



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

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 El Salvador 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, as well as to the criminalization of acts of corruption set out in Article VI of the Convention. 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 El Salvador 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 El Salvador's Response to the Questionnaire and information gathered during the on-site visit conducted between October 18 – 20, 2016, by representatives of Bolivia and Guyana, with the support of the Technical Secretariat. During that visit, the information furnished by El Salvador 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 El Salvador 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 El Salvador 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 two draft bills to modernize the system of government hiring, a Proposed Draft of Reforms to the Civil Service Law, and a draft Law on the Public Service. With respect to the government system for the procurement of goods and services, the implementation of COMPRASAL II, which is being carried out gradually in phases, through which the execution of the procurement process will be carried out virtually and in real time.

Some of the recommendations formulated in the Second Round that remain valid or have been reformulated address issues such as: consider establishing a comprehensive legal framework for entry

into the civil service, whether by enacting a new law, or amending the Civil Service Law; consider adopting as soon as possible regulations for the Civil Service Law, so that the Civil Service Tribunal and the Civil Service Commissions may carry out their functions; consider adopting legal provisions or measures that impose sanctions on public and municipal civil servants that violate the selection and recruitment process contained in the Municipal Service Law; provide the Government Procurement and Contracting Regulatory Unit (UNAC) with the necessary budgetary, technological, and human resources necessary to perform their functions properly, subject to their availability; examine the possibility of publishing, when appropriate, preliminary bidding terms and conditions so that interested parties might examine and submit observations on them; consider establishing a legal framework that provides administrative protection measures for public officials or private citizens who report acts of corruption, whether or not they lead to an investigation of a criminal offense or judicial proceeding; and include the terms “public authorities” and “government agents” referred to in Article 39 of the Criminal Code in the criminalization of the offence of offering bribes described in Articles 270, 325, 328, 332, 335 and 336 of said Code.

In addition, regarding the new developments in the Republic of El Salvador with respect to the implementation of the provisions of the Convention selected for the Second Round, the Committee formulated recommendations, such as taking concrete action to avoid the discretionary application of Article 83 of the General Budget Provisions Law, and adopt guidelines or parameters that set out the proper application of the circumstances enumerated in Article 72 of the Government Procurement and Contracting Law (LACAP), regarding the use of direct contracting as a method for government procurement.

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 El Salvador selected the personnel of the Government Ethics Tribunal, the Court of Accounts of the Republic, and the Access to Public Information Institute, 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 object of that provision of the Convention.

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

With respect to the Government Ethics Tribunal, establish a formal induction training program for the newly hired personnel of the Government Ethics Tribunal, which include courses offered and a timetable.

With respect to personnel in the Court of Accounts of the Republic, establish an Annual Training Plan that identifies the training needed by the Court of Accounts, containing courses offered and a timetable.

With respect to the Access to Public Information Institute, prepare an Annual Training Plan, which sets out the manner this Institute identifies its training needs, as well as containing the courses offered and a timetable.

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 of El Salvador has been recommended to consider establishing a legal framework that sets out objective and transparent criteria to determine public servant remunerations for the entire Public Administration, that is, those in the Legislative, Executive and Judicial Branch, autonomous and deconcentrated institutions, municipalities and other institutions of the State.

Finally, the best practices about which El Salvador provided information refer, in synthesis, to the “Staffing and Selection of Personnel System,” which aims to professionalize the civil service; the “Reforms to the Civil Service Law or New Legal Framework, focused on the implementation of the Administrative Career Path”, which seeks to start, or form the basis to achieve the objectives that are raised in the recommendations given by the MESICIC; and the “Implementation of Procedures for the Recruitment and Hiring of Personnel for the Ministry of Foreign Affairs of the Republic of El Salvador,” which seeks to ensure the incorporation or hiring of people who meet the profiles suitable to fill the positions assigned.

**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 EL
SALVADOR OF THE RECOMMENDATIONS FORMULATED AND PROVISIONS
REVIEWED IN THE SECOND ROUND, AND ON THE PROVISIONS OF THE
CONVENTION SELECTED FOR REVIEW IN THE FIFTH ROUND¹**

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 El Salvador 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 El Salvador 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 “*instructions 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 El Salvador 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

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_slv_en.pdf

⁴ Available at: http://www.oas.org/juridico/english/mesicic_III_rep_slv.pdf

[5] According to the official records of the OAS General Secretariat, the Republic of El Salvador ratified the Inter-American Convention against Corruption on July 9, 1998 and deposited its instrument of ratification on March 18, 1999.

[6] In addition, the Republic of El Salvador 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 El Salvador

[7] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of El Salvador, in particular, from the Secretariat for Citizen Participation, Transparency and Anti-Corruption of the Office of the President of the Republic, which was evidenced, inter alia, in its Response 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 El Salvador sent the provisions and documents it considered pertinent.⁵

[8] The Committee also notes that the Republic of El Salvador 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 – 20, 2016, by representatives of Bolivia and Guyana, 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 El Salvador 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 submitted by the following civil society organizations, which was presented in accordance with Article 34(b) of the Committee's Rules: National Foundation for Development, which is the National Chapter for Transparency International (*Fundación Nacional para el Desarrollo*), Social Initiative for Democracy (*Iniciativa Social para la Democracia*), the Foundation for Studies on the

⁵ Available at: http://www.oas.org/juridico/spanish/mesicic5_slv.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

Application of Law (*Fundación de Estudios para la Aplicación del Derecho*) and the University of El Salvador (*Universidad de El Salvador*).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 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 El Salvador 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 El Salvador 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:

Strengthen government hiring systems.

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

⁹ Available at: http://www.oas.org/juridico/PDFs/mesicic5_slv_soc_civ_1.pdf

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

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

Strengthen and develop, as appropriate, and through relevant legal and administrative procedures, the different stages that comprise the personnel recruitment and selection processes in the public administration, through adoption of clearly defined provisions and guidelines, in particular on calls for candidates, as well as the requirements, content and dissemination thereof; staging of processes, terms and conditions, and assessment of suitability tests, as well as selection of candidates and their subsequent appointment as new employees, ensuring the principles of openness, equity, and efficiency provided in the Convention.

[15] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:¹²

[16] *"The Law on Access to Public Information (LAIP) establishes the category of "required public information" (información oficiosa) to describe public information that should always be available for anyone, without the need to file a request for information.*

[17] *Required public information should be posted on websites, or published in institutional archives, and even made available in public libraries. This will enable citizens to be better informed. According to Article 10 of the LAIP, personnel selection and hiring procedures be they done according to the Salaries Law, or through contractual, day labor, or any other arrangements, constitute unofficial information.*

[18] *In order to verify that government entities comply with the obligation to divulge this information, a Verification Unit (Unidad de Fiscalización) has been established, charged, among other functions, with verifying compliance with the obligation to publish required public information..."*

[19] In addition, the country under review, in its Response to the Questionnaire and during the on-site visit, made reference to two draft bills that have been prepared to modernize the system of government hiring. The first one, a Proposed Draft of Reforms to the Civil Service Law, was presented by the Civil Service Tribunal in 2009, and took into consideration the recommendations formulated by the Committee of Experts of the MESICIC.¹³ Moreover, the Tribunal also presented draft General Regulations and Special Regulations on Suitability Exams. The second draft bill was prepared by the Technical and Planning Secretariat of the Office of the Presidency, which provided presentation on another proposal to modernize the system of government hiring in the country under review, a draft Law on the Public Service, a copy of which was provided to the Technical Secretariat of the MESICIC.¹⁴ In this respect, in a document containing complementary information to questions raised during the on-site visit, submitted by the country under review subsequent to said visit, the following is noted:¹⁵

[20] *The objectives pursued by the preliminary draft Law on the Public Service are to:*

¹² See Response by the Republic of El Salvador for the Fifth Round of Review, pgs. 41 - 42, http://www.oas.org/juridico/PDFs/mesicic5_slv_res_cuest.pdf

¹³ *Ibid.*, pgs. 48 – 49. See also See Proposed Draft of Reforms to the Civil Service Law (*Anteproyecto de Reformas a la Ley de Servicio Civil*), <http://tsc.gob.sv/index.php/evento-especial>, as well as the Presentation made by the Civil Service Tribunal during the on-site visit, http://www.oas.org/juridico/spanish/mesicic5_slv.htm

¹⁴ *Ibid.*, pg. 52. See also Draft Law on the Public Service, (*Anteproyecto de Ley de la Función Pública*), on file with the Technical Secretariat. For the purposes of this report, the country under review notes that the word "civil service" or "public service" should be understood to refer to persons entering a post or position within the public administration, since the simple admission to a post or public position does not necessarily imply admission to the Administrative Career path.

¹⁵ Complementary Information to the Questions Raised during On-Site Visit (*Informe Complementario con Respuestas a Interrogantes*), pgs. 55 and 61, http://www.oas.org/juridico/spanish/mesicic5_slv.htm

[21] *Provide comprehensive regulation of the civil service; lay the foundations for development of a career in public administration; establish the set of rules governing labor relations between public servants and the administration.*

[22] *The preliminary draft law provides for the establishment of a Governing Body (Autoridad Rectora) in the Administration with authority to ensure the professionalization of the civil service."*

[23] Notwithstanding the foregoing, the Committee observes that during the on-site visit, reference was made in various panels, that the Civil Service Law¹⁶ in place was not being applied, and lacked regulations to put in force the provisions contained in said Law, which is problematic given that, as observed in the Report of the Second Round for the Republic of El Salvador, this Law provides "*the body of rules with the greatest scope as regards government hiring systems. Its core objectives are, inter alia, to ensure the entry of suitable personnel to the public administration on the basis of merit and aptitude through procedures that allow participation on equal terms for anyone who aspires to join the civil service.*"¹⁷ For example, Article 7 provides that each agency of the public administration shall have a Civil Service Commission, which, among other things, is to select eligible candidates to enter the administrative career system (Article 12). The Law also establishes a Civil Service Tribunal, which has the power to examine appeals for review and reversal presented against final decisions of Civil Service Commissions, as well as any challenges lodged against other decisions adopted by Civil Service Commissions or agency chiefs (Article 13). Article 20 further provides that recruitment of civil service personnel shall be done by means of suitability tests and, Articles 21, 22, and 23 contain the recruitment procedure, from the call for applications to selection of the successful applicant. Furthermore, Article 68 of the Law provides that any appointment made in contravention of the provisions it contains shall be void, and that the Civil Service Tribunal is the organ with jurisdiction to decide such cases.

[24] Moreover, the Committee notes that the government institutions covered by this Law is wide in scope, applying to public servants in the Presidency of the Republic, Ministries, the Legislative and Judicial Branch, Independent Bodies, Departmental Political Governments and Municipalities.¹⁸ Civil Service Commissions are to be established in the Legislative Assembly, the Supreme Court of Justice, the Chambers of Second Instance, the Presidency of the Republic, the Secretaries of State, the Court of Accounts of the Republic, the Office of the Prosecutor General, the Office of the Attorney General, the Supreme Electoral Tribunal, and the Office of the Human Rights Prosecutor; among others.¹⁹

[25] The Law also encompasses the hiring process in important government bodies that were reviewed separately in the Second Round of Review, namely, the Legislative Branch, Judicial Branch, Court of Accounts of the Republic and the Office of the Prosecutor General.

[26] The Committee observes, however, that since the Law is not being applied, there is no functioning legal framework in place on the system of government hiring in the Republic of El Salvador. For example, although 83 Civil Service Commissions have been established throughout the Public Administration as required under the Law, they do not carry out hiring processes, as regulations have never been issued that set out the procedure for hiring, and the parameters to be in place for such

¹⁶ Civil Service Law, <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-servicio-civil>

¹⁷ Report on Implementation in El Salvador of the Inter-American Convention against Corruption Provisions selected for Review in the Framework of the Second Round, pg. 6, *supra* note 3.

¹⁸ Civil Service Law, Article 2, *supra* note 16.

¹⁹ *Ibid.*, Article 7.

hiring. Nor are there regulations that set out the criteria to be used in selecting a candidate, or the tests or examinations to be administered.

[27] In addition, the Committee highlights that the Civil Service Law was enacted in 1961. In that respect, the Committee notes that an additional difficulty presented by the country under review, in its Response to the Questionnaire, is the fact that the Law is outdated, and as a result, other legislation is used to cover legal gaps:²⁰

[28] *"One possible obstacle is thought to be the lack of a more up-to-date law, given that the Civil Service Law creates certain procedural difficulties; which is why, as a stop gap, recourse is had to provisions relating to the fast-track procedure referred to in the Code of Civil and Commercial Procedure. However, this creates difficulties for members of the Civil Service Commission due to certain ambiguities triggered by failure to establish which path to follow."*

[29] As a result, given the foregoing, the country under review admits that this has led government institutions to create their own rules for government hiring:²¹

[30] *"The Civil Service Tribunal and the Civil Service Commissions, especially the latter, would play an important role within the legal framework already in place in the Civil Code and proposed amendments to it and with the adoption of their respective enabling regulations. Until this happens, these bodies cannot play a more prominent part in said decisions, so that each institution follows its own in-house hiring procedures; in the case of the Executive Branch, these are ultimately authorized by the Ministry of Finance, while the Judiciary and Legislature follow their own procedures."*

[31] Moreover, the Civil Service Tribunal, in a document submitted subsequent to the on-site visit, notes that until the draft reforms to the Civil Service Law are approved, it is difficult to put in place procedures on the administration and control of the government hiring system in the Republic of El Salvador.²²

[32] As such, the Committee notes that there is no functioning legal framework in place that governs the system of government hiring in El Salvador, that assure openness, equity and efficiency, as set out in the Inter-American Convention against Corruption.

[33] Given the foregoing, the Committee believes that measure a) of the foregoing recommendation should be reformulated. To that end, the Committee deems it advisable for the country under review to consider establishing a functioning legal framework, by enacting a new law, or amend the existing one, including the adoption of regulations. In this respect, it should consider adopting legal provisions that take into account the following aspects:

[34] Entry into the civil service is to be based on the principle of merit; establish the different stages that comprise the process of selecting and appointing civil servants, make examinations and/or interview a mandatory requirement for entry into the civil service and also to establish mechanisms that provide clearly defined criteria on the manner in which these examinations and interviews would be carried out; and clearly defined criteria for the advertisement of hiring opportunities or vacancies in the civil service, as well as the time frame in which they should be advertised, and which take into account the use of the

²⁰ Response to the Questionnaire, pg. 49, *supra* note 12.

²¹ *Ibid.*, pg. 105.

²² Complementary Information to the Questions Raised during On-Site Visit, pg. 52, *supra* note 15.

mass media, such as newspapers with national circulation and/or websites, among others. It should also contain provisions that establish challenge mechanisms for the purpose of clarification, modification, or revocation of substantive decisions in the staff recruitment and selection process and establish or designate bodies responsible for implementing and overseeing compliance with the legal framework. (see Recommendation 1.1.3.1 of Section 1.1.3 of Chapter II of this Report)

[35] Moreover, notwithstanding the foregoing, the Committee considers that the country under review should also consider promptly issuing regulations that flesh out the provisions of the Civil Service Law, such as those that empower the Civil Service Commissions in determining the salary scale of a public body, the selection criteria for candidates who are eligible for the administrative career path, and the manner to carry out suitability tests for these candidates, as an example. In this manner, the Civil Service Law may function in part, addressing some of the shortcomings identified in this review, while a new law or extensively amended one is put into place to modernize the system of government hiring in the country under review. The Committee will formulate a recommendation. (see Recommendation 1.1.3.2 of Section 1.1.3 of Chapter II of this Report)

[36] Finally, the Committee notes that in a document presented by a group of civil society organizations, the El Salvador Civil Society Independent Report (*Informe Independiente de Sociedad Civil de El Salvador*), it noted the following regarding the Civil Service Law and the need to adopt the draft Law on the Public Service:²³

[37] *There is a Civil Service Law dating back to 1961 with certain lacunae and mismatches that have prevented the Public Administration from benefiting from a professionally qualified civil service. It left the door open to discretionary hirings and disparities between positions, either in respect of the functions to be performed or the salaries paid...*

[38] *The [new] draft Law on the Public Service needs to be taken up again and pushed by a variety of citizens' forums and academic circles, opening it up to discussion with stakeholders or persons affected by it, with a view to achieving greater legitimacy for its provisions. While initiatives designed to improve the civil service have been identified, adoption of the draft Law on the Public Service could lend impetus to professionalization of the service as well as to job stability for public servants. Moreover, we consider that this new legal framework could strike the right balance between constitutional provisions and international conventions aimed at ensuring effective oversight and punishment of corruption in public administration."*

Measure b):

[39] This measure was satisfactorily considered in the Report of the Third Round for the Republic of El Salvador and, therefore, does not require additional attention.

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

Continue to strengthen the bodies responsible for implementing the Civil Service Law, in particular the Civil Service Commissions and the Civil Service Tribunal, with respect to the functions that they perform in the areas of administration and control of government hiring systems, supplying them with the necessary resources to perform their functions properly and establishing mechanisms for the

²³ Civil Society Independent Report, pgs. 14 and 22, *supra* note 9.

effective institutional coordination of their actions as well as the ongoing evaluation and follow-up thereof.

[40] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:²⁴

[41] – Circular No.571, which establishes certain criteria of the Civil Service Tribunal, on the Public Service, Administrative Career and other aspects of importance and information requested by the Presidency of the Republic on the same subject. In addition, it provided information on the actions that were being taken as a Tribunal, which consisted in working on a package of reforms to the Civil Service Law and the revision of the Regulations of the law.

[42] – Circular No.750, which reported on the commitment of the Tribunal, on certain actions that would be taken with the objective of collaborating with the implementation of the Administrative Career service, taking into account the draft reforms to the Civil Service Law and the proposed General Regulations and Special Regulations on Suitability Exams, essential documents necessary to comply with this measure. In this Circular, the Tribunal also committed itself to an approximate timetable to implement them, indicators of progress, costs and sources of resources, as well as establishing a Competent Authority.

[43] – Circular No. 783 of November 30, 2009, signed by the Secretary General of the Tribunal, was sent to the Presidency of the Republic, the Proposed Draft Amendments to the Civil Service Law, taking into account the recommendations of the Committee of Experts of the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption. Likewise, the Draft General Regulations and Special Regulations on Suitability Exams were forwarded, which would be approved by this body, at the time when the Honorable Legislature would reform the Civil Service Law.

[44] The Committee also notes that the representatives of the Civil Service Tribunal, during the on-site visit, noted that it had a staff of 48 personnel, and that the budget it had to carry out its functions, was approximately \$800 000, which they indicated is an obstacle in carrying out its functions in establishing an administrative career path. Moreover, in a document submitted subsequent to the on-site visit, the following was noted:²⁵

[45] *“In recent years, the Tribunal has had an annual budget of approximately US\$852,160.00, which has not changed in that lapse of time. Nevertheless, by law the Tribunal is mandated to perform important functions, including:*

- *Training officials, government employees, and Civil Service Commissions;*
- *Being responsible as the Governing Body in individual labor litigation cases;*
- *Being responsible as the Governing Body in collective labor litigation cases;*
- *Overseeing appointments of civil service commission members throughout the country and making sure those appointments are viable;*
- *Being the Governing Body for matters relating to career paths in public administration.*

²⁴ See Response to the Questionnaire, pgs. 48 – 49, *supra* note 12.

²⁵ Complementary Information to the Questions Raised during On-Site Visit, pg. 50, *supra* note 15.

[46] *The aforementioned budget is one of the smallest in public administration. Nevertheless, this Tribunal is doing its best to comply moderately well with the legal mandates referred to in the first four items numbered above. Nonetheless, the Tribunal's budget would have to be at least doubled to fulfill those mandates 100%, because our functions have to be performed nationwide."*

[47] The country under review also notes that the Civil Service Tribunal has not been able to carry out its role as the governing body over the Administrative Career path the Republic of El Salvador due to two reasons: first, lack of political consensus in the Legislative Assembly to approve the reforms it has proposed to the Civil Service Law, including regulations, and secondly, lack of an adequate budget.²⁶

[48] This entity also notes that despite its difficulties and budgetary constraints, it has been carrying out its work based on a policy of institutional austerity, with the objective of collaborating and bringing together an efficient public administration. However, it observed that further funds would be needed to carry out its work, such as Modernizing its Training Department, by implementing virtual classes, which would cost approximately \$500 000, and financed by external funds. In addition, in implementing an administrative career path, with the adoption of the proposed reforms to the Civil Service Law, the Civil Service Tribunal estimated that it would cost approximately \$5 000 000. In total, for complying with its legal mandate, this Tribunal estimates that it would need approximately \$6 000 000, with the real costs to be determined if the reforms to the Law are adopted.²⁷

[49] The Committee notes the various difficulties and obstacles faced by the Civil Service Tribunal, and the Civil Service Commissions, both in terms of the resources available to them, and the legal framework in place that compromises their performance.

[50] The Committee, in its observations of measure a) above, has already made a recommendation for the country under review to enact regulations in order to enable the Civil Service Tribunal and the Civil Service Commissions to carry out their functions. The Committee believes the country under review should consider taking additional steps to strengthen these bodies, so that the legal framework created by the Civil Service Law may function in part, addressing some of the shortcomings identified in this review, while a new law or extensively amended one is put into place to modernize the system of government hiring in the country under review.

[51] In this respect, the country under review should consider strengthening the Civil Service Tribunal, with respect to the functions that they perform in the areas of administration and control of government hiring system, supplying them with the necessary resources to perform their functions properly, within available resources. In addition, the country under review should consider establishing mechanisms for the effective institutional coordination of the actions of the Civil Service Tribunal and the Civil Service Commissions as well as the ongoing evaluation and follow-up thereof.

[52] Given the foregoing, the Committee believes that measure c) should be reformulated. (see Recommendations 1.1.3.3 and 1.1.3.4 of Section 1.1.3 of Chapter II of this Report)

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

²⁶ *Ibid.*

²⁷ *Ibid.*, pgs. 50 – 51.

Strengthen and ensure the appropriate dissemination of provisions establishing through administrative and judicial channels challenge mechanisms for the purpose of clarification, modification, or revocation of substantive decisions in staff recruitment and selection procedures.

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

[54] *“The Technical and Planning Secretariat of the Presidency of the Republic has implemented a hiring system that allows candidates who meet the pre-selection requirements to know whether they will continue in the selection process or whether they have been excluded. In the latter case, institutions are obliged to incorporate into the system a way of letting candidates know the reasons why they have been removed from the list.*

[55] *In cases in which a candidate does not agree with the results obtained, he may in first instance request the corresponding reviews or corrections by the body responsible for the process. Then if, upon verifying the procedure and his or her evaluations, the candidate feels that he or she has clearly been treated unfairly, he/she may appeal in accordance with the Civil Service Law first to the Civil Service Commissions, pursuant to their functions under Article 13, and then he may file an appeal for revision or annulment with the Civil Service Tribunal, also pursuant to the functions described in Article 13. Furthermore, should those responsible for the process deny access to the procedure, there is a mechanism for clarifying, amending, or revoking the substantive acts pertaining to personnel recruitment and selection processes committed by the body responsible for the process, through the Access to Public Information Law (LAIP) (Article 66 of the Law and Articles 53 and 54 of its enabling regulations.”*

[56] The country under review further notes that there are Constitutional provisions that provide for recourse of *amparo* to the Constitutional Chamber of the Supreme Court of Justice, whereby a candidate may challenge a decision if it is felt his or her fundamental rights have been violated in a recruitment process.²⁹

[57] Moreover, the country under review notes that a candidate may also use the Law Regulating Contentious Administrative Jurisdiction.³⁰ Although Article 7 of that Law sets out the circumstances in which a contentious administrative action is not admissible, under said provision, a candidate who feels aggrieved in a recruitment and selection process may claim ipso facto nullity, a special category of invalidity of an administrative decision that is envisaged as cause for admission of a contentious administrative action and is constituted when there is a concurrence of the following circumstances: a) that the administrative act violates secondary legislation (of an administrative nature), because they were issued in excess or outside the scope permitted by law; b) the act violates constitutional law; c) that this violation is carried out in the legal sphere of the subject alleging invalidity.³¹

[58] In addition, the country under review notes that the Civil Service Commissions, as established in the Civil Service Law and the Human Resources Department have been established and sworn in. These

²⁸ *Ibid.*, pg. 50.

²⁹ *Ibid.*, pg. 51.

³⁰ Law Regulating Contentious Administrative Jurisdiction (*Ley de Jurisdicción de lo Contencioso Administrativo*), <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-la-jurisdiccion-de-lo-contencioso-administrativo>

³¹ Response to the Questionnaire, pg. 51, *supra* note 12.

bodies are responsible for resolving and processing any controversy that may arise in the various hiring procedures.³²

[59] However, the Committee notes, that in its Response, and during the on-site visit, the country under review observed that currently, there are no recourse mechanisms in place, that allow a candidate to challenge a selection process. To that end, in the Response to the Questionnaire, the country under review stated:³³

[60] *“In the Salvadoran legal system, there are no provisions establishing administrative and judicial mechanisms for challenging decisions aimed at clarifying, modifying, or revoking substantive acts committed during personnel recruitment and selection procedures. Therefore, there is no general appeals system or mechanism enabling a candidate who feels that he or she has been unfairly treated to challenge the hiring or appointment decision of the corresponding authority or official.”*

[61] The Committee also notes, as set out under the consideration of measure a) of the foregoing recommendation that the Civil Service Commissions are not able to fully carry out their functions, due to the lack of regulations to the Civil Service Law that specifically set out how they are to do so. In addition, this also appears to affect the work of the Civil Service Tribunal, since there are no regulations in place that provide the instances and manner for a candidate to challenge a selection process governed by the Civil Service Law.

[62] The Committee also observed that the country under review has an outdated, non-functioning legal framework regarding the government hiring system in El Salvador, which should be updated, either through amendments to the existing legislation, or enactment of a new regulatory regime.

[63] In that regard, the Committee notes the following from the Report of the Second Round for the Republic of El Salvador:³⁴

[64] *“Notwithstanding the provisions contained in Article 68 of the Civil Service Law on the nullity of any appointment in contravention of said Law, the Committee observes an inadequacy of mechanisms to challenge substantive decisions in staff recruitment and selection procedures, such as terms and conditions of competitions, rejection of applicants, selection of the winner, shortlist selection, grading of suitability tests, etc.”*

[65] Given the foregoing, the Committee believes that measure d) should be reformulated, taking into account that the country under review should consider ensuring challenge mechanisms are in place in the legal framework created by the Civil Service Law. In this manner, the Law may function in part, addressing some of the shortcomings identified in this review, while a new law or extensively amended one is put into place to modernize the system of government hiring in the country under review. (see Recommendation 1.1.3.5 of Section 1.1.3 of Chapter II of this Report)

Recommendation 1.1.2:

Strengthen municipal government hiring systems.

³² *Ibid.*

³³ *Ibid.*, pg. 50.

³⁴ Report of the Second Round, pg. 7, *supra* note 3.

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

Adopt, through appropriate legal or administrative procedures, clear and compulsory mechanisms that ensure objectiveness in candidate selection as provided in Article 31 of the Municipal Civil Service Law.

[66] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:³⁵

[67] *“As one of the concrete steps taken, the Salvadoran Institute for Municipal Development requests, in the rating process and in resolutions issued by the National Register of Administrative Careers, verification of the documents accrediting completion of the various processes required by the Municipal Administration Career law and the presentation of documents accrediting completion of the procedures for access to and connection with the municipality in accordance with the assessment of required profiles (Certification of the minutes remitted by the Municipal Commission to the Municipal Mayor, Municipal Council, or Highest Administrative Authority) and showing the results of the suitability tests conducted. The minutes must contain: the number of participants or persons evaluated (number of C.V.'s received); place, time, and date on which the evaluations were conducted; the name of the person or enterprises that conducted the evaluations (full names, positions, and in the case of personnel not pertaining to the Municipality, a note to that effect; details of the types of tests conducted; the names of the three best candidates evaluated (full names, age, profession or trade, along with other data that may be relevant, as well their ranking, based on their scores); and the scores obtained by the three top candidates evaluated (a slate of the top three shall be submitted).*

[68] *All the information required from the 262 municipalities to validate the processes through which an employee can enter or be kept on in the municipality is personalized and shared in the form of basic and straightforward guidelines listing the documentation required under the Municipal Civil Service Law (LCAM).”*

[69] In addition, in a presentation made during the on-site visit by the representatives of the Salvadoran Institute for Municipal Development, the governing body of the Municipal Civil Service Law noted that it had taken the following concrete actions to adopt administrative legal procedures for the selection of candidates: Specific advice to Municipal Councils; Trainings to Municipal Technical Staff; Deliverables of informative materials related to the implementation of the Municipal Civil Service Law; Execution of the project Implementation of the Administrative Career in El Salvador (Spanish Cooperation - DEMUCA Foundation) 2012-2015; Preparation of Administrative Career Manuals; Preparation of Internal Employment Regulations regarding procedures of recruitment, selection, contracting and promotion of personnel; Continuous training processes through the Municipal Training Center; Implementation of the subcomponent of the Project to Strengthen Local Governments; Decentralization of the National Registry of the Municipal Civil Service System in the Regional Centers of the Institute; Training to the Court of Accounts of the Republic, Government Ethics Tribunal, Attorney General's Office.³⁶

³⁵ Response to the Questionnaire, pgs. 53 – 54, *supra* note 12.

³⁶ Implementation of the Municipal Administrative Career Service (*Implementacion de la Carrera Administrativa Municipal*), pg. 6, http://www.oas.org/juridico/spanish/mesicic5_slv.htm

[70] The Committee notes, however, that the country under review has yet to address the observation made by the Committee in its Report of the Second Round of the Republic of El Salvador, that, with respect to Article 31 of the Municipal Civil Service Law, the Republic of El Salvador should consider adopting, through appropriate legal or administrative procedures, clear and compulsory mechanisms that ensure objectiveness in candidate selection, by implementing clear and objective criteria for selecting the winning candidate from the shortlist proposed by the Municipal Commission to the Municipal Council, the mayor, or the highest ranking administrative authority.³⁷

[71] Given the foregoing, the Committee takes note of the step taken by the country under review to advance in its implementation of measure a) of the foregoing recommendation, as well as the need for it to continue to give attention thereto. (see Recommendation 1.1.3.6 of Section 1.1.3 of Chapter II of this Report)

[72] The Committee further observes that the country under review noted in its Response to the Questionnaire, and during the on-site visit, that there is resistance on part of the Municipalities to comply with the Municipal Civil Service Law, in particular with the selection and contracting procedure contained therein and the requirement to establish Municipal Administrative Career Commissions:

[73] *"Some municipalities are still reluctant to implement technical aspects provided for in the Municipal Civil Service law for personnel selection procedures, because they are still hiring certain people directly for political reasons, ignoring established selection procedures or because of lack of interest in forming commissions (the bodies that administer and implement personnel selection processes) or forming municipal commissions which, even if they are constituted and recognized by the municipal authorities, lack certain legal requisites or omit requisites for selection processes, thereby invalidating them. The Court of Accounts of the Republic of El Salvador shall in due course be the body charged with auditing and possibly penalizing municipalities that engage in such practices. Once a precedent of this kind is set, probably the municipalities would mend their ways and feel obliged to comply strictly with their legal mandates.*

[74] Further evidence of the lack of compliance with the Law was provided by the country under review in its Response to the Questionnaire. In a study carried out by the Access to Public Information Institute, which sought to verify the compliance by government agencies to publicize the selection process of personnel, in a sample of 9 municipalities, only 7 were carrying out this obligation.³⁸ In addition, in a document submitted subsequent to the on-site visit, the Salvadoran Institute for Municipal Development noted that according to the information obtained from its National Registry of the Municipal Civil Service System, which is a registry of people that have entered the municipal administrative career service, which is to be provided by the 262 municipalities in El Salvador. In this respect, the country under review noted that 34 municipalities have not provided this information to the Salvadoran Institute for Municipal Development, and that approximately 80% of registered personnel, did not enter the municipal administrative career service through the selection process as set out in the Municipal Civil Service Law, given that they joined under the aegis of Legislative Decree 536, which allowed all 262 municipalities to include and enroll all personnel already working at the municipalities in the Municipal and National Registry. The aim of the decree was to protect the rights of municipal employees who were already working at municipalities but had not undergone

³⁷ Report of the Second Round, pg. 8, *supra* note 3.

³⁸ Response to the Questionnaire, pg. 56, *supra* note 9.

selection processes by the date of the law's entry into force (January 1, 2007), as there was no mandatory obligation requiring them to have one.³⁹

[75] Connected to this, as noted above, under the Law, it is the Municipal Commissions that are responsible for managing and implementing the selection process for personnel. It is these Commissions that ensure that the Law is being complied, with respect to the hiring of municipal public employees, ensuring that the most suitable candidates are selected for a post, through competitions based on the principles of equality, and merit. However, the country under review notes that there is a lack of interest on part of the municipalities in establishing these Commissions:⁴⁰

[76] *“Other reasons why selection processes are not conducted include lack of interest in forming Municipal Commissions (which are the bodies that administer and implement personnel selection processes), the establishment of a Municipal Commission without complying with established requirements, or failure to comply fully with the municipal employee selection process, all of which means that the processes through which employees enter and stay with municipalities lack validity, so that it becomes impossible for them to be incorporated into the municipal administrative career path, pursuant to Articles 12 and 23 to 36 of the Municipal Civil Service Law, or to be registered in the National Registry of the Municipal Civil Service System.”*

[77] In addition, the Committee notes that the country under review observes that even if these Commissions are established and operating, they do not have the legal competence to annul or invalidate a hiring process that is carried out in contravention of the Law.

[78] Given the foregoing, the Committee considers that the country under review should consider adopting laws or regulations that would strengthen the legal framework in place for Municipalities, in particular with the functions of the Salvadoran Institute for Municipal Development and the Municipal Commissions. One measure the country under review may consider is adopting legal provisions or measures that provide for the annulment or invalidation of a selection and recruitment process that is carried out in violation of the Municipal Civil Service Law. (see Recommendation 1.1.3.7 of Section 1.1.3 of Chapter II of this Report)

[79] The Committee also notes that said Law does not contain any provisions that sanction public and municipal civil servants that do not comply with the hiring process as set out in the Law, a fact noted by the representatives of the Salvadoran Institute for Municipal Development during the on-site visit. The country under review should consider adopting legal provisions or measures that allow for application of such sanctions for failure to comply with the Municipal Civil Service Law, such as failure to establish a Municipal Commission. The Committee will formulate Recommendations. (see Recommendations 1.1.3.8 and 1.1.3.9 of Section 1.1.3 of Chapter II of this Report)

[80] In this respect, the Committee notes that in the presentation made by a group of civil society organizations during the on-site visit, the El Salvador Civil Society Independent Report (*Informe Independiente de Sociedad Civil de El Salvador*), the issue of the discretionary contracting of personnel in the municipalities, in particular the Municipality of San Salvador, was raised, noting that the law was not being followed.⁴¹

³⁹ Complementary Information to the Questions Raised during On-Site Visit, pg. 83, *supra* note 15.

