Secretariat

(Time: Costa Rica)	
Wednesday, April 7, 2021	
11:00 hrs. – 13:30 hrs. *(Time: Washington, D.C.)* 10:00 hrs. – 12:30 hrs. *(Hora de Panamá/ Perú)* 09:00 hrs. – 11:30 hrs. *(Time: Costa Rica)*	**Meetings with Government Authorities: Follow-up on the Recommendations of the Third Round**
11:00 hrs. – 13:30 hrs. *(Time: Washington, D.C.)* 10:00 hrs. – 12:30 hrs. *(Time: Panama/Peru)* 09:00 hrs. – 11:30 hrs. *(Time: Costa Rica)*	**Panel 3** ▪ *Prevention of bribery of domestic and foreign government officials (Article III, paragraph 10 of the Convention)* ○ Progress with implementing the recommendations formulated in the Third Round, difficulties, new developments, and results. **Participantes** *Ministry of Finance (Office of the Director General of Taxation and Office of the Director General of Finance) (MH)* ▪ Lindsay Redondo Campos, Office of the Director General of Customs ▪ Luis Javier González, Official in the Office of the Director General of Finance ▪ Miguel Solís Sánchez, Official in the Office of the Director General of Taxation ▪ Natalie Artavia Chavarría, Head of the Advisory Unit on Internal Affairs *Office of the Prosecutor for Public Ethics (PEP)* ▪ Amy Román Bryan, Prosecuting Attorney, Criminal Matters ▪ Federico Quesada, Prosecuting Attorney, Criminal Matters *Association of Public Accountants of Costa Rica* ▪ Dayanni Picado Valverde, Head of the Technical Consultation Department

	▪ Guillermo Smith Ramírez, Public Prosecutor and Chairman of the Board ▪ Mauricio Artavia Mora, Director Ejecutivo *Office of the Deputy Public Prosecutor for Probity, Transparency and Anticorruption (FAPTA)* ▪ Carlos Meléndez Sequeira, Deputy Public Prosecutor ▪ Diana Hernández Gamboa, Prosecutor ▪ Alexander Valverde Peña, Prosecutor ▪ Milena Brenes Brenes, Prosecutor ▪ Randy Hernández Obregón, Assistant Public Prosecutor *Office of the Comptroller General of the Republic (CGR)* ▪ Rosa Fallas Ibañez, Associate Manager Legal Division ▪ Roberto Rodríguez, Associate Manager Legal Division ▪ Allan Ugalde, Manager, Administrative Procurement Division ▪ Karen Castro Montero, Auditor, Administrative Procurement Division ▪ Maritza Sanabria Masís, Head of the Corporate Governance Unit ▪ Daniel Sáenz Quesada, Area Manager, Operational and Evaluative Auditing Division *Ministry of Justice and Peace (MJP)* ▪ Diana Sofía Posada Solís, Vice Minister of Strategic Management ▪ Jeff Rodríguez Alvarado, Head of the Office of the Minister ▪ Denisse Martínez Arnuero, Assistant
13:30 hrs. – 13:45 hrs. *(Time: Washington, D.C.)* 12:30 hrs. – 12:45 hrs.	**Informal meeting** between the representatives of the member states of the subgroup and the Technical Secretariat

(Time: Panama/Peru) 11:30 hrs. – 11:45 hrs. (*Time: Costa Rica)*	
Jueves, 8 de abril de 2020	
11:00 hrs. – 13:30 hrs *(Time: Washington, D.C.)* 10:00 hrs. – 12:30 hrs *(Time: Panama/Peru)* 09:00 hrs. – 11:30 hrs. *(Time: Costa Rica)*	**Meetings with Government Authorities: Follow-up on the Recommendations of the Third Round**
11:00 hrs. – 13:30 hrs. *(Time: Washington, D.C.)* 10:00 hrs. – 12:30 hrs. *(Time: Panama/Peru)* 09:00 hrs. – 11:30 hrs. *(Time: Costa Rica)*	**Panel 4** ▪ *Illicit enrichment (Article IX of the Convention)* ▪ *Transnational bribery (Article VIII of the Convention)* ▪ *Extradition (Article XIII of the Convention)* o Progress with implementing the recommendations formulated in the Third Round, difficulties, new developments, and results. **Participants** *Office of the Procurator General of the Republic (PGR)* ▪ José Enrique Castro Marín, Prosecuting Attorney, Criminal Matters (*Procurador Penal*) *Office of the Prosecutor for Public Ethics (PEP)* ▪ Amy Román Bryan, Prosecuting Attorney, Criminal Matters ▪ Federico Quesada, Prosecuting Attorney, Criminal Matters *Office of the Deputy Public Prosecutor for Probity, Transparency and Anticorruption (FAPTA)* ▪ Carlos Meléndez Sequeira, Deputy Public Prosecutor ▪ Glen Calvo Céspedes, Deputy Public Prosecutor ▪ Diana Hernández Gamboa, Public Prosecutor

	▪ Andreina Núñez Sancho, Deputy Public Prosecutor ▪ Natalia Bolívar Chaves, Deputy Public Prosecutor ▪ Kathia Azofeifa Sánchez, Deputy Public Prosecutor *Supreme Court of Justice (CSJ)* ▪ Kennia Alvarado Villalobos ▪ Catalina Blanco Sánchez, Attorney *Office for Assistance and International Relations of the Public Prosecutors' Office (OATRI)* ▪ Elías Carranza Maxera, Public Prosecutor *Office of the Comptroller General of the Republic (CGR)* ▪ Rosa Fallas Ibañez, Associate Manager, Legal Division ▪ Roberto Rodríguez, Associate Manager, Legal Division ▪ Allan Ugalde, Manager, Administrative Procurement Division ▪ Karen Castro Montero, Auditor, Administrative Procurement Division ▪ Maritza Sanabria Masís, Head of the Corporate Governance Unit ▪ Daniel Sáenz Quesada, Area Manager, Operational and Evaluative Auditing Division *Ministry of Justice and Peace (MJP)* ▪ Diana Sofía Posada Solís, Vice Minister of Strategic Management ▪ Jeff Rodríguez Alvarado, Head of the Office of the Minister ▪ Denisse Martínez Arnuero, Advisor
13:30 hrs. – 13:45 hrs. *(Time: Washington, D.C.)* 12:30 hrs. – 12:45 hrs. *(Time: Panama/Peru)*	**Informal meeting** between the representatives of the member states of the subgroup and the Technical Secretariat

11:30 hrs. – 11:45 hrs. (*Time: Costa Rica)*	
13:45 hrs. – 14:00 hrs. *(Time: Washington, D.C.)* 12:45 hrs. – 13:00 hrs. *(Time: Panama/Peru)* 11:45 hrs. – 12:00 hrs. *(Time: Costa Rica)*	**Final meeting between the representatives of the country under review, member states of the Subgroup and the Technical Secretariat**

CONTACT AUTHORITY FROM THE COUNTRY UNDER REVIEW FOR COORDINATION OF THE ON-SITE VISIT, AND REPRESENTATIVES OF THE MEMBER STATES OF THE PRELIMINARY REVIEW SUBGROUP AND THE TECHNICAL SECRETARIAT OF THE MESICIC

COUNTRY UNDER REVIEW:

REPUBLIC OF COSTA RICA

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Prosecuting Attorney
Prosecutors Office for Public Ethics (PEP)

Lissy Dorado Vargas
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