

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

FINAL REPORT

(Adopted at the September 13, 2013 plenary session)

## SUMMARY

This report contains the comprehensive review of the implementation in Colombia of Article III, paragraph 9 of the Inter-American Convention against Corruption, corresponding to “high-level oversight bodies, with a view to developing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt practices,” which was selected by the Committee of Experts of the MESICIC for the Fourth Round; the best practices reported by those bodies; and monitoring of the implementation of the recommendations made to Colombia in the First 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 Fourth 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 conducted on the basis of Colombia’s reply to the questionnaire; the information provided by civil society organizations; the information gathered by the Technical Secretariat; and a new and important source of information, namely the on-site visit conducted between April 8 and 10, 2013 by members of the Colombia review subgroup, composed of Costa Rica and Guatemala, with the support of the Technical Secretariat. On that occasion, it was possible to explain, clarify and supplement the information provided by Colombia and to hear the views of civil society organizations and the private sector, academics, and researchers on topics of use for the analysis, all of which helped to ensure that the Committee has full and objective information on those matters.

As envisaged in the methodology for the Fourth Round, the analysis of the high-level oversight bodies aimed to determine whether they had a legal framework, whether it was adequate for the purposes of the Convention, and whether objective results are available. Bearing its observations in mind, the Committee then formulated relevant recommendations to the country under review.

The Colombian high-level oversight bodies analyzed in this report are: the Supreme Court of Justice (CSJ); the Higher Council of the Judiciary (CSJd); the Office of the General Prosecutor (*Fiscalía General de la Nación* - FGN); the Office of the Attorney General (*Procuraduría General de la Nación* - PGN); and the Office of the Comptroller General of the Republic (CGR).

Some of the recommendations regarding the aforementioned bodies formulated to Colombia for its consideration were geared to achieving purposes such as the following:

With respect to the CSJ, that its Criminal Appeals Division should have its own judicial police; training specifically related to the investigation and prosecution of acts of corruption; an information system that would enable it to access the information of other entities and thereby facilitate its performance of that function; analysis of the possible causes underlying the prescription, at the appeals stage, of criminal proceedings dealing with crimes against public administration and those underlying the adoption of decisions not to handle cases (*decisiones inhibitorias*) in “sole instances,” with a view to identifying challenges and recommending corrective measures, if applicable; and that the reports on its work be posted on its website.

With respect to the CSJd: adopt appropriate measures to render permanent the temporary positions established to lower the backlog of criminal justice cases; provide training specifically related to the

investigation and prosecution of acts of corruption, through the “Rodrigo Lara Bonilla” Judicial Academy; promote implementation of the Technological Strategic Plan for the Judiciary - PET and of the Justice Services Strengthening Project; achieve a larger budget appropriation for the Judiciary; strengthen interinstitutional cooperation to make additional use of the “transferred evidence” mechanism; prepare more detailed statistical data on the disciplinary proceedings brought against officers of the judicial branch and lawyers; and conduct an analysis of the possible reasons underlying the adoption of decisions not to handle cases (*medidas inhibitorias*) or to declare disciplinary proceedings for corrupt acts prescribed in such proceedings, in order to identify measures for improving them, if applicable.

With respect to the FGN: include the National Anti-Corruption Unit in the organic structure established for the FGN by law; strengthen inter-agency coordination with other organs performing judicial police functions; strengthen interinstitutional cooperation to make additional use of the “transferred evidence” mechanism, as well as adopt the pertinent measures for the transfer of evidence among the various oversight bodies conducting criminal, fiscal, and disciplinary proceedings; fill the regulatory gap regarding the administrative career system; boost the Technical Research Corps; and conduct an analysis of the possible reasons for the adoption of decisions not to handle cases (*medidas inhibitorias*), for the very low number of judgments, and the duration of termination of ownership proceedings in corruption cases, in order to identify measures for improving the effectiveness of the mechanism, if applicable.

With respect to the PGN: strengthen inter-agency cooperation with other oversight bodies; strengthen its preventive function; strengthen inter-agency cooperation to make the “transferred evidence” option more operational; endow the institution with the funds it need to conduct competitions for the positions that the Constitutional Court recently ordered to be filled in that manner, and to be able to provide anti-corruption training and promote citizen engagement with the exercise of social oversight; and adopt appropriate corrective measures to avoid declaring that disciplinary proceedings have prescribed because of the statute of limitations.

With regard to the CGR: strengthen inter-agency cooperation with other entities; strengthen the coordination of actions between officials performing judicial police functions and the FGN; strengthen inter-agency cooperation so material and physical evidence can be transferred between fiscal proceedings and criminal trials; adapt its structure and staffing to the new regulatory framework for fiscal oversight; and recover for the Treasury more of the monies that it should receive as a result of fiscal liability proceedings.

The best practices that Colombia reported on essentially have to do with a “National Prioritization and Context Unit,” established in the FGN, “which changes the paradigm for investigation, which now no longer examines isolated deeds, but rather macro crimes”; with use of oral proceedings in the PGN’s disciplinary proceedings, with the efficient and effective outcome that officials involved in acts of corruption or misconduct are punished at the time; with the Open Government Index (IGA), which is a synthetic indicator that measures compliance with strategic anticorruption provisions; with the Technological Infrastructure System of the Disciplinary Chamber of the Higher Council of the Judiciary; with the implementation of public hearings for drawing up lists of eligible candidates for justices of the Supreme Court and of the Council of State; with an agreement between the CGR and the CSJd’s Administrative Chamber to strengthen interinstitutional cooperation in the fight against corruption; with strengthening the judicial career; and with streamlining the processing of trials for the impeachment of members of Congress through oral proceedings at public hearing.

With regard to follow-up on the recommendations formulated to Colombia in the First Round and which, according to the Committee in its Second and Third Round reports, required additional attention, based on the methodology for the Fourth Round and bearing in mind the information provided by Colombia 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 no longer applied. A list of those still outstanding was also prepared, and has been included in Annex 1 of the report.

As to progress made with the implementation of those recommendations, of particular note are the measures adopted to train government officials in their responsibility to report acts of corruption and those adopted to ensure that subnational entities take advantage of advances made in “connectivity” and that national entities take advantage of information technologies; and the provisions of the new Anti-Corruption Statute, regarding such matters as the inclusion in basic and secondary school curricula and in their Institutional Educational Project of pedagogical content geared to forging a culture of respect for the law and care for communal property, and the prohibition of reprisals against civil servants who denounce acts of corruption; and the establishment of the National Ethics Commission.

Some of the recommendations formulated to Colombia in the First Round that are still outstanding aim, for instance, at: preventing the crime of embezzlement; boosting the effectiveness of internal audit and fiscal oversight systems to avoid the “diversion of budgetary funds”; optimizing systems for analyzing the content of sworn statements of net worth, so as to detect and prevent conflicts of interest and detect possible cases of illicit enrichment; regulating the conditions, procedures and other appropriate terms under which those statements may be disclosed; adopting measures to promote, facilitate and consolidate or ensure the effectiveness of mechanisms for consultation; providing the necessary protection for those who denounce acts of corruption; and developing procedures and indicators for verifying follow-up to the recommendations put to Colombia in that Round.

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

**REPORT ON IMPLEMENTATION IN THE REPUBLIC OF COLOMBIA OF THE  
CONVENTION PROVISION SELECTED FOR REVIEW IN THE FOURTH ROUND, AND  
ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY  
IN THE FIRST ROUND <sup>1</sup>**

**INTRODUCTION**

**1. Content of the Report**

[1] This report presents, first, a comprehensive review of implementation in the Republic of Colombia of the provision of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for the Fourth Round. That provision appears in Article III (9) of the Convention, pertaining to “Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts.”

[2] Second, the report will allude to the best practices that the country under review has voluntarily expressed its wish to share in regard to the oversight bodies under review in this report.

[3] Third, as agreed by the Committee of Experts of the MESICIC at its Eighteenth Meeting, in compliance with recommendation 9(a) of the Third Meeting of the Conference of States Parties to the MESICIC, this report will address the follow-up of implementation of the recommendations that the Committee of Experts of the MESICIC formulated to the Republic of Colombia in the report it adopted for that country in the First Round and which in its opinion required additional attention in the reports it adopted for that country in the Second and Third Rounds, which are available at: [www.oas.org/juridico/spanish/col.htm](http://www.oas.org/juridico/spanish/col.htm)

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

[4] According to the official records of the OAS General Secretariat, the Republic of Colombia deposited its instrument of ratification of the Inter-American Convention against Corruption on January 19, 1999.

[5] In addition, the Republic of Colombia 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 THE INFORMATION RECEIVED**

**1. Response of the Republic of Colombia**

[6] The Committee wishes to acknowledge the cooperation that it received, throughout the review process, from the Republic of Colombia and in particular from the Secretariat for Transparency of the

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<sup>1</sup> This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on September 13, 2013, at its Twenty Second Meeting, held at OAS Headquarters, September 9-13, 2013.

Office of the President of the Republic and from the Ministry of Foreign Affairs, which was evidenced, inter alia, in the Response to the Questionnaire and in the constant willingness to clarify or complete its contents, and in the support for the on-site visit to which the following paragraph of this report refers. Together with its response, the Republic of Colombia sent the provisions and documents it considered pertinent. That response, and those provisions and documents may be consulted at: [http://www.oas.org/juridico/spanish/mesicic4\\_col.htm](http://www.oas.org/juridico/spanish/mesicic4_col.htm)

[7] The Committee also notes that the country under review gave its consent for the on-site visit, in accordance with provision 5 of the *Methodology for Conducting On-Site Visits*.<sup>2</sup> As members of the review subgroup, the representatives of Costa Rica and Guatemala conducted the on-site visit from April 8 through 10, 2013, 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 those meetings is appended thereto, in keeping with provision 34 of the *Methodology for Conducting On-Site Visits*.

[8] For its review, the Committee took into account the information provided by the Republic of Colombia up to April 10, 2013, the date on which the aforementioned visit ended, as well as that provided and requested by the Secretariat and the members of the review subgroup to carry out its functions, in keeping with the *Rules of Procedure and Other Provisions*; the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round*; and the *Methodology for Conducting On-Site Visits*. This information may be consulted at the following webpage: [http://www.oas.org/juridico/spanish/mesicic\\_rondas.htm](http://www.oas.org/juridico/spanish/mesicic_rondas.htm)

## **2. Information received from civil society organizations and/or, inter alia, professional associations; academics and researchers**

[9] The Committee also received, within the time period established in the schedule for the Fourth Round, documents from the civil society organization “Corporación Transparencia por Colombia” (Transparency International’s Colombian Chapter) that were remitted by that organization in accordance with Article 34(b) of the Committee’s Rules of Procedure.<sup>3</sup>

[10] Furthermore, during the on-site visit to the country under review from April 8 to 10, 2013, information was gathered from other civil society and private sector organizations, 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.

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<sup>2</sup> Document SG/MESICIC/doc.276/11 rev. 2, available at: [www.oas.org/juridico/spanish/met\\_insitu.pdf](http://www.oas.org/juridico/spanish/met_insitu.pdf)

<sup>3</sup> These documents were received electronically on December 12, 2012 and can be consulted on the MESICIC website, in the section corresponding to Colombia (Fourth Round) [http://www.oas.org/juridico/spanish/mesicic4\\_col.htm](http://www.oas.org/juridico/spanish/mesicic4_col.htm)

## **II. REVIEW, CONCLUSIONS, AND RECOMMENDATIONS REGARDING THE STATE PARTY'S IMPLEMENTATION OF THE CONVENTION PROVISION SELECTED FOR THE FOURTH ROUND.**

### **OVERSIGHT BODIES, WITH A VIEW TO IMPLEMENTING MODERN MECHANISMS FOR PREVENTING, DETECTING, PUNISHING, AND ERADICATING CORRUPT ACTS (ARTICLE III (9) OF THE CONVENTION)**

[11] The Republic of Colombia has a set of oversight bodies charged with developing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts, including, in particular, the Supreme Court of Justice (CSJ); the Higher Council of the Judiciary (CSJd); the Office of the General Prosecutor (*Fiscalía General de la Nación* - FGN); the Office of the Attorney General (*Procuraduría General de la Nación* - PGN); and the Office of the Comptroller General of the Republic (CGR).

[12] The following is a brief description of the purposes and functions of the five bodies selected by the Republic of Colombia that are analyzed in this report.

[13] - The Supreme Court of Justice (CSJ), which, according to Article 234 of the Political Constitution (PC) [Tr. English text partially cited here can be found at: [http://confinder.richmond.edu/admin/docs/colombia\\_const2.pdf](http://confinder.richmond.edu/admin/docs/colombia_const2.pdf)] is the highest court of ordinary jurisdiction, with, *inter alia*, and pursuant to Article 235 of the PC, powers to: adjudicate as a court of appeal; try the President of the Republic or whoever replaces him and the senior officials covered by Article 174 of the PC for any punishable deed imputed to them, in accordance with Article 175, paragraphs Nos. 2 and 3, of the PC; investigate and try members of Congress; and to try, following charges brought by the General Prosecutor, the Deputy General Prosecutor, or their delegates from the prosecutors' office before the Supreme Court of Justice, the senior officials mentioned in Article 235.4 of the PC for punishable deeds with which they are charged.

[14] - The Higher Council of the Judiciary (CSJd), which, according to Article 256 of the Political Constitution, has, *inter alia*, power to: administer the judicial career service; draw up lists of candidates for judicial appointments and send them to the body responsible for making the appointments; examine the behavior and sanction the errors of officials of the judicial branch as well as those of attorneys practicing their profession in cases stipulated by law; supervise the productivity of judicial bodies and offices; draft the budgetary bill of the judicial branch to be transmitted to the government and implement it as approved by Congress; and settle jurisdictional conflicts between different organs.

[15] The Office of the General Prosecutor (FGN), which, according to Article 250 of the Political Constitution (PC), is responsible, *ex officio* or following an accusation, special petition, or complaint, for investigating facts that might constitute crimes and, where applicable, press charges against the suspects before the competent judges of the Republic.

[16] - The Office of the Attorney General - PGN, in which, pursuant to Article 277 of Political Constitution, the Attorney General's functions shall include, *inter alia*, supervising compliance with the Constitution, the laws, judicial decisions, and administrative decrees; supervising at the highest level the official conduct of those who hold public office, including those popularly elected; exercising its preferential right to impose disciplinary authority; initiating the appropriate investigations and imposing the appropriate sanctions in accordance with the law; and intervening in

legal proceedings before the judicial or administrative authorities when it becomes necessary to defend the legal order, the public domain, or fundamental rights and guarantees.

[17] - The Office of the Comptroller General of the Republic, whose function, pursuant to Article 267 of the Political Constitution, is to exercise fiscal control, overseeing fiscal management of the administration and of individuals or entities that handle funds or assets belonging to the nation.

## **1. SUPREME COURT OF JUSTICE (CSJ)**

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

[18] The Supreme Court of Justice is subject to a set of provisions making up its legal framework as well as other measures that refer, *inter alia*, to the following:

[19] - As regards its objective and function, according to Article 234 of the Political Constitution (PC), the Supreme Court of Justice (CSJ) is the highest court of ordinary jurisdiction,<sup>4</sup> with, *inter alia*, and pursuant to Article 235 of the PC, powers to: adjudicate as a court of appeal; try the President of the Republic or whoever replaces him and the senior officials covered by Article 174 of the PC for any punishable deed imputed to them, in accordance with Article 175, paragraphs Nos. 2 and 3, of the PC; investigate and try members of Congress; and to try, following charges brought by the General Prosecutor, the Deputy General Prosecutor, or their delegates from the prosecutors' office before the Supreme Court of Justice, the senior officials mentioned in Article 235.4 of the PC for punishable deeds with which they are charged.<sup>5</sup>

[20] Article 234 of the Political Constitution (PC) establishes that the CSJ will be composed of an uneven number of judges determined by law and that the law will divide the Court into divisions (or chambers, *salas*), stipulate to each of them the matters that it has to take cognizance of separately, and determine those matters which must be heard by the entire bench.

[21] As regards the judges of the Supreme Court of Justice, Article 231 of the PC establishes that they will be appointed by that body from lists drawn up by the Higher Council of the Judiciary (CSJd)<sup>6</sup>, while Article 232 of the PC establishes the requirements to be met for such appointment. For its part, Article 233 of the PC stipulates that the judges of the CSJ will be elected for a period of eight years. They cannot be reelected and will remain in office as long as they display good behavior, perform satisfactorily, and have not reached the age of mandatory retirement.

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<sup>4</sup> Article 30 of Law 906 of 2004 contemplates as exceptions to this jurisdiction, crimes committed by members of the security forces on active duty and in relation to such service and matters addressed by the indigenous courts.

<sup>5</sup> The senior officials referred to above are: Cabinet ministers, the Attorney General, the Ombudsperson (*Defensor del Pueblo*), officers of the "Public Ministry" (Tr.: in Colombia this term comprises the Attorney General, the Ombudsman, certain public prosecutors, municipal representatives and certain other agents) before the Court, the Council of State, and the courts, the directors of administrative departments, the Comptroller General of the Republic, ambassadors and heads of diplomatic and consular missions, governors, judges, and generals and admirals in the security forces.

<sup>6</sup> Article 5 of Law 270 of 1996 provides as follows: "in order to draw up the lists referred to in this article, the Higher Council of the Judiciary shall invite all the attorneys who meet the requirements and who aspire to become judges of the Court to submit their curricula vitae and evidence that they meet the minimum qualifications required. In establishing the list, the Higher Council of the Judiciary shall indicate and explain the reasons for including those candidates in the list."

[22] Pursuant to Article 178.3 and 4 of the PC, it shall be incumbent upon the Chamber of Representatives to bring charges before the Senate, when constitutional reasons may exist, against ... the judges of the Supreme Court of Justice ... and to take cognizance of reports and complaints that may be presented before it by the General Prosecutor or by individuals against specific officials and, if warranted, to bring charges on that basis before the Senate.

[23] Article 5 of Law 270 of 1996 provides that the Judiciary is independent and autonomous in carrying out its constitutional and legal function of administering justice and that no superior in the administrative or jurisdictional hierarchy may insinuate, demand, determine, or advise a judicial officer with a view to imposing decisions or criteria to be adopted in his or her rulings.

[24] Article 11.1 of Law 270 of 1996 establishes that the CSJ has competence throughout the national territory. and Article 16 of that law provides that it shall perform its functions through five divisions (*salas*), which shall be made up of the following members: The Court sitting *en banc*: all the Judges of the Court (*Magistrados de la Corporacion*); the Government Division: the President, Vice President, and the Presidents of each of the specialized divisions; the Civil and Agrarian Appeals Division: seven judges; the Labor Appeals division: seven judges; and the Criminal Appeals Division: nine judges.

[25] As regards the way decisions are adopted, Article 54 of Law 270 of 1996 provides that all decisions to be taken by the courts sitting *en banc* or by any of their divisions or sections shall require for their deliberation and adoption the attendance and vote of the majority of the members of the court, division, or section. Article 56 adds that the internal Rules of Procedure of the CSJ shall determine, inter alia, the way in which the rulings, concepts or opinions adopted shall be issued and signed, and that those Rules of Procedure shall also include a deadline for indicating in the dissenting vote or explanation of the vote the reasons for the judges dissenting from the majority vote, without prejudice to disclosure of the judgment.

[26] It is incumbent upon the Criminal Appeals Division to hear and decide on extraordinary appeals to the Supreme Court against appellate court decisions in respect of any kind of crime, including those relating to corruption, under the terms of Article 181 of Law 906 of 2004, which provides for such extraordinary appeals when it is considered that fundamental guarantees of the parties have been impaired due to: (i) Failure to apply, erroneous interpretation, or improper application of a constitutional or legal norm pertaining to the “constitutional bloc” (Tr. set of provisions with the same legal force as those of the Colombian Constitution) invoked to settle the case; (ii) Disregard of the structure of due process; or Disregard of the rules governing the submission and assessment of the evidence on which the judgment is based.

[27] It is also incumbent upon the Criminal Appeals Division to try senior government officials and investigate and try members of Congress, pursuant to Article 235 of the PC. With respect to investigation of members of Congress, the Division has two internal committees to help with investigations, established by CSJd Agreements No. 3890 of January 3, 2007 and No. 4150 of September 12, 2008.

[28] With regard to the work of investigating and trying members of Congress, pursuant to the Rules of Procedure of the Criminal Division, amended in line with Constitutional Court Judgment C-545 of 2008, which ordered those two duties to be performed separately by different bodies, a three-judge division was established for investigation and another six-judge division established for trying. In that way, those taking part in the first phase of the process, gathering evidence and bringing

charges, do not participate in the trial or handing down of the judgment that establishes, where applicable, the criminal liability of the member of Congress. That judgment requires the vote in favor of at least four members of the Criminal Trial Division. In all other cases involving senior government officials, in which, pursuant to the Constitution, it is the responsibility of the General Prosecutor (*Fiscal General de la Nación*) to investigate and bring charges, the Criminal Appeals Division sitting *en banc*, that is to say, with all nine of its judges present, conducts the oral, public, and adversarial proceedings, following which it either convicts or acquits, with a vote in favor of at least five of its members.

[29] As regards its human resources allocation and the rules governing them, Article 85.9 of Law 270 of 1996 establishes that it is incumbent upon the Administrative Division of the CSJd to determine structure and staffing. Article 112.2 states that, with respect to disciplinary matters, the judges of the CSJ shall be subject to the rules laid down in Articles 174, 175 and 178 of the PC, to which end the National Congress shall initiate disciplinary proceedings through the Legal Investigation and Indictment Committee of the Chamber of Representatives and the Pre-Trial Proceedings Committee of the Senate. For its part, Article 115 establishes that it is up to the judicial authorities (such as the CSJ), staff, and other employees of the judiciary to take cognizance of disciplinary proceedings against employees they supervise, without prejudice to the preferential power that the Political Constitution confers on the Attorney General to take disciplinary action pursuant to procedures established in special laws.

[30] As for relations between staff and other employees and the judges of the CSJ, the rules of conduct governing them, and requirements for the posts, Article 130 of Law 270 of 1996 establishes that free appointment and dismissal arrangements apply for the following positions: auxiliary judge, assistant attorney, and their equivalents; positions in judges' offices and those of the President and Vice President; and secretaries, while other positions are career service posts. Articles 150, 151, 152, 153 and 154 of that law refer, respectively, to disqualifications, incompatibilities, duties, and prohibitions, while Articles 160 and 161 refer to the qualifications for holding positions in the judiciary. For its part, the Functions Manual for Positions Assigned to Units of the Supreme Court of Justice, adopted by Agreement 0041 of 2003, establishes the functions and specific requirements for each of those positions.

[31] As for staff training, the Office of the President of the Court has a built-in training program, which includes seminars for training auxiliary judges in the techniques required for the adversarial criminal system.<sup>7</sup> There is also a "Rodrigo Lara Bonilla" Judicial Academy (*Escuela Judicial*), which forms part of the CSJd and serves as the initial and continuous training center for officers and employees of the Justice Administration System, pursuant to Article 177 of Law 270 of 1996.

[32] As regards budgetary resources, Article 85 of Law 270 of 1996 charges the Administrative Division of the CSJd with drawing up the proposed budget for the Judiciary, which it then remits to the National Government. Article 88 establishes that it shall consult the various jurisdictions as to their needs and proposals, to which end it shall hear the views of the Presidents of the Constitutional Court, the Supreme Court of Justice, and the Council of State, and shall receive the report of the Sectional Councils concerning the courts and tribunals.

[33] With respect to the use of systems and modern technology for the performance of its functions, the Criminal Appeals Division has an in-house information system designed to serve as an

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<sup>7</sup> Colombia's reply to the questionnaire, p. 31.

administrative support tool by recording the different proceedings under way and the decisions adopted. It also has an I.T. tool for accessing and consulting the Division's jurisprudence.<sup>8</sup>

[34] As for manuals or documented procedures for performing its functions, the CJJ has its Internal Rules of Procedure, adopted by Agreement 006 of 2002, amended by Agreement 001 of 2009, and the Functions Manual for Positions Assigned to Units of the Supreme Court of Justice, adopted by Agreement 0041 of 2003. For the Criminal Appeals Division, the procedures for investigations and trials are set forth in Law 600 of 2000 and Law 906 of 2004, which afford a detailed description of criminal proceedings.

[35] Regarding coordination mechanisms with other bodies or to obtain support from other authorities in order to investigate and try senior government officials, the CSJ has the support of the Investigative Police Section (*Policía Judicial*) of the National Police and of the Office of the General Prosecutor. At the request of the Office of the President of the Criminal Division, the General Prosecutor's Office has posted a team of field and criminal investigators to work with the CSJ.<sup>9</sup>

[36] In addition to the above, Article 62 of Law 1474 of 2011 established the National Ethics Commission (*Comisión Nacional para la Moralización*), comprised, inter alia, of the President of the Republic, the President of the Supreme Court of Justice, the General Prosecutor, the Attorney General, and the Comptroller General of the Republic. Article 64 assigns it, among other functions, that of coordinating joint actions to combat corruption in national or territorial-level entities in which there is circumstantial evidence of corruption as well as exchanges of information for anti-corruption purposes (the remarks in this paragraph are also relevant to the sections of this report covering "Existence of provisions in the legal framework and/or other measures" with respect to the FGN, the PGN, and the CGR).

[37] With respect to information provided to citizens, it is worth noting that, pursuant to Article 106 of Law 270 of 1996, it is up to the CSJd to start an information system for the Judiciary, to which end it has installed an institutional portal, [www.ramajudicial.gov.co](http://www.ramajudicial.gov.co), that provides information to citizens on the structure and functions of the Higher Courts (including the CSJ) and of judges' chambers; on-line information on the status of proceedings under way; procedural requirements for a variety of applications; consultation of case histories; contractual procedures; statistics; and other materials. In order to respond to claims by citizens, the same portal has a User Support desk detailing various ways of filing suggestions, complaints, or claims relating to justice administration services.

[38] As provided in Article 104 of Law 270 of 1996, the CSJ is required to submit to the CSJd, in accordance with the methodology stipulated in the Rules of Procedure of the Administrative Division of the CSJd, the reports that the Council requests from it for the proper performance of its functions. Those reports, to be rendered at least once a year, shall cover, inter alia, the list of proceedings initiated, those in which a decision is still pending, and those on which rulings have been issued.

[39] With regard to the compilation of information, Article 106 of Law 270 of 1996 provides that it is incumbent upon the CSJd to operate and maintain an Information and Statistics System on the work performed by members of the Judiciary or persons exercising judicial functions. It must cover each proceeding from start to finish, including verification of the procedural periods and effective settlement, in such a way as to provide an accurate reflection of how justice was administered. To that end, the same rule stipulates that all the bodies making up the Judiciary (including the CSJ) have

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<sup>8</sup> Colombia's reply to the questionnaire, pp.31 and 32

<sup>9</sup> Colombia's reply to the questionnaire, p. 33.

a duty to provide the information needed to keep the information system's data up to date, in the formats established for that purpose by the CSJ.<sup>10</sup>

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

[40] The Supreme Court of Justice (CSJ) has a set of provisions and/or other measures relevant to the purposes of the Convention, some of which were briefly described in Section 1.1 of this report. Nevertheless, the Committee deems it appropriate to make a number of observations in relation thereto:

[41] First, although the Criminal Appeals Division of the CSJ has the support of a team of field and criminal investigators thanks to the collaboration of the Office of the General Prosecutor (FGN), based on Colombia's reply to the questionnaire and information gathered during the on-site visit, it appears that it would be beneficial for that Division to have its own investigative police officers, endowed with the training and infrastructure needed to provide full support with respect to the investigation of the complex criminal behavior it has to address, such as that relating to acts of corruption. That being so, the Committee will formulate a recommendation to the country under review in that regard. (See Recommendation 1.4.1 in Chapter II of this report).

[42] In that respect it is worth noting that Colombia's reply to the questionnaire<sup>11</sup> states that one obstacle to achieving the purposes of the CSJ is the low level of training received by investigative police officers in the detection of corrupt practices. It points out that: "Field and criminal investigators helping the Criminal Appeals Division should have special training in investigation techniques applicable to corruption cases if they are truly going to help the institution perform its functions. - However, in this area, they appear merely to perform the tasks entrusted to them in a mechanical fashion, without contributing new insights into ways of handling different cases or without an overall grasp of the phenomenon that would enable them to make connections between cases resulting in better outcomes in specific interventions."

