



MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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REPUBLIC OF PANAMA

FINAL REPORT

(Adopted at the March 17, 2017 plenary session)

SUMMARY

This Report contains a comprehensive review of the implementation of the Recommendations that were formulated to the Republic of Panama in the report of the Second Round with respect to paragraphs 5 and 8 of Article III of the Inter-American Convention against Corruption, which refer, respectively, to systems of government hiring and procurement of goods and services and for the protection of public servants and private citizens who, in good faith, report acts of corruption. Reference is also made, when appropriate, to new developments with respect to the implementation of these provisions.

In addition, the Report includes a comprehensive review of the implementation in the Republic of Panama of paragraphs 3 and 12 of Article III of the Convention, which refer, respectively, to measures intended to create, maintain and strengthen instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities; and a study of further preventive measures that take into account the relationship between equitable compensation and probity in public service. These provisions were selected by the MESICIC Committee of Experts for the Fifth Round.

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

The review was carried out mainly taking into account the Republic of Panama's Response to the Questionnaire and information gathered during the on-site visit conducted between October 18 – 20, 2016, by representatives of Canada and Colombia, with the support of the Technical Secretariat. During that visit, the information furnished by Panama was clarified and supplemented with the opinions of civil society organizations.

With regard to the follow-up on the recommendations formulated to the Republic of Panama in the Second Round and with respect to which the Committee, in the Third Round report, found required additional attention, based on the methodology for the Fifth Round and bearing in mind the information provided by the Republic of Panama in its Response to the questionnaire and during the on-site visit, a determination was made as to which of those recommendations had been satisfactorily implemented, which required additional attention, which required reformulation and which were no longer valid.

With respect to systems of government hiring, it is pertinent to highlight the following: the presentation of a draft law to modernize the system of government hiring, suggesting the creation of an Administrative Tribunal for the Public Career, the preparation and updating of Post Classification Manuals and the implementation of performance evaluations. Also, new legislation regarding the structure of the Judicial Career, which sets out procedures for the selection and appointment of personnel.

With respect to the government system of for the procurement of goods and services, the proposal of a Draft Law which suggests the improvement of the efficiency and levels of transparency in public procurement for goods and services in the country under review.

Some of the recommendations formulated in the Second Round that remain valid or have been reformulated address issues such as the establishment of provisions that specifically require the publication of Post Classification Manuals so that they can be consulted by any person, taking steps to adapt or amend the entities excluded from the application of Law no. 22 of 2006, in order to prevent the fragmentation of the general procurement system and to ensure harmony in the management of various procurement regimes, and continue strengthening the PanamaCompra electronic public procurement system in order to ensure the transparency, openness, equity and efficiency that the Convention requires in systems for the procurement of goods and services by the country.

In addition, regarding the new developments in the Republic of Panama with respect to the implementation of the provisions of the Convention selected for the Second Round, the Committee formulated recommendations, such as consider adopting guidelines based on objective criteria to be used by the nominating authority in selecting a candidate from the list submitted by the General Directorate of the Administrative Career and to consider adopting legal provisions requiring that, in appointing personnel in the public administrative career, the nominating authority makes its selection by taking into account the order of the scores obtained by the candidates.

For the review of the first provisions selected for the Fifth Round that refer to instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, as set out under Article III, paragraph 3 of the Convention, the Republic of Panama selected the personnel of the Comptroller's General Office (CGR), the Public Procurement General Directorate (DGCP) and the General Directorate for the Administrative Career (DIGECA), as the country under review considers them as principal groups that merit review, due to them being a majority or based on the importance of their functions.

This review was focused on determining, with respect to the selected personnel, if the country under review has adopted provisions and/or measures which ensure the proper understanding of their responsibilities and the ethical rules governing their activities; the manner or occasions in which personnel are provided instructions; the programs in place for them; the bodies responsible for them; as well as the objective results obtained on the implementation of said provisions and/ or measures, taking into account any difficulties and/or weaknesses to achieve the purpose of this provision of the Convention. At the same time, it took note of any difficulties and/or shortcomings in accomplishing the objectives of that provision of the Convention.

Some of the recommendations formulated to the Republic of Panama, for its consideration, with respect to this topic, are as follows:

With respect to the CGR, publish on the CGR Website and any other media considered appropriate, information about training and instruction efforts and programs being pursued by the CGR in order to provide greater dissemination and publicity for the implementation and results of these activities. Also, adopt the necessary measures to guarantee that CGR's Code of Conduct contain detailed and specific actions in which employees are not to engage in, or risks of corruption inherent in the performance of their duties, as well as the consequences and penalties for becoming involved in corruption.

With respect to DGCP, adopt mechanisms to make training compulsory to its personnel to ensure proper understanding of ethical rules governing their activities when they begin performing them, when a change in their functions entails a different set of applicable ethical rules; or when changes are made to those rules. Also, provide DGCP with the necessary budgetary, technological, and human resources, within available resources, to carry out a training program that ensures that its personnel properly understand the ethical rules that govern their activities.

With respect to DIGECA, update the Induction Program Manual on a regular basis, addressing changing laws, regulations and new ethical issues in order to guarantee that the information continues to be important and relevant. Also, adopt the necessary measures to guarantee that training provided to public servants in the administrative career contains detailed and specific actions in which employees are not to engage in, or risks of corruption inherent in the performance of their duties, as well as the consequences and penalties for becoming involved in corruption.

In accordance with the aforementioned methodology, the review of the second provision selected for the Fifth Round, as set out under Article III, paragraph 12 of the Convention, which refers to the study of preventive measures that take into account the relationship between equitable compensation and probity in the public service, and if objective and transparent criteria has been established for determining the compensation of public servants, the Republic Panama has been recommended to consider establishing the necessary legal provisions to adopt a remuneration policy law that sets out objective and transparent criteria for equitable compensation for the entire public sector.

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

**FINAL REPORT ON FOLLOW-UP ON IMPLEMENTATION IN THE REPUBLIC OF
PANAMA OF THE RECOMMENDATIONS FORMULATED AND PROVISIONS
REVIEWED IN THE SECOND ROUND, AND ON THE PROVISIONS OF THE
CONVENTION SELECTED FOR REVIEW IN THE FIFTH ROUND**¹

INTRODUCTION

1. Content of the Report

[1] As agreed upon by the Committee of Experts (hereinafter “the Committee”) of the Follow-Up Mechanism for Implementation of the Inter-American Convention against Corruption (“MESICIC”) at its Twenty-fourth Meeting,² this report will first refer to follow up on implementation of the recommendations formulated to the Republic of Panama in the report from the Second Round,³ and which were deemed by the Committee to require additional attention in the report from the Third Round.⁴

[2] Second, where applicable, it will refer to new developments in the Republic of Panama with regard to the provisions of the Inter-American Convention against Corruption (hereinafter “the Convention”) selected for the Second 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 provisions of the Convention selected by the Committee for the Fifth Round. Those provisions are contained in paragraphs 3 and 12 of Article III regarding, respectively, measures to establish, maintain, and strengthen “*instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities*”, and “*the study of preventive measures that take into account the relationship between equitable compensation and probity in public service.*”

[4] Fourth, it will refer to the best practices, where applicable, that the Republic of Panama has wished to voluntarily share regarding implementation of the provisions of the Convention selected for the Second and Fifth Rounds.

2. Ratification of the Convention and adherence to the Mechanism

[5] According to the official records of the OAS General Secretariat, the Republic of Panama ratified the Inter-American Convention against Corruption on July 20, 1998 and deposited its instrument of ratification on August 10, 1998.

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 March 17, 2017, at its Twenty-Eighth meeting, held at OAS Headquarters, March 13 – 17, 2017.

² See the Minutes of the 24th Meeting of the Committee, available at: http://www.oas.org/juridico/docs/XXIV_min.doc

³ Available at: http://www.oas.org/juridico/english/mesicic_II_inf_pan_en.pdf

⁴ Available at: http://www.oas.org/juridico/english/mesicic_III_rep_pan.pdfj

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

I. SUMMARY OF INFORMATION RECEIVED

1. Response of the Republic of Panama

[7] The Committee wishes to acknowledge the cooperation that it received, throughout the review process, from the Republic of Panama and in particular from the National Transparency and Access to Information Authority (ANTAI), which was evidenced, inter alia, in its reply to the Questionnaire, in the constant willingness to clarify or complete its contents, and in the support for the execution of the *on-site* visit referred to below. Together with its Response, the Republic of Panama sent the provisions and documents it considered pertinent.⁵

[8] The Committee also notes that the Republic of Panama gave its consent for the *on-site visit*, in accordance with provision 5 of the *Methodology for Conducting On-site Visits*.⁶ That visit was conducted from October 18 to 20, 2016, by representatives of Canada and Colombia, in their capacity as members of the review subgroup, 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 the Republic of Panama up to October 20, 2016, as well as that furnished and requested by the Technical Secretariat and the members of the review subgroup, to carry out their functions in keeping with the *Rules of Procedure and Other Provisions*;⁷ the *Methodology for follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round and for the review of the provisions of the Convention selected for the Fifth Round*;⁸ and the *Methodology for Conducting On-site visits*.

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

[10] The Committee also received, within the time limit set in the Schedule for the Fifth Round, a document from the civil society organization *Fundacion para el Desarrollo de la Libertad Ciudadana*, which was presented by that organization in accordance with Article 34(b) of the Committee's Rules.⁹

[11] Moreover, on the occasion of the on-site visit to the country under review from October 18 – 20, 2016, information was also gathered from other civil society 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 has been annexed to this report. Pertinent parts of this information are reflected in the appropriate sections of this report.

II. FOLLOW UP ON IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE SECOND ROUND AND NEW DEVELOPMENTS WITH

⁵ Available at: http://www.oas.org/juridico/spanish/mesicic5_pan.htm

⁶ Available at: http://www.oas.org/juridico/english/met_onsite.pdf

⁷ Available at: http://www.oas.org/juridico/PDFs/mesicic4_rules_en.pdf

⁸ Available at: http://www.oas.org/juridico/PDFs/mesicic5_metodologia_en.pdf

⁹ Available at: http://www.oas.org/juridico/spanish/mesicic5_pan.htm

REGARD TO THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THAT ROUND

[12] First, the Committee will refer to progress made and new information and developments in the Republic of Panama with respect to the recommendations formulated and measures for their implementation suggested by the Committee in its report from the Second Round,¹⁰ which the Committee deemed required additional attention in the Third Round Report,¹¹ and it will proceed to take note of those that have been satisfactorily considered and of those that need further attention, in which case it will refer to the ongoing relevance of those recommendations and measures and to their restatement or reformulation, pursuant to Section V of the *Methodology* adopted by the Committee for the Fifth Round.

[13] In this section, the Committee will, where applicable, take note of any difficulties indicated by the country under review with implementing the recommendations and measures alluded to in the foregoing paragraph and of any technical cooperation requested by the State in that connection.

[14] Second, where applicable, it will refer to new developments in the Republic of Panama in respect of the provisions of the Convention selected for the Second Round regarding such matters as the legal framework, technological developments and results, and will formulate any observations and recommendations that may be applicable.

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

1.1. SYSTEMS OF GOVERNMENT HIRING

1.1.1. Follow-Up to the Implementation of the Recommendations Formulated in the Second Round

Recommendation 1.1.1:

Establish, maintain and strengthen the systems of government hiring of public servants, when applicable, that assure the openness, equity and efficiency of such systems.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Amend the Regulations of the Administrative Career Law to eliminate the possibility of equating years of experience in the post with years of study in the administrative career special admission process.

[15] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered:

[16] Enactment of Executive Decree No. 44 of April 11, 2008,¹² repealing Article 25 of Executive Decree No. 222 of September 12, 1997, which allowed for the possibility of equating years of experience

¹⁰ Available at: http://www.oas.org/juridico/english/mesicic_II_inf_pan_en.pdf

¹¹ Available at: http://www.oas.org/juridico/english/mesicic_III_rep_pan.pdf

¹² Available at: http://www.oas.org/juridico/english/mesicic_II_inf_pan_en.pdf

in the post with years of study in the administrative career special admission process. This Article served as the basis for the measure in question in the Second Round.¹³ In this regard, Article 34 of Executive Decree No. 44 of April 11, 2008 provides:¹⁴

[17] “Art. 34. *This Executive Decree modifies articles 2, 4, 5, 11, 15, 23, 24, 26, 34, 35, 36, 39, 42, 44, 53, 54, 55, 56, 57, 59, 61, 63, 64, 133, 135, 136 y 192; adds articles 4-A, 12-A, 19-A, 24-A, 36-A, 160-A and repeals articles 25 and 137 in Executive Decree 222 from September 12, 1997*”.

[18] Given the foregoing, the Committee takes note of the satisfactory consideration by the country under review of measure a), bearing in mind that the possibility to equate years of experience in the post with years of study found in Article 25 has been repealed by Article 34 of the Executive Decree No. 44 of April 11, 2008.

[19] In addition, the country under review highlighted in its Response to the questionnaire and also during the on-site visit, a Draft Law for the Administrative Career (Draft Law 230/2015)¹⁵ which was presented to the National Assembly on August 12, 2015, which adopts measures for the modernization of the human resources system of the country, such as requiring public servants to fulfill minimum requisites of education and experience within the Post Classification Manuals of each institution.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Establish provisions requiring the publication of the Post Classification Manual so it can be consulted by any person.

[20] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:¹⁶

[21] “*In response to this provision, the General Directorate of the Administrative Career has posted on its website digital copies of the Post Classification Manual approved for different institutions, so that they can be consulted by any user or citizen, in keeping with the Government's open information policy.*”

[22] During the on-site visit, the General Directorate of the Administrative Career (DIGECA) noted that thirty three percent (33%) of the forty-seven institutions within the public service administrative career have currently updated their Post Classification Manuals with rules and regulations on minimum requisites of education and experience required from public servants.

[23] In addition, the Representatives from DIGECA informed the Committee that even though the Post Classification Manuals should be reviewed and updated every 2 (two) years, most of the Manuals have not been updated for the last 7 (seven) years.

¹³ *Ibid.* pg 23. Article 25: In those cases of public servants who do not meet the requirements established in the previous article, their education will be equated with years of experience in the job as follows:...

¹⁴ Available at: http://www.oas.org/juridico/PDFs/mesicic5_pan_res_ane_con_fun_4.pdf

¹⁵ Available at: http://www.asamblea.gob.pa/provey/2015_P_230.pdf

¹⁶ See Response by Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 30. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

[24] The Committee further notes that even though the Post Classification Manuals are made easily accessible to the general public on the website indicated by the country under review¹⁷, according to DIGECA only around 15 institutions have updated their manuals.

[25] In addition, the Committee notes that in the Response to the Questionnaire, the country under review informs that Article 34 of Draft Law 230/2015 requires all institutions to update and to draft, if necessary, their Post Classification Manuals:¹⁸

[26] *“Article 34. Post Classification Manual. All central government entities, as well as autonomous and semiautonomous entities, shall draft and update their respective post classification manuals by September 1, 2016.”*

[27] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure b) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that that even though the Post Classification Manuals are public, accessible and can be found on the DIGECA website, there are no established provisions in the country under review that specifically require their publication so that they can be consulted by any person. (see Recommendation 1.1.3.1 of Section 1.1.3 of Chapter II of this Report)

[28] Moreover, the Committee notes that the Post Classification Manuals for the 47 institutions within public service administrative career institutions should be prepared, if not in place, as well as updated and revised. The Committee will therefore formulate a Recommendation in this regard. (see Recommendation 1.1.3.2 of Section 1.1.3 of Chapter II of this Report)

Measure c) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Require the nominating authority, in selecting a particular candidate, to leave a written record explaining its decisions in regular procedures for admission to the administrative career, so that selection procedures can be challenged.

[29] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered.¹⁹

[30] *“In this connection, Executive Decree 222 of 1997, which contains the implementing regulations for Law 9 of 1994 (Administrative Career Law), sets out the mechanism that the nominating authority must use for selection processes.”*

[31] *“Article 71. The Nominating Authority shall, at its discretion, select one of the candidates on the shortlist to fill the vacancy and shall notify the General Directorate of the Administrative Career of the name of the candidate selected. The chosen candidate must be available to take up the post immediately. If they are not ready for their appointment, one of the other candidates on the shortlist shall be chosen.”*

[32] *Furthermore, the Technical Rules of Procedure on Recruitment and Selection, adopted by the Administrative Career Technical Board by Resolution No. 2-2008 of April 30, 2008, published in Online*

¹⁷ Available at: <http://www.digeca.gob.pa/Manuales-de-las-Clases-Ocupacionales-por-Institucion>

¹⁸ *Ibid.*

¹⁹ See Response by Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 33. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

Official Gazette No. 26063 of June 2008, provide at Article 83 that the Nominating Authority shall have the power to exercise discretion in selecting a candidate from the shortlist. It also provides that it shall state the reasons for its choice.”

[33] *“Article 83. Selection of a New Public Servant.*

The Nominating Authority shall, at its discretion, select one of the candidates on the shortlist to fill the vacancy and shall state the reason or reasons for its choice. The nominating authority shall formally notify the General Directorate of the Administrative Career (DIGECA) of the name of the selected candidate and the reasons for their selection.”

[34] With respect to the aforementioned measure, the Committee notes that although Executive Decree No.44 of April 11, 2008²⁰ does not modify article 71 of Executive Decree no 222²¹ of 1997, a new provision was added to the most recent Regulation for the Administrative Career (Decree 44/2008) which establishes that the nominating authority has the discretion to select a candidate from the approved list, and shall also provide a written explanation about the criteria used for the selection of a candidate.²²

[35] Given the foregoing, the Committee takes note of the satisfactory consideration by the country under review of measure c).

[36] However, the Committee notes that although the nominating authority, is legally obligated to leave a written record explaining his criteria in selecting a candidate for admission to the administrative career from an approved list, there are no guidelines establishing what criteria is utilized within the selection process of a certain candidate. The Committee observes that this selection and written explanation should be based on objective criteria, such as work experience and educational background, for example. The Committee will therefore formulate a Recommendation in this regard. (see Recommendation 1.1.3.3 of Section 1.1.3 of Chapter II of this Report)

[37] In addition, during the on-site visit, the representatives from DIGECA highlighted that the nominating authority still has the power to select, at its discretion, an approved candidate within a candidate list, and therefore there is no legal obligation to respect, exclusively, the classification order of the candidates. The Committee will formulate a Recommendation in this regard, bearing in mind that in appointing personnel, the nominating authority should consider making their selection by taking into account the order of the scores obtained by the candidates. (see Recommendation 1.1.3.4 of Section 1.1.3 of Chapter II of this Report)

[38] The Committee also observes that even though there have been advances regarding the criteria selection of the approved candidates, the core issues regarding admission of public servants through regular admission procedures have yet to be addressed. In that sense, since the enactment of Law 43/2009²³, which made substantial changes to the law that created and governs the administrative career, the general rule has been special admission for public servants.

[39] Law 43/2009²⁴ eliminated the category of the acting public servant and established the regular admission procedure as the only mechanism for admission to the administrative career. It also

²⁰ Available at: http://www.oas.org/juridico/PDFs/mesicic5_pan_res_ane_con_fun_9.pdf

²¹ Available at: http://www.oas.org/juridico/spanish/mesicic2_pan_anexo_2_sp.pdf

²² Available at: http://www.oas.org/juridico/PDFs/mesicic5_pan_res_ane_con_fun_4.pdf

²³ Available at: http://www.oas.org/juridico/PDFs/mesicic5_pan_res_ane_con_fun_9.pdf

²⁴ *Ibid.*

established that July 31, 2012 was the deadline up to which the administration could still appoint a public servant through special admission procedure.

[40] Law 43/2009 also revoked the nomination of members to the Administrative Career Technical Board, which is the Board legally responsible for approving or rejecting technical regulations presented by DIGECA, such as approving procedures for the elaboration of public competitions.

[41] Following its enactment, unconstitutionality suits against Law 43 of 2009 became the order of the day until the Supreme Court of Justice issued a ruling in December 2015 finding that Articles 8, 12, 13, 16, 17, 18, 21, 22, 27, and 30 of that law were unconstitutional.

[42] In that sense, during the period when the claims of unconstitutionality were being decided by the Supreme Court, and also after the Court's decision in December 2015, no regular admission procedure for public servants has been established in the country under review.

[43] One of the reasons for this is that the Administrative Career Technical Board, responsible for approving the procedures for public competitions, was dissolved with Law 43/2009.

[44] Another reason the representatives of DIGECA noted is that it is more prudent to wait for the enactment of the Draft Law, which has more specific rules related to the ordinary admission of the public servant into the administrative career.

[45] During the on-site visit, the country under review stated that the current situation of the nominations for the Technical Board is that internal consultations are being made in order to decide in which manner these nominations should be carried out.

[46] Also, during the on-site visit, DIGECA presented information²⁵ which highlights that out of a total number of 78,034 public servants subject to the administrative career, 70,550 are acting public servants who do not hold the status of an administrative career public servant.

[47] The Committee notes, once again, that the general rule since the enactment of Law 43/2009 has been special admission for public servants with no established hiring procedures, according to representatives of DIGECA. In this regard, and since article 22 in Law 43/2009 was declared unconstitutional²⁶ and is no longer a legal impediment to nominate representatives for the Administrative Career Technical Board, nomination of members of said Board should be resumed. The Committee will therefore formulate a Recommendation in this regard. (see Recommendation 1.1.3.5 of Section 1.1.3 of Chapter II of this Report)

[48] The Committee also notes that the civil society organization *Fundación para el Desarrollo de la Libertad Ciudadana*, in its Response to the questionnaire²⁷ and during the on-site visit, highlighted that public competitions were suspended by Law 43/2009 until July 2012. The government has yet to reactivate the competitions, but apparently this all depends on the reestablishment of the Administrative Career Technical Board and the enactment of Draft Law 230/2015, which does not seem to be a priority at this moment for the government. In addition, it declares that the former Technical Board was constituted of members underqualified for the position, who were not attorneys, and did not have sufficient knowledge in public administration matters.