⁴⁰ *Ibid.*, pg. 105.

⁴¹ Presentation by El Salvador Civil Society Independent Report (*Informe Independiente de Sociedad Civil de El Salvador*), pg. 14, http://www.oas.org/juridico/spanish/mesicic5_slv.htm

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

Promote, in accordance with Articles 55 and 56 of the Municipal Civil Service Law, the strengthening of the National Registry of the Municipal Civil Service System and the Municipal Registries of the Municipal Civil Service System and grant the Salvadoran Institute for Municipal Development and the necessary oversight powers to monitor proper compliance with this obligation.

[81] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:⁴²

[82] *“The State of El Salvador is in compliance with the foregoing: through the delivery of documentary and other material to the 262 municipalities; briefings through the social networks; an animated short film on the National Municipal Administrative Career Register; monitoring through visits and advisory assistance on the Municipal Civil Service Law and SIRCAM (the digital program containing all the information about municipalities that have implemented the Municipal Civil Service Register...).*

[83] *The State of El Salvador is in compliance with the foregoing because the issue is addressed specifically from the point of view of the Municipal Civil Service Law and by providing each of the 262 municipalities, personalized advisory assistance aimed at correctly familiarizing the authorities with the subject matter. This involves personnel from the National Registry of the Municipal Civil Service System traveling to the municipality requiring the assistance and delivering an employee registration certificate in person.”*

[84] The Committee notes, however, that not all 262 municipalities are complying with the Municipal Service Law, by establishing their own Municipal Registry of the Municipal Civil Service System. In its Response to the Questionnaire, the Republic of El Salvador observed that 34 such municipalities have not complied with this obligation, despite the efforts undertaken by the personnel of the National Registry of the Municipal Civil Service System which is a unit of the Salvadoran Institute for Municipal Development.⁴³

[85] The country under review does observe that Legislative Decree No. 820 of 2014, which came into force on November 10, 2014, reformed Article 58 of the Municipal Civil Service Law, whereby making it a legal obligation for the municipalities to implement their own Municipal Registry of the Municipal Civil Service System and incorporate and register all municipal employees that comply with the selection and entry process of the Law. Moreover, this Registry must be updated by December 31 of each year, and within the first three months of the end of the fiscal year, this information must be sent to the National Registry of the Municipal Civil Service System. The Legislative Decree further provides that if a municipality does not update its Registry and send the information within this timeframe, the Court of Accounts of the Republic may impose a sanction, in accordance with Article 107 of the Law of

⁴² *Ibid.*, pg. 58.

⁴³ *Ibid.* See also Complementary Information to the Questions Raised during On-Site Visit, pg. 106, *supra* note 15, that provides updated information on this issue.

the Court of Accounts of the Republic, which allows for the imposition of fines for those public servants that incur an administrative penalty.⁴⁴

[86] The Committee observes, however, that there are no provisions in place in the Municipal Civil Service Law that directly applies a sanction on those public and municipal civil servants that do not comply with the Law, including that of updating the Municipal Registry, which was noted by the country under review in the on-site visit, and in a document submitted subsequent to this visit.⁴⁵ As noted under the consideration of measure a) of the foregoing recommendation, the fact that the Law does not allow for the direct application of a sanction for overall noncompliance with its provisions has proven problematic for the overall implementation of the Law, there are no legal consequences in place. (see Recommendation 1.1.3.10 of Section 1.1.3 of Chapter II of this Report)

[87] Moreover, the Committee was informed, during the on-site visit, that the Unit responsible for maintaining and updating the National Registry of the Municipal Civil Service System is part of the Department of Municipal Development of the Salvadoran Institute for Municipal Development (ISDEM) and has a staff of nine employees responsible for the Registry's operations, who also receive assistance from advisory personnel from the country's four regions, who, like the Registry staff, are part of the Department of Municipal Development. In addition, in keeping with the nature of the institution, the objective of which is to provide technical assistance to the 262 municipalities, the Committee was informed that the ISDEM is responsible for making available all the necessary human and material resources available to the Registry. The Committee observes that the Salvadoran Institute for Municipal Development, on its website, provides to the public the operating budget for 2016, as well as budgets since 2013.⁴⁶ The Committee notes, however, that it is not apparent, within the information provided on-line, if any of those funds are destined for the operation of the National Registry of the Municipal Civil Service System.

[88] Given the foregoing, the Committee considers that measure b) of the foregoing Recommendation should be reformulated, as the country under review should not only strengthen the oversight powers of the Salvadoran Institute for Municipal Development over the Registries cited in the measure, but should also ensure that this Institute is provided with the necessary human, technological and budgetary resources, within available resources, to ensure that the Unit responsible for these Registries can carry out its functions. The Committee will formulate Recommendations. (see Recommendations 1.1.3.11 and 1.1.3.12 of Section 1.1.3 of Chapter II of this Report)

Recommendation 1.1.3:

Strengthen government hiring systems in the legislative branch.

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

Adopt, through the appropriate authority, clear and specific provisions to govern the legislative branch recruitment system based on the principles of merit, equality, and transparency, including control mechanisms and governing or administrative authorities; employment opportunity dissemination

⁴⁴ Legislative Decree No. 80 of 2014, http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/reformase-la-ley-de-la-carrera-administrativa-municipal/archivo_documento_legislativo. See also Response to the Questionnaire, pg. 54, *supra* note 12.

⁴⁵ Complementary Information to the Questions Raised during On-Site Visit, pg. 107, *supra* note 15.

⁴⁶ See, http://publica.gobiernoabierto.gob.sv/institutions/instituto-salvadoreno-de-desarrollo-municipal/information_standards/presupuesto-actual

mechanisms, and challenge mechanisms for the purposes of clarification, modification, or revocation of substantive decisions in legislative branch hiring processes.

[89] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:⁴⁷

[90] *"The State of El Salvador is in compliance with the foregoing; through the Legislative Assembly, administrative guidelines have been established to ensure that all the Institution's selection and hiring of personnel are done through competitive, in-house or external, examinations.*

[91] *Technical criteria have been defined for internal and external calls for applications by candidates (vacancy notices) that abide by the principle of equal opportunity for women and men.*

[92] *There are model Vacancy Notice instructions, outlining each phase of the call for applications...*

[93] *Complying with the above, the State of El Salvador has adopted the competitive hiring approach, which has meant designing mass recruitment mechanisms, such as the intranet to publicize vacancies and internal call-for-application procedures. Work is currently under way on a proposal to establish and implement a spot on the Legislative Web Portal for publishing notices of vacancy and external hiring procedures, thereby making hiring processes transparent in the First Branch of Government and subject to citizen oversight; the idea being to see to it that hiring is done in accordance with the laws and regulations in force."*

[94] The Committee notes that in a presentation made by the representatives of the Department of Human Resources of the Legislative Assembly, they emphasized that the staff of the Legislative Assembly is divided into two groups, institutional and political, distributed as follows by gender:

Group	Gender	
	Feminine	Masculine
Institutional	374	611
Political	386	569
Total	760	1180

[95] The representatives also noted that the Internal Control Standards of the Legislative Assembly, under its Article 7, provides that there is an institutional commitment to competence, and that the Directorate of the Legislative Assembly, the highest administrative authority of the institution is made up

⁴⁷ Response to the Questionnaire, pg. 59, *supra* note 12.

of 14 deputies from various political parties as well as the management and supervisors,⁴⁸ are to jointly ensure that all personnel possess and maintain the level of aptitude and suitability to carry out their functions.⁴⁹

[96] The Directorate has also, in April 2015, adopted a Manual of Descriptive Posts of the Legislative Assembly, and a Manual of Procedures of the Department of Human Resources, and adopted a salary and post scale, for promotion and internal transfers, as well as for open competition. Moreover, the country under review notes that these Manuals are used for the selection, recruitment and hiring the institutional personnel of the Legislative Assembly.⁵⁰

[97] The representatives further noted that it periodically identifies the human resource needs of each department of the Legislative Assembly, and that ongoing training is provided through its Master Training Plan for Institutional Personnel.⁵¹ Moreover, since June 2015, the Legislative Assembly has a professional psychologist that is responsible for carrying out basic psychometric examinations in the selection of institutional personnel and in August 2016, the Directorate swore in its Civil Service Commission.⁵²

[98] The Committee notes, however, that the institutional staff of the Legislative Assembly, under the current legal framework in place, is subject to the Civil Service Law, which as noted under measure a) of Recommendation 1.1.1., is outdated and ineffective. Moreover, although a Civil Service Commission for the Legislative Assembly has been established, as noted above, these Commissions cannot carry out their work, as regulations have never been issued for this purpose.

[99] As a result, as noted in the presentation made by the representatives of the Department of Human Resources, there are administrative provisions in place on the hiring of institutional personnel.⁵³ The Committee notes that such provisions are more vulnerable to modifications, depending on the Directorate in place, which is composed of Deputies that may undermine any hiring system in place, by considering political considerations over that of merit. Moreover, administrative provisions do not have the same legal authority as that of a law, and may be disregarded in an easier manner. In this regard, in a document submitted subsequent to the on-site visit, the country under review notes the following:⁵⁴

[100] *“Among the difficulties observed in implementing these actions, we can mention reluctance to implement an objective and transparent personnel selection and hiring process, based on work experience and academic qualifications, instead of the old practice of hiring people essentially for political reasons, without merit, as such, being decisive for hiring personnel.”*

⁴⁸ See, Presentation by the Department of Human Resources of the Legislative Assembly (*Presentacion de la Gerencia de Recursos Humanos de la Asamblea Legislativa*), pg. 4, http://www.oas.org/juridico/spanish/mesicic5_slv.htm. See also in general, Complementary Information to the Questions Raised during On-Site Visit, pgs. 10 – 13 *supra* note 15.

⁴⁹ *Ibid.*, pg. 7.

⁵⁰ *Ibid.*, pg. 9. See also Report of the Follow-Up to the Recommendations of the Second Round by the Legislative Assembly (*Informe de Seguimiento a Recomendaciones de la II Ronda de la Asamblea Legislativa*), pg. 2, http://www.oas.org/juridico/spanish/mesicic5_slv.htm

⁵¹ *Ibid.*, pg. 12.

⁵² *Ibid.*, pg. 13.

⁵³ *Ibid.*, pg. 16.

⁵⁴ Complementary Information to the Questions Raised during On-Site Visit, pg. 12 *supra* note 15.

[101] Finally, the representatives also noted, in its presentation during the on-site visit, that there are no challenge mechanisms for the purposes of clarifying, modifying, or revoking any of the substantive decisions in the legislative branch hiring process, under this administrative regime.⁵⁵

[102] The Committee observes that the establishment of a parallel hiring process through administrative provisions, as the legal framework in place is currently inadequate for this purpose, is not an ideal solution for the shortcomings in the legal framework in place. This leads to confusion as the proper application of rules for a hiring process of institutional personnel in the Legislative Assembly.

[103] The Committee has already noted that the country under review should either consider updating the current law in place, or enacting a new legal framework, in order to establish a system of government hiring that assure openness, equity and efficiency. To that end, it should consider whether the hiring process in the Legislative Assembly for institutional personnel should be included in such a process, or whether a separate regime is more suitable. If it is determined that it should continue to fall under the regime of the Civil Service Law, or any general one that is put in place to modernize the system of government hiring in El Salvador, then the country under review should consider ensuring that the elements contained in Recommendation 1.1.3.1 of this Report is established for the institutional personnel of the Legislative Assembly.

[104] Given the foregoing, the Committee believes that the measure of the foregoing Recommendation should be reformulated. (see Recommendation 1.1.3.13 of Section 1.1.3 of Chapter II of this Report)

Recommendation 1.1.4:

Strengthen government hiring systems in the judicial branch.

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

Adopt, through appropriate procedures, mechanisms establishing clearly defined guidelines on announcement of employment opportunities and vacancies in the judicial branch and the content and form thereof, as well as the amount of advance notice required in their publication, to which end mass media outlets may be used, such as national newspapers and/or Internet websites.

[105] In its Response, the country under review notes that it has nothing to report with respect to the measure of the foregoing recommendation.⁵⁶ The Committee notes that the measure is focused on the judicial career path, which is separate from the personnel that carry out administrative functions, for example. To that end, the Committee observes that Articles 7(b) and (c) provide that the Supreme Court of Justice and the Chambers of First Instances, respectively, are to establish Commissions of Civil Service.

[106] As stated above, however, these Commissions are not functioning, as regulations have not been enacted to give effect to their functions. As applicable to the personnel of the Judicial Branch that carry out functions other than judicial ones, the recommendations issued in the review of measures a), c) and d) of Recommendation 1.1.1 are pertinent.

⁵⁵ Presentation by the Department of Human Resources of the Legislative Assembly, pg. 14, *supra* note 48.

⁵⁶ Response to the Questionnaire, pgs. 60 – 61, *supra* note 12.

[107] Given the foregoing, the Committee considers the measure of the foregoing Recommendation should be reformulated, so that it is focused on those candidates that aspire to the judicial career path, as they are not subject the Civil Service Law. The Committee will formulate a recommendation. (see Recommendation 1.1.3.14 of Section 1.1.3 of Chapter II of this Report)

Recommendation 1.1.5:

Strengthen government hiring systems in oversight bodies.

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

Adopt, through appropriate procedures, mechanisms establishing clearly defined guidelines on announcement of employment opportunities and vacancies in Court of Accounts of the Republic and in the Office of the Prosecutor General and the content and form thereof, as well as the amount of advance notice required in their publication, to which end mass media outlets may be used, such as national newspapers and/or Internet websites.

[108] With respect the aforementioned measure, in its Response, the country under review presents information it considers pertinent.⁵⁷

[109] Regarding the Court of Accounts of the Republic the country under review notes that the recruitment of personnel is governed by the Civil Service Law, and that with respect to the publication of vacancies, Article 21 of said applies, which states the following:

[110] *“When a vacancy occurs that is not to be filled through the promotion system, the respective Civil Service Commission shall reach out to candidates, hoping to fill the vacancy by publishing just one advertisement in a mass circulation national daily newspaper at least eight days prior to the closing date for applications and by sending a telegram to their respective addresses. The advertisement shall mention the number of vacancies open, requisites for filling them, the closing date for applications, and the date on which the examination will be held.”*

[111] In addition, the Committee was provided a copy of the Human Resources Standards, Policies and Procedures, which set out the responsibilities of the various departments in the Court of Accounts of the Republic in the selection of personnel.⁵⁸ In it, for external recruitment procedures, its notes that the Human Resources Department approves the different manners that the publication of vacancies can be carried out.

[112] The Committee, however, would also like to note that under the Civil Service Law, under Article 7(f), the Court of Accounts of the Republic is to establish a Civil Service Commission. As noted in previous sections, it is this Commission that is responsible for the selection of candidates that are eligible to enter the administrative career service. In this regard, in the Response to the Questionnaire, the country under review notes that it is this body that is responsible for participating in the selection and recruitment process in the Court of Accounts of the Republic,⁵⁹ which was established in September,

⁵⁷ *Ibid.*, pgs. 61 – 62.

⁵⁸ Human Resources Standards, Policies and Procedures of the Court of Accounts of the Republic, (*Normas, Politicas y Procedimientos de Recursos Humanos del Corte de Cuentas*), <http://www.cortedecuentas.gob.sv/uploaded/content/category/1236839973.pdf>

⁵⁹ Response to the Questionnaire, pg. 62, *supra* note 12.

2015.⁶⁰ However, the Committee observes that in both the Human Resources Standards, Policies and Procedures, which set out the responsibilities of the various departments in the Court of Accounts of the Republic in the selection of personnel, and in the Internal Regulations for the Staff of the Court of Accounts of the Republic,⁶¹ which sets out the staff recruitment and selection procedures, the Court of Account's Civil Service Commission has no role in the selection of candidates that are eligible to enter the administrative career service.

[113] The Committee does note that the creation and establishment of a selection and recruitment procedure by the Court of Accounts of the Republic, through administrative measures, may have been a response to the fact that the Civil Service Law, as observed above, has not been complied with or considered, given that regulations have never been adopted that would make it effective, such as those that would address the functions of the Civil Service Commission. To this end, the Committee believes that the country under review should consider taking steps to address this situation, as it creates legal uncertainty, as to what laws or regulations are to be followed in the recruitment process for the Court of Accounts of the Republic.

[114] Regarding the Office of the Prosecutor General, in its Response to the Questionnaire, the country under review did not provide information further to that reviewed by the Committee in the Report from the Third Round.⁶²

[115] The Committee does note that the representatives of the Department of Human Resources of the Office of the Prosecutor General made a detailed presentation on the selection and recruitment process of personnel into this oversight body.⁶³ In this presentation, it set out how recruitment is carried out for both those who enter the Prosecutor career path, and for employees. It noted the existence of the Prosecutor's Career Regulations, which states that the objective of the Prosecutor career path is the professionalization, development and improvement of administrative employees, being those that are not prosecutors, among other personnel, which ensure employment stability.⁶⁴ In this respect, the information set out and the norms cited were the same ones as those presented in the Second Round of Report of the Republic of El Salvador.⁶⁵

[116] The Committee observes that the establishment of a parallel hiring process in the Court of Accounts of the Republic is not an ideal solution for the shortcomings in the legal framework in place, as it can lead, for example, to confusion as the proper application of rules for a hiring process of institutional personnel in these institutions.

[117] The Committee has already noted that the country under review should either consider updating the current law in place, or enacting a new legal framework, in order to establish a system of government hiring that assure openness, equity and efficiency. To that end, it should consider whether the hiring process for the employees of the Court of Accounts of the Republic should be included in such a process,

⁶⁰ See Press Notice, President Valiente Swears in Civil Service Commission (*Presidente Valiente Juramenta Comision de Servicio Civil*), <http://www.cortedecuentas.gob.sv/?art=1294&title=PRESIDENTE%20VALIENTE%20JURAMENTA%20COMISI%20D3N%20DE%20SERVICIO%20CIVIL&lang=es>

⁶¹ Internal Regulations for the Staff of the Court of Accounts of the Republic (*Reglamento Interno de Personal de la Corte de Cuentas*), <http://www.cortedecuentas.gob.sv/uploaded/content/category/1069399837.pdf>

⁶² Response to the Questionnaire, pgs. 61 – 62, *supra* note 12.

⁶³ See Recruitment and Selection Process of Personnel in the Office of the Prosecutor General (*Proceso de Reclutamiento, Seleccion y Contratacion de Personal*), http://www.oas.org/juridico/spanish/mesicic5_slv.htm

⁶⁴ Prosecutor's Career Regulations, http://www.oas.org/juridico/PDFs/mesicic4_slv_regla_fiscal.pdf

⁶⁵ Report of the Second Round, pgs. 5 – 6, *supra* note 3.

or whether a separate regime is more suitable. If it is determined that the employees of the Court of Accounts of the Republic should continue to fall under the regime of the Civil Service Law, or any general one that is put in place to modernize the system of government hiring in El Salvador, then the country under review should consider ensuring that the elements contained in Recommendation 1.1.3.1 of this Report is established for these civil servants.⁶⁶ (see Recommendation 1.1.3.15 of Section 1.1.3 of Chapter II of this Report)

[118] In addition, notwithstanding the foregoing, the Committee believes that the conclusion of the Report of the Second Round is still valid, as it relates to the Office of the Prosecutor General, namely, the existence of inadequate provisions that set out clearly defined guidelines on announcement of employment opportunities and vacancies and the content and form thereof, as well as the amount of advance notice required in their publication, to which end mass media outlets may be used, such as national newspapers and/or Internet websites.

[119] The representative of the Office of the Prosecutor General, in a document submitted during the on-site visit, did note that during 2016, it had carried out a selection process for 100 Assistant Prosecutors, which were disseminated in newspapers of widest circulation, with the aim of receiving resumes, in compliance with the requirements established in the Prosecutor Career Regulations, which ensure transparency in the process.⁶⁷

[120] However, the Committee observes that the Regulations cited are identical to the ones reviewed by the Committee during the Second Round of Review, and which were found inadequate.

[121] Given the foregoing, the Committee considers that measure a) of the foregoing Recommendation should be reformulated, focusing on the employment opportunities for those persons that would like to enter the Office of the Prosecutor General. (see Recommendations 1.1.3.16 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:

Strengthen and ensure the appropriate dissemination of provisions establishing through administrative and judicial channels challenge mechanisms for the purpose of clarification, modification, or revocation of substantive decisions in staff recruitment and selection procedures in the Court of Accounts of the Republic and the Office of the Prosecutor General, and ensure timely, and objective, impartial, and effective processing.

⁶⁶ In its observations to the draft preliminary report, the Court of Accounts of the Republic noted that the procedure established in the Courts of Accounts of the Republic for the admission of personnel to the government audit area is supplementary; in other words, it is not a process that is separate from or parallel to the one envisaged in the Civil Service Law, but was established as a best practice that implements the provisions contained in Article 18(c) of the Law of the Court of Accounts of the Republic. It is a special process for candidates for auditor positions that consist of a government auditor training course, whose purpose is twofold: (a) to impart the appropriate knowledge and skills for the conduct of audits in the government sector and (b) to evaluate the capacities acquired as a prerequisite for admission. The foregoing notwithstanding, as a plan of action, a special committee has been set up to take charge of updating the entity's internal regulations in order to make them consistent with the Civil Service Law.

⁶⁷ Document submitted by the Office of the Prosecutor General (*Documento Suministrado por la Fiscalía General de la Republica*), pg. 2, http://www.oas.org/juridico/spanish/mesicic5_slv.htm

[122] With respect to the aforementioned measure, in its Response, the country under review presents information it considers pertinent.⁶⁸

[123] With respect to the Court of Accounts of the Republic, the country under review refers to the information provided under measure d) of Recommendation 1.1.1, regarding the recourse mechanisms generally made available under the Civil Service Law. However, as noted under that section, the country under review observed that currently, there are no recourse mechanisms in place, that allow a candidate to challenge a selection process. With respect to the Office of the Prosecutor General, the country under review notes, in its Response, noted the following:⁶⁹

[124] *“Within the Office of the Prosecutor General there are no mechanisms for revoking recruitment procedures, but there are dismissal procedures, if, after someone is hired, he or she is found to have ties to some criminal body or commits serious violations of internal rules or regulations.”*

[125] Moreover, in a document presented by the representatives of this oversight body during the on-site visit, this Office noted the following:⁷⁰

[126] *“Within the Office of the Prosecutor General, mechanisms have not been established to challenge personnel selection and recruitment procedures, because the selection process for hiring personnel is transparent and consists of selecting candidates with the best average scores until the available vacancies are filled. The names of candidates that passed the various stages in the process but were not hired are kept in a database of eligible personnel for future vacancies or opportunities.”*

[127] The Committee notes that establishing recourse mechanisms available to candidates who allege an impropriety has taken place in a selection process is essential in a system of government hiring, that ensures openness, equity and efficiency, as set out in the Inter-American Convention against Corruption.

[128] The Committee has already noted that the country under review should either consider updating the current law in place, or enacting a new legal framework as it relates to entry into the public administration, which is applicable to candidates that aspire to the Court of Accounts of the Republic. To that end, Recommendations 1.1.3.1 and 1.1.3.5, which address the establishment of challenge mechanism for clarification, modification, or revocation of substantive decisions in staff recruitment and selection procedures, are pertinent as it pertains to the employees of the Court of Accounts of the Republic.

[129] In addition, the Committee believes that the conclusion of the Report of the Second Round is still valid, as it relates to entry to the Office of the Prosecutor, namely, it could not identify specific provisions containing mechanisms to challenge substantive decisions in staff recruitment and selection procedures in the Office of the Prosecutor.⁷¹

[130] Given the foregoing, the Committee considers that measure b) of the foregoing Recommendation should be reformulated, establishing challenge mechanisms that can be made available to candidates that aspire to the Office of the Prosecutor General. (see Recommendation 1.1.3.17 of Section 1.1.3 of Chapter II of this Report)

⁶⁸ Response to the Questionnaire, pg. 63, *supra* note 12.

⁶⁹ *Ibid.*, pg. 63.

⁷⁰ Documented Submitted by the Office of the Prosecutor General, pg. 5, *supra* note 67.

⁷¹ Report of the Second Round, pg. 9, *supra* note 3.

Recommendation 1.1.6 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Carry out periodic comprehensive evaluations in order to assess the use and effectiveness of the government hiring system and, based on the findings, identify and consider adoption of specific measures by which to ensure the transparency, openness, equity, and efficiency thereof.

[131] With respect the aforementioned Recommendation, in its Response, the country under review presents information it considers pertinent.⁷²

[132] In this respect, the country under review notes that the Court of Accounts of the Republic, in its Internal Regulations for the Staff of the Court of Accounts of the Republic, contains provisions on the performance evaluation of personnel, and that it is currently reviewing and updating the Manual on Recruitment, Selection and Contracting of Human Talent, the Manual of Posts and Duties, and the Code of Ethics of the Court of Accounts of the Republic, in order to help measure the effectiveness of human resources in the Institution.

[133] The Committee notes, however, that these steps evaluate the performance of the staff and their duties, but not the use and effectiveness of the government hiring system. Moreover, as noted above, the Civil Service Law, which establishes the legal framework that regulates the entry into the civil service for the vast majority of government bodies in El Salvador, has not been taken into consideration, or followed, as regulations have not been issued to make it effective. The evaluation of the use and effectiveness of the government hiring system would be an important step in strengthening or replacing the current system in place, as it would help identify strengths and weaknesses as well as legal gaps.

[134] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementation thereto.⁷³ (see Recommendation 1.1.3.18 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 the public servants in the Public Administration, among which the following should be noted:⁷⁴

[135] – Enactment of the Access to Public Information Law, which established the obligation to make available to the public, information regarding the contracting and selection of personnel.

⁷² Response to the Questionnaire, pg. 64, *supra* note 12.

⁷³ In its observations to the draft preliminary report, the Court of Accounts of the Republic noted that there is an action mechanism in place that consists of conducting internal audits, which include the assessment of the transparency of personnel selection processes. In that connection, it should be clarified that prior to the on-site visit, audits were carried out in which opinions were issued on the subject. See Annual operating plans of the Internal Audit Directorate for 2015 and 2017 that envisage the review of selection processes for personnel who join the entity, available at, http://www.oas.org/juridico/spanish/mesicic5_slv.htm.

⁷⁴ *Ibid.*, pgs., 104 - 105.

[136] – The Technical and Planning Secretariat of the Office of the President is currently debating and analyzing two management tools. The first consists of "General Guidelines for Staffing and Staff Selection," aimed at strengthening and unifying the principles, policies, processes, and procedures followed by the bodies involved in staffing and personnel selection in Executive Branch institutions. The second tool is the "Draft Law on the Public Service," which includes a section on staffing and personnel selection and regulates mechanisms and procedures for ensuring objectivity and compliance with the criteria of merit, ability, and aptitude when recruiting, selecting, incorporating, and promoting people to fill vacant positions. Other mechanisms have to do with notices of vacancies and the publicizing of competitive examinations in several stages used to assess candidates' qualifications through such tools as tests of technical skills, psychometric tests, and interviews: all aimed at selecting the candidate who best matches the profile established for a particular position. Another novel tool for guaranteeing compliance with the law is the introduction of "Verification Committees," to be established in each institution for each selection and staffing process, in order to verify and certify that such processes are carried out in accordance with established procedures.

[137] – Adoption of the Staffing and Selection of Personnel System guidelines, which include the objectives, principles, operational policies and phases of the process and, in addition, establish the competition profile for the position, type of contract, the terms and conditions to be included the notice of vacancy, the factors to be used in assessments, and the archiving and custody of information. In general terms, these guidelines seek to standardize procedures and achieve more transparent and efficient management of staffing, selection, advancement and promotion processes in which the key factors are merit, qualification, and suitability, equal opportunity, and non-discrimination.

[138] – The presentation by the Civil Service Tribunal of a Proposed Draft of Reforms to the Civil Service Law, which takes into consideration the recommendations formulated by the Committee of Experts of the MESICIC.⁷⁵ Moreover, the Tribunal also presented draft General Regulations and Special Regulations on Suitability Exams.

[139] – The Amparo Judgement of 2-2011 29-VII-2011 issued by the Constitutional Chamber of the Supreme Court of Justice,⁷⁶ which provided that persons employed under contract for professional or technical services under Article 83 of the General Budget Provisions Law, have the same rights to employment stability as a public servant in the administrative career path of the civil service, as enshrined under Article 219 of the Constitution, so long as the following conditions are present:

[140] *“i) that the labor relationship be public, establishing the worker as a public servant; ii) that the tasks performed relate to the regular business of the institution, that is to say, fulfill functions related to its assigned spheres of competence; iii) that the activity performed be permanent, in the sense of being conducted on a continuing basis by someone with the capacity and experience needed to perform it efficiently; and iv) that the position not be a trust position, a factor that should be reviewed in light of the guidelines established in this Tribunal's jurisprudence; that is to say, that it not be a high-level position, that it does not entail ample leeway to make discretionary decisions, and that there be no direct tie between the employee and the head of the institution.”*

⁷⁵ *Ibid.*, pgs. 48 – 49. See also Proposed Draft of Reforms to the Civil Service Law as well as the Presentation made by the Civil Service Tribunal during the on-site visit, *supra* note 13.

⁷⁶ Amparo Judgement of 2-2011 29-VII-2011 (*Sentencia de Amparo*), pg. 16, <http://jurisprudencia.gob.sv/visormlx/pdf/2-2011.pdf> . See also Response to the Questionnaire, pg. 42, *supra* note 12.

- Statutory and other legal provisions applicable to the public servants in the Municipal Civil Service, among which the following should be noted:⁷⁷

[141] – Legislative Decree No. 80 of 2014, which amended Article 58 of the Municipal Civil Service Law, whereby making it a legal obligation for the municipalities to implement their own Municipal Registry of the Municipal Civil Service System and incorporate and register all municipal employees that comply with the selection and entry process of the Law. Moreover, this Registry must be updated by December 31 of each year, and within three months, this information must be sent to the National Registry of the Municipal Civil Service System. The Legislative Decree further provides that if a municipality does not update its Registry and send the information within this timeframe, the Court of Accounts of the Republic may impose a sanction, in accordance with Article 107 of the Law of the Court of Accounts of the Republic, which allows for the imposition of fines for those public servants that incur an administrative penalty.

b) Observations

[142] First, the Committee would like to recognize the new regulatory measures adopted by the Republic of El Salvador 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.

[143] Having said that, it believes it useful 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.

- With respect to legal provisions applicable to a majority of public servants in the Public Administration, the Committee notes the following:

[144] The Committee observes that during the on-site visit, in various panels, mention was made of the decision handed down by the Constitutional Chamber of the Supreme Court of Justice, Amparo Judgement of 2-2011 29-VII-2011, whereby persons hired under Article 83 of the General Budget Provisions Law, to provide professional or technical services in the public service, have the same rights as those hired under in the administrative career service, as set out under the Civil Service Law.

[145] In this respect, it was unclear if there is a norm in place that regulates the contracting of these personnel under this hiring process. Moreover, during the on-site visit, it was not made clear if those hired under Article 83 of the General Budget Provisions Law go through a selection and recruitment process, or if it is simply a process of offering a contract to persons who may meet the particular needs of a public entity.

[146] Given that those hired under Article 83, may acquire the same rights as those who, in principle, enter the administrative career service on the basis of merit, the Committee believes that the country under review should consider taking concrete action to avoid the discretionary application of Article 83 of the General Budget Provisions Law, either by updating the existing Civil Service Act or by creating a new legal framework in which a staff selection process is established. Such a legal framework should take into account the following, at a minimum: the offer of a contract is to be based on the principle of merit; it should establish the different stages that comprise the process of selecting and appointing a

⁷⁷ Response to the Questionnaire, pg. 54, *supra* note 12.

person for a contract: make examinations and/or interview a mandatory requirement, and that it should provide clearly defined criteria on the manner in which these examinations and interviews are to be carried out; it should clearly define the criteria for the advertisement of hiring opportunities or vacancies in the civil service, as well as the time frame in which they should be advertised, and which take into account the use of the mass media, such as newspapers with national circulation and/or websites, among others; establish challenge mechanisms for the purpose of clarification, modification, or revocation of substantive decisions in the recruitment and selection procedures for a contract; and establish or designate bodies responsible for implementing and overseeing compliance with this legal framework. (see Recommendation 1.1.3.19 of Section 1.1.3 of Chapter II of this Report)

[147] In this respect, during the on-site visit, in a meeting with the representative from the National Private Business Association (*Asociación Nacional de la Empresa Privada*), mention was made of Article 83 of the General Budget Provisions Law, and the potential abuse that may be made.

1.1.2.2 New Developments with Respect to Technology

[148] In its Response to the Questionnaire, the country under review presents various technological developments, which are presented as follows:⁷⁸

[149] – The Technical and Planning Secretariat of the Office of the Presidency, in December 2015, presented a new web platform, www.empleospublicos.gob.sv. This platform posts the employment opportunities available in the Executive Branch and Autonomous Institutions, allowing for candidates to apply on-line. An applicant will find the name of the post, name of the institution, geographic location, salary, as well as the duties of the post and the criteria to be utilized for the evaluation of candidates. The process begins with the registration of a resume and other relevant information, with supporting documentation, such as academic training, specific knowledge, and work experience. Based on the information provided, the system makes an automatic preselection of candidates that meet the profile.

[150] Subsequently, the institutions in charge will corroborate and analyze the attached documentation and the data entered to complete the first stage of pre-selection, and then will call the candidates to perform the respective tests (technical, psychometric or interviews). From this process, a list of the highest scoring candidates is prepared, from which the successful applicant is chosen. This person is notified and his or her name is published in the Portal, so that the probationary period may begin and this person can then join the institution.

[151] Each applicant can verify their progress in the competition to which they applied and see their results and those of others who have passed each stage with the required scores, as required in the portal, and published therein.

