

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

FINAL REPORT

(Adopted at the March 21, 2013 plenary session)

SUMMARY

This report contains the comprehensive review of the implementation in Costa Rica of Article III, paragraph 9, of the Inter-American Convention against Corruption, covering “oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts,” which was selected by the MESICIC Committee of Experts for the Fourth Round; of the best practices reported by those bodies; and of the follow-up of the implementation of the recommendations formulated to Costa Rica during 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 the States Parties, functional equivalence, and the common purpose of both the Convention and the MESICIC of promoting, facilitating, and strengthening cooperation among the States Parties in the prevention, detection, punishment, and eradication of corruption.

The review was carried out taking into account Costa Rica’s response to the questionnaire, information provided by civil society organizations, information gathered by the Technical Secretariat, and, as a new and important source of information, the on-site visit conducted between October 2 and 4, 2012, by the members of the review subgroup for Costa Rica, comprising Grenada and the Dominican Republic, with the support of the Technical Secretariat. During that visit, the information furnished by Costa Rica was clarified and expanded and the opinions of civil society organizations, the private sector, professional associations, academics, and researchers on issues of relevance to the review were heard. This provided the Committee with objective and complete information on those topics, assisting with the gathering of information on practices, and providing Costa Rica with the opportunity to offer and/or request technical assistance for the purposes of the Convention.

The review of the oversight bodies was intended, in accordance with the terms of the methodology for the Fourth Round, to determine whether they have a legal framework, whether that framework is suitable for the purposes of the Convention, and whether there are any objective results; then, taking those observations into account, the relevant recommendations were issued to the country under review.

The oversight bodies in Costa Rica reviewed in this report are: The Office of Public Ethics [*Procuraduría de la Ética Pública*] (PEP); the Office of the Comptroller General of the Republic (CGR); the Office of the Ombudsman [*Defensoría de los Habitantes de la República*] (DHR); the Probity, Transparency, and Anticorruption Prosecution Unit [*Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción*] (FAPTA); and the Criminal Taxation and Civil Service Jurisdiction.

Some of the recommendations formulated to Costa Rica for its consideration in relation to the foregoing oversight bodies address purposes such as the following::

Provide the oversight bodies with the financial and human resources necessary for the adequate fulfillment of its functions and responsibilities; and make the necessary arrangements with other States and cooperation organizations in order to obtain the required technical cooperation.

With respect to the PEP, strengthen the mechanisms for providing information to the public about its functions, including its Internet portal; establish training mechanisms on the concept of social harm (*daño social*); carry out additional follow-up with respect to compliance with the recommendations issued by the PEP and include the Ethics Prosecutors in the regime of sworn statements of assets.

With respect to the CGR, increase the number of sworn statements verified by the institution; establish a training program focused on the prevention of corruption; and establish objective criteria and parameters for the basic information contained in the Annual Reports.

With regard to the Ombudsman, maintain results on the compliance with the recommendations it issues and consider the need to grant the institution a higher rank; establish a comprehensive training program for officials of the institution; and increase the coordination with the Public Ministry.

In relation to the FAPTA, consider creating a unit made up of specialized anticorruption investigators; consider the possibility of assigning provincial anticorruption prosecutors; and maintain additional results on the fulfillment of the institution's functions.

With respect to the Criminal Taxation and Civil Service Jurisdiction, establish a training program for judges of this jurisdiction; raise the awareness of judges regarding social harm; and include them in the system of sworn statements.

The best practices regarding which Costa Rica provided information refer, in summary, to the recovery of social harm in corruption crimes; the Program of New Audits in the CGR; and the Project for Oral Hearings and Modern Management in Judicial Dockets in the Criminal Court and the Trial Tribunal of the Second Circuit of San Jose.

With regard to follow-up on the recommendations formulated to Costa Rica in the First Round and with respect to which, the Committee, in the Second and Third Round reports, found required additional attention, based on the methodology for the Fourth Round and bearing in mind the information provided by Costa Rica 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, and which required reformulation. A list of those still pending was also prepared, and has been included in Annex 1 of the report.

Among the progress related to the implementation of those recommendations, the following is noted: the strengthening of the mechanisms for consultation and for encouraging civil society participation in public management.

Some of the recommendations formulated to Costa Rica in the First Round that remain outstanding, or which were reformulated, address purposes such as the adequate verification and publication of sworn statements of income; and the adoption of comprehensive legislation on access to information.

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

**REPORT ON IMPLEMENTATION IN THE REPUBLIC OF COSTA RICA 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 ROUND¹**

INTRODUCTION

1. Contents of the Report

[1] This report presents, first, a comprehensive review of Costa Rica's implementation of the provision of the Inter-American Convention against Corruption that was selected for review 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 examine the best practices that Costa Rica 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 MESICIC formulated to Costa Rica in the First Round and that it deemed to require additional attention in the reports it adopted for that country in the Second and Third Rounds, which may be consulted at the following: <http://www.oas.org/juridico/english/cri.htm>

2. Ratification of the Convention and adherence to the Mechanism

[4] According to the official records of the OAS General Secretariat, Costa Rica ratified the Inter-American Convention against Corruption on May 9, 1997.

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

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of Costa Rica

[6] The Committee wishes to acknowledge the cooperation that it received, throughout the review process, from Costa Rica, and in particular from the Office of the Public Ethics Prosecutor, 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, Costa Rica sent the provisions and

1. This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on March 21, 2013, at its Twenty First Meeting, held at OAS Headquarters, March 18-22, 2013.

documents it considered pertinent. That response and the provisions and documents may be consulted at the following webpage: http://www.oas.org/juridico/spanish/mesicic4_cri.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*.² As members of the preliminary review subgroup, the representatives of Grenada and the Dominican Republic conducted the on-site visit from October 2 to 4, 2012, with the support of the MESICIC Technical Secretariat. The information obtained during that visit is included in the appropriate sections of this report, and the agenda of meetings is attached 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 Costa Rica up to October 4, 2012, as well as that furnished 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/english/mesicic_rounds.htm

2. Documents and opinions received from civil society organizations and/or, among others, private sector organizations, professional associations, academic or researchers

[9] The Committee also received, within the deadline established in the Schedule for the Fourth Round, a document from Costa Rica Integra – National Contact for Transparency International, which was submitted by that organization pursuant to article 34(b) of the Rules of Procedure and Other Provisions of the Committee.³

[10] Additionally, during the on site visit to the country under review from October 2 to 4, 2012, information was gathered from civil society and private sector organizations; professional associations; academic and investigators, 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. This information is reflected in the appropriate sections of this report, as appropriate.

II. REVIEW, CONCLUSIONS, AND RECOMMENDATIONS ON THE IMPLEMENTATION BY THE STATE PARTY 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] Costa Rica has a set of oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts, among which the following are highlighted: the Office of Public Ethics (*Procuraduría de la Ética Pública* - PEP), the Office of the

2. Document SG/MESICIC/doc.276/11 rev. 2, which may be consulted at the following webpage: http://www.oas.org/juridico/english/met_onsite.pdf

3. These documents were received on June 7, 2012 and are available at: http://www.oas.org/juridico/spanish/mesicic4_cri.htm

Comptroller General (*Contraloría General de la República* - CGR), the Public Prosecution Service (*Ministerio Público* - MP), the Treasury and Civil Service Criminal Jurisdiction, the Ombudsman (*Defensoría de los Habitantes de la República* - DHR), the Supreme Elections Tribunal; internal audit offices; service comptrollers, the Civil Service Tribunal, and the Legislative Assembly.

[12] The following is a short description of the purposes and functions of the five organs selected by Costa Rica that are reviewed in this report.

[13] The Office of Public Ethics (*Procuraduría de la Ética Pública* - PEP) is charged with pursuing the necessary administrative actions to prevent, detect, and eradicate corruption; increase ethics and transparency in the civil service; and report and prosecute government officials and private individuals whose conduct constitutes unlawful acts in connection with the exercise of their duties or on the occasion thereof, in matters pertaining to the Criminal Taxation and Civil Service Jurisdiction.