²⁵ See presentation DIGECA, slide 9. Available at: <http://www.oas.org/juridico/english/pan.htm>

²⁶ Available at: http://www.oas.org/juridico/PDFs/mesicic5_pan_res_ane_con_fun_5.pdf. pg. 80

²⁷ Available at: http://www.oas.org/juridico/spanish/mesicic5_pan.htm. pg 10

Measure d) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Develop rules to guarantee the broad dissemination of public announcements for all vacancies.

[49] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:²⁸

[50] *“The Technical Rules of Procedure on Recruitment and Selection, adopted by Resolution No. 2-2008 of April 30, 2008, are specific on the subject of public vacancy announcements.²⁹ Those rules procedure, particularly paragraph 3 of Article 50 thereof, underscore the need for a public vacancy announcement to participate in entrance competitions.”*

[51] *Article 50. Order of Precedence for Vacancy Announcements to Participate in Entrance Competitions.*

“The General Directorate of the Administrative Career (DIGECA) shall issue vacancy announcements for competitions for admission to the administrative career according to the following order of precedence:

2. Public vacancy announcement by means of advertisements in the local press and contacts with employment agencies, universities, and other sources.”

[52] *“In addition, Draft Law 230 of 2015 “Adopting Measures for the Modernization of the State's Human Resources System,” includes an amendment to Article 26 of Law 9 of 1994 aimed at setting out how public announcements for regular admission to the administrative career should be issued.”*

[53] With reference to Resolution 2-2008³⁰ mentioned in the questionnaire, the Committee notes that even though it states that vacancy announcements need to be published in local media, job agencies, universities and others, there are no mandatory provisions that require for the publication and dissemination of vacancies to the public at large.

[54] According to the Response to the questionnaire³¹, there are numerous rules regarding this matter within the country under review, causing the procedures to be unclear and not uniform. As a result, each institution has the discretion to publish its vacancies as it desires.

[55] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure d) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that the country under review should consider adopting provisions needed for the publication and broad dissemination of vacancies within the Public administrative career. (see Recommendation 1.1.3.6 of Section 1.1.3 of Chapter II of this Report)

²⁸ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review pg. 38 http://www.oas.org/juridico/spanish/mesicic5_pan.htm.

²⁹ Available at: <http://www.digeca.gob.pa/tmp/file/1175/RES2-2008.pdf>

³⁰ *Ibid.*

³¹ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 36 http://www.oas.org/juridico/spanish/mesicic5_pan.htm

[56] Additionally, during the on site visit, representatives from DIGECA emphasized that the legal framework in place does not contain provisions that set out the manner in which vacancy announcements in the public administrative career are to be carried out, such as providing minimum periods for advertising notices, as well as minimum periods during which registration can be accepted from applicants. Therefore, each institution may announce their vacancies for periods established at their own discretion. The Committee will therefore formulate a Recommendation in this regard. (see Recommendation 1.1.3.7 of Section 1.1.3 of Chapter II of this Report)

[57] The Committee also deems important for the country under review, in order to move forward with efforts to strengthen the suggested provisions, to consider publishing vacancy announcements in the Administrative Career by means of a universal open system for the announcement of employment vacancies in the public sector, such as an electronic system for the uniform publication and general dissemination of such vacancies. The Committee will therefore formulate a Recommendation in this regard. (see Recommendation 1.1.3.8 of Section 1.1.3 of Chapter II of this Report)

[58] The Committee further notes that during the on-site visit, Civil society organization *Fundación para el Desarrollo de la Libertad Ciudadana* informed, in its Response to the questionnaire³² and during the on-site visit, that Draft Law 230/2015 does not place enough importance on the broad dissemination of vacancies within the administrative career, and stressed the importance of reviewing the draft law in order to include these requirements.

Measure e) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Extend the ban on holding public positions to persons related by up to the third degree by blood and second by marriage with the immediate superior of the vacant post.

[59] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:³³

[60] *In that regard, the Consolidated Text of Law 9 of 1994³⁴ enshrines the ban in Article 44 and includes it in the Internal Model Regulations:*

[61] *“Article 44. No family relation of the nominating authority up to the third degree of consanguinity or the second degree of affinity may apply for a public post within the same institution.”*

[62] *“The most recent step taken to ratify that ban was to spell it out in the candidate requirements for administrative career competitions contained in the Technical Rules of Procedure on Promotion and Admissions, adopted by the Administrative Career Technical Board in Resolution No. 2-2008 of April 30, 2008,³⁵ and published in Online Official Gazette No. 26063 of June 2008. Specifically, the fifth paragraph of Article 9 refers to that measure in the following terms:*

³² See Response by Civil Society to the Questionnaire for the Fifth Round of Review, pg. 11 http://www.oas.org/juridico/spanish/pan_res81.pdf

³³ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 38 http://www.oas.org/juridico/spanish/mesicic5_pan.htm

³⁴ http://www.oas.org/juridico/spanish/pan_res81.pdf

³⁵ Available at : <http://www.digeca.gob.pa/tmp/file/1175/RES2-2008.pdf>

Article 9. Requirements for Candidates. The requirements for candidates applying for a post in the administrative career are as follows:

5. Not to be related, up to the third degree of consanguinity or the second of affinity, to the nominating authority.”

[63] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure e) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that although the provisions mentioned by the Republic of Panama forbid the holding of public positions by persons related to the nominating authority of the relevant institution by up to the third degree by blood and second degree by marriage, they do not impose a ban on candidates related to the immediate superiors of vacant positions, who are responsible for interviewing candidates and for forwarding appointment recommendations to the nominating authority. (see Recommendation 1.1.3.9 of Section 1.1.3 of Chapter II of this Report)

[64] Moreover, the Committee notes that during the on-site visit, representatives from DIGECA declared that there is no mechanism to detect cases of nepotism³⁶ within the public administrative career. DIGECA representatives indicated that during the hiring procedure, the rule is to verbally ask a nominee if he or she is related by up to the third degree by blood and second by marriage with the nominating authority of the vacant post. There is no need for the candidate to provide a sworn declaration regarding this information.

[65] Therefore, the Committee observes that in order for the country under review to implement the suggested measure it is important that it consider developing and adopting mechanisms to ensure its compliance with said measure. The Committee will therefore formulate a Recommendation in this regard. (See Recommendation 1.1.3.10 of Section 1.1.3 of Chapter II of this Report).

Measure f) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Specifically establish in the legislation that appointments made in violation of law shall be null and void.

[66] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:³⁷

[67] According to DICEGA, Art. 152 in Law 9/94 (Public Service Administrative Career Law), states that appointments made in violation of the provision that prohibits nepotism shall be considered null and void.

[68] *Article 152. Without prejudice to the provisions contained in the preceding article, the following conduct allows direct dismissal:*

³⁶ Art. 2 Law 9/94. *Nepotism: It is the administrative fault that incurs the nominating authority who benefits from appointments in public positions to his spouse, consensual union partner or other relatives within the third degree of consanguinity and second of affinity. A public servant also incurs in nepotism when, without timely notification to his immediate superior, performs a public function in the same administrative unit or units of such relative and where they maintain between each other supervision and control relations.*

³⁷ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 41 http://www.oas.org/juridico/spanish/mesicic5_pan.htm

9. *To commit nepotism.*

[69] In addition, the country under review stated in its Response to the questionnaire³⁸ that it had not identified within its legislation specific dispositions which refer to the annulment of appointments made in violation of law when hiring for the public administrative career. Moreover, it has only identified measures that refer to sanctions and not to annulment in these cases.

[70] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure f) of the foregoing recommendation, and notes that although the existing legislation provides for the revocation of appointments that constitute nepotism, the country under review does not have provisions that make it mandatory for appointments to be annulled and declared void when there are other violations of law unrelated to nepotism. (see Recommendation 1.1.3.11 of Section 1.1.3 of Chapter II of this Report)

[71] Additionally, in its Response to the questionnaire³⁹, civil society organization *Fundación para el Desarrollo de la Libertad Ciudadana* noted that Draft Law 230/2015 does not provide for the annulment of appointments that constitute nepotism, and therefore stresses the importance of revising the legislation in order to establish such provision.

Measure g) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Develop, by means of relevant legal and administrative procedures and bearing in mind the principle of the process, provisions that establish ordinary mechanisms, be they administrative, judicial, or both, for challenges intended to clarify, amend or annul the substantial actions that make up the recruitment and personnel selection procedures, ensuring that they are processed in a timely, objective, impartial and effective fashion.

[72] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:⁴⁰

[73] *“The Rules of Procedure for Recruitment and Selection for Promotion and Admission to the Administrative Career,”⁴¹ adopted by the General Directorate of the Administrative Career in Resolution No. 194 of July 22, 2008, contain the steps to be taken to invoke challenge mechanisms to clarify, amend, or annul decisions concerning recruitment and selection under provisions governing the administrative career. Article 77 sets out the steps that must be followed and the deadlines to be met in order for challenges to be considered valid.”*

[74] *Article 77. Challenging mechanisms available to Applicants. Should any applicant disagree with the scores obtained, they may present: 1. Application for reconsideration in writing to the General Directorate of the Administrative Career (DIGECA) within five (5) business days after publication of the*

³⁸ *Ibid.*

³⁹ See Response by Civil Society to the Questionnaire for the Fifth Round of Review, pg. 13. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

⁴⁰ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 43. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

⁴¹ Available at:

<http://www.digeca.gob.pa/tmp/file/1183/REGLAMENTO%20TECNICO%20DE%20ASCENSO%20E%20INGRESO%202008.pdf>

results of the competition, which application shall be decided within five (5) business days thereafter. 2. Application for appeal in writing to the Administrative Career Appellate and Conciliation Board (JACCA) within five (5) business days following notification of the outcome of the reconsideration, which application shall be decided within fifteen (15) business days thereafter.”

[75] With respect to Article 77, the Committee notes that it refers to situations where rejected candidates may request reconsideration of results in public competitions, and presents mechanisms for challenging the results of the public competitions regarding candidate results and classification only. However, the Committee believes the provision is limited in scope, and does not set forth mechanisms for challenging substantive stages of the recruitment and personnel selection procedures in general, such as requisites and prohibitions for competition, for example.

[76] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure g), as well as the need for it to continue to give attention thereto, bearing in mind that mechanisms set out in the existing legislation are not sufficiently broad. (see Recommendation 1.1.3.12 of Section 1.1.3 of Chapter II of this Report)

[77] Moreover, the Committee notes that although Article 77 permits candidates to appeal to the Appellate and Conciliation Board to challenge the results of a public competition, said Board remains inactive since the enactment of Law 43/2009. Seeing that, on December 2015, Article 22 of Law 43/2009, which dissolved the board, was declared unconstitutional, there is no longer a legal impediment to nominate representatives for the Appellate and Conciliation Board, and hence the nomination of its members should be resumed. The Committee will therefore formulate a Recommendation in this regard. (see Recommendation 1.1.3.13 of Section 1.1.3 of Chapter II of this Report)

[78] In addition, the country under review emphasized in its Response to the questionnaire the importance of the enactment of Draft Law 230/2015⁴², which addresses the aforementioned measure. Article 37 of the Draft Law introduces the Administrative Career Tribunal, which is an independent, specialized and impartial public agency designed to conduct hearings and render decisions on appeals regarding civil service in Panama.

Measure h) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Conclude the special admission procedure for those public servants who joined prior to the enactment of the Administrative Career Law Regulations, and ensure that, following the application of the special admissions procedure, vacant posts are filled by means of the regular admission procedure.

[79] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:⁴³

[80] *“In 1996, accreditation began of public servants in the administrative career regime. On July 30, Article 21 of Law 43/2009⁴⁴ revoked the accreditation of 25,000 servants who had attained the status of administrative career servants.”*

⁴² Available at: http://www.asamblea.gob.pa/proyley/2015_P_230.pdf.

⁴³ See presentation DIGECA. <http://www.oas.org/juridico/english/pan.htm>

[81] “Those servants were harmed by the mass revocation of accreditations by means of a letter informing them that under Article 21 their regular administrative career accreditation was no longer valid.”

[82] “The measure adopted by the new administration seeks to re-accredit public servants under a merits system, to which end it has included in its intended reforms Proposed Law 230 of 2015, which adopts measures for the modernization of the State's human resources system. It proposes a new program for joining the administrative career via the special admission process. The special admission process is an exceptional procedure that sets out rules on the incorporation of active public servants into the Administrative Career Regime.”

[83] During the on-site visit, DIGECA presented information⁴⁵ which highlights that out of a total number of 78,034 public servants subject to the administrative career, 70,550 are acting public servants who do not hold the status of an administrative career public servant.

[84] In addition, when questioned during the on-site visit about the current situation of the public servants who lost their status with the enactment of Law 43/2009, DIGECA disclosed that this aspect could only be resolved once Draft Law 230/2015 is enacted. The country under review also emphasized that once the Draft Law is enacted, the intention is to reinstate the status of those public servants through special admission procedures in effect until July 2, 2017. After that date, appointments will only be made through regular admission procedures.

[85] The Committee notes that, according to DIGECA,⁴⁶ the appointments for public administrative career are currently made by special admission procedures, in an informal manner and without established procedures, while regular admission procedures are at the moment interrupted. Furthermore, special admission procedure for those public servants who joined prior to the enactment of the Administrative Career Law Regulation was initiated but not concluded. In that respect, the Committee also notes that the reintegration of public servants affected by Law 43/2009 has not been concluded, and the Committee deems it advisable that this process be resumed immediately, as a consequence of Art. 21 of Law 43/2009 being declared unconstitutional.⁴⁷

[86] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure h), as well as the need for it to continue to give attention thereto, bearing in mind that vacant posts within the public administrative career are still being filled by means of the special admission procedures and that special admission procedures for public servants who joined prior to the enactment of the Administrative Career Law Regulation were not concluded. (see Recommendation 1.1.3.14 of Section 1.1.3 of Chapter II of this Report)

[87] Additionally, in its Response to the questionnaire⁴⁸, the civil society organization *Fundación para el Desarrollo de la Libertad Ciudadana* informs that the regular admission procedure has effectively stalled and public servants are joining under the special admission procedure and other mechanisms (temporary, part-time contracts).

⁴⁴ Available at: http://www.oas.org/juridico/PDFs/mesicic5_pan_res_ane_con_fun_9.pdf

⁴⁵ See presentation DIGECA. Slide 17. <http://www.oas.org/juridico/english/pan.htm>

⁴⁶ See presentation DIGECA. Slide 18. <http://www.oas.org/juridico/english/pan.htm>

⁴⁷ Available at: http://www.oas.org/juridico/PDFs/mesicic5_pan_res_ane_con_fun_5.pdf.

⁴⁸ See Response by Civil Society to the Questionnaire for the Fifth Round of Review, pg. 16. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

Measure i) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Strengthen the General Directorate of the Administrative Career, making it autonomous and independent of the executive and providing it with the resources necessary for the full implementation of the Administrative Career Law and its regulations.

[88] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:⁴⁹

[89] *“Administrative meddling in the development of Law 9 of 1994 has prevented the institution from developing as it should in accordance with the principles, postulates, and the spirit of the law. At present, the General Directorate of the Administrative Career is attached to the Ministry of the Presidency as a department of that entity. It has a certain amount of autonomy in managing its budget and has been afforded greater leeway in terms of its administrative management. The entity does not currently have its own equity and its offices are still rented. After more than four presidential terms, there is still plenty of scope for growth in terms of the progressive increase in its autonomy envisaged in Law 9/94 (Administrative Career Law), something that needs to be combined with the public policies of the Panamanian nation on the modernization and professionalization of the state's human resources.”*

[90] *Over the past year, the current administration has increased the institution's budget and taken the initiative—through the approval by the Cabinet and subsequent presentation to the National Assembly of Draft Law 230 of 2015—of making changes to the institution and providing it with the necessary legal underpinning to apply the principles of merit, competence, equity, and justice to the administrative career, advance the salary law, provide the institution with sufficient resources to implement the proposed reforms, and the necessary autonomy for it finally to develop, so that its mandates and management objectives are revitalized, in keeping with the National Government's governance plan for the 2015–2019 term.”*

[91] The country under review also presented this chart regarding the institution's budget from 2012 to 2016:⁵⁰

**GENERAL DIRECTORATE OF THE ADMINISTRATIVE CAREER
BUDGET APPROPRIATION (INCREASE OR DECREASE)**

2012 TO 2016

2012		2013		2014			2015			2016		
APPROPRIATION	APPROPRIATION	Incr. by B/.	Incr. %	APPROPRIATION	Dec. B/.	Dec. %	APPROPRIATION	Dec. B/.	Dec. %	APPROPRIATION	Incr. by B/.	Incr. %

⁴⁹ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 48. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

⁵⁰ *Ibid.*

1,539,644	1,541,240	1,596	0.10	1,515,87 5	- 25,365	-1.65	1,315,774	- 200,101	-13	1,422,200	106,42 6	8.09
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[92] Considering the information provided by the country under review in its Response to the questionnaire, the Committee takes note of the steps taken to advance in its implementation of measure i), as well as the need for it to continue to give attention thereto, bearing in mind that DIGECA is still attached to the office of the President of the Republic, and, as such, has neither budgetary autonomy nor the financial resources to promote matters related to the implementation of the public administrative career. (see Recommendation 1.1.3.15 of Section 1.1.3 of Chapter II of this Report)

Recommendation 1.1.2:

Strengthen the systems for the hiring of public officials in the judicial career.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Specifically establish in the legislation the ban on nepotism and the invalidity of appointments made in breach of Title XII of the Judicial Code of the Judicial Career Regulations.

[93] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments regarding nepotism. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:⁵¹

[94] *“The provisions contained in Title XII of Volume One of the Judicial Code were repealed by Article 271 of Law 53 of August 27, 2015, which governs the judicial career.”*

[95] *Article 271. Title XII of Volume One of the Judicial Code is hereby repealed*

[96] *Article 309. Stipulation. This Law subrogates Articles 21, 22, 23, 24, 25, 26, 46, 54, 55, 57, 60, 61, 63, and 191 in relation to the judicial branch, and repeals the first paragraph of Article 7 and Articles 9, 10, 13, 15, 18, 20, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 43, 44, 47, 48, 49, 50, 51, 53, 79, 120, 156, 172, 184, 185, 196, 199, 200, 214, 226, the last paragraph of Article 267, Title XII of Book One, and Articles 302, 307, 308, 315, 316, 317, 421, 432, 438, 439, 440, 441, 442, 443, 444, 445, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459 and 460, all of the Judicial Code. Article 309.*

[97] *“Furthermore, Article 191 (17) of the same law frames nepotism as a serious violation by expressly stating the following:*

*Article 191. Serious violations. Judicial public servants commit serious violations when:*⁵²

...

⁵¹ See Presentation Supreme Court. Slide 5. <http://www.oas.org/juridico/english/pan.htm>

⁵² Panama informs that the expression “judicial public servants” applies to both judges and auxiliaries in the administration of justice. Also see Art. 2 in Law 9/94 (nepotism in civil service)

17. *They select curators, agents, trustees, experts and other persons required to intervene in an auxiliary capacity in the administration of justice, on the basis of nepotism or favoritism.”*

[98] The Committee notes that the new law for the judicial career, Law 53/2015⁵³, repeals Title XII of the Judicial Code entirely. Title XII of the Judicial Code established requirements for admission to the judicial career, such as the prerequisites for the designation of public servants. Chapter III now contains the current provisions in Law 53/2015 which set out general rules and prohibitions for admission into the judicial career.

[99] However, with respect to Law 53/2015, the Committee observes that articles 55 and 56 (Chapter III), which set out the entry requirements into the Judicial Branch, as well as the prohibitions, do not set out nepotism as a prohibition for admission into the judicial career or consider the invalidity of appointments made in breach of it.

[100] Considering the information provided by the country under review, the Committee takes note of the steps taken to advance in its implementation of measure a), as well as the need for it to continue to give attention thereto, bearing in mind that even though Title XII of the Judicial Code was repealed, Articles 55 and 56 of Law 53/2015⁵⁴ do not address the recommended measure. Given the foregoing, the Committee considers that measure a) should be reformulated (see Recommendation 1.1.3.16 of Section 1.1.3 of Chapter II of this Report).

[101] Additionally, the Committee observes that Law 53/2015, in Articles 152 to 168,⁵⁵ establishes the creation of a Special Tribunal for Integrity and Transparency within the judicial body, which would be responsible for investigating complaints filed against permanent, temporary and occasional judicial public servants. In this regard, the Tribunal would be responsible for the investigation and resolution of nepotism claims within the judicial body.

[102] The Special Tribunal for Integrity and Transparency is in charge of the investigation, prosecution, defense, and enforcement of the appropriate penalties for violations committed by permanent, temporary, and occasional judicial public servants, appointed in the judicial branch to serve in a principal, alternate, interim, itinerant, or temporary replacement capacity for the positions that they occupy, in accordance with the law.

[103] Nonetheless, in accordance with Art. 308⁵⁶, the deadline to begin designation of members for the Tribunal was February 27, 2016, six months after the enactment of the new law. The Committee would advise that the country under review consider initiating the designation process. The Committee will therefore formulate a Recommendation in this regard. (see Recommendation 1.1.3.17 of Section 1.1.3 of Chapter II of this Report)

[104] Moreover, during the on-site visit, civil society organization *Alianza Ciudadana Pro Justicia* mentioned that the Special Tribunal for Integrity and Transparency—created as part of the judicial career—is not operational, and therefore, at present there is no functioning system of internal ethics and discipline in the judiciary. In other words, if a member of the public wished to file a complaint against a judge, there would be no way of investigating or prosecuting the judge because the standards

⁵³ Available at: http://www.organojudicial.gob.pa/wp-content/uploads/2015/11/Ley_53_de_2015_Que_regula_la_Carrera_Judicial1.pdf

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

were repealed and the new rules cannot be enforced because the bodies that the new law created are not in place.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Amend Article 34 of the Judicial Career Regulations to expand the dissemination of announcements by using such channels as the internet.