[43] Second, although the Office of the President of the CJI is developing a training program and the Higher Council of the Judiciary (CSJd) has its "Rodrigo Lara Bonilla" Judicial Academy, it became clear during the on-site visit that neither the Program nor the Academy envisage training specifically tailored to the investigation and trial of acts of corruption and that the CSJ lacks the funds needed to provide it. The Committee will therefore formulate a recommendation to the country under review that it consider adopting appropriate measures to provide staff members of the Criminal Appeals Divisions of the CSJ with such training (See Recommendation 1.4.2 in Chapter II of this report).

[44] Third, bearing in mind that based on Colombia's reply to the questionnaire and from the information gathered during the on-site visit, it appears that it would be beneficial for the Criminal Appeals Division of the CSJ to have an information system that would allow it to access information from the Office of the General Prosecutor, the Office of the Comptroller General of the Republic, the Office of the Attorney general, the Ministry of Finance, the Information and Financial Analysis Unit,

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<sup>10</sup> Colombia's reply to the questionnaire states, on page 34: "In order to consolidate national statistics on incoming and concluded proceedings that will help detect the workload and identify bottlenecks and ways to overcome them, the Administrative Division of the Higher Council of the Judiciary has designed the judicial statistics system which, in the case of the Criminal Division of the Supreme Court of Justice, requires quarterly submission of information on work performed."

<sup>11</sup> Colombia's reply to the questionnaire, p. 36.

and the Administrative Department of the Civil Service for purposes relating to the investigation and trial of cases of criminal conduct within its purview, such as acts of corruption, the Committee will formulate a recommendation in this regard to the country under review (See Recommendation 1.4.3 in Chapter II of this report).

[45] In that respect, it is worth noting that Colombia's reply to the questionnaire<sup>12</sup> states that one obstacle to achieving the purposes of the CSJ is the lack of information systems that are integrated with other government entities. It points out that: "Although crime is advancing rapidly and adopting sophisticated methods for camouflaging money stolen from the State and other ill-gotten gains, the justice system continues to handle the cases it is apprised of on a one-by-one basis, without the technological tools needed to cross-compare information and expedite the punishment of crime. - Having access to suspect financial movements, databases, real estate property records, or data on the initial composition of the wealth of civil servants under investigation, is urgently required to ensure a timely response to possible acts of corruption. - Furthermore, if that technological strategy is tied in with ongoing analyses in the investigative support committees of the Criminal Division of the Court, one by-product could be early detection of instances of administrative corruption."

[46] During the Committee's on-site visit, the CSJ clarified the above, as follows: "...the entities that could comprise this system would be those responsible for prosecuting corrupt acts, namely the Offices of the General Prosecutor, the Comptroller, and the Attorney General, so that access could be had to their findings or the status of their investigations into corruption issues. - it would, further, also be beneficial if this system were linked to other governmental entities that routinely handle public funds, such as the Ministry of Finance, or that collect information on suspect financial transactions, such as the Information and Financial Analysis Unit, or else keep records of the wealth of civil servants, such as the Administrative Department of the Civil Service."

[47] Fourth, the Committee considers that, in order for citizens to be better informed as to the fulfillment of the functions assigned to the CSJ, it would be advisable for the country under review to contemplate taking the necessary steps to publish on the CSJ web page in the institutional portal of the Judiciary the reports it has to submit to the CSJ pursuant to Article 104 of Law 270 of 1996. The Committee will therefore formulate a recommendation in this regard (see Recommendation 1.4.4 in Chapter II of this report).

[48] Fifth, the reply of the country under review<sup>13</sup> pointed to the following obstacles to achieving the CSJ's purposes: the lack of timely denunciation of corrupt practices, the absence of effective mechanisms for detecting corrupt practices at an early stage, and little collaboration by citizens.

[49] During the Committee's on-site visit, the CSJ clarified the above, as follows: "As pointed out in the reply to the questionnaire, one of the factors hindering criminal prosecution of corrupt practices is the lack of timely denunciation, whereas the news about crimes of this type normally reaches the Criminal Appeals Division in reference to deeds perpetrated years before, so that administration of justice begins years or even decades later, by which time it is difficult to gather evidence of the original crime. That in turn leads citizens to doubt the ability of the State to stop or punish crimes against public administration. One measure that could help overcome this obstacle to the administration of justice would be to run campaigns in the mass media on the culture of lawfulness and co-responsibility in the fight against corruption, so as to encourage timely denunciation. Such a

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<sup>12</sup> Colombia's reply to the questionnaire, p. 36.

<sup>13</sup> Colombia's reply to the questionnaire, pp. 35. and 36.

strategy would be compatible with current moves by the Government to train citizens to exercise social oversight through citizen watchdog committees (*veedurías*) and initiatives such as the “glass urn”.

[50] Aware of the importance of timely denunciation for achievement of the CSJ’s purposes and for effective investigation and punishment of corrupt practices, and bearing in mind that, in the First Review Round, it had already formulated recommendations to the country under review designed to motivate government officials to do their duty in that respect, the Committee deems it advisable that, with regard to the general public, the country under review consider running campaigns in the mass media so as to encourage citizens to report acts of corruption promptly to the authorities. As the CSJ pointed out during the on-site visit, that would be compatible with current moves by the Government to train citizens to exercise social oversight through citizen watchdog committees (*veedurías*) and initiatives such as the “glass urn.” In light of the above, the Committee will formulate a recommendation in this regard (see Recommendation 1.4.5 in Chapter II of this report).

[51] Worth noting in this regard, as the private sector organization “CONFECÁMARAS” pointed out during the on-site visit, is the existence of a lag between the moment of denunciation, when irregularities are encountered, and the State’s response. According to the civil society organization “Corporación Transparencia por Colombia,” a mass communication campaign promoting denunciation of acts of corruption is needed, along with instructions to citizens on how to file complaints.

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

[52] Information was gathered regarding the results achieved by the Supreme Court of Justice (CSJ), of which the following are worth noting:

[53] First, as requested, during the on-site visit, information was provided regarding outcomes in the Criminal Appeals Division of the Supreme Court of Justice (CSJ), in respect of “Crimes against Public Administration - Decisions - Annulment,” in the period from 2008 to April 2013,<sup>14</sup> in which 696 decisions were handed down, as follows: 33 decisions that the case in question had prescribed, 93 annulling judgments, 88 not annulling judgments, and 482 declaring the appeal inadmissible. This information is supplemented by a statistical Table listing the proceedings referred to by type of crime, decision adopted, and the date of each decision. That Table can be consulted at: [www.oas.org/juridico/xls/mesicic4\\_col\\_cons.xls](http://www.oas.org/juridico/xls/mesicic4_col_cons.xls)

[54] Given the number of prescriptions reported in the aforementioned information (33), the Committee will formulate a recommendation to the country under review that it consider undertaking an analysis of the reasons possibly underlying declarations of prescription in criminal proceedings relating to crimes against public administration at the appeals level, in order to identify challenges and recommend corrective measures (See recommendation 1.4.6 in Chapter II of this report).

[55] Second, as requested, during the on-site visit, information was provided regarding outcomes in the Criminal Appeals Division of the Supreme Court of Justice (CSJ), in respect of “Crimes against Public Administration - Decisions - Single Instances,” in the period from 2008 to April 2013,<sup>15</sup> in which 93 decisions were handed down, as follows: 11 convictions, 7 acquittals, 66 inhibition orders, and 8 estoppels. This information is supplemented by a statistical Table listing the proceedings

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<sup>14</sup> This information can be consulted in its entirety at: [http://www.oas.org/juridico/xls/mesicic4\\_col\\_cas.xls](http://www.oas.org/juridico/xls/mesicic4_col_cas.xls)

<sup>15</sup> This information can be consulted in its entirety at: [http://www.oas.org/juridico/xls/mesicic4\\_col\\_uni.xls](http://www.oas.org/juridico/xls/mesicic4_col_uni.xls)

referred to by type of crime, decision adopted, and the date of each decision. That Table can be consulted at: [www.oas.org/juridico/xls/mesicic4\\_col\\_inst.xls](http://www.oas.org/juridico/xls/mesicic4_col_inst.xls)

[56] With respect to the above, the Committee notes that of the 93 decisions adopted in relation to cases of crimes against public administration heard at only one level of jurisdiction (“*únicas instancias*”), a percentage (71%) are inhibition orders (Tr. motions for dismissal on the grounds of lack of jurisdiction). That being so, it will formulate a recommendation to the country under review that it conduct an analysis of the possible causes for this state of affairs in order to identify challenges and recommend corrective measures, if applicable (See recommendation 1.4.7 in Chapter II of this report).

#### **1.4. Conclusions and recommendations**

[57] Based on the comprehensive review of the Supreme Court of Justice in the foregoing sections, the Committee offers the following conclusions and recommendations:

**[58] Colombia has considered and adopted measures intended to maintain and strengthen the Supreme Court of Justice (CSJ) as an oversight body, as indicated in Chapter II, Section 1 of this report.**

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

- 1.4.1 Adopt appropriate measures to ensure that the Criminal Appeals Division of the Supreme Court of Justice has its own investigative police officers, endowed with the training and infrastructure needed to provide full support with respect to the investigation of the complex criminal behavior it has to address, such as that relating to acts of corruption (See Chapter II, Section 1.2 of this report).
- 1.4.2 Adopt appropriate measures to ensure that the officials and employees of the Criminal Appeals Division of the CSJ receive training specifically related to the investigation and prosecution of acts of corruption (See Chapter II, Section 1.2 of this report).
- 1.4.3 Adopt appropriate measures to ensure that the Criminal Appeals Division of the CSJ has an information system that allows it access to information from the Office of the General Prosecutor, the Office of the Comptroller General of the Republic, the Office of the Attorney General, the Ministry of Finance, the Information and Financial Analysis Unit, and the Administrative Department of the Civil Service for purposes relating to the investigation and trial of cases of criminal conduct within its purview, such as acts of corruption (See Chapter II, Section 1.2 of this report).
- 1.4.4 Adopt appropriate measures to ensure the publication on the CSJ web page in the Judiciary’s institutional portal of the reports on its work that the CSJ has to submit to the Higher Council of the Judiciary (CSJd) pursuant to Article 104 of Law 270 of 1996 (See Chapter II, Section 1.2 of this report).
- 1.4.5 Conduct mass media campaigns to encourage citizens to promptly report acts of corruption to the appropriate authorities (See Chapter II, Section 1.2 of this report).

- 1.4.6 Analyze the possible reasons why there are so many declarations of prescription in criminal proceedings regarding crimes against public administration, at the appeals level, in order to identify challenges and recommend corrective measures (See Chapter II, Section 1.3 of this report).
- 1.4.7 Analyze the possible reasons why a percentage of decisions in “sole instance” criminal proceedings regarding crimes against public administration are inhibition orders, in order to identify challenges and recommend corrective measures, if applicable (See Chapter II, Section 1.3 of this report).

## **2. HIGHER COUNCIL OF THE JUDICIARY (CSJd)**

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

[60] The Higher Council of the Judiciary (CSJd) has a set of provisions in its legal framework, as well as other measures that refer, inter alia, to the following:

[61] With respect to its objective and functions, Article 256 of the Political Constitution lists, among other functions: administering the judicial career service; drawing up lists of candidates for the appointment of judicial officials and sending them to the responsible body (excepted is the military criminal jurisdiction which is governed by special regulations); examining the behavior and punishing, at the jurisdictional level determined by law, offenses committed by officials of the judicial branch as well as by attorneys in the exercise of their profession; supervising the performance of judicial bodies and offices; drafting the proposed budget of the judicial branch to be presented to the government and implementing it as approved by Congress; and settling jurisdictional conflicts between different organs.

[62] Pursuant to Article 256 of the Political Constitution, the CSJd is divided into two chambers: The Superior Council of the Judicature will be divided into two chambers: the administrative chamber, made up of six judges elected for a period of eight years as follows: two by the Supreme Court of Justice, one by the Constitutional Court, and three by the Council of State; and the disciplinary jurisdictional chamber, made up of seven judges elected for a period of eight years by the National Congress from slates originating with the government. Pursuant to Article 82 of Law 270 of 1996, sectional councils of the judiciary may also be established in the leading city of judicial districts if the administrative chamber deems them to be necessary.

[63] Pursuant to Article 85 of Law 270 of 1996, the administrative chamber’s functions include: drawing up the proposed budget of the Judicial Branch; determining the structure and staff of the CSJd; determining the structure and staff of the courts and tribunals (to which end it may establish, abolish, merge, and transfer posts within the judiciary); regulating and administering the judicial career service; and preparing and developing the educational, training, and skills-development program for judicial officers and employees. In addition, according to Article 63 of the same law, it is incumbent upon the administrative chamber to execute the national plan to get rid of the judicial backlog (*descongestión*), to which end it may, exceptionally and temporarily, establish posts for judges or magistrates, in accordance with the budget law; temporarily employ judicial staff; and award fixed term contracts to expert professionals and auxiliary personnel to perform the support functions specified in the above-mentioned plan.

[64] Pursuant to Article 112 of law 270 of 1996, the disciplinary jurisdictional chamber's functions include, inter alia: settling jurisdictional conflicts between different bodies; hearing, in sole instance, disciplinary proceedings against judges of the courts and sectional councils of the judiciary, the Deputy General Prosecutor, attorneys seconded to the Supreme Court of Justice and the courts; hearing motions for appeal and on facts, as well as consultation, in disciplinary proceedings heard in first instance by the disciplinary jurisdictional chambers of the sectional councils of the judiciary; and appointing judges of the disciplinary jurisdictional chambers of the sectional councils of the judiciary from lists of candidates who passed the exam convened in advance by the Judicial Administration Directorate.

[65] Pursuant to Article 79 of Law 270 of 1996, the two chambers of the CSJd shall meet as a single body to perform some of their functions, including adopting the annual report to be presented to the Congress of the Republic on the state of administration of justice and adopting, with the consent of the Judiciary's Inter-Agency Commission, the Development Plan of the Judicial Branch and submitting it to the National Government for inclusion in its National Development Plan.

[66] Pursuant to Article 101 of Law 270 of 1996, the Sectional Councils of the Judiciary, through their Administrative Chambers, are responsible, among other functions, for administering the judicial career service in their district subject to directives issued by the CSJd and preparing and submitting to the courts the list of candidates for the position of judge in all posts for which a definitive vacancy has to be filled in accordance with the rules governing the judicial career service. Pursuant to Article 114 of Law 270 of 1996, those Councils are, through their disciplinary jurisdictional chambers, also responsible, among other functions, for hearing in first instance disciplinary proceedings against judges and attorneys for offenses committed in the territory of their jurisdiction and settling jurisdictional disputes within their jurisdiction between judges or prosecutors and police inspectors.

[67] Article 77 of Law 270 of 1996 establishes the requirements for becoming a magistrate of the CSJd and provides that they shall be subject to the same set of disqualifications and incompatibility criteria applicable to Supreme Court (CSJ) judges. Article 78 of that law stipulates that they shall remain in office for the full term to which they were elected so long as they behave appropriately and have not reached retirement age.

[68] Pursuant to Article 178.3 and 4 of the PC, it shall be incumbent upon the House of Representatives to bring charges before the Senate, when constitutional reasons may exist, against the members of the Higher Council of the Judiciary, and to take cognizance of reports and complaints that may be lodged before it by the General Prosecutor or by individuals against specific officials and, if necessary, to bring charges on that basis before the Senate.

[69] As regards the manner in which decisions are adopted, Article 54 of Law 270 of 1996 establishes that all decisions that have to be taken by the courts sitting *en banc* or by any of their chambers or sections shall require, during deliberations and when the decision is taken, the presence and vote of a majority of the members of the court, chamber, or section. Article 56 adds that the internal Rules of Procedure of the disciplinary jurisdictional chamber of the CSJd shall determine, inter alia, how the rulings, concepts or opinions adopted shall be issued and signed, and that those Rules of Procedure shall also include a deadline for indicating in the dissenting vote or explanation of the vote the reasons of the judges dissenting from the majority vote, without prejudice to disclosure of the judgment.

[70] Article 11 of Law 270 of 1996 provides that rulings in disciplinary matters that are issued in respect of judicial officers are jurisdictional acts not subject to actions under administrative law. It also provides that all unappealable substantive disciplinary rulings shall acquire *res judicata* status. For its part, Article 11.1 of that law establishes that judgments or other rulings definitively ending disciplinary proceedings heard in first instance by the Sectional Councils of the Judiciary, and against which no appeal is lodged, shall be reviewed (*consultadas*) whenever they are detrimental to the accused.

[71] As regards staffing and staff rules, Article 85.7 of Law 270 of 1996 establishes that it is up to the Administrative Chamber of the CSJd to determine the number and structure of human resources. Article 112.2 stipulates that, in disciplinary matters, Magistrates of the CSJd shall be subject to the provisions of Articles 174, 175 and 178 of the PC, whereby Congress shall advance the disciplinary proceedings via the Legal Investigation and Accusation Committee of the House of Representatives and the Senate's Preliminary Investigation Committee. Article 115 establishes that it is incumbent upon the judicial bodies (*Corporaciones*, such as the CSJd) and judicial officers and employees to hear disciplinary proceedings against employees they supervise, without prejudice to the preferential power that the Political Constitution confers upon the Attorney General to take disciplinary action pursuant to procedures established in special laws.

[72] With regard to relations between staff and employees other than the Magistrates of the CSJd, the rules of conduct governing them, and requirements for the posts, Article 130 of Law 270 of 1996 establishes that free appointment and dismissal arrangements apply for the following positions: auxiliary judge, assistant attorney, and their equivalents; positions in judges' offices and those of the President and Vice President; and secretaries, while other positions are career service posts. Articles 150, 151, 152, 153 and 154 of that law refer, respectively, to disqualifications, incompatibilities, duties, and prohibitions, while Articles 160 and 161 refer to the qualifications for holding positions in the judiciary.

[73] As regards internal controls, Article 105 of Law 270 of 1996 establishes that, in order to ensure fulfillment of the principles governing the administration of justice, the CSJd has to install, maintain, and perfect an adequate internal oversight system, comprising the organizational structure and all plans, methods, principles, rules, procedures, and verification and evaluation mechanisms; a system for preventing risks and making the most of opportunities; information and communication processes; and oversight procedures and supervisory mechanisms operating continuously and effectively at every level of the Judiciary. The same Article provides, furthermore, that the report of the person in charge of the Judiciary's internal control system shall be attached to the CSJd's annual report to Congress.

[74] As for staff training, there is also the "Rodrigo Lara Bonilla" Judicial Academy (*Escuela Judicial*), which forms part of the CSJd and serves as the initial and continuous training center for officers and employees of the Justice Administration System, pursuant to Article 177 of Law 270 of 1996.

[75] As regards budgetary resources, Article 85 of Law 270 of 1996 charges the Administrative Chamber of the CSJd with drawing up the proposed budget for the Judiciary, which it then remits to the National Government.<sup>16</sup> Article 88 establishes that it shall consult the various jurisdictions as to

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<sup>16</sup> The transitional paragraph of Article 1 of Law 1285 of 2009 reads as follows: "Authorize the National Government to include in the income and expenditure budget for each of the next four years an allocation

their needs and proposals, to which end it shall hear the views of the Presidents of the Constitutional Court, the Supreme Court of Justice, and the Council of State, and shall receive the report of the Sectional Councils concerning the courts and tribunals.

[76] With respect to the use of systems and modern technology for the performance of its functions, there is also an information system for consulting jurisprudence and disciplinary case histories, statistics on disciplinary proceedings, and judicial career appointments.<sup>17</sup> The Judiciary also has a Technological Strategic Plan (*Plan Estratégico Tecnológico -PET*) and a Justice Services Strengthening Project, the purpose of which, at least as regards the component financed with the IDB resources, is to expedite judicial proceedings being heard in, inter alia, the Higher Courts and the Disciplinary Chamber of the CSJd and to reduce the backlog of cases. That project includes, in one of its components, making use of information technologies.

[77] As for manuals or documented procedures for performing its functions, the CSJd has its Internal Rules of Procedure of the Administrative Chamber, adopted by Agreement 113 of 1993, and an Induction Manual, designed to introduce new officers and employees of the Disciplinary Jurisdictional Chamber of the CSJd to the structure, regulations and functions of that chamber within the Judiciary and to general features of the NTC ISO 9001 quality control system: 2008; and the Internal Rules of procedure of the Disciplinary Jurisdictional Chamber, adopted by Agreement 12 of 1994. To comply with its investigation and disciplinary sanctions work, this chamber also follows procedures established, inter alia, in Law 734 of 2002 (Single Disciplinary Code) and Law 1123 of 2007 (Attorney's Disciplinary Code). In connection with the Disciplinary Jurisdictional Chamber, another provision that exists is Agreement 005 of 1996, "Adopting the Functions Manual of the Judicial Secretariat," and, in connection with the Administrative Chamber, there are several Agreements dealing with functions manuals and requirements for holding positions in its different offices, including Agreements 250 and 346 of 1998 and Agreement 2961 of 2005.<sup>18</sup>

[78] As regards coordination mechanisms, Article 86 of Law 270 of 1996 provides that, without prejudice to the autonomy conferred on it by the Constitution for the exercise of its administrative functions, the Administrative Chamber of the CSJd shall act in coordination with organs of the other branches of government and with organizations related to the justice sector. For its part, Article 96 of that law establishes an Inter-Agency Commission of the Judiciary comprising the presidents of the Supreme Court, the Constitutional Court, the Council of State, the Higher Council of the Judiciary, the General Prosecutor, and a representative of the staff and employees of the Judiciary, to serve as a reciprocal information system between judicial organs and as a forum for administration of justice-related matters.

[79] Article 51 of Law 1474 of 2011, dealing with "transferred evidence," further provides as follows: "Evidence validly gathered in judicial or administrative proceedings, either inside the country or abroad, and material evidence may be transferred to disciplinary proceedings by means of copies authorized by the corresponding officer, and they shall be appraised in accordance with the rules established in this Code. - Material evidence and physical evidence discovered by the Office of the General Prosecutor with the presentation of the charges in criminal proceedings may also be transferred, even when they were not introduced and challenged in the trial hearing and are

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equivalent to 0.5% of Gross Domestic Product subject to the availability of budgetary resources, the Medium-Term Fiscal Framework, and the Expenditure Framework, in order gradually to develop oral proceedings in all judicial procedures determined by law and to execute plans for reducing the backlog of cases pending."

<sup>17</sup> Posted at: [www.oas.org/juridico/ppt/mesicic4\\_col\\_pres.ppt](http://www.oas.org/juridico/ppt/mesicic4_col_pres.ppt)

<sup>18</sup> On August 12, 2013, the State under review noted the need to update these manuals.

consequently not considered evidence. Such material evidence and physical evidence shall be open to challenges in the disciplinary proceedings. - When the Office of the Attorney General of the Nation or the Superior Council of the Judicature require information about an ongoing criminal investigation or require to transfer to the disciplinary proceedings material or physical evidence that have not been discovered, they shall file a request with the Prosecutor General of the Nation. In each case, the Prosecutor General shall assess the request and determine what information or materials or physical evidence he can hand over without affecting the criminal investigation or endangering the success thereof.”

[80] With respect to information provided to citizens, it is worth noting that, pursuant to Article 106 of Law 270 of 1996, it is up to the CSJd to operate an information system for the Judiciary, to which end it has installed an institutional portal, [www.ramajudicial.gov.co](http://www.ramajudicial.gov.co), that provides information to citizens on the structure and functions of the Higher Courts and of judges’ chambers; on-line information on the status of proceedings under way; procedural requirements for a variety of applications; consultation of case histories; contractual procedures; statistics; and other materials. In order to respond to claims by citizens, the same portal has a User Support desk detailing various ways of filing suggestions, complaints, or claims relating to justice administration services.

[81] With regard to the compilation of information, Article 106 of Law 270 of 1996 provides that it is incumbent upon the CSJd to operate and maintain an Information and Statistics System on the work performed by members of the Judiciary or persons exercising judicial functions. It must cover each proceeding from start to finish, including verification of the procedural periods and effective settlement, in such a way as to provide an accurate reflection of how justice is administered. To that end, the same rule stipulates that all the bodies making up the Judiciary have a duty to provide the information needed to keep the information system’s data up to date, in the formats established for that purpose by the CSJd.

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

[82] The Office of the Higher Council of the Judiciary (CSJd) has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were briefly described in section 2.1 of this report. Nevertheless, the Committee deems it appropriate to make a number of observations in relation thereto:

[83] First, while the National Plan to Overcome the Backlog of Judicial Cases, adopted by the CSJd pursuant to Article 63 of Law 270 of 1996, established some temporary positions to achieve that purpose in the criminal justice system, based on information gathered during the on-site visit that, it appears that to expedite the prosecution of acts of corruption, it would be advisable to make those positions permanent. The Committee will therefore formulate a recommendation in that regard to the country under review (See Recommendation 2.4.1 in Chapter II of this report).

[84] It is worth noting in this regard that the CSJd provided the following information during the on-site visit: “In 2011, 14 temporary criminal law judge positions (*despachos de magistrado penal*) were created in Colombian courts, along with 68 criminal judge’s chambers (*despachos judiciales penales*) and 117 tribunal judge positions (*jueces adjuntos*), making a grand total of 199 temporary support judicial positions for criminal law cases. In 2011 there were 1,214 permanent criminal judge positions, so that the establishment of temporary chambers boosted that number by 9.4%. Criminal case statistics for that year show a deceleration in the growth of inventories (which nevertheless grew by 2,100 due to increased demand). At the same time productivity (as measured by the partial

turnover index (*índice de evacuación parcial - IEP*) reached 100%, that is to say for every 100 new proceedings entering the system, 100 were dispatched. -Based on the above, the temporary measures adopted by the Administrative Chamber to cut the backlog of cases, focusing on criminal cases, which is where corruption cases are tried, have slowed down the rate of growth of inventories and expanded the installed capacity of criminal judges' chambers to meet the demands of the justice system with a 100% current dispatch rate. That being so, the CSJd is negotiating the possibility of making the temporary posts permanent, in order to be able to get rid of the backlog in criminal cases and normalize the handling thereof.”

[85] Second, although the CSJd does have the “Rodrigo Lara Bonilla” Judicial Academy (*Escuela Judicial*), which, pursuant to Article 177 of Law 270 of 1996, serves as the initial and continuous training center for officers and employees of the Justice Administration System, during the on-site visit it was established that that Academy does not actually provide training specifically related to the investigation and prosecution of acts of corruption. The Committee will therefore formulate a recommendation to the country under review that it consider adopting appropriate measures. (See Recommendation 2.4.2 in Chapter II of this report).

[86] Third, although the CSJd adopted the Judiciary’s Technological Strategic Plan (*PET*) in 2012, it transpires from the press communique of the President of the Administrative Chamber of the CSJd, of December 31, 2012, entitled “Review of Justice Administration in the year just ended” and posted on the CSJd website; from observations in the CSJd’s 2012 report to Congress; and from information culled *in situ*, that additional efforts are needed to implement that plan. To that end, the Committee will formulate a recommendation in that regard to the country under review (See Recommendation 2.4.3 in Chapter II of this report).

[87] Regarding the above, it is worth mentioning that the press release by the President of the Administrative Chamber of the CSJd on December 31, 2012, entitled “Review of Justice Administration in the year just ended” and posted on the CSJd website, reads as follows: “...In February, the Administrative Chamber adopted the Technological Strategic Plan for the Judiciary, with the support of the Min Tic and international cooperation. However, it has not yet reached its goal, which is implementation of electronic, or digital, files. There are also shortcomings with respect to connectivity (networks), the information system, computer hardware, and a culture of change”

[88] The CSJd’s 2012 Report to Congress also has the following to say about the *PET*: “The Administrative Chamber of the CSJd approved the Technological Strategic Plan (*PET*) of the Judiciary in February of this year, which provides guidelines for incorporating information and communication technologies into the administration of justice. The time frame for this Plan is six years. Operational plans for enacting it are currently being developed, along with a plan for financing it and a methodology for monitoring and evaluating the Plan itself.”<sup>19</sup>

[89] Finally, with regard to the above, the Committee was told during the on-site visit that the technological backwardness was due to the lack of budgetary resources and that there were connectivity issues, especially in Colombia’s jungle region.

[90] Fourth, although some progress has been made with the Justice Services Strengthening Project, the purpose of which, at least as regards the component financed with the IDB resources, is to

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<sup>19</sup> The CSJd’s 2012 Report to Congress (posted at [www.ramajudicial.gov.co](http://www.ramajudicial.gov.co) – *Publicaciones*). Page 78

expedite judicial proceedings being heard in, inter alia, the Higher Courts and the Disciplinary Chamber of the CSJd, it transpired from information provided during the on-site visit that implementation of the project needs boosting. The Committee will therefore formulate a recommendation in that regard (see Recommendation 2.4.4 in Chapter II of this report).