[14] The Office of the Comptroller General (*Contraloría General de la República* - CGR) is the fundamental constitutional organ of the state charged with control and oversight of government finances.

[15] The Public Prosecution Service (MP) is an organ of the judicial branch that carries out its functions in the criminal justice sphere, where, by bringing criminal actions and conducting preparatory investigations into publicly actionable crimes, it requests the criminal courts to enforce the law. The MP has a special anticorruption unit called the Probity, Transparency, and Anticorruption Prosecution Unit [*Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción* (FAPTA)]. This special prosecution unit deals with the most serious corruption offenses involving public servants and private individuals, as well as cases in which the accused is a judicial official. The purpose of this structure and the centralization of investigations of judicial officials for acts of corruption is not only to conduct a more efficient and effective investigation but to have a broader preventive effect.

[16] The Criminal Taxation and Civil Service Jurisdiction hears and issues final decisions on cases that concern malfeasance in the civil service, among other offenses.

[17] The Ombudsman (DHR) was created with the purpose of protecting the rights and interests of the country's inhabitants, ensuring that the workings of the public sector are consistent with moral principles; justice; the Constitution; the laws, conventions, treaties, and agreements signed by the Government; and generally recognized principles of law. It is also required to advance and raise awareness about the rights of the country's inhabitants.

1. OFFICE OF PUBLIC ETHICS (PEP)

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

[18] The Office of Public Ethics (PEP) has a set of provisions in its legal framework, as well as other measures that refer, *inter alia*, to the following:

[19] As regards its structure, the PEP is part of the Office of the Attorney General of the Republic (PGR), which is the public administration's superior advisory body on technical and legal matters as well as the legal representative of the State in matters under its authority (Organic Law of the Office of the Attorney General, Article 1).

[20] As regards its purpose and functions, Article 3 (h) of the Organic Law of the PGR—added by Article 1 of Law 8242 of 2002 (Law Creating the Office of Public Ethics)—provides that its functions include adopting the necessary administrative measures to prevent, detect, and eradicate corruption in the civil service and to strengthen ethics and transparency therein.

[21] Furthermore, the response of the state under review to the questionnaire indicates that the functions of the PEP include the following: (1) To receive and process administrative complaints alleging acts of corruption, unethical conduct, and lack of transparency in the exercise of public duties; (2) to carry out activities to educate and increase the awareness of public servants and the general public about the issues of corruption, ethics, and transparency in the civil service; (3) to act as the conduit for mutual assistance and technical cooperation, as the Central Authority for the Inter-American Convention against Corruption and the United Nations Convention against Corruption; (4) to report and prosecute public servants and private individuals suspected of unlawful criminal acts contrary to official public duties in connection with the exercise of their office or on the occasion thereof; (5) to participate in the most serious criminal proceedings involving corruption, in order to obtain compensation for material damages and/or social harm, as appropriate; or to represent the victim of the crime; and (6) to take the necessary administrative steps to prevent corruption, and increased ethics and transparency in the civil service.⁴

[22] With respect to its autonomy, article 1 of the Organic Law of the PGR provides that it enjoys operational and decision-making independence in the performance of its functions.

[23] As regards the jurisdiction of the PEP, it may exercise its authority with respect to any state official or servants of the central or decentralized administration, as well as private persons who: administer public property or funds; receive benefits arising from subsidies or incentives with public funds; or otherwise participate in a criminal offense committed by a civil servant.⁵

[24] As for exceptions to its jurisdiction, Article 3 (h) of the Organic Law of the PGR provides that the PEP shall carry out its activities without prejudice to the competencies assigned by law to the Office of the Comptroller General. In that regard, the response to the questionnaire notes that the jurisdiction of the PEP is limited to the civil service and excludes measures or activities that involve public funds or resources under the management of the Treasury. The response also states that it is *“It is different in the criminal law context, as the law allows the PEP to intervene in proceedings in matters concerning harm to the Treasury, allowing it the possibility to institute judicial proceedings against public servants and private persons for any crimes of malfeasance in the course of official duties, as well as to be a party in criminal proceedings, either as a victim, a plaintiff, or a civil actor, as appropriate.”*⁶

[25] With respect to the delineation between the functions of the PEP and those of the CGR, Ruling 5090 of 2003 adopted by the Constitutional Chamber of the Supreme Court of justice and ratified in subsequent decisions states in its pertinent part, that *“the separation of powers from the Office of the Comptroller General is clear and sufficient, giving no rise to any uncertainty or insecurity for obligated persons. Clearly, if a matter concerns the reporting and prosecution of a suspected criminal offense that might be considered a manifestation of a corrupt act or omission on the part of a public servant in the performance of their official duties or on the occasion thereof, the Office of*

4. See response of Costa Rica to the questionnaire for the Fourth Round, p. 8, available at http://www.oas.org/juridico/PDFs/mesicic4_cri_resp_organos.pdf. See also Organizational Law of the PGR, Article 3 (h).

5. See Organic Law of the PGR, Article 3 (h).

6. See response of Costa Rica to the questionnaire, p. 12, *supra* note 4.

Public Ethics will be the competent body to present it by express provision of the law, while it will be up to the courts to hear and issue a final decision on the criminal matter.”

[26] Another exception mentioned in the response to the questionnaire refers to complaints submitted for alleged partisanship or political belligerence on the part of public servants, envisaged in Chapter VIII of the Electoral Code, Article 265 of which provides that complaints of this nature should be made to the Supreme Elections Tribunal.

[27] With respect to functions shared with other oversight bodies, Article 3 of Law No. 8242, establishes that with respect to certain types of crimes, including, among others, those relating to the public treasury and crimes relating to public functions, “...*the Office of the Attorney General may also directly handle these types of cases, without subordination to the actions and decisions of the Public Ministry. In matters commenced by action of the Office of the Attorney General, that office will be a party and may carry out the same actions that this law provides may be exercised by the Public Ministry.*”⁷

[28] With respect to the highest authorities of the PEP, the response to the questionnaire explains that as the PEP is part of the PGR, its highest authorities are the Attorney General, the Deputy Attorney General and the Attorney-Director of the PEP.⁸

[29] With respect to the appointment of the Attorney General, Article 10 of the Organizational Law of the PGR provides that he/she shall be nominated by the Cabinet and ratified by the Legislative Assembly. Article 10 also provides that the Attorney General shall serve for a six-year term and may be re-elected according to the above-described procedure. The same article provides, with respect to removal of the Attorney General, that this may only be done on just grounds and requires ratification by the Legislative Assembly.

[30] Regarding the appointment of PEP officials, including the Attorney-Director of the PEP, Article 35 of the Organizational Law of the PGR establishes that “*the Attorney-Director, having first heard the opinion of the Assistant Attorney General, shall select staff from the roster that the Office of the Director General of the Civil Service shall submit.*”

[31] As regards these appointments, the response to the questionnaire explains that “*the Assistant Attorney General of the Republic and the Attorney-Director of the Office of Public Ethics are career administrative officials protected by the Civil Service Regime ... In accordance with paragraph 11 of Law 6815 (Organic Law of the PGR). For their appointment, they must meet the requirements set out in Articles 20 and 22 of the Civil Service Statute ... in addition to those provided in Law 6815 (Articles 12 and 14) in each case. According to Article 35 of the Organic Law of the PGR, they shall be selected by the Attorney General.*”⁹

[32] With respect to the foregoing, in the course of the on-site visit, PEP representatives explained that all government attorneys, including the Attorney General and the Attorney-Director were appointed from within the PGR. In that connection, the current Attorney General has been a PGR official for 27 years.

7. In this sense, in the Framework of the on site visit, the representatives of the Public Ethics Prosecutor explained that in the Costa Rican legal system, there is a difference between a criminal accusation, which is filed with the courts, and a criminal complaint, which consists of a “*noticia criminis*” put before the competent authorities regarding the apparent commission of a crime.