[105] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered⁵⁷:

[106] *“The dissemination of announcements by such means as the Internet, as suggested, has been strengthened and expanded by Law 53 of August 27, 2015, Article 92 of which establishes objectives and parameters for selection procedures.”*

[107] *“Article 92. Objectives and parameters for selection procedures. Selection procedures for admission, transfer, and promotion in judiciary careers will ensure that eligible candidates meet the specific organizational and technical competency requirements, so that in performing their duties they contribute to the accomplishment of their institution’s objectives.*

General competitions for admission and transfer procedures for each position will be advertised annually on the judicial branch website and published on the notice boards of the institution and of public and private-sector entities frequented by potential candidates who meet the positions’ requirements. The procedures shall be conducted in accordance with the following rules.”

[108] Given the foregoing, the Committee takes note of the satisfactory consideration by the country under review of measure b), bearing in mind that it has adopted provisions within Law 53/2015 for the publication and broad dissemination of vacancies within the Judicial Career by using such channels as the internet.

[109] Nonetheless, during the on-site visit, representatives from the Supreme Court disclosed that one of the major obstacles encountered by the country under review is the absence of financial resources to implement Law 53/2015. In that regard, although Art. 308⁵⁸ establishes that eight months after the enactment of Law 53/2015 public servants should be admitted through regular admission procedures, there have not yet been any admissions to the judicial career through public competitions because of the insufficiency of financial resources to carry out the examinations.

[110] Moreover, during the on-site visit, representatives from the Supreme Court indicated that in 2010 and 2011, a total of 861 (eight hundred and sixty one) public competitions were held for entry into the judicial career service. From 2012 to 2015, only 13 (thirteen) public competitions were held, while in 2016 none had taken place as of the date of the on-site visit.⁵⁹

[111] The Committee will therefore formulate a Recommendation in this regard, advising that the country under review consider making resources available to the judicial body, within available

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ See Presentation Supreme Court. Slide 13. <http://www.oas.org/juridico/english/pan.htm>

resources, in order to expedite the implementation of the existing legislation. (see Recommendation 1.1.3.18 of Section 1.1.3 of Chapter II of this Report)

[112] In addition, and in accordance with Art. 308⁶⁰, the deadline to begin implementation of competitive public competitions for vacancies within the judicial career was April, 27, 2016, and consequently the country under review should consider initiating this process. The Committee will therefore formulate a Recommendation in this regard. (see Recommendation 1.1.3.19 of Section 1.1.3 of Chapter II of this Report)

[113] Furthermore, civil society organization *Alianza Ciudadana Pro Justicia* informed the Committee during the on-site visit that 930 officials have been selected for the new criminal-law model without having the new rules established in the Judicial Career Law applied to them. With the move to the new adversarial system, the new law on the Judicial Career is still not being applied. Appointments continue to be made with total discretion, not based on merit, under the interim provisional provisions, which make the appointees vulnerable to those who designated them.”

Measure c) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Require that office heads, in selecting a particular candidate, leave a written record justifying the decisions taken in selection procedures for admission to the judicial career, so that selection procedures for such positions can be challenged.

[114] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered⁶¹:

[115] *“The regulations governing the Judicial Career System contained in Law 53 of August 27, 2015, have made the candidate selection process more transparent and introduced challenge procedures and mechanisms, given that the selection process involves several stages that come after the announcement and are set forth in Article 95”.*

[116] *Procedures, Article 95: Open competition procedure.*

The open competition is the required procedure to fill vacancies that arise in the judicial branch that are not susceptible to being filled by means of transfers, promotions, or discretionary appointments by the nominating unit.

[117] *In the open competitions, the Technical Secretariat for Human Resources issues the relevant annual announcement providing specific information on the positions in each career system, in addition to instructions for those interested in applying using the appropriate software.*

[118] *The procedure comprises the following five phases:*

⁶⁰ Available at: http://www.organojudicial.gob.pa/wp-content/uploads/2015/11/Ley_53_de_2015_Que_regula_la_Carrera_Judicial1.pdf

⁶¹ See Presentation Supreme Court. Slide 13. <http://www.oas.org/juridico/english/pan.htm>

Submission via the Internet of scanned academic and employment records and information, which will be authenticated subsequently during an appointment with the Human Resources Directorate, which will issue the appropriate certification. This phase is worth up to 20 percent of the overall score.

Psychological and technical tests applied by the Human Resources Directorate, in line with the nature of the position applied for. This phase is worth up to 20 percent of the overall score.

Competitive examination by an evaluating committee of experts. This phase is worth a maximum of 20 percent of the overall score.

An interview by representatives of the nominating unit and a civil society representative. This phase is worth a maximum of 20 percent of the overall score.”

[119] Given the foregoing, the Committee takes note of the satisfactory consideration by the country under review of measure c), bearing in mind that it has adopted provisions within Law 53/2015 which allow for transparency in the selection process, and thus ensures openness, equity and efficiency in the system of government hiring for the judicial career.

Measure d) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Develop, by means of relevant legal and administrative procedures and bearing in mind the principle of the process, provisions that establish ordinary mechanisms, be they administrative, judicial, or both, for challenges intended to clarify, amend or annul the substantial actions that make up the recruitment and personnel selection procedures, ensuring that they are processed in a timely, objective, impartial and effective fashion.

[120] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:

[121] *“Those who feel adversely affected by the way in which they were evaluated in the four phases may present an appeal for reconsideration to the authority in charge of assessing the relevant phase within two days of receiving the notification by e-mail, stating the reasons at the time of submitting the appeal or within two days thereafter. All appeals for reconsideration against the same decision shall be decided by the authority that issues it by means of a single pronouncement within 10 business days.”*

[122] *“There is no possibility of appeal against the results of the interview phase”.*

[123] *“The Administration Council of the relevant career system, subject to compliance with the established parameters, shall issue the decision, which shall set out the details of the selection procedure, the final scores obtained, and the names of the winners. The decision shall be communicated to the general public by edict and be published on the website of the judicial branch. The Administration Council shall order the Technical Secretariat for Human Resources to send the relevant information to the nominating units that must fill the vacancies, so that the person in first place is appointed. The same list shall be used to fill vacancies that arise in the judicial branch, until the decision on the next competition is issued.”*

[124] The Committee notes that although the merit-based and public competitions have been established in Law 53/2015 for the judicial career, they have not yet been implemented. However, the

Committee acknowledges that the parameters for developing merit-based and competitive examinations envisaged in the legislation in place include mechanisms to ensure equal opportunities for applicants during four out of five phases of the process.

[125] Also, the Committee notes that regarding the first four phases of the public competitions, the country under review should consider extending the deadline for challenges, which is of two days, for this period seems to be very short and does not provide the candidate with the opportunity to review his challenge. (See Recommendation 1.1.3.20 of Section 1.1.3 of Chapter II of this Report).

[126] Notwithstanding, the Committee notes that with respect to the last phase of the public competition, the interview stage, the legislation in place does not provide a candidate with the right to appeal a hiring process, if that candidate considers that there was an impropriety of some kind during the interview. In this regard, the Committee believes that candidates who apply for a vacancy through an open competition should have access to appeal mechanisms during all stages of the competition in order to conform to the principles of legality, equity, neutrality, equality and transparency. The Committee will therefore amend the Recommendation for the country under review to consider including mechanisms that ensure equal opportunities for applicants at all stages of the competition. (See Recommendation 1.1.3.20 of Section 1.1.3 of Chapter II of this Report).

Recommendation 1.1.3:

Strengthen the systems for the hiring of public officials assigned to the Legislative Service Career.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Establish provisions requiring the publication of the Post Classification Manual so it can be consulted by any person.

[127] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:⁶²

[128] *“The institution has a Post Classification Manual, however it was not published on the institution’s webpage.”*

[129] The Committee notes that, during the on-site visit, representatives from the Legislative body indicated that only the Council of the Legislative Career may authorize the Manual to be published and made easily accessible to the general public on the website. In fact, the Council is responsible for resolving appeals as well as authorizing procedures and regulations proposed within the Legislative Service Career.

[130] Notwithstanding, said Council has not been active for the last seven years. Article 9 of Law 12/1998 (Legislative Service Career Law), which established the creation of the Council of Legislative Service Career and its functions, was modified Article 3 of Law 04/2010⁶³ on February 25, 2010. Bearing in mind that the legislation in place modified the composition of Council members, the board was dissolved and has not yet been reconstituted. The Committee will therefore formulate a

⁶² See presentation Asamblea Legislativa. Slide 33. <http://www.oas.org/juridico/english/pan.htm>

⁶³ Available at: https://www.gacetaoficial.gob.pa/pdfTemp/26477_C/GacetaNo_26477c_20100225.pdf

Recommendation in this regard, advising that the country under review consider reactivating the Council of the Legislative Career by appointing its members and ensuring that it has the human, financial and technological resources necessary for the proper performance of its functions, within available resources. (See Recommendation 1.1.3.21 of Section 1.1.3 of Chapter II of this Report).

[131] Considering the information provided by the country under review in its Response, the Committee takes note of the steps taken to advance in its implementation of measure a), as well as the need for it to continue to give attention thereto, bearing in mind that although the country under review has adopted a Post Classification Manual for the Legislative Service Career, there are no established provisions in the current legislation that specifically require its publication so that it can be consulted by any person. (see Recommendation 1.1.3.22 of Section 1.1.3 of Chapter II of this Report)

Measure b) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Require the nominating authority, in selecting a particular candidate, to leave a written record explaining its decisions in regular procedures for admission to the legislative service career, so that selection procedures for such positions can be challenged.

[132] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:⁶⁴

[133] *“The institution has a regular procedure for admission to the legislative service career system established by Law 12 of February 10, 1998, which describes the legislative service career system and issues other provisions. The procedure was amended by Law 16 of 2008, Law 43 of June 30, 2009, and Law 4 of February 25, 2010, introducing the possibility of challenging selection processes for such positions, in spite of the fact that the legislative career council had not been activated at that time.”*

[134] The Committee notes that Articles 28 of Law 16/2009 and Art. 48 of Resolution 178/2010 (Regulation for Human Resources Administration in the Legislative Service Career)⁶⁵ state that the nominating authority has the power to select, at its discretion, an approved candidate within a candidate list, and has no legal obligation to respect, exclusively, the classification order of candidates.

[135] *“Article 48. The President of the National Assembly shall, at his discretion, select one of the candidates on the shortlist or list to fill the vacancy and shall notify the Directorate of Human Resources of the name of the candidate selected. The chosen candidate must be available to take up the post immediately. If they are not ready for their appointment, the President will choose from the remaining candidates on the shortlist”.*⁶⁶

[136] Furthermore, the Committee notes that the country under review presents advances regarding mechanisms put in place to challenge results of public competitions in the legislative service career. In that regard, Resolution 178/2010 (Regulation for Human Resources Administration in the Legislative Service Career) establishes certain mechanisms that provide for the possibility of challenging results, such as allowing candidates to appeal when not approved to participate in a specific public competition.

⁶⁴ See presentation Asamblea Legislativa. Slide 33. <http://www.oas.org/juridico/english/pan.htm>

⁶⁵ Available at: http://www.asamblea.gob.pa/transpasm/reglamento_interno_de_administracion_de_recursos_humanos.pdf

⁶⁶ *Ibid.*

Also, it permits that candidates request the re-evaluation of documents⁶⁷ related to the competition within a period of two days after the announcement of the results.

[137] However, the Committee believes the current provisions are limited in scope, and do not set forth mechanisms for challenging substantive stages of the recruitment and personnel selection procedures in general, such as requisites and prohibitions for competition, for example.

[138] Considering the information provided in its Response, the Committee takes note of the steps taken to advance its implementation of measure b), as well as the need for it to continue to give attention thereto, bearing in mind that it should consider establishing provisions that require the nominating authority to, in selecting a particular candidate, leave a written record explaining its decisions in regular procedures for admission to the legislative service career, so that selection procedures for such positions can be challenged. In that way, it will allow for transparency in the selection process, and thus ensure openness, equity and efficiency in the system of government hiring in the legislative branch. (see Recommendation 1.1.3.23 of Section 1.3 of Chapter II of this Report)

[139] In addition, there are no guidelines establishing what criteria are utilized within the selection process of a certain candidate. The Committee observes that this selection should be accompanied by a written explanation based on objective criteria, such as work experience and educational background, for example. The Committee will therefore formulate a Recommendation in this regard, bearing in mind that in appointing personnel, the nominating authority should consider making their selection by taking into account the order of the scores obtained by the candidates. (see Recommendation 1.1.3.24 of Section 1.1.3 of Chapter II of this Report)

Measure c) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Develop the Legislative Service Career Law in order to introduce provisions for deadlines, publication methods, and challenges to competition rules.

[140] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:⁶⁸

[141] *“The Legislative Service Career Law is in force, developed, and includes provisions on deadlines, in spite of the fact that the Legislative Career Council is not active at this time.”*

[142] The Committee notes that Resolution 178/2010 (Regulation for Human Resources Administration in the Legislative Service Career) does not specify how the publication of announcements for competitions are to be made. Articles 30 and 31 establish that public competitions have to be announced at least ten (10) days before the competition is due to initiate. It does not, however, establish guidelines on how and where public competitions should be circulated. The Committee therefore advises that the country under review consider publishing these announcements by means of an

⁶⁷ Panama notes that the profile of the candidate shall be assessed directly against the description of the position to which he or she is applying, to determine if he or she meets the minimum requirements to perform this job, as stipulated in our Human Resources Regulations. However, as long as the Regular Admission Process is not implemented, this is not being applied completely.

⁶⁸ See presentation Asamblea Legislativa. Slide 33. <http://www.oas.org/juridico/english/pan.htm>

electronic system which allows for their dissemination to the public at large, possibly via the internet, as well as through a nationally distributed newspaper.

[143] Additionally, the legal framework in place does not contain provisions that set out the manner in which vacancy announcements in the public administrative career are to be carried out, such as providing minimum periods during which candidates may apply for a competition or the general deadlines for the selection.

[144] Considering the information provided in its Response, the Committee takes note of the steps taken to advance its implementation of measure c), as well as the need for it to continue to give attention thereto, bearing in mind that the country under review should consider introducing in its legal framework provisions that establish more detailed deadlines, publication methods, and challenges to competition rules. (see Recommendation 1.1.3.25 of Section 1.1.3 of Chapter II of this Report)

[145] The Committee notes that, during the on-site visit, representatives from the Legislative body informed that only the Council of the Legislative Career may authorize the Manual to be published and made easily accessible to the general public on the website. In fact, the Council is responsible for resolving appeals as well as authorizing procedures and regulations proposed within the Legislative Service Career.

[146] The Committee also deems important to note that during the on-site visit, representatives of the Legislative body indicated that only the Council of the Legislative Career may authorize the holding of public competitions. Notwithstanding, said Council has been inactive for the last seven years, seeing it depends on the composition of its members by the President of the Legislative assembly, and for which the Committee has formulated a Recommendation in this regard.

Measure d) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Specifically establish in the legislation the ban on nepotism and the invalidity of appointments made in breach of those provisions.

[147] During the on-site visit, representatives of the Legislative body informed that Resolution 112 from July 29, 2002 (Ethics Code for the Legislative Body)⁶⁹ is the legislation in place that establishes the ban on nepotism within the legislative career. Article 14 states that it is prohibited for a public servant to engage in acts of nepotism by favoring relatives and family. It does not specifically impose a prohibition in favoring relatives by up to third degree by blood and second by marriage. Moreover, Resolution 178/2010 (Regulation for Human Resources Administration in the Legislative Service Career) contains no provisions prohibiting nepotism or invalidating appointments made in breach of this prohibition.

[148] Furthermore, the Committee notes that, during the on-site visit, representatives of the National Assembly declared that there is no mechanism in place to detect cases of nepotism within admission to the legislative career nor an agency responsible for overseeing compliance with the Ethics code for the Legislative Body. It was informed that during the hiring process, the candidate is not required to provide an oral or sworn declaration regarding this information.

⁶⁹ Resolution 112 from July 29, 2002. <http://www.oas.org/juridico/english/pan.htm>

[149] Considering the information provided by the country under review, the Committee takes note of the steps taken to advance in its implementation of measure d), as well as the need for it to continue to give attention thereto, bearing in mind that the legal provisions regarding nepotism are limited in scope. The country under review should consider introducing in its legal framework provisions that specifically establish the ban on nepotism regarding candidates related by up to the third degree by blood and second degree by marriage to the nominating authority and immediate superiors of the vacant position, the invalidity of appointments made in breach of those provisions, as well as mechanisms to detect cases of nepotism within admission to the legislative career. (see Recommendation 1.1.3.26 of Section 1.1.3 of Chapter II of this Report)

1.1.2. New Developments with Respect to the provisions of the Convention on Systems of Government Hiring

1.1.2.1 New Developments with Respect to the Legal Framework

a) Scope

- Statutory and other legal provisions applicable to a majority of public servants in the Executive Branch, among which the following should be noted:

[150] Executive Decree 44/2008 of April 11, 2008⁷⁰, which modifies and adds articles to Executive Decree 222/97, is intended to make the implementation of the Administrative Career Law more efficient, comprehensible and unambiguous. Most of the modifications do not alter the significance of the original text, however the following articles should be taken into account:

[151] Article 4 sets out that the Administrative Career is obligatory to all State agencies, and will be also applied, if necessary, to complement the ones already in place for specific public institutions. Article 24 establishes that public servants that work in Level 101 posts (operational support posts), will acquire, after two years of uninterrupted services, status of Administrative Career public servants, without the obligation to go through public competitions or verification of minimum requisites for the post. Article 135 establishes that in order to participate in an internal competition, a public servant should have at least two years of uninterrupted services within his career category as well as accumulate at least 102 hours of training related to his post during the last two years.

[152] – Resolution 2/2008 of April 30, 2008⁷¹ (Technical Regulation for Recruitment and Selection in Administrative Career Admission), which establishes the general rules of Recruitment and Selection of Candidates to ascend or enter the Administrative Career System, and contains rules on the hiring of personnel for internal and external merit-based competitions, such as procedures for competition announcements, candidate requirements, examinations, interviews, and competency criteria to be assessed in the decisions adopted during the process, as well as the publication of candidate results in each stage and the possibility of lodging appeals.

⁷⁰ Available at: http://www.oas.org/juridico/PDFs/mesicic5_pan_res_ane_con_fun_4.pdf

⁷¹ Available at: <http://www.digeca.gob.pa/tmp/file/1183/REGLAMENTO%20TECNICO%20DE%20ASCENSO%20E%20INGRESO%202008.pdf>

[153] – Draft Law 230/2015⁷², which adopts measures for the modernization of the human resources within the public administrative career system. This proposition suggests the creation of an Administrative Tribunal for the Public Career, preparation and updating of Post Classification Manuals, implementation of performance evaluations, and recognition of public servants' rights, such as job stability, compensation and training. The Draft Law also requires public servants to fulfill minimum requisites of education and experience within the Post Classification Manuals of each institution. Furthermore, it intends to reinstate the status of public servants of those who lost their status with the enactment of Law 43/2009.

- Statutory and other legal provisions applicable to a majority of public servants in the Judicial Branch, among which the following should be noted:

[154] – Law 53 of August 27, 2015⁷³, which regulates and structures the Judicial Career and sets out the procedures for selection and appointment of personnel:

[155] Articles 7 to 10 provide procedures for the creation and elaboration of Post Classification Manuals. The Manuals should contain the following: factors such as nomenclature, grade, mission, required competencies for performing the duties, expected results, person or office to which to report, responsibilities, environmental conditions, risks, performance and specification criteria or standards for the purpose of guiding management of human resources in the areas of recruitment, selection, induction, training, evaluation, classification, pay, promotion, health, safety, and other actions. The Human Resources Technical Secretariat will guarantee that the job description contains the qualifications and competencies needed adequately to perform the relevant duties. It will additionally coordinate the preparation and timely presentation to the career administration council concerned of the manual that will contain the definitions of the specific organizational and technical competency requirements for each position. A comprehensive review of all posts will be carried out annually in order to recommend such adjustments and modifications as may be required.

[156] Article 55 provides the general requirements for entering and remaining in the judicial career, including the following: (1) Be in full exercise of their civil rights; (2) meet the minimum requirements for the position; (3) not have been convicted of committing an intentional crime; (4) not have incompatibilities to carry out duties required by the position (5) have satisfactorily been approved in the exams and training courses established for admission (6) not have been dismissed for disciplinary reasons from the judiciary or been convicted for lack of professional ethics.

[157] Article 64 provides that one of the general duties of a public servant in the judicial career is to avoid carrying out actions related to nepotism.

[158] Articles 92 and 95 provide procedures to fill out vacancies within the judiciary. They provide that public competitions will be annually summoned by the Human Resources Technical Secretariat through the Judicial Branch website, and published within the institution's notice boards, as well as in notice boards of other private and public institutions. In addition, the competition is composed of five stages, which are the following: (1) Electronic presentation of documents (internet) (2) Psychological and technical exams (3) Training course (4) Interview. Partial results are confidential and will only be presented to the candidate itself. Candidates have two days after receiving

⁷² Available at: http://www.asamblea.gob.pa/provley/2015_P_230.pdf

⁷³ Available at: http://www.organojudicial.gob.pa/wp-content/uploads/2015/11/Ley_53_de_2015_Que_regula_la_Carrera_Judicial1.pdf

notification of the results to present an appeal against the scores, and the Secretariat then has ten days to decide if appeals should be ruled unfounded or not.