[152] The Committee notes the positive development in the country under review with the establishment of the online platform to post employment opportunities in the Executive Branch and Autonomous Institutions. The Committee observes, however, that during the on-site visit, the representatives of the Technical and Planning Secretariat of the Office of the Presidency noted that use of the platform is not obligatory. In this regard, 34 of 89 institutions in the Executive branch have utilized the system, but there is no legal requirement that the institutions post their employment opportunities or receive applications through the platform at www.empleospublicos.gob.sv. The Committee does note that in the Draft Law on the Public Service, it provides that government entities are required to use an information system for posting and receiving applications for these opportunities, and in the presentation made by the

⁷⁸ *Ibid.*, pgs. 105 – 107, 116 – 119.

representatives of the Technical and Planning Secretariat of the Office of the Presidency, it identified the platform found at www.empleospublicos.gob.sv as serving this purpose.⁷⁹

[153] Nevertheless, the Committee notes that the draft law has been under consideration since 2012, and there is also a proposal to amend the existing Civil Service Law, which include the enactment of regulations, to modernize the government hiring system, which has been under consideration since 2009, and it is difficult to ascertain when these proposals will be taken up and enacted by the Republic of El Salvador. Given that currently the legal framework in place for government hiring into the civil service is ineffective, and in order to further strengthen and complement the initiatives to modernize this system, the country under review should consider enacting provisions or measures, as deemed appropriate, that require government institutions that make up the public administration to use an electronic platform for posting employment opportunities and receive applications, such as the one found at www.empleospublicos.gob.sv. (see Recommendation 1.1.3.20 of Section 1.1.3 of Chapter II of this Report)

[154] Notwithstanding the foregoing, the Committee also believes that the country under review should consider beginning to widen the scope of participation in the platform contained at www.empleospublicos.gob.sv to include other entities in the public administration, such as those found in the Legislative and Judicial Branch as well as Municipalities, for the external employment opportunities that may arise. (see Recommendation 1.1.3.21 of Section 1.1.3 of Chapter II of this Report)

[155] In this respect, the Committee notes that in a document presented by a group of civil society organizations, the El Salvador Civil Society Independent Report (*Informe Independiente de Sociedad Civil de El Salvador*), it noted the following regarding this platform:⁸⁰

[156] *“The "Government Employment" platform has proved to be a useful tool that, supplemented with other tools and mechanisms for access to selection processes, should be expanded and applied in all State institutions, including local governments, and should gradually be opened up to public scrutiny, thereby lowering the possible risk of too much discretionary authority.”*

1.1.2.3 Results

[157] The country under review, in its Response to the Questionnaire, provided statistical information with respect to the operation of the web system www.empleospublicos.gob.sv.⁸¹ In this respect, the country under review notes that since the implementation of the platform in January 2016 up to the date the Response was submitted, 212 employment opportunities were posted, with more than 730 000 thousand visits, a total amount of \$196 000 in published salaries, 443 applications received, 136 technicians from registered institutions that utilize the system, and 854 registered persons that have submitted their resume. At the website, the Committee notes that these numbers are constantly being updated.

[158] Moreover, the representative of the Office of the Prosecutor General, in a document submitted during the on-site visit, did note that during 2016, it had carried out a selection process for 100 Assistant Prosecutors, which were disseminated in newspapers of widest circulation, with the aim of receiving

⁷⁹ See Article 55 of the draft Law on the Public Service, *supra* note 14. See also Presentation made by the Technical and Planning Secretariat of the Office of the Presidency, Draft Law on the Public Service, Staffing and Recruitment System, pg. 7, http://www.oas.org/juridico/spanish/mesicic5_slv.htm

⁸⁰ Civil Society Independent Report, pg. 22, *supra* note 9.

⁸¹ Response to the Questionnaire, pg. 107, *supra* note 12.

resumes, in compliance with the requirements established in the Prosecutor Career Regulations, which ensure transparency in the process.⁸² In this respect, it provided the following table:

PHASE	FIRST PROCESS	SECOND PROCESS	THIRD PROCESS
NUMBER EVALUATED	197	410	532
DATE OF WRITTEN EVALUATION	09/03/2016	23/04/2016	04/06/2016
DATE OF PSYCHOLOGICAL EVALUATION	16/03/2016	02/05/2016	11/06/2016
DATE OF ORAL EVALUATION	26,29 and 30/03/2016	18,19,23,24 and 25/05/2016	04,05,06,07 and 08/07/2016
INTERVIEW DATE	*	13,14,16,17,18,19/05/2016	23,24,27/06/2016
HIRING DATE	April 1, 2016	June 6, 2016	July 25, 2016
NUMBER OF PROSECUTORS AT START OF PROBATIONARY PERIOD	31	34	36
NUMBER OF PERSONS HIRED	30	34	36

* Interviews were carried out at the same time as the oral exam.

[159] It also provided information on the overall number of selection processes carried out and number of persons evaluated, up to September 2016:

POST	# PROCESSES	N° OF PERSONS EVALUATED	COMPETITION TYPE
PROGRAM ANALYST	3	7	EXTERNAL
CITATION OFFICER	4	15	EXTERNAL
TREASURY COLLABORATOR	1	16	INTERNAL
COLLABORATOR IN THE PROTOCOL DEPARTMENT	1	1	EXTERNAL
DRIVER	8	57	EXTERNAL
ORDINANCE OFFICER	1	1	EXTERNAL
RECEPTIONIST	3	15	EXTERNAL
SECRETARY	6	43	EXTERNAL
SECRETARY/RECEPTIONIST	6	8	EXTERNAL

⁸² Document submitted by the Office of the Prosecutor General, pg. 2, *supra* note 67.

ASSISTANT PROSECUTORS	3	1139	EXTERNAL
TOTAL	36	1302	

[160] Despite the foregoing, the Committee notes that neither the Executive, through the Civil Service Tribunal, the Judicial Branch, the Legislative Assembly, the Court of Accounts of the Republic, the Office of the Prosecutor General, and the Salvadoran Institute for Municipal Development, provide objective results with respect to the system of government hiring carried out under their respective competence. As such, the Committee notes, it cannot count on statistical data on 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. 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 1.1.3.22 of Section 1.1.3 of Chapter II of this Report)

[161] Moreover, the Committee notes that Article 83 of the General Budget Provisions Law provides for entry into the civil service through a contract for professional or technical services. Similarly, there is no statistical information on the number of persons employed in the civil service under this type of contract. To that end, the country under review should consider maintaining these statistics on the overall number of persons employed in the civil service through this provision, as well as by institution, and should provide the number of persons employed under this type of contract in a year, how many competitions were completed for this type of contract, how many were abandoned, and how many persons applied to a position. The lack of information makes it hard for the Committee to determine the efficiency and transparency of the government hiring system in place, especially since this type of contract has the potential of abuse, given that currently, an institution has the discretion to offer a contract as well as the process for determining a suitable candidate. The Committee will formulate recommendations. (see Recommendations 1.1.3.23 and 1.1.3.24 of Section 1.1.3 of Chapter II of this Report)

1.1.3. Recommendations

[162] In 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:

- 1.1.3.1 Consider establishing a comprehensive legal framework for entry into the civil service, whether by enacting a new law, or amending the Civil Service Law, which takes into account the following aspects:
- i. Entry into the civil service is based on the principle of merit;
 - ii. Establishes the different stages that comprise the process of selecting and appointing civil servants;
 - iii. Makes examinations and/or interview a mandatory requirement for entry into the administrative career system;
 - iv. Establishes mechanisms that provide clearly defined criteria on the manner in which these examinations and interviews are to be carried out;

- v. Establishes clearly defined criteria for the advertisement of hiring opportunities or vacancies in the civil service, as well as the time frame in which they should be advertised, and which take into account the use of the mass media, such as newspapers with national circulation and/or websites, among others.
 - vi. Establishes challenge mechanisms for the purpose of clarification, modification, or revocation of substantive decisions in the staff recruitment and selection process;
 - vii. Establishes or designates bodies responsible for implementing and overseeing compliance with the legal framework (See paragraph 34 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.2 Consider adopting as soon as possible regulations for the Civil Service Law, so that the Civil Service Tribunal and the Civil Service Commissions may carry out their functions (See paragraph 35 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.3 Strengthen the Civil Service Tribunal, with respect to the functions that they perform in the areas of administration and control of government hiring system, and supplying them with the necessary resources to perform their functions properly, within available resources (See paragraph 52 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.4 Establish mechanisms for the effective institutional coordination of the actions of the Civil Service Tribunal and the Civil Service Commissions as well as the ongoing evaluation and follow-up thereof (See paragraph 52 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.5 Consider establishing challenge mechanisms in the Civil Service Law, for the purpose of clarification, modification or revocation of substantive decisions in staff recruitment and selection procedures (See paragraph 65 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.6 Adopt, through appropriate legal or administrative procedures, clear and compulsory mechanisms that ensure objectiveness in candidate selection as provided in Article 31 of the Municipal Civil Service Law (See paragraph 71 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.7 Consider adopting legal provisions or measures that provide for the annulment or invalidation of a selection and recruitment process that is carried out in violation of the Municipal Civil Service Law (See paragraph 78 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.8 Consider adopting legal provisions or measures that impose sanctions on public and municipal civil servants who are responsible for violating the selection and recruitment process contained in the Municipal Service Law (See paragraph 79 of Section 1.1.1 of Chapter II of this Report).

- 1.1.3.9 Consider adopting legal provisions or measures that impose sanctions on public and municipal civil servants who fail to establish a Municipal Commission, as required in the Municipal Service Law (See paragraph 79 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.10 Consider adopting legal provisions or measures that provide for the application of a sanction or fine on those public and municipal civil servants who do not establish their own Municipal Registry of the Municipal Civil Service System (See paragraph 86 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.11 Provide the Salvadoran Institute for Municipal Development the necessary oversight powers to monitor proper compliance with the obligation to establish a Municipal Registry of the Municipal Civil Service System (See paragraph 88 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.12 Ensure that the Salvadoran Institute for Municipal Development is provided with the necessary human, technological and budgetary resources to ensure that the Unit responsible for the National Registry of the Municipal Civil Service System and the Municipal Registries of the Municipal Civil Service System can carry out its functions properly, within available resources (See paragraph 88 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.13 Determine whether a separate legal regime from the Civil Service Law is more suitable for the recruitment and selection of institutional personnel of the Legislative Assembly, which takes into account the principles of openness, equity, and efficiency provided in the Inter-American Convention against Corruption (See paragraph 104 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.14 Adopt, for entry into the judicial career path in the Judicial Branch, by the National Judicial Council, provisions or mechanisms that provide clearly defined guidelines on announcement of employment opportunities and vacancies, and the content and form thereof, as well as the amount of advance notice required in their publication, to which end mass media outlets may be used, such as national newspapers and/or Internet websites (See paragraph 107 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.15 Determine whether a separate legal regime from the Civil Service Law is more suitable for the recruitment and selection of employees of the Court of Accounts of the Republic, which takes into account the principles of openness, equity, and efficiency provided in the Inter-American Convention against Corruption (See paragraph 117 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.16 Adopt provisions or mechanisms that establish clearly defined guidelines on announcement of employment opportunities and vacancies in the Office of the Prosecutor General and the content and form thereof, as well as the amount of advance notice required in their publication, to which end mass media outlets may be used, such as national newspapers and/or Internet websites (See paragraph 121 of Section 1.1.1 of Chapter II of this Report).

- 1.1.3.17 Adopt provisions or measures that establish challenge mechanisms for the purpose of clarification, modification, or revocation of substantive decisions in the recruitment and selection procedures for entry into the Office of the Prosecutor General (See paragraph 130 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.18 Carry out periodic comprehensive evaluations in order to assess the use and effectiveness of the government hiring system and, based on the findings, identify and consider adoption of specific measures by which to ensure the transparency, openness, equity, and efficiency thereof (See paragraph 134 of Section 1.1.1 of Chapter II of this Report).
- 1.1.3.19 Consider taking concrete action to avoid the discretionary application of Article 83 of the General Budget Provisions Law, either by updating the existing Civil Service Act or by creating a new legal framework that establishes a staff selection process, which takes into account the following aspects:
- i. A contract is offered based on the principle of merit;
 - ii. Establishes the different stages that comprise the process of selecting and offering a contract;
 - iii. Makes examinations and/or interview a mandatory requirement;
 - iv. Establishes mechanisms that provide clearly defined criteria on the manner in which these examinations and interviews are to be carried out;
 - v. Establishes clearly defined criteria for the advertisement of contract opportunities, as well as the time frame in which they should be advertised, and which take into account the use of the mass media, such as newspapers with national circulation and/or websites, among others.
 - vi. Establishes challenge mechanisms for the purpose of clarification, modification, or revocation of substantive decisions in the offer of a contract;
 - vii. Establishes or designates bodies responsible for assuring the legal framework is respected (See paragraph 146 of Section 1.1.2 of Chapter II of this Report).
- 1.1.3.20 Consider adopting legal provisions or measures, as deemed appropriate, that require government institutions that make up the public administration to use an electronic platform for posting employment opportunities and to receive applications (See paragraph 153 of Section 1.1.2 of Chapter II of this Report).
- 1.1.3.21 Widen the scope of participation in the platform contained at www.empleospublicos.gob.sv, to include other entities in the public administration, such as those found in the Legislative and Judicial Branch as well as Municipalities (See paragraph 154 of Section 1.1.2 of Chapter II of this Report).
- 1.1.3.22 Maintain statistics, as it pertains to the public servants of the Executive, through the Civil Service Tribunal, the Judicial Branch, the Legislative Assembly, the Court of

Accounts of the Republic, the Office of the Prosecutor General, and the Salvadoran Institute for Municipal Development, 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 on 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 160 of Section 1.1.2 of Chapter II of this Report).

- 1.1.3.23 Maintain statistics, with respect to Article 83 of the General Budget Provisions Law, on the overall number of persons employed under this type of contract, broken down as well as by institution, in order to identify challenges and recommend corrective measures where appropriate (See paragraph 161 of Section 1.1.2 of Chapter II of this Report).
- 1.1.3.24 Maintain statistics, with respect to Article 83 of the General Budget Provisions Law, on the number of persons employed under this type of contract in a year, how many competitions were completed for this type of contract, how many were abandoned, and how many persons applied to a position, in order to identify challenges and recommend corrective measures (See paragraph 161 of Section 1.1.2 of Chapter II 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:

Continue to strengthen the governing bodies of the Government Procurement and Contracting System (SIAC), in particular the Government Procurement and Contracting Regulatory Unit (UNAC), as well as the Institutional Procurement and Contracting Units (UACIs), with respect to the functions that they perform in the area of administration and control of the system, providing them with the resources necessary to perform their functions properly and developing mechanisms for the effective institutional coordination of their actions as well as the ongoing evaluation and follow-up thereof.

[163] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure.⁸³

[164] – At the institutional level, the Government Procurement, and Contracting Regulatory Unit (UNAC) has been strengthened through an organizational restructuring, which will allow it to carry out its functions, due to the magnitude in which national public procurement system is evolving. In this

⁸³ Response to the Questionnaire, pg. 66, *supra* note 12.

respect the last structural modification to the Unit took place in June, 2015, and the implementation of this new structure is currently under way.⁸⁴

[165] The representatives of the Unit, during the on-site visit, also noted that it is in the process of modernizing the Government Procurement and Contracting System of the Public Administration of El Salvador (SIAC). This would include strengthening the various components that make up the SIAC, namely the UNAC, as well as the Institutional Procurement and Contracting Units.⁸⁵ It would lead to the specialization of its personnel, a UNAC that continues to be based on best practices; and training provided to suppliers, buyers, and auditors.⁸⁶

[166] Moreover, in a document submitted subsequent to the on-site visit, the representatives of the UNAC noted that in terms of institutional coordination, they cite a 2013 Agreement between the UNAC and the Court of Accounts of the Republic, as it is the Court that has the audit function, the purpose of which is to establish mechanisms of collaboration and interinstitutional communication between the parties to contribute to the efficient fulfillment of their institutional goals and objectives.⁸⁷

[167] The Committee notes that this process of modernization, also comprises of reforms to the Government Procurement and Contracting Law (*Ley de Adquisiciones y Contrataciones de la Administración Pública - LACAP*)⁸⁸ and its regulations, which would include new methods of public procurement, such as reverse auctions (*Subasta Inversa*) and framework agreements (*Convenio Marco*), as well as the development of a new technological platform, the Public Procurement Electronic Transactional System - COMPRASAL II, which would automatically process all State procurement transactions through this platform (*Sistema Transaccional Electronico de Compras Publicas*).⁸⁹

[168] In regards to the new technological platform, during the on-site visit, it was noted that COMPRASAL II would be implemented in two phases. The first would consist in developing a new transactional module that would operate through the internet for procurement purchases for freely negotiated contracts (*Libre Gestion*),⁹⁰ Annual Procurement Plans, procurement requests and the redesign, graphically, of the Public Portal for publications, notifications, and submission of bids, by bidders. The country under review notes that some of the above have already been implemented, such as the Annual Procurement Plan, the redesign of the portal, and the use of the internet for procurement purchases of freely negotiated contracts, which are operational, albeit at a pilot stage.

[169] The second phase consists in the incorporation of other modules into the electronic transactional system, such as: public and competitive bidding, direct contracting, administration of contracts,

⁸⁴ In its observations to the draft preliminary report, the country under review notes that the Public Procurement Observatory and the Call Center (*Sección de Atención Telefónica*), which are operational.

⁸⁵ Presentation by UNAC, Modernization of the Government Procurement and Contracting System of the Public Administration of El Salvador (SIAC), (*Modernización del Sistema de Adquisiciones y Contrataciones de la Administración Pública de El Salvador (SIAC)*), pg. 3, http://www.oas.org/juridico/spanish/mesicic5_slv.htm

⁸⁶ *Ibid.*, pg. 7.

⁸⁷ Complementary Information to the Questions Raised during On-Site Visit, pg. 71, *supra* note 15.

⁸⁸ Government Procurement and Contracting Law (*Ley de Adquisiciones y Contrataciones de la Administración Pública*), <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-adquisiciones-y-contrataciones-de-la-administracion-publica>

⁸⁹ Presentation by UNAC, pg. 3, *supra* note 85.

⁹⁰ Article 68 of the Government Procurement and Contracting Law provides that freely negotiated contracts is a simplified procedure whereby institutions select contractors that provide works, goods and services or consultancies, up to the amount established in the Government Procurement and Contracting Law. The calls for bids for this procurement procedure and its outcomes are to be published in the registry found in the COMPRASAL platform, *supra* note 88.

administration of guarantees, extension or modification of contracts, as well as sanction procedures.⁹¹ The representatives noted that the second phase of implementation is slowly being implemented, based on the availability of funds.

[170] The Committee further observes that during the on-site visit, the representatives of the UNAC observed that it is the governing body for the system of government procurement of goods and services in the Republic of El Salvador. As a result, it oversees 388 institutions including all 262 municipalities, which each having its own Procurement and Contracting Unit, and also issues directives to all these institutions. It also stated that the reorganization of the Unit in 2015 was also carried out to address issues with resources. The representatives noted, during the on-site visit, that it currently has 25 persons in the Unit, which may not be enough to carry out all the functions set out in the LACAP.

[171] To this end, the country under review has acknowledged that the UNAC needs to be strengthened, to implement the modernization plan underway. For example, in an Article prepared by the UNAC in 2012, regarding this modernization plan, it noted the need to strengthen the UNAC as well as the Institutional Procurement and Contracting Units, so that they will be able to manage and provide efficient and effective services associated with COMPRASAL II. This would be achieved by increasing the level of specialization in the UNAC personnel, and would also require the personnel to provide training to suppliers, buyers, and auditors.⁹² A first phase was proposed to strengthen the UNAC, in the form of the following activities:⁹³

[172] *“a) Crafting of a detailed Work Plan for the whole project; b) drawing up of a training program for personnel of the Public Administration Procurement and Hiring Unit (UNAC), covering at least the following areas: Train-the-Trainer sessions, Administrative Law, Procurement Plans, Integration with Government Financial Systems, Graphic Design for Portals, and so on; c) implementation and evaluation of the training program for UNAC personnel; d) program of visits to facilitate the sharing of best government procurement practices, such as: call centers, training processes that come with accreditations and electronic systems.”*

[173] Moreover, it would require the implementation of an e-learning platform that would allow for virtual classrooms for training purchasers, suppliers, and auditors. To carry out this platform, it would require the following activities:⁹⁴

[174] *“e) design of the e-learning platform development strategy; f) development and testing of the e-learning platform; g) purchase of the computers needed to develop and install the e-learning platform; h) drawing up and deployment of an initial distance-training prototype plan for purchasers, providers, and auditors.”*

[175] Moreover, the modernization plan also aims to encourage micro, small, and medium-sized enterprises (*MIPYMES*) to State procurement opportunities. This will entail further training to be provided to these enterprises on the COMPRASAL system, and, in general to the public procurement system in place in the country under review.

⁹¹ Presentation by UNAC, pg. 8, *supra* note 85.

⁹² Article: Modernization of the System of Public Procurement in El Salvador for the Institutional Procurement and Contracting Units (UACIs), (*Artículo: Modernización del Sistema de Compras Públicas de El Salvador para UACIs*) http://www.mh.gob.sv/portal/page/portal/PCC/SO_Compras_Publicas/Otros/Articulo-Modernizacion_del_Sistema_de_Compras_Publicas_de_El_Salvador_para_UACIs.pdf

⁹³ *Ibid.*

⁹⁴ *Ibid.*

[176] As such, the Committee observes that the implementation of COMPRASAL II will require significant financial, human, and technological resources, on part of the UNAC, including significant training that will need to be carried out for staff of the UNAC, as well as those in the public administration that will utilize the new platform for their own purchasing needs, as well as those enterprises that would like to access State procurement opportunities. Given the foregoing, the Committee believes that Recommendation 1.2.1 should be reformulated, in this respect. (See Recommendation 1.2.3.1 in Section 1.2.3 of Chapter II of this Report)

[177] The Committee further notes that under Article 6 of the LACAP, the UNAC is an agency of the Ministry of the Finance, though it has functional and technical autonomy. The Committee notes that the UNAC does not prepare an Annual Report, unlike the Ministry of Finance, and it is difficult to ascertain the budget allocated to the UNAC to carry out its work. To the extent it is possible to determine the activities it carries out in a given year; the only document that provides an indication into these activities is the Annual Report by the Ministry of Finance. For example, in the 2015 – 2016 Annual Report of this Ministry, it sets out the progress the UNAC has made in implementing COMPRASAL II, the Registry of Suppliers, and the implementation of a pilot plan with respect to the freely negotiated contracts in COMPRASAL II.⁹⁵ It also contains information on the number of training carried out for its staff, as well as that for staff and employees of institutions subject to the LACAP. It also provides information on training carried out for civil servants, purchasers and suppliers, among others. The country under review does note that the Annual Operating Plan prepared by the UNAC as part of the Ministry of Finance sets out the Unit's activities and goals. In addition, a semiannual newsletter is published with information on its activities.⁹⁶

[178] While this information is useful, the Committee believes that presenting its own annual report of activities, given its functional and technical autonomy, could help strengthen the UNAC, and allow for more transparency and accountability into the system of government procurement in the country under review. In this manner, the public may become aware of the work undertaken by this important government body. To achieve this objective, the Committee considers that an Access to Public Information Unit for UNAC should be created, in compliance with the Access to Public Information Law. (See Recommendations 1.2.3.2 and 1.2.3.3 in Section 1.2.3 of Chapter II of this Report)

Recommendation 1.2.2:

Strengthen oversight mechanisms in procurement processes for goods, construction projects, general services, and consultant services.

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

Adopt, through the existing bodies, provisions that provide for the selection of an administrative unit that carries out work of auditing, control, and oversight of contracts of a certain amount and/or complexity that so require.

⁹⁵ Ministry of Finance, 2015 – 2016 Annual Report, (Ministerio de Hacienda, Memoria de Labores, 2015 – 2016), pg. 100, http://www.mh.gob.sv/portal/page/portal/PCC/Memoria-Archivo/Memoria_Ministerio_de_Hacienda_compressed.pdf

⁹⁶ *Ibid.*, pg. 88.

[179] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:⁹⁷

[180] *“The Government Procurement, and Contracting Regulatory Unit at the Ministry of Finance has taken the following steps:*

[181] *Interagency Agreement between the Court of Accounts of the Republic and the Ministry of Finance (UNAC is attached to the Ministry of Finance, so that the Agreement was signed by the Finance Minister) in September 2013. Its principal objective is to coordinate actions aimed at boosting efficiency and transparency in public administration by establishing links between the two institutions that help to enhance the performance of public servants and the proper execution of contracts for works, goods, and services. The Agreement established liaison between the two institutions to ensure coordination and compliance with that Agreement, and with regard to all hiring procedures. The Agreement is posted at: www.comprasal.gob.sv, in the regulatory framework/agreements section.*

[182] *Training courses given by UNAC for public servants in the Court of Accounts of the Republic who conduct audits of government procurement procedures.*

[183] *Implementation of the transactions module of the Annual Programming of Acquisitions and Contracting tool (PAAC) in October 2004, because it involves oversight and responsibility for conducting more detailed program planning, and, in 2015, implementation of the PAAC execution module, which introduces links to budgeting so as to facilitate verification of budgetary appropriations when processes get under way.”*

[184] The Committee further notes that in the on-site visit, and in a document submitted subsequent to this visit, the representatives of the UNAC observed the following:⁹⁸

[185] *“In El Salvador's legal framework, there is no entity specifically devoted to ex ante audits or inventories. Rather, as explained previously, by law it is the Court of Accounts of the Republic that conducts an audit a posteriori. Nevertheless, like UNAC and based on that Unit's functions and the legal framework in effect, the Public Procurement Observatory will be implemented. It could provide mechanisms for obtaining information needed to manage accountability, contracts, and their performance. That information will be made available not only to the Oversight Body, but also to the general public, thereby increasing citizen participation. The Observatory information will relate to all types of contract, not just one type or category.”*

[186] In this respect, the Public Procurement Observatory will provide for the follow-up and monitoring of information recorded in COMPRASAL, of all procurement procedures for works, goods and services carried out by government institutions. This will allow for the generation of indicators on the level of execution of the contracts, and will also contain a component of citizen participation, as it will allow for the reception of claims and complaints regarding specific procurement procedures.⁹⁹ The country under review further notes that this Observatory will serve as follow-up and analysis tool of the procurement

⁹⁷ Response to the Questionnaire, pg. 67, *supra* note 12.

⁹⁸ Complementary Information to the Questions Raised during On-Site Visit, pg. 71, *supra* note 15.

⁹⁹ Response to the Questionnaire, pg. 68, *supra* note 12.

and contracting processes carried out by the institutions of the Public Administration, with the aim of verifying that these procedures are legal, transparent and efficient.¹⁰⁰

[187] The Committee also notes that during the on-site visit, the representatives of the UNAC noted that this Observatory will also provide oversight on all contracts, not just those of a certain dollar amount and/or complexity.

[188] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of Recommendation 1.2.2, as well as the need for it to continue to give attention thereto, bearing in mind that while the Observatory, in conjunction with the Court of Accounts of the Republic may address in part the measure, these institutions have not carried out these control functions, as suggested by the Committee in measure a), and, as acknowledged by the country under review above, there is no specific body dedicated to audits or ex ante audits and to have one would require a legal reform of the procurement system of the country under review. To this end, the Committee notes that while the Public Procurement Observatory began operating in 2016, at the time of this writing it was not operational on the website at the website, www.observatoriocompraspublicas.gob.sv, it is now operational. (See Recommendation 1.2.3.4 in Section 1.2.3 of Chapter II of this Report)

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

Encourage the creation of citizen review mechanisms to perform oversight and monitoring of the pre-contractual phase, and of the execution of those contracts, having regard to their nature, importance, and/or magnitude.

[189] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure.¹⁰¹

[190] “Complying with the above, the State of El Salvador, through the UNAC, will implement a Public Procurement Observatory, which will make available, follow-up on, and monitor information recorded in COMPRASAL on all procedures for the procurement of works, goods, and services conducted by institutions, abiding by the legal framework in force in respect of both procurement and access to public information. This will generate indicators, including indicators of the status of execution of processes, and will include citizen participation components, since it will permit the filing of claims and complaints specifically related to procurement procedures. The initial phase of the Public Procurement Observatory will be implemented in June of this year.”

[191] Moreover, in a document submitted subsequent to the on-site visit, the representatives of the UNAC noted that the Public Procurement Observatory will provide information in matters of public procurement and access to public information. It further notes that such citizen review mechanisms have not been implemented, as it would require the legal framework to be modified. To this end, since 2015, work has been underway on a proposal to reform the LACAP, which will analyze the feasibility of including these mechanisms in said Law.¹⁰²

¹⁰⁰ Complementary Information to the Questions Raised during On-Site Visit, pg. 69, *supra* note 15.

¹⁰¹ Response to the Questionnaire, pgs. 68 – 69, *supra* note 12.

¹⁰² Complementary Information to the Questions Raised during On-Site Visit, pg. 71, *supra* note 15

[192] The Committee takes note of the steps taken by the country under review to advance in its implementation of Recommendation 1.2.2, as well as the need for it to continue to give attention thereto, bearing in mind that citizen review mechanisms have not been established that perform oversight and monitoring of the pre-contractual phase, and of the execution of those contracts, having regard to their nature, importance, and/or magnitude.¹⁰³ (See Recommendation 1.2.3.5 in Section 1.2.3 of Chapter II of this Report)

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

Develop provisions for the implementation of mechanisms or systems for the rendering of periodic accounts both by suppliers and contractors and by persons or entities directly responsible for supervision, control and oversight of contracts, ensuring the openness thereof.

[193] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure.¹⁰⁴

[194] *“Complying with the above, the State of El Salvador has, through UNAC, taken at least the following steps:*

[195] The Public Procurement Observatory to be implemented, in its initial phase, in June of this year. Its citizen participation component will make it possible to file observations, claims, and complaints regarding procurement processes, which is an important part of accountability.

[196] COMPRASAL transactions modules, which will help keep track of procedures and their implementation status. They will also generate audit unit users for verifying information.

[197] Thanks to the transactions system, information will be available based on the information to be provided through the Public Procurement Observatory.”

[198] The Committee also notes that this Public Procurement Observatory would also be responsible for monitoring and follow-up on all procurement procedures carried out within the Public Administration. To this end, it would also provide information on the progress made with respect to a contract. As noted above:¹⁰⁵

[199] “The Public Procurement Observatory will be implemented, along with mechanisms that could provide the information needed to manage accountability as well as information on contracts and their performance status. That information shall be available not just to the Oversight Body, but to the general public as well.”

[200] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure c) of Recommendation 1.2.2, as well as the need for it to continue to give attention thereto, bearing in mind that while the Public Procurement Observatory may make it capable of implementing procurement management follow-up and monitoring systems and mechanisms, both by

¹⁰³ In its observations to the draft preliminary report, the country under review notes that that citizen review mechanisms have been established through the Public Procurement Observatory for oversight and monitoring of the pre-contractual phase, and of the execution of all contracts.

¹⁰⁴ Response to the Questionnaire, pgs. 69 – 70, *supra* note 12.

¹⁰⁵ Complementary Information to the Questions Raised during On-Site Visit, pg. 71, *supra* note 15.

suppliers and contractors and by persons or entities directly responsible for supervision, control and oversight of contracts, as of this writing it was not operational; however, it is now. Moreover, it is difficult to ascertain to what extent this Observatory will require the periodic accounts, as set out in the measure, and in what form this information will be made available. (See Recommendation 1.2.3.6 in Section 1.2.3 of Chapter II of this Report)

Recommendation 1.2.3 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Develop and implement the single Registry of bidders, procurement, and contracts that contains all the data from the different registries mentioned in the Government Procurement and Contracting Law and its Regulations, using, for instance, information technology for its formation, updating, consultation, and dissemination.

[201] With respect to the aforementioned Recommendation, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure.¹⁰⁶

[202] *“Complying with the above, the State of El Salvador has taken steps to ensure that, pursuant to the Access to Public Information Law, every government institution must keep and make available to the public a database of bidders and contractors awarded contracts following the corresponding competitive processes, as well as of those punished for breaches of contract. That information must be updated each quarter in the transparency portals of each institution's website. In exceptional cases, that information may be kept in electronic form and made available in each institution's offices. Only low-income municipalities shall be allowed to have printouts of the information as the sole form of publication.*

[203] *In addition to the above, in an amendment to the Government Procurement and Contracting Law (LACAP) in 2011, a Single National Procurement Register was established. With the issuance of enabling regulations for the LACAP in 2013, which repealed the whole set of regulations issued in 2005 in order to take account of the 2011 amendments to the LACAP, provisions and parameters were established for developing and implementing the National Government Procurement Registry, to be done module by module (of bidders, contractors, and consolidated files (Article 9 RELACAP).*

[204] *It is worth mentioning here that COMPRASAL currently has a Government Suppliers Register, but the point of implementing the Single Register of Suppliers, in accordance with what was said in the foregoing paragraph about RELACAP, is to have a Register that, to start with, eliminates the need for certain documentation in procurement processes, thereby expediting the evaluation process and generating greater supplier participation. This Single Register of Suppliers is a project that El Salvador hopes to implement gradually, starting in 2017.”*

[205] During the on-site visit, the Committee was also informed, by the representatives of the UNAC, that the Single Registry of Suppliers has yet to be implemented, and the current registry in place is utilized to send information, through electronic mail to supplier about contract opportunities, among other things.

[206] The Committee observes that in the Report of the Second Round for the Republic of El Salvador, the Committee made note of the various registries and databases in place, under the old LACAP, prior to the reforms adopted in 2011. Under that review, the Law provided for 5 different registries or databases

¹⁰⁶ Response to the Questionnaire, pgs. 72 – 73, *supra* note 12.

that were to be kept, either by the UNAC, or the Institutional Procurement and Contracting Units. As a result, the Committee recommended that there be a single registry, containing the information contained in these registries and databases.¹⁰⁷

[207] With the amendments that were adopted in 2011, the Committee notes that rather than establishing a Single Registry, the aforementioned National Government Procurement Registry, which is to be maintained by the UNAC, the Institutional Procurement and Contracting Units are to still maintain a registry of all contracts undertaken over the previous 10 years, in order to permit evaluation and oversight by competent agencies and authorities, as well as a registry of bidders and contractors, so as to have a record of information on nonperformance and other aspects that might be relevant for the purposes of future contracts or disqualifications.¹⁰⁸ However, the country under review notes that it is taking into account aspects relating to the consolidation of the various existing registries, in order to implement the Single Registry of State Providers, so as to have a single source of information.