[91] With respect to the above, it is worth pointing out that, during its on-site visit, the Committee was shown sign of progress in the Justice Services Strengthening Project at the diagnostic assessment level. As regards the component involving the use of information technology, the Committee was informed: “Progress needs to be made with forging a strategy for implementing technological projects that are typically interdisciplinary, flexible, interactive, and sustainable. - Prior to its implementation, the IT Solution Architecture proposal needs to be analyzed vis-à-vis other jurisdictions and nationwide. - Critical dimensions of data-governance need to be analyzed before the program is first put in place. IT governance should be established in order to formalize objectives, principles, policies, and priorities. - In order to define the process’s communication, training, and skills-building strategies, there first has to be an effort to prepare people for change. - A new approach to information systems is needed to meet the somewhat diverse needs of the Higher Courts and the Administrative Law Courts of Cundinamarca and Bogotá.”

[92] Fifth, although the transitional paragraph of Article 1 of Law 1285 of 2009 authorized the National Government to include in the income and expenditure budget for each of the next four years an allocation equivalent to 0.5% of Gross Domestic Product subject to the availability of budgetary resources, the Medium-Term Fiscal Framework, and the Expenditure Framework, in order gradually to develop oral proceedings in all judicial procedures determined by law and to execute plans for reducing the backlog of cases pending, based on the CSJd’s 2012 Report to Congress and from information gathered during the on-site visit, that it would be advisable for the National Government, in light of that provision, to consider assigning a larger budget appropriation to the Judiciary, in line with the parameters set therein. The Committee will therefore formulate a recommendation in this regard to the country under review (see Recommendation 2.4.5 in Chapter II of this report).

[93] With respect to the above, the reply of the country under review to the questionnaire<sup>20</sup> points out, in the section on obstacles to achieving the purposes of the CSJd, that “the difficulties essentially have to do with the lack of budgetary resources for stepping up awareness and training programs and providing more logistical support in terms of space and locations.” The CSJd’s 2012 Report to Congress adds: As the figures show, the budget allocated each year has fallen short of that requested by the Judiciary and presented to the National Government. That circumstance has made it difficult to meet medium- and long-term targets, plans, and programs. Thus the Judiciary had a budget shortfall averaging 17% a year from 2001 through 2011. In particular, the investment expenditure account shows a shortfall of 57%. - The same situation repeats itself year after year, despite the fact that the first paragraph of Article 1 of Law 1285 of 2009 authorized the National Government to include in the income and expenditure budget for each of the next four years an allocation equivalent to 0.5% of Gross Domestic Product. This means that, by this standard for the first two years since the Law entered into force is 66%/ (See Table 6-3). Thus, according to that provision, in fiscal years 2012 and 2013, the National Government would have to appropriate nearly \$2,160,819 million, including the 2010 and 2011 deficits.”<sup>21</sup>

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<sup>20</sup> Colombia’s reply to the questionnaire, p. 64.

<sup>21</sup> The CSJd’s 2012 Report to Congress (posted at [www.ramajudicial.gov.co](http://www.ramajudicial.gov.co) – Publicaciones). Pages 88 and 89.

[94] During the on-site visit, the CSJd also mentioned that, as a percentage of GDP, the resources allocated to the Judiciary were very low.

[95] Sixth, although Article 105 of Law 270 of 1996 established that the report by the person in charge of the Judiciary’s Internal Control System must be attached to the CSJd’s annual report to Congress, a review of the CSJd reports for 2011 and 2012 posted on its Internet portal reveals that the internal control reports for those years are not published along with the aforesaid annual reports. The Committee will therefore formulate a recommendation in this regard to the country under review (See Recommendation 2.4.6 in Chapter II of this report).

[96] Seven, since the CSJd issued the agreements adopting the functions manuals and requirements for holding office within the Administrative Chamber and the Executive Directorate of the Judicial Administration in 1998 and 2005, the Committee, after assessing the usefulness of those manuals for understanding the duties of the staff and the requirements for the performance thereof, will formulate a recommendation for the State under review for it to consider updating them. (See recommendation 2.4.7 in Chapter II of this report.)

[97] Eight, since during the on-site visit reference was made to the need to make the “transferred evidence” mechanism provided for in Article 51 of Law 1474 of 2011 more operational, the Committee will formulate a recommendation in that regard al State under review. (See recommendation 2.4.8 in Chapter II of this report.)

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

[98] Information was gathered regarding the results achieved by the Higher Council of the Judiciary (CSJd), of which the following are worth noting:

[99] First, the CSJd provided information compiled by its Disciplinary Jurisdictional Chamber on “decisions taken by the Chamber, arranged by subject matter, from 2007 to December 19, 2012,” which shows the number and type of sanctions imposed on judiciary officials and attorneys, as well as their acquittals, during those years, as follows:

OFFICIALS				TOTAL PENALTIES	ACQUITTED	TOTAL NO. OF OFFICIALS	CONFLICTS	GUARDIANSHIPS	INTERLOCUTORY ORDERS	HABEAS CORPUS	ANNUAL TOTAL
FINES	SUSP.	WARNINGS	DISMISSALS								
40	57	26	5	128	102	230	1080	1874	1924	20	6093
24	52	7	9	92	46	138	1597	2117	2366	14	7772
9	89	23	11	132	48	180	1610	1401	2658	37	7459
14	196	25	30	265	72	337	1662	1530	3598	41	9067
11	165	8	17	201	180	381	1179	1572	3112	29	8268
58	502	63	67	<b>690</b>	<b>346</b>	1036	6048	6620	11734	121	32566

YEARS	ATTORNEYS				FINES	TOTAL PENALTIES	LAW 1123	ACQUITTALS	TOTAL ATTORNEYS
	EXCLUSION	SUSP.	CENSURE	WARNINGS					
2007	23	474	385	20		902		63	965
2008	20	592	547	12		1171	169	200	1540
2009	24	668	536	7		1235	215	123	1573
2010	26	931	530	3		1490	281	128	1899
2011	29	742	371	1	16	1159	624	212	1995
<b>TOTALS</b>	<b>99</b>	<b>2933</b>	<b>1984</b>	<b>23</b>	<b>16</b>	<b>5055</b>	<b>1289</b>	<b>663</b>	<b>7007</b>

1: THE INTERLOCUTORY ORDERS COLUMN INCLUDES LISTS OF CHARGES, ARCHIVING, ATTORNEYS’ IMPEDIMENTS, OFFICIALS AND GUARDIANSHIPS  
 2: THE DISMISSAL COLUMN INCLUDES REMOVALS FROM OFFICE OF JUSTICES OF THE PEACE

**TOTAL PENALIZED ATTORNEYS PENALIZED OFFICIALS PENALIZED**

	<b>5745</b>
	<b>5055</b>
	<b>690</b>

**TOTAL ACQUITTED ATTORNEYS ACQUITTED OFFICIALS ACQUITTED**

	<b>1009</b>
	<b>663</b>
	<b>346</b>

[100] Regarding the foregoing information, the Committee considers that although it shows that the CSJd’s Disciplinary Jurisdictional Chamber, pursuant to its functions, has imposed penalties on judicial officials and attorneys, that information is not broken down in a way that indicates which penalties were imposed specifically because of acts of corruption.

[101] Second, the CSJd provided information compiled by the Disciplinary Jurisdictional Chamber on “proceedings against officials for corruption from January 11, 2007 to December 19, 2011,”<sup>22</sup> which lists 43 proceedings against officials at various levels of the judicial hierarchy, together with the decisions adopted. With respect to those cases, it is worth noting that in 14 the decision adopted was to terminate and archive the proceedings; in 13, there were orders to refrain from a decision or from taking disciplinary action based on lack of jurisdiction (*se dispuso inhibirse de decidir o de adelantar actuación disciplinaria*); and, in the remaining cases, various measures were adopted, such

<sup>22</sup> The CSJd also brings disciplinary proceedings against officers of the judicial branch for disciplinary shortcomings other than acts of corruption.

as referral to a more competent authority and confirmation of a decision to archive or end an investigation. This information can be consulted in its entirety at: [www.oas.org/juridico/pdfs/mesicic4\\_col\\_consejo2007.pdf](http://www.oas.org/juridico/pdfs/mesicic4_col_consejo2007.pdf)

[102] Regarding the above data, the Committee notes that of the 43 proceedings against judicial officials for corruption in the four-year period from 2007 to 2011, a high percentage (63%) of the measures taken involved archiving the investigation or refraining from a decision and from taking disciplinary action, and that, moreover, no penalties were imposed in any of the proceedings. The Committee will formulate a recommendation to the country under review in order for it to consider analyzing the reasons for this state of affairs in order to identify challenges and recommend corrective measures (See Recommendation 2.4.9 in Chapter II of this report).

[103] Third, the CSJd provided information compiled by the Disciplinary Jurisdictional Chamber on “proceedings against attorneys for acts of corruption between January 11, 2007 and December 19, 2011,”<sup>23</sup> which lists three proceedings against three attorneys and the decisions adopted. The first decision confirmed a suspension penalty; the second ruled that disciplinary action had prescribed; and the third was an acquittal. This information can be consulted in its entirety at: [www.oas.org/juridico/pdfs/mesicic4\\_col\\_consejo2.pdf](http://www.oas.org/juridico/pdfs/mesicic4_col_consejo2.pdf). Given that in one of the three proceedings referred to here disciplinary action had prescribed, the Committee will formulate a recommendation to the country under review that it consider conducting an analysis of the possible reasons for this, in order to identify challenges and recommend corrective measures (See Recommendation 2.4.10 in Chapter II of this report).

[104] Fourth, the Committee believes that the statistical data furnished by the Committee offered by the CSJd’s Disciplinary Jurisdictional Chamber is insufficient and appears not to be systematized in such a way as to clearly indicate the results of disciplinary proceedings brought against judicial branch officials and lawyers for the commission de corrupt acts and, for that reason, it will formulate a recommendation on that point for the State under review (see recommendation 2.4.11 in Chapter II of this report).

[105] Fifth, the CSJd provided statistics on the Judiciary’s work, broken down by type of proceedings, one of which corresponds to crimes of corruption (crimes against the economic and social order and against public administration), in the period from January 1 to December 31, 2012. The information shows the number of proceedings starting and concluding and the status of such proceedings at the beginning and end of that period. Bearing in mind that this information (which can be consulted in its entirety at [www.oas.org/juridico/pdfs/mesicic4\\_col\\_consulta.pdf](http://www.oas.org/juridico/pdfs/mesicic4_col_consulta.pdf)) is not broken down in such a way as to indicate how many of the cases referred to are under way, have been suspended, prescribed, or been archived before a decision could be taken, or which are ready for a decision to be taken, or in respect of which a decision on the merits has been taken, but it is not shown whether it resulted in an acquittal or penalty, the Committee will formulate a recommendation to the country under review (See Recommendation 2.4.12 in Chapter II of this report).

[106] The Committee considers that the foregoing recommendation could help achieve the purpose contemplated in Article 106 of Law 270 of 1996, which provides that it is incumbent upon the CSJd to operate and maintain an Information and Statistics System on the work performed by members of the Judiciary or persons exercising judicial functions. It must cover each proceeding from start to

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<sup>23</sup> The CSJd also brings disciplinary proceedings against lawyers for disciplinary shortcomings other than acts of corruption.

finish, including verification of the procedural periods and effective settlement, in such a way as to provide an accurate reflection of how justice is administered.

#### **2.4. Conclusions and recommendations**

[107] Based on the foregoing comprehensive analysis of the Higher Council of the Judiciary (CSJd), the Committee offers the following conclusions and recommendations:

**[108] Colombia has considered and adopted measures intended to maintain and strengthen the Higher Council of the Judiciary (CSJd) as an oversight body, as indicated in Chapter II, Section 2 of this report.**

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

- 2.4.1 Adopt appropriate measures, taking the availability of resources into account, to give permanent status to the positions established on a temporary basis in order to reduce the backlog of criminal justice cases in the 2011 National Backlog Reduction Plan adopted by the Higher Council of the Judiciary (CSJd) pursuant to Article 63 of Law 270 of 1996 (See Chapter II, Section 2.2 of this report).
- 2.4.2 Adopt appropriate measures to ensure that, through the “Rodrigo Lara Bonilla” judicial academy of the CSJd, Justice Administration officials and other employees responsible for investigating and trying acts of corruption can receive training with a specific bearing on this subject (See Chapter II, Section 2.2 of this report).
- 2.4.3 Adopt appropriate measures to enhance implementation of the Judiciary’s Technological Strategic Plan - PET (See Chapter II, Section 2.2 of this report).
- 2.4.4 Adopt appropriate measures to enhance implementation of the Justice Services Strengthening Project (See Chapter II, Section 2.2 of this report).
- 2.4.5 Taking into account the availability of resources, adopt appropriate measures to allocate a larger budgetary appropriation to the Judiciary, in keeping with the parameters set in the transitional paragraph of Article 1 of Law 1285 of 2009, which authorized the National Government to include in the income and expenditure budget for each of the next four years an allocation equivalent to 0.5% of Gross Domestic Product subject to the availability of budgetary resources, the Medium-Term Fiscal Framework, and the Expenditure Framework, in order gradually to develop oral proceedings in all judicial procedures determined by law and to execute plans for reducing the backlog of cases pending (See Chapter II, Section 2.2 of this report).
- 2.4.6 Attach the report of the persons in charge of the Internal Oversight System of the Judicial Branch to the annual report that the CSJd must submit to the Congress of the Republic, when the publication is issued on the institution’s portal, in line with the provisions of Article 105 of Law 270 of 1996, and to publicize the two most recent internal control reports. (See Chapter II, Section 2.2 of this report).
- 2.4.7 Update the specific Manual of Requirements and Functions for CSJd personnel positions (See Chapter II, Section 2.2 of this report).

- 2.4.8 Strengthen interinstitutional cooperation between the CSJd and the FGN, to increase the use made of Article 51 of Law 1474 of 2011, so that material and physical evidence in criminal proceedings can be transferred to disciplinary proceedings. (See section 2.2 of Chapter II of this report.)
- 2.4.9 Analyze the possible reasons why, in disciplinary proceedings on charges of corruption against officials in the Judiciary, a percentage of the measures taken involve archiving the investigation or refraining from a decision and from taking disciplinary action, with no penalties being imposed in any of the proceedings. The purpose of this is to identify measures for improving disciplinary proceedings, when applicable. (See Chapter II, Section 2.3 of this report).
- 2.4.10 Analyze the possible reasons why, in the disciplinary proceedings on charges of corruption against attorneys, one of the three decisions adopted declared that disciplinary action had prescribed. The purpose of this is to identify measures for improving disciplinary proceedings, when applicable. (See Chapter II, Section 2.3 of this report).
- 2.4.11 Prepare statistical data on the proceedings conducted by the Disciplinary Jurisdictional Chamber for corrupt practices committed by officers of the judicial branch and by lawyers, to clearly indicate how many matters are ongoing, suspended, covered by statutory limitations, or sent to the archive without a decision being adopted, ready for a decision to be adopted, or already covered by a decision on the merits, and whether such decisions involved sanctions or acquittals. The aim of the above is to identify challenges and recommend corrective measures, if applicable. (See section 2.3 of Chapter II of this report.)
- 2.4.12 Prepare statistics on corruption proceedings in the Judiciary that indicate how many of them are under way, have been suspended, prescribed, been archived before a decision could be taken, are ready for a decision to be taken, or in respect of which a decision on the merits has been taken, showing whether it resulted in an acquittal or penalty; the purpose of the above analysis being to identify challenges and recommend corrective measures (See Chapter II, Section 2.3 of this report).

### **3. THE OFFICE OF THE GENERAL PROSECUTOR (*Fiscalía General de la Nación* - FGN)**

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

[110] The Office of the General Prosecutor (FGN) has a set of provisions in its legal framework, as well as other measures that refer, inter alia, to the following:

[111] As regards its purpose and functions, the Office of the General Prosecutor (FGN) is, according to Article 250 of the Political Constitution (PC), responsible, ex officio or following an accusation, special petition, or complaint, for investigating facts that might constitute crimes and, where applicable, pressing charges against the suspects before the competent judges of the Republic. Crimes committed by members of the Armed Forces on active duty or related to their service are not included.<sup>24</sup>

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<sup>24</sup> Also exempt from FGN scrutiny are matters heard by indigenous courts, pursuant to Article 246 of the PC; the investigation and trial of the President of the Republic, judges of the Higher Courts, and the General

[112] Functions assigned to the FGN under Article 250 of the PC include: asking the judge responsible for overseeing warrants to take the necessary steps to ensure the appearance of the accused at criminal proceedings, safeguard evidence, and protect the community (victims, in particular); safeguarding physical evidence, and guaranteeing the chain of custody while the evidence is contested; presenting lists of charges to the judge hearing the case, with a view to initiating an oral, public, adversarial and consolidated trial, with substantiation of evidence and all guarantees of due process (*un juicio público, oral, con inmediación de las pruebas, contradictorio, concentrado y con todas las garantías*); asking the judge in the case to order a stop to investigations when by law there are no grounds for accusation; asking the judge in the case to take the necessary judicial measures to provide assistance to victims and to restore the law and make indemnification for the damage caused by the crime; supervising the protection of victims, jurors, witnesses, and other participants in criminal proceedings; and directing and coordinating the judicial police functions regularly performed by the national police and other organizations stipulated by law.<sup>25</sup>

[113] At the same time, Article 2 of Law 793 of 2002 lists as one of the grounds for terminating ownership by means of a court decision the existence of an unwarranted increase in wealth, at any time, without explanation of its illicit origin, and whenever the asset or assets involved stem directly or indirectly from an unlawful activity. Article 5 of the same law establishes that the action terminating ownership must be initiated ex officio by the FGN whenever any of the grounds contemplated in Article 2 apply.

[114] According to Article 249, of the PC, the Office of the General Prosecutor will consist of the General Prosecutor, his/her assistant prosecutor attorneys, and the other officials determined by law. The General Prosecutor will be elected for a period of four years by the Supreme Court of Justice from a list originating with the President of the Republic and is not eligible for reelection. The candidate must possess the same qualifications required for a judge of the Supreme Court of Justice. The Office of the General Prosecutor is part of the judiciary and enjoys administrative and budgetary autonomy. In disciplinary matters, pursuant to Article 10 of Law 938 of 2004 (Organic Statute of the Officer of the General Prosecutor), the General Prosecutor is subject to the rules set forth in Articles 174, 175 and 178 of the PC, whereby Congress shall set disciplinary proceedings in motion through the House of Representatives, in respect of the investigation, and through the Senate in respect of prosecution.

[115] Article 30 of Law 270 of 1996 establishes that the structure and modus operandi of the FGN shall be determined by law; that the General Prosecutor shall develop that structure subject to the general principles and rules established by law and shall staff each dependency appropriately, changing said staffing whenever he or she deems it necessary to do so; and that he/she shall draw up a manual of the requirement and functions of each position. The FGN has a number of different sections, which are in turn composed of different units responsible for investigating criminal conduct. In each of these sections, there are units responsible for investigating crimes against public

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Prosecutor, for which Congress is responsible, pursuant to Article 178 of the PC; and the investigation and trial of members of Congress, for which the Supreme Court of Justice is responsible, according to Article 235 of the PC.

<sup>25</sup> According to Article 202 of Law 906 of 2004, such organizations include the Office of the Attorney General, the Office of the Comptroller General of the Republic, and government entities performing surveillance and oversight functions.

administration. In addition, there is a National Anti-Corruption Unit, responsible for investigating matters specifically assigned to it by the General Prosecutor.<sup>26</sup>

[116] Article 2 of Law 938 of 2004 establishes that the functions of the FGN are performed by the General Prosecutor, the Deputy Prosecutor (*Vicefiscal*), and Assistant Prosecutors (*Fiscales Delegados*) through Assistant Prosecutor Offices. Article 3 of the same law establishes that Assistant Prosecutors shall have competence throughout the national territory, while Article 6 stipulates that they always act as representatives of the FGN, answerable to the General Prosecutor and their superiors in the hierarchy of the FGN, without prejudice to the autonomy of Assistant Prosecutors in the terms and conditions established by the Organic Law governing the Administration of Justice (*Ley Estatutaria de Administración de Justicia*)

[117] As regards appeals against decisions of the FGN, investigative acts carried out by it under Law 906 of 2004<sup>27</sup> are unappealable. However, because a transitional set of rules is in place,<sup>28</sup> some proceedings are still being conducted under Law 600 of 2000,<sup>29</sup> according to which judicial decisions by the FGN may be the subject of ordinary appeals.<sup>30</sup>

[118] As for relations between staff and employees other than the General Prosecutor and the rules of conduct governing them, Article 59 of Law 938 of 2004 clearly states, in concordance with Article 130 of Law 270 of 1996 the positions to which free appointment and dismissal arrangements apply, while other positions are career service posts.<sup>31</sup> Articles 150, 151, 152, 153 and 154 of Law 270 of 1996 refer, respectively, to disqualifications, incompatibilities, duties, and prohibitions, while Article 115 establishes that it is incumbent upon the judicial bodies (*Corporaciones*, such as the CSJd and judicial officers and employees to hear disciplinary proceedings against employees they supervise, without prejudice to the preferential power that the Political Constitution confers on the Attorney General to take disciplinary action pursuant to procedures established in special laws. For its part, Article 20 of Law 938 provides, in such cases, for an Oversight and Internal Disciplinary Control Office of the FGN.

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<sup>26</sup> Colombia's reply to the questionnaire, p. 16 General Prosecutor resolution 2473 of 2005 provides for a National Prosecution Unit Specializing in Crimes against public Administration.

<sup>27</sup> Corresponding to the "Adversarial System"

<sup>28</sup> During the on-site visit, it was explained that the two regimes coexisted without problems, as a consequence of the transition to the adversarial system in 2005, and that it was a temporary arrangement until cases begun under the inquisitorial system concluded. It was also explained that neither system was fully adversarial or inquisitive, but rather *sui generis*, in that both contain features of each systems, to a greater or lesser extent.

<sup>29</sup> Corresponding to the "inquisitorial system."

<sup>30</sup> According to Colombia's reply to the questionnaire (page 13), "...under Law 906 of 2004, the Office of the General Prosecutor still forms part of the Judiciary and continues to have exceptional powers to restrict fundamental rights, such as the power to order searches and inspections and interception of communications and arrests (whenever such orders affect fundamental rights they have to have prior authorization or legalization by the judge responsible for overseeing warrants (*juez de control de garantías*). Its functions are not judicial functions, particularly since they essentially have to do with investigations carried out through judicial police organizations and consist of gathering items of evidence, exhibits, and information obtained through legal means that will allow it to substantiate its claims before judges responsible for procedural safeguards or judges hearing the case, when bringing charges, obtaining any necessary precautionary measures, indicting, and requesting a conviction."

<sup>31</sup> Article 60 of Law 938 of 2004 establishes that the FGN has its own Staff Rules, which are regulated and administered autonomously, subject to competitive and performance evaluation criteria.

[119] As regards internal controls, Article 18 of Law 938 of 2004 establishes the FGN's Internal Oversight Office, the functions of which include: planning, directing, and evaluating the FGN's Internal Controls System and ensuring that it is applied in all positions, especially those with executive responsibilities; checking that the controls established for FGN proceedings and activities are applied by those responsible for executing them; and, in particular, that the areas or staff responsible for applying disciplinary measures perform that function appropriately.

[120] As for staff training, the FGN has its Criminal Investigation and Forensic Science academy, the functions of which, under Article 26 of Law 938 of 2004, are to: establish and conduct teaching programs in Criminal Investigation Techniques to provide refresher courses for staff of the technical investigation corps and prosecutors; and coordinate with entities performing judicial police functions that have schools or training academies the holding of joint training, updating, and information-sharing sessions, aimed at enhancing the skills of staff of the technical investigation corps and prosecutors.

[121] With respect to budgetary resources, Article 85 of Law 270 of 1996 establishes that it is incumbent upon the Administrative Chamber of the Higher Council of the Judiciary (CSJd) to prepare the proposed budget of the Judiciary, which should incorporate the draft put forward by the FGN.

[122] With regard to modern systems or technologies to facilitate its work, the FGN has an I.T. office, the functions of which include, according to Article 22 of Law 938 of 2004, planning, designing, and regularly updating the institutional and back-up information systems required by the Office to meet its users' needs and implement institutional policies. The FGN is currently implementing the National Government policy known as the Online Government Strategy, which seeks to set up, implement, and integrate various forums in which the entities can interact with their in-house and external users, through electronic mechanisms for digital consultations.<sup>32</sup>

[123] As regards the existence of manuals or documented procedures for specific tasks, there is a Functions Manual describing the tasks of each staff member of the institution and the requirements for acceding to each positions (document FGN 30000M01), as well as a Process Map and a Manual on Integral Management of the Office of the General Prosecutor (document FGN 14100-M-01), adopted in connection with implementation in the Office of the Quality Management System, pursuant to the parameters set forth in Law 873 of 2003 and Decree 1599 of 2005, which adopted the Standard Internal Control Management Model (MECI).<sup>33</sup> The procedures for conducting criminal investigations are established in Law 600 of 2000 and Law 996 of 2004, which give a detailed description of criminal proceedings.

[124] As regards coordination mechanisms, Article 36 of Law 270 of 1996 provides that the General Prosecutor or his assistants shall be responsible for directing, coordinating, and overseeing the judicial police functions that are performed on a permanent basis by the National Police, other agencies designated by law, and the other government entities to which the General Prosecutor may

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<sup>32</sup> Activities Report for 2012-2013, p.153 This document can be consulted on the FGN website at: <http://www.fiscalia.gov.co/colombia/gestion> (under quality management system and the Standard Internal Control Management Model - MECI)

<sup>33</sup> This document can be consulted on the FGN website at: <http://www.fiscalia.gov.co/colombia/gestion> (under quality management system and the Standard Internal Control Management Model - MECI)

have assigned such functions on a temporary basis. The General Prosecutor shall exercise all those functions in accordance with law, on a permanent, special, or temporary basis, either directly or through the agencies he/she designates.<sup>34</sup> For its part, Article 96 of that law establishes an Inter-Agency Commission of the Judiciary comprising the presidents of the Supreme Court, the Constitutional Court, the Council of State, the Higher Council of the Judiciary, the General Prosecutor, and a representative of the staff and employees of the Judiciary, to serve as a reciprocal information system between judicial organs and as a forum for administration of justice-related matters.

[125] For its part, Article 51 of Law 1474 of 2011 on “transferred evidence” (*prueba trasladada*) provides that: “Evidence validly submitted in a judicial or administrative proceeding, inside or outside the country, and the material means of proof, may be transferred to a disciplinary proceeding via copies authorized by the official concerned and shall be assessed in accordance with the rules established in this code. Material means of proof or exhibits that the Office of the General Prosecutor has uncovered may also be transferred with the presentation of the indictment in the criminal proceeding, even though they may not have been introduced and examined in the trial hearing and do not therefore have the status of evidence. These material means of proof or exhibits must be examined during the disciplinary proceedings. - Whenever the Office of the Attorney General or the Higher Council of the Judiciary need information regarding a criminal investigation under way or need to transfer to a disciplinary proceeding material means of proof or exhibits that have not been uncovered, they shall file a request to that end with the General Prosecutor. The General Prosecutor shall examine each such request and determine what information or material means of proof or exhibits are to be provided, without impairing the criminal investigation or jeopardizing its success.”

[126] As to accountability and the way citizens are kept informed, the FGN has a website <http://www.fiscalia.gov.co>, which provides the public with information on, inter alia, the FGN’s structure and functions, how it is managed, the rules governing it, ways to file reports or complaints, and the current status of investigations. The FGN’s web page also posts Activities Reports to Congress, Fiscal Accountability Reports to the Office of the Comptroller General of the Republic, and Accountability Reports to the General Public. There is also a section for filing complaints and claims.

[127] As for the way information is compiled, pursuant to Article 27 of Law 938 of 2004, it is incumbent upon the FGN’s National Directorate of Prosecutors’ Offices to direct the gathering of statistics on investigations and accusations brought by the Office of the General Prosecutor and conduct appropriate assessments as a basis for formulating criminal policy.

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

[128] The Office of the General Prosecutor (FGN) has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were briefly described in section 3.1 of this report. Nevertheless, the Committee deems it appropriate to make a number of observations in relation thereto:

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<sup>34</sup> The paragraph containing this provision states that “an exception to this provision shall be made in the case of the judicial police structure and functions of the Office of the Attorney General, as indicated in Article 277 of the Political Constitution.”