[159] With respect to the last phase of the public competition, the interview stage, the legislation in place does not provide a candidate with the right to appeal a hiring process, if that candidate considers that there was an impropriety of some kind during the interview.

- Statutory and other legal provisions applicable to a majority of public servants in the Legislative Branch, among which the following should be noted:

[160] – Law 04 of February 24, 2010⁷⁴, which modifies and adds articles to Law 12/98 (Legislative Service Career Law). Article 9 modifies the composition of members designated for the Council of the Legislative Service Career established by Law 12/98, by adding to the Council the President of the Employee Association, and removing from it the President of the Ethics Commission and one of the representatives of the public servants within the judicial career.

[161] – Resolution 178/2010⁷⁵ of (Regulation for Human Resources Administration in the Legislative Service Career). Article 12 provides that selections for the Legislative Career will be made based on professional competencies, merit and public moral of candidates. Article 13 establishes that selection instruments for a vacancy are background evaluations, public competitions, admission evaluations or any combination of them. Article 14 establishes that the Human Resources Directorate will assign to each candidate a number or equivalent, in order to prevent that the examiner has knowledge of the candidate's identity. Article 30 establishes that public competition announcements will be made at least 10 days before the beginning of the exams. Article 46 provides that candidates may request, in writing, a review of the results within two days of their announcement. Article 48 establishes that the President of the National Assembly has the power to select, at his or her discretion, an approved candidate within a candidate list, and therefore there is no legal obligation to respect, exclusively, the classification order of the candidates.

[162] Resolution 112 from July 29, 2002⁷⁶ (Ethics Code for the Legislative Branch). Articles 13 and 14 establish the prohibition for a public servant to incur in acts of nepotism by favoring relatives and family related by blood or affinity.

b) Observations

[163] First, the Committee would like to recognize the new regulatory measures adopted by the Republic of Panama to continue to push forward with the creation, maintenance, and strengthening of its systems of government hiring as referred to in Article III (5) of the Convention.

[164] Nevertheless, it deems appropriate to make a number of comments regarding the advisability of strengthening, developing, and/or adapting certain provisions that have to do with those new developments, notwithstanding the observations made by the Committee in Section 1.1.1. above in connection with the follow-up on implementation of the recommendations made to the country under review in the Report from the Second Round.

⁷⁴Available at: https://www.gacetaoficial.gob.pa/pdfTemp/26477_C/GacetaNo_26477c_20100225.pdf

⁷⁵Available at: http://www.asamblea.gob.pa/transpasm/reglamento_interno_de_administracion_de_recursos_humanos.pdf

⁷⁶ Resolution 112 from July 29, 2002. <http://www.oas.org/juridico/english/pan.htm>

[165] With respect to new legal developments applicable to a majority of public servants, in the Executive Branch, the Committee notes the following:

[166] Regarding Executive Decree 44/2008 of April 11, 2008⁷⁷, and in the interests of the ongoing improvement in terms of safeguarding the principles of transparency, equality, fairness, and efficiency in merit-based competitive examination processes, the Committee believes it important for the country under review to consider repealing the legal provisions that allow interim officials and employees of trust to be appointed to vacant permanent positions, without having previously participated in an external competition or verification of minimum requisites for the post, in order to promote equal opportunity for access to public positions and promote external competitions for this purpose. (see Recommendation 1.1.3.28 of Section 1.1.3 of Chapter II of this Report)

[167] With respect to new legal developments applicable to a majority of public servants in the Judicial Branch, the Committee notes the following:

[168] Notwithstanding the observations made by the Committee in Section 1.1.1. above in connection with the follow-up on implementation of the recommendations made to the country under review in the Report from the Second Round, the committee notes that, during the on-site visit, representatives from the Judicial Branch indicated that the elaboration of Post Classification Manuals has not yet been initiated because of lack of financial resources. In that regard, annual public competitions may only be held when post classifications for the judicial career have been elaborated and approved. The Committee deems important that the country under review consider providing the necessary human, financial, and technological resources, within available resources, for the implementation of Law 53/2015 (see Recommendation 1.1.3.18 of Section 1.1.3 of Chapter II of this Report)

1.1.2.2 New Developments with Respect to Technology

[169] With respect to developments of this type in the Executive Branch, Panama referred in its response⁷⁸ to the creation of DIGECA WEB⁷⁹ (General Directorate of the Administrative Career), in 2010, containing information about the structure of the public administrative career, as well as the disclosure of all information regarding the Human Resources Administration. In addition, an Information System for Human Resources Administration in the Public Sector is being developed by the country under review, which will integrate modules on Post Classification Manuals, Human Resources and Performance Evaluation.

1.1.2.3 Results

[170] The Committee notes that neither the Executive, Judicial nor the Legislative Branch provided objective results with respect to the system of government hiring carried out under their respective competence.

⁷⁷ Available at: http://www.oas.org/juridico/PDFs/mesicic5_pan_res_ane_con_fun_4.pdf

⁷⁸ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 89. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

⁷⁹ Available at: <http://201.218.239.201/digeca/>

[171] The Committee notes, for example, that in the response to the questionnaire, the country under review does not provide statistical information with respect to the number of recruitment and selection processes that were carried out in a given year in the Executive Branch. This is also true when examining the information related to the Legislative Branch.

[172] During the on-site visit, representatives from the Judicial Branch presented the following information regarding the number of selection processes carried out from 2010 to 2015:⁸⁰

PUBLIC COMPETITIONS HELD FROM 2010 - 2015

Summoned competitions	Quantity
2010-2011	861
2012-2013	0
2014-2105	13
Total	874

Processed competitions	Quantity
2010-2011	211
2012-2013	0
2014-2015	663
Total	874
Concluded competitions	430
To be concluded	223
Total	663

[173] However, no information was provided for the number of public servants admitted to the judicial career within the 874 public competitions held from the years 2010 to 2015, as well as no statistics on the number of public competitions and admissions carried out in 2016. In that regard, the country under review informed that no public competitions were held after the enactment of Law 53/2015 due to the lack of financial resources. Notwithstanding, the Committee reiterates the importance that the country under review considers taking steps in adopting appropriate measures to initiate merit-based public competitions in order to fill permanent staff positions in the judiciary. (See Recommendation 1.1.3.27 of Section 1.1.3 of Chapter II of this Report.)

[174] The Committee further notes that it cannot rely on statistical data provided on the number of competitions carried out in a year to determine how many were completed, how many were abandoned, how many persons applied to a position, as well as the number of persons entering into the public service in a given year. The lack of information makes it hard for the Committee to determine the efficiency and transparency of the government hiring system in place. The Committee will formulate a recommendation. (see Recommendation 1.1.3.28 of Section 1.1.3 of Chapter II of this Report)

1.1.3 Recommendations:

[175] In the light of the observations formulated in sections 1.1.1 and 1.1.2 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

⁸⁰ See Presentation Supreme Court. Slide 13. <http://www.oas.org/juridico/english/pan.htm>

- 1.1.3.1 Establish provisions that specifically require the publication of Post Classification Manuals so that they can be consulted by any person. (See paragraph 27 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.2 Consider establishing legal provisions that require the preparation, update and revision of Post Classification Manuals within the 47 institutions of the public administrative career. (see paragraph 28 in Chapter III, Section 1.1.1. of this Report)
- 1.1.3.3 Adopt guidelines based on objective criteria to be used by the nominating authority in selecting a candidate from the list submitted by the General Directorate of the Administrative Career. (see paragraph 36 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.4 Consider adopting legal provisions requiring that, in appointing personnel in the public administrative career, the nominating authority makes its selection by taking into account the order of the scores obtained by the candidates. (see paragraph 37 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.5 Reactivate the Administrative Career Technical Board Council by appointing its members and ensuring that it has the human, financial and technological resources necessary for the proper performance of its functions, bearing in mind the availability of resources. (see paragraph 47 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.6 Develop rules to guarantee the broad dissemination of public announcements for all vacancies. (see paragraph 55 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.7 Consider adopting legal provisions that set out the manner in which vacancy announcements within the public administrative career are to be carried out, such as providing minimum periods for advertising notices, as well as minimum periods during which registration can be accepted from applicants. (see paragraph 56 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.8 Establish mechanisms such as an electronic system for the uniform publication and general dissemination of announcements for external open competitions in the Public Administrative Career. (see paragraph 57 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.9 Consider extending the ban on holding public positions to persons related by up to the third degree by blood and second by marriage with the immediate superior of the vacant post, providing mechanisms to ensure its control. (see paragraph 63 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.10 Adopt mechanisms that ensure compliance with the ban on holding public positions to persons related by up to the third degree by blood and second by marriage with the immediate superior of the vacant post. (see paragraph 65 in Chapter II, Section 1.1.1. of this Report)

- 1.1.3.11 Specifically consider establishing in the legislation that appointments made in violation of law shall be null and void. (see paragraph 70 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.12 Develop provisions that establish ordinary mechanisms for challenges intended to clarify, amend or annul the substantial actions that make up the recruitment and personnel selection procedures, ensuring that they are processed in a timely, objective, impartial and effective fashion. (see paragraph 76 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.13 Reactivate the Appellate and Conciliation Board by appointing its members and ensuring that it has the human, financial and technological means necessary for the proper performance of its functions, bearing in mind the availability of resources. (see paragraph 77 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.14 Conclude the special admission procedure for those public servants who joined prior to the enactment of the Administrative Career Law Regulations, and ensure that, following the application of the special admissions procedure, vacant posts are filled by means of the regular admission procedure. (see paragraph 86 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.15 Strengthen the General Directorate of the Administrative Career, making it autonomous and independent of the executive and providing it with the resources necessary for the full implementation of the Administrative Career Law and its regulations, within available resources. (see paragraph 92 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.16 Consider adopting legal provisions that prohibit nepotism when admitting public servants into the judicial career and that also declare the invalidity of the appointments made in breach of it, providing mechanisms to ensure its control. (see paragraph 100 in Chapter III, Section 1.1.1. of this Report)
- 1.1.3.17 Appoint the members to the Special Tribunal for Integrity and Transparency of the Judicial Branch, and ensure that it has the human, financial and technological means necessary for the proper performance of its functions, within available resources (see paragraph 103 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.18 Ensure that the Judicial Branch has the human, financial and technological means necessary for proper implementation of Law 53/2015, within available resources. (see paragraph 111 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.19 Initiate procedures established by Law 53/2015 to ensure admission of public servants through competitive public competitions into the judicial career. (see paragraph 112 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.20 Adopt mechanisms to ensure equal opportunities for applicants at all stages of public competition for admission in the judicial career and, in particular, include an extension of the deadline for challenges during the first four phases of the public

competition, in order to provide the candidate with the opportunity to review his challenge. (see paragraph 125 and 126 in Chapter II, Section 1.1.1. of this Report)

- 1.1.3.21 Reactivate the Council of the Legislative Career by appointing its members and ensuring that it has the human, financial and technological means necessary for the proper performance of its functions, within available resources. (see paragraph 130 in Chapter III, Section 1.1.1. of this Report)
- 1.1.3.22 Establish provisions requiring the publication of the Post Classification Manual of the Legislative Career so it can be consulted by any person. (see paragraph 131 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.23 Require the nominating authority, in selecting a particular candidate in regular procedures for admission to the legislative service career, to leave a written record explaining its decisions , so as to permit that selection procedures for such positions can be challenged. (see paragraph 138 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.24 Consider adopting legal provisions requiring that, in appointing personnel in the legislative career, the nominating authority considers making its selection by taking into account the order of the scores obtained by the candidates. (see paragraph 139 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.25 Consider developing the Legislative Service Career Law in order to introduce provisions for deadlines, publication methods and challenges to competition rules in public competitions. (see paragraph 144 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.26 Consider adopting provisions that specifically establish the ban on nepotism regarding candidates related by up to the third degree by blood and second degree by marriage to the nominating authority and immediate superiors of the vacant position, the invalidity of appointments made in breach of those provisions, as well as mechanisms to detect nepotism within admission to the legislative career. (see paragraph 149 in Chapter II, Section 1.1.1. of this Report)
- 1.1.3.27 Consider repealing legal provisions that allow interim officials and employees of trust to be appointed to vacant permanent positions in the public administrative career, without having previously participated in an external competition or verification of minimum requisites for the post, in order to promote equal opportunity for access to public positions and promote external competitions for this purpose. (see paragraph 173 in Chapter II, Section 1.1.2. of this Report)
- 1.1.3.28 Adopt appropriate measures to strengthen the compilation and updating of statistics as it pertains to the public servants of the Executive Branch, Legislative Branch and Judicial Branch, regarding, inter alia, the number of employment opportunities publicized, and the number and percentage of public servants employed via meritocratic selection processes; as well as make available to the public the number of competitions carried out in a year, how many were completed, how many were abandoned, how many persons applied to a position, as well as the number of persons entering into the public service in a given year, in order to identify

challenges and recommend corrective measures where appropriate. (see paragraph 174 in Chapter II, Section 1.1.2. of this Report)

1.2 GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES

1.2.1 Follow-Up to the Implementation of the Recommendations Formulated in the Second Round

Recommendation 1.2.1 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Strengthen the systems for the procurement of goods and services by the government.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Continue to take steps to adapt or amend the entities excluded from the application of Law no. 22 of 2006, in order to prevent the fragmentation of the general procurement system and to ensure harmony in the management of various procurement regimes, guiding itself in that by the principles of openness, equity, and efficiency enshrined in the Convention.

[176] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:⁸¹

[177] *“Law 22 of June 27, 2006, is being comprehensively reformed by means of a process that involved exhaustive consultations over the course of nine months. The proposed law has included community councils and all decentralized entities. Only the subject of medicines has not been included in the case of the Social Security Fund.”*⁸²

[178] The Committee notes that in the Report of the Second Round for Panama, it was observed that Law 22/2006 does not apply to contracts entered into by municipalities, local and communal committees, or to the Social Security fund, in which it applies solely on a supplementary basis.

[179] Additionally, the Committee notes that during the on-site visit, representatives from the General Directorate for Public Procurement (DGCP) indicated that Draft Law 305/2016 had eight articles vetoed by the President, and needs to be discussed for a second time by the National Assembly. One of the vetoes carried out by the Executive to the Draft Law has to do with Article 1, since it excludes from its scope the purchase of medicines, supplies, medical equipment and other products related to human health carried out by the Social Security Fund (CSS).

[180] Considering the information provided in its Response, the Committee takes note of the steps taken to advance in its implementation of measure a), as well as the need for it to continue to give attention thereto, bearing in mind that the country under review should consider preventing the fragmentation of the general procurement system caused and to guarantee harmonization in the

⁸¹ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 57. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

⁸² Available at: http://www.asamblea.gob.pa/proyley/2016_P_305.pdf

management of various procurement regimes. (See Recommendation 1.2.3.1 of Section 1.2.3 of Chapter II of this Report).

[181] Additionally, civil society organization *Allianza Ciudadana Pró-Justicia* indicated in its response to the questionnaire ⁸³ that “*Proposed Law 305/2016 does not deal with the issue of fragmentation since that law will continue to be the generally applicable supplementary law for procedures contained in special laws, in spite of the fact that on June 17 the President of the Republic partially vetoed the approved bill, stating as one of his objections the failure of Law 22 to include medicines and medical supplies in its general procedures with the aim of doing away with the regulatory dispersion that exists in that regard.*”

[182] Furthermore, and regarding the importance of preventing the fragmentation of the general procurement system, the civil society organization MOVIN (Movimiento Independiente) indicated during the on-site visit⁸⁴ that “*the Social Security Fund, an entity that for 10 years has had an ample independent budget and legal autonomy with respect to hiring, and therefore the ability to choose when to align itself with the Consolidated Text of Law 22. This institution gives no signs of enhancing its effectiveness. Its public hiring processes are notorious for their delays, lack of transparency, and erratic nature, and frequently have to be corrected by order of the Comptroller's Office. Its processes are so discretionary that even the legal opinions on which it relies can vary from one day to the next.*”

Measure b) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Continue developing and strengthening the PanamaCompra electronic public procurement system (www.panamacompra.gob.pa) in order to ensure the transparency, openness, equity and efficiency that the Convention requires in systems for the procurement of goods and services by the state.

[183] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:⁸⁵

[184] “*The Electronic Public Procurement System is in the process of changing to version 3, which offers better applications, such as webinars, chats, and communications with other state platforms, including the Public Records Office and the Social Security Fund. Notable features include: Statistical reports, business intelligence, greater flexibility and speed, reverse auctions, regular auctions, and it is more user-friendly. With the funds already earmarked, the list of positions is being prepared using the mechanism furnished by the World Bank, which is funding the project. The new system is forecast to be ready in 2017.*”

[185] In addition, in order to strengthen PanamaCompra, the country under review indicates that it has provided a number of training courses to national and international contractors on Law 22, including a guide on how to utilize the PanamaCompra system and public procurement procedures.

⁸³ Response to the questionnaire by *Allianza Ciudadana Pró-Justicia*, pg 26. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

⁸⁴ See presentation MOVIN, pg 3. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

⁸⁵ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 59. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

[186] Considering the information provided in its Response, the Committee acknowledges the efforts taken to advance in its implementation of measure b), as well as the need for it to continue to strengthen the PanamaCompra electronic public procurement system. (See Recommendation 1.2.3.2 of Section 1.2.3 of Chapter II of this Report).

[187] Furthermore, during the on-site visit, representatives from the General Directorate for Public Procurement (DGCP) indicated that the estimated value of contracts and technical reports indicating how those values were attained are not published on the Panamacompra website. Considering that this is a key element of transparency and accountability in public procurement, the Committee will formulate a recommendation in this regard. (See Recommendation 1.2.3.3 of Section 1.2.3 of Chapter II of this Report).

[188] Additionally, civil society Alianza Ciudadana Pró-Justicia, informed in its response to the questionnaire⁸⁶ that “*regarding the PanamaCompra system there are far more domestic complaints than external ones. The reforms introduced by Draft Law 305, which is due for another reading in the National Assembly, would make it mandatory to publish the official or indicative price for contracts. It would also be positive to make it mandatory to publish the technical report on which the calculation was based, which could be included in the implementing regulations.*”

Measure c) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Make the pertinent modifications to establish citizen oversight mechanisms for contracting activities, such as citizen watchdogs, and to continue strengthening the principles of openness, equity, and efficiency enshrined in the Convention.

[189] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following⁸⁷:

[190] During the on-site visit, representatives from the DGCP indicated that the current Law still does not establish citizen oversight mechanisms for contracting activities. The principles of openness, equity, and efficiency exist in the current law but have not yet been fully implemented. In this regard, with the enactment of Draft Law 305/2016, civil society and the public procurement system will be strengthened. Also, in its response to the questionnaire, the country under review states that the Draft Law strengthens the recommended principles, and also creates the principle of equality for bidders.

[191] Considering the information provided in its Response, the Committee acknowledges the efforts taken to advance in its implementation of measure c), as well as the need for it to continue to give attention thereto, bearing in mind that the country under review should consider establishing mechanisms for citizen oversight in contracting activities as well as strengthening the principles of openness, equity, and efficiency in public procurement. (See Recommendation 1.2.3.4 of Section 1.2.3 of Chapter II of this Report).

⁸⁶ Response to the Questionnaire by Alianza Ciudadana Pró-Justicia, pg 27. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

⁸⁷ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 64. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

[192] In addition, civil society organization MOVIN, during the on-site visit,⁸⁸ brought attention to the fact that citizen oversight is not permitted in public procurement for goods and services. *“Control mechanisms have been created to prevent such organizations from having access to the information. The information is restricted and manipulated, even that which is provided on the PanamaCompra website, where there have been cases of delaying the online registration of written objections in order to warn institutions or give them the opportunity to publish the award decision or declare any complaint time-barred, undermining the legitimate rights of bidders and prompting distrust in the system.”*

Measure d) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Study the possibility of establishing, when appropriate, uniform criteria and evaluation methods for bidding processes, in line with the principles of equity and efficiency set forth in the Convention.

[193] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following⁸⁹:

[194] The country under review indicates that it is currently working with the World Bank in order to standardize the documents utilized for public procurement, and has already selected the company that will be responsible for this procedure. The idea is to standardize around 40 documents, such as bidding terms and conditions, contracts, reference letters, and others.

[195] In that regard, the Committee notes that Resolution 072/2008⁹⁰ establishes that DGCP is responsible for standardizing the general aspects of bidding terms and conditions for each type of contract, as well as its forms and guidelines, however as of yet there is no uniform criteria for bidding terms and conditions or other documents related to the bidding process, such as manuals and guides of different topics, like, for example, how to conduct a market research or how to establish qualifying requirements. In this regard, with the absence of such criteria, each institution, at its own discretion, establishes formulas for assessing prices, quality, or technical suitability in bidding processes.

[196] Considering the information provided in its Response, the Committee acknowledges the efforts taken to advance in its implementation of measure d), as well as the need for it to continue to give attention thereto, bearing in mind that the country under review should consider establishing uniform criteria for documents with bidding terms and conditions, as well as for other documents related to the bidding process. (See Recommendation 1.2.3.5 of Section 1.2.3 of Chapter II of this Report).

[197] Moreover, civil society organization Alianza Ciudadana Pró-Justicia, in its response to the questionnaire⁹¹ emphasized that *“by law it is mandatory to include bid evaluation criteria and methodologies in the terms and conditions. In spite of that, to date, the DGCP has not issued standardized models or instructions or guidelines for drafting uniform terms and conditions.”*

⁸⁸ See MOVIN presentation. pg. 02. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

⁸⁹ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 66. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

⁹⁰ Available at: http://www.dgcp.gob.pa/images/legislacion/resoluciones/5_resolucion_72_documentos_estandares.pdf

⁹¹ Response to the questionnaire by Alianza Ciudadana Pró-Justicia, pg. 29. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

Measure e) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Continue to conduct regular comprehensive assessments to gauge the usage and effectiveness of the public sector procurement system and, using the results of that effort, define and consider the adoption of specific measures to ensure transparency, openness, equity, and efficiency in its operations.