[208] Given the foregoing, the Committee takes note of the steps taken by the country under review to advance in its implementation of Recommendation 1.2.3, as well as the need for it to continue to give attention thereto, taking into account that important information that a Registry of State Providers should be maintained by the Institutional Procurement and Contracting Units, given that the country under review notes that the current registry, which is part of the Government Procurement and Contracting System (COMPRASAL), is designed to allow providers to register and learn about business opportunities, among other things, and that once the Single Registry of State Providers is implemented, it will validate the information so that UACI no longer register of providers separately. (See Recommendation 1.2.3.7 in Section 1.2.3 of Chapter II of this Report)

Recommendation 1.2.4:

Continue to develop and strengthen the information technology component of the Government Procurement and Contracting System, COMPRASAL (www.comprasal.gob.sv), in order to ensure transparency, openness, equity, and efficiency in government systems for procurement of goods and services in keeping with the Convention.

[209] With respect to the aforementioned Recommendation, 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:¹⁰⁹

[210] *“Complying with the above, the State of El Salvador has established, with respect to hiring that has already been made official and works already being executed, that entities subject to the LAIP must post, in addition to the “COMPRASAL” platform data, detailed information on their own individual websites.*

[211] *Likewise, the Electronic Government Procurement System (COMPRASAL) forms part of the Integrated Procurement and Hiring System (SIAC). As regards efforts to strengthen and develop COMPRASAL, the following merit special attention:*

[212] - *Modernization of the Electronic Government Procurement System (COMPRASAL), involving:*

¹⁰⁷ Report of the Second Round, pg. 15, *supra* note 3.

¹⁰⁸ Government Procurement and Contracting Law, Article 15, *supra* note 88.

¹⁰⁹ Response to the Questionnaire, pgs. 71 – 72, *supra* note 12.

[213] - *Redesigning the Portal (disclosure module);*

[214] - *Development and implementation of the COMPRASAL transactions modules (COMPRASAL II), which is being done gradually in separate stages. Eventually, this will mean that procedures can be performed on-line in real time. The first transactions module to be implemented was the one for preparing the Annual Procurement and Hiring Program Planning tool (PAAC) in October 2014. In 2016, work will continue on the module for implementing the PAAC and the module for directly managed hiring (contratacion de Libre Gestion) through the System.*

[215] *Worth mentioning, too, is that due to the 2011 amendments to the LACAP, changes were made to COMPRASAL to adapt it to the interactive elements introduced in the amendment, such as cost-free downloading of bidding conditions or the ground rules for competitive processes...*

[216] *...Complying with the above, the State of El Salvador has ensured that users (personnel in the institutions, suppliers, bidders and contractors) have adapted to and accepted the change from totally physical processes to the inclusion of electronic components, such as the cost-free downloading of bidding conditions. Difficulties were overcome, bearing in mind that they are normal when any system is implemented, so that UNAC provided the necessary assistance and has been developing and implementing the system gradually. Now, apart from being mandatory, actual use of the system has increased. Once the transactions modules are operational, usage will reach 100%.”*

[217] Given the foregoing, the Committee takes note of the satisfactory consideration by the country under review of the foregoing recommendation.

Recommendation 1.2.5:

Examine the possibility of publishing, when appropriate, preliminary bidding terms and conditions so that interested parties might examine and submit observations on them.

[218] With respect to the aforementioned Recommendation, in its Response, the country under review notes that the legal framework currently in place for public procurement does not contemplate for the publishing of preliminary bidding terms and conditions.¹¹⁰ However, the country under review notes that there does exist the possibility of consultations by bidders to them, and if warranted, the terms and conditions may be changed, though only to the extent that the legal framework allows. In this respect, the Committee highlights the following, contained in the Response to the Questionnaire:¹¹¹

[219] *“It should be pointed out that, while it is true that the publication of pre-bid specifications (pre pliegos) has not been regulated, the 2011 amendments to the LACAP established the obligation of the institution initiating procurement to establish technical feasibility, which includes, inter alia, verification of current market terms. However, there are some asymmetries in the information regarding specifications. Hopefully, under the new arrangements, UNAC will come up with tools, such as market studies, to be used by institutions when establishing specifications.*

[220] *Thanks to the Public Procurement Observatory, information on procurement processes will be available so that even those not taking part in them will be able to comment on the bidding terms and*

¹¹⁰ *Ibid.*, pgs. 73 – 74.

¹¹¹ *Ibid.*, pg. 73.

*conditions or terms of reference and on the terms for other forms of hiring, However, in the current legal framework, this will be after publication of the terms or conditions.*¹¹²

[221] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (See Recommendation 1.2.3.8 in Section 1.2.3 of Chapter II of this Report)

Recommendation 1.2.6:

Strengthen public works contracting systems.

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

Consider implementation of control systems for each individual public works contract, which enable civic inspections or citizen oversight activities; entail the obligation to submit periodic reports on the progress of the contract; and make it possible to determine if the expected cost/benefit ratio was actually achieved and if the quality of the work met the terms of the contract.

[222] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure.¹¹³

[223] *“Complying with the above, the State of El Salvador has ensured, in this regard, that the LAIP also requires publication of information regarding works currently being executed and those executed in the past three years. That information includes, for instance, the names of the contractors, implementers, and supervisors, in addition to the amounts allocated, deadlines, and guarantees.”*

[224] Moreover, the country under review also referred to the Response given for measure b), Recommendation 1.2.2, where it is noted:¹¹⁴

[225] *“Complying with the above, the State of El Salvador, through the UNAC, will implement a Government Procurement Observatory, which will make available, follow-up on, and monitor information recorded in COMPRASAL on all procedures for the procurement of works, goods, and services conducted by institutions, abiding by the legal framework in force in respect of both procurement and access to public information. This will generate indicators, including indicators of the status of execution of processes, and will include a citizen participation component, since it will permit the filing of claims and complaints specifically related to procurement procedures. The initial phase of the Public Procurement Observatory will be implemented in June of this year.”*

[226] In addition, in a document submitted subsequent to the on-site visit, the country under review noted that the Public Procurement Observatory does not solely focus on public works, but will

¹¹² In its observations to the draft preliminary report, the country under review notes that that proposals are currently being drawn up for reforming the legal framework, and the pertinence will be examined of a stage for making observations on preliminary terms and conditions as input on conditions with respect to technical specifications, in order to have information that is consistent with market conditions.

¹¹³ *Ibid.*, pgs. 68, 74 – 75.

¹¹⁴ *Ibid.*, pg. 68.

encompass all works, goods and services of all amounts. It also noted that once COMPRASAL II is implemented, there exists the possibility of incorporating public works specifically.¹¹⁵

[227] The Committee takes note of the steps taken by the country under review to advance in its implementation of the measure of Recommendation 1.2.6, as well as the need for it to continue to give attention thereto, bearing in mind that as of this writing citizen review mechanisms that perform oversight and monitoring of public works contracts had not been established and the Public Procurement Observatory was not operational. However, the country under review notes that both have now been set up and may be accessed at www.observatoriocompraspublicas.gob.sv. In addition, the country under review notes that the Public Procurement Observatory will itself generate the reports that it issues, which will be available to all interested parties and based on information in the Government Procurement and Contracting System (COMPRASAL) entered by each institution. Nevertheless, it is unclear whether the Observatory, or any other mechanism in place in the legal framework, requires the submission of periodic reports on the progress of public works contract; and make it possible to determine if the expected cost/benefit ratio have been achieved and if the quality of the work met the terms of the contract. (See Recommendation 1.2.3.9 in Section 1.2.3 of Chapter II of this Report)

Recommendation 1.2.7 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Carry out periodic comprehensive evaluations in order to assess the use and effectiveness of the government procurement and contracting system and, based on its findings, identify and consider adoption of specific measures by which to ensure the transparency, openness, equity, and efficiency thereof.

[228] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:¹¹⁶

[229] With the restructuring that took place in the UNAC in 2015, an area has been created within the Unit that will allow for the carrying out of studies and evaluations in order to have data to implement measures for greater effectiveness in the contracting procedures in the Republic of El Salvador. Moreover, the outcomes of the indicators to be provided by the Public Procurement Observatory and COMPRASAL will also provide input for these studies and evaluations.

[230] Moreover, in a document submitted by the country under review subsequent to the on-site visit, the country under review noted that this area within the UNAC, known as “studies and business intelligence” (*estudios e inteligencia de negocios*), through which studies will be conducted in order to obtain data to increase the effectiveness of processes and create mechanisms for the effectiveness and efficiency of the management of procurement system in place.¹¹⁷ Moreover, it noted that the implementation of the Sole Registry of Suppliers of the State will generate a reduction in transaction costs to bidders, reduce the time period for the evaluation of legal aspects in the procurement processes, among other things.

[231] The Committee takes note of the steps taken by the country under review to advance in its implementation of the measure of Recommendation 1.2.7, as well as the need for it to continue to give

¹¹⁵ Complementary Information to the Questions Raised during On-Site Visit, pg. 72, *supra* note 15.

¹¹⁶ Response to the Questionnaire, pg. 76, *supra* note 12.

¹¹⁷ Complementary Information to the Questions Raised during On-Site Visit, pg. 72, *supra* note 15.

attention thereto, bearing in mind that while the Republic of El Salvador is moving towards establishing mechanisms for carrying out periodic comprehensive evaluations in order to assess the use and effectiveness of the government procurement and contracting system, it has yet to do carry out these evaluations, and from which, could help identify and consider adoption of specific measures by which to ensure the transparency, openness, equity, and efficiency thereof. (See Recommendation 1.2.3.10 in 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

[232] In its Response to the Questionnaire, the country under review notes that in 2011, Decree Law 725 reformulated approximately 60% of the Government Procurement and Contracting Law (LACAP).¹¹⁸ In this respect, the country under review highlights the following aspects:¹¹⁹

[233] Establishes the pillars for the modernization of the Government Procurement and Contracting System (SIAC) and the Electronic Public Procurement System (COMPRASAL);

[234] Increased the amounts to be carried out for freely negotiated contracts (*Libre Gestion*), and Public and Competitive Bidding, through which works, goods and services are acquired;

[235] Eliminated public and competitive bidding by invitation, as a form of procurement;

[236] Excluded from the LACAP the contracting of banking and financial services, other than insurance, that are entered into by the Public Administration;

[237] Broadened the prohibitions on the offer of a tender, with respect to the participation of civil servants, employees, relatives, among others;

[238] Established special rules to encourage the participation of micro, small, and medium-sized enterprises (*MIPYMES*) to State procurement opportunities, by which 12% of annual procurement budget of public institutions of goods and services are allocated to these enterprises;

[239] The possibility of joint purchases is regulated so they can be carried out more efficiently;

[240] Clarity and establishment of responsibilities for procurement units and contract or purchase order managers;

[241] The deadline for signature of a contract is reduced to 5 days, and it regulates the extension of the contracts of goods and services for the same or shorter period as originally agreed, which can only be done once.

[242] The Committee also notes that Executive Decree 53 of 2013 enacted the new Regulations of the Government Procurement and Contracting Law.¹²⁰ The Committee highlights that the Regulations

¹¹⁸ Response to the Questionnaire, pg. 107, *supra* note 12. See Government Procurement and Contracting Law, *supra* note 88.

¹¹⁹ *Ibid.*, pgs. 107 – 108.

provide that the Electronic Public Procurement System (COMPRASAL) is to automatize the procedure for purchasing and contracting works, goods and services in the Public Administration, which is to be implemented in a gradual manner.¹²¹ It shall have an electronic platform, that contains, among other things, a dissemination module, which will be freely accessible to the general public and will contain the publication of acts that are legally required to be published, such as calls for tenders, outcomes of tenders, freely negotiated contracts, direct contracts, as well as all the processes of purchases and contracts of works, goods and services.

[243] In addition, the Regulation provides that a National Registry of Purchases and Contracts of the Public Administration is to be maintained.¹²² It is to be implemented gradually and contain of two modules. The first is a module of Registry of Bidders and Contractors, which will contain information on natural and legal persons, as well as registry contracts that have been concluded or are currently being executed, and any sanctions that have been imposed, among other things. The second module will contain consolidated records of all the purchases and contracts carried out by each institution of the Public Administration, by procurement method.

b) Observations

[244] First, the Committee wishes to acknowledge the new developments in the legal framework of the Republic of El Salvador that create, maintain and strengthen the government systems for the procurement of goods and services as referred to in Article III, paragraph 5 of the Inter-American Convention against Corruption.

[245] Notwithstanding, the Committee considers it appropriate to make a number of observations on the advisability of developing and complementing certain provisions that refer to these new developments, without prejudice to the observations made by the Committee in section 1.2.1 above with respect to the follow-up of the implementation of the recommendations that were formulated to the country under review in the Second Round.

[246] The Committee notes that Article 4 of the reformed LACAP provides for more exclusions on the application of the Law, than that what was found in the pre-amended version. The LACAP, before is reformation, allowed for 3 exclusions: a) procurement and contracting operations financed with funds provided under agreements or treaties that the State enters upon with other states or international agencies, when so determined by the agreement or treaty; b) Agreements signed between state institutions provided they do not oppose the objectives of the law; c) Personal services contracted by government institutions, including those under the system of the Salaries, Contracts, or Daily Wage Law.¹²³ With the reformations of 2011, there are now 9 exclusions from this Law, which opposes the purpose of the Law, which is to provide a legal framework applicable to all procurement and contracting procedures carried out by state organs, offices, auxiliary agencies, entities, and municipalities.

[247] In this respect, the Committee would like to highlight two important additions, which can entail significant amount of public funds: for service in the distribution of electrical energy and public service

¹²⁰ Regulations to the Government Procurement and Contracting Law, (*Reglamento de la Ley de Adquisiciones y Contrataciones de la Administracion Publica*),

http://www.mh.gob.sv/portal/page/portal/PCC/SO_Compras_Publicas/Reglamentos/Nuevo_Reglamento_de_la_LACAP_2013.pdf

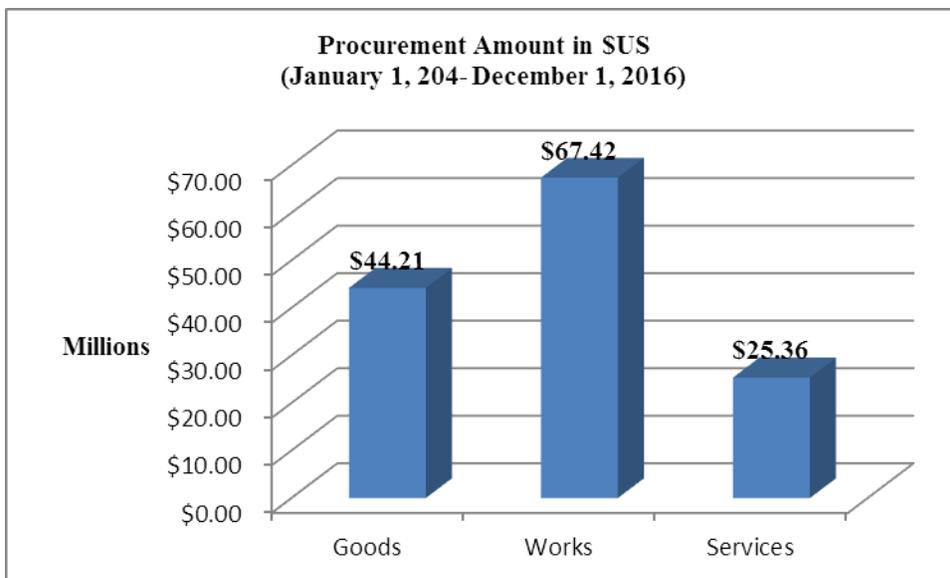
¹²¹ Article 8, *ibid.*

¹²² Article 9, *ibid.*

¹²³ Old Government Procurement and Contracting Law, http://www.oas.org/juridico/spanish/mesicic3_slv_contrataciones.pdf

of drinking water; and for municipal construction works, which the country under review notes that these reforms were undertaken based on what is considered viable for the country.

[248] The Committee notes that the procurement processes involving the energy sector and for drinking water may entail large amounts and complex contracts, in order to ensure that these basic services are made available to the public at large. With respect to construction works contracts entered into by municipalities in the country under of review, they are governed by the LACAP. The only exception is projects for the actual execution of contracts, which are managed by the Municipal Council (aimed at providing local employment); contracts for inputs and materials are subject to LACAP processes. The Committee notes for municipalities, since 2014 until December 1, 2016, over \$US 67 million dollars of contracts have been carried out for public works in municipalities, which amounts to approximately 49% of all contracts carried out by these entities, as set out in the graph below:¹²⁴



[249] With respect to construction works contracts entered into by municipalities in El Salvador, they are governed by the LACAP. The only exception is projects for the actual execution of contracts, which are managed by the Municipal Council (aimed at providing local employment); contracts for inputs and materials are subject to LACAP processes.

[250] In addition, as noted by the country under review in its Response, the LACAP excludes from its scope of application the contracting of banking and financial services, other than insurance, that are entered into by the Public Administration. In this respect, the Committee notes that the Council of Directors of the Superintendency of Competition of El Salvador, in an opinion on the proposed reforms to the LACAP, noted that:¹²⁵

[251] *“That economic agents that may provide banking and financial services have the capacity to compete for government contracts and should therefore enjoy equal opportunities in government procurement and hiring procedures.”*

¹²⁴ Information obtained from the Statistics webpage of the Public Procurement Electronic System of El Salvador (*Sistema Electronico de Compras Publicas de El Salvador*), https://www.comprasal.gob.sv/comprasal_web/estadisticaSumario

¹²⁵ Superintendency of Competition (*Superintendencia de Competencia*) SC-002-OP/PN/R-2011, Opinion of April 12, 2011, pgs. 4 – 5, http://sc.gob.sv/site/uploads/SC-002-OP-PN-R-2011_120411_1245.pdf

[252] The Committee shares the view by the Superintendency of Competition, where it further stated that the majority of purchases in the public sector should be subject to the LACAP, and only exceptionally should exclusions be allowed, when there are reasons to justify these exclusions and do not affect significantly competition to the detriment of the State. Moreover, it further noted that the legal and economic justifications for these exclusions were not provided in some of these cases, and therefore recommended that these new exclusions be reviewed and assessed comprehensively in order to reasonably determine the justification for their exclusion.¹²⁶ To that end, the Committee believes the country under review should consider reviewing and assessing the exclusions to the LACAP contained in Article 4, in order to determine the appropriateness of these exclusions, in order to ensure that the system of government procurement respects the principles of openness, equity, and efficiency as provided in the Convention.¹²⁷ (See Recommendation 1.2.3.11 in Section 1.2.3 of Chapter II of this Report)

[253] The Committee also notes that the reformed LACAP also broadens the instances that direct contracting may be utilized. Under the old Law, Article 71 provided that direct contracting is the process by which an institution contracts directly with an individual or legal person, yet abiding by competitive principles and adhering to preset technical specifications and conditions. If this method is to be used, the decision to do so must be set down in a reasoned resolution issued by the head of the institution.¹²⁸ In addition, Article 72 of the old version of the LACAP, provided 7 circumstances that direct contracting was allowed: a) if necessary in order to protect industrial or intellectual property rights, such as patents, copyright, or similar rights, when there is only one source or when the area of professional, technical, or artistic expertise to which the contractual obligations apply preclude a tender; b) when a public or competitive bidding process has been declared void for a second time; c) when the contract has been rescinded and emergency reasons warrant preclusion of another tender; d) in the case of works, services, or supplementary supply of goods, or of accessories, components or spare parts for existing equipment or other previously purchased items, for which no other source exists; e) in the case of procurement of war equipment or materiel previously classified by the Minister of National Defense and approved by the President of the Republic; f) if classed as an emergency in accordance with the guidelines contained in this Law; and, g) In the event of an emergency arising from war, a public disaster, or a grave disturbance of public order. The Committee notes that with the new reformulation, the circumstances by which direct contracting may be used has increased from 7, to 12, as set out under Article 72 of the current version of the LACAP.

[254] The Committee also observes that under Article 234 of the Constitution of El Salvador, when the State enters into contracts in order to carry out works or procure goods and services for which public funds or assets are to be committed, such works or supply contracts shall be submitted to public bidding, except where the law determines otherwise. As such, the use of direct contracting is to be an exception, and the increase in circumstances should be duly justified, as well as parameters put in place to provide guidance on their use, much like what has been developed for declaration of emergencies, as provided for under Article 73 of the Law, and for the contracting of works, goods and services in anticipation of or subsequent to a state of emergency, as set out under Article 73A. The Committee further notes that the

¹²⁶ *Ibid.*, pg. 4.

¹²⁷ In its observations to the draft preliminary report, the country under review notes that under the LACAP public works are carried out in accordance with the aforementioned principles, on how the administration mechanism for municipalities envisaged in Article 4 of the LACAP works.

¹²⁸ Old Government Procurement and Contracting Law, *supra* note 123.

country under review has issued guidelines for the contracting of works, goods and services when a state of emergency is declared.¹²⁹

[255] The Committee observes that these are the only instance in which guidelines or parameters are put in place on the use of direct contracting. In this respect, the Committee notes that the country under review should consider adopting similar guidelines for the exceptions set out under Article 72. In this manner, these guidelines can provide legal certainty on the exact application of these exceptions, and avoid any ambiguity or leave to discretion on the application of these exceptions. Moreover, as direct contracting should be an exception to the general rule of public and competitive bidding, the personnel that utilize this method of contracting should provide written justification for this use, and publish the justification on the COMPRASAL platform, providing all the elements of the contract, such as price, form, and contractors, something that is currently not required in the LACAP. In this respect, the Committee notes that Article 10(19) of the Access to Public Information Law provides that all public institutions are to make available to the public, the contracts and purchases entered into or awarded, detailing the a) object; b) amount; c) identification of the contractor; d) timeframes for carrying out the contract, and its execution; e) the manner the contract was awarded or carried out, whether by public and competitive bidding, direct contracting, or freely negotiated contracts; and f) details of the award process and the content of the contracts.¹³⁰ The Committee will formulate recommendations. (See Recommendations 1.2.3.12 and 1.2.3.13 in Section 1.2.3 of Chapter II of this Report)

[256] The Committee further notes that Article 39 of the LACAP provides for three methods for contracting: a) Public and competitive bidding; b) freely negotiated contract; and c) direct contracting.

[257] Article 40 further provides the monetary amounts that determine which of the above-mentioned procurement methods are appropriate and applicable in each instance: a) public and competitive bidding: for municipalities, amounts in excess of the equivalent of one hundred and sixty (160) times the minimum monthly wage of the commercial sector; for the rest of the institutions of the Public Administration, amounts in excess of the equivalent of two hundred and forty (240) times the minimum monthly wage of the commercial sector;¹³¹ b) freely negotiated contracts: for amounts less than the equivalent of one hundred and sixty (160) times the minimum monthly wage of the commercial sector, including that it be put on record that a competitive process has taken place, and in which at least three bidders must be involved, except where the procurement or contracting operation does not exceed the equivalent of twenty (20) times the minimum monthly wage for the commercial sector and when the operation involves a single bidder or specific brands in which a single bidder shall suffice; a reasoned resolution shall be issued in that regard. This Article also provides that there is no ceiling on amounts in direct contracting, bearing in mind the special nature of the grounds on which they are based.

¹²⁹ Guidelines for the Contracting of Goods, Works and Services during a National State of Emergency, (*Lineamientos para Contratacion de Bienes Obra o Servicios por Estado de Emergencia Nacional*), http://www.mh.gob.sv/portal/page/portal/PCC/SO_Compras_Publicas/Lineamientos/Lineamientos_para_Contratacion_de_Bienes_Obra_o_Servicios_por_Estado_de_Emergencia_Nacional.pdf

¹³⁰ In its observations to the draft preliminary report, the country under review notes that all reasons given for direct contracting in accordance with Article 72 of the LACAP must be properly justified and that said justification must give in a reasoned resolution published on COMPRASAL. The RELACAP also sets out aspects pertaining to the propriety of direct contracting.

¹³¹ The unit of measure is the “minimum monthly wage for the commercial sector,” which is set by executive order issued by the President of the Republic on the recommendation of the National Minimum Wage Board (*Consejo Nacional de Salario Mínimo*). At present, the minimum monthly wage for the commercial sector comes to US\$ 251.70, <http://www.mtps.gob.sv/consejo-nacional-del-salario-minimo/>

[258] The Committee notes, however, upon examining his Article, there is a gap in the legislation regarding the application of the proper procurement method, for institutions of the Public Administration. As noted above, these institutions can use the freely negotiated contracts method, up to 160 times the minimum monthly wage of the commercial sector, which amounts to approximately \$40 272. For public and competitive bidding, this can be used for amounts that are more than 240 times the minimum monthly wage of the commercial sector, which is approximately \$60 408. As such, there is a gap, between the amount that can be used for freely negotiated contracts, and that for public and competitive bidding, for institutions of the Public Administration.

[259] The Committee does note that in a document prepared by the UNAC on frequently asked questions regarding the LACAP, it notes that freely negotiated contracts method can be used up to 240 times the minimum monthly wage of the commercial sector, which would address this gap.¹³² However, the legislation does not support this interpretation. As such, the Committee believes the country under review should consider amending the LACAP, in order to address this situation. The Committee will formulate a recommendation.¹³³ (See Recommendation 1.2.3.14 in Section 1.2.3 of Chapter II of this Report)

[260] Finally, the Committee notes that Article 76 of the LACAP provides that private individuals whose rights have been impaired have the right to appeal for review a decision that awards a contract, or one that declares a process is void. Moreover, Article 77 provides the timeframe and manner to lodge this appeal.

[261] In this regard, the Committee notes that the country under review only allows those persons whose rights have been impaired in a public and competitive bidding process, to have access to this right to appeal of a decision. For example, the Committee observes that in the 2013 Annual Purchasing and Contracting Plan for the Institutions of the Public Administration,¹³⁴ adopted by the Council of Ministers, as well as in the Document on Frequently Asked Questions prepared by the UNAC,¹³⁵ these documents note that the recourse mechanism is only available when there is an administrative act that awards or declares void a public and competitive bidding process.

[262] The Committee notes, however, that the method of freely negotiated contracts, under Article 40 of the LACAP, is to be used ensuring that there is a competitive process, involving at least three bidders. In this respect, Article 61 of the Regulations to the LACAP provide that the Head of an Institutional Procurement and Contracting Unit must carry out the call for bids in the Electronic Public Procurement System, so that potential bidders may be notified of the contracting opportunity. Article 68 of the LACAP further provides that the outcome of this bidding process should also be published in the aforementioned System. The Committee considers that given that this contracting procedure is to be based on competition, involving multiple parties, where at least two bidders will not be successful, the country under review should consider amending the LACAP to allow an appeal for review with respect to decisions to award, or declare void a contract process, when the method for freely negotiated contract

¹³² Doubts Regarding LACAP? Frequently Asked Questions (*Dudas Sobre la LACAP? Preguntas Frecuentes*), pg. 19, http://www.mh.gob.sv/portal/page/portal/PCC/SO_Compras_Publicas/Otros/Preguntas_Frecuentes_LACAP.pdf

¹³³ In its observations to the draft preliminary report, the country under review notes that upon becoming aware of the amendment of the LACAP in 2011, on the initiative of the UNAC it submitted proposed amendments to the legislative branch to rectify the inconsistency in that law.

¹³⁴ 2013 Annual Purchasing and Contracting Plan for the Institutions of the Public Administration (*Política Anual de Adquisiciones y Contrataciones de las Instituciones de la Administración Pública 2013*), pg. 8, http://www.mh.gob.sv/portal/page/portal/PCC/SO_Compras_Publicas/Políticas/Política_Anual_de_Adquisiciones_y_Contrataciones_2013.pdf

¹³⁵ Doubts Regarding LACAP? Frequently Asked Questions, pgs. 27 – 28, *supra* note 132.

is utilized. In this respect, the country under review notes that it is drafting reforms to the legal framework in which the issue of challenges will be analyzed. The Committee will formulate a recommendation. (See Recommendation 1.2.3.15 in Section 1.2.3 of Chapter II of this Report)

1.2.2.2 New Developments with Respect to Technology

[263] In its Response to the Questionnaire, the country under review presents various technological developments, which are presented as follows:¹³⁶

[264] Modernization of the Electronic Public Procurement System (COMPRASAL), which not only included a redesign of the portal, but also:

[265] – Developed and implemented the COMPRASAL transactional module, known as COMPRASAL II, which is being carried out gradually in phases, through which the execution of the procurement process will be carried out virtually and in real time. The first transactional module implemented was the preparation of the Annual Programming of Acquisitions and Contracting (*Programación Anual de Adquisiciones y Contrataciones - PAAC*) in October 2014. In 2016 the modules for carrying out the PAAC will continue as well as the ability to carry out freely negotiated contracts (*Libre Gestion*), through the system.

[266] – As a result of reforms made to the LACAP in 2011, modifications were made to COMPRASAL to allow it to adapt the interactive aspects that the reform involved, such as the free download of the bidding rules for open or competitive procurement processes.

1.2.2.3 Results

[267] In its Response to the Questionnaire, the country under review presents the following information notes that it has developed, regarding the new developments in the legal framework and technological developments set forth in the previous paragraphs, greater transparency, openness and competition, in terms of publication of the calls for bids and results of the procurement processes.¹³⁷ The country under review also emphasizes that it has a more developed Electronic Public Procurement System with elements that observe international best practices, in addition to the development of the transactional components, and strengthening the attributions of the UNAC as governing entity of the public procurement system at the national level.

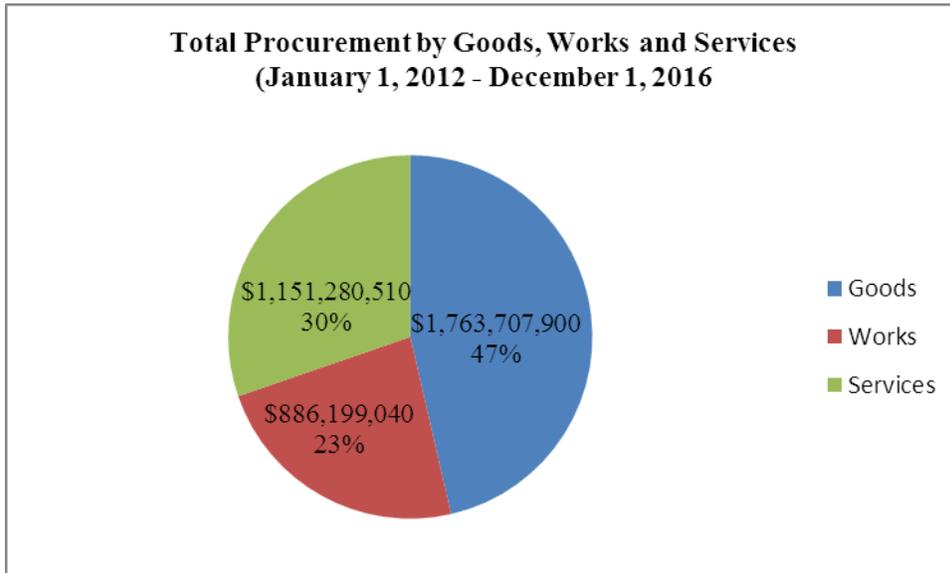
[268] The Committee would also like to highlight the existence of the statistics maintained by the COMPRASAL system. The ‘Statistics’ website maintained by COMPRASAL provides access to reports containing statistics on all procurement procedures.¹³⁸ Users can generate reports, inputting a date range. For example, summaries can be found, broken down by: contracts awarded, broken down by goods, works and services; amounts awarded by year, in United States dollars, and by procedure; as well as by individual institutions. It also provides summaries over a period of years, depending on the date range inputted.

[269] As an example, it provides information on the total number of procurement carried out, in US dollars, broken down by goods, works and services. Below is a report generated using the date range, January 1, 2012 – December 1, 2016:

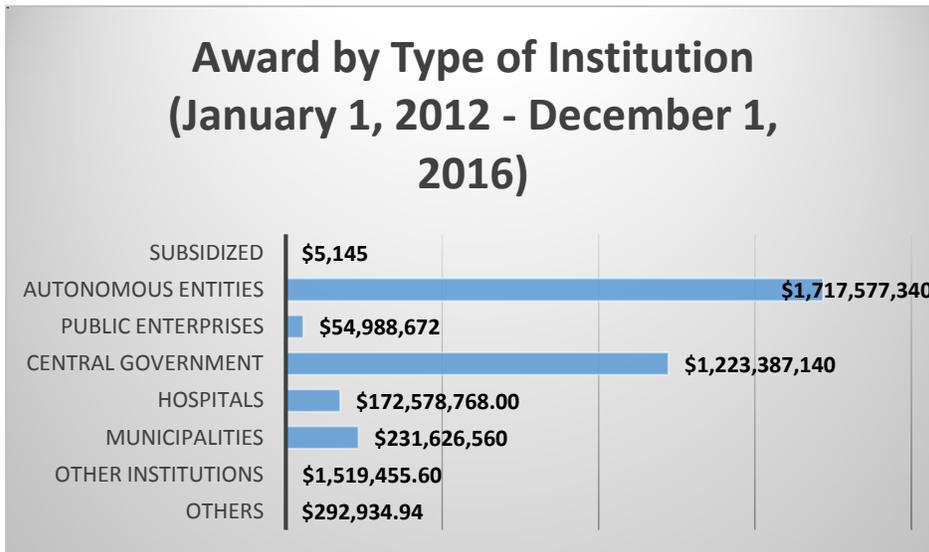
¹³⁶ Response to the Questionnaire, pg. 108, *supra* note 12.

¹³⁷ *Ibid.* pg. 108.