[129] First, although the FGN has a National Anti-Corruption Unit responsible for investigating matters specifically assigned to it by the General Prosecutor,<sup>35</sup> the Committee notes that there is no provision for it in the FGN's organic structure legally determined by its Organic Statutes (Law 938 of 2004); rather, it was created by the General Prosecutor making use of the powers conferred by Article 30 of Law 270 of 1996.

[130] With respect to the above, the Committee considers that, given the importance of the FGN's National Anti-Corruption Unit for investigating corrupt acts and in order to ensure that it acquires permanent status, it would be advisable for the country under review to consider including that unit in the formally established organic structure of the FGN. The Committee will formulate a recommendation in that regard to the country under review (See Recommendation 3.4.1 in Chapter II of this report).

[131] It is worth noting, in connection with the above, that the Committee was informed, during the on-site visit, of a bill aimed at strengthening the FGN. A reference to that bill can also be found in the FGN's 2012-2013 Activities Report,<sup>36</sup> which states: "At the initiative of the Office of the General Prosecutor, a bill was submitted to Congress granting special powers to the President of the Republic to promulgate a law restructuring the Office of the General Prosecutor. - The bill already passed the House of Representatives the first time it was debated."

[132] Second, bearing in mind that based on the information gathered during the on-site visit, it appears necessary to boost inter-agency coordination between the FGN and other agencies performing judicial police functions, pursuant to Article 202 of Law 906 of 2004, such as the Office of the Attorney General (PGN) and the Office of the Comptroller General of the Republic (CGR), the Committee will formulate a recommendation in that regard to the country under review (See Recommendation 3.4.2 in Chapter II of this report).

[133] With respect to the above, it is worth noting that during the on-site visit, the Committee was specifically reminded that Article 250 of the Political Constitution empowers the General Prosecutor to direct and coordinate the judicial police functions performed on a permanent basis by the National Police and other bodies designated by law. The Committee was also told of problems with recognition of those powers by other agencies, as well as of the need to establish better channels of communication with those who hold judicial policing powers.

[134] The Committee considers that in connection with the National Ethics Commission established by Article 62 of Law 1471 of 2011 and comprised, inter alia, of the General Prosecutor, the Attorney General, and the Comptroller General of the Republic, said authorities could agree on inter-agency coordination actions on judicial police functions, because their functions include coordination of joint actions to combat corruption in national or territorial entities in which corruption is suspected and the coordination of exchanges of information regarding anti-corruption efforts.

[135] At the same time, with regard to inter-agency coordination, the civil society organization "Corporación Transparencia por Colombia" pointed out in its paper on the Fourth Round

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<sup>35</sup> Colombia's reply to the questionnaire, p. 16.

<sup>36</sup> Activities report for 2012-2013 This document can be consulted on the FGN website at: <http://www.fiscalia.gov.co/colombia/gestion> (under quality management system and the Standard Internal Control Management Model - MECI)

questionnaire<sup>37</sup> and during the on-site visit that coordination is needed between all three branches of government and the “*Ministerio Público*” [Tr. in Colombia the “MP” comprises both the AG’s office (PGN) and that of the Ombudsman (*Defensoria del Pueblo*) ] in order to strengthen systems and processes for preventing, investigating, and punishing acts of corruption.

[136] Third, the Committee notes, in connection with the “transferred evidence” concept of Article 51 of Law 1474 of 2011, that this provision permits the transfer of evidence, material forms of evidence, and physical evidence submitted by the FGN to disciplinary proceedings instituted by the Office of the Attorney General and the Higher Council of the Judiciary but bearing in mind that during the on-site visit, the need to make this mechanism more operational was noted, as well as for the adoption of pertinent measures for the transfer of evidence among the various oversight bodies conducting criminal, fiscal, and disciplinary proceedings. The Committee will formulate a recommendation in that regard to the country under review (See Recommendation 3.4.3 in Chapter II of this report).

[137] On the other hand, in the 2012 Outcomes and Activities Report of the National Ethics Commission,<sup>38</sup> the section “Comprehensive Public Policy to Combat Corruption (*Política Pública Integral Anticorrupción - PPIA*) envisages, as part of the strategic emphasis on reducing impunity with respect to acts of corruption, “establishing protocols and standards for exchanges of evidence in criminal, fiscal, and disciplinary proceedings.” In addition, during the on-site visit, a researcher at the National University of Colombia pointed out that coordination through the Ethics Commission is separate and quite different from coordination of the proceedings and that the overall negative outcome is due to inherently incompatible investigation and prosecution models, which is why evidence cannot be transferred.

[138] Fourth, bearing in mind that, based on information gathered during the on-site visit, there appear to be problems with implementing the FGN’s administrative career system, due to lacunae in the regulations that prevent the entity from initiating new selection processes to fill positions through competition, the Committee will formulate a recommendation to the country under review in order for it to consider adopting appropriate measures to overcome those lacunae (See Recommendation 3.4.4 of Chapter II of this report).

[139] It should be mentioned that, during the on-site visit, the Committee was informed that: “As a result of the partial non-enforceability order with respect to Article 60 of Law 938 of 2004, which empowered the National Career Administration Commission to regulate competitions, the Institution is facing a regulatory lacuna which prevents it from initiating new selection processes to fill the positions through competition. That is why a bill is being negotiated in Congress granting extraordinary powers to issue the Office of the General Prosecutor’s special career rules.”

[140] Fifth, bearing in mind that, based on information gathered during the on-site visit, there appear to be problems with meeting the schedules established for filling 1,716 positions in the Administrative and Financial Area of the FGN through a competitive process initiated in 2008 and suspended multiple times due to legislation later declared to be unenforceable, the Committee will formulate a recommendation to the country under review that it consider adopting appropriate

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<sup>37</sup> Paper presented by the civil society organization “Corporación Transparencia por Colombia,” p.4.

<sup>38</sup> This report is posted on the website of the Transparency Secretariat of the Office of the President of Colombia([www.presidencia.gov.co](http://www.presidencia.gov.co))

measures to expedite the completion of that competition (See Recommendation 3.4.5 in Chapter II of this report).

[141] With respect to the above, it should be mentioned that, during the on-site visit, the Committee was told that: “in 2008, calls for expression of interest were initiated with a view to filling 1,716 positions in the Administrative and Financial Area. This competition was thwarted by Legislative Act 01 of 2008 and Legislative Act 04 of 2011 and their unenforceability orders, which caused the competition to be suspended on numerous occasions, which made it impossible to comply with schedules. - So far, provisional lists of eligible candidates have been published. With a view to publishing the definitive lists, the Council of State’s Consultation and Civil Service Division was consulted regarding their composition, so that the National Career Administration Commission could take a final decision.”

[142] Sixth, bearing in mind that, based on information gathered during the on-site visit, it is necessary to strengthen the FGN’s Technical Research Corps, endowing it with enough financial investigators or forensic accountants to support the anti-Corruption area and providing specific financial or accounting training for its staff, the Committee will formulate a recommendation in this regard to the country under review (See Recommendation 3.4.6. of Chapter II of this report).

[143] With regard to the above, it should be noted that, during the on-site visit, the Committee was told that in fact there is a shortage of financial investigators and forensic accountants to assist the anti-corruption area, as well as a lack of specific training in financial or accounting matters. In addition, the reply to the questionnaire of the country under review<sup>39</sup> points out, in the section on obstacles top achieving the FGN’s goals, that “another problem with investigating crimes against public administration has to do with the qualifications of the personnel performing judicial police functions and their ability to deal with the highly complex nature of investigations in this field.”

[144] Seventh, given the information gathered during the on-site visit regarding the training activities carried out by the FGN’s School of Criminal Investigation and Forensic Sciences in areas that are important for the investigation of acts of corruption,<sup>40</sup> and the fact that, in Colombia’s reply to the questionnaire, in the section on the technical cooperation needs of the Supreme Court of Justice, it is evident that it would very useful for the Court to be able to rely on such training for both officials and other employees in the Criminal Appeals Division who sit on the investigative support committees and for the FGN investigators seconded to the Division, the Committee will formulate a recommendation on this matter to the country under review (See Recommendation 3.4.7 of Chapter II of this report).

[145] Regarding the above, the aforementioned section of Colombia’s reply to the questionnaire states: “...it would be very useful to have a training module on investigation techniques applicable to the various facets of administrative corruption, tailored to the needs of officials and other employees in the Criminal Appeals Division who sit on investigating support committees and of the investigators of the Office of the General Prosecutor seconded to the Division.”

[146] Eighth, in the reply to the questionnaire of the country under review,<sup>41</sup> the section on obstacles to achieving the FGN’s goals points out that: “It is necessary to strengthen the mechanisms needed for prompt detection of acts of corruption occurring in each government entity, because in most cases

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<sup>39</sup> Colombia’s reply to the questionnaire, p. 25.

<sup>40</sup> This information is posted at: [www.oas.org/juridico/pdfs/mesicic4\\_col\\_fgn-capa.pdf](http://www.oas.org/juridico/pdfs/mesicic4_col_fgn-capa.pdf)

<sup>41</sup> Colombia’s reply to the questionnaire, p. 25.

the deeds constituting these crimes are detected long after they occur, which makes it difficult to gather the evidence needed to establish the responsibility of the perpetrators.”

[147] Regarding the above, the Committee was informed during the on-site visit that the mechanisms to be strengthened in each government entity would be those used to file reports and complaints and the internal audit units, whose duties needed to be redefined in such a way as to enable them to comply with their preventive function of promptly detecting irregularities and reporting them, equally promptly, to the competent authorities. Mention was also made of the need for a single desk to receive all complaints and redirect them appropriately to the competent authorities.

[148] With respect to the above, it should be noted that the Committee is conscious of the importance, for achievement of the FGN’s goals, of strengthening whistle-blowing mechanisms in each government entity and their internal audit units, in such a way that they can provide valuable and timely information for the investigation of acts of corruption. However, given that, in the First Review Round, it already made recommendations to the country under review on reporting of acts of corruption by civil servants and on internal audits, the Committee will comment on these matters in the section of this report devoted to follow up on the First Round recommendations.

[149] With respect to reporting of acts of corruption, it should also be noted that, during the on-site visit, the civil society organization “Corporación Transparencia por Colombia” stated that whistle-blowing channels had not been institutionalized, that neither the general public nor civil servants were aware of them, and that civil servants (i.e. those in closest contact to acts of corruptions) say they are increasingly afraid to denounce them.

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

[150] Information was gathered regarding the results obtained by the Office of the General Prosecutor (FGN), and the following, in particular:

[151] First, in the reply to the questionnaire,<sup>42</sup> the FGN furnished the following data of the National Prosecution Unit Specializing in Crimes against Public Administration on “the number of proceedings initiated, completed, and pending 2004 - 2010”:

Item	Prior investigation						
	2004	2005	2006	2007	2008	2009	2010
Existing	387	322	187	209	243	255	241
Initiated	202	102	147	196	130	130	90
Completed	307	186	126	162	118	125	121
Passed on	282	187	209	243	255	232	202
No. of prosecutors	21	23	19	20	21	21	20

Item	Pre-trial proceedings
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<sup>42</sup> Colombia’s reply to the questionnaire, p. 24.

	2004	2005	2006	2007	2008	2009	2010
Existing	188	506	239	254	280	267	259
Initiated	144	139	98	134	99	101	85
Completed	106	120	83	108	111	98	81
Passed on	226	238	254	280	268	260	271

[152] Regarding the previous information, the Committee deems that although it is useful to determine the number of proceedings, involving both prior investigation and preliminary hearings, that have been entered and processed each year referred to by the information in the National Anti-Corruption Unit, this information is not broken down so as to know, with respect to the proceedings being referred to, how many have been suspended, subject to a statute of limitations, closed, those cases for which no ruling could be issued, those ready for a ruling or that have been the target of a substantive ruling and what that ruling was and does not provide either any statistical data that make it possible to learn about the aspects indicated with respect to the matters investigated by the units specializing in crimes against public administration of local divisions.

[153] Second, in the reply to the questionnaire,<sup>43</sup> the FGN provided the following information “on the processing of cases by the National Unit on Crimes against Public Administration” between August 2009 and November 2010:

<b>Actions taken</b>	<b>No. of decisions</b>
Indictments	47
Estoppels	39
Legal status	63
Inhibition proceedings	42
Proceedings archived under Law 906	23
<b>Total actions taken</b>	<b>214</b>

[154] Third, in the reply to the questionnaire,<sup>44</sup> the FGN provided data for 2011 on the following “activities report” in respect of the “National Prosecutor’s Unit Specializing in Crimes against Public Administration”:

<b>Actions undertaken</b>	<b>Law 600 of 2000</b>	<b>Law 906 of 2004</b>
Convictions	18	
Inhibition proceedings	48	
Legal status	77	
Estoppels	50	
Indictments	29	
Archived under Art. 79		22
P. opportunity		4
E. indictment		6
Pre-agreements		5
Public hearings, two systems		259

<sup>43</sup> Colombia’s reply to the questionnaire, pp. 24. and 25.

<sup>44</sup> Colombia’s reply to the questionnaire, p. 25.

[155] As regards the data shown in the two foregoing Tables, the Committee considers that they serve to show that the “National Prosecutor’s Unit Specializing in Crimes against Public Administration” performed its functions in the period referred to, with the results indicated in those Tables.

[156] Fourth, the Technical Secretariat of the MESICIC gathered the following information<sup>45</sup> from the website of the Secretariat for Transparency of the Office of the President of Colombia regarding the FGN’s “Termination of Ownership Unit” (*Unidad de Extinción de Dominio*):

[157] “In 11 years, verdicts were reached in only 4.3% of the 594 Termination of Ownership proceedings stemming from corruption cases, according to the Secretary for Transparency (...) - Of the 594 cases handled by the Termination of Ownership Unit, 338 were archived for lack of competence (*por inhibitorios*). That means that in 57% of the proceedings there were no grounds for investigation. Furthermore, of the 256 remaining cases, 204 are at the initial phase, 12 have begun the preliminary stage, 2 were joined to other proceedings, 24 were dismissed for lack of competence, 2 are currently in the trial phase, 1 still has to be assigned, and only 11 cases, or 4.3%, wended with a termination of ownership judgment...On average, proceedings take between 10 and 12 years.”

[158] With respect to these data, and bearing in mind the high percentage of motions for dismissal based on lack of competence (*medidas inhibitorias*), the low level number of termination of ownership judgments, and the duration of each such proceeding, the Committee will formulate a recommendation to the country under review in order for it to consider analyzing the possible reasons for this state of affairs, in order to identify measures for improving the effectiveness of the mechanism, if applicable. (See Recommendation 3.4.9 in Chapter II of this report).

### 3.4. Conclusions and recommendations

[159] Based on the comprehensive review of the Office of the General Prosecutor (FGN) in the foregoing sections, the Committee offers the following conclusions and recommendations:

**[160] Colombia has considered and adopted measures intended to maintain and strengthen the Office of the General Prosecutor (FGN) as an oversight body, as indicated in Chapter II, Section 3 of this report.**

[161] In light of the comments made in that Section, the Committee suggests that the country under review consider the following recommendations:

- 3.4.1 Include the National Anti-Corruption Unit in the legally and formally established organic structure of the Office of the General Prosecutor (FGN), given its importance for the investigation of acts of corruption and in order to increase the likelihood that it will be permanent (See Chapter II, Section 3.2 of this report).
- 3.4.2 Strengthen, as appropriate, interagency coordination between the FGN and other organs performing judicial police functions pursuant to Article 202 of Law 906 of 2004, such as the Office of the Attorney General (PGN) and the Office of the Comptroller General of the Republic (CGR). (See Chapter II, Section 3.2 of this report).

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<sup>45</sup> This information is posted at: [www.oas.org/juridico/pdfs/mesicic4\\_col\\_raj.pdf](http://www.oas.org/juridico/pdfs/mesicic4_col_raj.pdf)

- 3.4.3 Strengthen interinstitutional cooperation between the FGN, the PGN, and the CSJd, to increase the use made of Article 51 of Law 1474 of 2011, so that material and physical evidence in criminal proceedings can be transferred to disciplinary proceedings, as well as adopt the pertinent measures for the transfer of evidence among the various oversight bodies conducting criminal, fiscal, and disciplinary proceedings. (See section 3.2 of Chapter II of this report.)
- 3.4.4 Take appropriate steps to overcome the regulatory lacuna in the FGN's administrative career system that is preventing it from initiating new selection processes to fill positions by competitive exam (See Chapter II, Section 3.2 of this report).
- 3.4.5 Take appropriate steps to expedite completion of the competition initiated in 2008 to fill 1,716 positions in the FGN's Administrative and Financial Area, which has been suspended on multiple occasions due to legislative acts that were later declared unenforceable (See Chapter II, Section 3.2 of this report).
- 3.4.6 Strengthen the FGN's Technical Investigation Corps by providing it with sufficient financial investigators or forensic accountants to assist with its anti-corruption work and by providing its staff with specific training in financial or accounting matters (See Chapter II, Section 3.2 of this report).
- 3.4.7 Provide training courses, through the FGN's School of Criminal Investigation and Forensic Sciences, for the Supreme Court of Justice (CSJ), in areas that are important for investigating acts of corruption, such as those already being taught by that School for both the officials and other employees of the Criminal Appeals Division who sit on the CSJ's investigative support committees and the FGN investigators seconded to that Division (See Chapter II, Section 3.2 of this report).
- 3.4.8 Compile statistics on the corruption proceedings conducted by the FGN, including the matters being dealt with by both the National Anticorruption Unit and by the units specializing in crimes against the public administration in the district offices, and that show how many have been suspended, have prescribed, have been archived without a decision being handed down, are ready for a decision, or in respect of which a decision on the merits has already been handed down, and the nature of that decision; the purpose of the above analysis being to identify challenges and recommend corrective measures (See Chapter II, Section 3.3 of this report).
- 3.4.9 Conduct an analysis of the possible reasons for the high percentage of motions to dismiss based on lack of competence (*medidas inhibitorias*) adopted in termination of ownership proceedings stemming from corruption cases, the low level number of termination of ownership judgments, and the duration of such proceedings; the purpose of this is to identify measures for improving the effectiveness of the mechanism, if applicable. (See Chapter II, Section 3.3 of this report).

#### **4. OFFICE OF THE ATTORNEY GENERAL (PGN)**

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

[162] The Office of the Attorney General has a set of provisions in its legal framework, as well as other measures that refer, inter alia, to the following:

[163] With regard to its objective and functions, pursuant to Article 277 of Political Constitution, the Attorney General's functions in his/her own right and via his/her assistants and agents, shall include, inter alia, supervising compliance with the Constitution, the laws, judicial decisions, and administrative decrees; supervising at the highest level the official conduct of those who hold public office, including those popularly elected; exercising a preferential right to impose disciplinary authority;<sup>46</sup> initiating the appropriate investigations and imposing the appropriate sanctions in accordance with the law; and intervening in legal proceedings before the judicial or administrative authorities when it becomes necessary to defend the legal order, the public domain, or fundamental rights and guarantees. This same provision establishes that in order to fulfill its functions the Office of the Attorney General shall have judicial police powers and may bring such actions as it deems necessary.

[164] According to Article 275 of the PC, the Attorney General is the supreme director of the *Ministerio Público* (Tr. hereinafter, for the sake of simplicity, "Public Ministry") and, according to Article 276 of the PC, he/she shall be elected by the Senate for a period of four years from a list made up of candidates selected by the President of the Republic, the Supreme Court of Justice, and the Council of State.

[165] According to Article 1 of Law 262 of 2000, the Office of the Attorney General (PGN) is the highest body in the Public Ministry; it enjoys administrative, financial, and budgetary autonomy as specified by the Organic Statute of the National Budget; and it performs its functions as instructed by its highest authority, the Attorney General. The disqualifications and incompatibilities applicable to the Attorney General are set forth in Articles 4 and 5 of said Law. He/she may be tried, if charged with committing punishable deeds, by the Supreme Court of Justice, pursuant to Article 235 of the PC.

[166] According to Article 23 of Decree Law 262 of 2000, the delegated offices of the Attorney General (*procuradurías delegadas*) shall perform preventive, oversight, and disciplinary functions, protect and defend human rights, and intercede with administrative and judicial authorities, in accordance with the PC, the law, and the provisions of Title VI of the aforementioned Decree Law, whenever the Attorney General so determines under powers conferred by Article 7 of said Decree. Articles 24 to 36 of the aforementioned decree provide a detailed description of the functions referred to. Article 37 thereof envisages for court prosecutors (*procuradores judiciales*) the same functions as those indicated in Article 23 for the delegated offices of the Attorney General and described in detail in Articles 38 to 48.

[167] Article 75 of Decree Law 262 of 2000 establishes the functions performed by regional prosecutors' offices within their territorial district, when so determined by the Attorney General under the powers conferred by Article 7 of said Decree. Article 76 thereof does the same in respect of district and provincial prosecutors' offices.

[168] Decisions taken by the PGN are individual in the case of matters heard in sole, first and second instance by provincial and district prosecutor's offices (Article 76 of Decree Law 262 of 2000), regional prosecutors' offices (Article 75 of Decree Law 262 of 2000), court prosecutors' offices

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<sup>46</sup> Exceptions to this power apply in the case of Higher Court judges and the General Prosecutor, who may only be investigated and tried by Congress, pursuant to Article 178 of the PC.

(Article 39 of Decree Law 262 of 2000), delegated offices of the Attorney General (Article 25.1 through 4 of Decree Law 262 of 2000), the oversight office (*Veeduría*) of the Office of the Attorney General (Articles 72 to 74 of Decree Law 262 of 2000), the Assistant Attorney General (Article 17.3 and 4 of Decree Law 262 of 2000), and the Attorney General (Article 7.21 through 25 of Decree Law 262 of 2000); and collegial in the case of decisions handed down by the Disciplinary Division of the Office of the Attorney General (Article 22.1 of Decree Law 262 of 2000).

[169] As for the exercise of concurrent functions, Article 2 of Law 734 of 2002 (Single Disciplinary Code) establishes that, without prejudice to the preferential disciplinary authority of the PGN and of District and Municipal Representatives,<sup>47</sup> it is incumbent upon internal disciplinary oversight bodies and officials with disciplinary powers in the branches, organs, and entities of the State, to hear disciplinary cases against the civil servants in their dependencies. It adds that the body exercising disciplinary action in cases involving judicial officials is the disciplinary authority (*jurisdicción disciplinaria*).<sup>48</sup>

[170] According to Article 25 of Law 734 of 2002 (Single Disciplinary Code), disciplinary law shall apply to civil servants even after they have retired and to individuals referred to in Article 53 of the Single Disciplinary Code.<sup>49</sup> It shall also apply to indigenous persons administering State resources. For disciplinary law purposes, the following shall also be deemed to be civil servants: the managers of cooperatives, foundations, corporations, and association established and run by the State or in which the State has a majority stake;

[171] As regards the human resources of the PGN and the rules governing them, Article 279 of the PC establishes that the law will determine matters relating to the structure and *modus operandi* of the Office of the Attorney General, regulate matters relating to employment and competitive examinations and retirement from the service, disqualifications and incompatibilities, designation, qualifications, compensation, and the disciplinary regime applicable to all officials and employees of said body. Article 82 of Decree Law 262 of 2000 establishes the positions to which free appointment and dismissal arrangements apply, and those that are career service posts.<sup>50</sup> Articles 85 and 86 of the same law establishes disqualifications and incompatibilities for PGN staff and other employees subject to the disciplinary rules set forth in the Single Disciplinary Code. The Specific Manual on

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<sup>47</sup> Article 3 of this Code stipulates in this respect that: “The Office of the Attorney General has preferential right to exercise disciplinary authority, to which end it may initiate, pursue, or remand any investigation or trial within the sphere of competence of internal disciplinary oversight bodies in government entities. It may likewise take over proceedings at the appeal stage. -By virtue of the same power it may, through a substantiated decision, *ex officio*, or at anyone’s request, take cognizance of matters being processed internally in all other disciplinary oversight bodies. It shall proceed in the same manner in cases in which it decides to cease hearing a case. - Municipal and district representatives shall have preferential disciplinary authority vis-a-vis the administration.

<sup>48</sup> Here, Article 3 of this Code establishes that the Higher Council of the Judiciary is competent to hear until the end of the proceedings cases involving misconduct on the part of judicial officials, except those with constitutional prerogatives.

<sup>49</sup> Those who perform control or supervisory functions in state contracts, perform public functions permanently or on a temporary basis, in respect of said functions; and those who administer public or official funds.

<sup>50</sup> Page 42 of Colombia’s Reply to the Questionnaire lists the number of positions to which free appointment and dismissal arrangements apply, and career service posts, and the regulations governing them. During its on-site visit, the Committee was told that the Constitutional Court had recently ruled that many formerly “free appointment” positions in the PGN were henceforth to be filled through competition.

Functions in accordance with Labor Skills and Job Requirements for Personnel of the PGN and of the Public Ministry's Studies Institute was adopted through Resolution 253 of 2002.

[172] As for staff training, the Public Ministry has its Studies Institute, whose functions include, pursuant to Article 50 of Decree law 262 of 2000, conducting training programs. The Committee was also informed during the on-site visit about training for staff in the functions contemplated in the Specific Manual on Functions in accordance with Labor Skills and Job Requirements and about a National Preventive Training Project within the "Program for Strengthening the Office of the Attorney General - Phase II (2011 - 2015)."

[173] As for internal audits, Article 18 of Decree Law 262 of 2000 establishes the PGN's Internal Audit Office and includes among its functions oversight of the activities carried on by the different units within the PGN as well as of overall compliance with the institution's objectives, based on analysis of the information provided by those units. Another function is to propose such corrective measures as it deems appropriate.<sup>51</sup>

[174] As for modern systems or technologies to facilitate its work and the existence of manuals or documented procedures, the PGN has a Systems Office, whose functions include, pursuant to Article 16 of Decree Law 262 of 2000, developing, directly or through third parties, the software needed to systematize information. The PGN also has a chart of preventive, intervention, and disciplinary processes and it has implemented the Quality Control System as far as the Sub-Process for Selecting Career System Staff in accordance with Technical Quality Standard NTCISO 9001:2008.<sup>52</sup> Disciplinary procedures are described in detail in Law 734 of 2002 (Single Disciplinary Code).

[175] As regards coordination mechanisms, Article 7 stipulates that the Attorney General's functions include coordination and oversight of compliance with disciplinary regulations. In April 2003, an agreement was signed between the Office of the General Prosecutor, the Office of the Attorney General, and the Office of the Comptroller General, "so that, based on each Office's constitutional and legal spheres of competence, ways can be found to make actions to prevent and punish conduct detrimental to State property complement one another, primarily by striving to ensure that anti-corruption plans and projects result in joint actions with optimal outcomes."<sup>53</sup>

[176] For its part, Article 51 of Law 1474 of 2011 on "transferred evidence" (*prueba trasladada*) provides that: "Evidence validly submitted in a judicial or administrative proceeding, inside or outside the country, and the material means of proof, may be transferred to a disciplinary proceeding via copies authorized by the official concerned and shall be assessed in accordance with the rules established in this code. Material means of proof or exhibits that the Office of the General Prosecutor has uncovered may also be transferred with the presentation of the indictment in the criminal proceeding, even though they may not have been introduced and examined in the trial hearing and do not therefore have the status of evidence. These material means of proof or exhibits must be examined during the disciplinary proceedings. - Whenever the Office of the Attorney General or the Higher Council of the Judiciary need information regarding a criminal investigation under way or need to transfer to a disciplinary proceeding material means of proof or exhibits that have not been uncovered, they shall file a request to that end with the General Prosecutor. The General Prosecutor

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<sup>51</sup> Page 43 of Colombia's Reply to the Questionnaire reports on (99.24%) implementation of the Standard Internal Oversight Model.

<sup>52</sup> Colombia's reply to the questionnaire, p. 43.

<sup>53</sup> Colombia's reply to the questionnaire, p. 45.

shall examine each such request and determine what information or material means of proof or exhibits are to be provided, without impairing the criminal investigation or jeopardizing its success.”

[177] As to accountability and the way citizens are kept informed, the PGN has a website [www.procuraduria.gov.co](http://www.procuraduria.gov.co), which provides the public with information on, inter alia, the PGN’s structure and functions, how it is managed, the rules governing it, ways to file reports or complaints, and the current status of investigations. For its part, Article 277 of the PC establishes that each year the Attorney General will submit an activities report to Congress.<sup>54</sup>

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

[178] The Office of the Attorney General (PGN) has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were briefly described in section 4.1 of this report. Nevertheless, the Committee deems it appropriate to make a number of observations regarding them:

[179] First, bearing in mind that based on the information gathered during the on-site visit, it appears that it is necessary to boost interagency cooperation between the PGN and other oversight bodies, such as the Office of the General Prosecutor (FGN) and the Office of the Comptroller General of the Republic, the Committee will formulate a recommendation in that regard to the country under review (See Recommendation 4.4.1 in Chapter II of this report).