[198] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following⁹²:

[199] In its response, the country under review informs that it is conducting an annual evaluation in partnership with the Inter-American Development Bank (IDB). The first report will be issued this year.

[200] In this regard, the Committee notes that it received from the country under review a document entitled “Evaluation of the Public Procurement System in Panama”⁹³ which appears to be a self-assessment of the country’s public procurement system.

[201] Considering the information provided in its Response, the Committee acknowledges the efforts taken to advance in its implementation of measure e), however, with the absence of additional information on the official results of the evaluation by the Inter-American Development Bank (IDB), the Committee reiterates the recommended measure and advises that the country under review should consider examining the results of IDB’s evaluation of the public sector procurement system in Panama and consider the possibility of adopting specific measures to ensure that comprehensive evaluations are conducted periodically to measure the usage and effectiveness of the public sector procurement system and, on the basis of the results, to adopt specific measures to ensure disclosure, equity, and efficiency in its operations. (See Recommendation 1.2.3.6 of Section 1.2.3 of Chapter II of this Report).

1.2.2 New Developments with Respect to the provisions of the Convention on Government Systems for the Procurement of Goods and Services

1.2.2.1 New Developments with Respect to the Legal Framework

a) Scope

- Statutory and other legal provisions, among which the following should be noted:

[202] Law published on June 27, 2011 in the Official Gazette No. 26829, which is the current version of Law 22/2006, applicable to public contracting by the central government, and which consolidates several laws regarding public procurement enacted over a period of years into a single law.

⁹² See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 66. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

⁹³ See document MAPS Panama, http://www.oas.org/juridico/spanish/mesicic5_pan.htm

[203] Article 30 of the current Law incorporates two new procedures to public procurement, which are abbreviated bidding and best value bidding with separated evaluation. These procedures were introduced, respectively, by Law 69/2009⁹⁴ and Law 12/2010⁹⁵. Article 10 establishes that one of the roles attributed to DGCP is to impose fines on public servants who violate the principles and norms of public contracting established in Law 22/2006.

[204] Article 58 establishes that the contracting institution may, prior to receiving proposals, cancel the call for bids without any written justification. In this regard, a Supreme Court decision from April 18, 2016, declared that the portion of the article that reads “without any justification” should be declared unconstitutional.⁹⁶ The same decision from April 18, 2016, also declares Articles 58, 62 (Sole paragraph), 92 and 93 of the current Law 22/2006 unconstitutional. Article 62, sole paragraph, refers to exceptions to public procurement in cases of acquisitions in public security for citizens, for the President and for the country. Article 92 refers to exceptions in consultancy contracts not exceeding 300.000 *balboas*, and Article 93 to exceptions in contracting when related to international promotion and publicity.

[205] Article 103 establishes that a deposit of 15% of the total amount of the proposal must be paid in order to lodge a complaint about illegal or arbitrary acts during a selection process for all types of contracts. The amount established in the prior version of the law was of 10% of the total amount of the proposal.

[206] Draft Law 305/2016⁹⁷, which suggests the addition of 20 (twenty) new articles, the modification of 69 (sixty nine) articles and the repeal of one article of Law 22/2006 in order to improve the efficiency and levels of transparency in public procurement for goods and services in the country under review. The Draft Law had eight articles recently vetoed by the President, and needs to be discussed for a second time by the National Assembly.

b) Observations

[207] First, the Committee would like to acknowledge the new developments in Panama’s legal framework to create, maintain, and strengthen government systems for the procurement of goods and services as envisaged in the Inter-American Convention against Corruption.

[208] Having said that, the Committee considers it appropriate to make additional comments, notwithstanding the observations made by the Committee in section 1.2.1 above in connection with the follow-up on implementation of the recommendations made to the country under review in the Second Round.

[209] With regard to the inclusion of abbreviated bidding as a new process for public procurement, the Committee notes that, by law, these bids will open for submission during three to five days before their closing deadline, depending on the value of the contract. The committee advises that this process might not give sufficient time or a fair chance for all contractors to write and submit their best proposal for the project, and could therefore compromise the transparency, openness and fairness

⁹⁴ Available at: <http://v1.panamacompra.gob.pa/documentosconvertidos/2159-01.pdf>

⁹⁵ Available at: <http://docs.panama.justia.com/federales/leyes/12-de-2010-mar-19-2010.pdf>

⁹⁶ Fallo inconstitucionalidad April 18, 2016, http://www.oas.org/juridico/spanish/mesicic5_pan.htm

⁹⁷ Available at: http://www.asamblea.gob.pa/proyley/2016_P_305.pdf

of the process. The Committee will formulate a recommendation. (see Recommendation 1.2.3.7 of Section 1.2.3 of Chapter II of this Report)

[210] Concerning Article 103, which establishes that a security deposit of 15% of the total amount of the proposal must be paid in order to lodge a complaint about illegal or arbitrary acts during a selection process for all types of contract, the Committee believes that the country under review should bear in mind that the payment of a fee in such proportions for an administrative procedure might deter potential participants from defending their legitimate rights and interests, as well as undermine the principle of access to justice by the public, who should encounter no economic barriers to asserting their basic rights. In this regard, the Committee considers that this provision restricts the access to legal remedies and directly distorts competition in the public procurement for goods and services, and will therefore formulate a recommendation in this regard. (see Recommendation 1.2.3.8 of Section 1.2.3 of Chapter II of this Report)

1.2.2.2 New Developments with Respect to Technology

[211] In its Response to the Questionnaire, the country under review presents various technological developments, which are presented as follows:⁹⁸

[212] First, the country under review mentions the System for Citizen Control of State Works (COBE Ciudadano)⁹⁹, which was planned for institutional use but was released in April 2010, and which allows the general public, through the web page of the Office of the Comptroller General of the Republic, to access to up-to-date information on the progress and execution of state works, in order to promote transparency and citizen participation in their oversight.

[213] In addition, during the on-site visit, the country under review presented information¹⁰⁰ on its plan to launch its New Portal for Public Procurement, named PanamaCompra version 3, which will include new features such as interaction between the buyer and seller, demand quantification, intelligent purchasing, planning public purchases, interconnections with other state web sites, webinars and on-line training, a user-friendly interface, and the ability to conduct oversight of processes. At present there is no detailed calendar for the implementation of the new public procurement system, but it is believed the new version will begin operations in late 2017.

1.2.2.3 Results

[214] The Committee notes that the country under review did not provide in its response to the questionnaire, objective results with respect to the system for the procurement of goods and services.¹⁰¹

[215] The Committee notes that the General Comptroller's Office (CGR) provided the following table regarding the different competitive bidding processes carried out from 2010 to March 2015:

⁹⁸ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pgs. 93-94. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

⁹⁹ <http://www.contraloria.gob.pa/cobeconsulta/ConsultaCobe.aspx>

¹⁰⁰ See presentation by DGCP, slide 23. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

¹⁰¹ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 99. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

Type of Act	2010-2011	2011-2012	Nov. 2013-Oct. 2014	2015
Minor purchases and petty cash	\$ 1,008,736.67	\$ 2,632,014.14	\$ 1,114,008.92	\$ 915,933.87
Competitive bidding process	\$ 1,088,157.37	\$ 1,819,768.65	\$ 2,022,895.50	\$ 711,576.44
Framework agreement	\$ 198,377.40		\$ 983,188.92	\$ 728,482.59
Other kinds of contracts (direct award contracts, expired fixed-term contracts)	\$ 333,172.50	\$ 1,279,522.50	\$ 3,388,575.23	\$ 8,276,200.06
TOTAL	\$ 2,628,443.94	\$ 5,731,305.29	\$ 7,508,668.57	\$ 10,634,207.96
%	2010-2011	2011-2012	Nov 2013-Oct 2014	2015
Minor purchases and petty cash	38%	46%	15%	9%
Competitive bidding process	41%	32%	27%	7%
Framework agreement	8%	0%	13%	7%
Other contracts (direct award contracts, expired fixed-term contracts)	13%	22%	45%	78%
TOTAL	100%	100%	100%	100%

[216] In this regard, the Committee notes that the chart presented by the country under review lacks information concerning the months of January to October 2013. During the on-site visit, further information on the missing period was requested from the country with the objective of clarifying the data presented, but no other documents were submitted subsequently to the Committee for analysis.

[217] Moreover, the Committee notes that, according to the chart presented by CGR, the number of processes carried out by competitive bidding have declined every year, reaching a total of 7% in 2015. On the other hand, the number of processes carried out by other types of contracting, such as direct contracts and contracts with expired validity have risen within the last five years, to an amount of 78% in 2015.

[218] With reference to the information provided, the Committee recommends that the country under review consider ensuring that the competitive bidding process is utilized as the norm, rather than the exception, as set out in the table above, in order to guarantee more transparency, openness and fairness to the process. Although direct contracting as an exception is authorized by Article 62 of Law 22/2006, it is important to remember that the excessive use of this modality may be seen as a means to avoid more complex tendering processes that have more requirements and formalities. The Committee will therefore formulate a recommendation in that respect. (see Recommendation 1.2.3.9 of Section 1.2.3 of Chapter II of this Report)

[219] Furthermore, during the on-site visit, the DGCP presented a chart¹⁰² containing information of the different competitive bidding processes carried out in 2015. However, the numbers presented are inconsistent with the numbers presented by the CGR for that same period.

Public Contracts from January 1, 2015, to December 28, 2015		
	Amount	Number
Minor Purchases	282,560,565.19	97,840
Law 51 – Social Security Fund	190,204,343.09	9895
Abbreviated Best Value Bidding	333,942,413.49	230
Abbreviated Price-based Bidding	401,215,375.00	420
Best Value Bidding	850,478,330.90	251
Best Value Bidding Separate Evaluation	2,595,045,509.83	7
Competitive Bidding	394,050,243.75	2,259
Electronic Catalogue Procurement	143,075,209.15	39,806
Special Proceedings	219,080,621.22	1,679
Auction	7,808,825.38	71
TOTAL	B/. 5,417,461,437.00	152,458

[220] As such, the Committee notes, it cannot rely on statistical data on the number and modalities of bidding processes carried out in a year, such as how many were completed or how many were disqualified. In addition, the country under review should consider presenting a breakdown of the number and value of contracts by competitive and non-competitive awards and by total contracts per year, for the last five years. In that regard, the lack of information makes it hard for the Committee to determine the efficiency and transparency of the government public procurement system for goods and services in place. The Committee will formulate a recommendation in that respect. (see Recommendation 1.2.3.10 of Section 1.1.3 of Chapter II of this Report.)

[221] Furthermore, the country under review presented, during the on-site visit, a list¹⁰³ containing sanctions imposed to companies regarding prohibitions from entering into contracts with the public administration in Panama. Article 16 of Law 22/2006 establishes a number of situations in which the administration may impose this prohibition on a company or an individual, including the termination

¹⁰² See presentation by DGCP, Slide 03. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

¹⁰³ Available at: <http://www.panamacompra.gob.pa/portal/EmpresasInhabilitadas.aspx>

of a public contract as a result of wrongful conduct by the contractor or the initiation of insolvency proceedings by a contractor.

[222] However, this Law does not establish the prohibition on entering into contracts with physical and legal persons that have committed crimes against the public administration, such as corruption or related offences. (see Recommendation 1.2.3.11 of Section 1.1.3 of Chapter II of this Report.)

1.2.3 Recommendations

[223] In light of the observations formulated in sections 1.2.1 and 1.2.2 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

- 1.2.3.1 Prevent the fragmentation of the general procurement system and to ensure harmony in the management of various procurement regimes, guiding itself in that by the principles of openness, equity, and efficiency enshrined in the Convention. (paragraph 180, Chapter II, section 1.2.1.1 of this report)
- 1.2.3.2 Strengthen the PanamaCompra electronic public procurement system (www.panamacompra.gob.pa) in order to ensure the transparency, openness, equity and efficiency that the Convention requires in systems for the procurement of goods and services by the country. (paragraph 186 in Chapter II Section 1.2.1.1 of this report)
- 1.2.3.3 Publish on the Panamacompra website the technical reports issued to calculate an estimated value for a contract, as well as what rules and methods were used to calculate this given value, in order to ensure transparency and accountability in public procurement. (paragraph 187 in Chapter II Section 1.2.1.1 of this report)
- 1.2.3.4 Make the pertinent modifications to establish citizen oversight mechanisms for contracting activities, and to continue strengthening the principles of openness, equity, and efficiency enshrined in the Convention. (paragraph 191 in Chapter II Section 1.2.1.1 of this report)
- 1.2.3.5 Study the possibility of establishing, where appropriate, uniform criteria and evaluation methods for bidding processes, in line with the principles of equity and efficiency set forth in the Convention. (paragraph 196 in Chapter II Section 1.2.1.1 of this report)
- 1.2.3.6 Examine the results of IDB's evaluation of the public sector procurement system in Panama and adopt specific measures such as the use of indicators and self-monitoring to ensure that comprehensive evaluations are conducted periodically to measure the usage and effectiveness of the public sector procurement system and, on the basis of the results, to adopt specific measures to ensure disclosure, equity, and efficiency in its operations, if necessary. (paragraph 201, Chapter II Section 1.2.1.1 of this report)

- 1.2.3.7 Consider making pertinent legal modifications to the process of abbreviated bidding for public procurement, to provide sufficient time for all contractors to write and submit their best proposal for the project, in order to ensure transparency, openness and fairness of the process. (paragraph 209, Chapter II, Section 1.2.2.1 of this report.)
- 1.2.3.8 Consider the possibility of revising existing legislation by eliminating the payment requirement fee to lodge a complaint about an illegal or arbitrary act for all types of contracts. (paragraph 210, Chapter II, Section 1.2.2.2 of this report)
- 1.2.3.9 Ensure that competitive bidding process is utilized as the norm, rather than the exception, in order to guarantee more transparency, openness and fairness to the public procurement system. (paragraph 218, Chapter II, Section 1.2.2.2 of this report)
- 1.2.3.10 Adopt appropriate measures to strengthen the compilation and updating of statistics as it pertains to the public procurement of goods, services and public works, regarding, inter alia, the number, modality and value of contracts by competitive and non-competitive awards per year, as well as sanctions imposed on contractors, in order to guarantee the efficiency and transparency of the system in place, identify challenges and recommend corrective measures, if appropriate. (paragraph 220 Chapter II, Section 1.2.2.2 of this report)
- 1.2.3.11 Consider adopting legal provisions that establish prohibitions on entering into contracts with the public sector for physical and legal persons that have been sanctioned for acts or crimes against the public administration or other financial offences. (paragraph 222, Chapter II, Section 1.2.2.2 of this report)

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

2.1 Follow-Up to the Implementation of the Recommendations Formulated in the Second Round

Recommendation 2.1 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Implementing systems to protect public servants and private citizens who, in good faith, report acts of corruption.

Measure suggested:

Enact, through the relevant legal and administrative procedures, a legal instrument to establish systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including identity protection, in accordance with its Constitution and the basic principles of its domestic legal system. This could cover, inter alia, the following:

a) Protection for those who report acts of corruption that can be investigated through either administrative or judicial venues.

b) Protection measures, covering not only the physical integrity of the whistleblower and his family, but also his employment status, particularly for public officials who report acts of corruption that could involve superiors or workmates.

c) Provisions to punish noncompliance with the rules and/or obligations applicable to protection measures.

d) Simplifying formalities for requesting protection for whistleblowers.

e) Reporting mechanisms, such as anonymous complaints and identity-protected complaints, to guarantee the personal security and identity confidentiality of public officials and private citizens who, in good faith, report acts of corruption.

f) Mechanisms for reporting threats or reprisals made against whistleblowers, indicating the authorities responsible for processing protection requests and the agencies responsible for providing such protection.

g) Mechanisms to facilitate, when appropriate, international cooperation in the above areas, including the technical assistance and reciprocal cooperation described in the Convention, along with exchanges of experiences, training, and mutual assistance.

h) The competence of the judicial and administrative authorities regarding these matters, clearly distinguishing one from the other.

[224] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following¹⁰⁴:

[225] *In the area where the Adversarial Criminal Court system applies, the same Code of Procedure establishes, in Article 69¹⁰⁵, paragraph two, that:*

“The Public Prosecution Service shall take the steps necessary to protect the victims, witnesses, whistleblowers, and other persons involved in the criminal proceeding and, to that end, it shall implement, with no additional formalities and under its own leadership, a program for their assistance and protection...”

[226] *“By means of Official Gazette 27777-A of May 11, 2015, the Protocol for Action of the Unit for Protecting Victims, Witnesses, and Experts in Criminal Proceedings (UPAVIT) was established; however, it does not only cover corruption cases.”*

[227] During the on-site visit, a representative from UPAVIT indicated that, in principle, the unit is open to public officials and private citizens who require protection for reporting acts of corruption in criminal proceedings, however, there have been no reported cases of this sort within the unit since its creation in May 2015.¹⁰⁶

¹⁰⁴ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 66. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

¹⁰⁵ Available at: http://www.oas.org/juridico/PDFs/mesicic4_pan_ley63.pdf

¹⁰⁶ The country under review informs that a draft bill has been submitted to the Legislative, which establishes measures of protection for persons who report crimes against the public administration.

[228] Considering the information provided in its Response, the Committee acknowledges the efforts taken to advance in its implementation of Recommendation 2.1, however, it notes that the country under review has not yet put into place a specific law establishing measures and systems to protect public officials and private citizens who in good faith report acts of corruption. Therefore, it reiterates the need for the country under review to give further attention to those measures, taking into account the criteria established in the Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses.¹⁰⁷ (See Recommendation 2.3.1 in Chapter II, Section 2.3 of this Report.)

[229] Moreover, civil society organization Alianza Ciudadana Pró-Justicia, in its Response to the Questionnaire for the Fifth Round¹⁰⁸, emphasizes that there have not been significant advances in the adoption of the recommended measures. According to them, *the country lacks in provisions that provide real protection guarantees to whistleblowers or witnesses when reporting acts of corruption.*

2.2 New Developments with Respect to the Provision of the Convention on Systems for Protecting Public Servants and Private Citizens Who, in Good Faith, Report Acts of Corruption

2.2.1 New Developments with respect to the Legal Framework

a) Scope

[230] The country under review provided the following information as new developments with respect to the Convention provision on systems for protecting public servants and private citizens who in good faith report acts of corruption.¹⁰⁹

[231] Article 69, paragraph two, of the Code of Criminal Procedure of August 29, 2008, states that the Public Prosecution Service shall take the steps necessary to protect the victims, witnesses, whistleblowers, and other persons involved in the criminal proceeding and, to that end, it shall implement, with no additional formalities and under its own leadership, a program for their assistance and protection.

[232] Resolution N° 15 from March 25, 2014, which restructures the Secretariat for Victims, Witnesses, Experts and others (SEPROVIT) in order to adapt its procedures and mechanisms to an accusatorial penal procedural system that is being gradually implemented by the country under review.¹¹⁰

[233] Protocol for Action of the Unit for Protecting Victims, Witnesses, and Experts in Criminal Proceedings (UPAVIT), by means of Official Gazette 27777-A of May 11, 2015. The purpose of the agency is to provide free legal assistance to crime victims in criminal proceedings in general.

b) Observations

¹⁰⁷ Model law to facilitate and encourage the reporting of acts of corruption and to protect whistle-blowers and witnesses, http://www.oas.org/juridico/PDFs/model_law_reporting.pdf

¹⁰⁸ Response to the questionnaire by Alianza Ciudadana Pró-Justicia, pg 33. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

¹⁰⁹ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 66. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

¹¹⁰ Available at: http://www.oas.org/juridico/PDFs/mesicic5_pan_res_ane_prot_den_4.pdf

[234] The Committee notes that although the protection made available to victims and witnesses by SEPROVIT and UPAVIT could be applied to cases involving persons who report acts of corruption, it is not specifically designed for such cases. Furthermore, it does not address protection for those who report acts of corruption that can be investigated in either administrative or non-criminal proceedings.

[235] Accordingly, the Committee reiterates the recommendation put forward in section 2.1 above regarding the need for the country under review to consider enacting legislation to provide comprehensive protection to those who in good faith report acts of corruption and their families, including withholding their identities and protection in the workplace, requisites for access to protection, among other safeguards, taking into account the criteria established in the Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses. (See recommendation 2.3.1 in Chapter II, Section 2.3 of this Report.)

2.2.2 New Developments with Respect to Technology

[236] The country under review did not provide information on developments in this regard either in its Response to the Questionnaire or during the on-site visit.

2.2.3 Results

[237] During the on-site visit representatives of the Comptroller General’s Office (CGR) reported that the program “Citizen Complaints”, has received, from 2010 to 2016, 540 complaints, including irregularities in labor, public procurement for goods and services, handling of public funds and goods, and others not specified. Moreover, the Committee notes that on the program’s website¹¹¹, the following results for the year 2016 were retrieved:

Complaints Received	%
Labor Irregularities	22.17
Goods Irregularities	42.88
Public Contracting Irregularities	3.69
Adulteration	1.74
Other	29.51
Status of Complaints	%
Under Assessment	0.15
Dismissed	46.32
Under Investigation	0.89
Under Review	0.00
Concluded	52.64

[238] In addition, during the on-site visit, representatives from the CGR also informed that the program “Citizen Complaints”, no longer allows for anonymous complaints on their website. All complainants must provide their identification when reporting, although confidentiality regarding names and identities are guaranteed to be preserved during the investigation.