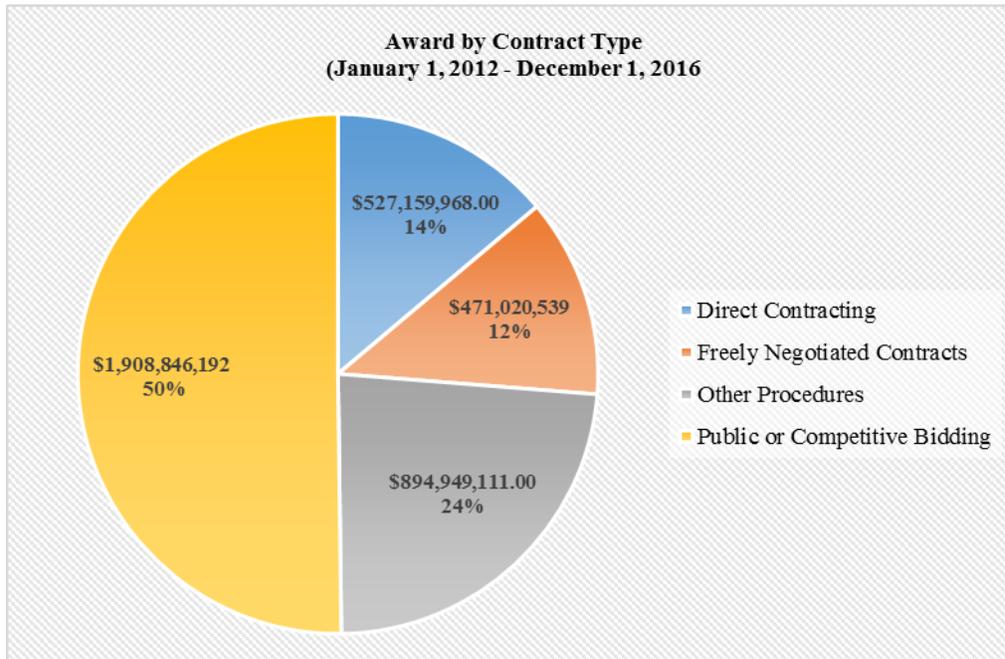
¹³⁸ Statistics – Summaries (*Estadísticas – Sumarios*), https://www.comprasal.gob.sv/comprasal_web/estadisticaSumario



[270] It also provides information on the amount, in US dollars of the awards, broken down by institution, as set out below, for the date range January 1, 2012 to December 1, 2016:



[271] Moreover, a person can also generate information on the amounts, in US dollars, of contracts, awarded by type of contracting process. For example, the pie chart below indicates this information, for January 1, 2012 – December 1, 2016:



[272] The Committee also notes that the country under review maintains a database of contractors that have been sanctioned.¹³⁹ This database contains three types of information. In the first instance, it maintains a registry of disqualified contractors, broken down by name of contractor, institution that imposed the sanction, the date the sanction was imposed, the date the sanction finalizes, the time period that the contractor is disqualified from contracting with the State, and days remaining for the sanction to be lifted. In the second instance, information in this registry corresponds to cases in which a contracting institution terminated a contract for reasons attributable to the contractor, with the information broken down in the same manner as that of disqualified contractors. Finally, it also maintains a registry of contractors that have had their sanctions lifted, or suspended.

[273] The Committee notes that the statistics maintained by the country under review do provide a comprehensive overview of the application of the system of government procurement. However, the Committee believes that the country under review may consider maintaining statistics on the number of awards or decisions made with respect to a contract, broken down by procurement process, in order to identify challenges and recommend corrective measures where appropriate. For example, in the pie chart above, for the time frame indicated, while it is possible to obtain information on the amount in US dollars awarded for each type of procurement process, it is not possible to generate information on the number of these contracts awarded, by process, within a given time frame.¹⁴⁰ The Committee will formulate a recommendation. (See Recommendation 1.2.3.16 in Section 1.2.3 of Chapter II of this Report)

1.2.3 Recommendations

[274] 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:

¹³⁹ Sanctions (Sanciones), https://www.comprasal.gob.sv/comprasal_web/sanciones

¹⁴⁰ In its observations to the draft preliminary report, the country under review notes that the Public Procurement Observatory will yield more detailed information about contracting, such as the number of contracts.

- 1.2.3.1 Provide the Government Procurement and Contracting Regulatory Unit (UNAC) with the necessary budgetary, technological, and human resources necessary to perform their functions properly, subject to their availability (see paragraph 176 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.2 Disseminate the required public information set out in Article 10 of the Law on Access to Public Information by the Government Procurement and Contracting Regulatory Unit, as well as the steps taken to modernize the public procurement system, the efforts to implement COMPRASAL II, and the training activities carried out in preparation for this initiative (see paragraph 178 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.3 Create and implement, by the Ministry of Finance, the Access to Public Information Unit for the Government Procurement and Contracting Regulatory Unit (see paragraph 178 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.4 Adopt, through the existing bodies, provisions that provide for the selection of an administrative unit that carries out work of auditing, control, and oversight of contracts of a certain amount and/or complexity that so require (see paragraph 188 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.5 Encourage the creation of citizen review mechanisms to perform oversight and monitoring of the pre-contractual phase, and of the execution of those contracts, having regard to their nature, importance, and/or magnitude (see paragraph 192 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.6 Develop provisions for the implementation of mechanisms or systems for the rendering of periodic accounts both by suppliers and contractors and by persons or entities directly responsible for supervision, control and oversight of contracts, ensuring the openness thereof (see paragraph 200 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.7 Develop and implement the single Registry of bidders, procurement, and contracts that contains all the data from the different registries mentioned in the Government Procurement and Contracting Law and its Regulations, using, for instance, information technology for its formation, updating, consultation, and dissemination (see paragraph 208 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.8 Examine the possibility of publishing, when appropriate, preliminary bidding terms and conditions so that interested parties might examine and submit observations on them (see paragraph 221 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.9 Implement control systems for each individual public works contract, which enable civic inspections or citizen oversight activities; entail the obligation to submit periodic reports on the progress of the contract; and make it possible to determine if the expected cost/benefit ratio was actually achieved and if the quality of the work met the terms of the contract (see paragraph 227 in Chapter III, Section 1.2.1. of this Report).

- 1.2.3.10 Carry out periodic comprehensive evaluations in order to assess the use and effectiveness of the government procurement and contracting system and, based on its findings, identify and consider adoption of specific measures by which to ensure the transparency, openness, equity, and efficiency thereof (see paragraph 231 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.11 Review the exclusions contained in Article 4 of the Government Procurement and Contracting Law (LACAP), to determine if these exclusions are justified and respect the principles of openness, equity, and efficiency as provided in the Convention (see paragraph 252 in Chapter III, Section 1.2.2. of this Report).
- 1.2.3.12 Adopt guidelines or parameters that set out the proper application of the circumstances enumerated in Article 72 of the Government Procurement and Contracting Law (LACAP), regarding the use of direct contracting as a method for government procurement (see paragraph 255 in Chapter III, Section 1.2.2. of this Report).
- 1.2.3.13 Publish the written justification for the use of direct contracting in the COMPRASAL website, including the information required under Article 10(19) of the Access to Public Information Law (see paragraph 255 in Chapter III, Section 1.2.2. of this Report).
- 1.2.3.14 Consider amending Article 40 of the Government Procurement and Contracting Law (LACAP), to address the gap between the use of freely negotiated contracts, and that of public or competitive bidding, for institutions in the Public Administration (see paragraph 259 in Chapter III, Section 1.2.2. of this Report).
- 1.2.3.15 Consider amending the Government Procurement and Contracting Law (LACAP), in order to allow an appeal for review with respect to decisions to award, or declare void a contract process, when the method for freely negotiated contract is utilized (see paragraph 262 in Chapter III, Section 1.2.2. of this Report).
- 1.2.3.16 Maintain statistics on the number of contracts awarded by procurement process, in order to identify challenges and recommend corrective measures where appropriate (see paragraph 273 in Chapter III, Section 1.2.2. of this Report).

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

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

Recommendation 2.1:

Strengthen the systems for protecting public servants and private citizens who, in good faith report acts of corruption.

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

Increase the possibility of applying protection and assistance measures provided in the Special Victim and Witness Protection Law for public officials or private citizens who report acts of corruption that might not be recognized as crimes and be subject to an administrative investigation.

[275] With respect to the aforementioned measure, in its Response, the country under review notes that the Special Victim and Witness Protection Law has not been modified, and that so long as acts of corruption are not recognized as crimes, the Law cannot be applied to provide protection and assistance measures.¹⁴¹

[276] The Committee notes that the focus of the aforementioned measure is to provide administrative protection measures to public officials or private citizens who report acts of corruption, rather than application for those involved, directly or indirectly, in the investigation of criminal offense or a judicial proceeding. To that end, the ones found in the Special Victim and Witness Protection Law may be used in these cases, when applicable. However, administrative protection measures also contemplate other circumstances not contemplated in the aforementioned Law, such as protecting the employment situation of whistleblowers, especially when the act of corruption may involve his or her hierarchical superior or colleagues. These administrative protection measures would also involve protection from reprisals.

[277] Given the foregoing, the Committee believes that measure a) should be reformulated and that the country under review should consider establishing a legal framework that provides administrative protection measures for public officials or private citizens who report acts of corruption, whether or not those acts lead to an investigation of a criminal offense or judicial proceeding. In this regard, the country under review should take into account the Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses.¹⁴² (See Recommendation 2.3.1 of Section 2.3 of Chapter II of this Report)

[278] Moreover, the country under review should consider establishing or designating a body that has the competence to receive and respond to requests for administrative protection measures, as well as promoting the provision of the necessary measures of protection, including providing necessary measures of protection and remediation, and sanctions in the event prohibited retaliation occur; and ensure that they have the necessary resources and personnel, within available resources, to carry out their functions. In the absence of such a body for public servants to request protection measures, at the administrative level, it can have a serious impediment on the reporting of acts of corruption. The Committee will formulate recommendations. (See Recommendation 2.3.2 and 2.3.3 of Section 2.3 of Chapter II of this Report)

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

Hasten, under the aegis of the Special Victim and Witness Protection Law, implementation of mechanisms to facilitate, where relevant, international cooperation, including the technical assistance and mutual cooperation for which the Convention provides, as well as experience sharing, training, and mutual assistance.

¹⁴¹ Response to the Questionnaire, pg. 77, *supra* note 12.

¹⁴² 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

[279] 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:¹⁴³

[280] Since its establishment, the personnel of the Victim and Witness Protection Program have received training from the Executive Technical Unit (*Unidad Técnica Ejecutiva*),¹⁴⁴ in coordination with the Federal Bureau of Investigation, the Marshall Service of the United States, the Office of Overseas Prosecutorial Development Assistance and Training (OPDAT), and has also exchanged experiences with members of the Protection Programs in place for countries such as Serbia, Chile, Colombia, Brazil, France and Japan.

[281] Moreover, under the framework of the Central American Convention for the Protection of Victims, Witnesses, Experts and other Persons Involved in the Investigation and Criminal Proceedings, particularly Drug trafficking and Organized Crime, working meetings have been held with delegates of the countries of the Northern Triangle (Guatemala – Honduras – El Salvador), and through which it is joining efforts, through the auspices of the OAS. In these meetings, discussions were made to draft a Manual on the structure and operation of Protection Programs in each country, and with the participation of the personnel of these Programs, two technical meeting have been held to draft a “Manual for the Assistance of Victims of Crimes in Central America” and the “Protocol for the Implementation of the Central American Convention for the Protection of Victims, Witnesses, Experts and other Persons Involved in the Investigation and Criminal Proceedings, particularly Drug trafficking and Organized Crime.”

[282] During these meetings, it also became evident of the need to promote, through practical on-site exchanges and the development and application of effective technical assistance and/or protection, by those officials and institutions responsible for providing assistance and/or protection to victims, witnesses and other persons. The country under review also highlights the following regarding these initiatives: a) Three Diagnostic Reports on the standards, policies, programs, governmental institutions and civil society organizations, responsible for the protection of victims and witnesses in El Salvador, Guatemala and Honduras; b) the carrying out of descriptive and analytical diagnostics for each country, which allowed to know in depth the standards, policies, programs, governmental institutions and civil society organizations, responsible for the protection of victims and witnesses in El Salvador, Guatemala and Honduras; c) the preparation of the “Manual for the Assistance of Victims of Crimes in Central America” and the “Protocol for the Implementation of the Central American Convention for the Protection of Victims, Witnesses, Experts and other Persons Involved in the Investigation and Criminal Proceedings, particularly Drug trafficking and Organized Crime;” d) in addition to propose effective technical assistance and/or protection by the institutions responsible for providing these services to victims, witnesses, experts and other persons, these two technical mechanisms seek to promote implementation of existing tools, such as the Central American Convention.

[283] Moreover, the country under review notes that technical meetings were held in Guatemala, the purpose being to unify operational criteria and present best practices. In September and October 2015, two exchanges took place between Honduras and Guatemala respectively, with the objective of being

¹⁴³ Response to the Questionnaire, pgs. 79 – 80, *supra* note 12.

¹⁴⁴ The Executive Technical Unit is responsible for providing technical, administrative, and financial assistance to the Justice Sector Coordinating Committee, and is also the executing agency of all agreements and projects and promotes the implementation of programs and projects for the Special Victim and Witness Protection Law, as well as improve the effectiveness of institutional management by strengthening teamwork and working environment, among others, Response to the Questionnaire, pg. 4, *supra* note 12.

informed of the operational best practices of the Victim and Witness Protection Program of El Salvador, and its coordination among the institutions of the Justice Sector to expedite and facilitate protection measures. With respect to Honduras, a number of activities were carried out to provide theoretical and practical knowledge of the operation of the Program in El Salvador, with the objective of being incorporated into the Witness Protection Program of Honduras. With respect to Guatemala, the exchange of experiences led to the preparation of a proposed Document/Form, containing common criteria on the profile of candidates to receive protection measures in Guatemala and/or El Salvador, as well as a list of official documents that should be attached to a request of this type.

[284] Finally, the country under review notes that in 2015, it has established an Inter-Agency Steering Committee (*Comite Directivo Interinstitucional*), made up of members of the Justice Sector and other institutions, which is responsible for coordinating the activities related to the protection of victims, and witnesses. This Committee can issue recommendations, as well as propose projects for protecting victims, witnesses, and other persons, involved in the investigation and criminal proceedings. Through this Committee, activities were carried out with institutions of the Justice Sector, such as the Supreme Court of Justice, and the Office of the Prosecutor General, taking into account the experience of Honduras.

[285] Given the foregoing, the Committee takes note of the satisfactory consideration by the country under review of measure b) of the foregoing recommendation.

[286] However, the Committee observes that the country under review does not have in place a protection program in place that provides administrative protection measures for those that report acts of corruption. The Republic of El Salvador has taken extensive steps to seek international cooperation, including technical assistance and mutual cooperation efforts, for the Program in place as it is applicable to investigations in criminal proceedings. Likewise, it should consider doing the same, where appropriate, for the establishment of a protection program that provides administrative protection measures, for acts of corruption subject to an administrative investigation. The Committee will formulate a recommendation. (See Recommendation 2.3.4 of Section 2.3 of Chapter II of this Report)

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

Expand the legal and administrative protection measures, including those for the work place for public servants and private citizens who in good faith report acts of corruption.

[287] With respect to the aforementioned measure, in its Response, the country under review notes that, through the Office of the Prosecutor General, if someone reports an act of corruption, they receive protection, in accordance with the Special Victim and Witness Protection Law.¹⁴⁵

[288] The Committee notes that the focus of this measure of the aforementioned recommendation is to not expand protection measures based solely on the Special Victim and Witness Protection Law. To that end, these legal and administrative protection measures should be focused primarily on protection that may be afforded in the work place, especially in the case when it may involve his or her hierarchical superior or colleagues. These administrative protection measures would also involve protection from reprisals for reporting.

¹⁴⁵ Response to the Questionnaire, pg. 77, *supra* note 12.

[289] Given the foregoing, the Committee reiterates the need for the country under review to give further attention to this measure, 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 2.3.5 of Section 2.3 of Chapter II of this Report)

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

Expressly recognize the entitlement of public servants to protection, including the protection of their identity as contemplated under the Government Ethics Law for private citizens who report acts of corruption.

[290] With respect to the aforementioned measure, the country under review presents information.¹⁴⁶ Moreover, the Republic of El Salvador observes that the Government Ethics Tribunal cannot protect the identity of public servants, as the legal framework in place, the Government Ethics Law, only allows for this protection measure for private citizens who report acts of corruption carried out by public servants.¹⁴⁷ To this end, the country under review also notes that the Government Ethics Tribunal is preparing a package of reforms to the Law, and its regulations, that would create administrative protection measures to protect public servants, that reports on acts of corruption, and which not only protects the identity of the person reporting, but also will provide employment stability, as well as establish mechanisms to prevent reprisals.¹⁴⁸ The Committee notes, however, that in a presentation made during the on-site visit by the representatives of the Government Ethics Tribunal, it was not made clear that the proposed reforms would be for this end.¹⁴⁹

¹⁴⁶ *Ibid.*, pgs. 82 – 85.

¹⁴⁷ *Ibid.*, pg. 85.

¹⁴⁸ *Ibid.*

¹⁴⁹ See Presentation by the Government Ethics Tribunal (*Presentacion del Tribunal de Etica Gubernamental*), pgs. 13 – 16, http://www.oas.org/juridico/spanish/mesicic5_slv.htm as well as Executive Report Expanding on the MESICIC Response (Informe Ejecutivo sobre Ampliacion de Respuestas del MESICIC), pgs. 5 – 8, http://www.oas.org/juridico/spanish/mesicic5_slv.htm. In its observations to the draft preliminary report, the country under review notes that the Government Ethics Tribunal cannot protect the identities of public servants "who wish to file reports and provide their personal information in punitive administrative proceedings" because under the current legal framework, the Government Ethics Law (LEG) "does not contain a specific protection mechanism for those who file complaints and provide their personal information, although it does for those who do so anonymously. In spite of the fact that the Government Ethics Law does not at present contain provisions governing specific mechanisms to protect the identities of employees or officials who report acts of corruption or acts that run counter to official duties and ethical prohibitions, it does envisage a special administrative protection mechanism for those who report such acts; that mechanism directly addresses their protection, particularly with respect to job stability and to preventing reprisals against them. That protection mechanism derives from the structure and composition of government ethics committees, whose three members are appointed through an election process in accordance with that Law: one is appointed directly by the head of the institution to which it pertains; one by the institution's staff; and the third by the Ethics Tribunal itself in accordance with Articles 26 of the LEG and 31, 32, and 33 of the that law's regulations. As a result, ethics committees and their members possess an important institutional position and status that offers multiple protective assurances for any official or employee who reports an act of corruption within their institution to the members of said committee, whose functions enable them to intervene on their behalf to ensure respect for their job stability; furthermore, in the administrative realm, appropriate measures may be adopted to prevent reprisals against them. At the same time, a systematic interpretation of the laws on protection of fundamental rights in the country under review shows that any public official or person who has reported acts of corruption and, as a result, suffers a violation of their right to job stability at the hands of an official or any other person, has recourse to the regular courts concerned with such matters and, if necessary, may invoke an expedited special amparo proceeding for protection of their constitutional rights in order to ensure their fundamental right to work and, consequently, their job stability. In the event of intimidation or coercion, the official may also report such acts to the Office of the Prosecutor General.

[291] In addition, the country under review notes that the Secretariat for Citizen Participation, Transparency, and Anti-Corruption of the Office of the President of the Republic, among its functions, receives complaints on irregularities that are taking place in the Executive Branch, which are made through telephone calls, electronic mail, in person, through social media, and the platform, <http://www.gobiernoabierto.gob.sv/complaints/new>. The country under review further notes that it is not necessary for the complainant to identify themselves when lodging a report, and that this institution has received 716 complaints, up to the date of the submission of the Response to the Questionnaire, and that of these, 160 have been forwarded to the Office of the Prosecutor General.¹⁵⁰

[292] The Committee observes, however, that while this mechanism might prove useful for reporting anonymous complaints, the protection of the identity of public servants in lodging a report, has not yet been regulated by law in the country under review. Moreover, this mechanism is limited in scope to irregularities taking place in the Executive Branch, and not the Public Administration.

[293] Given the foregoing, the Committee reiterates the need for the country under review to give further attention to this measure, 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 2.3.6 of Section 2.3 of Chapter II of this Report)

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

Establish provisions that provide for administrative sanctions for noncompliance of protection rules and/or obligations.

[294] With respect to the aforementioned measure, the country under review notes that it has nothing to report. Given the foregoing, the Committee reiterates the need for the country under review to give further attention to this measure, 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 2.3.7 of Section 2.3 of Chapter II of this Report)

Recommendation 2.2 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Perform periodic comprehensive evaluations in order to assess the use and effectiveness of the Victim and Witness Protection Program, and the Government Ethics Law and, based on their findings, identify and consider adoption of specific measures by which to ensure the effective application thereof

[295] With respect the aforementioned Recommendation, in its Response, the country under review presents information it considers pertinent:¹⁵¹

[296] Regarding the Government Ethics Tribunal, the country under review notes that Heads of the Units of this Tribunal, in accordance with Article 40 of its Technical Standards on Specific Internal Controls, carries out an internal self-evaluation at least once a year, on the effectiveness of the control

¹⁵⁰ Response to the Questionnaire, pgs. 84 – 85. This Questionnaire was submitted on June 23, 2016.

¹⁵¹ *Ibid.*, pgs. 86 – 90.

mechanisms in place for their Unit.¹⁵² A report is sent to the Plenary of the Tribunal, setting out the execution of the activities of the institution and the application of the institutional standards in its operational management, to achieve the objectives and goals of the Tribunal.

[297] Furthermore, this evaluation includes participatory planning by the Units of the Tribunal in risk assessment, identification of relevant internal and external risk factors associated with the achievement of institutional objectives, impact analysis and likelihood of occurrence. It also includes proposals for risk management that involves an analysis of probability of occurrence and the impact of risk factors.¹⁵³

[298] Within this framework, the Unit responsible for identifying and analyzing the probabilities of relevant risk factors regarding the protection of whistleblowers, should measure their impact, and manage actions to minimize their risk in the application of the Government Ethics Law.

[299] Moreover, the Government Ethics Tribunal provided information on the outcome of a public opinion survey of public servants and the general public.¹⁵⁴

[300] With respect to the Special Victim and Witness Protection Law, the country under review notes that in response to approximately 27,621 requests for regular protection measures, special protection measures, and assistance made by the Office of the Prosecutor General, the National Civil Police, the Office of the Attorney General, the Supreme Court of Justice, and the Human Rights Ombudsman, 30,025 protection measures were provided:

¹⁵² Technical Standards on Specific Internal Controls (Normas Tecnicas de Control Interno Especificas), <http://www.teg.gob.sv/phocadownload/portal/marconormativo/manualeseInstructivos/Normas%20Tecnicas%20de%20Control%20Interno%20del%20TEG.pdf>

¹⁵³ In its observations to the draft preliminary report, the country under review notes that another self-evaluation mechanism exists in the management of the Tribunal budget, which is controlled by the Ministry of Finance through the results-based program budget. The budget includes the planning and execution of operational mechanisms for the investigation process in punitive administrative proceedings aimed at achieving the institution's objectives. In addition, as part of its self-evaluation, the Tribunal presents accountability reports to the appropriate authorities and the general public in the form of annual reports on the institution's performance, its situation, and accomplishment of its objectives.

¹⁵⁴ In its observations to the draft preliminary report, the country under review notes that the purpose of the poll was to assess awareness of the institution's activities and enforcement of its regulations. The poll covered public servants and civil society and found that the perception of the general public was that the Tribunal seeks to ensure 'transparency in the management of public services,' 'prevent acts of corruption,' and 'receive complaints of acts of corruption by officials and public servants' Some 53.5 percent of the public servants polled said that they knew about the work that the Tribunal does. In addition, 83.3 percent considered the Tribunal 'an institution that governs and encourages the ethical performance of duties in public service.' As regards the benefits of the Government Ethics Law, they felt that it promotes 'transparency among public servants' and helps to 'prevent and prosecute corruption.

ACTIVITY	YEARS										TOTAL
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	
REQUESTS	583	1,931	2,347	3,086	3,495	3,476	3,295	3,251	3,102	3,055	27,621
MEASURES GRANTED	239	2,247	2,671	2,985	3,626	4,000	3,158	2,867	4,253	3,979	30,025

[301] The country under review also noted that as of May 2015, an Inter-Agency Steering Committee for Victims and Witness Protection was established, to be coordinated by the Executive Technical Unit of the Justice Sector. This Committee will be able to issue recommendations and projects for protection and attending to victims and witnesses involved in the investigation of a crime in a judicial process.

[302] The Committee notes that with respect to the Government Ethics Law, the Government Ethics Tribunal is required to carry out a self-evaluation, at least once a year, as set out above. But the Committee observes, however, that it is unclear if this exercise has also focused on the effectiveness of the protection measures contained in the Law, specifically as they relate to providing administrative protection measures to private citizens that report acts of corruption carried out by public servants.

[303] With respect to the Special Victim and Witness Protection Law, the Committee notes that while protection measures are being provided, and a Steering Committee set up to issue recommendations with regard to the Witness Protection Program in place, the country under review has not conducted an analysis or evaluation of this Program to measure its effectiveness and improve its operation.

[304] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementation thereto. (See Recommendation 2.3.8 of Section 2.3 of Chapter II of this Report)

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

[305] The country under review provided information regarding its legal framework that was already reviewed by the Committee in previous rounds of review.¹⁵⁵

2.2.2 New Developments with Respect to Technology

[306] The country under review notes that through the website of the Government Ethics Tribunal, persons can send anonymous tipoffs (avisos), which is a mechanism whereby someone whose identity is

¹⁵⁵ Response to the Questionnaire, pgs. 109 – 110, *supra* note 12.

unknown or impossible to verify brings to the attention of the Tribunal some act or circumstance that contravenes a duty or prohibition established in the Government Ethics Law, which is available at <http://www.teg.gob.sv/index.php/servicios/avisos>.¹⁵⁶

2.2.3 Results

[307] The country under review, in its Response to the Questionnaire, presents information on the protection measures provided.¹⁵⁷

[308] In addition, as cited above, the following was provided with respect to the Special Victim and Witness Protection Law, regarding the number of protective measures requested by the Office of the Prosecutor General (*Fiscalía General de la República*), the National Civil Police (*Policía Nacional Civil*), the Office of the Attorney General (*Procuraduría General de la República*), the Supreme Court of Justice (*Corte Suprema de Justicia*), the Human Rights Ombudsman (*Procuraduría de Defensa de los Derechos Humanos*), or by request from an interested party:¹⁵⁸

ACTIVITY	YEARS										TOTAL
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	
REQUESTS	583	1,931	2,347	3,086	3,495	3,476	3,295	3,251	3,102	3,055	27,621
MEASURES GRANTED	239	2,247	2,671	2,985	3,626	4,000	3,158	2,867	4,253	3,979	30,025

[309] With respect to the information provided regarding the protection measures provided under the framework of the Special Victim and Witness Protection Law, the Committee believes the country under review may wish to consider breaking down the results provided, by institution requesting the protection measure, and indicating which of these were as a result of a criminal proceeding stemming from an act of corruption, in order to identify challenges and recommend corrective measures where appropriate. The Committee will formulate a recommendation. (See Recommendation 2.3.9 of Section 2.3 of Chapter II of this Report)

[310] The Committee does note that of the various institutions that can request protection measures under the Law, the Supreme Court of Justice maintains statistics on the number of these measures that were required in a given year, broken down by criminal offense, and by gender of the victim, for both adult or minors, which is made available at the following website:

¹⁵⁶ *Ibid.*, pgs. 110 – 111.

¹⁵⁷ *Ibid.*, pgs. 111 – 113.

¹⁵⁸ *Ibid.*, pg. 88.

<http://www.transparencia.oj.gob.sv/portal/transparencia.php?opcion=13> (Estadísticas Institucionales – Documento Labor Jurisdiccional (DPI) – Penal Adulto)¹⁵⁹

Criminal Offense	2013					2014				
	Victims					Victims				
	Adults		Minors		Protection Regime	Adults		Minors		Protection Regime
	Feminine	Masculine	Feminine	Masculine		Feminine	Masculine	Feminine	Masculine	
Embezzlement	1	2	1	0	1	0	0	0	0	0
Bribery for violation of official duties	1	1	0	0	0	1	3	0	1	3
Bribery for performance of official duties	0	1	0	0	0	0	0	0	0	0
Aggravated Corruption	1	0	1	0	0	0	0	1	0	0
Illicit Transactions	0	1	0	0	0	0	0	0	0	0
Extortion	0	0	0	0		1	1	0	0	0
Offering of bribes	0	0	1	1	3	0	0	0	0	3
Revelation or disclosure of industrial secrets	0	0	0	0	0	0	1	0	0	0
Malfeasance in office	0	0	0	0	0	2	1	0	0	0
Influence peddling	0	0	0	0	0	1	1	0	0	0

Criminal Offense	2015					2016 (January – June)				
	Victims					Victims				
	Adults		Minors		Protection Regime	Adults		Minors		Protection Regime
	Feminine	Masculine	Feminine	Masculine		Feminine	Masculine	Feminine	Masculine	
Embezzlement	1	2	0	0	6	2	1	0	0	2
Bribery for violation of official duties	2	0	0	0	1	0	1	0	0	0
Bribery for performance of official duties	1	0	0	0	0	1	0	0	0	1
Aggravated Corruption	2	0	2	0	0	0	1	0	0	0
Illicit Transactions	0	0	0	0	0	0	0	0	0	0
Extortion	0	0	0	0	4	0	0	0	0	0
Offering of bribes	0	0	0	0	1	0	0	0	0	1
Revelation or disclosure of industrial secrets	0	1	0	0	0	1	0	1	0	0
Malfeasance in office	0	0	0	0	0	0	0	0	0	1
Influence peddling	0	0	0	0	0	0	0	0	0	0

¹⁵⁹ See also *Victimas Delitos Varios – MESICIC*,

<http://www.transparencia.oj.gob.sv/Filemaster/InformacionGeneral/documentacion/c-40/8124/Victimas%20Delitos%20Varios%20-%20MESICIC.pdf>

[311] The Committee believes that the manner in which these results are maintained can serve as an example, regarding the breakdown of the number of overall protective measures requested and granted for the other institutions that have the competence to request such measures, that is, the Office of the Prosecutor General (*Fiscalía General de la Republica*), the National Civil Police (*Policía Nacional Civil*), the Office of the Attorney General (*Procuraduría General de la República*), and the Human Rights Ombudsman (*Procuraduría de Defensa de los Derechos Humanos*).

2.3 Recommendations

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

- 2.3.1 Consider establishing a legal framework that provides administrative protection measures for public officials or private citizens who report acts of corruption, whether or not those acts lead to an investigation of a criminal offense or judicial proceeding (See paragraph 277 of section 2.1 of Chapter II of this Report).
- 2.3.2 Establish or designate a body that has the competence to receive and respond to requests for administrative protection measures, as well as promoting the provision of the necessary measures of protection, remediation and sanctions in the event retaliation does occur (See paragraph 278 of section 2.1 of Chapter II of this Report).
- 2.3.3 Ensure that the body entrusted with receiving and responding to requests for administrative protection measures has the necessary resources and personnel to carry out its functions (See paragraph 278 of section 2.1 of Chapter II of this Report)
- 2.3.4 Seek, where appropriate, international cooperation and technical assistance on the establishment of a program that provides administrative protection measures, along with exchanges of experiences, training, and mutual assistance (See paragraph 286 of section 2.1 of Chapter II of this Report)
- 2.3.5 Expand the legal and administrative protection measures, including those for the work place for public servants and private citizens who in good faith report acts of corruption (See paragraph 289 of section 2.1 of Chapter II of this Report).
- 2.3.6 Expressly recognize the entitlement of public servants to protection, including the protection of their identity as contemplated under the Government Ethics Law for private citizens who report acts of corruption (See paragraph 293 of section 2.1 of Chapter II of this Report).
- 2.3.7 Establish provisions that provide for administrative sanctions for noncompliance of protection rules and/or obligations (See paragraph 294 of section 2.1 of Chapter II of this Report).
- 2.3.8 Perform periodic comprehensive evaluations in order to assess the use and effectiveness of the Victim and Witness Protection Program, and the Government Ethics Law and, based on

their findings, identify and consider adoption of specific measures by which to ensure the effective application thereof (See paragraph 304 of section 2.1 of Chapter II of this Report).

- 2.3.9 Maintain results with respect to the protection measures provided under the framework of the Special Victim and Witness Protection Law, broken down by institution requesting the protection measure, and indicating which of these were as a result of a criminal proceeding stemming from an act of corruption, in order to identify challenges and recommend corrective measures where appropriate (See paragraph 309 of section 2.2 of Chapter II of this Report).

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

3.1. Follow-up on implementation of the recommendations made at the Second Round

Recommendation 3.1:

Adapt and/or strengthen, as appropriate, criminal laws so as to include the elements of acts of corruption provided in Article VI(1) of the Convention.

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

Include, in the offenses defined in Articles 331 and 335 of the Criminal Code, the phrase “or for another person or entity” contained in paragraphs (a) and (b) of Article VI.1 of the Convention.

[313] With respect to the aforementioned measure, the country under review notes that no legal reform has been carried out.¹⁶⁰ Given the foregoing, the Committee reiterates the need for the country under review to give further attention to this measure. (See Recommendation 3.3.1 of Section 3.3 of Chapter II of this Report)

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

Study the possibility of amending Article 39 of the Criminal Code to expand the notion of public official to cover those private citizens involved in the provision of public services or who manage public funds in any capacity or form.

[314] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:¹⁶¹

[315] The country under review notes that it has been analyzing the issue, through a working roundtable of government experts composed of: i) the Office of the Prosecutor General; ii) the Government Ethics Tribunal; iii) the Executive Technical Unit; iv) the Court of Accounts of the Republic; v) the Supreme Court of Justice; vi) the Access to Public Information Institute; vii) the Ministry of Foreign Affairs; and the viii) Secretariat for Citizen Participation, Transparency, and Anti-Corruption. This roundtable has been examining the issue of expanding the concept of public servants or employees, as applicable in

¹⁶⁰ *Ibid.*, pg. 91.

¹⁶¹ *Ibid.*, pg. 92.

criminal law, in order to meet this recommendation, as well as others, so that they can be discussed subsequently by the heads of the institutions involved in this roundtable, and then submitted to the Legislative Assembly.

[316] In addition, the roundtable of government experts that is responsible for following up on the commitments by the Republic of El Salvador to the Inter-American Convention against Corruption and the United Nations Convention against Corruption, it is analyzing this issue, in order to meet its international obligations.

[317] Given the foregoing, the Committee believes that measure b) of the foregoing recommendation should be reformulated. To that end, the Committee believes that the country under review should consider concluding the study on the possibility of amending Article 39 of the Criminal Code to expand the notion of public official to cover those private citizens involved in the provision of public services or who manage public funds in any capacity or form. (See Recommendation 3.3.2 of Section 3.3 of Chapter II of this Report)

Recommendation 3.2 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Include the terms “public authorities” and “government agents” referred to in Article 39 of the Criminal Code in the criminalization of the offence of offering bribes described in Articles 270, 325, 328, 332, 335 and 336 of said Code.