[180] It is worth noting in this respect that Colombia’s reply to the questionnaire states that “in order to maximize support and interagency cooperation, in April 2003 an agreement was signed between the Office of the General Prosecutor, the Office of the Attorney General, and the Office of the Comptroller General, so that, based on each Office’s constitutional and legal spheres of competence, ways can be found to make actions to prevent and punish conduct detrimental to State property complement one another, primarily by striving to ensure that anti-corruption plans and projects result in joint actions with optimal outcomes.”<sup>55</sup> However, from information gathered during the on-site visit, that agreement would appear to have ceased to be in effect on April 12, 2012.

[181] During the on-site visit, moreover, the PGN pointed out that, although it is possible to form PGN-FGN committees to conduct joint investigations, this rarely happens, and that the PGN’s Special Investigations Directorate, which the Attorney General uses to perform its judicial police functions, only has a staff of 60 for the entire country, while the FGN’s judicial police is far larger and better funded.

[182] In addition, it is worth bearing in mind that in the Reply to the Questionnaire, the Committee was told of a workshop conducted while the aforementioned agreement was in effect, in which staff from all three institutions participated and shared experiences regarding difficulties encountered

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<sup>54</sup> Colombia’s reply to the questionnaire states, on page 46: An ANNUAL ACTIVITIES REPORT (*INFORME DE GESTIÓN ANUAL*) shall be compiled and presented in a PUBLIC ACCOUNTABILITY HEARING, broadcast live on national television to the general public, oversight bodies, and Congress. - A printout shall be given to each oversight office and supervisor present at the Hearing and any queries answered. A copy shall be sent to Congress and to the Office of the Comptroller General for such purposes as they deem pertinent. -The information shall remain posted on the web page of the Office of the Attorney General at: [www.procuraduria.gov.co](http://www.procuraduria.gov.co) Informe de Gestión 2011 [Activities Report for 2011].”

<sup>55</sup> Colombia’s reply to the questionnaire, p. 45.

during investigations.<sup>56</sup> That goes to show the advisability of permanent and effective inter-agency cooperation.

[183] The Committee considers that, in connection with the National Ethics Commission (*Comisión Nacional para la Moralización*), established by Article 62 of Law 1474 of 2011 and comprised, inter alia, of the Attorney General, the General Prosecutor, and the Comptroller General of the Republic, those authorities could agree on appropriate inter-agency cooperation activities, given that their functions include, inter alia, coordinating joint actions to combat corruption in national or territorial-level entities in which there is circumstantial evidence of corruption and coordinating exchanges of information for anti-corruption purposes.

[184] Second, bearing in mind that based on the information gathered during the on-site visit, it appears necessary to strengthen the PGN's preventive function, as envisaged in the "Program for Strengthening the Office of the Attorney General - Phase II (2011 - 2015)," in such a way as to overcome the problems besetting the "PGN's Comprehensive Prevention System" which that program seeks to correct, the Committee will formulate a recommendation in that regard to the country under review (See Recommendation 4.4.2 in Chapter II of this Report).

[185] With respect to the above, it is worth noting that, during the on-site visit, the following factors were mentioned as relevant to the issues facing the "PGN's Comprehensive Prevention System": "insufficient capacity; lack of coordination between the different levels of the Institution responsible for prevention at the central and regional level; a lack of in-house incentives to perform preventive functions; infrastructure and a distribution of spheres of competence that encourage the performance of disciplinary and intervention functions more than preventive functions (6.5%); budgetary imbalances (5.3% of the resources are invested in preventive procedures); and limited I.T. tools to support the preventive function."

[186] Third, the Committee observes that Decree Law 262 of 2000 establishes precise and separate functions with respect to prevention for the delegated prosecutor's offices (Article 24) and the court prosecutors (Article 38), but does not do so for the regional prosecutor's offices (Article 75) or the district and provincial prosecutor's offices (Article 76). Bearing in mind, furthermore, that, based on information gathering during the on-site visit, it would appear best to establish precise and separate functions for the latter offices as well, and to assign them the staff they need to fully perform said functions, the Committee will formulate a recommendation in this regard to the country under review (See Recommendation 4.4.3 in Chapter II of this report).

[187] Worth noting in this regard is that during the on-site visit, it became apparent that in the regional, district, and provincial prosecutor's offices, functions of a preventive nature are sometimes downplayed because their staff concentrate on disciplinary functions, whereas it would be advisable to clearly distinguish those functions and endow those prosecutor's offices with specialists in each of the areas.

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<sup>56</sup> Regarding this agreement, Colombia's reply to the questionnaire states, on page 45: "To that end, on May 5, 2011, a training workshop was conducted in the Antonio Nariño Auditorium of the Office of the Attorney General for 300 staff members (100 from each institution) on "Different Types of Financial Fraud," as an effective way of boosting a comprehensive grasp of this illicit behavior and of sharing experiences regarding difficulties encountered during investigations in large part as a result of the sophisticated tools used by the criminals."

[188] Fourth, given that the information gathered during the on-site visit suggests a need to make the “transferred evidence” option contained in Article 51 of Law 1474 of 2011 more operational (thereby allowing evidence submitted by the Office of the General Prosecutor to be transferred to the disciplinary procedures, material evidence, and physical evidence practiced by the Office of the Attorney General and the Higher Council of the Judiciary), the Committee will formulate a recommendation in this regard to the country under review (See Recommendation 4.4.4 in Chapter II of this report).

[189] Worth noting in this regard is that during the on-site visit, the FGN pointed to the existence of problems with applying the “transferred evidence” option due to such circumstances as the different times procedures take in the different institutions and differences in the parameters applied to the evidence submitted. During that visit, the PGN, for its part, pointed to problems due, inter alia, to the FGN’s claim that, because of the confidential nature of the preliminary proceeding, evidence may only be transferred after charges have been brought; which is too late for the PGN, whose investigations progress at a faster pace. The PGN also told the Committee that making the disciplinary action independent of the criminal action means that the evidence-related concerns of the Accusing Entity (the FGN) may not coincide with the needs of the Disciplinary Oversight Body (the PGN), and therefore a consensus should be reached on a mechanism for determining what means of proof or exhibits are really required for disciplinary proceedings.

[190] Fifth, given that based on the information gathered during the on-site visit, it appears that the PGN needs to have the financial resources required to conduct the examinations for positions to be filled that the Constitutional Court recently ordered, the Committee will formulate a recommendation on that regard to the country under review (See Recommendation 4.4.5 in Chapter II of this report).

[191] Worth noting in this respect is the observation made during the on-site visit that, since in its recent judgments the Constitutional Court had ruled that many formerly “freely appointed” positions in the PGN now had to be awarded through competition, the necessary funding for that process needs to be made available.

[192] Sixth, bearing in mind that based on the information gathered during the on-site visit, it appears that it is necessary to boost coordination within the PGN with respect to training, as well as provide sufficient funds to finance anti-corruption training courses, the Committee will formulate a recommendation in that regard to the country under review (See Recommendation 4.4.6 in Chapter II of this report).

[193] With respect to the above, it is worth noting that during the on-site visit the Public Ministry’s Studies institute pointed to the importance of pooling efforts with regard to training, because currently a prevention project was being developed, with IDB financing, which includes components that were not coordinated with the Studies Institute inside the PGN. It also pointed to the insufficiency of current funding for training, including training in anti-corruption techniques.

[194] Seventh, given that based on both the Reply to the Questionnaire and the information gathered during the on-site visit, it appears that the PGN needs to have the financial resources it requires to engage citizens in social oversight, the Committee will formulate a recommendation in that regard to the country under review (see Recommendation 4.4.7 in Chapter II of this report).

[195] It is worth noting here that the Reply by the country under review<sup>57</sup> states, in the section on obstacles encountered in attempting to achieve the PGN's purposes, that: "With respect to efforts to combat corruption, it is important that the Office of the Attorney General has the means (financial and technical resources) to develop social oversight and engage citizens in it on a massive scale."

[196] At the same time, during the on-site visit it became apparent that the community needs to be involved in the fight against corruption, and yet the resources were lacking to finance the activities required to elicit that involvement, such as forums, other events, and actions to that end.

[197] Eighth, the Reply of the country under review<sup>58</sup> refers, in the section on obstacles to achieving the PGN's purposes, to: "The lack of protection and incentives for whistle-blowers, of a kind that demonstrates and reflects effectiveness and benefits of citizen participation."

[198] With respect to the above, during the on-site visit the PGN explained that although the Law establishes that this body must have its own protection program, it lacked the necessary funds. It also pointed out that, since the Law requires that no proceedings may be kept secret from the accused, not being able to keep the whistleblower's or witness's identity confidential could inhibit them from testifying or even lead them to retract a complaint. While it is true that the PGN can investigate anonymous complaints, this means that the person filing the complaint must accompany it with all the evidence. There is no chance of adding to it later.

[199] On this, it should be noted that the Committee is aware of the importance, for the attainment of the PGN's objectives, of it having the financial resources needed for its whistle-blower protection program, as well as of legal measures such as protection of the identity of the whistle-blower or witness. However, given that the Committee already made recommendations to the country under review in the first two Rounds of Review regarding protection for those who report acts of corruption, it will comment on this matter in the section of this report devoted to follow-up on the recommendations of the First Review Round.

[200] On this matter of protection for persons reporting acts of corruption, it is also worth noting that during the on-site visit the civil society organization "Corporación Transparencia por Colombia" stated that there was still no legal or regulatory framework that explicitly establishes whistleblower protection mechanisms and that the Government claimed to be working on the subject, taking the OAS model law and other international instruments as guidelines, but no actual progress had been made,

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

[201] Information was gathered regarding the results achieved by the Office of the Attorney General (PGN), of which the following are worth noting:

[202] First, in the Reply to the Questionnaire,<sup>59</sup> the PGN provided the following information on preventive activities for 2009 - 2012:

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<sup>57</sup> Colombia's reply to the questionnaire, p. 52.

<sup>58</sup> Colombia's reply to the questionnaire, p. 52.

<sup>59</sup> Colombia's reply to the questionnaire, p. 50.

<b>Preventive activities 2009-2011</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b> (Sept 30)	<b>2009/12</b>
Users attended to	36,629	71,428	85,260	78,353	274,670
Visits carried out	11,094	10,098	7,675	5,973	34,840
Reports presented	14,892	7,944	10,531	8,696	42,063
Cases closed	2,134	35,378	24,501	23,016	85,029
Actions undertaken in the electoral process	697	2,069	2,878	369	6,013
<b>Preventive activities</b>	<b>233,400</b>	<b>226,519</b>	<b>219,611</b>	<b>131,956</b>	<b>811,486</b>

[203] Regarding the statistics contained in the foregoing Table, the Committee considers that they serve to show that the PGN has performed its prevention-related functions in the period covered by the Table, with the outcomes shown therein. It is to be noted that this information supplements the detailed information on preventive actions provided in the Reply to the Questionnaire.<sup>60</sup>

[204] Second, in the Reply to the Questionnaire,<sup>61</sup> the PGN provided the following information on preventive activities for 2009 - 2012:

<b>Interventions 2009/2011</b>	<b>2008</b>	<b>2009</b>	<b>2011</b>	<b>2012</b>	<b>2009/2012</b>
Participation in hearings	67,937	62,024	73,718	51,550	255,229
Resources	8,700	7,530	4,646	5,781	26,675
Opinions ( <i>conceptos</i> ) issued	22,310	24,972	43,728	26,342	117,362

[205] Regarding the statistics contained in the foregoing Table, the Committee considers that they serve to show that the PGN has performed its prevention-related functions in the period covered by the Table, with the outcomes shown therein.

[206] Third, in the Reply to the Questionnaire,<sup>62</sup> the PGN provided the following information on disciplinary activities for 2009 - 2012:

<b>Disciplinary activities</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012 up to Sept. 30</b>	<b>Total (2009/2012)</b>
Matters received	68,248	88,098	110,084	83,632	350,062
Initial inventory of proceedings	20,433	23,698	29,775	33,063	
Writs of prohibition/motions for removal of case from court ( <i>autos</i> )	6,672	7,374	9,650	9,041	32,737

<sup>60</sup> Colombia's reply to the questionnaire, p. 50.

<sup>61</sup> Colombia's reply to the questionnaire, p. 50.

<sup>62</sup> Colombia's reply to the questionnaire, pp. 48 and 49.

<i>inhibitorios</i> )					
Admissions/incoming cases ( <i>ingresos</i> )	20,760	22,138	28,955	27,566	99,419
Inquiries begun	14,903	15,924	22,543	15,341	68,711
Disciplinary investigations	5,857	6,214	6,412	7,513	25,996
First instance judgments	1,537	1,475	1,666	1,326	6,004
Acquittals	649	560	583	419	2,211
Convictions	888	915	1,083	907	3,793
Persons punished	737	855	1,608	1,289	4,489
Second instance judgments	1,009	1,116	1,144	880	4,149
Oral proceedings initiated		273	564	471	1,308
Oral proceedings with decision rendered ( <i>procesos verbales fallados</i> )		225	392	358	975
Archived	12,820	12,902	14,104	11,748	51,574
Annulments	590	472	455	536	2,053
Direct vacation of judgment ( <i>revocatoria directa</i> )	194	150	201	133	678
Prescriptions	592	428	509	462	1,991
Penalties H.R. ( <i>Sanciones DD.HH.</i> )	63	67	60	60	250
Remanded (Internal jurisdiction) ( <i>Remisiones Competencia Int.</i> )	6,162	10,095	4,057	2,185	22,499
Remanded (External jurisdiction) ( <i>Remisiones Competencia Ext.</i> )	12,625	21,095	41,451	1,351	77,351
Outgoing cases ( <i>egresos</i> )	15,155	16,766	25,455	15,550	72,926
Final inventory	23,698	29,775	33,063	26,568	

[207] Regarding the statistics contained in the foregoing Table, the Committee considers that they serve to show that the PGN has performed its disciplinary functions in the period covered by the Table, with the outcomes shown therein.

[208] Nevertheless, bearing in mind the large number (1,991) of cases declared to have prescribed, the Committee will formulate a recommendation to the country under review to consider adopting appropriate corrective measures to avoid disciplinary actions prescribing (See Recommendation 4.4.8 in Chapter II of this report).

[209] With regard to the above, during the on-site visit, the PGN listed the following reasons for or factors affecting the prescription of disciplinary proceedings:

[210] “Delay in the PGN hearing about disciplinary offenses:

[211] - At the subnational level (departments and municipalities), disciplinary proceedings are not brought in the times allowed for the preliminary inquiry and investigation phases.

[212] The offices responsible for internal disciplinary oversight fail to gather evidence on time.

[213] -Once evidence has been submitted at the subnational level, it is not forwarded on time to central bodies for evaluation.

[214] -By the time the material is received, the five (5) years allowed for disciplinary action to be brought have almost run out.

[215] At the local level, special obstacles prevent disciplinary actions being brought by the legal deadlines. These include:

[216] - Improper pressure is brought to bear on local authorities;

[217] - Lack of qualifications and training in investigation on the part of officials responsible for discipline;

[218] - Shortage of personnel to effectively carry out tasks assigned by the central authorities;

[219] Late reports on the facts surrounding disciplinary offenses by another oversight body or judicial authority and when proceedings for which that body is responsible (and which last several years) have concluded. E.g.: fiscal (tax-related) and/or criminal proceedings:

[220] -They need to inform the PGN promptly of the start of their own proceedings so that their relevance can be assessed by the disciplinary authority.”

#### **4.4. Conclusions and recommendations**

[221] Based on the foregoing comprehensive analysis of the Office of the Attorney General (PGN), the Committee offers the following conclusions and recommendations:

**[222] Colombia has considered and adopted measures intended to maintain and strengthen the Office of the Attorney General (PGN), as an oversight body, as indicated in Chapter II, Section 4 of this report.**

[223] In light of the comments made in that Section, the Committee suggests that the country under review consider the following recommendations:

- 4.4.1 Strengthen, as appropriate, inter-agency cooperation between the PGN and other oversight bodies, such as the Office of the General Prosecutor (FGN) and the Office of the Comptroller General of the Republic (CGR) (See Chapter II, Section 4.2 of this report).

- 4.4.2 Strengthen, as appropriate, the PGN's preventive function as envisaged in the "Program for Strengthening the Office of the Attorney General - Phase II (2011 - 2015)," in such a way as to overcome the problems besetting the "PGN's Comprehensive Prevention System" which that program seeks to correct (See Chapter II, Section 4.2 of this report).
- 4.4.3 Establish precise and separate functions with respect to prevention for the regional, district, and provincial prosecutor's offices and assign them the staff they need to fully perform those functions (See Chapter II, Section 4.2 of this report).
- 4.4.4 Strengthen, as appropriate, interinstitutional cooperation between the PGN and the FGN, to increase the use made of Article 51 of Law 1474 of 2011, so that material and physical evidence in criminal proceedings can be transferred to disciplinary proceedings. (See Chapter II, Section 4.2 of this report.)
- 4.4.5 Taking into account the availability of resources, adopt appropriate measures to ensure that the PGN has the financial and human resources required to conduct the examinations for positions to be filled that the Constitutional Court recently ordered, as well as to administer the administrative career system. (See Chapter II, Section 4.2 of this report).
- 4.4.6 Strengthen coordination within the PGN with respect to training and provide it with the financial resources needed to teach anti-corruption courses (See Chapter II, Section 4.2 of this report).
- 4.4.7 Taking into account the availability of resources, adopt appropriate measures to ensure that the PGN has the financial resources required to promote citizen involvement in social oversight (See Chapter II, Section 4.2 of this report).
- 4.4.8 Take corrective measures to avoid the prescription of disciplinary proceedings, among which building up the capacities of local authorities for the due and timely exercise of the disciplinary action, as well as to endow the PGN with enough trained staff to conduct disciplinary investigations. (See Chapter II, Section 4.3 of this report).

## **5. OFFICE OF THE COMPTROLLER GENERAL OF THE REPUBLIC (CGR)**

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

[224] The Office of the Comptroller General (CGR) has a set of provisions in its legal framework, as well as other measures that refer, inter alia, to the following:

[225] As regards its objectives, according to Article 267 of the Political Constitution (PC), it is responsible for exercising fiscal control by overseeing the fiscal management of the administration and of individuals or entities which handle funds or assets belonging to the Nation.<sup>63</sup> That Article

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<sup>63</sup> For its part, Law 267 of 2000 describes the CGR's objectives as follows: "Supervising, on behalf of the community, the administration's management of public finances (*gestión fiscal*) as well as that of individuals or entities which handle funds or assets belonging to the Nation; evaluating the results achieved by the different State organizations and entities through correct, efficient, cost-effective, effective, and equitable administration of public property, natural resources, and the environment; generating a culture of oversight of State property and public management; establishing fiscal responsibilities, imposing appropriate fines, and bringing other actions derived from the exercise of fiscal oversight; and recovering any losses of state property."

also establishes that this control will be exercised selectively ex post facto in accordance with the procedures, systems, and principles established by law. However, the law may authorize that, in special cases, Colombian private enterprises, selected through a public prequalification process and hired with the consent of the Council of State, may conduct the supervision.

[226] The above-mentioned constitutional provision establishes that fiscal management by the State includes the exercise of financial, managerial and performance control, based on efficiency, economy, equity, and assessment of environmental costs. In exceptional cases stipulated by law, the Office of the Comptroller General may audit the accounts of any subnational entity ex post.

[227] The same provision also establishes that the Office of the Comptroller General is an entity of a technical nature with administrative and budgetary autonomy and that the Comptroller General will be elected by the whole Congress in the first month of its legislative session for a term equal to that of the President of the Republic, from a slate of three candidates, consisting of one submitted by the Constitutional Court, one by the Supreme Court of Justice, and one by the Council of State. He/she may not be reelected for the term immediately following nor continue in the exercise of his/her functions once the term has expired. The same article of the Constitution further establishes that anyone who has held the office of Comptroller General may not hold any other public office at the national level, except a teaching position, nor present him/herself as a candidate in an election by the people until one year following retirement from this office. In addition, this article describes the requirements and disqualifications for the office. Pursuant to Article 235 of the PC, it is incumbent upon the Supreme Court of Justice to try the Comptroller General of the Republic for any punishable offenses with which he or she is charged.

[228] Under Article 268 of the PC, the functions of the Comptroller General of the Republic include, inter alia, reviewing and closing the accounts kept by those responsible for public funds and determining the degree of efficiency, effectiveness, and cost-effectiveness of their performance; establishing liability derived from fiscal management; imposing fines, where applicable, collecting the sums involved and exercising coercive jurisdiction over shortfalls (*sobre los alcances deducidos de la misma*); and initiating (with the corresponding evidence) criminal or disciplinary investigations before the competent authorities, against persons whose actions have been detrimental to the State's financial interests. The Office of the Auditor General has the power to demand, on the strength of the facts and in good faith, the immediate suspension of officials until the investigations or appropriate criminal or disciplinary procedures are completed.

[229] Article 5 of Decree Law 267 lists as functions of the CGR, inter alia, ex post auditing of the accounts of any subnational entity (*entidad territorial*) in cases contemplated by law;<sup>64</sup> exercising superior oversight, in coordination with regional comptrollers' offices, of fiscal management and of the results of the administration and handling of national funds transferred for whatever reason to subnational entities in accordance with legal provisions; and drawing attention to operations or processes under way in order to preempt any serious threats to public property, as well as subsequently overseeing incidents identified as such.

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<sup>64</sup> Law 42 of 1993 provides that the CGR may, exceptionally, conduct ex post audits of the accounts of any subnational entity, without prejudice to the oversight incumbent upon departmental and municipal comptrollers' offices, under the following circumstances: (a) At the request of the departmental, district, or municipal government, of any standing Congressional committee, or of half plus one of the members of subnational public authorities (*corporaciones públicas territoriales*); and (b) At the request of citizens, through the legally established participation mechanisms.

[230] Article 10 of the aforementioned Decree Law establishes that the CGR will be organized at two main levels, namely, the central level, which comprises its dependencies headquartered in the Capital, and the regional level (*nivel desconcentrado*), which comprises dependencies located outside the Capital. Article 11 establishes the dependencies that will make up each of these levels, such as the Offices of the Comptroller and Deputy Comptroller and the delegated comptroller's offices, including the Delegated Office of the Comptroller for Investigations, Fiscal Trials, and Coercive Jurisdiction, whose functions, according to Article 58 of the aforementioned Decree Law, include directing any investigation, fiscal trial, and coercive jurisdiction proceedings that result from the exercise of fiscal oversight, including exceptional audits, in accordance with preliminary proceedings undertaken by the delegated comptroller's offices and authorized audit teams in the case of exceptional audits (section 4); and seeing that entities obliged to do so by virtue of Article 36 of Law 190 of 1995<sup>65</sup> bring civil suit in the corresponding criminal proceedings, imposing penalties and bringing any applicable fiscal liability proceedings when they fail to do so (section 6).<sup>66</sup>

[231] Article 128 of Law 1474 of 2011, intended to strengthen actions against corruption, establishes four units within the CGR: the Unit for Special Anti-Corruption Investigations, the National and International Cooperation Unit for the Prevention, Investigation, and Seizures of Assets, the Technical Support Unit for Congress, and the Technology and Computer Security and Assurance Unit.

[232] Article 115 of the aforementioned law establishes that Fiscal Surveillance and Oversight Bodies shall form a rapid response task force with the judicial police powers provided for in Law 610 of 2000, which shall act in accordance with any of the missions assigned to those Bodies and with due diligence and care to conserve and keep custody of the evidence they collect in the performance of judicial police functions, in accordance with the provisions of the Code of Criminal Procedure to the extent that they are compatible with the nature of said functions.

[233] As regards the way decisions are rendered and appeals against them, it is to be noted that in fiscal liability cases it is possible to resort to a second hearing (*acudir a la doble instancia*) based on the amount of impairment to property (*daño patrimonial*)<sup>67</sup>. Decisions taken in matters of fiscal liability are adopted individually by the civil servant having jurisdiction, or collectively through Steering and Technical Committees, supporting the decentralized entity. With the creation of positions of provincial comptrollers in the department management offices in Law 1474 of 2011, joint decision-making structures were established, and they are regulated by Resolution 6541 of 2012. Regarding administrative appeals, there is the possibility of appealing to two courts because of the amount of the damage to public assets.<sup>68</sup> Now, regarding the possibility of resorting to the

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<sup>65</sup> This article states: "In any proceedings for crimes against public administration, the legal entity established under public law to which harm was done shall be obliged to bring civil suit.- The legal representative of the entity concerned must always be notified in the time allowed by law that preliminary proceedings have been initiated (*apertura de instrucción*). - Failure to comply with these obligations shall qualify as misconduct on the part of the official concerned."

<sup>66</sup> This section adds: "Should the entity obligated to bring civil suit fail to do so, the Office of the Comptroller General may do so instead, without prejudice to the consequences contemplated in this section."

<sup>67</sup> Resolution 6554 of 2012: fiscal liability and second hearing at the central level. Resolution 6541 of 2012: for the subnational level.

<sup>68</sup> Resolution 6554 of 2012, fiscal liability and double jeopardy at the central level. Resolution 6541 of 2012, for the territorial level.

Administrative Litigation Jurisdiction, Article 59 of Law 610 of 2000 provides that only the Administrative Action that concludes the proceedings can be appealed once the judgment is final.

[234] With respect to the human resources in the CGR and the rules governing them, Article 268 of the PC includes among the functions of the Comptroller General filling the positions established by law for his/her Office through competitive exams. It adds that the law will determine a special set of rules for the selection, promotion, and retirement of career staff of the Office of the Comptroller General.<sup>69</sup> The holders of executive positions may be freely appointed and dismissed, except the Directors of Fiscal Surveillance and Sector Studies. Those positions must be filled by career staff members. CGR personnel are subject to the disciplinary rules set forth in the Single Disciplinary Code (Law 734 of 2002). Accordingly, the Institution has a Disciplinary Oversight Office (Article 45 of Decree 267 of 2000). At the same time, Resolution No. 05044 of 2000 establishes general criteria governing the CGR's facilities, and the functions, required qualifications, and performance of staff in each of the units in its organizational structure.

[235] As for staff training, it has the Office for Training, Technology Production and International Technical Cooperation (Decree 267 of 2000, Article 49). Furthermore, in the "General Training Plan for 2011-2014" it was determined that the areas that civil servants must examine with greater emphasis are: public ethics and the phenomenology of corruption; review and evaluation of public policymaking and macroprojects, public management and quality management and control, electronic government, culture, appropriation and use of new technologies for public oversight and management, evaluation of management and results, formulation, analysis and use of indicators, internal oversight, citizen oversight, and environmental monitoring, human talent management based on competencies, university teaching, virtual mentoring, and anti-corruption statutes. Agreements have also been reached and activities conducted, both nationally and internationally, for training purposes.<sup>70</sup>

[236] As for internal audits, Article 44 of Decree 267 of 2000 established the Internal Audit Office and included among its functions that of verifying appropriate implementation of internal audits throughout the Institution, in order to ensure that the CGR complies with the principles governing administration addressed in Article 209 of the PC and Law 87 of 1993.

[237] With respect to modern systems or technologies to facilitate its work and the existence of manuals and documented procedures all the CGR's processes and procedures are included in the Integrated Management and Quality Control System (SIGCC). To help it perform its various strategic, mission-based, support, and evaluation tasks, the CGR uses a chart of 10 macro processes. It is also in the process of implementing a fiscal procedures oversight system, including, in particular the auditing procedure known as SICA, donated by Chile's Office of the Comptroller, which will it possible to plan, implement, and produce reports on line, taking risk matrices and national priorities into account. The CGR also has "Audit Guidelines of the Office of the Comptroller General of the Republic of Colombia," adopted through Resolution No. 6368 of 2011, which contains basic guidelines for its audits.<sup>71</sup> For its part, Law 610 of 2000 provides detailed regulations for fiscal

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<sup>69</sup> Established through Decree Law 268 of 2000.

<sup>70</sup> Colombia's reply to the questionnaire, pp. 72 to 75.

<sup>71</sup> Colombia's reply to the questionnaire, pp. 75 and 76.

liability proceedings,<sup>72</sup> while Law 1474 of 2011 contains important measures concerning fiscal liability oral proceedings, and Law 42 of 1993 regulates enforced collection procedures.