[239] The Committee deems it important to note that any information provided anonymously should not be considered less accurate, hence anonymous allegations should be assessed on their merits like any

¹¹¹ Available at: <http://www.denunciaciudadana.gob.pa/publico/>

other complaint. Moreover, anonymity may provide a strong incentive for whistleblowers to come forward. The country under review should consider adopting mechanisms that provide for protection of identity by allowing anonymous complaints to be reported in its “Citizen Complaints” program, taking into account the criteria established under Article 10 of the Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses. The Committee will therefore formulate a recommendation in this respect. (See recommendation 2.3.2 in Chapter II, Section 2.3 of this Report.)

[240] Furthermore, during the on-site visit, CGR representatives indicated that, in order for them to be able to efficiently carry out their work they would need the necessary human resources and funding. The Committee will therefore formulate a Recommendation in this regard, advising that the country under review to ensure that the CGR has the human, financial and technological resources necessary for the proper performance of its functions, within available resources. (See Recommendation 2.3.3 in Chapter II, Section 2.3 of this Report.)

2.3 Recommendations

[241] In light of the observations formulated in section 2 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

- 2.3.1 Enact, through the relevant legal and administrative procedures, a legal instrument, such as the Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses, to establish systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including identity protection, in accordance with its Constitution and the basic principles of its domestic legal system. This could cover, inter alia, the following: (paragraph 235 in Chapter II Section 2.2 of this report)
- a) Protection for those who report acts of corruption that can be investigated through either administrative or judicial venues.
 - b) Protection measures, covering not only the physical integrity of the whistleblower and his family, but also his employment status, particularly for public officials who report acts of corruption that could involve superiors or workmates.
 - c) Provisions to punish noncompliance with the rules and/or obligations applicable to protection measures.
 - d) Simplifying formalities for requesting protection for whistleblowers.
 - e) Reporting mechanisms, such as anonymous complaints and identity-protected complaints, to guarantee the personal security and identity confidentiality of public officials and private citizens who, in good faith, report acts of corruption.

f) Mechanisms for reporting threats or reprisals made against whistleblowers, indicating the authorities responsible for processing protection requests and the agencies responsible for providing such protection.

g) Mechanisms to facilitate, when appropriate, international cooperation in the above areas, including the technical assistance and reciprocal cooperation described in the Convention, along with exchanges of experiences, training, and mutual assistance.

h) The competence of the judicial and administrative authorities regarding these matters, clearly distinguishing one from the other.

2.3.2 Adopt mechanisms that allow anonymous complaints to be reported in the “Citizen Complaints” program, taking into account the criteria established under Article 10 of the Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses. (paragraph 239 in Chapter II Section 2.2 of this report)

2.3.3 Ensure, within available resources, that the CGR has the human, financial and technological resources necessary for the proper performance of its functions, within available resources. (paragraph 240 in Chapter II Section 2.2 of this report)

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

3.1. Follow-up on implementation of the recommendations formulated in the Second Round

Recommendation 3.1 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Study the possibility of amending the legislation in place in the Republic of Panama, in particular criminal legislation, so that the definition of public servant is expanded, under criminal law, to include those private citizens who perform public functions or who manage public funds in any capacity or form.

[242] With respect to the aforementioned recommendation, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following¹¹²:

[243] *“In criminal matters, our Code criminalizes (under the offense EMBEZZLEMENT BY EXTENSION) actions by private citizens given responsibility of any form over the funds, income, and effects of a public agency, by private citizens legally appointed as the depositories of public revenues or effects, embargoed goods deposited by a public authority even when belonging to private citizens, and by representatives of corporate entities given the responsibility to manage money, property, or valuables belonging to the State’s assets (Law 14 of 2007). The definition of the offense admits no doubt or discussion, and the private citizen may be punished.*

¹¹² See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 73. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

[244] In this regard, the Committee notes that although Art. 343 of the Criminal Code¹¹³ does contemplate private citizens who manage public forms in any capacity or form, this provision is only applicable to the specific crime of embezzlement. It is not related to other acts of corruption addressed in Panama's legal framework.

[245] Moreover, the definition for Public Servant found in Article 299 of the Constitution of the Republic of Panama¹¹⁴, does not specifically address private citizens who perform public functions or who manage public funds in any capacity or form, in the name of the State or in the service of the State.

[246] Considering the information provided in its Response, the Committee acknowledges the efforts taken to advance in its implementation of Recommendation 3.1, however, it notes that the country under review has not yet amended its legislation so that the definition of public servant is expanded, under criminal law, to include those private citizens who perform public functions or who manage public funds in any capacity or form, in the name of the State or in the service of the State. Therefore, it reiterates the need for the country under review to give further attention to this measure. (See Recommendation 3.3.1 in Chapter III, Section 3.3 of this Report.)

Recommendation 3.2.

Modify and/or complement the new Criminal Code, in order to expand the coverage to meet the requirements of Article VI(1) of the Inter-American Convention against Corruption.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Articles 339 and 340 of the new Criminal Code could be complemented by the inclusion of the element "for himself or another person or entity".

[247] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following¹¹⁵:

[248] The country under review informs that reforms to the Penal Code related to Crimes against the Public Service are being addressed by a project led by the UNODC, in partnership with the British Embassy in Panama City, and in consultation with Civil Society, the judiciary, the DGCP, and the Ministry of Foreign Affairs. The following would be added to Art. 339: "... for a third party, be it an individual or a corporate entity, interest group, agency, or corporation, national or municipal money, titles, valuables, or any asset or thing of value..."

[249] Additionally, in its response to the questionnaire, the country under review informs that "As regards the recommendation in measure (a) regarding Article 340 of the Criminal Code (Culpable Embezzlement), the wording 'for himself' would not apply because of the nature of the offense in question: in other words, this offense is culpable in nature, so it would be difficult for a person committing culpable embezzlement to also commit the crime of willful embezzlement and, therefore, the recommendation would not apply to this offense."

¹¹³ Available at: http://biblioteca.cejamerica.org/bitstream/handle/2015/5480/CODIGO%20PENAL%20-%20AJUSTADO_panama.pdf?sequence=1&isAllowed=y

¹¹⁴ Available at: http://www.asamblea.gob.pa/cep/const_constitucion1941.pdf

¹¹⁵ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 74. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

[250] The Committee notes, however, that Article 340 in measure a) does not refer itself to the offence of culpable embezzlement as pointed out in the Response, but to Passive Embezzlement related to members of the judiciary or members of the Public Prosecution Service. Due to a number of enacted reforms, Article 340 was altered to become Article 346 in the current and revised Penal Code¹¹⁶, with only a modification in numbering but no change in the text itself.

[251] The Committee takes note of the information provided by the country under review in its Response to the Questionnaire with respect to the measures undertaken to implement measure a) of the foregoing recommendation. Article 346 from the Criminal Code speaks of “personally or by interposed person”, in other words, if the person receives or accepts it himself or through someone else. It also refers to “accepting, receiving or requesting.” In this regard, the Committee takes note of the partially satisfied measure by the country under review regarding Art. 346 of the Criminal Code.

[252] However, the Committee reiterates the need for the country under review to give additional attention to implementation thereto and include the element “for himself or another person or entity” in Article 345 of the revised Criminal Code. (See Recommendation 3.3.2 in Chapter III, Section 3.3 of this Report.)

Measure b) suggested by the Committee that requires additional attention within the Framework of the Third Round:

Article 341 of the new Criminal Code could be complemented by the inclusion of the element “for himself or another person or entity”.

[253] The country under review, in its response to the questionnaire¹¹⁷, once again informed that reforms to the Penal Code related to Crimes against the Public Administration are being addressed by a project led by ANTAI and UNODC, in partnership with the British Embassy in Panama City, and in consultation with Civil Society, the judiciary, the DGCP, and the Ministry of Foreign Affairs. are being addressed by a project led by UNODC, Embassy of Great Britain, Civil Society, Judiciary, DGCP, Ministry for Foreign Affairs and by the Public Prosecutor’s Office.

[254] Considering the information provided in its Response, the Committee acknowledges the efforts taken to advance in its implementation of measure b), as well as the need for it to continue to give attention thereto, bearing in mind that the country under review should amend Article 347¹¹⁸ of the current Criminal Code with the inclusion of the element “for himself or another person or entity.” (See Recommendation 3.3.3 in Chapter III, Section 3.3 of this Report.)

Measure c) suggested by the Committee that requires additional attention within the Framework of the Third Round:

¹¹⁶ Article 346. The public servant who, acting as a member of the Judicial Branch or of the Public Prosecutor's Office, administrative authority, arbitrator or any office that must decide a matter of his knowledge or competence, personally or by interposed person, accepts, receives or requests a donation, promise, money, benefit or advantage to harm or favor one of the parties in the process, or as a result of having harmed or favored one of them, shall be punished with imprisonment of four to eight years.

¹¹⁷ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 75. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

¹¹⁸ Article 347. Any person who offers, promises or delivers to a public servant a gift, promise, money or any benefit or advantage to perform, delay or omit an action related to his position or employment or in violation of his obligations, will be punished with imprisonment of three to six years.

Amend Article 323 of the new Criminal Code to require a minimum of two people for commission of the crime of illicit association.

[255] The country under review, in its Response to the Questionnaire, notes that it has not complied with the measure of the foregoing recommendation regarding Article 329 of the current Penal Code.¹¹⁹ The Committee reiterates the need for the country under review to give further attention to this measure. (See Recommendation 3.3.4 in Chapter III, Section 3.3 of this Report.)

3.2. New developments in respect of the Convention provision on acts of corruption

3.2.1. New developments in the legal framework

[256] The country under review made no mention of new developments with respect to its legal framework in this area.

3.2.2. New developments with respect to technology

[257] The country under review made no mention of new developments with respect to technology in this area.

3.2.3. Results

[258] During the on-site visit, the country under review provided the following tables on results obtained with respect to acts of corruption referred to in Article VI of the Convention:¹²⁰

PUBLIC PROSECUTION SERVICE – OFFICE OF THE ANTICORRUPTION PROSECUTOR COMPARATIVE TABLE OF FILE ENTRIES BY TYPE OF OFFENSE FOR 2014, 2015, AND AUGUST 2016			
TYPE OF ENTRIES BY GENERIC OFFENSE	YEARS		
	2014	2015	2016
TOTAL	712	648	321
Against economic assets	109	27	14
Crimes against the economic order	48	173	21
Crimes against the public administration	525	437	270
Crimes against the public record	30	11	16

TYPE OF JUDGMENTS BY INDIVIDUALS	YEARS		
	2014	2015	2016
TOTAL			

¹¹⁹ Article 329. When three or more persons are brought together for the purpose of committing offenses, each of them shall be punished for that single act with imprisonment of three to five years.

¹²⁰ See Presentation by the Public Ministry, slides 23-25. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

PERSONS CONVICTED	74	94	72
PERSONS ACQUITTED	22	24	26
Source: Statistics Center, Public Prosecution Service			

[259] The Committee considers that the above results regarding cases received by the anticorruption offices indicate that the existing provisions in Panama which criminalize acts of corruption referred to in Article VI of the Convention, have been applied to concrete cases. The Committee considers that this is a positive step towards implementation of the Convention.

[260] The information provided by the country under review takes into account general categories of corruption-related cases, however it does not provide for detailed or categorized information regarding specific corruption offenses. During the on-site visit, further information on specific offenses was requested with the objective of clarifying the data presented, but unfortunately no other documents were submitted subsequently to the Committee for analysis.¹²¹

[261] As such, the Committee notes that it cannot rely on statistical data pertaining to corruption-related cases presented by the country under review, and therefore, advises that it considers presenting a detailed breakdown of the number of cases prosecuted, number of individuals prosecuted, number of convictions, acquittals and dismissals by type of corruption-related offense during the last five years, as well as the possibility of having an updated, on-line system. (See Recommendation 3.3.5 in Chapter III, Section 3.3 of this Report.)

3.3. Recommendations

[262] In view of the observations formulated in sections 3.1. and 3.2 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

- 3.3.1 Study the possibility of amending the legislation in place in the Republic of Panama, in particular criminal legislation, so that the definition of public servant is expanded, under criminal law, to include those private citizens who perform public functions or who manage public funds in any capacity or form. (paragraph 246 in Chapter III Section 3.2 of this report)
- 3.3.2 Amend Article 345 of the new Criminal Code, in order to expand the coverage to meet the requirements of Article VI(1) of the Inter-American Convention against Corruption by including the element “for himself or another person or entity”. (paragraph 252 in Chapter III Section 3.2 of this report)
- 3.3.3 Amend Article 347 of the new Criminal Code, in order to expand the coverage to meet the requirements of Article VI(1) of the Inter-American Convention against Corruption by including the element “for himself or another person or entity”. (paragraph 254 in Chapter III Section 3.2 of this report)

¹²¹ See new information presented by Panama, http://www.oas.org/juridico/spanish/mesicic5_pan.htm

- 3.3.4 Amend Article 329 of the new Criminal Code to require a minimum of two people for commission of the crime of illicit association. (paragraph 255 in Chapter III Section 3.2 of this report)
- 3.3.5 Consolidate and publish a detailed breakdown of the number of cases prosecuted, number of individuals prosecuted, number of convictions, acquittals and dismissals by type of corruption-related offense, as well as the possibility of having an updated, on-line system. (paragraph 261 in Chapter III Section 3.2 of this report)

4. GENERAL RECOMMENDATIONS

Recommendation 4.1 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, standards, measures and mechanisms considered in this Report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.

[263] In its Response to the Questionnaire¹²², the country under review mentions that the CGR has implemented a total of sixteen (16) training activities at the national level under the Public Ethics and Institutional Competences Program, with which training was given to six hundred and three (603) employees of all areas of the Office of the Comptroller General of the Republic over a period of three (3) years (2014-2015-2016).

[264] The DGCP also informed that the amendments to Law 22/2006¹²³ make 40 hours per annum of training obligatory for members of purchasing departments.

[265] Moreover, DIGECA mentioned in the response to the questionnaire that in 2010 it has introduced an Induction Training Program, which has been made available to official Human Resource Units. Its aims include conveying the basic elements of the organizational culture to new employees, with an emphasis on the ethical and moral principles that must determine the actions of all public servants upon joining the new Administrative Career system. The program includes such issues as analyzing the relationship between public servants and the regulations governing their relationship with the State as their employer, their relations with the agency to which they belong, and their relationship with the work group and position. This level will be developed in accordance with the methodology established by each institution for the purpose.

[266] DIGECA has also submitted information on the following training activities offered to public servants from 2013 to 2016:

<p>GENERAL DIRECTORATE OF THE ADMINISTRATIVE CAREER</p> <p>TRAINING ACTIVITIES BY THE TRAINING DIRECTORATE</p> <p>2013 TO 2016 (MAY)</p>

¹²² See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 78-81. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

¹²³ Available at:

http://www.panamacompra.gob.pa/portal/files/Legislacion/Leyes/TEXTO_UNICO_LEY_22_2006_VERS_FINAL_11_06_2006.pdf

2013	2014	2015	2016 (May)	2016 (Final Forecast)
1146	*588	**3800	**2650	*6200
OVERALL FIGURES				
* ELECTORAL YEAR AND NEW ADMINISTRATION				
** NEW TRAINING POLICIES				
** Includes training and labor relations				
Main areas of training: Human resource actions, supervision techniques, drafting and spelling, trainer training, modification of structures, basic computer skills, induction into the public administration, effective workplace relations, attending to the public, teamwork, administrative career laws and regulations, enforcement of the disciplinary regime, ethics of public servants, quality, attending to the public, labor relations and wellbeing of public servants, the human factor, internal regulations, financial analyses, performance evaluations, stress management, job classification and auditing, stress management, leadership, auditing and internal government oversight, mediation and conflict resolution.				

[267] Given that in sections 1, 2 and 3 of Chapter II of this Report provides an updated and detailed follow-up of the recommendations formulated to Panama in the Second Round of Review, as well as the systems, standards, measures and mechanisms that the suggested recommendations concern, the Committee adopts what is set out in said sections, and, therefore, believes that this recommendation is redundant.

Recommendation 4.2 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, provisions, measures, and mechanisms considered in this report, and to verify follow-up on the recommendations made herein.

[268] In its Response to the Questionnaire¹²⁴, the country under review mentions that the CGR will prepare indicators to measure the impact of the Public Ethics and Institutional Competences Program in the public administration by applying the Institutional Integrity Index Self-assessment tool (IntoSaint)¹²⁵, a project sponsored by the Organization of Latin American and Caribbean Supreme Audit Institutions (OLACEFS), which oversees all the region's comptrollers' offices. In April 2016, the first workshop for evaluating the integrity of public servants from all units was held, and the preliminary results of the workshop are being awaited.

[269] Moreover, the country under review also informs that the General Directorate of the Administrative Career has developed and adapted management and information programs that report on the indicators in specific areas, including: the Performance Evaluation Program (EDES), the Information and Organization and Human Resource Management System (SIGRHU), which provides methodological and IT technical support for the Post Classification and Payments System. There is also the Psicosof technological program, which is a tool for selecting human resources based on

¹²⁴ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 78-81. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

¹²⁵ Available at: <http://www.olacefs.com/p9232/>

technical criteria, skills, and abilities. With technical assistance from the government's Innovation Authority, work is currently underway on a more modern and integrated system, the Integrated Human Resource Management System, which includes all information of relevance to the actions of Institutional Human Resource Units and their IT and statistical components.

[270] Given that in sections 1, 2 and 3 of Chapter II of this Report provides an updated and detailed follow-up of the recommendations formulated to Panama in the Second Round of Review, as well as the systems, standards, measures and mechanisms that the suggested recommendations concern, the Committee adopts what is set out in said sections, and, therefore, believes that this recommendation is redundant.

III. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE REPUBLIC OF PANAMA OF THE CONVENTION PROVISIONS SELECTED FOR THE FIFTH ROUND

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

[271] In accordance with the Methodology adopted by the Committee for the Fifth Round regarding the implementation of Article III, paragraph 3 of the Convention, which refer to measures that are intended to establish, maintain and strengthen "*instruction[s] to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities,*" the country under review selected the General Comptroller's Office (Contraloria General de la Republica), the General Directorate of the Administrative Career (Direccion General de Carrera Administrativa) and the General Public Procurement Directorate (Direccion General de Contrataciones Publicas), as the country under review considers them as principal groups that merit review, due to them being a majority or based on the importance of their functions.

[272] The following is a brief description of the three bodies selected by the Republic of Panama that are to be examined in this section:

[273] The General Comptroller's Office is the body responsible for overseeing, regulating, and controlling movements of public resources and assets, and for examining, intervening in, and closing accounts related thereto.

[274] The General Public Procurement Directorate serves as the regulatory and executive agency for the human resource policies adopted by the executive branch, and its powers include designing the human resource administration system and its organization, programs, and mechanisms for execution, information, evaluation, and control; enacting regulations, systems, and procedures to facilitate the implementation of the aforesaid measures and provisions; and implementing public sector human resource policies in accordance with the executive branch's guidelines.

[275] The General Directorate of the Administrative Career serves as the regulatory and executive agency for the human resource policies adopted by the executive branch, and its powers include designing the human resource administration system and its organization, programs, and mechanisms for execution, information, evaluation, and control; enacting regulations, systems, and procedures to

facilitate the implementation of the aforesaid measures and provisions; and implementing public sector human resource policies in accordance with the executive branch's guidelines.

1.1. Existence of a legal framework and/or other measures

[276] Panama has a set of provisions and/or measures that provide instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, among which the following are highlighted:

- Statutory and other legal provisions applicable to the selected personnel of the General Comptroller's Office, among which the following should be noted:

[277] With respect to provisions and/or measures for providing instructions to the personnel of the General Comptroller's Office (CGR), Decree No. 422-LEG of November 16, 2010,¹²⁶ enacts the legal instruments titled *Code of Ethics and Code of Conduct*¹²⁷ of the public servants of the Office of the Comptroller General of the Republic and states that the Department of Public Ethics and Transparency, attached to the General Secretariat, shall be responsible for fostering therein the culture of conduct and ethics in the public administration, promoting ethical principles as a set of rules to build the community's trust and credibility in the public services performed by the Comptroller General's Office.

[278] Regarding the manner in which personnel are informed of their responsibilities and functions, the country under review notes that that all employees entering service in the Comptroller's Office, once they have taken possession of their positions in the Personnel Actions Department, are given a set of documents containing: Internal Regulations, Law 32 of 1984, Code of Ethics and Conduct, employee ID, ACH form, and the functions to be performed by the position in question. New employees must sign to indicate they have received those documents and they are also informed that they will later have to attend the Induction Seminar for new hires. The seminar will implement the mandate of Article 24 of the Internal Regulations¹²⁸ and will familiarize the employee with the mission, vision, organizational structure, functioning, and other general aspects of the institution, together with the applicable rules, rights and duties, programs, and benefits.¹²⁹

[279] Moreover, upon joining the institution, new employees are informed of their positions' functions and, upon being taken to the administrative unit where they are to work, are given instructions in the position's specific tasks by their immediate superiors or other appointed persons. A position's functions may only be modified when its reclassification is ordered, either to reduce or increase the tasks assigned to it.¹³⁰

[280] Regarding the existence of introductory, training or instructional programs and courses for personnel on the ethical rules governing their activities, the CGR notes that the Induction Seminar is

¹²⁶ Available at: http://gacetas.procuraduria-admon.gob.pa/26668-C_2010.pdf

¹²⁷ Available at: http://www.contraloria.gob.pa/assets/código-de-ética_2015.pdf and http://www.contraloria.gob.pa/assets/código-de-conducta_2015.pdf

¹²⁸ "Article 24: INDUCTION PROCESS: Public servants with the Comptroller General's Office, once they have taken possession of their positions at the Directorate of Human Resources, shall undergo the induction process, in order to familiarize them with the mission, actions, organizational structure, functioning, Internal Regulations, and other general aspects of the institution. Employees' immediate superiors shall be responsible for informing them, in writing, of the basic functions and specific instructions related to the post to be held."