8. See response of Costa Rica to the questionnaire, p. 15, *supra* note 4.

9. *Ibid.*, p. 16.

[33] The Organic Law of the PGR sets out the requirements for becoming a PGR official, including Article 9, with respect to the Attorney General; Article 12, with respect to the Assistant Attorney General; and Article 14, with respect to government attorneys. Furthermore, Article 11 of the Organic Law of the PGR provides that, other than the Attorney General, all public servants are subject to the Civil Service Regime. In that regard, the response to the questionnaire explains, *“Therefore, they shall be appointed on the basis of programs suitability.”*¹⁰ Article 192 of the Constitution provides that, subject to constitutional exceptions, *“civil servants shall be appointed on the basis of proven suitability and may only be removed on justified grounds for dismissal recognized in the labor laws, or as part of a forcible downsize in services, either for lack of funds or with a view to their better organization.”*

[34] Furthermore, all civil servants in Costa Rica, including those of the PEP, are subject to the same general rules on ineligibility, conflict of interests, prohibitions, and liability, including those contained, *inter alia*, in the Law against Corruption and Illicit Enrichment in Public Service and its Regulations, the Law on Administrative Contracting and its Regulations, the General Administrative Procedure Law, the Regulations on the Civil Service Statute, the Law on Financial Administration and Public Budgets, the Criminal Code, the General Guidelines on ethical principles and statements to be observed by senior management, section chiefs, and staff of the Office of the Comptroller General, internal audit units, and civil servants in general (Guideline D-2-2004-CO), and Executive Decree 33146.

[35] In the course of the on-site visit, PEP representatives also described the specific prohibitions for officials of the institution contained in Article 28 of the Organizational Law of the PGR, including an outright ban on participation in demonstrations and other public acts of a political or electoral nature (Article 28(c)).

[36] As regards decision-making in the PEP, in its response to the questionnaire the state under review explained that decisions are adopted in a collegiate manner. During the on-site visit, PEP representatives explained that the Attorney-Director of the institution also reviews all decisions made by the attorneys under him.

[37] With respect to necessary measures for enforcing PEP decisions, in its response to the questionnaire, the state under review explained that *“all reports and recommendations arising from the processing of administrative complaints are communicated to the government organ responsible for their enforcement. They are also subject to follow-up by PEP officials in order to verify their proper implementation.”*¹¹

[38] Similarly, as regards review mechanisms for decisions that are adopted, Article 25 of Decree 32333 (Regulations of the Law against Corruption and Illicit Enrichment in Public Service) provides that *“the only admissible recourse against a notice of results of or a report on a preliminary investigation is a petition for clarification or additional information, which must be submitted within three business days to the competent organ that issued the final results. Such a petition may be made by the active administration or anyone demonstrating a legitimate interest to the organ issuing the final results of the preliminary investigation.”* Similarly, Article 25 bis of those Regulations provides that *“the complainant shall have recourse to petitions for revocation and appeal against the decision ordering the rejection, archive, or dismissal of the complaint, which must be lodged within three*

10. *Ibid.*, p. 18.

11. *Ibid.*, p. 14.

business days of the notification, in keeping with the rules on challenging decisions set out in the Public Administration Law.”

[39] With respect to internal controls, Article 8 of Law 8292 (Internal Control Law) defines the internal control system as the series of measures implemented by the active administration,¹² *inter alia*, to protect and preserve state property against losses, wastage, misuse or unlawful acts (Article 8 (a)); demand accurate and timely information (Article 8 (b)); ensure operational efficiency and efficacy (Article 8 (c)); and ensure compliance with the legal and technical standards in force (Article 8 (d)) In that regard, the response to the questionnaire explains that the internal control system is the responsibility of all public officials and that the PEP is subject to the guidelines and oversight of the Internal Audit Unit of the Ministry of Justice.

[40] Pursuant to Article 12 of Law 8292 the duties of the institutional heads and subordinate supervisors in the internal control system are as follows: to ensure that the entity or organ under their direction carries out its activities appropriately (Article 12 (a)); to take immediate corrective action should any evidence of deviations or irregularities arise (Article 12 (b)); to analyze and immediately implement any observations, recommendations, or instructions issued by the internal audit unit, the Office of the Comptroller General, external auditors, or any other competent control and oversight agency (Article 12 (c)); to ensure that, as a minimum, internal control systems meet the conditions set out in Article 7 of this law (Article 12 (a)); and to submit a report at the end of their tenure and formally handover the entity or organ to their successor, in accordance with the guidelines issued by the Office of the Comptroller General and the competent entities and organs of the active administration (Article 12(e)).

[41] With regard to mechanisms for addressing claims, complaints, or reports of wrongdoing in connection with the fulfillment of its objectives and conduct of its staff, in its response to the questionnaire, the state under review noted that *“initially they are handled by the respective section chief in an attempt to settle the matter. Should a matter warrant the institution of punitive administrative proceedings and the imposition of administrative penalties, it is referred to the Attorney General, or to the Assistant Attorney General if what is required is a verbal warning or suspension without pay; if the penalty is dismissal, the matter is referred to the Minister of Justice.”*¹³

[42] As for documents and manuals that describe staff functions, there are the following: the PGR Institutional Manual (*Manual Institucional de la PGR*), which contains the description and specifications of the positions of Attorney-Director and Attorney; the Civil Service Post Description Manual (*Manual Descriptivo de Puestos del Servicio Civil*), which provides the same information regarding the positions of lawyers in the Attorney General’s Office, the Investigating Auditor of the Attorney General’s Office, and administrative services assistants; and the Civil Service General Classification Manual (*Manual de Clases Anchas del Servicio Civil*).

[43] With respect to training imparted to PEP staff members, in its response to the questionnaire the state under review mentioned that *“from 2007 to 2011, training was imparted to personnel of the Office of Public Ethics in a variety of areas, including, inter alia: public ethics; investigation of*

12. Article 2 (b) of Law 8282 defines the “active administration” as follows: *“From a functional point of view, it is the decision-making, executive, resolving, managerial or operational function of the Administration. From an organizational point of view, it is the various administrative organs or entities that adopt decisions and implement measures, including the head of the institution, as the final instance.”*

13. See response of Costa Rica to the questionnaire for the fourth round, p. 32, *supra* note 4.

money laundering and terrorist financing; how to prevent financial risks that could favor corruption; bookkeeping investigations, including forensic auditing; and international legal cooperation."¹⁴

[44] As to the existence of documented working procedures for the PEP, in 2006, the institution implemented "Internal complaint-processing guidelines (*Guía interna para el trámite de una denuncia*)," which set out the procedure to follow in terms of registering a complaint, conducting an investigation, possible findings, and follow-up on reports and recommendations. The response to the questionnaire also mentions that these guidelines have been updated twice since their initial publication.¹⁵

[45] With respect to institutional strengthening of the PEP, the response to the questionnaire mentions the following: (1) Access to the *Sistema Nacional de Legislación Vigente* (SINALEVI), the national legislation database, which, *inter alia*, allows online access to in-force Costa Rican laws and jurisprudence; (2) publication of the *Resumen Gaceterio*, or Summary Gazette, which is sent daily by e-mail to civil servants and published on the PGR website, and contains, *inter alia*, proposed laws, laws, decrees, regulations, and other regulatory provisions issued; (3) the *Revista Digital*, the institutional e-newsletter, which publishes PEP pronouncements and other recently enacted rules and regulations; and (4) *Metabase.net*, a free service in which the PGR participates, and which allows users to search for bibliographical resources on various national and international libraries online.