[318] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:¹⁶²

[319] – The country under review notes that it has been analyzing the issue, through a working roundtable of government experts composed of: i) the Office of the Prosecutor General; ii) the Government Ethics Tribunal; iii) the Executive Technical Unit; iv) the Court of Accounts of the Republic; v) the Supreme Court of Justice; vi) the Access to Public Information Institute; vii) the Ministry of Foreign Affairs; and the viii) Secretariat for Citizen Participation, Transparency, and Anti-Corruption. This roundtable has been examining the aforementioned recommendation, as well as others, so that they can be discussed subsequently by the heads of the institutions involved in this roundtable, and then submitted to the Legislative Assembly.

[320] Given the foregoing, the Committee takes note of the step taken by the country under review to advance in its implementation of the foregoing recommendation, as well as the need for it to continue to give attention thereto. (See Recommendation 3.3.3 of Section 3.3 of Chapter II of this Report)

Recommendation 3.3 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Select and develop, through the Judicial Branch and the Office of the Prosecutor General and other relevant government entities, 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 Chapter II, Section 3 of this Report.

¹⁶² *Ibid.*, pgs. 93 – 94.

[321] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:¹⁶³

[322] – The country under review notes that it has been analyzing the issue, through a working roundtable of government experts composed of: i) the Office of the Prosecutor General; ii) the Government Ethics Tribunal; iii) the Executive Technical Unit; iv) the Court of Accounts of the Republic; v) the Supreme Court of Justice; vi) the Access to Public Information Institute; vii) the Ministry of Foreign Affairs; and the viii) Secretariat for Citizen Participation, Transparency, and Anti-Corruption. This roundtable has been examining the aforementioned recommendation, as well as others, so that they can be discussed subsequently by the heads of the institutions involved in this roundtable, and then submitted to the Legislative Assembly. This exercise also includes looking at the different reports, standards and mechanisms considered in the Report of the Second Round.

[323] In addition, the country under review observes that it is possible to verify the existence of procedures and numerical data from which indicators can be created, in the following cases: for corruption offenses; for actions of judicial officials subject to Article 52 (use of position to exercise undue influence) and Article 55 (use of position to exercise undue influence and Request gifts, promises or favors from interested parties to a process, either directly or through a third person, respectively) of the Judicial Career Law; and the declarations of net worth received by the Integrity Section of the Supreme Court of Justice.

[324] Given the foregoing, the Committee takes note of the step taken by the country under review to advance in its implementation of the foregoing recommendation, as well as the need for it to continue to give attention thereto, given that while the above cited procedures and data provided may provide results on the application of criminal law for acts of corruption, no analysis has been conducted on the results of the systems, provisions, measures, and mechanisms.¹⁶⁴ (See Recommendation 3.3.4 of Section 3.3 of Chapter II 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

[325] The country under review notes that it has reformed its Criminal Code, Forfeiture Law (*Ley de Extincion de Dominio*) and the Anti-Money Laundering Law (*Ley de Lavado de Dinero y Activos*).¹⁶⁵

3.2.2. New developments with respect to technology

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

3.2.3. Results

¹⁶³ *Ibid.*, pgs. 94 – 97.

¹⁶⁴ In its observations to the draft preliminary report, the country under review notes that the President of the Supreme Court of Justice, in response to the observations mentioned, has given instructions to the Directorate of Institutional Planning to see to it that, in coordination with the appropriate units, the recommendations issued are implemented at the earliest opportunity.

¹⁶⁵ *Ibid.*, pg. 114.

[327] In its Response to the Questionnaire, with respect to number of cases brought to the Supreme Court Justice, the country under review provided results obtained with respect to acts of corruption referred to in Article VI of the Convention in the table below, which contains additional information obtained at the webpage <http://www.transparencia.oj.gob.sv/portal/transparencia.php?opcion=13> (*Estadísticas Institucionales – Documento Labor Jurisdiccional (DPI) – Penal Adulto*):¹⁶⁶

Criminal Offense	2012			2013			2014		
	Frequency	Adults Prosecuted		Frequency	Adults Prosecuted		Frequency	Adults Prosecuted	
		Feminine	Masculine		Feminine	Masculine		Feminine	Masculine
Embezzlement	12	9	30	16	11	44	17	6	18
Bribery for violation of official duties	14	1	20	7	0	10	16	8	28
Bribery for performance of official duties	0	0	0	4	1	5	2	0	2
Destruction or hiding a registry or public documents in the custody of a public official	2	3	2	2	0	2	1	0	1
Aggravated Corruption	5	1	4	1	0	1	1	1	0
Embezzlement by guilt	0	0	0	0	0	0	1	0	1
Illicit Enrichment	0	0	0	0	0	0	1	0	1
Misappropriation	2	0	10	0	0	0	1	0	1
Illicit Transactions	0	0	0	1	0	1	3	0	3
Extortion	1			0	0	0	2	0	3
Offering of bribes	5	0	5	4	2	3	8	1	8
Revelation or disclosure of industrial secrets	1	0	1	0	0	0	2	1	2
Public fraud	1	3	4	0	0	0	0	0	0
Malfesance in office	3	0	4	0	0	0	4	0	4
Influence peddling	1	0	2	3	0	3	2	0	2

[328] This webpage also provides the number of individuals being prosecuted, broken down by gender, for these cases, as set out in the table above.

[329] The Committee believes, however, that the country under review should also consider providing further details with respect to the information maintained by the Supreme Court of Justice. Notwithstanding the recommendations this oversight body received in the Fourth Round of Review, regarding the results it maintains on acts of corruption,¹⁶⁷ the Committee believes that the Supreme Court of Justice should make available to the public additional information, such as the outcome of these cases,

¹⁶⁶ *Ibid.* pg. 95.

¹⁶⁷ Report of the Fourth Round of Review of the Republic of El Salvador, pgs. 21 -22, http://www.oas.org/juridico/PDFs/mesicic4_slv_en.pdf

broken down by number of convictions, acquittals, and dismissals.¹⁶⁸ (See Recommendation 3.3.5 of Section 3.3 of Chapter II of this Report)

[330] The Committee also highlights Recommendation 1.4.5 that the Office of the Prosecutor General received in the Report of the Fourth Round, where it is to breakdown statistics on the punishment of corrupt practices incurring disciplinary, administrative, financial, civil, or criminal liability, as follows: the total number of investigated cases awaiting a ruling; the number of decisions adopted in respect of those cases; the number of those decisions in which responsibilities were established or penalties imposed; the number of decisions in which no responsibilities were found or acquittals were given; the number of decisions in which punishment was barred by statute of limitation; and the amount of fines levied or of damages awarded to the State that were paid to the Treasury, in order to identify challenges and recommend remedial measures.¹⁶⁹

[331] Finally, the Committee observes that the information maintained above by the Supreme Court of Justice is available up to 2014, however, it was not found in its report for 2015. The Committee considers that the country under review should consider reestablishing the maintenance of these results, for 2015 and subsequent years. The Committee will formulate a recommendation. (See Recommendation 3.3.6 of Section 3.3 of Chapter II of this Report)

3.3. Recommendations

[332] In light 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 Include, in the offenses defined in Articles 331 and 335 of the Criminal Code, the phrase “or for another person or entity” contained in paragraphs (a) and (b) of Article VI.1 of the Convention (See paragraph 313 of section 3.1 of Chapter II of this Report).
- 3.3.2 Conclude the study on the possibility of amending Article 39 of the Criminal Code to expand the notion of public official to cover those private citizens involved in the provision of public services or who manage public funds in any capacity or form (See paragraph 317 of section 3.1 of Chapter II of this Report).
- 3.3.3 Include the terms “public authorities” and “government agents” referred to in Article 39 of the Criminal Code in the criminalization of the offence of offering bribes described in Articles 270, 325, 328, 332, 335 and 336 of said Code (See paragraph 320 of section 3.1 of Chapter II of this Report).
- 3.3.4 Select and develop, through the Judicial Branch and the Office of the Prosecutor General and other relevant government entities, 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 Chapter II, Section 3 of this Report (See paragraph 324 of section 3.1 of Chapter II of this Report).

¹⁶⁸ In its observations to the draft preliminary report, the country under review notes that the President of the Supreme Court of Justice, in response to the observations mentioned, has given instructions to the Directorate of Institutional Planning to see to it that, in coordination with the appropriate units, the recommendations issued are implemented at the earliest opportunity.

¹⁶⁹ *Ibid.*, pg. 9.

- 3.3.5 Complement the statistics maintained by the country under review on the number of cases of corruption brought to the Court, such as the outcome of these cases, broken down by number of convictions, acquittals, and dismissals in a given year, in order to identify challenges and recommend corrective measures where appropriate (See paragraph 329 of section 3.2 of Chapter II of this Report).
- 3.3.6 Reestablish the maintenance of results on the number of cases on corruption brought to the Supreme Court of Justice each year, in order to identify challenges and recommend corrective measures where appropriate (See paragraph 331 of section 3.2 of Chapter II 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.

[333] With respect to the aforementioned recommendation, the country under review presents the courses carried out by the National Judicature Council (*Consejo Nacional de la Judicatura*), regarding the training it has carried out on ethics, corruption and transparency.¹⁷⁰

[334] Moreover, in a document submitted subsequent to the on-site visit, the Office of the Prosecutor General provides information on the training and induction programs it has in place for this institution.¹⁷¹

[335] 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 the Republic of El Salvador 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, standards, measures and mechanisms considered in this Report, and to verify follow-up on the recommendations made herein.

[336] In its Response, the country under review notes that it has nothing to report with respect to the foregoing recommendation.¹⁷²

[337] 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 the Republic of El Salvador in the Second Round of Review, as well as the systems, standards, measures and mechanisms that the suggested

¹⁷⁰ Response to the Questionnaire, pgs. 98 – 101, *supra* note 12.

¹⁷¹ Complementary Information to the Questions Raised during On-Site Visit, pg. 139 – 141, *supra* note 15

¹⁷² Response to the Questionnaire, pgs. 102 – 103, *supra* note 12.

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 EL SALVADOR 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)

[338] 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 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 Government Ethics Tribunal (*Tribunal de Ética Gubernamental*), the Court of Accounts of the Republic (*Corte de Cuentas de la República*), and the Access to Public Information Institute (*Instituto de Acceso a la Información Pública*) 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.

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

[340] The Government Ethics Tribunal is the body responsible for the implementation and enforcement of the Government Ethics Law and its main objective is to promote ethical performance within the civil service through respect for and observance of the ethical standards provided for in the Law.

[341] The Court of Accounts of the Republic is the institution responsible for oversight of public finances in general and the national budget in particular.

[342] The Access to Public Information Institute is responsible for promoting and facilitating access to public information, as well as for regulating and supervising the procedures to be followed by institutions subject to the Law, with respect to the protection, classification and custody of public information.

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

[343] The Republic of El Salvador 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 personnel of the Government Ethics Tribunal, among which the following should be noted:

[344] Regarding provisions and/or measures for providing instructions to Government Ethics Tribunal (TEG) personnel ensure proper understanding of their responsibilities, the country under review observes that Article 24 of the Law of the Court of Accounts of the Republic (*Ley de la Corte de Cuentas de la República*) stipulates that the Court is responsible for regulating the functioning of internal oversight and issuing compulsory General and Specific Technical Internal Oversight Standards. These will serve as a

basic framework for entities, including the TEG, and their employees to oversee programs and the administration of operations under their purview, to include: the creation of regulations, manuals, and instructions, and any other necessary provisions that establish mechanisms to ensure that the personnel selected to serve as civil servants properly understand their responsibilities.¹⁷³

[345] Accordingly, Article 12 of the Specific Technical Internal Oversight Standards of the Government Ethics Tribunal stipulates that the Plenum of the Tribunal shall approve appropriate personnel policies and practices, particularly as pertains to, *inter alia*, orientation and training. These policies and practices shall be documented in the Human Resources Manual.¹⁷⁴ Article 20 of the manual stipulates that the Director of Human Resources, in coordination with the Chief of the Planning Unit, shall prepare an Institutional Training Plan for the Tribunal's civil servants, taking into consideration the following criteria: (a) performance evaluation; (b) surveys for officials and employees on training needs; (c) unit chief and director requests; (d) new duties and powers of the Tribunal; (e) change of working methods and processes; (f) addition of new civil servants; and (g) any other criterion deemed relevant by the plenum.¹⁷⁵ Article 22 further states that the Director of Human Resources shall maintain the personalized and updated record of the training each civil servant has received; while Article 33 stipulates Tribunal civil servants shall be entitled to participate in the trainings included in the Institutional Training Plan on matters under their purview.¹⁷⁶

[346] The Government Ethics Law provides for the ethical standards governing employee activities. This law aims to regulate and promote ethical conduct in civil service activities at both a national and municipal level, prevent and detect corrupt practices, and punish misfeasance and violations of the ethical prohibitions contained therein.¹⁷⁷ Article 2 stipulates that the law applies to all civil servants, which includes the employees of the Government Ethics Tribunal:

[347] *“The Act applies to all civil servants, permanent or temporary, paid or unpaid, who hold office either by election, appointment, or contract, providing service in the public administration, inside or outside the national territory. This Act is also applicable to those persons who, without being civil servants, administer assets or handle public funds. Former civil servants are also subject to the law for any infraction thereof that was committed as part of the carrying out of their public duties, or for violations of the ethical prohibitions stated in Article 7 of this Act.”*

[348] Article 19 of the law stipulates that the duties and authority of the Tribunal are to promote and spread respect and observance of ethical standards among civil servants and other individuals subject to the law, as well as the principles, rights, duties, and ethical prohibitions contained therein. It is also called to promote a culture of ethics among the population at large, train the members of the Ethics Committee and others bound by the ethics of public service. These activities are intended to prevent acts of corruption.

¹⁷³ See the Law of the Court of Accounts of the Republic (*Ley de la Corte de Cuentas de la República*), Article 24, <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-la-corte-de-cuentas-de-la-republica> and Responses to the Questionnaire, pgs. 9 – 10, *supra* note 12.

¹⁷⁴ Specific Technical Internal Oversight Standards of the Government Ethics Tribunal: <http://www.teg.gob.sv/phocadownload/portal/marconormativo/HandbookeseInstructivos/Normas%20Tcnicas%20de%20Control%20Interno%20del%20TEG.pdf>

¹⁷⁵ Human Resources Manual: <http://www.teg.gob.sv/phocadownload/portal/marconormativo/HandbookeseInstructivos/HANDBOOKRRHH.pdf>

¹⁷⁶ See 2016 Training Plan, http://www.oas.org/juridico/spanish/mesicic5_slv.htm

¹⁷⁷ Government Ethics Law: <http://www.teg.gob.sv/index.php/institucional/legislacion?download=29:ley-reglamento-2014>

[349] The Tribunal is also obligated to conduct orientation courses and other appropriate activities to promote public ethics for the high-level official of institutions, popularly-elected officials, or second-tier officials in public administration.¹⁷⁸ The Tribunal, Ethics Committee or Commissioner¹⁷⁹ should widely promote respect for and observance of ethical standards of the law, as well as the principles, duties, and ethical prohibitions contained therein, among all civil servants and other individuals subject to the law in the various sectors of society, including the education sector. It should also promote a culture of ethics in public service.

[350] As to the way in which personnel are apprised of their responsibilities or functions, the country under review notes that the Tribunal provides each civil servant, upon joining the institution, an orientation to include, *inter alia*, the content, application, and scope of the internal regulations governed by the Human Resources Manual and the Job and Duties Description Manual. They will also receive orientation on the ethics issues addressed in the Government Ethics Law to ensure a greater commitment to behaving ethically as a new employee of the Tribunal. Record of this is made in the employment file.¹⁸⁰

[351] The Tribunal has an Induction Manual, which serves as a guide to provide the initial information necessary to ease the transition of new employees into their positions with greater confidence and commitment and with an understanding of the Tribunal, as well as the mission, vision, and all aspects relating to the workplace.¹⁸¹

[352] As regards the occasion(s) when personnel are informed of their responsibilities or functions, indicating whether this is when they begin performing them or at some later point; when said functions change; or when functions change due to a change of duties, the country under review notes that the Tribunal provides training to public servants when they first take up their duties and ongoing and specialized training is provided at a later point, depending on their performance. If there are changes in their duties or position, training is provided in accordance with needs.¹⁸²

[353] As to the existence of induction, training, or instruction programs and courses for personnel on the proper performance of their responsibilities and functions, and, in particular, to make them aware of the inherent corruption risks in their performance, the country under review indicated in its Response to the Questionnaire that the Tribunal provides an initial orientation to personnel on how to properly discharge their responsibilities and duties. It also educates and provides awareness to Tribunal employees as to the risks of corruption that their work entails.¹⁸³ The Tribunal has also developed a comprehensive training

¹⁷⁸ *Ibid.*, Article 59.

¹⁷⁹ According to Article 2 of the Act, the following institutions are obligated to create an Ethics Committee, whose duties include, among others, inform and train the civil servants of the institutions on the ethics of public service, the law, and any other regulations related to preventing acts of corruption: (a) Legislative Assembly; (b) Office of the President of the Republic; (c) Supreme Court of Justice; (d) Secretaries of State; (e) National Judicial Council; (f) Court of Accounts of the Republic; (g) Office of the Attorney General of the Republic; (h) Office of the Public Defender; (i) Ombudsman for Human Rights; (j) Supreme Electoral Tribunal; (k) University of El Salvador; (l) all official autonomous or decentralized institutions, including the Salvadoran Institute for Social Security, Autonomous Executive Port Commission, and the Executive Hydroelectric Commission for the Lempa River, as set forth in the law establishing each institution; and (m) every municipality in El Salvador and the Salvadoran Institute for Municipal Development.

¹⁸⁰ Response to the Questionnaire, pgs. 11 – 12, *supra* note 12. See also: Job and Duties Description Manual, <http://www.teg.gob.sv/index.php/institucional/estructura-organizativa?download=515:Handbook-de-descripcion-de-puestos-y-funciones>

¹⁸¹ Induction Manual of the Government Ethics Tribunal. Available in Spanish at: http://www.oas.org/juridico/spanish/mesicic5_slv.htm

¹⁸² Response to the Questionnaire, pg. 12, *supra* note 12.

¹⁸³ *Ibid.*, pg. 13.

plan based on the Strategic Institutional Plan. Compliance thereof is verified through the indicators of the Annual Operations Plan and is defined according to the needs of each organizational unit.¹⁸⁴

[354] Tribunal representatives provided a document during the on-site visit, indicating that it has an orientation and training program, called for in its Annual Operations Plan. This program aims to improve employee conduct, increase personnel technical level and performance, prepare personnel to efficiently discharge the responsibilities of their positions, among others.¹⁸⁵ This is a four-tiered program: (a) a day for orientation and training on the Law and its Regulations, (b) Diploma in Public Ethics, (c) advanced courses, and (d) specialized courses.¹⁸⁶ The Diploma in Public Ethics is designed for specific groups within the Tribunal, for the purpose of strengthening and multiplying knowledge on the Tribunal throughout the rest of the institution, as well as developing specialized knowledge and attitudinal processes specific to civil servants, whose job it is to promote ethical conduct in State institutions.¹⁸⁷

[355] Furthermore, Tribunal representatives indicated that, in practice, both the general administration and the immediate supervisor of the unit provide an orientation to personnel. This orientation entails an explanation of the duties and functions of each civil servant beginning work at the Tribunal. It also includes information on the history of the creation of the Tribunal and its *raison d'être*.¹⁸⁸ In addition, the country under review notes that the Tribunal is currently developing an orientation program whose purpose is not only to assist and provide training to employees who have recently joined the Tribunal in the institution's activities or technical aspects relating to their job or position, but also to encourage observance of ethical principles, values, and rules in the performance of their duties and obligations under the Government Ethics Law.

[356] As to the use of the use of modern communication technologies to apprise personnel of their responsibilities or functions and to provide guidance on how to perform them properly, the country under review, in its Response to the Questionnaire, indicated that the Tribunal uses a virtual platform (www.teg.gob.sv), where the manuals, instructions, other procedures, and applicable policies can be found. It also provides a description of the duties and responsibilities of the civil servants of the Tribunal.¹⁸⁹

[357] In a document provided subsequent to the on-site visit, the country under review stated that there is an institutional internal email system used. The Communications Unit, Gender Unit, Environmental Unit, and Human Resources Unit share specific information with all personnel through this system to enhance management, highlight how to best perform duties, and how to work together to create a comprehensive civil servant team.¹⁹⁰

[358] As to the existence of bodies to which personnel can resort to obtain information or resolve doubts about how to perform their responsibilities and functions properly, the country under review indicated that—according to the internal regulations of the Government Ethics Tribunal—all civil servants seeking additional information or answers to questions about the proper execution of their duties and

¹⁸⁴ See Strategic Institutional Plan, 2013-2017, <http://www.teg.gob.sv/index.php/gestion-estrategica/plan-estrategico-2013-2017> and the Annual Operations Plans of the Government Ethics Tribunal, <http://www.teg.gob.sv/index.php/gestion-estrategica/plan-anual-opertivo-pao>

¹⁸⁵ Executive Report Expanding on the MESICIC Response, pg. 8, *supra* note 149.

¹⁸⁶ Presentation by the Government Ethics Tribunal, pg. 19, *supra* note 149.

¹⁸⁷ Complementary Information to the Questions Raised during On-Site Visit, pg. 41, *supra* note 15

¹⁸⁸ Executive Report Expanding on the MESICIC Response, pg. 9, *supra* note 149.

¹⁸⁹ Response to the Questionnaire, pg. 14, *supra* note 12.

¹⁹⁰ Complementary Information to the Questions Raised during On-Site Visit, pg. 41, *supra* note 15.

responsibilities may go directly to their immediate supervisor and if they are not satisfied, they make request a hearing with the Plenary of the Tribunal.¹⁹¹

[359] In terms of the existence of a governing organ, authority or body responsible for defining, steering, advising, or supporting the manner in which personnel are to be informed of their responsibilities and functions, the country under review explained that the Outreach and Training Unit acts as the governing body that guides, advises, and informs on the responsibilities and duties specifically related to discharging their responsibilities and duties as members of an Ethics Committee.¹⁹²

[360] As to the manner in which personnel are informed of the ethical rules governing their activities, indicating whether this is done verbally or in writing and whether records are kept of those instructions, Tribunal representatives provided a document during the on-site visit that personnel are informed, in general terms, of the ethics regulations applicable to civil servants and public officials during the orientation. The new orientation process being developed by the human resources area is expected to bolster this aspect of the orientation.¹⁹³ The employment file records this information.¹⁹⁴

[361] The country under review stated that the Government Ethics Tribunal specializes in public ethics; it provides general instruction on the Government Ethics Law to all employees joining the institution who, depending on the functions of the position they will occupy, must undergo a selection process to evaluate, as appropriate, the expertise required by the job profile, depending on the unit to which they are assigned, their specialized technical knowledge on matters of anti-corruption, including the Government Ethics Law and its regulations and international anti-corruption systems.¹⁹⁵

[362] Regarding when personnel are informed about the ethical standards governing their activities, whether this is done when they begin to work or later, when their duties change, and when modifications are made to these standards, the country under review, in its Response to the Questionnaire, noted that Tribunal civil servants are informed during their initial orientation. This orientation covers not only administrative issues, but also compliance with ethical standards. They are provided a copy of the law.

¹⁹¹ Response to the Questionnaire, pg. 14, *supra* note 12.

¹⁹² Complementary Information to the Questions Raised during On-Site Visit, pg. 42, *supra* note 15. In addition, in its observations to the draft preliminary report, the country under review notes that pursuant to Article 12 of the Technical Internal Oversight Standards, the Human Resources Unit is responsible for drafting, submitting for approval, and implementing the Human Resources Manual and the Job and Duties Description Manual. Furthermore, Article 16 of the Human Resources Manual provides that the Head Of Human Resources shall provide general orientation to newly joined public servants, and the chief or person in charge in the specific unit shall do so in the workplace. Accordingly, the Head of Human Resources is required to provide orientation, advise, and inform personnel about their responsibilities and functions, while the chief of the unit in question provides training specific to the position. For its part, the Training and Dissemination Unit is in charge of disseminating ethical rules, principles, duties, and prohibitions. It also provides training to members of government ethics committees and other public servants, including Tribunal personnel. In that connection, harnessing existing technical-educational capacity in relation to ethics, as well as optimizing resources, that unit includes in its ethics training programs not only members of ethics committees and other public servants, but also the personnel of the Tribunal, all of which must be coordinated with the Human Resources Unit. (Article 24 of the Technical Internal Oversight Standards of the Government Ethics Tribunal).

¹⁹³ Executive Report Expanding on the MESICIC Response, pg. 11, *supra* note 149.

¹⁹⁴ Response to the Questionnaire, pgs. 11 – 12, *supra* note 12. See also: Job and Duties Description Handbook, <http://www.teg.gob.sv/index.php/institucional/estructura-organizativa?download=515:Handbook-de-descripcion-de-puestos-y-funciones>. In addition, in its observations to the draft preliminary report, the country under review notes that the Tribunal is currently moving forward with a training plan whose main objective is to stimulate an attitude change and have a positive impact on the results of each area of the Tribunal. The plan covers technical aspects as well as ethical values and its programmed activities seek to bring about a continuous improvement in personnel performance, both on a technical level and in terms of ethical conduct.

¹⁹⁵ Complementary Information to the Questions Raised during On-Site Visit, pg. 42, *supra* note 15.

There is follow-up specialized training, depending on the duties of the post. If there are changes in duties or the job position, trainings are tailored to their needs.¹⁹⁶

[363] As regards the existence of introductory, training or instructional programs and courses for personnel on the ethical rules governing their activities, the country under review indicated in its Response to the Questionnaire that the Tribunal's Strategic Institutional Plan calls for training programs and internal and external orientation courses implemented as part of the Annual Operations Plans and monitored through indicators.¹⁹⁷ The external component of this plan is designed for civil servants and other persons subject to the law. It includes training activities for the initial phase, as well as for ongoing, specialized, and advanced training. It specifically addresses ethics and related matters, the Government Ethics Law and its regulations, international anti-corruption instruments, among others. This demonstrates that there is a public ethics training system in place. For the internal component of the plan, the Tribunal has an annual training program on public ethics and related matters for all personnel. This is a four-tiered program: (a) a day for orientation and training on the Act and its regulations, (b) certificate in Public Ethics, (c) advanced courses, and (d) specialized courses.¹⁹⁸ Additionally, staff also participates in some training activities designed for outside personnel. To date, three certificate courses on public ethics have been provided, in which some Tribunal personnel have participated.

[364] As to the use of modern communication technologies to apprise personnel of the ethical rules governing their activities, Tribunal representatives provided a document during the on-site visit indicating that the webpage is used to share information on institutional work, ethics issues, newsletters, legal issues, the annual report, interpretative guides, the basic presentation of the Government Ethics Law, etc., for both internal staff and civil servants in general. The representatives also indicated that Tribunal staff are also sent direct emails on ethics matters, updates to TEG criteria, and promotion of values.¹⁹⁹

[365] As to the existence of bodies to which personnel can resort to obtain information or resolve doubts about the scope or interpretation of the ethical rules governing their activities, Tribunal representatives indicated in a document provided during the on-site visit that the Plenary of the Tribunal has the authority to answer questions about the Government Ethics Law and its regulations. It is also the only competent body to set interpretive criteria on the application of these regulations.²⁰⁰ Tribunal personnel may also address their queries to the Plenary of the Tribunal either via a letter or an email. Hearings have also been made available for Tribunal personnel with the plenum when it is in session.

[366] In terms of the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, the country under review explained that the Outreach and Training Unit acts as the governing body that guides, advises, and informs them of the responsibilities and duties specifically related to complying with the ethical standards applicable to their activities.²⁰¹ Furthermore, the country under review notes that at the internal level, there is also the Outreach and Training Committee, composed of three members of the Tribunal, who are in charge of management of internal and external training, technical assistance, and interagency cooperation for the benefit of the Tribunal's personnel.

¹⁹⁶ Response to the Questionnaire, pg. 21, *supra* note 12.

¹⁹⁷ *Ibid.*, pg. 22.

¹⁹⁸ Presentation by the Government Ethics Tribunal, pg. 19, *supra* note 149.

¹⁹⁹ Executive Report Expanding on the MESICIC Response, pg. 12, *supra* note 149.

²⁰⁰ *Ibid.*

²⁰¹ Complementary Information to the Questions Raised during On-Site Visit, pg. 42, *supra* note 15.

They are also responsible for the provision of training on ethics to the heads of public entities and autonomous institutions, among others.

- Statutory and other legal provisions applicable to the personnel of the Court of Accounts of the Republic, among which the following should be noted:

[367] Regarding provisions and/or measures for providing instructions to the personnel of the Court of Accounts of the Republic to ensure they properly understand their responsibilities and the ethical standards that govern their activities, in a document provided after the on-site visit, the country under review cited the Internal Staff Rules.²⁰² Article 16 of these rules mandates that all civil servants joining the institution must complete an orientation on their duties, rights, and obligations. The Human Resources Unit must provide all new civil servants and employees with an orientation on the Court's functions and powers, the activities relating to the organizational unit where they will be working, and staff rights, obligations, and restrictions. The article also stipulates that the immediate supervisor will be responsible for developing specific orientations for all new staff on the duties, responsibilities, and activities of each job position.

[368] Article 39 of the rules stipulates that civil servants and employees shall receive any training deemed necessary by the Court for discharging their duties. Any training they receive shall be taken into consideration when applying for new positions or vacancies or for any administrative staff incentives.

[369] The Government Ethics Law sets forth the ethical standards that govern employee activities. This law aims to regulate and promote ethical conduct in the civil service at both a national and municipal level, prevent and detect corrupt practices, and punish misfeasance and violations of the ethical prohibitions for these activities.²⁰³ Article 2 stipulates that the law applies to all civil servants, which includes the personnel of the Court of Accounts of the Republic.

[370] Furthermore, Article 25 of this law stipulates that the Court of Accounts of the Republic must establish an Ethics Committee, which shall be charged with, among other tasks, promoting and training civil servants working in the Court on ethics in public service, the law, and any other regulation related to preventing acts of corruption.

[371] The Court of Accounts of the Republic has a Civil Servant Code of Ethics, whose Article 10 stipulates that observance of and compliance with the code is compulsory for all civil servants of the Court.²⁰⁴

[372] The country under review also indicated that the Regulation of the Specific Technical Internal Oversight Standards of the Court of Accounts of the Republic state that it is incumbent upon the president of the Court and other levels of management to promote and ensure that civil servants demonstrate integrity and ethical values in the carrying out of their duties, as called for in the Government Ethics Law and the Civil Servant Code of Ethics of the Court of Accounts of the Republic.²⁰⁵

²⁰² Internal Staff Rules: <http://www.cortedecuentas.gob.sv/uploaded/content/category/1069399837.pdf>.

See also: Complementary Information to the Questions Raised during On-Site Visit, pg. 18, *supra* note 15, and the Presentation by the Court of Accounts of the Republic, pg. 17, http://www.oas.org/juridico/spanish/mesicic5_slv.htm.

²⁰³ Government Ethics Law, *supra* note 177.

²⁰⁴ Code of Ethics for Officials of the Court of Accounts of the Republic, <http://www.cortedecuentas.gob.sv/uploaded/content/category/1435445222.pdf>

²⁰⁵ Regulation of the Specific Technical Oversight Standards of the Court of Accounts of the Republic, Article 7,

[373] Article 8 stipulates that the president of the Court and other levels of management shall take measures to enable all personnel to have and maintain the necessary level of competence and suitability to uphold the highest quality standards in their work. They shall also update the following standards and regulations, as necessary: Organizational Operating Regulation, Internal Staff Rules, Job and Duties Description Manual, Civil Servant Code of Ethics of the Court of Accounts of the Republic, Scholarship Rules, and Training Regulations.

[374] As to the manner in which employees are informed about their responsibilities and functions, the country under review indicated that when new staff join the Court of Accounts of the Republic they participate in a verbal orientation process to understand the duties and responsibilities for each position. They will also receive a detailed copy of this same information, which will be recorded in each employee's file.²⁰⁶

[375] In addition, the Court of Accounts of the Republic has a Procedure Manual for the Induction of Newly Entered Personnel, Induction Manual, whose purpose is to establish provisions, responsibilities and steps to follow for the execution of the induction process for persons appointed to the Court, which facilitates the adaptation and integration of new personnel to the institution and to its post, by providing information related to the characteristics and dimensions of the same.²⁰⁷

[376] Regarding the occasion(s) when personnel are informed of their responsibilities and functions, indicating whether this is done when they begin performing them or at a later point; when those functions change; or when functions change due to a change of post, the country under review indicated that this occurs when new staff start their job. If there are changes, they will be notified at that time.²⁰⁸

[377] As for the existence of introductory, training or instructional programs and courses for personnel on how to perform their responsibilities and functions properly and, particularly, for making them aware of the risks of corruption inherent in the performance of those functions, the country under review notes in its Response to the Questionnaire that the institution has the Organizational Operating Regulation of the Court of Accounts of the Republic and the Training Regulation of the Court of Accounts of the Republic, according to which Court training policies are implemented.²⁰⁹ To this end, the Court's Training Regulation will govern all activities throughout the teaching/learning process pertaining to Court and public entity staff. Compliance with this regulation is compulsory for all civil servants employed by the Court.

[378] The Court has its own research and training center charged with determining training needs, in order to ensure that they meet the requirements of the respective organizational units of the Court, in coordination with these units. The center also prepares the draft annual training plan that is submitted for the consideration and approval of the president of the Court. It conducts the training in accordance with this plan and maintains an updated record of the trainings and personnel who have participated, among other things.²¹⁰

<http://www.cortedecuentas.gob.sv/uploaded/content/category/852026379.pdf>

²⁰⁶ Response to the Questionnaire, pg. 12, *supra* note 12.

²⁰⁷ Procedure Manual for the Induction of Newly Entered Personnel. Available in Spanish at: http://www.oas.org/juridico/PDFs/Mesicic5_slv_Observaciones_InfPreliminar_ANEXO%2029.pdf

²⁰⁸ *Ibid.*, pg. 13.