¹²⁹ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 8. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

¹³⁰ *Ibid.* p. 9

given to new hires and to those who, following a temporary appointment, are assigned to permanent positions. It is organized by the Superior Institute for Oversight, Control, and Public Administration and the National Directorate for the Development of Human Resources. New hires are instructed in general topics related to the Comptroller General's Office, including history, composition, structure, past comptrollers, regional offices, and institutional values. These topics are taught by personnel from the Superior Institute for Oversight, Control, and Public Administration. At the same time, personnel from the National Directorate for the Development of Human Resources provide instruction on three topics: the Internal Regulations, the Competences-based Management System, and benefits for employees of the Comptroller's Office.¹³¹

[281] The seminar has a duration of 8 hours in most cases; nevertheless, it can last up to 40 hours when it includes instruction on the handling of computer-based tools such as SCAFID and COBE, when applicable, in which case personnel from the corresponding areas instruct the new hires in their use.

[282] Furthermore, the country under review states, in its Response to the Questionnaire, that through the Superior Institute for Oversight, Control, and Public Administration, during 2015, it organized two on-line courses on public ethics, with a duration of 24 on-line hours each, that emphasize the enforcement of the Codes of Ethics and Conduct and encourage the observance of institutional values, including transparency, legality, independence, responsibility, probity and integrity, ethics, quality, confidentiality, justice, and equality.¹³²

[283] Moreover, the Seminar on Public Ethics and Institutional Competences was held from September 2014 to April 2016, with monthly training activity of 40 hours a week at the CGR's headquarters and 24 hours a week for the regional offices, was attended by participants from all the CGR's directorates and covered the topics of organizational culture, public ethics, attitude, leadership, and interpersonal relations.¹³³

[284] In addition, the Seminar on Public Ethics and Institutional Competences involves written tests to provide evidence on whether the Codes were understood. After conducting an assessment, in class, if the participant has not understood, the instructor provides an expanded explanation with practical examples. The Seminar on Public Ethics and Transparency is obligatory for all officers of the CGR.¹³⁴

[285] With respect to the use of modern communication technologies to apprise personnel of the ethical rules in place, the country under review notes that it uses information and communication technologies, such as using the Closed Circuit TV system at the headquarters building to broadcast awareness videos about the articles contained in the Codes of Public Ethics and Conduct and the observance of institutional values. Moreover, awareness messages about the Codes of Ethics and Conduct are also distributed over the institution's *intranet and e-mail*, which reach all the users throughout the country.¹³⁵

[286] Regarding the existence of bodies to which personnel can resort to obtain information or resolve doubts about the scope or interpretation of ethical rules, the country under review notes that personnel can consult the various departments of the Directorate for the Development of Human

¹³¹ *Ibid.*

¹³² See presentation CGR, slide 5. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

¹³³ *Ibid.* Slide 23.

¹³⁴ *Ibid.*, slide 6.

¹³⁵ *Ibid.*

Resources to resolve queries or obtain guidance and information about their employment and the functions and responsibilities of their positions, as well as access the material on the intranet.¹³⁶

- Statutory and other legal provisions applicable to the personnel of the General Public Procurement Directorate, among which the following should be noted:

[287] With respect to provisions and/or measures for providing instructions to the personnel of the General Public Procurement Directorate (DGCP), Executive Decree No. 246 of December 15, 2004,¹³⁷ enacted the Unified Code of Ethics for public employees working in agencies of the central government. The Decree's provisions are binding on all public officials and employees, regardless of their place in the hierarchy, who serve the different agencies of the central government, autonomous and semi-autonomous entities, and companies and societies with a majority state shareholding. During the on-site visit, the country under review indicated that DGCP does not have their own Ethics Code.

[288] Furthermore, the DGCP has a set of Internal Regulations, which regulate disciplinary rules, the processing of human resource actions, and in particular, the rights, duties and responsibilities of public servants.¹³⁸

[289] Regarding the manner in which personnel are informed of their responsibilities and functions¹³⁹, the country under review notes that responsibilities and functions are communicated orally at the start of duties and during the first weeks, as well as upon signing the contract that covers the position. The only record is the employment contract; no records are kept of the other formalities.

[290] Moreover, during the on-site visit the country under review mentioned that there is no program in the institution to guarantee that induction covers ethics rules. Furthermore, upon entering the institution, new hires are not given the Code of Ethics or a document with the functions they are to perform. However, the country under review mentions that an induction is performed upon entry, based on their internal regulations, containing general rules and technical aspects of the functions to be performed by the public servant.

[291] Regarding the existence of bodies to which personnel can resort to obtain information or resolve doubts about the scope or interpretation of ethical rules, the country under review notes that personnel can consult their own department or the Human Resources Institutional Office.

[292] With respect to the use of modern communication technologies to apprise personnel of the ethical rules in place, the country under review notes that it uses information and communication technologies such as institutional emails and a digital magazine.¹⁴⁰

[293] In addition, the country under review indicated during the on-site visit that it has not been able to provide training to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities due to lack of financial resources.

¹³⁶ *Ibid.*, pg. 12.

¹³⁷ Available at: http://www.up.ac.pa/ftp/2010/principal/transparencia/codigo_de_etica.pdf

¹³⁸ Available at: <http://www.panamacompra.gob.pa/portal/files/Acercade/ResolucionNo372007.pdf>

¹³⁹ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 11. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

¹⁴⁰ Available at: <http://www.dgcp.gob.pa/sala-de-prensa/960-dgcp-jornada-intensa>

- Statutory and other legal provisions applicable to the personnel of the General Directorate of the Administrative Career, among which the following should be noted:

[294] With respect to provisions and/or measures for providing instructions to the personnel of the General Directorate of the Administrative Career (DIGECA),¹⁴¹ Chapter V of Law 9/94, Article 99 provides that mandatory induction training is to be provided to public servants upon entry into governmental institutions, in order to help with guidance and adaptation of personnel into their posts and also to inform them of their rights, prohibitions and duties.

[295] In addition, Article 100 of Law 9/94¹⁴² states that DIGECA will be responsible for providing a uniform methodology on induction processes to be carried out by Human Resources offices of the country's institutions, as well as the general documents that allow the new employee to be fully integrated into the public administration career.

[296] However, during the on-site visit, the country under review informed that although induction courses in ethic rules and responsibilities are being held progressively, they are not being provided as established by law, which is upon entry of public servants to a specific institution.

[297] The Committee also notes that during the on-site visit, DIGECA informed that although there exists a manual which provides a uniform methodology for induction processes, it is outdated and there are no current plans to update the manual or to introduce new guidelines and general documents regarding induction processes to be carried out by Human Resources offices in administrative career institutions on account of lack of financial resources.

[298] Moreover, DIGECA cites Executive Decree No. 246 of December 15, 2004,¹⁴³ which enacted the Unified Code of Ethics for public employees working in agencies of the central government. The Decree's provisions are binding on all public officials and employees, regardless of their place in the hierarchy, who serve the different agencies of the central government, autonomous and semiautonomous entities, and companies and societies with a majority state shareholding.

[299] Regarding the existence of introductory, training or instructional programs and courses for personnel on the ethical rules governing their activities, the aforementioned notes that Law 9 of 1994 makes the programs and induction or instruction courses obligatory for employees subject to its terms. Currently, the General Directorate of the Administrative Career has developed an induction program,¹⁴⁴ which provides guidance for its implementation by the Institutional Human Resource Offices within the institutions. This program was updated up to the year 2010.¹⁴⁵

[300] In addition, training provided by DIGECA to public servants from the administrative career does not include in-course assessment mechanisms in order to gauge the effectiveness of the quality of the learning that took place during the training process.

¹⁴¹ Available at: http://www.oas.org/juridico/spanish/pan_res81.pdf

¹⁴² *Ibid.*

¹⁴³ Available at: http://www.up.ac.pa/ftp/2010/principal/transparencia/codigo_de_etica.pdf

¹⁴⁴ http://www.digeca.gob.pa/tmp/file/1178/PROPUESTA_DE_GUIA_METODOLOGICA_PARA_LA_ELABORACION_DE_PROG_DE_INDUCCION_DEL_PERSONAL_A_LA_ORGANIZACION_PUBLICA.pdf

¹⁴⁵ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 11 http://www.oas.org/juridico/spanish/mesicic5_pan.htm

[301] Regarding the manner in which personnel are informed of their responsibilities and functions¹⁴⁶, the country under review notes that the immediate superior, in coordination with the Institutional Human Resource Office, is responsible for providing the public servant with all information related to his functions, tasks, activities, and responsibilities, in writing, in accordance with Job Classification Manual.

[302] Additionally, public servants are informed of the ethical rules as part of their induction, re-induction, and training programs. The Institutional Human Resource Offices hand out copies of the Regulations, Code of Ethics, and other disciplinary rules to employees during the courses. In addition, the different administrative agencies and DIGECA publish those documents on their web pages.

[303] At the same time, the General Directorate of the Administrative Career, through the Directorate for Labor Relations and Public Employee Well-being, in support of the work of the Institutional Human Resource Offices, includes in its responsibilities related to the dissemination and oversight of the disciplinary regime, information on the Code of Ethics, the Transparency Law, and international anticorruption conventions and protocols.¹⁴⁷

[304] With respect to the use of modern communication technologies to apprise personnel of the ethical rules in place, the country under review notes that it uses information and communication technologies such as institutional emails to inform public servants all over the country of actions and instructions regarding ethical rules. In addition, regarding personnel responsibilities, DIGECA publishes on its website the Models for Internal regulations and Induction Programs for Administrative Career institutions, as well as their Post Classification Manuals¹⁴⁸.

[305] During the on-site visit, DIGECA indicated that¹⁴⁹ it does not carry out virtual training regarding ethical rules and responsibilities to public servants in the administrative career.

[306] Regarding the existence of bodies to which personnel can resort to obtain information or resolve doubts about the scope or interpretation of ethical rules, the country under review notes that personnel can consult the Institutional Human Resource Offices, which are the responsible entities at the institutional level, where public servants can obtain information and resolve queries related to the performance of their activities, responsibilities, and functions.¹⁵⁰

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

[307] With respect to the statutory and other legal provisions reviewed by the Committee on the measures intended to provide instructions to government personnel of the three bodies selected by the country under review that ensure proper understanding of their responsibilities and the ethical rules governing their activities, the Committee notes that they are relevant for promoting the purposes of the Convention.

¹⁴⁶ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 11. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

¹⁴⁷ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 13 http://www.oas.org/juridico/spanish/mesicic5_pan.htm

¹⁴⁸ Available at: <http://www.digeca.gob.pa/Manuales-de-las-Clases-Ocupacionales-por-Institucion>

¹⁴⁹ See presentation by DIGECA, slide 33. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

¹⁵⁰ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 12 http://www.oas.org/juridico/spanish/mesicic5_pan.htm

[308] Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures:

- With respect to the provisions and/or other measures applicable to the personnel of the CGR, the Committee notes the following:

[309] On the basis of the information presented by the country under review in its response to the questionnaire, as well as the information gathered during the on-site visit, the Committee is aware of and recognizes the work in training and instruction that the institution has been carrying out to make sure that its staff adequately understand their ethical responsibilities and the standards governing their activities. Nevertheless, in order to strengthen transparency and public knowledge about these activities, the Committee highlights the need for the country under review to consider providing greater dissemination and publicity for the implementation and results of these activities, principally through the official CGR portal on the internet. (See recommendation 1.4.1 in Chapter III section of the present report)

[310] Moreover, although training presented by the CGR to public servants regarding ethical responsibilities and standards provides guidance to public officials on identifying and managing potential conflicts of interests and preventing violations,¹⁵¹ the Code of Conduct presented by the country under review does not contain detailed specific actions in which employees are not to engage in, or risks of corruption inherent in the performance of their duties, as well as the consequences and penalties for becoming involved in corruption. The Committee advises that a more comprehensive Code is necessary to both protect the employee while at the same time ensuring the integrity of the government. (See recommendation 1.4.2 in Chapter III section 1.2 of the present report)

[311] Finally, CGR informs that¹⁵² one of the weaknesses detected during training on the Public Ethics and Institutional Competences Program was the selection of officers from the Mission Directorates who, on account of the volume and importance of the audits carried out, have had low levels of participation in the program. It should be noted that efforts are underway to make the adjustments needed to improve participation by officers from those directorates. The Committee will formulate a recommendation in this regard. (see recommendation 1.4.3 in Chapter III, section 1.4 of this report.)

- With respect to the provisions and/or other measures applicable to the personnel of the DGCP, the Committee notes the following:

[312] The Committee notes that DGCP does not distribute, as part of their induction process, a copy of the Code of Ethics to a newly appointed public servant. The Committee advises that the country under review should consider establishing mechanisms to guarantee that a new employee, upon entry to the public administrative career, acknowledges, in writing, that he has received, read and understood the Code of Ethics handed out to him as part of the induction process on ethical rules and responsibilities. The Committee will formulate a recommendation in this regard (see recommendation 1.4.4 in Chapter III of this report.)

¹⁵¹ Available at: https://www.contraloria.gob.pa/assets/programa-de-etica_noviembre_2016.pdf

¹⁵² See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 21 http://www.oas.org/juridico/spanish/mesicic5_pan.htm

[313] Moreover, the Committee notes that DGCP does not provide to their public servants, upon admission or throughout their careers, training on ethical rules and responsibilities. Considering that training on ethics, responsibilities and conduct within the public administration enables public officials to meet the requirements for the proper performance of public functions and enhances their awareness of the risks of corruption inherent in the performance of their functions, the Committee will formulate a recommendation in this regard. (see recommendation 1.4.5 in Chapter III of this report.)

[314] In addition, DGCP should consider, after implementing a formal training on ethical standards and responsibilities to their personnel, incorporating modern communication technologies in trainings to their personnel such as webinars, online tools and videoconferencing. In this regard, the Committee will formulate a recommendation. (see recommendation 1.4.6 in Chapter III of this report.)

[315] Finally, implementing a formal training program on ethical standards for DGCP personnel will require funding that would have to be made available annually, and the lack of financial resources is another difficulty cited by the country under review during the on-site visit. To that end, the country under review should consider, within available resources, providing the DGCP with the necessary budgetary, technological, and human resources to carry out a training and retraining program that ensures that its personnel properly understand the ethical rules and responsibilities that govern their activities. The Committee will make a recommendation. (See recommendation 1.4.7 in chapter III of this Report)

- With respect to the provisions and/or other measures applicable to the personnel of the DIGECA, the Committee notes the following:

[316] The Committee notes that pursuant to Law 9/94, it is the responsibility of DIGECA to provide the directive on information that is to be included in the employee induction process. Although DIGECA has developed an Induction Program Manual which serves as a guide to the implementation of training on responsibilities and ethical rules, said manual was last updated in 2010. The Committee advises that the country under review consider updating this document on a regular basis, in order to address changing laws, regulations and new ethical issues to guarantee that the information continues to be important and relevant. The Committee will therefore formulate a recommendation in this regard. (see recommendation 1.4.8 in Chapter III of this report)

[317] In addition, the Manual presented by the country under review does not provide for a specific content of topics to be discussed in the orientation program adopted by institutions, but merely indicates a general content for training. The Committee believes it is positive that, at a minimum, the information in the orientation program include provisions and other measures that are deemed appropriate for making all individuals who enter public service aware of the risks of corruption inherent in the performance of their duties, as well as the consequences and penalties for becoming involved in corruption. The Committee will formulate a recommendation in this regard (see recommendation 1.4.9 in Chapter III of this report.)

[318] Furthermore, the country under review in its response to the questionnaire¹⁵³, informs that, if personnel from DIGECA or DGCP need additional information regarding the scope or interpretation of ethical rules, they should consult their institution's Human Resources Office.

[319] In addition, the Committee notes that training provided by DIGECA to public servants from the administrative career does not include in-course assessment mechanisms in order to gauge the effectiveness of the quality of the learning that took place during the training process. The Committee will formulate a recommendation in this regard (see recommendation 1.4.10 in Chapter III of this report.)

[320] Additionally, the Ethics Code presented by the country under review for public servants in the administrative career (Executive Decree 246/2004) is from 2004 and should be updated in order to address changing laws, regulations and new ethical issues to guarantee that the information continues to be important and relevant. The Committee will formulate a recommendation in this regard (see recommendation 1.4.11 in Chapter III of this report.)

[321] Likewise, the Ethics Code does not contain detailed specific actions in which employees are not to engage in, or risks of corruption inherent in the performance of their duties, as well as the consequences and penalties for becoming involved in corruption. The Committee advises that a more comprehensive Code is important to both protect the employee while at the same time ensuring the integrity of the government, and will formulate a recommendation in this regard (see recommendation 1.4.13 in Chapter III of this report.)

[322] Moreover, the Committee notes that DIGECA does not distribute, as part of their mandatory employee induction process, a copy of the Code of Ethics to the newly appointed public servant. The Committee advises that the country under review consider establishing mechanisms to guarantee that upon entry to the public administrative career, an employee acknowledges, in writing, that he has received, read and understood the Code of Ethics handed out to him as part of the induction process on ethical rules and responsibilities. The Committee will formulate a recommendation in this regard (see recommendation 1.4.4 in Chapter III of this report.)

[323] Likewise, although induction courses in ethic rules and responsibilities are being held progressively by DIGECA, they are not being provided upon admission of public servants to a specific administrative career institution, as legal provisions determine them to be. The Committee will formulate a recommendation in this regard (see recommendation 1.4.13 in Chapter III of this report.)

[324] The Committee also notes that training provided by DIGECA does not incorporate modern communication technologies such as videoconferencing or virtual courses. The Committee will formulate a recommendation in this regard (see recommendation 1.4.14 in Chapter III of this report.)

[325] The Committee is aware of and recognizes the work in training and instruction that the institution has been carrying out to make sure that its staff adequately understand their ethical responsibilities and the standards governing their activities. Nevertheless, in order to strengthen transparency and public knowledge about these activities, the Committee highlights the need to provide greater dissemination and publicity for the implementation and results of these activities,

¹⁵³ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 11. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

principally through the official DIGECA portal on the internet. (See recommendation 1.4.15 in Chapter III of the present report).

[326] Finally, implementing a formal induction training program on ethical standards for DIGECA personnel will require funding that would have to be made available annually, and the lack of financial resources is another difficulty cited by the country under review above. To that end, the country under review should consider, within its available resources, providing DIGECA with the necessary budgetary, technological, and human resources to carry out a training program that ensures that its personnel properly understand the ethical rules and responsibilities that govern their activities. The Committee will make a recommendation. (See recommendation 1.4.16 in chapter III of this Report)

1.3 Results

[327] In its Response to the Questionnaire and during the on-site visit, the country under review described the following results from the application of the provisions and/or measures relating to instruction given to government personnel in order to ensure proper understanding of their responsibilities and the ethical rules governing their activities.

[328] With respect to the CGR, the country under review mentioned in its Response to the Questionnaire and during the on-site visit,¹⁵⁴ that it has carried out, from September 2014 to April 2016, 603 training courses on Public Ethics and Institutional Competences, with monthly training activity of 40 hours a week at the CGR's headquarters and 24 hours a week for the regional offices, attended by participants from all the CGR's directorates representing 15% of the approximate total of 4,000 public servants within the CGR, with the following participant numbers per year:

PROGRAM	Sept 2014	2015	April 2016	TOTAL
ON-SITE	63	393	61	517
ON-LINE	0	86	0	86
TOTAL	63	479	61	603

[329] Moreover, in April 2016, the first workshop to assess the integrity of officers from all the directorates was held, and the preliminary results of that workshop are being awaited.

[330] Additionally, indicators will be prepared to measure the impact of the Public Ethics and Institutional Competences Program in the public administration by applying the Institutional Integrity Index Self-assessment tool (IntoSaint), a project sponsored by the Organization of Latin American and Caribbean Supreme Audit Institutions (OLACEFS), which oversees all the region's comptrollers' offices.

¹⁵⁴ See presentation by CGR, slide 23-25. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

[331] With respect to the DGCP, no information was presented in its response to the questionnaire or on-site visit regarding training processes in ethical rules and responsibilities.

[332] In its response to the questionnaire¹⁵⁵, the DIGECA, through the Directorate for Labor Relations and Public Employee Well-being, has supported the work of the Institutional Human Resource Offices, with courses and training exercises on the rights, duties, obligations, and prohibitions of public servants, including ethics in public functions; through these efforts, more than 1500 public servants received training during 2016 and around 350 to date during 2016. These activities were organized to support the work of the Institutional Human Resource Offices of more than 30 administrative career institutions. Those public servants have become multipliers for the dissemination and strengthening of this component within each institution.

[333] Furthermore, the main courses organized by the DIGECA for public servants are those that deal with Ethics in the Public Administration; Ethics, Transparency, and Anticorruption in the Public Administration; Alternate Conflict-resolution Methods; and the Internal Regulations.¹⁵⁶

[334] The Committee considers that the above information is pertinent for demonstrating that the public-sector entities selected by the country under review have obtained results in the application of provisions and/or measures relating to instruction given to government personnel to ensure proper understanding of their responsibilities and functions.

[335] However, the Committee believes that it would be useful for the country under review to consider supplementing the statistics on the selected public-sector entities with data on induction, training, and instruction courses to ensure proper understanding of the ethical rules that guide the activities of their personnel, the periodicity or frequency with which they are imparted, the number of civil servants taking part of them, the use of technological tools for those purposes, and the activities carried out to determine if the objective of ensuring that those ethical rules are understood has been met. (See Recommendation 1.4.17 in Chapter III of this report.)