[46] Furthermore, with respect to the implementation and use of modern technologies to facilitate its work, in the response to the questionnaire as well as during the on-site visit, PEP representatives explained that the institution's staff use a computer program that provides access to information on judicial proceedings in which the PEP is a party, in addition to administrative complaints and official communications issued. The information that the system provides includes "*the date of entry, the official assigned to the case, actions taken or activities carried out, information on the location of the physical file, the status of proceedings, and information for conducting follow-up.*"¹⁶ In addition to the foregoing, the response indicates that the PEP "*has made significant progress in implementing digital signature systems, which afford greater security and prompter product delivery. Furthermore, the PEP has implemented an IP telephone platform that will soon attain 100% coverage within the institution, enabling the addition of new communication services in the future.*"¹⁷

[47] As regards ensuring the necessary budgetary resources for the PEP's operations the National Budget Law (*Ley de Presupuesto Ordinario y Extraordinario de la República*) determines the PEP budget appropriation. This law is drafted by the Ministry of Justice, of which the PGR is part.

[48] With regard to the coordination mechanisms with other State oversight bodies and to obtain support from the public for the fulfillment of its functions, the response to the questionnaire mentions the creation of a strategic alliance between the Office of the Attorney General, the Public Ministry, the Office of the Comptroller of the Republic and the Costa Rican Institute on Drugs, in order to establish institutional coordination and cooperation to fight corruption.¹⁸ In this context, these four institutions signed a letter of intent in June, 2010, and in 2012, the Inter-institutional Commission was created, and is composed of a representative of each of the institutions.

14. *Ibid.*, p. 23.

15. *Ibid.*, p. 25.

16. *Ibid.*, p. 26.

17. *Ibid.*, p. 25.

18. *Ibid.*, p. 34.

[49] Similarly, the Attorney General represents the Office of the Attorney General in the National Commission for the Improvement of the Administration of Justice (CONAMAJ), the functions of which, according to Executive Decree No. 3498-J, include, among others, establishing, recommending or providing the means, activities and procedures in order for the entities related to administration of justice to coordinate their activities and programs (Article 2(a)); awareness-raising and coordination of the efforts aimed at improvement of the justice sector (Article 2(b)); and promoting citizen participation in matters related to justice.

[50] As regards mechanisms for accountability reporting by the PEP, the response to the questionnaire mentions that this is done through the annual report of the PGR, which is published on the PGR website and includes, *inter alia*, “a reference to the creation of the PGR; its mission statement, vision, and functions; a description of its organizational structure; its strategic objectives; and an account of activities carried out over the year by each of its component units, including the PEP.”¹⁹ In addition, the PGR website (available at <http://www.pgr.go.cr>) provides a variety of information, including the legal framework of the PGR and its various areas, among them, the PEP; training given to different areas of the PGR; and links to the SINALEVI website, the *Revista Digital*, and the *Resumen Gacetario*.

[51] With respect to mechanisms for supplying information to the public, the response to the questionnaire mentions four:²⁰ (1) the PGR website; (2) training activities provided by the PEP for public officials and civil society; (3) call-center and in-person assistance to the public; and, (4) reports in the press.

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

[52] The PEP 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. Nonetheless, the Committee considers it appropriate to formulate certain observations in relation thereto:

[53] First, with respect to mechanisms for providing information to citizens on the objectives and functions of the PEP, as well as on how to present complaints thereto, the response to the questionnaire indicates that this is done, in part, via the PGR's website. In that connection, the Committee notes that the PEP does not have its own website and that the only information concerning the PEP available on the PGR website are training presentations prepared by PEP officials and the section on the PEP in the PGR annual report.

[54] In this regard, the document presented by *Costa Rica Integra*, as a civil society organization, mentions that “[the PEP] has not been sufficiently promoted as the institution in charge of handling corruption complaints.”²¹ In this regard, the Committee notes that there is no way of lodging complaints online on the PGR website.

[55] In light of the foregoing, the Committee considers it important for the country under review to undertake the measures necessary to strengthen the existing mechanisms for providing information to citizens on the functions and responsibilities of the PEP, as well as on how to present complaints thereto. Additionally, the Committee considers that it might be beneficial to establish a mechanism

19. *Ibid.*, p. 36.

20. *Ibid.*, p. 29.

21. See the document presented by “*Estado de la Nación*” and “*Costa Rica Integra*”, a civil society organizations, p. 19, available at: http://www.oas.org/juridico/PDFs/mesicic4_cri_sc_inf.pdf.

allowing for complaints to be presented online, considering that Article 8 of the Regulation of the Law against Corruption and Illicit Enrichment in Public Service allows for complaints to be presented by any means. The Committee will offer recommendations in this regard. (See recommendations 1.4.1 and 1.4.2 in Chapter II of this report.)

[56] Second, the Committee notes that the response to the questionnaire mentions, *inter alia*, the following as obstacles in accomplishing the purposes of the PEP: “*insufficient human and financial resources to implement a more diverse range of corruption prevention measures, and staff with insufficient technical expertise to carry out activities in that area.*”²² In that same connection, the document presented by civil society mentions that the work of assisting in high-profile corruption lawsuits has absorbed much of the PEP's limited resources, which has “*relegated to a very marginal role its other work in the area of prevention and strengthening public ethics and transparency, which was supposed to distinguish it from the other oversight entities.*”²³

[57] Also with respect to the PEP's resources, during the on site visit, a university professor noted that the institution lack specialized professionals in different areas, such as engineers or auditors, and that having such professionals, in addition to lawyers and prosecutors, might be very useful to the PEP in the investigation of financial and other types of crimes. Tied to the foregoing, during the on site visit, it was observed that the PEP might lack the adequate and sufficient physical infrastructure, particularly considering that it is an institution that attends to public consultations. The Committee will formulate a recommendation in this regard. (See Recommendation 1.4.3 in Chapter II of this report.)

[58] Third, another difficulty expressed in the response to the questionnaire concerns civil actions for social damages, regarding which the response notes the need “*to strengthen the mechanism for determining the limits of social harm, both qualitatively and quantitatively speaking, so as to enable it, via a universally applicable formula, to be appropriately estimated on a case-by-case basis. There would also be benefits to be gained from designing a strategy that informs justice sector operators and civil society in general about its legal basis and aims, and, in particular, spreads awareness about the extent of social harm caused by corruption and the need to introduce proper reparation for it.*”²⁴ The Committee will formulate recommendations taking these difficulties into consideration. (See Recommendations 1.4.4 and 5.4.3 in Chapter II of this report.)

[59] Fourth, the Committee considers that in light of the foregoing, it would be useful for the judges responsible for corruption cases to be informed, among others, of the legal basis and the objectives of the rules governing social harm. The Committee will formulate a recommendation in this regard, in the section dealing with the Criminal Taxation and Civil Service Jurisdiction. The Committee will formulate a recommendation in this sense. (See Recommendation 5.4.3 in Chapter II of this report.)

[60] Fifth, the response to the questionnaire also expresses that technical cooperation would be very useful in order to progress in resolving the difficulties related to the lack of resources and to strengthen the mechanisms for establishing the qualitative and quantitative limits of social harm. The Committee will formulate a recommendation taking these needs into account. (See Recommendation 1.4.5 in Chapter II of this report)

22. See response of Costa Rica to the questionnaire for the fourth round, p. 63, *supra* note 4.

23. See the document presented by *Estado de la Nación*, as a civil society organization, p. 19, *supra* note 21.

24. See response of Costa Rica to the questionnaire for the fourth round, p. 63, *supra* note 4.

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

[61] Based on the response of the country under review to the questionnaire and the on-site visit, information was gathered regarding the results obtained by the PEP with respect to the fulfillment of its functions, including the following:

[62] First, with respect to measures relating to the prevention of corruption, in its response to the questionnaire, Costa Rica explained, *“One aspect of the public awareness campaigns on the consequences of corruption is the positioning of the concept of social harm. In 2004, the PEP took the initiative of presenting, for the first time within a criminal proceeding, a civil action aimed at obtaining redress for social damages caused by acts of corruption. Aside from the procedural objective, the complaint had a purpose beyond the proceedings, which was to make society aware of the different kinds of social harm that corruption inflicts on the system, including loss of credibility and respect for institutions, weakening of the democratic system, deterioration of the population's well-being, under-development, etc. The ongoing efforts to position the concept of social harm have taken the form of actions for social damages interposed in criminal suits for malfeasance in public office, seminars to explain the legal basis and scope of the initiative, and exposure of the concept in the mass media.”*²⁵