[238] With respect to coordination mechanisms, Article 10 of Law 610 of 2000 envisages, when it stipulates that employees of the comptroller's offices who perform investigation or inquiry functions or who are required to produce evidence in fiscal liability proceedings act in a judicial police capacity, that their functions in this regard include coordinating their activities with the Office of the General Prosecutor. Article 28, on "transferred evidence," establishes that evidence validly adduced in administrative or disciplinary judicial proceedings relating to fiscal liability may be transferred in the form of a copy or photocopy to the fiscal liability proceedings and shall be assessed in accordance with pre-existing rules, depending on the nature of each means of proof. For its part, Article 271 of the PC establishes that the findings of the preliminary inquiries undertaken by the Office of the Comptroller General shall have probative value before the Office of the Attorney General and the competent judge. The CGR has also entered into agreements enabling it to obtain information on fiscal liability proceedings.<sup>73</sup>

[239] As for accountability, Article 268 of the PC lists as one of the functions of the Comptroller General the presentation of reports to Congress and to the President of the Republic on compliance with his/her duties. That being so, the CGR submits an annual Compliance with Functions and Activities Report to Congress and the President of the Republic, along with other reports envisaged in legal provisions, such as the Report on the Status of the Public Debt at the National and Subnational Level, and the Report on the State of Government Finance and Management required under Articles 41 and 43 of law 42 of 1993, respectively. At the same time, the CGR accounts for its actions to the general public through such media as public hearings, social networks, and publications like the Colombian Economic Journal.<sup>74</sup>

[240] As for how it keeps citizens informed, the CGR has a web site ([www.contraloria.gov.co](http://www.contraloria.gov.co)), which provides information regarding, inter alia, its organizational structure and functions, the institution's work, the regulations that govern it, accountability reports, the 2010-2014 Strategic Plan, the 2012 Action Plan, the admonishments it issues, and fiscal liability bulletins. The CGR also runs a Citizens' Service Desk (*Centro de Atención al Ciudadano*), a "Transparency Hotline," and an institutional television channel to inform the public.<sup>75</sup> In addition, the Citizen Oversight offices and the Congress of the Republic, to the extent that they make use of the CGR's work, also perform dissemination tasks.

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

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<sup>72</sup> Article 9 of Law 610 establishes that fiscal liability prescribes in five (5) years from the order initiating fiscal liability proceedings unless final judgment proclaiming liability is issued within that period. Article 12 establishes that if, during the proceedings to which this law refers, evidence of the commission of punishable deeds or disciplinary offenses comes to light, the competent official must immediately notify the corresponding authorities thereof. Articles 39 and 40 regulate preliminary inquiries and the initiation of fiscal liability proceedings, respectively.

<sup>73</sup> Colombia's reply to the questionnaire mentions three such agreements on page 81. Article 10 of Law 610 of 2000 also authorizes CGR personnel performing judicial police duties to "request information from official or private entities in their quest for data needed to initiate fiscal liability proceedings or for preliminary inquiries or investigations under way, including information needed to identify the assets of persons involved in acts detrimental to State property, without confidentiality of any kind being invoked to deny their request."

<sup>74</sup> Colombia's reply to the questionnaire, pp. 81 and 82.

<sup>75</sup> Colombia's reply to the questionnaire, pp. 77 to 79.

[241] The Office of the Comptroller General (CGR) has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were briefly described in section 5.1 of this report. Nevertheless, the Committee deems it appropriate to make a number of observations regarding them:

[242] First, bearing in mind that based on the information gathered during the on-site visit, it appears necessary to boost interagency cooperation between the PGN and other bodies, such as the Office of the General Prosecutor (FGN) and the Office of the Attorney General (PGN), the Ministry of the Interior, the Office of the President of the Republic, the National Intelligence Directorate, and the National Police, the Committee will formulate a recommendation in this regard to the country under review (See Recommendation 5.4.1 in Chapter II of this report).

[243] With respect to the above, the CGR's 2011-2012 Compliance with Functions and Activities Report to Congress and the President of the Republic comments: "Law 1474 of 2011 establishes a zero tolerance of corruption policy through various measures that enable the State not only to suppress the phenomenon but also to undertake a preventive campaign to discourage acts of corruption." Combating corruption requires a joint effort by State institutions. Indeed, Law 1474 included specific intervention functions and mechanisms to support joint actions that are capable of having an unquestionable impact on corruption.- To that end, the Office of the Comptroller General of the Republic has signed a framework agreement on interagency cooperation with the Office of the General Prosecutor, the Office of the Attorney General, the Ministry of the Interior, the Office of the President of the Republic, the National Intelligence Directorate, and the National Police. Its purpose is to establish an elite task force for exchanges of information, training, and analysis in the fight against corruption and for monitoring the use of public funds in Colombia to address fiscal, criminal, disciplinary, and police issues. That task force will be housed on the premises of the Office of the Comptroller General of the Republic. -So far, the agreement has been signed by the Attorney General, the General Prosecutor, and the Minister of the Interior. Still pending are the signatures of the President of the Republic, the Director of the Administrative Department of the Office of the President of the Republic, the Director of the National Police, and the Director of the National Intelligence Directorate.

[244] A propos of the aforementioned agreement, during the on-site visit the CGR pointed out that "despite all the efforts to achieve signature of this agreement and multiple meetings to that end, in the end the agreement was not signed."

[245] The Committee considers that, in connection with the National Ethics Commission (*Comisión Nacional para la Moralización*), established by Article 62 of Law 1474 of 2011 and comprised, inter alia, of the Comptroller General of the Republic, the President of the Republic, the Minister of the Interior, the General Prosecutor, and the Attorney General, those authorities could agree on appropriate inter-agency cooperation activities such as those referred to in the agreement proposed by the CGR, given that their functions include, inter alia, coordinating joint actions to combat corruption in national or subnational entities in which there is circumstantial evidence of corruption and coordinating exchanges of information for anti-corruption purposes.

[246] Second, bearing in mind that while Article 10 of law 610 of 2000 expressly envisages coordination of the activities of the staff of the comptroller's offices (such as the CGR), which act in a judicial police capacity, with those of the Office of the General Prosecutor (FGN), it transpired from information culled during the on-site visit that such coordination needs boosting. For that reason

the Committee will formulate a recommendation in that regard to the country under review (See Recommendation 5.4.2. in Chapter II of this report).

[247] It is worth noting in that regard that the CGR pointed out during the on-site visit that: “Although the law stipulates that there should be coordination of judicial police activities between staff of the Office of the Comptroller General and the General Prosecutor who are responsible for that function, so far there has been no such coordination because said bodies do not conduct joint inquiries. Furthermore, the different tempos of the investigations carried out in these two institutions prevent simultaneous undertakings. It is important to point out that staff of the Office of the Comptroller General acting in a judicial police capacity who discover criminal findings in the course of their activities immediately forward them to the Office of the General Prosecutor.”

[248] Third, given that the information gathered during the on-site visit suggests a need to strengthen interinstitutional cooperation between the CGR and the FGN, so that material and physical evidence can be transferred between fiscal proceedings and criminal trials, in light of the provisions of Article 271 of the Constitution, the Committee will formulate a recommendation in this regard to the country under review (See Recommendation 5.4.3 in Chapter II of this report).

[249] It is worth noting in this regard that the CGR pointed out during the on-site visit that: “The CGR has transferred a significant amount of evidence to the Office of the General Prosecutor. Yet sometimes it is accepted and at other times not. There are no uniform criteria when it comes to acceptance.”

[250] Fourth, bearing in mind that based on the information gathered during the on-site visit, it appears advisable to adjust CGR structure and staffing to the new regulatory framework for fiscal oversight, the Committee will formulate a recommendation in that regard to the country under review (See Recommendation 5.4.4 in Chapter II of this report).

[251] It is worth noting in that regard that the CGR pointed out during the on-site visit that: “The structure of the Office of the Comptroller General of the Republic was established in Decree Law 267 of 2000 and no changes were made to it until 2011, despite the fact that in that lapse of time the powers of the CGR were established or clarified in respect of fees, the General Contributions System (*Sistema General de Participaciones - SGP*), Family Welfare Funds (*Cajas de Compensación Familiar*), Health Promotion Entities (EPS), and so on. Law 1474 of 2011 introduced changes to its structure, but those changes were made to establish new units and positions which were precisely the changes entailed in that Law’s fiscal oversight. However, adjustments to the design of the institution were not made at the new executive and coordination levels, specifically because of the impact of the reform on the Office of the Comptroller General and Deputy Comptroller General, in terms of steering, coordinating, and monitoring activities. - Likewise, the New General System of Fees (*Nuevo Sistema General de Regalías*) provided for in Law 1530 of May 17, 2012 allowed a large number of positions to be created via Decree 1539 of 2012, in order to perform the functions of the Monitoring, Follow-up, and Oversight System. However, on that occasion, no changes to the structure of the Office of the Comptroller General were envisaged. - Law 1448 of 2011 “Containing Measures to Furnish Care, Assistance and Full Reparation to Victims of the Internal Armed Conflict and other provisions” entails costs for the Colombian State relating to implementation of the goal of providing comprehensive reparation to the victims. That Law assigned to the Office of the Comptroller General of the Republic the task of keeping special track of implementation and execution of the public policy of providing assistance, care, and full reparation to the victims of the internal armed conflict and the legal and physical restitution of lands to the dispossessed and displaced.- The CGR’s involvement

includes, moreover, its participation in the preparation of the Report of the Follow-up and Monitoring Commission to be submitted to Congress in the month following the start of each legislature over a 10-year period, from the promulgation of this Law (June 10, 2011). Implementation of the above involves adjusting institutional arrangements in such a way that fiscal oversight of the competent authorities ensures that the law is enforced to the benefit of the population for which it is intended.- For all those reasons, last April 7, the Office of the Comptroller General presented a bill to Congress requesting changes in its structure, involving the establishment of five Auxiliary Comptroller's Offices responsible for directing and coordinating the work of the different units, thereby freeing the Comptroller General and Deputy Comptroller General from some of their coordination and monitoring duties and enabling them to devote more time to strategic planning.”

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

[252] Information was gathered regarding the results achieved by the Office of the Comptroller General of the Republic (CGR), of which the following are worth noting:

[253] First, during the on-site visit, the CGR provided the following information regarding its admonishment function and improvement plans, which, according to Colombia's reply to the questionnaire,<sup>76</sup> are prevention instruments at the Institution's disposal.

<b>Admonishment functions</b>							
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013 (1.1-3.14)</b>
<b>Quantity</b>	31	70	64	159	165	273	26
Increase over 2007		126%	106%	413%	432%	781%	

\*Source: SIGEP (Government Employment Information and Management System) Cut-off March 14, 2013

<b>Improvement plans</b>						
	<b>2007-2008</b>	<b>2008-2009</b>	<b>2009-2010</b>	<b>2010-2011</b>	<b>2011-2012</b>	<b>2012-2013</b>
Subject to Improvement Plan Oversight	352	341	436	455	562	1554
Increase over 2007		-3%	24%	29%	60%	341%

\*Source: CUBO, Activities Report 2006-2010, SIIGEP and SIRECI

[254] Regarding the statistics shown in the two foregoing Tables, the Committee considers that they serve to show that the CGR performed its admonishment function and adopted pertinent improvement plans in the period referred to therein.

<sup>76</sup> Colombia's reply to the questionnaire, pp. 83 and 84.

[255] Second, during the on-site visit, the CGR provided the following information regarding preliminary inquiries:

<b>Preliminary inquiries</b>					
	<b>2007-2008</b>	<b>2008-2009</b>	<b>2009-2010</b>	<b>2010-2011</b>	<b>2011-2012</b>
Number of inquiries initiated	569	594	473	386	562
Increase over 2007		4%	-17%	-32%	-33%
Number of inquiries archived	214	231	193	204	118
Increase over 2007		8%	-10%	-5%	-25%
Fiscal accountability inquiries ( <i>Indagaciones con Responsabilidad Fiscal</i> )	175	136	114	182	265
Increase over 2007		-22%	-35%	4%	51%

\*Source: CUBO, Activities Report 2001-2012

[256] Regarding the statistics shown in the foregoing Table, the Committee considers that they serve to show that the CGR initiated preliminary inquiries in each of the years referred to therein and that it adopted the measures required to archive or initiate fiscal accountability proceedings stipulated in Article 39 of Law 610 of 2000, to the extent indicated in the Table.

[257] Third, during the on-site visit, the CGR provided the following information regarding fiscal accountability proceedings:

<b>Fiscal Accountability Proceedings</b>						
	<b>2007-2008</b>	<b>2008-2009</b>	<b>2009-2010</b>	<b>2010-2011</b>	<b>2011-2012</b>	<b>2012-4.2.2013</b>
Initiated	730	785	1151	1022	1085	512
Increase over 2007		8%	58%	40%	49%	
Under way	2418	2537	3003	3250	3664	3943
Increase over 2007		5%	24%	34%	52%	
Finalized	297	310	370	452	547	297
Increase over 2007		4%	25%	52%	84%	

\*Source: Fiscal Accountability Information System – SIREF

<b>Concluded Proceedings</b>
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	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-4/2/2013
With a judgment of fiscal liability	65	69	103	128	429	734
Increase over 2007		6%	58%	97%		
Without a judgment of fiscal liability	25	26	26	40	33	16
Increase over 2007		4%	4%	60%	32%	
Filed	207	215	241	284	357	2007
Increase over 2007		4%	16%	37%	72%	

\*Source: Fiscal Accountability Information System – SIREF. The figure for “With a judgment of fiscal liability” for the years 2011-2012 and 2012-2.4.2013 were amended after the State under review flagged a transcription error in the numbers.

[258] During the on-site visit, the CGR stated, with respect to the cases sent to the archive, that the figure included cases in which the accused or liable party paid the amount owed, or in which the damage was repaired, among other reasons. It also reported that over the past three years, measures had been taken to reduce the number of cases sent to the archive, including the implementation of oral proceedings, the training of auditors and attorneys, and the structural change in audits.

[259] With respect to the statistics shown in the two foregoing Tables, the Committee considers that, although they serve to determine the number of fiscal accountability proceedings initiated in each of the years referred to therein, the number of those currently under way or that have been archived, and the number of proceedings that resulted or did not result in a fiscal liability finding, those Tables do not show how many fiscal accountability proceedings were declared to have prescribed in the years referred to (Article 9 of Law 610 of 2000). For that reason the Committee will formulate a recommendation in that regard to the country under review (See Recommendation 5.4.5 in Chapter II of this report).

[260] Fourth, during the on-site visit, the CGR provided the following information regarding the amount of money recovered through fiscal accountability proceedings:

<b>Amount of Money Recovered</b>				
	2007-2010	2010-2011	2011-2012	2012-2013 (Feb.)
Colombian pesos	44,207,237,435.00	36,177,897,915.50	236,747,954,792.54	70,116,108,223.18
US\$	24,170,035.94	19,780,043.80	129,440,492.28	38,335,552.14

\*Source: *Informe Periódico Único* (IPU), Enforced Collection UIECC, SIREF, and plaintiffs in civil actions. The “pesos” figure for the years 2011-2012 was amended after the State under review flagged a transcription error in the number.<sup>77</sup>

[261] In response to a request made during the on-site visit, the CGR later supplemented the information on the amount of money recovered, as follows:

<sup>77</sup> This figure does not include the amount of the benefits from the audits or of the resources for which misuse was avoided.

Amount recovered between 2012 and May 2013	81,979,365,783.52 Colombian pesos
Amount corresponding to the 4,047 fiscal accountability proceedings being processed at May 31, 2013	7,543,243,983,303.25* Colombian pesos

\*Fiscal accountability proceedings may expire five years after they were initiated.

[262] With respect to the statistics shown in the two foregoing Tables, the Committee considers that, although they show that money was recovered for the Treasury in the amounts indicated as a result of fiscal accountability proceedings, there is a considerable difference between the number (4,047) of fiscal accountability processes under way on May 31, 2013 and the actually recovered sums. For that reason, the Committee will formulate a recommendation to the country under review (See Recommendation 5.4.6 in Chapter II of this report).

[263] Fifth, during the on-site visit, the CGR provided the following information regarding the punishable deeds or disciplinary offenses detected by the institution and reported to the competent authorities:

<b>Punishable deeds or disciplinary offenses reported to the competent authorities</b>				
	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Fiscal	673	643	542	760
Increase over 2009		-4%	-19%	13%
Disciplinary	4398	4489	4673	6125
Increase over 2009		2%	6%	39%

[264] It is worth noting in that regard that the CGR pointed out during the on-site visit that: “Since adoption of Law 620 of 2000, staff of the Office of the Comptroller General of the Republic have systematically been sending fiscal and disciplinary evidence encountered in the course of their investigations to the Office of the General Prosecutor and the Office of the Attorney General, respectively. - Nevertheless, no follow-up is performed after the dispatch of said information as that would clearly involve interference in the internal affairs of each institution.”

#### **5.4. Conclusions and recommendations**

[265] Based on the foregoing comprehensive analysis of the Office of the Comptroller General of the Republic (CGR), the Committee offers the following conclusions and recommendations:

[266] **Colombia has considered and adopted measures intended to maintain and strengthen the Office of the Comptroller General of the Republic (CGR), as an oversight body, as indicated in Chapter II, Section 5 of this report.**

[267] In light of the comments made in that Section, the Committee suggests that the country under review consider the following recommendations:

- 5.4.1 Enhance, as appropriate, interagency cooperation between the Office of the Comptroller General of the Republic (CGR) and other institutions such as the Office of the General Prosecutor (FGN), the Office of the Attorney General (PGN), the Ministry of the Interior, the Office of the President of the Republic, the National Intelligence Directorate, and the National Police (See Chapter II, Section 5.2 of this report).
- 5.4.2 Strengthen, as appropriate, coordination of the activities undertaken by staff of the CGR acting in a judicial police capacity and the Office of the General Prosecutor (FGN), pursuant to Article 10 of Law 610 of 2000 (See Chapter II, Section 5.2 of this report)
- 5.4.3 Strengthen, as appropriate, interinstitutional cooperation between the CGR and the FGN, so that material and physical evidence can be transferred between fiscal proceedings and criminal trials, in light of the provisions of Article 271 of the Constitution. (See Chapter II, Section 5.2 of this report).
- 5.4.4 Adopt appropriate measures to adapt the CGR's structure and staffing to the new regulatory framework for fiscal oversight (See Chapter II, Section 5.2 of this report).
- 5.4.5 Prepare statistics showing whether, in fiscal accountability proceedings conducted by the CGR, cases were declared to have prescribed pursuant to Article 9 of Law 610 of 2000, with a view to identifying challenges and recommending corrective measures (See Chapter II, Section 5.3 of this report).
- 5.4.6 Adopt appropriate measures to step up recovery of sums to which the Treasury is entitled as a result of fiscal accountability proceedings (See Chapter II, Section 5.3 of this report).

## I. BEST PRACTICES

[268] In keeping with section V of the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round* and the *Format* for country reports adopted by the Committee for that 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:

### [269] 1. - Regarding the Office of the General Prosecutor (FGN):

[270] Through Directive No. 001 of October 4, 2012, the General Prosecutor established the "National Unit for Prioritization and Context," which alters the paradigm governing investigation, which will no longer focus on investigating isolated acts, but rather on macro crimes, with a view to combating organized crime more effectively. Under this framework, priority will be attached to the investigation of behaviors having the greatest impact on society, in such a way as to ensure real time results of the investigation."<sup>78</sup>

[271] It should be pointed out, with respect to the above, that during the on-site visit, the Committee was told that the aforementioned Unit was fully up and running and about the benefits of

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<sup>78</sup> Colombia's reply to the questionnaire, p. 26.

“Prioritization and Context” for the investigation of acts of corruption. As requested during the visit, a copy was later provided of the aforementioned Directive and of Resolution No. 1810 of 2012, which refer to the establishment of the above-mentioned Unit. They are posted on the FGN website ([www.fiscalia.gov.co](http://www.fiscalia.gov.co)).

**[272] 2. - Regarding the Office of the Attorney General (PGN):**

[273] - “A good practice employed by the Office of the Attorney General to combat corruption is found in the use of ORAL PROCEEDINGS in DISCIPLINARY PROCEEDINGS which results in efficient and effective penalties for officials involved in acts of corruption or improper behavior. For instance, between 2010 and thus far in 2012, as a result of actions taken ex officio and of the 350,062 complaints and reports received from citizens, 94,707 proceedings were initiated (including both preliminary inquiries and disciplinary investigations) in the whole of Colombia. Among them were 1,308 oral proceedings, 975 of which were resolved in real time, resulting in exemplary disciplinary penalties or, where appropriate, acquittals.”<sup>79</sup>

[274] Regarding the above, further information was provided during the on-site visit in the form of a Power Point presentation, which is posted at: [www.oas.org/juridico/ppt/mesicic4\\_col\\_pgn.ppt](http://www.oas.org/juridico/ppt/mesicic4_col_pgn.ppt) (See Tables 47 to 51).

[275] The Open Government Index (IGA), which “is a synthetic indicator that measures compliance with strategic anticorruption provisions. Strategic anticorruption provisions are understood as those that seek to implement preventive measures in the public sector within the framework of the anticorruption conventions of the inter-American system and the United Nations. Thus, the IGA represents a measuring tool that points toward the construction of an Open Government: that is, a government that is accessible, transparent, and receptive.”<sup>80</sup>

**[276] 3. Regarding the Higher Council of the Judiciary (CSJd):**

[277] During the on-site visit, the Committee was shown a presentation of the Technological Infrastructure System in the Disciplinary Chamber of the Higher Council of the Judiciary, as an example of a best practice. The Power Point presentation is posted at: [www.oas.org/juridico/ppt/mesicic4\\_col\\_pres.ppt](http://www.oas.org/juridico/ppt/mesicic4_col_pres.ppt).<sup>81</sup>

**IV. FOLLOW-UP ON NEW AND RELEVANT INFORMATION AND DEVELOPMENTS WITH REGARD TO THE IMPLEMENTATION OF RECOMMENDATIONS SUGGESTED IN THE COUNTRY REPORT IN THE FIRST ROUND OF REVIEW<sup>82</sup>**

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<sup>79</sup> Colombia’s reply to the questionnaire, p. 53.

<sup>80</sup> Colombia’s reply to the questionnaire, pp. 94 and 95.

<sup>81</sup> As examples of good practices, the CSJd referred to the following: implementation of public hearings for drawing up lists of eligible candidates for justices of the Supreme Court and of the Council of State; an agreement between the CGR and the CSJd’s Administrative Chamber to strengthen interinstitutional cooperation in the fight against corruption; the strengthening of the judicial career; and streamlining the processing of trials for the impeachment of members of Congress through oral proceedings at public hearing.

<sup>82</sup> The recommendations that, following this review, still require additional attention or have been reframed are listed in Annex I to this report.

[278] The Committee will now refer to progress made and new information and developments in Colombia with respect to the recommendations formulated and measures for their implementation suggested by the Committee in its Second and Third Review Round reports<sup>83</sup>, and it will proceed to take note of those that have been satisfactorily considered and those that require additional attention from the country under review. In addition, where appropriate, it will address the continued validity of those recommendations and measures and, as applicable, restate or reformulate them, in accordance with provisions contained in section VI of the methodology adopted by the Committee for the Fourth Round.

[279] This section also takes note of any difficulties in implementing the above recommendations and measures to which the country under review may have drawn attention, as well as of technical cooperation it may have requested to that end.

## **1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 1 OF THE CONVENTION)**

### **1.1. Standards of conduct to prevent conflicts of interest and mechanisms to enforce them**

The recommendation with respect to this section was satisfactorily considered and, therefore, does not require additional attention.

### **1.2. Standards of conduct and mechanisms for ensuring the conservation and proper use of resources entrusted to public officials**

#### Recommendation 1.2.1:

*Continue strengthening preventive measures and oversight systems to ensure the conservation and proper use of resources entrusted to public officials in the performance of their functions.*

First measure suggested by the Committee that requires further attention under the terms provided in the reports from the Second and Third Rounds:

*- Conduct a comprehensive evaluation to determine the objective grounds giving rise to investigations into the crime of embezzlement and, based on the findings, define and consider adopting specific measures designed to prevent this form of crime from occurring and, ultimately, to ensure the conservation and proper use of resources entrusted to public officials.*

[280] In its reply,<sup>84</sup> the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[281] - The Anti-Corruption Observatory” designed at the behest of the Office of the Attorney General (PGN) and adopted by the National Ethics Commission, the overall purpose of which “is to generate inputs so that State entities at both the national and subnational levels, civil society organizations, the private sector, academia, the international community, and the general public, can have more and better information on which to base decisions and implement effective public policies for combating corruption and promoting integrity”. Thanks to the Observatory, “the country is

<sup>83</sup> Available at: <http://www.oas.org/juridico/spanish/arg.htm>

<sup>84</sup> Colombia’s reply to the questionnaire, pp. 88 to 97.

beginning to have access to data on the corruption phenomenon, which tell us, for instance, that of the 4,124 crimes against public administration committed in 2011, 1,869 were crimes of embezzlement, 1,318 bribery, 486 extortion, 265 breaches of public duties, 159 illicit contracts, and 27 abuse of office.”

[282] - The Open Government Index (*Índice de Gobierno Abierto* - IGA), which “is a synthetic indicator measuring compliance with strategic anti-corruption standards. Strategic anti-corruption standards are construed as provisions aimed at implementing preventive measures in the public sector in the framework of the Inter-American and United Nations conventions against corruption. From this perspective, the IGA constitutes a measurement tool aimed at achieving an Open Government, that is to say, one that is accessible, transparent, and receptive.”

[283] - “The importance of having mechanisms and instruments that facilitate the study, analysis, and measurement of corruption was recognized in the National Development Plan adopted by the Colombian Government through Law 1450 of 2011. The document entitled “Foundations for the 2010-2014 National Development Plan: Prosperity for All,” adopted as an annex to that Law, contained for the first time (in Section VII - Crosscutting Tools) a chapter specifically devoted to the subject of corruption.” That Plan is posted at: <http://www.dnp.gov.co/LinkClick.aspx?fileticket=sOTSCIEqIAI%3d&tabid=1238>.

[284] At the same time, the PGN explained during the on-site visit that a study on the “Culture of Legality” was conducted, which addressed, inter alia, the subject of the conservation of government resources and the crime of embezzlement. It added, however, that it was likely that the scope of the study would be expanded and that the comprehensive evaluation referred to in the recommendation had not been carried out. The Committee was also told about the “Anti-Corruption Observatory” and what progress it had made with respect to the crime of embezzlement, and about the “Open Government Index” and the “Culture of Legality.” This information is contained in a Power Point presentation, which is posted at: [www.oas.org/juridico/ppt/mesicic4\\_col\\_pgn.ppt](http://www.oas.org/juridico/ppt/mesicic4_col_pgn.ppt) (See Tables 53 to 63).

[285] The Committee takes note of the steps taken by the country under review to move ahead with implementation of the first measure suggested in the recommendation in Chapter IV, Section 1.2 of this report, and of the need for the country under review to continue giving the matter its attention, given that the comprehensive evaluation referred to therein has not yet materialized and to be able to adopt the specific measures it refers to based on said evaluation (See measure (a) of Section 1.2 of Annex I to this report).

Second measure suggested by the Committee that requires further attention under the terms provided in the reports from the Second and Third Rounds:

*- Conduct a comprehensive evaluation to determine the objective grounds preventing or limiting the effectiveness of internal and fiscal oversight systems in preventing the occurrence of “diversion” of budgetary and other funds and, based on the findings, to define and consider the adoption of specific measures aimed at preventing their occurrence and ensuring the conservation and proper use of public resources.”*

[286] In its reply,<sup>85</sup> the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[287] - The progress made with implementation of the Standard Internal Control Management Model - MECI, adopted through Decree 1599 of 2005, “which provides the basic structure for evaluating the strategy, performance, and specific evaluation mechanisms of the administrative process, in order to provide guidelines to institutions for reaching their institutional objectives and ensuring that they serve the core purposes of the State, and provides ways to standardize oversight of different activities of civil servants, the implementation of procedures, and the practice of self-supervision,” as well as its evaluation by the Civil Service Administrative Department until fiscal year 2011. During the on-site visit, that evaluation supplemented the information provided on that subject in the reply to the questionnaire with a Power Point presentation that can be consulted at: [www.oas.org/juridico/ppt/mesicic4\\_col\\_DAFP2.ppt](http://www.oas.org/juridico/ppt/mesicic4_col_DAFP2.ppt)

[288] During the on-site visit, the Civil Service Administrative Department also explained that, although thus far the comprehensive evaluation of the effectiveness of the internal oversight systems referred to in the recommendation had not yet been undertaken, consideration had, nevertheless, been given to the need to strengthen it, for which it would be necessary to amend the legal framework (provisions such as Decrees 2145 of 1999 and 1537 of 2001). The fact that, under the Anti-Corruption Statute (Law 1474 of 2011), the heads of internal oversight units in national entities are appointed by the President of the Republic was also mentioned as a sign of progress, although it was also pointed out that challenges remain (See the last slide in the DAFP presentation, which is posted at: [www.oas.org/juridico/ppt/mesicic4\\_col\\_DAFP2.ppt](http://www.oas.org/juridico/ppt/mesicic4_col_DAFP2.ppt)).