[336] Finally, the Committee believes that it would be beneficial for the country under review to consider adopting the necessary measures to guarantee that selected and other public-sector entities provide handbooks, guidelines, and other instruments for civil servants on the proper discharge of their functions, alert them to the inherent corruption risks in the performance of their duties, and inform them about the scope and interpretation of the ethical rules that govern their activities and the consequences of their infringement for the civil service and for violators. (See Recommendation 1.4.18 in Chapter III of this report.)

1.4. Conclusions and recommendations

[337] On the basis of the analysis conducted in foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article III (3) of the Convention:

[338] The Republic of Panama has considered and adopted measures intended to establish, maintain and strengthen the instructions provided to government personnel by the bodies selected that ensure proper understanding of their responsibilities and the ethical rules governing their activities, as described in Chapter III, Section 1 of this report.

¹⁵⁵ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 20. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

¹⁵⁶ See Carrera Administrativa – Cursos, pp. 1 and 2. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

[339] In view of the comments made in that section, the Committee suggests that the country under review consider the following recommendations:

- 1.4.1 Publish on the CGR Website and any other media considered advisable, information about training and instruction efforts and programs being pursued by the CGR in order to provide greater dissemination and publicity for the implementation and results of these activities. (See paragraph 307 in Chapter III, Section 1.2 of this report.)
- 1.4.2 Adopt the necessary measures to guarantee that CGR's Code of Conduct contains detailed and specific actions in which employees are not to engage in, or risks of corruption inherent in the performance of their duties, as well as the consequences and penalties for becoming involved in corruption. (paragraph 308 in Chapter III, Section 1.2 of this report)
- 1.4.3 Adopt relevant measures so that all public servants employed at the CGR have availability to participate in training activities. (paragraph 309 in Chapter III, Section 1.2 of this report)
- 1.4.4 Establish mechanisms to guarantee that a new employee, upon entry to DGCP and to DIGECA, acknowledge, in writing, that he has received, read and understood the Code of Ethics handed out to him as part of the induction process on ethical rules and responsibilities. (paragraphs 312 and 322 in Chapter III, Section 1.2 of this report)
- 1.4.5 Adopt mechanisms to make training compulsory to DGCP personnel to ensure proper understanding of ethical rules and responsibilities governing their activities when they begin performing them; when a change in their functions entails a different set of applicable ethical rules; or when changes are made to those rules. (paragraph 311 and in Chapter III, Section 1.2 of this report)
- 1.4.6 Incorporate modern communication technologies in the training programs offered to personnel of DGCP, including but not limited to, videoconferencing or virtual courses. (See paragraph 313 in Chapter III, Section 1.2 of this report.)
- 1.4.7 Provide DGCP with the necessary budgetary, technological, and human resources, subject to their availability, to carry out a training program that ensures that its personnel properly understand the ethical rules and responsibilities that govern their activities. (paragraph 314 in Chapter III, Section 1.2 of this report)
- 1.4.8 Update the Induction Program Manual prepared by DIGECA on a regular basis, addressing changing laws, regulations and new ethical issues in order to guarantee that the information continues to be important and relevant. (paragraph 315 in Chapter III, Section 1.2 of this report)
- 1.4.9 Adopt the necessary measures to guarantee that training provided to public servants by DIGECA contain detailed and specific actions in which employees are not to engage in, or risks of corruption inherent in the performance of their duties, as well as the consequences and penalties for becoming involved in corruption (paragraph 316 in Chapter III, Section 1.2 of this report)

- 1.4.10 Establish measures to include, where appropriate, in-course assessment mechanisms in training programs provided by DIGECA in order to gauge the effectiveness of the quality of the learning taken place. (paragraph 319 in Chapter III, Section 1.2 of this report)
- 1.4.11 Update the Code of Ethics for the Public Administrative Career (Decree 246/2004) in order to address changing laws, regulations and new ethical issues to guarantee that the information continues to be important and relevant. (paragraph 320 in Chapter III, Section 1.2 of this report)
- 1.4.12 Adopt mechanisms to make training compulsory to personnel in DIGECA and all public administrative career in order to ensure proper understanding of ethical rules governing their activities when they begin performing them; when a change in their functions entails a different set of applicable ethical rules; or when changes are made to those rules. (paragraph 323 in Chapter III, Section 1.2 of this report)
- 1.4.13 Adopt the necessary measures to guarantee that the Code of Ethics for the Public Administrative Career (Decree 246/2004) contains detailed and specific actions in which employees are not to engage in, or risks of corruption inherent in the performance of their duties, as well as the consequences and penalties for becoming involved in corruption. (paragraph 321 in Chapter III, Section 1.2 of this report)
- 1.4.14 Incorporate modern communication technologies in the training programs offered to personnel of DIGECA, including but not limited to videoconferencing or virtual courses. (See paragraph 324 in Chapter III, Section 1.2 of this report.)
- 1.4.15 Publish on the DIGECA Website and any other media considered advisable, information about training and instruction efforts and programs being pursued by the DIGECA in order to provide greater dissemination and publicity for the implementation and results of these activities. (See paragraph 325 in Chapter III, Section 1.2 of this report.)
- 1.4.16 Provide DIGECA with the necessary budgetary, technological, and human resources, subject to availability, to carry out a training program that ensures that its personnel properly understand the ethical rules that govern their activities. (paragraph 326 in Chapter III, Section 1.2 of this report)
- 1.4.17 Supplement the statistics on the public-sector entities selected by the country under review with data on induction, training, and instruction courses to ensure proper understanding of the ethical rules that guide the activities of their personnel, the periodicity or frequency with which they are imparted, the number of civil servants taking part of them, the use of technological tools for those purposes, and the activities carried out to determine if the objective of ensuring that those ethical rules are understood has been met. (paragraph 335 in Chapter III, Section 1.3 of this report)
- 1.4.18 Adopt the necessary measures to guarantee that the selected entities provide to public servants handbooks, guidelines, and other instruments on the proper discharge of

their functions, alert them to the inherent corruption risks in the performance of their duties, and inform them about the scope and interpretation of the ethical rules that govern their activities and the consequences of their infringement for the civil service and for violators. (paragraph 336 in Chapter III, Section 1.3 of this report)

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

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

[340] In its Response to the Questionnaire, the country under review notes that it has not carried out studies of prevention measures that take into account the relationship between equitable compensation and probity in public service.¹⁵⁷

2.2 ESTABLISHMENT OF OBJECTIVE AND TRANSPARENT CRITERIA FOR DETERMINING THE COMPENSATION OF PUBLIC SERVANTS

2.2.1 Existence of a legal framework and/or other measures

[341] In its Response to the Questionnaire, the country under review notes the following:¹⁵⁸

[342] *“The remuneration of the CGR’s public servants, which can be found in Decree No. 149-DDRH of May 8, 2013,¹⁵⁹ which formalizes the updating of the Job Classification and Salary Policy System for CGR Employees, is governed by the guidelines set in the Salary Policy, which is subject to regular review and verification; it enacts provisions for appointments, promotions, rotations and transfers, merit-based increases, and demotions”*

[343] Regarding DIGECA, Article 75, Chapter 11 of Law 9 of 1994,¹⁶⁰ which creates the Administrative Career in the Republic of Panama, *stipulates that remuneration shall take into account the classification, the fiscal situation, and labor market conditions, in accordance with the public sector’s human resource policies.*

[344] The country under review notes that Article 9 of the Law 9/94 states that the functions of the DIGECA include that of presenting the preliminary draft of the General Salaries Law and/or its amendments to the executive branch. Similarly, Article 77 states that the General Salaries Law is to be reviewed at least every second year.

[345] In addition, Article 141 of Executive Decree 222 of 1997¹⁶¹ includes, among the objective criteria for determining the pay of public servants, that no officer shall receive less than the base salary corresponding to the position he occupies; that the salaries of administrative career public

¹⁵⁷ See Response by the Republic of Panama to the Questionnaire for the Fifth Round of Review, pg. 21. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

¹⁵⁸ *Ibid*, pgs. 22 and 23.

¹⁵⁹ Available at: http://gacetas.procuraduria-admon.gob.pa/27492-B_2014.pdf

¹⁶⁰ Available at: http://www.oas.org/juridico/spanish/pan_res81.pdf

¹⁶¹ Available at: http://www.oas.org/juridico/spanish/mesicic2_pan_anexo_2_sp.pdf

servants shall be determined by the wage scale included in the General Salaries Law, which shall set the minimum, average, and maximum amounts for each job category; and that the Nominating Authority may request that the General Directorate of the Administrative Career adjust officers' pay in accordance with such factors as seniority, efficiency, and performance evaluation results.

[346] Notwithstanding, the country under review indicated during the on-site visit¹⁶² that there are no objective criteria for granting employees the pay adjustments that the Nominating Authority requests of the DIGECA in accordance with the terms of paragraph (d) of Executive Decree 222/1997.

[347] Similarly, Article 142 of Executive Decree 222 of 1997¹⁶³ considers performance as an equitable and fair criterion for appraising the compensation received by a public servant.

[348] However, the country under review, during the on-site visit¹⁶⁴, noted that to date no objective and transparent criteria have been established for the salaries and benefits of public servants covered by the General System.

[349] Moreover, one of the objectives of Draft Law 230 of 2015¹⁶⁵ is to work for a General Salaries Law, which does not yet exist, for the transparent and appropriate management of fair compensation, with merit-based increases.

2.2.2 Adequacy of the legal framework and/or other measures

[350] With respect to the provisions that refer to the establishment of objective and transparent criteria for determining the compensation of public servants examined by the Committee and based on the information made available by the country under review, the Committee concludes that the provisions presented are relevant for promoting the purposes of the Convention.

[351] Having said that, the Committee notes that the absence of a comprehensive legal framework in place establishing standards for remuneration of public officials creates disparities in wages for civil servants who perform the same duties but work for different government institutions, as there are no common criteria to determine these remunerations.

[352] The Committee therefore believes that it would be advisable for the country under review to consider establishing a comprehensive legal framework that sets out a remuneration policy law in the public sector, as well as objective and transparent criteria for determining these compensations. (See recommendation in Chapter III, Section 2.2.2 of this report.)

2.2.2. Conclusions and Recommendations

[353] Based on the review conducted in the above sections regarding the implementation of by the Republic of Panama of Article III, paragraph 12 of the Convention, the Committee offers the following conclusions and recommendations:

¹⁶² See presentation DIGECA, slide 40. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

¹⁶³ *Ibid.*

¹⁶⁴ See presentation DIGECA, slide 39. http://www.oas.org/juridico/spanish/mesicic5_pan.htm

¹⁶⁵ Available at: http://www.asamblea.gob.pa/proyley/2015_P_230.pdf

[354] The Republic of Panama has considered and adopted measures intended to establish objective and transparent criteria for determining the compensation of public servants, as described in Chapter III, Section 2 of this Report.

[355] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- Consider establishing the necessary legal provisions to adopt a remuneration policy law that sets out objective and transparent criteria for equitable compensation for the entire public sector. (See paragraph 352 in Chapter III, section 2.2.1 of this Report.)

IV. BEST PRACTICES

[356] The country under review did not present best practices related to the Convention provisions selected for the Second and Fifth Rounds of Review.

ANNEX

AGENDA OF THE ON-SITE VISIT TO THE REPUBLIC OF PANAMA*

<u>Monday, October 17, 2016</u>	
4:30 p.m. – 5:00 p.m.	Coordination meeting between the representatives of the Subgroup Member States and the Technical Secretariat.
5:00 p.m. – 5:30 p.m. <i>Place: – Hotel Wyndham</i>	Coordination meeting between the representatives of the country under review, the Member States of the Subgroup, and the Technical Secretariat.
<u>Tuesday, October 18, 2016</u>	

<p>9:00 a.m. – 12:30 p.m. <u>Place:</u> <i>Training Center of the Office of the Administration Attorney – CECPA</i></p>	<p>Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics, or researchers¹⁶⁶</p>
<p>First meeting 9:00 a.m. – 10:00 a.m.</p>	<p><u>Topic:</u> Government hiring systems</p> <p><u>Suggested participants:</u></p> <p><i>Representative of Alianza Ciudadana Pro Justicia.</i> Magally Castillo – Director</p> <p><i>National Federation of Public Servants (FENASEP).</i> Alfredo Berrocal</p> <p><i>Representative of Movimiento Independiente (MOVIN)</i> Annette Planells Horacio Icaza</p>
<p>Second meeting 10:10 a.m. – 11:20 a.m.</p>	<p><u>Topics:</u> Systems for the protection of corruption whistleblowers. Criminalization of corruption offenses</p> <p><u>Suggested participants:</u></p> <p><i>Representative of Alianza Ciudadana Pro Justicia.</i> Magally Castillo, Director</p> <p><i>National Federation of Public Servants (FENASEP).</i> Alfredo Berrocal</p>

	<p><i>Representative of Movimiento Independiente (MOVIN)</i></p> <p>Annette Planells – Member of the Board</p> <p>Horacio Icaza – Member of the Board</p>
<p>Third meeting 11:30 a.m. – 12:30 p.m.</p>	<p><u>Topic:</u></p> <p>Systems for the government procurement of goods and services</p> <p><u>Suggested participants:</u></p> <p><i>Representative of Alianza Ciudadana Pro Justicia.</i></p> <p>Magally Castillo, Director</p> <p><i>Representative of Movimiento Independiente (MOVIN)</i></p> <p>Annette Planells – Member of the Board</p> <p>Horacio Icaza – Member of the Board</p>
12:30 p.m. – 2:00 p.m.	Lunch
2:00 p.m. – 5:30 p.m.	
<p><u>Place:</u> <i>Training Center of the Office of the Administration Attorney – CECPA</i></p>	<p>Meetings with public authorities: criminalization of corruption offenses and systems for the protection of corruption whistleblowers.</p>
2:00 p.m. – 3:30 p.m.	<p><u>Panel 1</u></p> <ul style="list-style-type: none"> • Follow-up on the Second Round recommendations on the criminalization of corruption offenses: <ul style="list-style-type: none"> - Progress, new developments, and the results thereof in the implementation of the recommendations formulated in the Second Round.
	<p><u>Participants:</u></p> <p><i>Representatives of the Public Prosecution Service (Office of the</i></p>

	<p><i>Anticorruption Prosecutor)</i></p> <p>Tania Sterling – Prosecutor / Office of the First Backlog Prosecutor of the Anticorruption Prosecutor’s Office</p> <p>Zuleyka Moore – Prosecutor / Office of the Third Backlog Prosecutor of the Prosecutor’s Office</p> <p>Digna Atencio Prosecutor / Senior Prosecutor for International Affairs</p> <p>Adecio Mojica Prosecutor / Prosecutor Attached to the Anticorruption Prosecutors’ Office</p> <p><i>Representatives of the judicial branch</i></p> <p>Supreme Court of Justice</p> <p>Ginette Diaz – Director of Judicial Auditing</p> <p>Danilo Montenegro – Director of the Public Defense Institute</p> <p>Asunción Alonso Mojica – Public Defender at the Public Defense Institute</p>
3:30 p.m. – 3:45 p.m.	Break
3:45 p.m. – 5:00 p.m.	<p><u>Panel 2</u></p> <ul style="list-style-type: none"> • Follow-up of the Second Round recommendations on systems for the protection of corruption whistleblowers: <ul style="list-style-type: none"> - Progress, new developments, and the results thereof in the implementation of the recommendation formulated and measures suggested in the Second Round. - Difficulties encountered in the implementation processes. <p><u>Participants:</u></p> <p><i>Representatives of the Public Prosecution Service (Unit for Protecting Victims, Witnesses, and Experts in Criminal Proceedings – UPAVIT)</i></p> <p>Yamilka Troncoso – Secretary</p> <p>Representatives of the Office of the Comptroller General of the Republic</p> <p>Mariangela Pitti – National Director of <i>Denuncia Ciudadana</i></p> <p><i>Eric Pérez – Head of Public Ethics and Transparency</i></p>

5:00 p.m. – 6:00 p.m.	Informal meeting between the representatives of the Member States of the Subgroup and the Technical Secretariat.
<u>Wednesday, October 19, 2016</u>	
9:00 a.m. – 5:00 p.m. <i>Place: Training Center of the Office of the Administration Attorney – CECPA</i>	Meetings with public authorities: government hiring systems and training.
9:00 a.m. – 12:30 p.m.	<p><u>Panel 3</u></p> <ul style="list-style-type: none"> • Follow-up of the Second Round recommendations on government hiring systems: <ul style="list-style-type: none"> - Progress, new developments, and the results thereof in the implementation of the recommendations formulated and measures suggested in the Second Round. <p><u>Suggested participants:</u></p> <p><i>Representatives of the General Directorate of the Administrative Career (DIGECA)</i></p> <p>David Montenegro – Director General Harmodio Jiménez – Legal Advisor Karla Loré – Office Advisor Elisa Álvarez – Director of the Human Resource Administration Guillermo Escobar – Head of Legal Advice</p> <p><i>Representatives of the judicial branch (Human Resource Directorate)</i></p> <p>Vielza Rios – Administrative Secretary</p> <p><i>Representatives of the Public Prosecution Service (Human Resource Directorate)</i></p> <p>Silvia Garcia – Human Resources Tulia Pardo – Public Prosecution Service School</p> <p><i>Representatives of the legislative branch (Human Resource Directorate)</i></p>

	<p>Jerry Wilson – Advisor to the President of the National Assembly</p> <p>Luiz Marina Navarro – Director of the Institutional Development Unit</p> <p>Juan José Tuñón – Legal Administrative Deputy Director</p> <p>José Barahona – Head of the Human Resource Administration Department</p> <p>Eira Santa María – Director of Human Resources</p> <p>Jesibeth Flaant – Legal Advisor</p>
12:30 p.m. – 2:00 p.m.	Lunch
2:00 p.m. – 5:00 p.m.	<p><u>Panel 4</u></p> <ul style="list-style-type: none"> • Instructions given to the personnel of public agencies to assist them in understanding their responsibilities and the ethical rules governing them: <ul style="list-style-type: none"> - Legal framework, programs, competent agencies, and use of technology. - Results. - Difficulties. <p><u>Suggested participants:</u></p> <p><i>Representatives of the General Directorate of the Administrative Career (DIGECA)</i></p> <p>Harmodio Jimenez – Legal Advisor</p> <p>Karla Loré – Office Advisor</p> <p><i>Representatives of the Office of the Comptroller General of the Republic (Directorate of Human Resource Development and Department of Public Ethics and Transparency)</i></p> <p>Mariangela Pitti – National Director of “Denuncia Ciudadana”</p> <p>Eric Pérez – Head of Public Ethics and Transparency</p> <p><i>Representatives of the General Public Procurement Directorate (Institutional Human Resource Office)</i></p>

	<p>Legal Advisors:</p> <p>Manuel González – Advisor to the General Secretariat</p> <p>Silka Barrera – Head of Human Resources</p> <p>Nimia Castro – Deputy Head of Human Resources</p> <p>Marianela Montenegro – Legal Director</p> <p>Jorge Cristóbal Acosta – General Secretary</p> <p><i>Representatives of the Office of the Administration Attorney (Public Ethics Unit)</i></p> <p>Sebastian Reyes – Public Ethics Unit</p> <p><i>Representatives of the National Transparency and Information Access Authority (ANTAI)</i></p> <p>Antonio Lam – Head of the International Technical Cooperation Office</p> <p>Juan Armengol – Attorney</p> <p>Cecilia López – Legal Advisor</p>
5:00 p.m. – 6:00 p.m.	Informal meeting between the representatives of the Member States of the Subgroup and the Technical Secretariat.
<u>Thursday, October 20, 2016</u>	
<p>9:00 a.m. – 3:30 p.m.</p> <p><i>Place: Training Center of the Office of the Administration Attorney – CECPA</i></p>	Meetings with public authorities: systems for the government procurement of goods and services; study of preventive measures that take into account the relationship between equitable compensation and probity in public service.
9:00 a.m. – 12:30 p.m.	<p><u>Panel 5</u></p> <ul style="list-style-type: none"> • Follow-up of the Second Round recommendations on systems for the government procurement of goods and services: <ul style="list-style-type: none"> - Progress, new developments, and the results thereof in implementation of those recommendations pending compliance. <p><u>Suggested participants:</u></p> <p><i>Representatives of the General Public Procurement Directorate</i></p> <p>Legal Advisors:</p>

	<p>Manuel González – Advisor to the General Secretariat</p> <p><i>Representatives of the Office of the Comptroller General of the Republic</i></p> <p><u>Mariangela Pitti – National Director of “Denuncia Ciudadana”</u></p> <p>Eric Pérez – Head of Public Ethics and Transparency</p> <p><i>Representatives of the National Transparency and Information Access Authority (ANTAI)</i></p> <p>Antonio Lam – Head of the International Technical Cooperation Office</p> <p>Juan Armengol – Attorney</p> <p>Cecilia López – Legal Advisor</p>
12:30 p.m. – 2:00 p.m.	Lunch
2:00 p.m. – 3:30 p.m.	<p><u>Panel 6</u></p> <ul style="list-style-type: none"> • Study of preventive measures that take into account the relationship between equitable compensation and probity in public service: <ul style="list-style-type: none"> - Studies carried out. - Objective and transparent criteria for setting public servants’ salary levels. <p><u>Participants:</u></p> <p><i>Representatives of the General Directorate of the Administrative Career (DIGECA)</i></p> <p>Harmodio Jiménez – Legal Advisor</p> <p>Karla Loré – Office Advisor</p> <p><i>Representatives of the National Transparency and Information Access Authority (ANTAI)</i></p> <p>Antonio Lam – Head of the International Technical Cooperation Office</p> <p>Juan Armengol – Attorney</p> <p>Cecilia López – Legal Advisor</p>
3:30 p.m. – 4:30 p.m.	Informal meeting between the representatives of the Member States of

	the Subgroup and the Technical Secretariat.
4:30 p.m. – 5:00 p.m.	Final meeting^{167/} between the representatives of the country under review, the 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 PANAMA

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