[63] With respect to the actions related to social harm, the response to the questionnaire indicates that these actions have allowed for the recovery of US \$15,741,461.59.²⁶

[64] Costa Rica's response also indicates that the PEP carries out awareness programs for government officials as well as for civil society.²⁷ The PEP also has a training program for institutions with a high risk for corruption: *“It is a permanent program that seeks to instill awareness of ethical conduct in the performance of public duties and covers such topics as: “Ethics and Probity in Public Office,” “Criminal Liability and Law 8422,” “Reporting Acts of Corruption,” “Offenses for Which the PEP Can Report and Prosecute Public Officials,” “Costa Rica's Obligations As a Signatory of the International Conventions against Corruption,” “Strengthening Individual and Social Values in Connection with Public Ethics,” “Prohibitions in the Exercise of Liberal and Incompatible Professions,” and “Social Harm.”*²⁸

[65] The response to the questionnaire also includes a table that shows the total number of talks, conferences, seminars, and training courses imparted by the PEP on preventing corruption from 2007 to 2011. The table indicates that in that period training was given to more than 3,000 officials from 71 institutions, including ministries, autonomous institutions, and private organizations. In that connection, the response also mentions that special training programs have been carried out with vulnerable state organizations.

[66] As part of its preventive role, the PEP has issued warnings of corruption risks through so-called “recommended actions,” which are warnings to the public administration advising a particular course of action in order to strengthen ethics and transparency in government. The PEP has issued a total of 37 such “recommended actions” in the past two years.

25. See response of Costa Rica to the questionnaire for the fourth round, p. 39, *supra* note 4.

26. *Ibid.*, p. 65.

27. *Ibid.*, p. 39.

28. *Ibid.*, p. 39. See also <http://www.pgr.go.cr/capacitacion/Etica.html>

[67] The response to the questionnaire also provides information on how the PEP has dealt with queries and inquiries from government officials and the general public, both by telephone and in person. This “consists of the user reporting an allegedly corrupt situation to the PEP official so that the latter might advise them on how to address the issue and, where appropriate, the facts are recorded in order to formally proceed on the matter as a complaint.”²⁹ The response also includes a table that shows that between 2007 and 2011 the PEP has dealt with 204 inquiries in person and 379 by telephone.³⁰

[68] Second, regarding the functions of the PEP with respect to investigation and detection of acts of corruption, the response to the questionnaire contains the following table showing the results of complaints of alleged corruption in public office that the PEP has handled:³¹

Status of Proceedings	2007	2008	2009	2010	2011
Rejected	29	91	70	78	85
Dismissed	13	10	21	17	19
Report with Recommendation	13	15	16	8	22
Referred to competent authority	11	10	13	6	2
Decisions with Recommendation	5	3	3	7	7
Preliminary Investigation	0	0	0	0	5
Total	71	129	123	116	140

[69] Regarding the above table, the response to the questionnaire mentions that “The main issues that the PEP analyzes in addressing complaints are: Conflict of interests, violations of probity, violations of the rules on prohibitions and incompatibilities, lack of transparency, illegal appointments, misuse of public resources, and malfeasance in public office, among others.”³²

[70] Similarly, the State’s response notes that 12 of the investigations carried out by the PEP between 2007 and 2011 resulted in the imposition of complaints to the Public Ministry, for crimes against public functions.³³

[71] In this sense, it should be clarified that although Law No. 8242 allows the PEP to handle, among others, criminal actions related to crimes related to public functions directly before the

29. *Ibid.*, p. 41.

30. *Ibid.*

31. *Ibid.*, p. 46. With respect to this table, Costa Rica’s response to the questionnaire provides the following clarifications: “To understand the table, note that complaints are “Rejected” when they fail to meet the hypotheses contained in Article 17 of the regulations to the Law against Corruption and Illicit Enrichment in Public Functions (Decree No. 32333) or when, for reasons unrelated to the actions of the Ethics Prosecutor, the investigation cannot be pursued any further, notwithstanding the fact that it may be reopened at another time. “Dismissed” complaints are those that, once the corresponding investigation has concluded, fail to identify actions related to the facts under investigation that are corrupt, unethical, or lacking in transparency. Those flagged as “Report with Recommendation” arise from the processing of investigations in which suspected acts in breach of ethics and transparency were detected, and those reports are conveyed to the corresponding agencies for them to pursue the procedures established for determining the responsibility of the perpetrators. Those categorized as “Referred to competent authority” cover those which are appraised at the admissibility stage but which, for reasons of jurisdiction, are referred to another agency that is the competent authority for the applicable processing. In those described as “Resolution with recommendation,” while no corrupt, unethical, or nontransparent acts were identified, actions that could facilitate such acts were detected and, as a result thereof, “Recommendation Actions” are issued, containing guidelines for the Active Administration to better implement mechanisms, processes, or internal oversight.”

32. *Ibid.*, p. 47.

33. *Ibid.*

Judicial Branch, during the on site visit the PEP representatives explained that in all of the cases in which they have presented a criminal complaint to the Public Ministry, the Public Ministry has processed all of those criminal complaints. Similarly, the representatives explained that in the event that the Public Ministry were to decide not to present formal criminal charges or requested the dismissal of an active case, the PEP could decide, of its own accord, to present or continue the case, as appropriate.

[72] Third, the response explains that while the PEP is not responsible for imposing penalties, “*it does participate actively in criminal prosecutions of malfeasance in public office with the aim of ensuring a conviction and the imposition of a criminal or civil penalty, as appropriate. The PEP may participate in criminal proceedings as victim, complainant, civil actor seeking reparation for material damages, or civil actor seeking reparation for social damages.*”³⁴

[73] In connection with the foregoing, the response indicates that “*In 2011 the PEP was notified of 1,119 new cases handled by the Public Prosecution Service involving offenses in the above category, compared with 1,060 in 2010, 825 in 2009, 607 in 2008, and 472 in 2007.*”³⁵

[74] Regarding the above figures and information, the Committee notes that since its inception the PEP has pursued a range of important activities for the prevention, investigation, and detection of corruption in public office. However, with respect to the table showing results of the PEP's handling of corruption-related complaints, the Committee finds that the response only generally identifies each type of violation that gave rise to those complaints. The Committee considers that it might be useful, particularly as regards the PEP's functions related to the prevention of acts of corruption, for it to maintain statistics showing not only on the results of complaints generally, but which also indicate the number of each type of violation identified. This information might be of use to the PEP in determining which areas should receive increased attention and focus as far as its preventive activities are concerned, and the Committee will formulate a recommendation bearing this fact in mind. (See recommendation 1.4.6 in chapter II of this report.)

[75] As regards the PEP's function of issuing reports to the public administration, the response of the country under review to the questionnaire indicates that between 2007 and 2011, a total of 74 reports were issued recommending the initiation of disciplinary administrative proceedings. In addition, during the on-site visit, it was explained that the PEP follows up on the implementation of its recommendations by institutions. However, the Committee has no statistics on that follow-up or on the number of recommendations that have been met. Having information on the level of compliance with recommendations issued by the PEP could be invaluable, particularly when one considers the opinion of *Costa Rica Integra* that the lack of punitive powers is a weakness where the institution is concerned. The Committee will offer a recommendation on this point. (See recommendation 1.4.7 in chapter II of this report.)

1.4. Conclusions and recommendations

[76] Based on the foregoing comprehensive analysis of the PEP, the Committee offers the following conclusions and recommendations:

[77] **Costa Rica has considered and adopted measures intended to maintain and strengthen the Office of Public Ethics as an oversight body, as indicated in Chapter II, Section 1 of this report.**

34. *Ibid.*, p. 49.