²⁰⁹ *Ibid.* See: Organizational Operating Regulation of the Court of Accounts of the Republic, <http://www.jurisprudencia.gob.sv/DocumentosBoveda/D/2/2000-2009/2004/08/891E2.PDF> and the Training Regulation of the Court of Accounts of the Republic, <http://www.cortedecuentas.gob.sv/uploaded/content/category/1666756494.pdf>

²¹⁰ Organizational Operating Regulation of the Court of Accounts of the Republic, Article 32-B, *Ibid.*

[379] As to the use of modern communication technologies to apprise personnel of their responsibilities or functions and to provide guidance on how to perform them properly, the country under review, in its Response to the Questionnaire, indicated that the Court uses the institutional internal email system and computer equipment to keep its personnel informed. This includes the virtual platform for accessing the Court of Account's webpage, which provides internal regulations on institutional activities.²¹¹ A presentation by Court representatives during the on-site visit indicated that there has been an online query platform since 2012, administered by the Court's legal department. This technological tool allows the civil servants and employees from the various public sector entities to submit queries on the application and interpretation of the regulatory instruments governing their activities.²¹²

[380] Also during a presentation by representatives of the Court of Accounts of the Republic during the on-site visit, they indicated that the internal email system is used to share agreements and circulars from the president relating to administrative guidelines. To this end, civil servants have been granted wi-fi internet access, administered by each audit team supervisor. This supervisor must ensure that all auditors have internet access and, thus, access to the institution's online platform.²¹³

[381] As to the existence of bodies to which personnel can resort to obtain information or resolve doubts about how to perform their responsibilities and functions properly, the country under review stated that, according to the Court of Account's internal staff rules, the Human Resources Unit is in charge of providing orientation and information on the regulations covering duties, responsibilities, and compliance with ethical standards.²¹⁴

[382] In terms of the existence of a governing organ, authority or body responsible for defining, steering, advising, or supporting the manner in which personnel are to be informed of their responsibilities and functions, the country under review explained that, pursuant to the Civil Service Act, the governing body is the Civil Service Tribunal and Civil Service Commission of the Court of Accounts of the Republic.²¹⁵

[383] As to the manner in which employees are informed about the ethical standards governing their activities, the country indicated that new personnel joining the Court of Accounts of the Republic learn about the Court's Civil Servant Code of Ethics during the orientation. They also receive a copy of the code and record thereof is made in each employee's file.²¹⁶

[384] Regarding the occasion(s) when personnel are informed of ethical rules governing their activities, the country under review stated that this information is provided when they begin working. If there are changes, they will be notified at that time.²¹⁷

[385] As far as the existence of introductory, training or instructional programs and courses for personnel on the ethical rules governing their activities and, particularly, on the consequences of failure to abide by them for public institutions and for wrongdoers, the country under review indicated in its Response to the Questionnaire that the institution has the Organizational Operating Regulation of the Court of Accounts of the Republic and the Training Regulation of the Court of Accounts of the Republic,

²¹¹ Response to the Questionnaire, pg. 14, *supra* note 12.

²¹² Presentation by the Court of Accounts of the Republic, pg. 33, *supra* note 202.

²¹³ *Ibid.*, pg. 26.

²¹⁴ Response to the Questionnaire, pg. 14, *supra* note 12.

²¹⁵ *Ibid.*, pg. 15.

²¹⁶ *Ibid.*, pg. 21.

²¹⁷ *Ibid.*, pg. 22.

according to which Court training policies are implemented.²¹⁸ To this end, the Court's Training Regulation will govern all activities throughout the teaching/learning process pertaining to Court and public entity staff. Compliance with this regulation is compulsory for all civil servants employed by the Court.

[386] The Court has its own research and training center charged with determining training needs, in order to ensure that they meet the requirements of the respective organizational units of the Court, in coordination with these units. The center also prepares the draft annual training plan that is submitted for the consideration and approval of the president of the Court. It conducts the training in accordance with this plan and maintains an updated record of the trainings and personnel who have participated, among other things.²¹⁹ This annual plan of activities has included topics to strengthen capacity building, such as ethics standards applicable to civil servants, including Court staff. A detailed list of activities that have been carried out was provided.²²⁰

[387] The Court of Accounts of the Republic representatives also stated during the on-site visit that the research and training center helps conduct the trainings, through the development initiative of the International Organization of Supreme Audit Institutions (INTOSAI), and in keeping with the agreement signed with the Public Accounting and Audit Professional Oversight Council, the Government Ethics Law, and the Government Ethics Committee's work plan. It also contributes to the development of strategic plans to build and strengthen capacities; this would include training and workshops on ethical standards and the consequences of non-compliance.²²¹

[388] As to the use of modern communications technology to apprise personnel of the ethical rules governing their activities and to provide guidance as to their scope or interpretation, the country under review referred to the use of the institutional internal email system and computer equipment to keep its personnel informed. This includes the virtual platform for accessing the Court of Account's webpage, which provides internal regulations of institutional activities.²²² A presentation by Court representatives during the on-site visit indicated that there has been an online query platform since 2012, administered by the Court's legal department. This technology allows public servants and employees from the various public sector entities to submit queries on the application and interpretation of the regulatory instruments governing their activities.²²³

[389] The representatives of the Court of Accounts of the Republic further noted during the on-site visit that the internal email and computer equipment assigned to each employee and official, as well as the institution's website, provide the means for all civil servants to become familiar with and understand the scope of the ethical standards; for example, information published in the institution's internal publications (*Publicorte, Ccr Revista*) as well as agreements and circulars from the president related to administrative guidelines and the observance of ethical principles.²²⁴

[390] As to the existence of bodies to which personnel can resort to obtain information or resolve doubts about the scope or interpretation of the ethical rules governing their activities, the country under review

²¹⁸ *Ibid.* See: Organizational Operating Regulation of the Court of Accounts of the Republic, <http://www.jurisprudencia.gob.sv/DocumentosBoveda/D/2/2000-2009/2004/08/891E2.PDF> and the Training Regulation of the Court of Accounts of the Republic, <http://www.cortedecuentas.gob.sv/uploaded/content/category/1666756494.pdf>

²¹⁹ Organizational Operating Regulation of the Court of Accounts of the Republic, Article 32-B, *ibid.*

²²⁰ Presentation by the Court of Accounts of the Republic, pg. 31, *supra* note 202.

²²¹ *Ibid.*, pg. 28.

²²² Response to the Questionnaire, pg. 23, *supra* note 12.

²²³ Presentation by the Court of Accounts of the Republic, pg. 33, *supra* note 202.

²²⁴ *Ibid.*, pg. 29.

notes that the Court of Accounts of the Republic has its own Government Ethics Committee per Article 25(f) of the Government Ethics Law.²²⁵

[391] In terms of the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, the representatives of the Court of Accounts of the Republic indicated during the on-site visit that, pursuant to the Government Ethics Law, the governing body is the Government Ethics Committee, which serves, in turn, as the liaison between the Court of Accounts of the Republic and the Government Ethics Tribunal.²²⁶

- Statutory and other legal provisions applicable to the personnel of the Access to Public Information Institute, among which the following should be noted:

[392] Regarding provisions and/or measures for providing instructions to the staff of the Access to Public Information Institute in order to ensure they properly understand their responsibilities and the ethical standards that govern their activities, representatives of the Institute gave a presentation during the on-site visit in which they indicated that there are three documents available to this end: the Manual for the Recruitment, Selection, Hiring, and Orientation of Personnel, the Organization and Operations Manual, and the Internal Work Regulations.²²⁷

[393] In addition, Article 12 of the Access to Public Information Institute's Specific Technical Internal Oversight Standards stipulates that the Institute's Board (*Pleno*), management, and leadership are to promote, through its Human Resources Unit, appropriate personnel policies and practices— primarily those that refer to, *inter alia*, orientation and training—and that these are to be spelled out in the respective laws, manuals, or regulations.²²⁸ Article 12 further stipulates that Unit managers and chiefs will be responsible for enforcing the human resources management policies and practices set forth in the Institute's manuals and standards; enforcement thereof will be compulsory.

[394] The Manual for the Recruitment, Selection, Hiring, and Orientation of Personnel indicates that the Human Resources Unit is responsible for providing orientation and general information to new employees in order to ease their transition into the institution.²²⁹ In addition, according to the Organization and Operations Manual, the Human Resources Unit is responsible for holding, coordinating, and overseeing orientations, etc., pursuant to applicable rules, and for planning, organizing, supervising, and monitoring the training Institute staff receive.²³⁰

[395] The Government Ethics Law sets forth the ethical standards that govern employee activities. This law aims to regulate and promote ethical conduct in the civil service at both a national and municipal level, prevent and detect corrupt practices, and punish misfeasance and violations of the ethical

²²⁵ Response to Questionnaire, pg. 29, *supra* note 12.

²²⁶ Presentation by the Court of Accounts of the Republic, pg. 30, *supra* note 202.

²²⁷ Presentation by the Access to Public Information Institute, pg. 13, http://www.oas.org/juridico/spanish/mesicic5_slv.htm

²²⁸ The Access to Public Information Institute's Specific Internal Technical Oversight Standards, <http://www.iaip.gob.sv/sites/default/files/informacion-oficiosa/03-Normas%20t%C3%A9cnicas%20de%20control%20interno%20y%20externo%202016%20%281%29.pdf.PdfCompressor-1858156.pdf>

²²⁹ Manual for the Recruitment, Selection, Hiring, and Orientation of Personnel, pg. 7, <http://www.iaip.gob.sv/sites/default/files/informacion-oficiosa/Procedimientos%20de%20selecci%C3%B3n%20y%20contrataci%C3%B3n%20de%20personal.pdf>

²³⁰ Organization and Operations Manual, pgs. 46 – 47, <http://www.iaip.gob.sv/sites/default/files/informacion-oficiosa/MANUAL%20ORG%20Y%20FUNCIONES%20IAIP.pdf>

prohibitions contained therein. Article 2 stipulates that the law applies to all civil servants, which include the employees of the Access to Public Information Institute.

[396] In addition, Article 25 of the Government Ethics Law stipulates that the Access to Public Information Institute is required to establish an Ethics Committee, which is charged with, among other things, providing information and training to its civil servants on ethics in the civil service, the law, and any other related regulation in order to prevent acts of corruption.

[397] Accordingly, Article 7 of the Access to Public Information Institute's Specific Internal Technical Oversight Standards sets forth the following:²³¹

[398] *"The Board, managers, and other leaders shall uphold, demonstrate, and promote integrity and ethical values among the civil servants of the IAIP [Access to Public Information Institute] in the performance of their duties and obligations. The Standards of Conduct and Ethics shall be included in the corresponding internal work regulations, manuals, policies, and procedures. Pursuant to Article 14 of the Government Ethics Law, an IAIP Ethics Committee shall be appointed for purposes of meeting its legal obligations, above all with respect to informing and providing training to personnel on the Government Ethics Law and to developing the Institutional Code of Ethics."*

[399] As to the manner in which employees are informed about the responsibilities and functions of their posts, and whether this is done verbally or in writing and if there is a record thereof, the country under review indicates that responsibilities and duties are communicated in different ways, first during the orientation given by the Human Resources Unit. The country under review further notes that each of the duties are described in the Organization and Duties Manual adopted in February 2016, and there is also a Government Ethics Committee in charge of periodically training personnel.²³²

[400] Regarding on the occasion(s) when personnel are informed of their responsibilities and functions, indicating whether this is done when they begin performing them or at a later point; when those functions change; or when functions change due to a change of post, the country under review notes that the Institute's Board has decided to conduct yearly employee evaluations—such assessments are done by the chief of the corresponding administrative unit. Should an employee's duties change, the Organization and Duties Manual must be amended and, once approved, the civil servant is to be informed.²³³ Furthermore, in the presentation given during the on-site visit, representatives of the Institute indicated that the Manual for the Recruitment, Selection, Hiring, and Orientation of Personnel calls for the leadership of the Human Resources Unit to give a talk to employees when they first begin to inform them of their obligations, responsibilities, and functions and for the unit chief to give a talk about the functions inherent to the post in question.²³⁴

[401] As far as the existence of introductory, training or instructional programs and courses for personnel on how to perform their responsibilities and functions properly, the country under review notes in its Response to the Questionnaire that the Human Resources Unit's Annual Operations Plan includes periodic training for personnel, and agreements have been signed with counterpart institutions like Mexico's National Institute for Access to Public Information.²³⁵

²³¹ The Access to Public Information Institute's Specific Internal Technical Oversight Standards, *supra* note 228.

²³² Response to Questionnaire, pg. 12, *supra* note 12.

²³³ *Ibid.*, pg. 13

²³⁴ Presentation by the Access to Public Information Institute, pg. 14, *supra* note 227.

²³⁵ Response to Questionnaire, pg. 13, *supra* note 12.

[402] As to the use of modern communications technologies to apprise personnel of their responsibilities or functions and to provide guidance on how to perform them properly, the representatives of the Institute indicated, in a presentation they gave during the on-site visit, that the Human Resources Unit uses email.²³⁶

[403] With respect to the existence of bodies to which personnel can resort to obtain information or resolve doubts about how to perform their responsibilities and functions properly, the country under review noted that the administrative management, via the Human Resources Unit, is in charge of guiding personnel as to how to perform the duties of each post.²³⁷

[404] In terms of the existence of a governing organ, authority or body responsible for defining, steering, advising, or supporting the manner in which personnel are to be informed of their responsibilities and functions, the country under review notes that the Board of the Institute ordered the administrative management to follow up on each of the points agreed by the Board in an attempt to secure effective outcomes in less time.²³⁸

[405] In terms of how personnel are informed about the ethical standards that govern their activities, the country under review, in its Response to the Questionnaire, indicates that they have walls on which the ethical standards to be followed are periodically updated. Moreover, the Institute's Ethics Committee holds training days for personnel and there is an Annual Operations Plan.²³⁹

[406] Regarding when personnel are informed about the ethical standards that govern their activities, the country under review indicates that the Institute's Ethics Committee periodically updates them.²⁴⁰

[407] With respect to the existence of introductory, training or instructional programs and courses for personnel on the ethical rules governing their activities, the country under review indicated in its Response to the Questionnaire that the members of the Ethics Committees are trained by the Government Ethics Tribunal and thereafter, those individuals replicate the training they received.²⁴¹ In addition, representatives of the Institute indicated in a presentation they gave during the on-site visit that the Institute's Ethics Committee has drawn up annual work plans.²⁴²

[408] Regarding the use of modern communications technologies to inform personnel about existing ethical rules governing their activities, the country under review reported that technological tools are used during training sessions to make them participatory and dynamic.²⁴³ In addition, representatives of the Institute indicated in a presentation made during the on-site visit that the Institute's Ethics Committee uses email – Comisiondeetica@iaip.gob.sv. This account is used for complaints, requests, and notifications in connection with employees' tasks, such that personnel can receive guidance with regard to any question they may have about ethics.²⁴⁴

[409] With respect to the existence of bodies to which personnel can resort to obtain information or resolve doubts about the scope or interpretation of the ethical rules governing their activities, the country

²³⁶ Presentation by the Access to Public Information Institute, pg. 18, *supra* note 227.

²³⁷ Response to Questionnaire, pg. 14, *supra* note 12.

²³⁸ *Ibid.*, pg. 15

²³⁹ *Ibid.*, pg. 21

²⁴⁰ *Ibid.*, pg. 22

²⁴¹ *Ibid.*

²⁴² Presentation by the Access to Public Information Institute, pg. 23, *supra* note 227.

²⁴³ Response to Questionnaire, pg. 23, *supra* note 12.

²⁴⁴ Presentation by the Access to Public Information Institute, pgs. 18 and 25, *supra* note 227.

under review indicates that one may go to the Government Ethics Tribunal to allay any doubts as well as to the Institution's Ethics Committee regarding any situation having to do with government ethics.²⁴⁵

[410] As to the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, the country under review observes that the governing body is the Government Ethics Tribunal, which is continually training civil servants via the Institute's Ethics Committee.²⁴⁶

1.2 Adequacy of the legal framework and/or other measures

[411] 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.

[412] 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 Government Ethics Tribunal, the Committee notes the following:

[413] The Committee notes that the representatives of the Government Ethics Tribunal during the on-site visit, and in the Response to the Questionnaire, observed that the lack of resources is affecting the ability of this institution to carry out its work effectively. For example, in its Response, the country under review noted:²⁴⁷

[414] *“There are insufficient personnel, as the Tribunal has only sixty-one public servants and an annual budget of two million three hundred and fifty-eight thousand six hundred United States dollars (US \$ 2,358,600) to carry out its administrative and legal activity in the country regarding its functions and powers. In particular, the Training and Dissemination Unit has only four people in charge of coordinating and managing training plans.”*

[415] In the documented presented by the representatives of the Tribunal during the on-site visit, it also observed that if it is to have a better impact carrying out its objectives, it is necessary to have more resources, to hire more personnel, count on better training tools, acquire transportation equipment as well as better information technology.²⁴⁸ The Committee notes that the lack of resources appears to be affecting the training the Tribunal can carry out for its personnel, as set out in the 2016 Training Plan adopted by the Tribunal, where it observes:²⁴⁹

[416] *“With the very scarce resources available for training, we will program according to the needs of the units of the Tribunal. As well, depending on the execution of the budget for this year, we will strengthen the category for training in order to carry out the respective training. It is also important to*

²⁴⁵ Response to Questionnaire, pg. 29, *supra* note 12 and Presentation by the Access to Public Information Institute, pg. 19, *supra* note 227.

²⁴⁶ Response to Questionnaire, *ibid.* See also: Presentation by the Access to Public Information Institute, pg. 20, *supra* note 214.

²⁴⁷ Response to the Questionnaire, pg. 38, *supra* note 12.

²⁴⁸ Executive Report Expanding on the MESICIC Response, pg. 15, *supra* note 149.

²⁴⁹ 2016 Training Plan, pg. 7, *supra* note 176.

mention that the subjects of institutional interest, such as: personal values, we will try to do as much as possible every three months throughout the year.”

[417] In this respect, this same Training Plan notes that budget for training of personnel is \$20,000.²⁵⁰

[418] The Committee does observe that the issue of lack of resources for the Tribunal to carry out its work, and the need to strengthen the Training and Dissemination Unit, was reflected in the Report of the Fourth Round of the Republic of El Salvador:²⁵¹

[419] *“The Committee also suggests that the country under review consider providing the appropriate budgetary and human resources for the operation of the TEG [Government Ethics Tribunal]. ...In this respect, the TEG outlined the increased need in a presentation carried out to the team during its on-site visit, where it set out the reasons as to why this was needed, such as, among others, in strengthening human resources in the Training and Dissemination Unit, the need to create a Teaching Unit, and the need to strengthen the Communications Unit. In addition, the TEG identified that more resources would be needed to train personnel, and in the acquisition of adequate equipment and technological tools.”*

[420] In this Report, the Committee adopted a recommendation whereby the country under review is to consider providing the Government Ethics Tribunal with the necessary budgetary and human resources that ensure the adequate operation of the Tribunal, in particular with its responsibilities for the prevention of corruption, within available resources.

[421] Given the foregoing, the Committee believes that a specific recommendation should be formulated on the provision of resources for the training of personnel of the Tribunal, notwithstanding the recommendation of general application on resources formulated to the country under review with respect to the Tribunal in the Report of the Fourth Round. To that end, the country under review should consider furnishing the Government Ethics Tribunal with the necessary budgetary, technological, and human resources to carry out a training program that ensures that its personnel properly understand their responsibilities and the ethical rules governing their activities. The Committee will make a recommendation. (See recommendation 1.4.1 in Chapter III of this Report)

[422] The Committee further observes that a formal training induction plan for newly appointed personnel is currently not in place for the Tribunal. The Tribunal notes that it is the Human Resources Unit that is responsible for overseeing this plan, and this Unit has only recently been created, since December 2015, and the Head of this Unit appointed in June 2016. As such, an induction training plan is currently being prepared and adopted.²⁵²

[423] The lack of a formal training induction plan is also reflected in the 2016 Training Plan, as there are no courses listed that provide induction or orientation training to be provided to newly appointed personnel.²⁵³

[424] The country under review does observe that despite the foregoing, induction is provided to newly appointed staff, whether through the General Administration, and by the immediate supervisor from each

²⁵⁰ See Summary of Modified Budget 2012 – 2017 for the Government Ethics Tribunal (*Resumen de Presupuestos Modificados de 2012 – 2017 del Tribunal de Ética Gubernamental*), http://www.oas.org/juridico/spanish/mesicic5_slv.htm

²⁵¹ Report of the Fourth Round of Review for the Republic of El Salvador, pgs. 13 – 15, http://www.oas.org/juridico/PDFs/mesicic4_slv_en.pdf

²⁵² Executive Report Expanding on the MESICIC Response, pgs. 8 – 9, *supra* note 149.

²⁵³ 2016 Training Plan, pgs. 5 – 7, *supra* note 176.

Unit, which sets out the duties and functions for each new public servant of the Tribunal, as well as the history and purpose for its existence.²⁵⁴

[425] Nevertheless, the Committee believes the country under review should consider establishing a formal induction training program for newly hired personnel into the Government Ethics Tribunal. This program should also be reflected in the annual Training Plan adopted by the Tribunal and contain the courses offered and a timetable, as required. (See recommendation 1.4.2 in Chapter III of this Report)

[426] Related to this, the Committee believes that the Annual Operation Plan of the Tribunal, with respect to the Human Resources Unit, should set out as an activity induction training, as required, as part of its responsibility for executing the Tribunal's training plan for its personnel. In this respect, the Committee observes that the 2017 Annual Operation Plan, such an activity is not listed, although it falls under the Human Resources Unit to carry out this type of training.²⁵⁵ The Committee will formulate a recommendation. (See recommendation 1.4.3 in Chapter III of this Report)

[427] Moreover, during the on-site visit, the Committee was provided a copy of the Induction Manual that the Tribunal has in place, which is provided to newly hired personnel.²⁵⁶ The objective of the Manual is to present a background of the Tribunal, its mission, vision, structure; present the most relevant aspects of the labor rules and other applicable laws of the public service; provide information on benefits, and the disciplinary process applicable to all the personnel of the Tribunal. This Manual is also to be provided to all newly hired personnel. The Committee notes that this Manual is for the years 2006 – 2016, and thus can become outdated. Given the foregoing, the Committee believes the country under review should consider updating the Manual to one this is more current. (See recommendation 1.4.4 in Chapter III of this Report)

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

[428] The Committee notes that the Court of Accounts of the Republic has a Procedure Manual for the Induction of Newly Entered Personnel, whose purpose is to establish provisions, responsibilities and steps to follow for the execution of the induction process for persons appointed to the Court, which facilitates the adaptation and integration of new personnel to the institution and to its post, by providing information related to the characteristics and dimensions of the same. The Manual applies to all personnel named to the Court of Accounts of the Republic, after having participate in a recruitment and selection process, in order to provide general, comprehensive and sufficient information that orients personnel and its role within this institution. The Committee notes that this Manual was adopted in 2008, and thus may be outdated. Given the foregoing, the Committee believes the country under review should consider updating the Manual to one this is more current. (See recommendation 1.4.5 in Chapter III of this Report)

[429] The Committee also notes that the Research and Training Center of the Court of Accounts of the Republic is responsible for establishing the training needs of this institution, and prepare and Annual Training Plan, which is to be approved by the President of the Court. The Committee, however, was not able to identify or locate this training plan, on the website of the Court. As a result, it is difficult to

²⁵⁴ Executive Report Expanding on the MESICIC Response, pg. 9, *supra* note 149.

²⁵⁵ 2017 Annual Operation Plan (*Plan Anual Operativo 2017*), pg. 55, <http://www.teg.gob.sv/phocadownload/portal/gestionestrategica/pao/PAO%202017.pdf>

²⁵⁶ Induction Manual of the Government Ethics Tribunal: 2006 – 2016 (*Manual de Induccion del Tribunal de Etica Gubernamental: 2006 – 2016*), http://www.oas.org/juridico/spanish/mesicic5_slv.htm

determine how the training needs are identified, and training plan structured for a given year. The Committee does observe that training is carried out for the personnel of the Court of Accounts of the Republic, as set out in the information provided in the Response to the Questionnaire, and in the Annual Reports of the Court.²⁵⁷ However, the Committee believes it would be beneficial for the country under review to consider making available its Annual Training Plan, and consider making evident the manner it identifies its training needs, as well as containing the courses offered and a timetable. The Committee will make a recommendation.²⁵⁸ (See Recommendation 1.4.6 in Chapter III of this Report)

[430] Related to this, the Committee also observes that it is difficult to determine if a formal induction training plan is in place. In the information provided by the country under review regarding the training its personnel undertook for 2015, the Committee notes there is no information provided on the induction training carried out for this institution, as they are broken down into six broad categories, none which seem applicable: Control and Audit (*Control y Auditoria*); Legislation (*Normativa*); Planning (*Planificacion*); Development and Strengthening (*Desarrollo y Fortalecimiento*); Computing (*Informatica*); and Occupational Health and Safety (*Salud y Seguridad Ocupacional*). Given the foregoing, the Committee believes that the country under review should consider establishing a formal induction training plan for newly hired personnel into the Court of Accounts of the Republic. This plan should also be reflected in the annual Training Plan adopted by the Court and contain the courses offered and a timetable, as required. Moreover, the Committee recommends that this induction program should include provisions and other measures that make all individuals who enter the Court of Accounts of the Republic aware of the risks of corruption inherent in the performance of their functions, as well as the consequences and penalties for becoming involved in corruption. The Committee will formulate recommendations.²⁵⁹ (See Recommendation 1.4.7 in Chapter III of this Report).

[431] Similarly, the Committee notes that there appears to be a lack of a structured training program on ethical standards, that sets out the courses offered and a timetable. The information provided in the Response, as well as in the Annual Reports, does not set out the training the personnel of this institution have received with respect to ethical standards. As a result, a training program on ethics should also be scheduled on an annual basis, taking into account the needs of the personnel of the Court of Accounts of the Republic, and should include modules on the Code of Ethics and Conduct, that would complement

²⁵⁷ Response to the Questionnaire, pgs. 33 -34, *supra* note 12, and see 2015 Annual Report of the Court of Accounts of the Republic (*2015 Informe de Labores del Corte de Cuentas*), pgs. 60 – 63, <http://www.cortedecuentas.gob.sv/uploaded/content/category/506212720.pdf>

²⁵⁸ In its observations to the draft preliminary report, the country under review notes that in order to implement the recommendation, the entity's management adopted Decision No. 67 of February 6, 2017, creating a special committee which, among other things, will ensure the inclusion of a plan in the annual training program of the Investigation and Training Center of the Court of Accounts of the Republic that identifies that entity's training needs and sets out a schedule of available courses designed to ensure an adequate understanding by its staff of their responsibilities and the ethical standards that govern their activities, http://www.oas.org/juridico/PDFs/Mesicic5_slv_Observaciones_InfPreliminar_ANEXO%2030.pdf

²⁵⁹ In its observations to the draft preliminary report, the country under review notes that in order to implement the recommendation, the entity's management adopted Decision No. 67 of February 6, 2017, creating a special committee which, among other things, will ensure the implementation of a formal orientation training program for new personnel hired by the Court of Accounts of the Republic, that includes the schedule of available courses, as well as the provisions and other measures designed to ensure that all officials who enter service with the Court of Accounts of the Republic are alert to the inherent corruption risks in the performance of their official duties as well as the consequences of, and penalties for, committing acts of corruption, http://www.oas.org/juridico/PDFs/Mesicic5_slv_Observaciones_InfPreliminar_ANEXO%2030.pdf

the programs of courses offered by the Government Ethics Tribunal to the Ethics Commissions. The Committee will make a recommendation.²⁶⁰ (See recommendation 1.4.8 in Chapter III of this Report)

[432] Finally, the Committee notes that in the presentation made by the representatives of the Court of Accounts of the Republic during the on-site visit, they observed that the institution has not prepared guidelines for their personnel in order to make them aware on the ethical rules that govern their activities.²⁶¹ In addition, the Committee notes that guidelines have not been prepared either to counsel the personnel of their responsibilities and functions, including a manual on induction, as exist for the newly entered staff of the Government Ethics Tribunal. Given the foregoing, the Committee believes that the country under review should consider establishing such guidelines. The Committee will formulate a recommendation.²⁶² (See recommendation 1.4.9 in Chapter III of this Report)

- With respect to the provisions and/or other measures applicable to the personnel of the Access to Public Information Institute, the Committee notes the following:

[433] In the document presented by the representatives of the Institute during the on-site visit, it was noted that the budget for this institution had decreased from \$937,720 in 2013, to \$885,565 in 2014.²⁶³ The Committee further notes that in the 2015 - 2016 Annual Report published by the Institute, there was an increase in its budget, yet the Institution still found that it had insufficient funds to address its current needs.²⁶⁴ Given the foregoing, the country under review should consider furnishing the Institute with the necessary budgetary, technological, and human resources, within available resources, to carry out a training program that ensures that its personnel properly understand their responsibilities and the ethical rules governing their activities. The Committee will make a recommendation. (See recommendation 1.4.1 in Chapter III of this Report)

[434] The country under review also observes that the personnel of the Institute are apprised of their responsibilities and functions when they enter public service, or when their functions are modified. However, it is not indicated if training is also provided to ensure that officials properly understand their responsibilities when there is a change of position. The Committee will make a recommendation. (See recommendation 1.4.10 in Chapter III of this Report)

[435] The Committee also notes that the Human Resources Unit is responsible for establishing the training needs of this institution, as set out in the Annual Operations Plan of this institution. The

²⁶⁰ In its observations to the draft preliminary report, the country under review notes that in order to implement the recommendation, the entity's management adopted Decision No. 67 of February 6, 2017, creating a special committee which, among other things, will see to it that the training program and training courses offered by the Court of Accounts of the Republic for its personnel include the ethical rules that govern their activities, which should include modules on the Code of Ethics and Conduct,

http://www.oas.org/juridico/PDFs/Mesicic5_slv_Observaciones_InfPreliminar_ANEXO%2030.pdf

²⁶¹ Presentation by the Court of Accounts of the Republic, pg. 32, *supra* note 202.

²⁶² In its observations to the draft preliminary report, the country under review notes that in order to implement the recommendation, the entity's management adopted Decision No. 67 of February 6, 2017, creating a special committee which, among other things, will present a draft update of the procedural manual for orientation for newly joined personnel of the Court of Accounts of the Republic, which would include mandatory induction training for entrants, promotions, transfers, and any other situation that entails a change of functions for employees of the Court of Accounts of the Republic, so as to ensure their knowledge and understanding of their responsibilities and functions as well as of the ethical standards that govern their activities,

http://www.oas.org/juridico/PDFs/Mesicic5_slv_Observaciones_InfPreliminar_ANEXO%2030.pdf

²⁶³ Presentation by the Access to Public Information Institute, pgs. 2 and 5, *supra* note 227

²⁶⁴ 2015 – 2016 Annual Report of the Access to Public Information Institute, page 20,
<http://www.iaip.gov.sv/sites/default/files/informacion-oficiosa/Memoria%202015-2016.pdf>

Committee, however, was not able to identify or locate an annual training plan for the Institute. As a result, it is difficult to determine how the training needs are identified, and training plan structured for a given year. The Committee does observe that training is carried out for the personnel of the Institute, as set out in the information provided in a document submitted subsequent to the on-site visit.²⁶⁵ However, the Committee believes it would be beneficial for the country under review to consider preparing an Annual Training Plan, and consider making evident the manner it identifies its training needs, as well as containing the courses offered and a timetable. The Committee will make a recommendation.²⁶⁶ (See recommendation 1.4.11 in Chapter III of this Report)

[436] Related to this, the Committee also observes that it is difficult to determine if a formal induction training plan is in place. In the information provided by the country under review regarding the training its personnel undertook for 2014 and 2015, the Committee notes there is no information provided on the induction training carried out for this institution. Given the foregoing, the Committee believes that the country under review should consider establishing a formal induction training plan for newly hired personnel into the Institute. This plan should also be reflected in an annual Training Plan and contain the courses offered and a timetable, as required. Moreover, the Committee recommends that this induction program should include provisions and other measures that make all individuals who enter the Institute aware of the risks of corruption inherent in the performance of their functions, as well as the consequences and penalties for becoming involved in corruption.²⁶⁷ The Committee will formulate recommendations. (See recommendation 1.4.12 in Chapter III of this Report)

[437] Similarly, the Committee notes that there is a lack of a structured training program on ethical standards, that sets out the courses offered and a timetable. The information provided in the Response, does not set out the training the personnel of this institution has received with respect to ethical standards, other than what is provided by the Institute's Ethical Commission, which carries out a day of discussions on ethical standards and conflicts of interest twice a year. A more robust training program on ethics should also be programmed on an annual basis, taking into account the needs of the personnel of the Court of Accounts of the Republic that would complement the programs of courses offered by the Government Ethics Tribunal to the Ethics Commissions.²⁶⁸ The Committee will make a recommendation. (See recommendation 1.4.13 in Chapter III of this Report)

²⁶⁵ Complementary Information to the Questions Raised during On-Site Visit, pgs. 31 – 33, *supra* note 15.

²⁶⁶ In its observations to the draft preliminary report, in order to comply with the recommendation, the Access to Public Information Institute notes that in February 2018, an Institutional Plan to Overcome Observations of the On-Site Visit Implementation of the Inter-American Convention against Corruption was adopted. The Work Plan is focused on overcoming the following recommendations: need to have an Annual Training Plan; the preparation of an Induction Manual for new personnel entering the Institute, and the preparation of an Institutional Code of Ethics, see Plan Institucional para Superar las Observaciones de la Visita in situ sobre la Implementación de la Convención Interamericana contra la Corrupción, http://www.oas.org/juridico/spanish/mesicic5_slv.htm

²⁶⁷ In its observations to the draft preliminary report, in order to comply with the recommendation, the Access to Public Information Institute notes that in February 2018, an Institutional Plan to Overcome Observations of the On-Site Visit Implementation of the Inter-American Convention against Corruption was adopted. The Work Plan is focused on overcoming the following recommendations: need to have an Annual Training Plan; the preparation of an Induction Manual for new personnel entering the Institute, and the preparation of an Institutional Code of Ethics, see Plan Institucional para Superar las Observaciones de la Visita in situ sobre la Implementación de la Convención Interamericana contra la Corrupción, http://www.oas.org/juridico/spanish/mesicic5_slv.htm

²⁶⁸ In its observations to the draft preliminary report, in order to comply with the recommendation, the Access to Public Information Institute notes that in February 2018, an Institutional Plan to Overcome Observations of the On-Site Visit Implementation of the Inter-American Convention against Corruption was adopted. The Work Plan is focused on overcoming the following recommendations: need to have an Annual Training Plan; the preparation of an Induction Manual for new personnel entering the Institute, and the preparation of an Institutional Code of Ethics, see Plan Institucional para

[438] The Committee further notes that in a document submitted subsequent to the on-site visit, the representatives of the Institute observed that it has not prepared guidelines to counsel their personnel on the ethical rules that govern their activities, and that the Ethical Commission refers to the Government Ethics Law in this respect.²⁶⁹ Moreover, the Committee notes guidelines have not been prepared for their personnel in order to make them aware of their responsibilities and functions, including a manual on induction, as exist for the newly entered staff of the Government Ethics Tribunal. Given the foregoing, the Committee believes that the country under review should consider establishing such guidelines. The Committee will formulate a recommendation. (See recommendation 1.4.14 in Chapter III of this Report)

[439] Finally, the Committee also notes that Article 7 of the Technical Standards on Specific Internal Controls for the Institute specifically sets out that one of the responsibilities of the Plenary is to establish a Code of Ethics for the Institution.²⁷⁰ However, the Committee has not been able to ascertain whether such a Code has been developed. Given the foregoing, the Committee believes the country under review should consider establishing such an institutional Code for the Institute, as this can also serve to institute the values of ethics and integrity in the institution, as a complement to the Government Ethics Law, much like the Code of Conduct in place for the Court of Accounts of the Republic. The Committee will formulate a recommendation.²⁷¹ (See recommendation 1.4.15 in Chapter III of this Report)

1.3 Results

[440] 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.