[289] In addition to the above, the Committee was also told by the Office of the Comptroller General of the Republic (CGR), during the on-site visit, that the CGR had prepared its “2010-2014 Strategic Plan,” called “For Timely and Effective Fiscal Oversight,” which adjusts the methodology for evaluating the internal control systems of entities subject to fiscal oversight based on a risks-oriented approach envisaged in the Integrated Audit Control System - SICA. Information on this was furnished through a Power Point presentation, which can be found at: [www.oas.org/juridico/ppt/mesicic4\\_col\\_cg-plan.ppt](http://www.oas.org/juridico/ppt/mesicic4_col_cg-plan.ppt)

[290] The Committee takes note of the steps taken by the country under review to move ahead with implementation of the second measure suggested in the recommendation in Chapter IV, Section 1.2 of this report, and of the need for the country under review to continue giving the matter its attention, given that the comprehensive evaluation referred to therein has not yet materialized and to be able to adopt the specific measures it refers to based on that evaluation (See measure (b) of Section 1.2 of Annex I to this report).

### **1.3. Measures and systems requiring public officials to report acts of corruption in the performance of public functions of which they are aware to the appropriate authorities**

#### Recommendation 1.3.1:

*Strengthen the Republic of Colombia’s mechanisms for requiring public officials to report to the competent authorities any acts of corruption in government service that come to their attention.*

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<sup>85</sup> Colombia’s reply to the questionnaire, pp. 97 to 123.

First measure suggested by the Committee that requires further attention under the terms provided in the reports from the Second and Third Rounds:

*- Consider measures to enforce the obligation stipulated in Colombian law to require government officials to report to the competent authorities any acts of corruption in government service that come to their attention; facilitate compliance with that obligation; provide the necessary protection commensurate with the gravity of the acts of corruption denounced; and, in cases of non-compliance with that obligation, impose the penalties stipulated in Colombia's legal system for such cases.*<sup>86</sup>

[291] In its reply,<sup>87</sup> the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as a step that contributes to progress in its implementation:

[292] - The ban, expressly established in Article 43 of Law 1474 of 2011, on reprisals against a civil servant who denounces acts of corruption. That Article reads as follows: "Prohibition of reprisals. Add a new numbered paragraph to Article 48 of Law 734 of 2002, which shall read as follows: "Article 48. Very serious offenses (*faltas gravísimas*). The following shall constitute very serious offenses: Without prejudice to the adoption of the measures provided for in Law 1010 of 2006, committing, directly or indirectly, in the performance of, or exceeding the scope of, one's duties, an arbitrary and unwarranted act against another civil servant who has denounced acts of corruption."

[293] In addition to the above, during the on-site visit, the Office of the General Prosecutor (FGN) told the Committee how its whistleblower and witness protection program worked and how it was used in corruption cases. This information is posted at: [www.oas.org/juridico/pdfs/mesicic4\\_col\\_fgn\\_prog.pdf](http://www.oas.org/juridico/pdfs/mesicic4_col_fgn_prog.pdf). During that visit, the FGN also pointed to the need to strengthen mechanisms for filing reports and complaints and the internal audit units in each of the institutions, who functions would have to be reframed to allow them, in the course of their preventive work, to detect unlawful acts early on and promptly report them to the competent authorities. Also mentioned was the advisability of having a single desk to receive all complaints and then forward them to the competent authorities.

[294] The Office of the Attorney General (PGN) also explained during the on-site visit that, although the law provides that it must have its own protection program, there was no funding for such a program. It pointed out, moreover, that as no proceeding may be kept secret from the accused, the inability to keep the name of a whistleblower or witness confidential might inhibit them from coming forward or even induce them to retract their statements.

[295] The Committee takes notes of the step taken by the country under review to move toward implementation of the first measure of the recommendation in Chapter IV, Section 1.3 of this report, reflected in Article 43 of Law 1474 of 2011, as well as of the need for it to continue paying attention thereto, bearing in mind the information provided during the on-site visit by both the Office of the General Prosecutor (FGN) and the Office of the Attorney General (PGN). At the same time, the Committee recalls that it already took note in the Second Round report of the satisfactory

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<sup>86</sup> Regarding this measure, it is worth noting that in the report of the Second Review Round the Committee took note of the satisfactory consideration given to the component relating to contemplation of measures to enforce the obligation stipulated in Colombian law to require government officials to report to the competent authorities any acts of corruption in government service that come to their attention under the terms envisaged in said report.

<sup>87</sup> Colombia's reply to the questionnaire, pp. 123 to 125.

consideration given to the element in that measure of the recommendation referring to contemplation of measures to ensure effective enforcement of the obligation under Colombian law to require government officials to report to the competent authorities acts of corruption in public service of which they become aware. For clarification purposes, therefore, the Committee considers it appropriate to reframe the recommended measure as follows:

[296] Provide facilities to enable government officials to comply with their obligation to report to the competent authorities acts of corruption in public service of which they become aware; provide necessary protection commensurate with the gravity of the acts of corruption reported; and, in cases of failure to comply with the obligation, impose the penalties stipulated under Colombian law for such cases (See the single measure in Annex I, Section 1.3 of this report).

[297] It should be noted, moreover, in connection with protection for those who report acts of corruption, that during the on-site visit the civil society organization “Corporación Transparencia por Colombia” had the following to say: “The Secretariat of Transparency has been working on software that can function as a one-stop desk in Colombia to collect, administer, and redirect complaints made against civil servants or of acts of corruption. The idea is to develop a comprehensive program in which citizens have a single mechanism for filing complaints, which also contains the necessary arrangements for protecting informants should they so request. - Although the Secretariat of Transparency has stated that progress has been made toward creating said software, the general public is still not informed about it. Hopefully, in the coming months, there will be mass dissemination and social ownership of the mechanism, accompanied by training in how to use it, and then follow-up and monitoring of its effectiveness.”

Second measure suggested by the Committee that requires further attention under the terms provided in the reports from the Second and Third Rounds:

*Train public officials regarding the existence and purpose of the duty to report to the appropriate authorities acts of corruption in the performance of public functions of which they are aware.*

[298] In its reply<sup>88</sup> and during the on-site visit, the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that allow it to conclude that it has been satisfactorily considered:

[299] - “The Colombian State has a National Educational and Training Plan for civil servants, aimed at ‘Improving the quality of services provided by the State for the sake of general well-being and achievement of the State’s own purposes, and guaranteeing the establishment of specific skills and capacities in the respective units, in accordance with the principles governing public service.’”

[300] - “The National Educational and Training Plan also establishes that “Institutional Training Plans (PIC) should cover the items listed in the Thematic Guidelines for traineeship projects, which should be formulated by teams of officials, and for other projects identified in the traineeship teams.” It also cites the Fight against Corruption as one of the core areas needing to be developed: (...).”<sup>89</sup>

[301] During the on-site visit, the authorities in the Administrative Department of the Civil Service also explained that the training on the duty to report to the authorities is included in the Anti-Corruption component of the aforementioned Training Plan.

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<sup>88</sup> Colombia’s reply to the questionnaire, pp. 125 to 127.

<sup>89</sup> Posted at: [http://portal.dafp.gov.co/form/formularios.retrive\\_publicaciones?no=236](http://portal.dafp.gov.co/form/formularios.retrive_publicaciones?no=236)

[302] The Committee takes note of the satisfactory consideration given by the country under review to the second measure of the recommendation contained in Chapter IV, Section 1.3 of this report.

## **2. SYSTEMS FOR REGISTERING INCOME, ASSETS, AND LIABILITIES (ARTICLE III, PARAGRAPH 4, OF THE CONVENTION)**

### Recommendation 2.1:

*Improve the systems for overseeing and evaluating the contents of sworn statements of net worth and regulate disclosure of them.*

First measure suggested by the Committee that requires further attention under the terms provided in the reports from the Second and Third Rounds:

*- Optimize systems for analyzing the contents of sworn statements of net worth with a view to detecting and preventing conflicts of interests, as well as detecting possible cases of illicit enrichment/*

[303] In its reply,<sup>90</sup> the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[304] - “Pursuant to its functions, the Administrative Department of the Civil Service (DAFP) is responsible for formulating , implementing, and evaluating public policies designed to stimulate ongoing improvements in public institutions and enhance the development of their personnel. One such instrument is the Government Employment Information and Management System (SIGEP), established by Law 489 of 1998 and regulated by Decree 2842 of 2010.”

[305] - “In conclusion, in connection with the first measure of Recommendation 2.1 of the Committee of Experts of the MESICIC, it is important to point out that one of the modules in the SIGEP is the CV and Statement of Assets and Income, in which civil servants have to register their assets and income upon taking up a position, as required under Article 122 of the Political Constitution. Pursuant to Law 190 of 1995 and regulatory decrees, this information has to be updated every year.

[306] - “Given that the Administrative Department of the Civil Service is the entity responsible for technical and operational management of the System, we can say that, as of September 30, 127 of the 145 entities set as a goal for 2012 have received training, and their employees are declaring their assets and income through the System. It is important to point out that it is the Colombian Government entities that are responsible for registering and guaranteeing the veracity of each institution’s information. For that reason, the Head of Internal Audit or his or her equivalent must constantly monitor the situation to ensure that the entity concerned complies with its obligation to record true and timely information in the System.” The Government Employment Information and Management System may be consulted at: <http://www.sigep.gov.co/>

[307] During the on-site visit, the authorities of the Administrative Department of the Civil Service also reiterated that it was incumbent upon each government entity to keep track of the information

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<sup>90</sup> Colombia’s reply to the questionnaire, pp. 127 to 129.

reported in the sworn statements of net worth. The information provided is posted at: [www.oas.org/juridico/ppt/mesicic4\\_col\\_DAFP.ppt](http://www.oas.org/juridico/ppt/mesicic4_col_DAFP.ppt)

[308] The Committee takes notes of the step taken by the country under review to move toward implementation of the first measure of the recommendation in Chapter IV, Section 2.1 of this report, and of the need for the country under review to continue giving attention thereto, bearing in mind that keeping track of the information reported in the sworn statements of net worth, as each government entity is supposed to do through the Head of Internal Audit or her or his equivalent, entails verifying that true and timely information is recorded in the System, but not analyzing said information with a view to detecting and preventing conflicts of interest, as well as detecting possible cases of illicit enrichment (See measure (a) in Annex I, Section 2 of this report).

Second measure suggested by the Committee that requires further attention under the terms provided in the reports from the Second and Third Rounds:

- *Regulate the conditions, procedures, and other pertinent aspects governing disclosure of the statements of wealth, income, and liabilities of civil servants, subject to the Constitution and the fundamental principles of Colombia's legal system.*

[309] In its reply,<sup>91</sup> the country under review presented information it deemed relevant regarding the foregoing measures, of which the Committee notes the following:

[310] - "The Curriculum Vitae and Assets and Income statement of the SIGEP Information System makes it possible to access and handle information on a civil servant's basic data, academic training, work experience, language skills, teaching experience, acquired skills, penalties imposed, and so on, as well as information on the assets and income of civil servants and persons holding professional and auxiliary services contracts."

[311] - "According to the regulations, when they take up office civil servants must report their assets and income to the SIGEP and update that information every year; said information is not public, although it may be consulted by the heads of the human resources departments of the government entities in which those civil servants work and it may be provided to oversight and judicial bodies, provided that there is an order authorizing such disclosure, because both the Constitution and Colombia's legal system have accorded confidential status to that type of information."

[312] - "Regarding the information contained in the CV, Statute Law 1266 of 2008, which contains general provisions on habeas data and, along with other provisions, regulates the handling of information contained in personal databases, especially financial, credit, commercial, and services data and information provided by third countries, establishes as follows: "ARTICLE 3. DEFINITIONS. For the purposes of this law the following definition shall apply: (...) **g**) Semi-private datum. A semi-private datum (or piece of information) is one that is not of an intimate, confidential, or public nature, the knowledge or disclosure of which may interest not just the person it refers to but also a certain sector or group of persons or society in general, such as the financial and credit information relating to a commercial or services activity referred to in Title IV of this law. (...). ARTICLE 4. PRINCIPLES OF DATA ADMINISTRATION In the development, interpretation, and enforcement of this law, consistent and comprehensive attention shall be paid to the following principles: (...). c) Principle of restricted circulation. The administration of personal

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<sup>91</sup> Colombia's reply to the questionnaire, pp. 130 to 137.

data is subject to the restrictions derived from the nature of the data, the provisions of this law, and the principles governing the administration of personal data, especially the principles of duration of the information and purpose of the database. Except for public information, personal data shall not be accessible via the Internet or other mass means of disclosure or communication, unless access to it can be technically controlled in such a way as to permit disclosure to just the person the information refers to or users authorized pursuant to this law (...).”

[313] - “Along those same lines, the Administrative Department of the Civil Service may only provide the information registered in the Government Employment Information and Management System (SIGEP) to other government entities, the National Government, and the judicial authorities; disclosure may also be allowed by express permission of the person to whom the information refers. The information may contain related data in the CV classified as semi-private information, pursuant to the provision governing that matter.”

[314] The Committee takes notes of the information provided by the country under review concerning the second measure of the recommendation in Chapter IV, Section 2.1 of this report, and of the need for the country under review to continue paying attention thereto, bearing in mind that, according to the foregoing paragraph, it is only possible to provide the information recorded in the Government Employment Information and Management System (SIGEP) to the government entities and authorities indicated therein, or with the express permission of the person the information refers to, with no regulation, however, of the conditions, procedures, and other pertinent aspects relating to the disclosure of net worth statements contemplated in said measure (See measure (b) in Annex I, Section 2 of this report.

### **3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11, OF THE CONVENTION)**

Recommendation 3.1, which requires further attention under the terms provided in the reports from the Second and Third Rounds:

- *“Strengthen the high-level oversight organs, as regards the functions they carry out in relation to controlling effective compliance with the provisions in sections 1, 2, 4 and 11 of the Convention, and optimize coordination among them as provided for in the Colombian legal system, to ensure the efficacy of such oversight, endowing them with the resources needed for the proper performance of their functions; seeking to ensure that they have greater political and social support to this end; and establishing mechanisms to permit ongoing evaluation and monitoring of their actions.”*<sup>92</sup>

[315] In its reply,<sup>93</sup> the country under review provided information on measures to strengthen the high-level oversight bodies envisaged in the National Development Plan and the Anti-Corruption Statute (Law 1474 of 2011).

[316] Given that Chapter II of this report contains a detailed and updated analysis regarding the high-level oversight bodies referred to in connection with the aforementioned measures, the Committee reaffirms what was said in that Chapter regarding each of those bodies and therefore deems that Recommendation 3 transcribed above is no longer relevant.

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<sup>92</sup> Regarding this recommendation, it is to be noted that, in the Second Round report, the Committee took note of the satisfactory consideration given to the component in the recommendation that had to do with optimizing coordination of the high-level oversight bodies, under the terms contemplated in said report.

<sup>93</sup> Colombia’s reply to the questionnaire, pp. 137 to 143.

#### **4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ART. III, PARAGRAPH 11)**

##### **4.1. Mechanisms for access to information**

Recommendation 4.1.1, which requires further attention under the terms provided in the reports from the Second and Third Rounds:

*- Consider measures to ensure that progress with “connectivity” and the use of information technologies in national institutions and those initiated in the regions thanks to Decree Law 2170 of 2002, are consolidated and expanded to subnational entities and, consequently, that the institutions performing government functions at the departmental and municipal levels also take advantage of those technologies to disseminate the information they possess or control.*

[317] In its reply<sup>94</sup> and during the on-site visit, the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that allow it to conclude that it has been satisfactorily considered:

[318] - “Aware of the importance of fostering efficient use of Information and Communication Technologies (ICTs) by regional entities, the Connectivity Agenda - On-line Governance Program in the Ministry for ICTs is spearheading the Regional On-line Governance Initiative, aimed at helping to forge more efficient, transparent, and participatory local governments providing better services to citizens and the more autonomous enterprises by make use of ICTs.”

[319] -In connection with the aforementioned aspects of this program, Governor’s Offices and private regional on-line governance operators began supporting subnational entities from 2010 and through to December 2012. That support entails strengthening the ability of mayor’s and governor’s offices to own and effectively implement the strategy by conducting a diagnostic assessment of each subnational entity; constant monitoring of websites; approving administrative decisions within the entities to implement on-line governance; and training at least five officials in each mayor’s and governor’s office in the implementation of interactive tools, the holding of regional and local workshops on the Standard Internal Control Management Model - MECI, service to citizens, managing change, teamwork, and the implementation of on-line procedures and services.”

[320] - “By 2013, all 1,102 municipalities and 32 departments in Colombia will see at least four on-line procedures and/or services, as well as high-quality interaction forums to trigger two-way communication between subnational entities and their citizens and increase citizens’ participation in decision-making and public affairs.”

[321] -”It is important to point out that, in addition to the above-mentioned support, the Ministry of Information and Communications Technologies continues to administer the institutional mail accounts and to finance the full cost of hosting the websites of 1,068 mayor’s and governor’s offices, as well as the hosting of the On-line Governance Transactions Tool, which enables the institutional portals of those entities to be on the air 24/7 and ensures, because they are designed by the Ministry, that they comply with the guidelines of the On-Line Governance Implementation Manual, thereby guaranteeing permanent on-line forums in which citizens can find information regarding their

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<sup>94</sup> Colombia’s reply to the questionnaire, pp. 143 to 154.

entities' activities, interact with them, access procedures and services, and exercise their right to participate and to access information.”

[322] In addition to the above, during the on-site visit the Ministry of Information and Communication Technologies explained the strategies pursued to implement the aforementioned subnational entities program, such as providing them with the necessary technological platform and delivering computers to municipal school and libraries. They also said that implementation was on schedule and that they expected to meet their targets on time.

[323] The Committee takes note of the satisfactory consideration given by the country under review to Recommendation 4.4.1 contained in Chapter IV, Section 4.1 of this report.

[324] It is worth noting that, with respect to the subject of access to information in general through the use of new information technologies, during the on-site visit the civil society organization “Corporación Somos Más” pointed out that, with regard to access to public information, the State has provided an On-Line Manual (3.0 and 3.1) containing all the tools and platforms citizens need. They said that the Manual provided broad guidelines to facilitate clear access for citizens, but that much had still to be implemented and that the platforms needed to follow the guidelines that the State itself had set.

#### **4.2. Mechanisms for consultation**

Recommendation 4.2.1, which requires further attention under the terms provided in the reports from the Second and Third Rounds:

*- Conduct a comprehensive assessment of the utilization and effectiveness of the existing consultation mechanisms in Colombia, as instruments for preventing corruption, and, following that evaluation, consider taking steps to promote, facilitate, consolidate, or ensure their effectiveness to that end.*

[325] In its reply,<sup>95</sup> the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[326] -”A survey of the impact of citizen participation, 20 years after it was adopted by the 1991 Constitution, shows major advances, including: (a) a wide range of institutional opportunities for participation that previously did not exist and that have often served as a channel for encouraging new types of relations between the State and civil society; (b) willingness by the authorities, especially at the regional level, to involve citizens in public deliberations; (c) the adoption of participatory discourse as part of a new vision of public affairs and of the role of citizens in that scenario; (d) the ongoing relevance of a large number of experiences of participation -- some more successful than others -- in areas such as participatory planning, the crafting of public policies, social oversight, development project execution, participatory budgets, and the generation of social capital.”

[327] - “At the same time, direct participation mechanisms have not been used frequently, except for (always unsuccessful) attempts to revoke a mandate , nor have they achieved the intended effect of inducing a more prominent citizen participation in government decisions. Plebiscites, for instance, have not been used since 1957. - Following are some of the outcomes of citizen participation mechanisms that were presented and approved:”

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<sup>95</sup> Colombia's reply to the questionnaire, pp. 154 to 158.

	<b>Total Number of Initiatives</b>	<b>Approved</b>	<b>Percentage approved</b>
Revocation of Mandate	132	0	0
Legislative and Regulatory Initiative	16	1	6
Referendum	36	2	6
Plebiscite ( <i>Consulta Popular</i> )	25	6	24
<b>Total</b>	<b>209</b>	<b>9</b>	<b>4%</b>

Source: <http://moe.org.co/prensa/comunicados-de-prensa/2012/431-desconocimiento-ciudadano-y-barreras-institucionales-no-han-permitido-estrenar-la-democracia-participativa.html>

[328] - Aware of the importance of strengthening participation, we are working on the development of a citizen participation statute that incorporates the regulatory and institutional framework of participation, encourages and facilitates citizen participation, and promotes more efficient use of the mechanisms by citizens in such a way as to help prevent and combat corruption. To that end and to promote citizen participation and social capital, pursuant to Article 231 of the 2010 – 2014 National Development Plan: Prosperity for All, the National Government, through the Ministry of the Interior and the National Planning Department is currently developing the National Citizen Participation Agenda, given that participation is a democratic activity that helps strengthen public management, optimize social investment, foster democratic attention to the needs of the community, and make governance and participatory democracy more robust.<sup>96</sup>

[329] - “At the initiative of the National Government, Congress reviewed Statutory Bill No.227 of 2012 in the Senate, No. 134 of 2011 in the House of Representatives, jointed with No. 133 of 2011,” containing provisions on promotion and protection of the right to political participation,” the constitutionality of which is first being reviewed by the Constitutional Court. This bill is based on the citizen participation guidelines established in the National Development Plan.”

[330] In addition, during the on-site visit, the Ministry of the Interior pointed out that in the run up to the aforementioned bill the comprehensive assessment referred to in the recommendation was carried out and the outcomes thereof are to be found in the reply to the questionnaire. The assessment prior to this draft bill of law is based on the institutional offer for citizen participation and its impacts on promoting the active exercise of this right and duty. It determines that there are weaknesses and flaws in its design and implementation in the institution’s architecture, leading to gaps in meeting public needs and interests; likewise, participation should be strengthened by exercising accountability, information management and good governance, and finally it should focus on the articulation between stakeholders to generate the dynamics of representation, dialogue, and attention leading to the consolidation of participatory democracy and development.

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<sup>96</sup> This paragraph was expanded with clarifying information furnished by the State under review on August 12, 2012, regarding the inclusion of the National Planning Department.

[331] The Committee takes notes of the information provided by the country under review concerning the recommendation in Chapter IV, Section 4.2 of this report, and of the need for the country under review to continue paying attention thereto, bearing in mind that, although a comprehensive assessment was conducted of the utilization and effectiveness of the consultation mechanisms it refers to, and the aforementioned findings thereof are reported in the reply to the questionnaire, still pending is the adoption of measures to promote, facilitate, and consolidate or ensure the effectiveness of such measures, because the bill referred to above is first being scrutinized by the Constitutional Court to see whether it is constitutional (See the sole recommendation in Annex I, Section 4.2 of this report).

[332] Regarding the element of Recommendation 4.4.1 in Chapter IV, Section 4.4 of this report, concerning the conducting of a comprehensive assessment of the utilization and effectiveness of consultation mechanisms, the Committee notes its satisfactorily considered by the country under review and, for the sake of clarity, considers it appropriate to reformulate this Recommendation as follows:

[333] Adopt measures to promote, facilitate, and consolidate or ensure the effectiveness of consultation mechanisms (See the sole recommendation in Annex I, Section 4.4 of this report).

[334] It should be noted, moreover, in connection with the aforementioned bill, that during the on-site visit the civil society organization “Corporación Transparencia por Colombia” had the following to say: “Discussion of the statutory bill was preceded by a plebiscite promoted by several civil society institutions, including Corporación Nuevo Arco Iris, Corporación Transparencia por Colombia, Corporación Viva la Ciudadanía and Fundación Social, under the coordination and leadership of the Fundación Foro Nacional por Colombia, in partnership with the Ministry of the Interior, in thirteen Colombian cities. - The plebiscite was conducted through Participation Round Tables set up in each city, in which more than 850 people participated directly over the course of almost four months, as representatives of 450 civil society organizations and some national and subnational government entities. - *The bill contains citizen inputs that make it more solid and add to its legitimacy.* Despite that, many of the roundtable proposals were not accepted by the Ministry of the Interior, the Chamber of Representatives, and the Senate, which disconcerted the organizations taking part in the process.”

[335] In addition to the above, “Corporación Transparencia por Colombia” provided a copy of a letter sent by a number of civil society organizations to the Constitutional Court regarding the aforementioned bill. it is posted at: [www.oas.org/juridico/pdfs/mesicic4\\_col\\_estatuto.pdf](http://www.oas.org/juridico/pdfs/mesicic4_col_estatuto.pdf)

### **4.3. Mechanisms to encourage participation in public administration**

The recommendation with respect to this section was satisfactorily considered and, therefore, does not require additional attention.

### **4.4. Mechanisms for participation in the monitoring of public affairs**

Recommendation 4.4.1, which requires further attention under the terms provided in the reports from the Second and Third Rounds:

*- Consider measures to consolidate and expand programs designed to disseminate mechanisms for participation in the monitoring of public affairs; educate and train civic leaders to encourage their*

*utilization; include content concerning the prevention of corruption and compliance with civic duties in basic and secondary education curricula; create citizen awareness of the importance of reporting acts of public corruption; and provide those who report them with the necessary protection.*<sup>97</sup>

[336] In its reply<sup>98</sup> and during the on-site visit, the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[337] - “1. Training of regional replicators for promoting social oversight. The Administrative Department of the Civil Service, in partnership with the Institutional Network to Support Citizen Oversight offices, established by Law 850 of 2003, is promoting the training of departmental replicators all over Colombia so that they train other civil servants, citizens, oversight offices and social oversight groups. That means that one achievement we can point to is the existence of installed capacity in the country’s 32 departments, with trained officials whom citizens, oversight offices and social oversight groups can go to for training in the exercise of their right to oversee the handling of public affairs.

[338] - 2. Training citizens to exercise social oversight. The Administrative Department of the Civil Service (through the National Training Plan in Social Oversight of Public Affairs) and the national and subnational inter-agency partnership of the institutional network to support oversight offices have developed educational and training programs as part of the action plans of the departmental networks to support citizen oversight offices and in that way, in the 2002-2009 period, have reached 30,472 citizens and 761 oversight offices and social oversight groups all over Colombia.<sup>99</sup>

[339] In view of this need, the Leadership and Public Participation School was established, conceived as an instrument to implement public policymaking for participation, leading to training for drawing up democratic public management and active citizenship. The School has become an instrument for excellence so that citizens can become interested in public affairs and intervene on various stages and forums for building, enforcing and monitoring public policies to promote the establishment and consolidation of social networks and partnerships, as well as to learn about and use various citizen intervention mechanisms and facilitate the National Government’s coming closer to the public. – Among the projects promoted by the School there is the “Certification Program in Social Monitoring” which is aimed at citizen oversight observers and leaders belonging to social and community organizations in each one of the 32 departments and in Bogotá, aimed at qualifying citizens through tools, know-how, skills and abilities that will contribute to the development of social and political stakeholders, making it possible to recognize them as the subjects of rights with the possibility of exerting an impact on decisions and dynamics having to do with their development, the appropriation of stages of participation, the knowledge of public policies about participation and education, and finally the identification of their role as observers in a social and geographical context.

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<sup>97</sup> In the Second Round report, the Committee already noted the satisfactory consideration by the Country under review of the elements of the foregoing recommendation regarding: consolidation and expansion of dissemination programs of participatory mechanisms for monitoring the management of public affairs; education and training of civic leaders to give encourage their utilization; and creation of citizen awareness on the importance of denouncing acts of public corruption, under the terms envisaged in that report.

<sup>98</sup> Colombia’s reply to the questionnaire, pp. 154 to 158.

<sup>99</sup> This paragraph was expanded with clarifying information furnished by the State under review on August 12, 2012, regarding the inclusion of the period 2002 to 2009.

[340] - “3. Inclusion in school curricula of contents dealing with the prevention of corruption and compliance with civic duties. Conscious of the need to instill a culture of respect for the law from an early age, the Colombian State included in Law 1474 of 2011 (the Anti-Corruption Statute) a commitment on the part of educational establishments to make progress in that area. - Indeed, Article 79 of the aforementioned Law establishes that: “Basic and secondary education establishments shall include in their Institutional Educational Project, strategies they deem relevant for developing citizens’ skills for living together in harmony, participation, and democratic accountability, and for identifying and appreciating diversity, and that approach must be reflected in activities involving all members of the educational community. Specifically in the case of participation the idea shall be to forge a culture of respect for law and care for community property.”