35. *Ibid.*

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

- 1.4.1. Strengthen the mechanisms for supplying information to the public about the PEP by creation of a specific section for that purpose on the PGR website and by adopting such measures as are deemed necessary to ensure that the website is genuinely a useful tool for disseminating information on, *inter alia*, the entity itself, the type of complaints that it handles, how to present complaints to it, and the accountability process. (See Chapter II, Section 1.2 of this report.)
- 1.4.2. Consider the possibility of enabling acts of corruption in public office to be reported via the PEP website. (See Chapter II, Section 1.2 of this report.)
- 1.4.3. Provide the PEP with sufficient human and financial resources, within available resources, as well as the necessary physical infrastructure, to carry out its functions properly, particularly where prevention, detection, and investigation of acts of corruption are concerned. (See Chapter II, Section 1.2 of this report.)
- 1.4.4. Take the necessary steps to establish appropriate mechanisms for quantifying estimates of social damages, in specific cases, and thus, strengthen the application of this best practice. (See Chapter II, Section 1.2 of this report.)
- 1.4.5. Where appropriate, seek the necessary technical cooperation from other states and cooperation agencies that would allow the PEP to overcome the difficulties related to the lack of resources, and to strengthen the mechanism for establishing the quantitative and qualitative limits of social harm. (See Chapter II, Section 1.2 of this report.)
- 1.4.6. Maintain statistics which show not only the disposition of complaints that are processed by the PEP, but which also show the number of each type of administrative infraction identified through the investigation of those complaints, in order to determine which areas should receive increased attention and focus. (See Chapter II, Section 1.3 of this report.)
- 1.4.7. Prepare statistical information regarding the follow-up to and level of compliance with the recommendations contained in the PEP's reports, in order to determine if it would be beneficial for the PEP to have punitive powers. (See Chapter II, Section 1.3 of this report.)

2. OFFICE OF THE COMPTROLLER GENERAL (CGR)

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

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

[80] Article 183 of the Constitution, which created the CGR as the auxiliary body of the Legislative Assembly in monitoring government finances and grants it complete functional and administrative independence in carrying out its work.

[81] Article 184 assigns it the following duties and powers: (1) To oversee execution and liquidation of the regular and special budgets of the Republic; (2) to examine, approve, or disapprove the budgets of municipalities and autonomous institutions, and to oversee their execution and liquidation; (3) To submit annually to the legislative assembly at its first regular session a report on the movements for the preceding financial year, together with a description of the activities of the Comptroller and a presentation of their opinions and recommendations for the better management of public funds; (4) to examine, comment on and close the accounts of government institutions and public servants; and, (5) such other functions as it may be assigned by the Constitution or laws.”

[82] Furthermore, the country under review indicates that Costa Rica's legal system recognizes the CGR as having five main functions: (1) Ex-post oversight of the use of public funds, which includes audits and assessments; (2) punitive measures; (3) ex-ante oversight of budgets and administrative procurement; (4): consultative and advisory functions on public funds; and, (5) to act as an administrative body that resolves matters as dual-phase improper superior: in other words, an agency that exhausts administrative channels outside the administration processing the contract.

[83] As regards the area of responsibility of the CGR, Article 4 of Law 7428 (Organizational Law of the Office of the Comptroller General) provides that the CGR shall exercise its authority over all the entities and organs that comprise the system of public finances [*Hacienda Publica*] and that it has discretionary authority over nonstate public entities [Article 4(a)]; private persons who have custody of or administer public funds or the activities mentioned in this Law [Article 4(b)]; foreign entities and bodies whose composition includes Costa Rican state entities or organs and in which the latter have a majority interest, or are under its legal ownership, or whose equity and capital mainly comprise Costa Rican state funds, even though they might have been incorporated under foreign laws and have their domicile abroad. In the case of banking, insurance or financial entities, the oversight shall not encompass their substantive or regular activities [Article 4(c)]; Minority proprietary interests of the state or of other public-sector entities or organs in domestic or foreign commercial corporations, in accordance with this law [Article 4(d)]. The same provision establishes that the opinions issued by the CGR within its area of responsibility shall be binding upon the persons subject to its control or oversight.

[84] Under Article 5 of Law 7428 provides that also subject to the discretionary oversight of the CGR are “*Any grant of equity benefits free of charge or for no consideration as well as any release of obligations by the organs that comprise the system of Public Finances in favor of a private person.*” For its part, Article 6 of Law 7428 provides that control over funds and private activities “*shall concern there bookkeeping and technical legality and, in particular, ensure that the equity benefits or release of obligations are put to their intended legal use.*”

[85] In the course of the on-site visit, CGR representatives explained that the CGR does not approve the budgets of ministries, the judicial branch, the Legislative Assembly, the TSE, or the pensions system.

[86] As regards decision-making in the CGR, the response mentioned, “*On substantive matters, most decisions are adopted jointly, for example, in the area of administrative procurement, advisory opinions, and administrative proceedings.* In the case of oversight studies, although the cover notes are signed by the relevant managers, they are the result of teamwork, with decisions based on consensus.³⁶ The response also mentioned that technical responsibilities are delegated among three

36. *Ibid.*, p. 14.

line divisions. These are the Operational Oversight and Assessment Division, Legal Division, and Administrative Procurement Division. The CGR also has a Support Division, which includes an Internal Legal Unit, a Human Resources Department, an Administrative Department, a Financial Department, a Training Center, an Information Technology Department, and an Information Services Department. It also has a Corporate Governance Unit, a Press and Communications Unit, and an Internal Auditing Unit, which report to the Comptroller's Office.³⁷

[87] Furthermore, as regards recourse to review of decisions, the response mentions that "*all decisions adopted by the CGR, other than legally recognized exceptions, as in the case of the administrative procurement system, authentication of administrative agreements, and decisions on budget-related matters, are subject to the regular challenge system envisaged in the Public Administration Code (Law 6227). Appeals and petitions for review of decisions are examined directly by the Office of Control, thus ensuring a two-tier system. Finally, as with any administrative act, the decisions adopted by this oversight body are subject to judicial review.*"³⁸

[88] As regards the leadership of the CGR, Article 183 of the Constitution provides that it shall be exercised by a Comptroller and a Deputy Comptroller who are appointed by the Legislative Assembly for a term of eight years. The same article states that these two officials answer to the Legislative Assembly, which may remove them by a vote of two thirds of its members in the event of ineptitude or misconduct.

[89] For their part, Article 39 and 40 of Law 7428 establish the requirements and impediments, respectively, for being appointed and discharging the duties of comptroller or deputy comptroller.

[90] As regards the staff of the CGR, the institution has its Autonomous Services Statutes, which govern relations between the CGR and its employees. Article 10 of the Statutes recognizes five categories of employee: senior management (comptroller and deputy comptroller), positions of trust, management, regular, and special services. They also set out the manner of appointment for each category of employee: Senior management – appointed by the Legislative Assembly (Article 11); positions of trust – free appointment and removal by the Comptroller General (Article 12); management – appointed in accordance with the established selection procedure (Article 13); regular – appointed after demonstrating their suitability through competitive examination (Article 14); special services – appointed following verification of compliance with the suitability requirements by the Human Resources Unit (Article 15).