[441] – With respect to the Government Ethics Tribunal, the country under review mentioned in its Response to the Questionnaire that internally, in accordance with the Annual Training Program it has carried out different training activities in accordance with the training needs as identified by each of its Units, as set out below:

IMPLEMENTATION OF TRAINING PLAN FOR PERSONNEL OF THE GOVERNMENT ETHICS TRIBUNAL 2013-2014 (June 2013- May 2014)				
	DATES	TRAINING	No. Of Trained Personnel	UNIT BENEFITTED
1.	August 26 – September 30, 2013	Administering Windows Server 2012; Microsoft Exchange Server 2010	1	Information Technology Unit

Superar las Observaciones de la Visita in situ sobre la Implementación de la Convención Interamericana contra la Corrupción, http://www.oas.org/juridico/spanish/mesicic5_slv.htm

²⁶⁹ *Ibid.*, pgs. 31 – 33.

²⁷⁰ Technical Standards on Specific Internal Controls for the Institute, *supra* note 228.

²⁷¹ In its observations to the draft preliminary report, in order to comply with the recommendation, the Access to Public Information Institute notes that in February 2018, an Institutional Plan to Overcome Observations of the On-Site Visit Implementation of the Inter-American Convention against Corruption was adopted. The Work Plan is focused on overcoming the following recommendations: need to have an Annual Training Plan; the preparation of an Induction Manual for new personnel entering the Institute, and the preparation of an Institutional Code of Ethics, see Plan Institucional para Superar las Observaciones de la Visita in situ sobre la Implementación de la Convención Interamericana contra la Corrupción, http://www.oas.org/juridico/spanish/mesicic5_slv.htm

2.	September 10 – November 18, 2013	Course on Prevention and Management of Corruption Risks for the Public Sector in Latin America. (Sponsored by the UNDP)	8	Legal Ethics Unit
3.	October 28 – November 1, 2013	Writing Techniques	13	Legal Ethics Unit/General Secretariat
4.	November 11 – 15, December 2, 3 and 5, 2013	Human Development	51	All Personnel
5.	February 11 – April 11, 2014	Ethics, Transparency, and the Fight against Corruption	7	Legal Ethics Unit and Information Office
6.	January 31 – June 21, 2014 and July 25 – December 19, 2014	Teacher Training Course	1	Training and Dissemination Unit
7.	January 14 to the month of July, 2014	XXIII National Security and Development Course 2014	1	General Secretariat
8.	February 14, 21 and 28, 2014	Management of Contracts and Purchase Orders according to LACAP	13	Supervisors and Technical Staff
9.	March 20 – 22, 2014	COSO III Risk Management and Information Technology Governance	1	Internal Auditor
10.	April 8 – May 30, 2014	Government in the Era of Social Networks (OAS)	1	Communications Unit
11.	May 9, 16, and 23, 2014	Prevention and Combat of Fires, First Aid, Evacuation (Earthquakes)	22	Health and Occupational Safety Committee and Brigadiers
12.	May 12 – June 6, 2014	Implementation, Virtualization Management, and Services in the Microsoft Cloud	1	Information Technology Unit
13.	May 16 and 17, 2014	Forensic Audit	1	Internal Audit
14.	May 20 and 21, 2014	Regional Workshop " Strengthening Institutions in the Fight against Corruption," Guatemala City	1	Plenary Member

Training Registered
(June 2014 – May 2015)

No.	NAME OF TRAINING	DATE OF TRAINING/DURATION	INSTITUTION	NUMBER OF ATTENDEES
1.	Diploma in Public Ethics	October, November, December 2014	Government Ethics Tribunal	7
2.	Audit of Information Systems (virtual)	June 19 – December 19, 2014	Civil Association Universidad Jose Antonio Páez. Venezuela	1
3.	Foundations of Constitutional Law	June 3, 4 and 10, 2014	National Council of the Judiciary	3
4.	Perspectives of the Code of Judicial Ethics in the Salvadoran Legislation	June 20, 2014	National Council of the Judiciary	3
5.	Diploma "Taxes"	July 26 – November 29, 2014	Universidad Centroamericana Jose Simeón Canas	2
6.	Diploma "Good Governance and Public Management"	July 1 – September 20, 2014	Universidad Centroamérica Jose Simeón Canas	2
7.	Course on Management of Relevant Cases	July 21 – 25, 2014	Prosecutor Training School	2
8.	Interview Techniques Course	July 28 – 31, 2014	Prosecutor Training School	2
9.	Diploma "Environmental Management, Hygiene and Industrial Safety" 3 modules	August 2014 – December 2014	Universidad Centroamericana Jose Simeón Canas	1
10.	Civil Liability of the State and its Officials (virtual course).	August 18 – September 23, 2014	Judicial Training School CNJ	3
11.	Investigation techniques in sanctioning administrative procedures	September 24, 2014	Casals & Asociados	13
12.	Perspectives of the Code of Judicial Ethics in Salvadoran Legislation	September 26, 2014	Judicial Training School	2
13.	Diploma in Criminal Policy	November 3, 2014 – January 29, 2015	Universidad Centroamericana Jose Simeón Canas	1
14.	Logistics and Organization of Outreach Events (Protocol)	November 24, 2014	Jose Roberto Batista Solórzano	17
15.	International Auditing Standards	November 22 – 29, 2014	Corporación de Contadores de El Salvador	1

16.	Investigation Protocols	November 10 – 14, 2014	Casals & Asociados	11
17.	II International Congress of Administrative Law in El Salvador	November 8 – 9, 2014	CSJ y PNUD (Ministry of Foreign Affairs)	6
18.	Workshop on Acts of Corruption	November 11, 2014	Casals & Asociados (Hotel Sheraton)	12
19.	XXIV National Security and Development Course (CSDN) 2015	January – July 2015 (Tuesday, Wednesday and Thursday, 8:00 to 12:00)	Ministry of Defense	1
20.	Environmental Management (3 modules remaining)	January - March 2015	UCA	1
21.	Human Development <ul style="list-style-type: none"> • Change of Paradigms • Organizational Development • Emotional Intelligence 	January 10, 2015 January 14, 2015 January 30, 2015	Maria Elena Paz Manzano	51
22.	Diploma in Administrative Law	March 7 to September 26, 2015	UCA	7
23.	Practical Aspects of the Civil and Commercial Procedure	February 21 and 28, March 7, 14, 21 and 28, 2015	FESPAD	3
24.	Effectives Strategies of Institutional Communication (virtual course)	7 weeks starting from April 14, 2015	OAS	2
25.	Training the Trainers (virtual course)	5 weeks starting from March 9, 2015	ARGENTINE CENTER FOR HIGHER AND PERMANENT EDUCATION	4

Implementation of Training Plan for Personnel of the Government Ethics Tribunal, 2015-2016

TRAINING TOPIC	DATE (MONTH AND YEAR)
Seminar on Teamwork	November 2015
Payroll Preparation Seminar	November 2015
Diploma in Administrative Law	November 2015
Postgraduate in Constitutional Law	December 2015
Seminar on process analysis, risk and control matrix, comprehensive risk management	October 2015
Seminar, the LACAP fundamental aspects and their recent unconstitutionality	September 2015
Seminar on Teamwork and assertive communication	December 2015
Seminar, Capacity Building Program	July 2015
JOOMLA Advanced Administrative Course	November 2015
Seminar, how to evaluate the alignment of governance efforts, risk management and internal control of a company	June 2015
Course, Constitutional law for civil servants	September 2015
Course, Training the trainers	March 2015
Course, Effective strategies of institutional communication	June 2015
Course, Practical Aspects of the Civil and Commercial Procedure	February 2015
Diploma, Administrative Law	October 2015
Diploma, Environmental Management	May 2015
Seminar, Change of Paradigms	January 2015
Seminar, Emotional Intelligence	January 2015
Seminar, Organizational Development	January 2015
Diploma, Administrative Law	February 2016
Course, Government in the Era of Social Networks	February 2016
Seminar, How to carry out an operational audit	March 2016
Diploma, Fundamental Rights	February 2016
Postgraduate, Constitutional Law	January 2016
Diploma, Fundamental Rights	April 2016

[442] The Committee notes the extensive training provided to the personnel of the Tribunal, as set out above. However, the information does not provide information on the induction or orientation training provided to newly entered personnel.

[443] In light of the foregoing, as regards instruction given to newly entered personnel to ensure proper understanding of their responsibilities and functions, the Government Ethics Tribunal should consider compiling and analyzing information that covers aspects such as the nature and periodicity of training imparted; numbers of officials trained; and indicators to show that they have understood the information and are applying it in the performance of their functions. (See recommendation 1.4.16 in Chapter III of this Report).

[444] As for the Court of Accounts of the Republic, in its Response to the Questionnaire, the country under review indicated that training is provided depending on the needs in the following broad categories: Control and Audit (*Control y Auditoria*); Legislation (*Normativa*); Planning (*Planificación*); Development and Strengthening (*Desarrollo y Fortalecimiento*); Computing (*Informática*); and Occupational Health and Safety (*Salud y Seguridad Ocupacional*).²⁷²

Training Provided to Internal Users 2015			
Training Area	Number of Events	Hours of Training	Participants
Control and Audit	30	693	1268

²⁷² Response to the Questionnaire, pgs. 33 – 34, *supra* note 12.

Legislation	49	405	2585
Planning	7	96	208
Development and Strengthening	47	337	2654
Computing	2	48	28
Occupational Health and Safety	11	65	124
Total	146	1644	6867

[445] The Committee finds that it does not have any other information showing the coverage and content of training that the Court of Accounts of the Republic provides to its personnel to ensure proper understanding of their responsibilities and functions as well as proper understanding of the ethical rules that govern their activities.

[446] In light of the foregoing, as regards instruction given to its personnel to ensure proper understanding of their responsibilities and functions, the Court of Accounts of the Republic should consider compiling and analyzing information that covers aspects such as the nature and periodicity of training imparted; responses to queries from public officials about the correct performance of their functions; and indicators to show that they have understood the information and are applying it in the performance of their functions.²⁷³ (See recommendation 1.4.17 in Chapter III of this Report)

[447] Furthermore, with respect to instruction to ensure proper understanding by its personnel of the ethical rules that govern their activities, the Court of Accounts of the Republic should consider preparing a summary of results in that regard that provides information on, such as the nature and periodicity of training imparted; responses to queries made by public servants in that regard; activities undertaken to determine if the goal of ensuring that ethical rules are understood has indeed been met; and measures or actions adopted by the authorities or entities responsible for ensuring that instruction is properly provided for that purpose and for seeing to it that the provisions and/or measures in place are applied. The Committee will make recommendations in that regard.²⁷⁴ (See recommendation 1.4.18 in Chapter III of this Report).

²⁷³ In its observations to the draft preliminary report, the country under review notes that in order to implement the recommendation, the entity's management adopted Decision No. 67 of February 6, 2017, creating a special committee which, among other things, will present a proposal that contains a mechanism for compiling information obtained from assessments carried out during training activities and courses offered by the Court of Accounts of the Republic for its personnel, http://www.oas.org/juridico/PDFs/Mesicic5_slv_Observaciones_InfPreliminar_ANEXO%2030.pdf

²⁷⁴ In its observations to the draft preliminary report, the country under review notes that in order to implement the recommendation the entity's management adopted Decision No. 7 of February 6, 2017, in which it instructed the Internal Audit Directorate to include in the Annual Operating Audit Plans the assessment and monitoring of training activities in order to determine if the goal has been met of ensuring that the rules of ethics and the measures or actions adopted for that purpose are properly imparted, as well as to monitor the proper application of those provisions and measures, http://www.oas.org/juridico/PDFs/Mesicic5_slv_Observaciones_InfPreliminar_ANEXO%2030.pdf

[448] With respect to the Access to Public Information Institute, in a document submitted subsequent to the on-site visit, the representatives of the Institute provided the following tables regarding the training provided to its personnel:²⁷⁵

TRAINING FOR PERSONNEL 2014

No.	Dates	Training	No. of Trained Persons
1	January 27 – 28, 2014	Internal Control System	14
2	January 29 – 30, 2014	Internal Control System	14
3	February 27, 2014	Law of the Court of Accounts of the Republic	5
4	February 28, 2014	Audit for Non Auditors	5
5	April 9 – 11, 2014	Conference 2: Discussions regarding document and archive management	10
6	March 25 – 27, 2014	Conference 1: Discussions regarding document and archive management	10
7	June 2 – 30, 2014	Government Accounting Course	2
8	June 4, 2014	LACAP and RELACAP Law	10
9	July 4, 2014	Document Organization	10
10	July 25, 2014	Law on Illicit Enrichment of Public Officials and Employees	20
11	October 4, 2014	Writing Techniques. FEPADE (USAID Cooperation)	29
12	October 21 and 23, 2014	"Course of Strengthening and Updating in Government Accounting"	1
13	November 11 – 18, 2014	Regulations, processes and management of the SAFI Computer Application Modules	2
14	November 24 – December 1, 2014	Regulations, processes and information generation from the SAFI computer application for auditors	1
15	December 1 – 5, 2014	Administration of Contracts and Purchase Orders according to the LACAP. Treasury	13
16	July 15 – September 15, 2014	Access to Public Information, Legal Framework and Implementation in Latin America, Ed. 9. OAS (virtual)	27
17	December 1 – 5, 2014	Open EGovernment for Citizens, INAP, GOBERNA, AECID. Cartagena.	1
18	August 12 – 13, 2014	Alternate Conflict Resolution. PGR	20

TRAINING FOR PERSONNEL 2015

No.	Dates	Topic	No. of Trained Persons
1	June 22, 2015	Data Protection in El Salvador	32
2	August 2015 – February 2016	Diploma in Government Ethics	2
3	August 13, 2015	Notification and investigation of occupational accidents	1
4	September 30, 2015	Government Auditing Standards Version 2014	2
5	October 6, 2015	Influenza Vaccination Campaign	35
6	October 12, 2015	Financial Advisory Workshop	14
7	October 26, 2015	Audit for Non Auditors	3
8	November 9, 2015	Health and Hygiene Habits	22
9	November 16, 2015	Law of the Court of Accounts as a Reference Framework for Administrative Control	3
10	November 17, 2015	Day of Comprehensive Health	27
11	November 21, 2015	Evacuation and Fire Training	10
12	November 23, 2015	Training on Required Public Information in the framework of the Law on Access to Public Information	22
13	November 26 – 27, 2015	First Aid Training	15
14	December 5, 2015	Training on teamwork and group cohesion	32
15	December 2015	Virtual training module on the Law on Access to Public Information	3
16	November 23, 2015	Implementation of new computer tools for document management of the IAIP	22
17	December 21, 2015	Introductory Talk on the Law on Access to Public Information	14

Courses, Diplomas, Masters	No. of Trained	Justification
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²⁷⁵ Complementary Information to the Questions Raised during On-Site Visit, pgs. 31 – 33, *supra* note 15.

and others	Persons	
48 hour training on Occupational Safety and Health	5	To comply with the requirements of the General Law on Prevention of Risks in Workplaces and its Regulations
Diploma in Administrative Law Sanctions 80 hours training	2	In order to contribute to the training of the staff of the Legal Unit in Administrative Law Sanctions, due to the increase in the number of procedures, which is why it is necessary to be at the forefront of new jurisprudential and doctrinal thinking in this area

TRAINING FOR PERSONNEL 2016

No.	Dates	Training	No. of Trained Persons
1	January 29, 2016	Access to Information Procedures with respect to required entities.	10
2	February 26, 2016	Interpretation and Implementation of the Civil Service Law	15
3	March 1, 2016	Sexual Orientation Bullying, Gender Identity and/or Expression	23
4	April 18, 2016	Training on teamwork and group cohesion: Follow-up	37
5	April 29, 2016	Google Tools	25
6	May 31, 2016	Electronic Signature: Benefits and Uses of the Law	17
7	June 1, 2016	Discussion on life insurance and medical health insurance	22
8	June 24, 2016	Empathy as a communication tool in the workplace	21
9	July 1, 2016	Institutional Policy on Document and Archive Management	22
10	July 21, 2016	Contract Administration	15
11	July and August 2016	Diploma of Management Skills	13

[449] The Committee finds that it does not have any other information showing the coverage and content of training that the Court of Accounts of the Republic provides to its personnel to ensure proper understanding of the ethical rules that govern their activities.

[450] In light of the foregoing, with respect to instruction to ensure proper understanding by its personnel of the ethical rules that govern their activities, the Access to Public Information Institute should consider preparing a summary of results in that regard that provides information on, such as the nature and periodicity of training imparted; responses to queries made by public servants in that regard; activities undertaken to determine if the goal of ensuring that ethical rules are understood has indeed been met; and measures or actions adopted by the authorities or entities responsible for ensuring that

instruction is properly provided for that purpose and for seeing to it that the provisions and/or measures in place are applied. The Committee will make recommendations in that regard. (See recommendation 1.4.19 in Chapter III of this Report)

1.4 Conclusions and recommendations

[451] Based on the review conducted regarding the implementation of by the Republic of El Salvador of Article III, paragraph 3 of the Convention, the Committee offers the following conclusions and recommendations:

[452] The Republic of El Salvador 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.

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

- 1.4.1 Provide the Government Ethics Tribunal and the Access to Public Information Institute 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 their responsibilities and the ethical rules governing their activities (See paragraphs 421 and 433 of section 1.2 of Chapter III of this Report).
- 1.4.2 Establish a formal induction training program for the newly hired personnel of the Government Ethics Tribunal, which include courses offered and a timetable (See paragraph 425 of section 1.2 of Chapter III of this Report).
- 1.4.3 Set out as an activity, in the Annual Operation Plan, induction training for the Human Resources Unit of the Government Ethics Tribunal (See paragraph 426 of section 1.2 of Chapter III of this Report).
- 1.4.4 Adopt an updated Induction Manual for the Government Ethics Tribunal (See paragraph 427 of section 1.2 of Chapter III of this Report).
- 1.4.5 Adopt an updated Procedure Manual for the Induction of Newly Entered Personnel of the Court of Accounts of the Republic (See paragraph 428 of section 1.2 of Chapter III of this Report).
- 1.4.6 Establish an Annual Training Plan that identifies the training needed by the Court of Account, containing courses offered and a timetable (See paragraph 429 of section 1.2 of Chapter III of this Report).
- 1.4.7 Establish a formal induction training program for the newly hired personnel of the Court of Accounts of the Republic, which include courses offered and a timetable, which also contains provisions and other measures that make all individuals who enter the Court of Accounts of the Republic aware of the risks of corruption inherent in the performance of their functions, as well as the consequences and penalties for becoming involved in corruption (See paragraph 430 of section 1.2 of Chapter III of this Report).

- 1.4.8 Establish a structured training program of courses offered by the Court of Accounts of the Republic to its personnel on ethical rules that govern its activities, which should include modules on the Code of Ethics and Conduct of this institution (See paragraph 431 of section 1.2 of Chapter III of this Report).
- 1.4.9 Prepare guidelines for the personnel of the Court of Accounts of the Republic, in order to make them aware of their responsibilities and functions and on the ethical rules that govern their activities (See paragraph 432 of section 1.2 of Chapter III of this Report).
- 1.4.10 Impart training to personnel of the Access to Public Information Institute to ensure a proper understanding of their responsibilities whenever there is a change of position (See paragraph 434 of section 1.2 of Chapter III of this Report).
- 1.4.11 Prepare an Annual Training Plan for the Access to Public Information Institute, which sets out the manner this Institute identifies its training needs, as well as containing the courses offered and a timetable (See paragraph 435 of section 1.2 of Chapter III of this Report).
- 1.4.12 Establish a formal induction training program for the newly hired personnel of the Access to Public Information Institute, which include courses offered and a timetable, which also contains provisions and other measures that make all individuals who enter the Access to Public Information Institute aware of the risks of corruption inherent in the performance of their functions, as well as the consequences and penalties for becoming involved in corruption (See paragraph 436 of section 1.2 of Chapter III of this Report).
- 1.4.13 Establish a structured training program of courses offered by the Access to Public Information Institute to its personnel on ethical rules that govern its activities (See paragraph 437 of section 1.2 of Chapter III of this Report).
- 1.4.14 Prepare guidelines for the personnel of the Access to Public Information Institute, in order to make them aware of their responsibilities and functions and on the ethical rules that govern their activities (See paragraph 438 of section 1.2 of Chapter III of this Report).
- 1.4.15 Establish an institutional Code of Ethics for the Access to Public Information Institute (See paragraph 439 of section 1.2 of Chapter III of this Report).
- 1.4.16 Compile and analyze information on instruction imparted to newly hired personnel of the Government Ethics Tribunal for ensuring that they have a proper understanding of their responsibilities and functions. That information could cover aspects such as the nature and periodicity of training imparted; numbers of officials trained; and indicators to show that they have understood the information and are applying it in the performance of their functions (See paragraph 443 of section 1.3 of Chapter III of this Report).
- 1.4.17 Compile and analyze information on instruction imparted to the personnel of the Court of Accounts of the Republic for ensuring they have a proper understanding of their responsibilities and functions. That information could cover aspects such as the nature and periodicity of training imparted; responses to queries from public officials about the correct performance of their functions; and indicators to show that they have understood the information and are applying it in the performance of their functions (See paragraph 446 of section 1.3 of Chapter III of this Report).

- 1.4.18 Prepare a summary of results obtained from instruction imparted to personnel in the Court of Accounts of the Republic to ensure proper understanding of the ethical rules that govern their activities, providing information on, for example: the nature and periodicity of training imparted; responses to queries made by public servants in that regard; activities undertaken to determine if the goal of ensuring that ethical rules are understood has indeed been met; and measures or actions adopted by the authorities or entities responsible for ensuring that instruction is properly provided for that purpose and for seeing to it that the provisions and/or measures in place are applied (See paragraph 447 of section 1.3 of Chapter III of this Report).
- 1.4.19 Prepare a summary of results obtained from instruction imparted to personnel of the Access to Public Information Institute to ensure proper understanding of the ethical rules that govern their activities, providing information on, for example: the nature and periodicity of training imparted; responses to queries made by public servants in that regard; activities undertaken to determine if the goal of ensuring that ethical rules are understood has indeed been met; and measures or actions adopted by the authorities or entities responsible for ensuring that instruction is properly provided for that purpose and for seeing to it that the provisions and/or measures in place are applied (See paragraph 450 of section 1.3 of Chapter III of this Report).

2. 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

[454] 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.²⁷⁶

[455] In this respect, the Committee observes that in a document presented by a group of civil society organizations, the El Salvador Civil Society Independent Report (*Informe Independiente de Sociedad Civil de El Salvador*), it noted that the studies have been carried out in this respect in previous government administrations, and these studies concluded that in all institutions, job posts are in a disarray, and are handled discretionally.²⁷⁷

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

²⁷⁶ Response to the Questionnaire, pg. 39, *supra* note 12.

²⁷⁷ Civil Society Independent Report, pg. 13, *supra* note 9.

[456] In its Response to the Questionnaire, the country under review notes that it does not establish objective and transparent criteria for determining the compensation of public servants. This is determined by each public body and according to its budget.²⁷⁸

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

[457] With respect to the provisions that refer to the establishment of objective and transparent criteria for determining the compensation of public servants, the Committee notes the absence of a comprehensive system establishing objective and transparent criteria for determining civil servant remunerations.

[458] Given the foregoing, the country under review should consider establishing a legal framework that sets out objective and transparent criteria to determine the remuneration for all public servants in the Public Administration, that is, those in the Legislative, Executive and Judicial Branch, autonomous and deconcentrated institutions, municipalities and other institutions of the State. That legal framework may include the appointment or establishment of a governing body to oversee the remunerations. The Committee will make recommendations in that regard. (See sole recommendation in Chapter III of this Report).

[459] In this respect, in a document presented by a group of civil society organizations, the El Salvador Civil Society Independent Report (*Informe Independiente de Sociedad Civil de El Salvador*), it noted that no objective and transparent criteria for determining civil servant remunerations has been established. At best, there are salary ranges for certain posts, but there is still discretionality in assigning the remuneration in some institutions, in particular the autonomous entities.²⁷⁹ It also noted that in some cases, chauffeurs of some institutions enjoy a better salary and benefits than some in technical positions. It further notes that this disparity is a risk factor for the migration of public officials from their institutions in search of a better income. This group also notes that at the local level, the disparity is much more evident between the salaries and benefits of public servants, and to its knowledge, only in some institutions such as the National Civil Police, the Ministry of Health, Education and the University of El Salvador, has a salary scale been established, as a mechanism to establish the remuneration of their employees.²⁸⁰

2.2.3. Conclusions and Recommendations

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

[461] The Republic of El Salvador has not 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.

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

²⁷⁸ Response to the Questionnaire, pg. 39, *supra* note 12.

²⁷⁹ Civil Society Independent Report, pg. 17, *supra* note 9.

²⁸⁰ *Ibid.*, pgs. 14 – 15.

- Consider establishing a legal framework that sets out objective and transparent criteria to determine public servant remunerations for the entire Public Administration, that is, those in the Legislative, Executive and Judicial Branch, autonomous and deconcentrated institutions, municipalities and other institutions of the State. (See paragraph 458 in Section 2.2.2 in Chapter III of this Report.)

IV. BEST PRACTICES

[463] In keeping with section VI of 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, the following describes the best practices identified by the country under review that it has wished to share with the other member countries of the MESICIC in the belief that they could be of benefit to them.

[464] – **Staffing and Selection of Personnel System (*Sistema de Dotación y Selección de Personal (Reclutamiento y Selección de Personal)*)**,²⁸¹ which aims to professionalize the civil service.

[465] It is considered a best practice because it seeks to reduce clientelism and corruption in the management of human talent in the public administration, in all its positions and segments, whether they are administrative, technical, or managerial posts.

[466] – **Reforms to the Civil Service Law or New Legal Framework, focused on the implementation of the Administrative Career Path (*Reformas a la Ley de Servicio Civil o Nuevo Marco Legal, enfocadas a la implementación de la Carrera Administrativa*)**,²⁸² which seeks to start, or form the basis to achieve the objectives that are raised in the recommendations given by the MESICIC.

[467] It is considered a best practice because it allows for the development of best practices for making transparent government hiring, update the legal framework and establish and implement regulations thereof, as well as in complying with the MESICIC recommendations.

[468] – **Implementation of Procedures for the Recruitment and Hiring of Personnel for the Ministry of Foreign Affairs of the Republic of El Salvador (*Implementación de Procedimientos de Reclutamiento y Contratación de Personal por el Ministerio de Relaciones Exteriores de la República de El Salvador*)**,²⁸³ which seeks to ensure the incorporation or hiring of people who meet the profiles suitable to fill the positions assigned.

[469] It is considered a best practice because it allows for the implementation of procedures for the execution of a transparent selection process that results in the incorporation of people with the competencies required by the post and for the carrying out the functions of the post.

²⁸¹ See Response to the Questionnaire, pgs. 116 – 119, *supra* note 12.

²⁸² *Ibid*, pgs. 119 - 121.

²⁸³ *Ibid*, pgs. 121 - 122.

ANNEX

AGENDA FOR THE ON-SITE VISIT TO EL SALVADOR

<u>Monday, October 17, 2016</u>	
5:00 – 6:00 p.m. <i>Sheraton Presidente San Salvador Hotel</i>	Coordination meeting of representatives of the country under review, the member states of the subgroup, and the Technical Secretariat
6:00 – 6:30 p.m. <i>Sheraton Presidente San Salvador Hotel</i>	Coordination meeting between representatives of the members states of the subgroup and the Technical Secretariat
<u>Tuesday, October 18, 2016</u>	
9:00 a.m - 12:30 p.m. <i>Casa Presidencial (Official residence of the President of El Salvador)</i>	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional associations, academics and researchers
9:00 – 11:00 a.m.	<p><u>First meeting:</u></p> <ul style="list-style-type: none"> • Contents of the El Salvador Civil Society Independent Report <p><u>Participants:</u></p> <p>National Development Foundation (<i>Fundación Nacional para el Desarrollo (FUNDE)</i>), <i>El Salvador Chapter of Transparency International (TI)</i></p> <p>Jessica Guadalupe Estrada de Soriano</p> <p>Claudia Margarita Marchesini</p> <p>Elmer Jiovanni Flores Fuentes</p> <p>Social Initiative for Democracy (<i>Iniciativa Social para la Democracia (ISD)</i>)</p> <p>Ramón Villalta</p> <p>Oscar Oswaldo Campos Molina</p> <p>Study Foundation for the Application of Law (<i>Fundación de Estudios para la Aplicación del Derecho (FESPAD)</i>)</p> <p>University of El Salvador (UES)</p>

11:00 a.m. – 12:30 p.m.	<p><u>Second meeting:</u></p> <ul style="list-style-type: none"> • Follow-up on recommendations from the second round regarding systems of government procurement of goods and services: <p><u>Suggested participants:</u></p> <p>Chamber of Commerce and Industry of El Salvador (<i>Cámara de Comercio e Industria de El Salvador</i>)</p> <p>Marvin Denis Portillo Cuellar</p> <p>Luis Carlos Golcher Mejía</p> <p>Luis Federico Hernández Aguilar</p> <p>National Private Business Association (<i>Asociación Nacional de la Empresa Privada</i>)</p> <p>Arnoldo Jiménez</p> <p>Javier Argueta</p>
12:30 – 2:00 p.m.	Lunch
2:00 – 5:00 p.m.	Meeting with representatives of the <u>Government Ethics Tribunal</u>
	<p><u>Panel 1:</u></p> <ul style="list-style-type: none"> • Follow-up on recommendations from the second round regarding protection systems for those who report acts of corruption • Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities <p><u>Participants:</u></p> <p>Rodrigo Alberto Molina</p> <p>Lesvia Solas de Estévez</p> <p>Moris Edgardo Landaverde</p> <p>Ada Melvin Villalta de Chacón</p> <p>Jennyffer Giovanna Vega Hércules</p>
5:00 – 5:30 p.m.	<u>Informal Meeting</u> with representatives of the member states of the subgroup and the Technical Secretariat.
<u>Wednesday, October 19, 2016</u>	
9:00 a.m. – 12:00 p.m. <i>Casa Presidencial</i> <i>(Official residence of</i>	Meeting with representatives of the <u>Court of Accounts</u>

<i>the President of El Salvador)</i>	
	<p><u>Panel 2:</u></p> <ul style="list-style-type: none"> • Follow-up on recommendations from the second round regarding government hiring systems • Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities
	<p><u>Participants:</u></p> <p>Mario Alberto Cáceres Chinchilla Samuel Alfredo Núñez Chávez Ovidio Antonio Seoane Aguirre Karen Yamileth Cruz Pineda</p>
12:00 – 2:00 p.m.	Lunch
2:00 – 5:00 p.m. <i>Casa Presidencial (Official residence of the President of El Salvador)</i>	Meeting with representatives of the <u>Access to Public Information Institute</u>
	<p><u>Panel 3:</u></p> <ul style="list-style-type: none"> • Follow-up on recommendations from the second round regarding systems of government hiring and government procurement of goods and services • Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities
	<p><u>Participants:</u></p> <p>Doris Elizabeth Cabrera Jose Juan Marroquín René Francisco Valiente César Mauricio González</p>
5:00 – 6:00 p.m.	<u>Informal meeting</u> with representatives of the member states of the subgroup and the Technical Secretariat
<u>Thursday, October 20, 2016</u>	

<p>9:00 a.m. – 12:00 p.m.</p> <p><i>Casa Presidencial</i> (Official residence of the President of El Salvador)</p>	<p>Meetings with public authorities</p>
	<p><u>Panel 4:</u></p> <ul style="list-style-type: none"> • Follow-up on general recommendations from the second round and those regarding government hiring systems <p><u>Participants:</u></p> <p><u>Civil Service Tribunal</u> Claudia Noemí Medina Rodríguez Tomas Everaldo Portillo Grande Favio Aníbal Rivera Portillo</p> <p><u>Municipal Development Institute</u> Werner Boanerger Agilar Luis Alexei Gálvez Salguero Cyndi Carolina Serrano Miguel Alexander Ruano Gutiérrez</p> <p><u>Department of Human Resources of the Legislative Assembly</u> Javier Enrique Rivas Celia López Michelle Montalvo</p> <p><u>Office of the Attorney General of the Republic</u> Edwin Arturo Molina Lopez Ana Leyda Salomón de Padilla Sergio Leonel Cuenca Chávez Angela Roxana Rivera de Domínguez</p>
<p>12:00 – 1:30 p.m.</p>	<p>Lunch</p>
<p>1:30 – 3:30 p.m.</p> <p><i>Casa Presidencial</i> (Official residence of the President of El Salvador)</p>	<p>Meeting with representatives of the <u>Government Procurement and Contracting Regulatory Unit</u></p>

<i>Salvador)</i>	
	<p><u>Panel 5:</u></p> <ul style="list-style-type: none"> • Follow-up on general recommendations from the second round and those regarding systems of government procurement of goods and services:
	<p><u>Participants:</u></p> <p>Ludis Jazmin Arteaga Ana Edelmira Montejo de Molina Christian Obdulio Guardado</p>
3:30 – 5:30 p.m. <i>Casa Presidencial</i> <i>(Official residence of the President of El Salvador)</i>	<u>Meeting with representatives of the Technical and Planning Secretariat of the Office of the President</u>
	<p><u>Panel 6:</u></p> <ul style="list-style-type: none"> • Follow-up on recommendations from the second round regarding government hiring systems
	<p><u>Participants:</u></p> <p>Ernesto Zuniga Karla Majano de Palma</p>
5:30 – 6:00 p.m.	<u>Informal meeting</u> with representatives of the member states of the subgroup and the Technical Secretariat
6:00 p.m.	<u>Final Meeting</u> with representatives of the country under review, the members 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 EL SALVADOR

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