[341] The Committee takes notes of the steps taken by the country under review to move ahead with implementation of the second measure of Recommendation 4.4.1 in Chapter IV, Section 4.4 of this report, and of the need for the country under review to continue paying attention thereto, in respect of the protection needed for those who report acts of corruption, bearing in mind the comments made by the Office of the Attorney General (PGN) during the on-site visit regarding the first measure in Chapter IV, Section 1.3 of this report, which also referred to protection of whistleblowers, to the effect that, although the law provides for that body having its own protection program, no funds were available for it; moreover, that as the law cannot hide any proceedings from the accused, not being able to keep the identity of a whistleblower or witness confidential may inhibit them from reporting acts of corruption or even induce them to retract their statements.

[342] As regards the element of Recommendation 4.4.1 in Chapter IV, Section 4.4 of this report, regarding the inclusion in basic and secondary education curricula of contents dealing with the prevention of corruption and compliance with civic duties, the Committee takes note of its satisfactory consideration by the country under review, taking into account the provisions in that regard of Article 79 of Law 1474 of 2011, and with regard to the other elements of said recommendation, the Committee recalls that it already noted in the report from the Second Round that they had been satisfactorily considered, so that, for the sake of greater clarity, considers it appropriate to reformulate that recommendation as follows:

[343] Provide the necessary protection to citizens who denounce acts of corruption (See the sole recommendation in Annex I, Section 4.4 of this report).

Recommendation 4.4.2, which requires further attention under the terms provided in the reports from the Second and Third Rounds:

*- Consider the adoption of appropriate measures with respect to mechanisms such as the “National Ethics Commission” referred to in Decree 1681 of 1997.*

[344] In its reply<sup>100</sup> and during the on-site visit, the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that allow it to conclude that it has been satisfactorily considered:

[345] - “Law 1474 of 2011 incorporated the provisions established in Law 190 of 1995 on the National Ethics Commission. The preliminary recitals of this Law establish that: “Fighting corruption should be a joint undertaking by Government entities and civil society. To that end, intervention by

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<sup>100</sup> Colombia’s reply to the questionnaire, pp. 160 to 162.

oversight bodies will not suffice. Also needed is the support of agencies or commissions to coordinate unified actions, systematize information, and prepare general reports monitoring compliance with the policies formulated. - In this area, this project places special emphasis on two institutions: the National Ethics Commission and the National Commission of Citizens to Fight Corruption (*Comisión Nacional Ciudadana para la Lucha contra la Corrupción*), which date back to Law 190 of 1995 and have to be resuscitated on the understanding that combating corruption is only possible as a State policy with the active participation of civil society. - Accordingly, concrete intervention functions and mechanisms for these two bodies have been included to permit them to carry out joint actions capable of achieving immediate results in actions against existing cases and results down the line from the development of anti-corruption policies.”

[346] Pursuant to this provision, on December 9, 2011, the President of the Republic officially installed the National Ethics Commission by issuing Decree 4632 of 2011.”

[347] “This body is chaired by the President of the Republic and its members are the Minister of the Interior and Justice, the Attorney General, the Comptroller General of the Republic, the Auditor General of the Republic, the President of the Senate and of the House of Representatives, the General Prosecutor, the President of the Supreme Court, the Chair of the Council of State, the Secretary of Transparency, the Presidential Advisor for Good Governance and Administrative Efficiency, and the Ombudsman (*Defensor del Pueblo*).”

[348] In addition, during the on-site visit the Transparency Secretariat of the Office of the President of the Republic provided information regarding the “National Ethic Commission” and the “Regional Ethics Commissions” and their modus operandi through a document, which can be consulted on-line at: [www.oas.org/juridico/ppt/mesicic4\\_col\\_sec.ppt](http://www.oas.org/juridico/ppt/mesicic4_col_sec.ppt)

[349] The Committee takes note of the satisfactory consideration given by the country under review to Recommendation 4.4.2 contained in Chapter IV, Section 4.4 of this report.

[350] It is worth noting, too, regarding the aforementioned Commission, that during the on-site visit the civil society organization “Corporación Transparencia por Colombia” reported that said Commission had met on six occasions prior to the visit, which it deemed appreciable given the composition of that Commission. It also referred in its presentation to the National Commission of Citizens to Fight Corruption, established by Law 1474 of 2011, which also established the Ethics Commission.

## **5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)**

Recommendations 5.1, 5.2, 5.3, and 5.4 in connection with this section were satisfactorily considered and therefore require no further information.

## **6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)**

The Committee did not formulate any recommendations in this section.

## **7. GENERAL RECOMMENDATIONS**

Recommendation 7.2, which requires further attention under the terms provided in the reports from the Second and Third Rounds:

*Select, develop, and report to the Technical Secretariat of the Committee, procedures and indicators, when appropriate, that make it possible to verify follow-up to the recommendations made in this report. For this purpose, the Technical Secretariat of the Committee will publish on the OAS website a list of more generalized indicators applicable within the inter-American system that may be available for the aforementioned selection by the country under review.*

[351] In its reply,<sup>101</sup> the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[352] - “Through the Secretariat of Transparency, Colombia has designed a tabular matrix, a copy of which is attached to this report, to monitor implementation of the recommendations formulated by the Committee of Experts of the MESICIC. The systematization of this information has enabled government entities to grasp and more easily access the data they need on this subject.”

[353] - “Likewise, this matrix has been supplemented with a “traffic lights” system. This means that the recommendations have been classified according to their nature (one-off or continuous action) and progress with their development, which has made it easier to monitor them.”

[354] The Committee takes notes of the steps taken by the country under review to move ahead with implementation of Recommendation 7.2 in Chapter IV, Section 7 of this report, and of the need for the country under review to continue paying attention thereto, in respect of the protection needed for those who report acts of corruption, bearing in mind that although the tabular matrix referred to in the reply makes it possible to discern which of the recommendations formulated in the First Round report have been given satisfactory consideration and which require additional attention, it does not contain procedures and indicators that make it possible to verify follow-up to the recommendations made in this report in the manner alluded to in said recommendation (See the sole recommendation in Annex I, Section 7 of this report.).

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<sup>101</sup> Colombia’s reply to the questionnaire, p. 163.

## ANNEX I

### **RECOMMENDATIONS PENDING FROM THE FIRST ROUND AND REFRAMED**

#### **1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 1 OF THE CONVENTION)**

##### **1.1. Standards of conduct to prevent conflicts of interest and mechanisms to enforce them**

###### Recommendation:

The recommendation with respect to this section was satisfactorily considered and, therefore, does not require additional attention.

##### **1.2. Standards of conduct and mechanisms for ensuring the conservation and proper use of resources entrusted to public officials**

###### Recommendation:

Continue strengthening preventive measures and oversight systems to ensure the conservation and proper use of resources entrusted to public officials in the performance of their functions.

###### Suggested measures:

- a) Conduct a comprehensive evaluation to determine the objective grounds giving rise to investigations into the crime of embezzlement and, based on the findings, define and consider adopting specific measures designed to prevent this form of crime from occurring and, ultimately, to ensure the conservation and proper use of resources entrusted to public officials.
- b) Conduct a comprehensive evaluation to determine the objective grounds preventing or limiting the effectiveness of internal and fiscal oversight systems in preventing the occurrence of “diversion” of budgetary and other funds and, based on the findings, to define and consider the adoption of specific measures aimed at preventing their occurrence and ensuring the conservation and proper use of public resources.

##### **1.3. Measures and systems requiring public officials to report acts of corruption in the performance of public functions of which they are aware to the appropriate authorities**

###### Recommendation:

Strengthen the Republic of Colombia’s mechanisms for requiring public officials to report to the competent authorities any acts of corruption in government service that come to their attention.

###### Suggested measure:

- Provide facilities to enable government officials to comply with their obligation to report to the competent authorities acts of corruption in public service of which they become aware; provide necessary protection commensurate with the gravity of the acts of corruption reported; and, in

cases of failure to comply with the obligation, impose the penalties stipulated under Colombian law for such cases.

**2. SYSTEMS FOR REGISTERING INCOME, ASSETS, AND LIABILITIES (ARTICLE III, PARAGRAPH 4, OF THE CONVENTION)**

Recommendation:

Improve the systems for overseeing and evaluating the contents of sworn statements of net worth and regulate disclosure of them.

Suggested measures:

- a) Optimize systems for analyzing the contents of sworn statements of net worth with a view to detecting and preventing conflicts of interests, as well as detecting possible cases of illicit enrichment.
- b) Regulate the conditions, procedures, and other pertinent aspects governing disclosure of the statements of wealth, income, and liabilities of civil servants, subject to the Constitution and the fundamental principles of Colombia's legal system.

**3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11, OF THE CONVENTION)**

The recommendation with respect to this section was considered no longer relevant and, therefore, does not require additional attention.

**4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ART. III, PARAGRAPH 11)**

**4.1. Mechanisms for access to information**

The recommendation with respect to this section was satisfactorily considered and, therefore, does not require additional attention.

**4.2. Mechanisms for consultation**

Recommendation:

- Adopt measures to promote, facilitate, and consolidate or ensure the effectiveness of mechanisms for consultation.

**4.3. Mechanisms to encourage participation in public administration**

The recommendation with respect to this section was satisfactorily considered and, therefore, does not require additional attention.

**4.4. Mechanisms for participation in the monitoring of public affairs**

Recommendation:

- Provide the necessary protection for citizens who report acts of corruption.

#### **5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)**

The recommendations with respect to this section were satisfactorily considered and, therefore, do not require additional attention.

#### **6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)**

The Committee did not formulate any recommendations in this section.

#### **7. GENERAL RECOMMENDATIONS**

##### Recommendation

- Select, develop, and report to the Technical Secretariat of the Committee, procedures and indicators, when appropriate, that make it possible to verify follow-up to the recommendations established in this report. For this purpose, the Technical Secretariat of the Committee will publish on the OAS website a list of more generalized indicators applicable within the inter-American system that may be available for the aforementioned selection by the country under review.

**ANNEX II**  
**AGENDA OF THE ON-SITE VISIT TO**  
**COLOMBIA\***

**Sunday, April 7, 2013**

<b>4:00 p.m. – 4:45 p.m.</b> Place: Hotel Tequendama	<b>Coordination meeting between representatives of the members states of the subgroup and the Technical Secretariat.</b>
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<b>5:00 p.m. - 6:00 p.m.</b> Place: Hotel Tequendama	<b>Coordination meeting of representatives of the country under review, the members states of the subgroup, and the Technical Secretariat</b>
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**Monday, April 8, 2013**

<b>8:00 a.m. – 10:00 a.m.</b> Place: Ministry of Foreign Affairs	<b>Meetings with civil society organizations and/or, inter alia, private sector organizations, academics or researchers.<sup>102</sup></b>
Carrera 6 No. 9-46 Salón Anexo al López de Mesa	<b>Subject: High-level Oversight bodies:</b> <ul style="list-style-type: none"><li>• Inter-agency coordination</li><li>• Demarcation of the functions of the oversight bodies and civil society cooperation with them</li><li>• Private sector cooperation with oversight bodies</li><li>• Difficulties in attaining its goals.</li></ul>
	<b><u>Participants:</u></b> <b><i>Corporación Transparencia por Colombia</i></b> -Dr. Elisabeth Ungar Bleier, Executive Director. -Dr. Natalia Albañil, Technical Assistant. -Dr. Ana María Paéz, Researcher.

\* This agenda was agreed upon pursuant to provisions 13 and 14 of the Methodology for Conducting On-Site Visits (document SG/MESICIC/doc.276/11 rev. 2), available at: [http://www.oas.org/juridico/english/met\\_onsite.pdf](http://www.oas.org/juridico/english/met_onsite.pdf)

<sup>102</sup> . The civil society organization “Corporación Transparencia por Colombia” participates in these meetings pursuant to the provisions of item 26 of the Methodology for Conducting On-Site Visits, inasmuch as it presented a document relating to the questionnaire for the fourth review round, as provided in Article 34 b) of the Committee’s Rules of Procedure. It is suggested that other organizations and individuals be invited to attend, as envisaged in item 27 of the above Methodology, which permits the invitation to these meetings of civil society organizations and/or, inter alia, private sector organizations, professional associations, academics, or researchers.”

	<p><b>National University</b></p> <p>-Dr. Orlando Puentes, Researcher.</p> <p><b>Confederación de Cámaras de Comercio de Colombia (Chambers of Commerce - CONFECÁMARAS).</b></p> <p>-Dr. Rodrigo Mejía Novoa, Chamber Services Manager.</p>
<p><b>10:00 a.m. – 12:00 noon</b>  <u>Place:</u> Ministry of Foreign Affairs</p>	<p><b>Meetings with civil society organizations and/or, inter alia, private sector organizations, academics, or researchers. (cont.)</b></p>
<p>Carrera 6 No. 9-46  Salón Anexo al López de Mesa</p>	<p><b>Subject: Follow-up to Recommendations from the First Round:</b></p> <ul style="list-style-type: none"> <li>• Denunciation of acts of corruption</li> <li>• Access to public information</li> <li>• Mechanisms for participation by civil society</li> </ul>
	<p><b><u>Participants:</u></b></p> <p><b>Corporación Transparencia por Colombia</b></p> <p>-Dr. Elisabeth Ungar Bleier, Executive Director.</p> <p>-Dr. Natalia Albañil, Technical Assistant.</p> <p>-Dr. Ana María Paéz, Researcher.</p> <p><b>Corporación Somos Más</b></p> <p>-Dr. Ximena Lara – Executive Director.</p>
<p><b>12:00 noon - 1:45 p.m.</b></p>	<p><b>Lunch</b></p>

<p><b>2:30 p.m. – 5:30 p.m.</b>  <u>Place:</u> The Office of the General Prosecutor  (Fiscalía General de la Nación - FGN)</p>	<p><b>The Office of the General Prosecutor (FGN)</b></p>
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<p>Diagonal 22B#52-01 (Ciudad Salitre)</p> <p>Meeting Room of the Directorate of International Affairs</p>	<p><b>Panel 1: The Office of the General Prosecutor (FGN):</b></p> <ul style="list-style-type: none"><li>• <b>Brief presentation on its purpose, functions, and structure</b></li><li>• <b>Scope of its functions and coordination of spheres of competence with other bodies</b></li><li>• <b>Resources for its operations</b></li><li>• <b>Difficulties in performing its functions</b></li><li>• <b>Results in relation to the fulfillment of its responsibilities</b></li><li>• <b>Institutional strengthening</b></li><li>• <b>Sound Practice</b></li></ul> <p><b><u>Participants:</u></b></p> <p>-Dr. Mario Montes Giraldo, Head of the Anti-Corruption Unit.</p> <p>-Dr. Hugo Tovar Pérez, Anti-Corruption Prosecutor.</p> <p>-Dr. Fernando Cervera González, Head of the National Investigation Division of the Technical Investigation Corps (<i>Cuerpo Técnico de Investigación</i>).</p> <p>-Dr. Yasmith del Carmen Bello, Advisor in the Office of the Deputy General Prosecutor.</p> <p>-Dr. Oscar Pérez Lizcano, Delegate of the Academy (<i>Escuela</i>) of the General Prosecutor's Office.</p> <p>-Dr. Sandra Mabel Sepúlveda Contreras, Advisor, Directorate of International Affairs</p> <p><b>Panel 2: Follow-up to Recommendations from the First Round:</b></p> <ul style="list-style-type: none"><li>• <b>Denunciation of acts of corruption</b></li></ul> <p><b>This topic was discussed in Panel 8</b></p>
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<p>7:00 p.m.</p> <p>Place: Hotel Tequendama</p>	<p><b>Informal meeting between the representatives of the Member States of the Subgroup and the Technical Secretariat.</b></p>
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**Tuesday, April 9, 2013**

<p><b>8:00 a.m. – 10:00 a.m.</b> Place: Ministry of Foreign Affairs</p>	<p><b>Follow-up to Recommendations from the First Round</b></p>
<p>Carrera 6 No. 9-46 Salón Anexo al López de Mesa</p>	<p><b>Panel 3:</b></p> <ul style="list-style-type: none"><li>• <b>Stewardship of public funds</b></li></ul> <p><b><u>Participants:</u></b></p> <p>-Dr. José Miguel Zambrano Guerrero, Management Coordinator, Office of the Comptroller General of the Republic.</p> <p>-Dr. Carlos Rodríguez Bocanegra, Director of the International Unit for the Recovery of Assets, Office of the Comptroller General of the Republic.</p> <p>-Dr. Bladimir Cuadro Crespo, Criminal Justice Attorney, Office of the Attorney General.</p> <p>- Dr. Polyana Hernández López, Advisor, Attorney General’s Office Assigned to Decentralization and Subnational Entities, Office of the Attorney General.</p> <p>-Dr. Claudia Patricia Molano Vargas, Director of Government Employment, Administrative Department of the Civil Service.</p> <p>-Dr. Lina Marcela Cuadros, Advisor in the Office of the Deputy Director, Administrative Department of the Civil Service.</p> <p>-Dr. Juan Felipe Rueda, Advisor, Internal Audit Directorate, Administrative Department of the Civil Service.</p> <p>-Dr. Myriam Cubillos, Specialist, Administrative Department of the Civil Service.</p> <p>-Dr. Mario Enrique Fernández Jordán, Specialist, Government Employment Directorate, Administrative Department of the Civil Service.</p> <p><b>Panel 4:</b></p> <ul style="list-style-type: none"><li>• <b>Statements of Net Worth</b></li><li>• <b>Training for government officials in the denunciation of acts of corruption - National Training Plan.</b></li></ul> <p><b><u>Participants:</u></b></p> <p>-Dr. Claudia Patricia Molano Vargas, Director of Government Employment, Administrative Department of the Civil Service.</p> <p>-Dr. Lina Marcela Cuadros, Advisor in the Office of the Deputy Director, Administrative Department of the Civil Service.</p> <p>-Dr. Juan Felipe Rueda, Advisor, Internal Audit Directorate,</p>

	<p>Administrative Department of the Civil Service.</p> <p>-Dr. Myriam Cubillos, Specialist, Administrative Department of the Civil Service.</p> <p>-Dr. Mario Enrique Fernández Jordán, Specialist, Government Employment Directorate, Administrative Department of the Civil Service.</p>
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<p><b>10:30 a.m. – 1:00 p.m.</b></p> <p><u>Place:</u> Supreme Court of Justice</p>	<p><b>Panel 5: Supreme Court of Justice (CSJ)</b></p>
<p><b>Calle 12 # 7 - 65</b></p>	<ul style="list-style-type: none"><li>• <b>Brief presentation of its purpose and functions relating to the investigation and punishment of acts of corruption</b></li><li>• <b>Scope of its functions and coordination of spheres of competence with other bodies</b></li><li>• <b>Training and procedures for the performance of its functions</b></li><li>• <b>Difficulties in performing its functions</b></li><li>• <b>Results in relation to the fulfillment of its responsibilities</b></li><li>• <b>Institutional strengthening</b></li></ul> <p><b><u>Participants:</u></b></p> <p><b>Governance Division of the Supreme Court of Justice:</b></p> <ul style="list-style-type: none"><li>- Judge Ruth Marina Díaz Rueda, President of the Supreme Court.</li><li>- Judge Luis Gabriel Miranda Buelvas, Vice President of the Supreme Court.</li><li>- Judge Margarita Cabello Blanco, President of the Civil Appeals Division.</li><li>- Judge José Leonidas Bustos Martínez, President of the Criminal Appeals Division.</li><li>- Judge Jorge Mauricio Burgos Ruiz, President of the Labor Appeals Division.</li></ul>

<p><b>1:15 p.m. – 2:30 p.m.</b></p>	<p><b>Lunch</b></p>
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<b>3:00 p.m. – 6:00 p.m.</b> <u>Place:</u> Higher Council of the Judiciary	<b>Panel 6: Higher Council of the Judiciary (CSJd)</b>
<b>Calle 12 # 7 - 65</b>	<ul style="list-style-type: none"><li>• <b>Brief presentation on its purpose, structure, and functions</b></li><li>• <b>Coordination of responsibilities with other organs</b></li><li>• <b>Difficulties in performing its functions</b></li><li>• <b>2011 National Plan for Eliminating the Backlog</b></li><li>• <b>Project to Strengthen Justice Services</b></li><li>• <b>Training</b></li><li>• <b>Results in relation to the fulfillment of its responsibilities</b></li><li>• <b>Sound Practice</b></li></ul> <p><b><u>Suggested Participants:</u></b></p> <p>-Dr. Pedro Alonso Sanabria Buitrago, Chair of the Higher Council of the Judiciary.</p> <p>-Dr. Néstor Raúl Correa Henao, President of the Administrative Chamber.</p> <p>-Dr. Leonor Padilla, Auxiliary Judge, Coordination Office, International Affairs and Legal Department.</p> <p>-Dr. Francisco Boada Rodríguez, Auxiliary Judge.</p> <p>-Dr. Ricardo Peralta, Auxiliary Judge of the Administrative Chamber.</p> <p>-Dr. Diego Londoño, Division Chief, Administrative Chamber.</p> <p>-Dr. Diana Claudia Caro, Specialist, Development Unit.</p>

<b>6:30 p.m. – 7:00 p.m.</b> <u>Place:</u> Hotel Tequendama	<b>Informal Meeting</b> between representatives of the Member States in the review subgroup and the Technical Secretariat
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**Wednesday, April 10, 2013**

<b>8:00 a.m. – 11:00 a.m.</b> <u>Place:</u> The Office of the Attorney General	<b>Panel 7: The Office of the Attorney General (PGN)</b>
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<p>Carrera 5ª # 15 - 60</p>	<ul style="list-style-type: none"> <li>• <b>Brief presentation on its purpose, functions, and structure</b></li> <li>• <b>Coordination of responsibilities with other organs</b></li> <li>• <b>Resources for its operations</b></li> <li>• <b>Training</b></li> <li>• <b>Difficulties in performing its functions</b></li> <li>• <b>Results in relation to the fulfillment of its responsibilities</b></li> <li>• <b>Institutional strengthening</b></li> <li>• <b>Sound Practice</b></li> </ul> <p><b><u>Participants:</u></b></p> <p>-Dr. Martha Isabel Castañeda Curvelo, Deputy Attorney General.</p> <p>-Dr. María Consuelo Cruz Mesa, Prosecuting Attorney assigned to Public Ethics.</p> <p>-Dr. María Juliana Albán, General Secretary.</p> <p>-Dr. Irma Trujillo, Prosecuting Attorney assigned to Procurement.</p> <p>-Dr. Orlando Ospitia Garzón, Criminal Justice Prosecutor II.</p> <p>-Dr. Cristian Mora, Director of the Studies Institute at the “Ministerio Público.”</p> <p>-Dr. Gabriel Quiñones, National Director of Special Investigations.</p> <p>-Dr. Néstor Valdivieso, Head of the Planning Office.</p> <p>-Dr. Polyana Hernández López, Advisor, Attorney General’s Office Assigned to Decentralization and Subnational Entities.</p>
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<p><b>11:30 a.m. – 1:00 p.m.</b>  <u>Place:</u> Ministry of Foreign Affairs</p>	<p><b>Panel 8: Follow-up to Recommendations from the First Round:</b></p>
<p>Carrera 6 No. 9-46  Salón Anexo al López de Mesa</p>	<ul style="list-style-type: none"> <li>• <b>Denunciation of acts of corruption</b></li> <li>• <b>Mechanisms for participation by civil society</b></li> </ul> <p><b><u>Participants:</u></b></p> <p>Official in the witness protection program, Office of the General Prosecutor.</p> <p>-Dr. Lucía Bastidas, Director for Democracy, Citizen Participation and</p>

	<p>Community Action, Ministry of the Interior.</p> <p>-Dr. Luisa Rodríguez Ramírez, Ministry of the Interior.</p> <p>-Dr. Mónica Rueda, Advisor, Secretariat of Transparency of the Office of the President of the Republic, Lead Expert, MESICIC.</p> <p>-Dr. Martha Pilonieta Albarracín, Consultant, On-Line Governance, Ministry of Information and Communication Technologies.</p> <p>-Dr. Fernando Segura, Leader, Policy and Regulation, On-Line Governance, Ministry of Information and Communication Technologies.</p>
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<p><b>1:15 p.m. – 2:30 p.m.</b></p>	<p><b>Lunch</b></p>
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<p><b>3:15 p.m. -6:15 p.m..</b>  <u>Place:</u> Office of the Comptroller General of the Republic</p>	<p><b>Panel 9: Office of the Comptroller General of the Republic (CGR)</b></p>
<p>Av. Esperanza # 62-49 Edificio Gran Estación II.          Room next to the Office of the Comptroller General of the Republic</p>	<p><b>Panel 9: Office of the Comptroller General of the Republic (CGR)</b></p> <ul style="list-style-type: none"> <li>• <b>Brief presentation on its purpose, functions, and structure</b></li> <li>• <b>Coordination of responsibilities with other organs</b></li> <li>• <b>Resources for its operations</b></li> <li>• <b>Difficulties in performing its functions</b></li> <li>• <b>Results in relation to the fulfillment of its responsibilities</b></li> <li>• <b>Institutional strengthening</b></li> </ul> <p><b><u>Participants:</u></b></p> <p>-Dr. Sandra Morelli Rico, Comptroller General of the Republic.</p> <p>-Dr. Felipe Córdoba, Deputy Comptroller General of the Republic.</p> <p>-Dr. Javier Alfonso Lastra, Comptroller assigned to Investigations, Fiscal Trials and Enforced Collection.</p> <p>-Dr. Carlos Rodríguez Bocanegra, Director of the International Unit for the Recovery of Assets.</p> <p>-Dr. Ligia Helena Borrero, Director of Governance (<i>Gestión Pública</i>)</p> <p>-Dr. Carlos Umaña, Manager, Human Talent.</p>

	<p>-Dr. Carlos Cabrera, Director of Planning.</p> <p>-Dr. Mónica Cano, Delegated Comptroller (<i>Contralora Delegada</i>).</p> <p>-Dr. Laura Corral, Advisor, Office of the Director of the International Unit for the Recovery of Assets.</p> <p>-Dr. Máximo Perea, University Lecturer.</p> <p>-Dr. Raimundo Vélez Cabrales, Anti-Corruption Unit.</p>
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<p>6:45 p.m. – 7:15 p.m.</p> <p><u>Place:</u> Hotel Tequendama</p>	<p><b>Informal meeting</b> between representatives of the member States in the subgroup and the Technical Secretariat.</p>
<p>7:15 p.m. - 7:45 p.m.</p> <p><i>Place: Hotel Tequendama</i></p>	<p>Final meeting<sup>103</sup> with representatives of the country under review, the member states of the subgroup, and the Technical Secretariat.</p>

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<sup>103</sup> . The third paragraph of provision 20 of the Methodology for Conducting On-Site Visits states: “...At the end of the on-site visit, a meeting shall be held, to be attended by the Subgroup experts, the Technical Secretariat, and the Lead Expert of the country under review and/or the official appointed in his place in accordance with provision 10, second paragraph, of this Methodology. That meeting shall identify, if necessary, the information that, exceptionally, the country under review is still to submit through the Technical Secretariat and the deadline within which it is to do so, and it shall also coordinate any other pending matters arising from the on-site visit.”

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

**COUNTRY UNDER REVIEW:**

**COLOMBIA**

**Mónica Rueda**

Lead Expert on the Committee of Experts of the MESICIC  
Advisor, Secretariat of Transparency of the Office of the President of the Republic

**Claudia Flórez**

First Secretary, Foreign Affairs  
Coordination, Crime Prevention  
Ministry of Foreign Affairs

**MEMBER STATES OF THE PRELIMINARY REVIEW SUBGROUP:**

**COSTA RICA**

**Tatiana Gutiérrez**

Lead Expert on the Committee of Experts of the MESICIC  
Prosecuting Attorney in the Office of the Public Ethics Prosecutor in the Office of the Attorney  
General

**GUATEMALA**

**Verónica Taracena Gil**

Lead Expert on the Committee of Experts of the MESICIC  
Coordinator of the Presidential Commission on Transparency and E-government - COPREI

**TECHNICAL SECRETARIAT OF THE MESICIC**

**Enrique Martínez**

Principal Legal Officer of the Department of Legal Cooperation  
OAS Secretariat for Legal Affairs.

**Laura Martínez**

Senior Legal Officer of the Department of Legal Cooperation  
OAS Secretariat for Legal Affairs