[91] With respect to the tenure of CGR staff, the response to the questionnaire says that they "*enjoy job stability and may only be dismissed on the grounds envisaged by law in accordance with the appropriate administrative procedure, which, in turn, is subject to the rules of due process; the foregoing does not apply to positions of trust. To apply for a position, candidates must fit the profile set out in the post profile manual, as appropriate.*"³⁹ In that regard, Article 47 of Law 7428 provides, "*Employees of the Office of the Comptroller General may only be dismissed for just cause, or because their position has been terminated, which shall be duly justified in writing in the respective record.*"

[92] As regards the system of rules applicable to CGR staff, the response explains, "*CGR officials, like PEP staff, are subject to the general rules on ineligibility, conflict of interests,*

37. *Ibid.*

38. *Ibid.*

39. See response of Costa Rica to the questionnaire in the fourth round, p. 19, *supra* note 4.

*prohibitions, and liability. They are also required to comply with the institutional rules, which are composed of the Autonomous Services Statutes, which set out specific obligations and prohibitions; the institutional Code of Ethics, which contains the ethical principles that should guide the conduct and actions of anyone with a constitutional mandate to monitor public finances; and the Code of Conduct, which sets out a basic and priority framework of conduct that guides the behavior of the CGR with the aim of attaining an institutional culture based on the highest ethical values that ensures transparency, honesty, and responsibility.*⁴⁰

[93] As for documents and manuals that describe the functions of its staff, the CGR has its Posts Profiles Manual, which describes the job profiles of each unit, area, and division of the institution. The Manual contains a detailed description of 54 work positions and, according to the response to the questionnaire, the information contained in the Manual is used as an input in designing staff training plans.⁴¹

[94] Article 57 of Law 7428 creates the CGR Training Center to provide instruction to its staff and other public servants in matters pertaining to their responsibilities. According to the response to the questionnaire, “[t]he Training Center operates according to an annual plan designed on the basis of institutional needs.”⁴²

[95] The response to the questionnaire also mentions that the CGR carries out other functions associated with the exercise of its governorship of the National Oversight and Control System and external training to the public sector, *inter alia*, in matters connected with internal control and efficient and honest public management.⁴³

[96] With regard to documented working procedures, the CGR has its Comprehensive Oversight Manual [*Manual General de Fiscalización Integral*] (MAGEFI) for fulfilling its public finances oversight objectives. The manual serves as a “*basis for developing documentation on the procedures and records that comprise each of the activities within the institution’s processes.*”⁴⁴ Among other information, the MAGEFI contains details on comprehensive oversight macro processes, corporate governance, knowledge management, and resources management. With respect to comprehensive oversight macro processes, the Manual contains detailed processes relating, *inter alia*, to ex-ante oversight, ex-post oversight, administrative proceedings, advisory services on government finances, and training. Furthermore, the CGR has a methodology for the implementation of information and communication technology projects, which describes the activities for the proper control of projects.

[97] As regards institutional strengthening or quality improvement measures implemented in the CGR, it is working on a “Service Reception Desk” [*Mesa de Servicio*] to supervise how users’ information communication technology needs are addressed.

[98] To facilitate its work, the CGR has implemented several computer systems, including the: State Budget Plan System [*Sistema de Planes Presupuestos Públicos*] (SIPP), the Procurement System [*Sistema de Actividad Contractual*] (SIAC), the Institutional Performance System [*Sistema de Gestión Institucional*] (SIGI), the Ex-Post Oversight System [*Sistema de Fiscalización Posterior*] (SIP-NET), the Integrated Human Resources System [*Sistema Integrado de Recursos Humanos*], and

40. *Ibid.*

41. *Ibid.*, p. 23.

42. *Ibid.*

43. *Ibid.*, p. 9.

44. *Ibid.*, p. 26.

the Treasury Punishment Records System [*Sistema de Registro de Sanciones de la Hacienda Pública*] (SIRSA).

[99] Other measures for the implementation of modern technologies mentioned in the response to the questionnaire include the development of digital signature systems, technologies to establish a data center in the CGR, extensive wireless network coverage at the CGR's headquarters, and update of its telephony platform with the aim of having 100% IP telephone coverage in the institution.

[100] With respect to mechanisms for supplying information to the public, the CGR has a website (<http://www.cgr.go.cr/>), which offers detailed information about the institution's activities. Furthermore, in its response to the questionnaire, the country under review mentioned that under "the sections on its website entitled: "Conózcenos" [Get to Know Us] and "Contraloría Transparente" [Transparent Control] ... there is information about the CGR's main functions, guiding principles, basic documents, and organizational structure. In the "Transparent Control" section citizens can find out about its plans, accountability reports, financial statements, salaries and benefits, procurement plan, and other aspects. Also on the website, under the "Procedures" section there is a tab entitled "Compliance with Law 8220," which provides a detailed explanation on how to lodge complaints with the CGR."⁴⁵

[101] The website also contains the CGR Inquiries System, enabling members of the public to make online queries about matters such as state budgets, administrative procurement, and other matters.

[102] In connection with the foregoing, during the on-site visit CGR representatives explained about the measurement and improvement process underway with respect to the websites of government institutions, which is the responsibility of the CGR. They showed a video on YouTube prepared by the CGR to help citizens understand the changes to the CGR website and find their way around it. They also presented the CGR YouTube channel, which offers, among other things, visual guides prepared by the CGR on administrative procurement, the sworn statements system, and training.⁴⁶

[103] As regards internal control and presentation of complaints in the CGR, the response to the questionnaire mentions that complaints about staff performance are dealt with by the chief of the respective section. Decisions at this level may be appealed to the Comptroller General. The response also says that such complaints may lead to the institution of administrative proceedings and imposition of penalties.⁴⁷ The response explains, "In keeping with the nature of the Office of the Comptroller General, internal control constitutes an activity inherent to all the institution's work. Accordingly, the underlying premise is that the institution's internal control system is the responsibility of everyone in the organization and this is reflected and supported by the control activities of each division and unit."⁴⁸

[104] As regards ensuring the necessary budgetary resources for the operations of the CGR, in its response to the questionnaire, the country under review notes that "the necessary budgetary resources for the operations of the Office of the Comptroller General are allocated by the Law on the Regular and Special Budget of the Republic, a draft of which is prepared by the institution and submitted to the Ministry of Finance for inclusion in the proposed budget referred for adoption to the

45 .Ibid., p. 29.

46. See <http://www.youtube.com/user/CGRCostaRica>

47. See response of Costa Rica to the questionnaire in the fourth round, p. 32, *supra* note 4..

48. *Ibid.*

Legislative Assembly. The premise assuring the allocation of budget resources to the control organ is contained in Articles 50 to 57 of the Organizational Law of the Office of the Comptroller General."⁴⁹

[105] As to mechanisms for coordination with other state agencies and for securing the support of the citizenry in carrying out its functions, the response to the questionnaire mentions the creation of a strategic partnership between the PGR, the Public Prosecution Service, and the Costa Rican Institute on Drugs, with the aim of establishing an interagency coordination mechanism for assistance and cooperation to tackle corruption.⁵⁰ In this context, the above four institutions signed a letter of intent in June 2010. The Interagency Committee was created in 2012, composed of one representative from each of the institutions.

[106] The Comptroller General also represents the CGR on the National Committee for the Improvement of Justice Administration (CONAMAJ), which, according to Executive Decree 3498-J has, *inter alia*, the following main functions: to establish, recommend, or seek the means, activities, and procedures for agencies involved in the administration of justice to coordinate their actions and programs [Article 2 (a)]; raise public awareness about and coordinate efforts to improve the justice sector [article 2 (b)]; and promote citizen participation and education in justice-related matters.

[107] In addition to the foregoing, as regards harmonization of its functions with those of other oversight bodies, in the course of the on-site visit, CGR representatives explained that there is a monthly coordination meeting between the CGR, PEP, Public Prosecution Service, and Costa Rican Institute on Drugs. Furthermore, specifically with respect to the PEP, when a complaint is received, they said that the CGR coordinates with public ethics procurators to select the cases that correspond to either institution. In addition, they explained that when the two institutions examined the same case, the PEP might be attempting to determine if an ethical violation had occurred, while the responsibility of the CGR was the use of public resources.

[108] As regards accountability mechanisms with respect to the CGR, according to Article 32 of its Organizational Law (Law 7428), the institution reports to the Legislative Assembly through its presentation to Congress of the activities report contained in its annual report, in addition to reports submitted to various congressional committees.⁵¹ Article 184(c) of the Constitution establishes minimum content for this annual report, including, "*actions from the previous fiscal year with detail of the comptroller's work and presentation of the opinions and suggestions considered necessary for the better management of public resources.*" Furthermore, the CGR presents semiannual and annual assessment reports to the Ministry of Finance, which the ministry requests from institutions covered by the national budget.⁵² The response to the questionnaire also mentions that "in 2011, the CGR underwent a number of voluntary external review processes in line with strict international standards, essentially to complement its accountability with independent outside opinions. *In particular, a peer review was conducted of the institution's main substantive processes, which included operational planning and auditing by oversight entities, among them, the Office of the Auditor General of the Federation of the United Mexican States and the Office of the Comptroller General of Chile. The external review was completed with an audit of the institution's financial statements, also with excellent results. All of the foregoing was carried out in keeping with objective 7 of the CGR's*

49. *Ibid.*, p. 34.

50. *Ibid.*

51. *Ibid.*, p. 36.

52. *Ibid.*

*strategic plan which aims to boost the Costa Rican public's trust in the Office of the Comptroller General, increasing transparency and accountability on institutional performance.*⁵³

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

[109] The 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 2.1 of this report. Nonetheless, the Committee considers it appropriate to formulate certain observations in relation thereto:

[110] First, with respect to the funding available to the CGR, the independent response from *Estado de la Nación* notes that “[t]he CGR’s institutional framework is among the most robust and independent in the Costa Rican state apparatus, in terms of its infrastructural power (assigned responsibilities, financial and human capabilities, and achievements).”

[111] However, in the course of the on-site visit, CGR representatives explained that its [ability to discharge its] anticorruption duties are impaired by a shortage of human and financial resources. By way of an example, they explained that they only have 37 officials to receive and verify approximately 15,000 sworn statements, with the result that they can only verify a minimal amount of statements. They also mentioned that additional funding is needed to strengthen their ex-ante and ex-post oversight. The Committee will offer a recommendation in this regard. (See recommendation 2.4.1 in chapter II of this report.)

[112] Second, and in connection with the foregoing, during the on-site visit CGR representatives described its technical cooperation need for the creation of technological tools which would allow automated verification of the information contained in sworn statements, such as, for example, a data warehouse (composed of software and hardware) to prevent corruption. The Committee will formulate a recommendation in this regard, taking those needs into account. (See recommendation 2.4.2 in chapter II of this report.)

[113] Third, in relation to the use of technology in the CGR, during the on-site visit, representatives of civil society organizations noted that the website of the CGR, among others, was not easy for the average user to understand and needed to be improved. In that regard, at meetings with CGR representatives, the latter explained that there was a realization within the institution that the documents and information published on the CGR website were of an overly technical character. Furthermore, as described in the previous section of this report, representatives of the institution explained and demonstrated the various efforts underway precisely to make the website easier to understand and the information it contains, more useful. After the on-site visit, representatives of the CGR reported that in the November 2012 the CGR placed third in the annual assessment of government websites conducted by the INCAE Business School.⁵⁴ The Committee considers that it is important that such improvements continue and will formulate a recommendation in that regard. (See recommendation 2.4.3 in chapter II of this report.)

[114] Fourth, with respect to external training imparted by the CGR, the response to the questionnaire mentions that the CGR’s lack of “a permanent public administration training program with a preventive focus constitutes a challenge in the fight against corruption.”⁵⁵ The Committee is of the opinion that the provision of training of this kind falls within the realm of responsibilities of the CGR’s Training Unit, one function of which is to provide training to CGR officials and other civil

53. *Ibid.*, p. 37.

54. This document is available at: <http://www.gobiernofacil.go.cr/e-gob/gobiernodigital/premios/InformeWeb2012.pdf>

55. See response of Costa Rica to the questionnaire in the fourth round, p. 63, *supra* note 4.

servants. The Committee will offer a recommendation in that regard. (See recommendation 2.4.4 in chapter II of this report.)

[115] Fifth, regarding difficulties in the performance of his duties, in its response to the questionnaire and at meetings held with the CGR, the country under review⁵⁶ explained that institutions use different computer platforms and this is an obstacle to timely information exchange among agencies with functions in the area of prevention, detection, and punishment of corruption. The Committee will formulate a recommendation in that regard. (See recommendation 2.4.5 in chapter II of this report.)

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

[116] Based on the response to the questionnaire of the country under review and the on-site visit, information was gathered regarding the results obtained by the CGR with respect to the fulfillment of its functions, including the following:

[117] First, with respect to corruption prevention measures adopted by the CGR, the response to the questionnaire mentions that it has issued regulatory provisions, developed tools, and taken steps *"aimed at contributing to the establishment, operations, maintenance, improvement, and assessment of internal control systems, in addition to implementing measures that help to prevent corruption."*⁵⁷

[118] The response highlights the following regulatory provisions adopted: in 2004, the General guidelines on principles and ethical standards to be observed by the management, supervisors, and staff of the Office of the Comptroller General, internal audit units, and civil servants in general; in 2009, the Public Sector Control Standards and the Private Sector Control Standards; in 2008, the Guidelines on annual self-assessment and external quality assessment of internal audit units in the public sector; and in 2009, the Technical Guidelines for the Conduct of Ethics Audits.

[119] The Committee finds that the above information serves to show that the CGR has taken steps related to the prevention of corruption.

[120] Second, as regards the functions of the CGR in the area of investigation and detection of acts of corruption, the response to the questionnaire mentions that, over the last five years, the CGR has carried out 587 investigations in keeping with its powers to corroborate the veracity of sworn statements under Article 34 of Law 8442 and in keeping with its investigative powers recognized by Article 24 of Law 7428 (Organizational Law of the CGR). The response also included the following table on the results of those investigations:⁵⁸

Year	Reported incidents	Criminal charges	Preliminary investigations	Total investigations	Closed
2007	157	8	-	165	97
2008	58	12	-	70	126
2009	57	13	-	70	154
2010	103	11	-	114	136
2011	95	6	60	161	114
2012	1	-	6	7	31

56. *Ibid.*

57. *Ibid.*, p. 41.

58. *Ibid.*, p. 46.

[121] With respect to the above table, the response also mentioned that no investigations have, either lapsed as a result of the statute of limitations, or been suspended, and that the status of all investigations underway suggests that a decision on merits will be possible in each case. The response adds that *"all investigations have been referred to the relevant organ for a decision on merits on the case under investigation, whether that be the institution's legal division, the Public Prosecution Service, or the 'active administration.'* Closed investigations are those in which, either there was insufficient evidence to establish responsibilities, or they did not pertain to the jurisdiction of the Office of the Comptroller General, or another competent organ had them under cognizance. Finally, the CGR mentions that it has a Special Complaints and Investigations Area that can receive complaints lodged in person or electronically. The Area is composed of professionals from different fields, including lawyers, accountants, administrators, criminologists, a civil engineer, and systems engineers."⁵⁹

[122] The Committee considers that the statistics presented serve to demonstrate that the CGR carries out investigations regarding the information contained in a small number of the sworn statements that they receive. In this connection, in the course of the on-site visit, CGR representatives explained that more than 15,000 civil servants are required to file declarations and that there are only 37 officials to receive those declarations and related complaints. As a result, they said that the CGR verifies approximately 100 declarations a year. They also noted that the criteria for determining which declarations would be verified varied from year to year. For instance, in one year, there was a large road building project. Therefore it was decided to check the declarations of the officials involved in decision-making on the project. It was also explained that when a complaint of corruption or illicit enrichment is received the declaration of the accused is verified but no statistics are kept on those checks.

[123] While the Committee considers it highly useful to focus available human resources on important matters, such as the case cited as an example in the foregoing paragraph, it also finds that in the number of sworn declarations verified over the last five years is low considering the total number of civil servants required to file declarations. The Committee will formulate a recommendation taking the above considerations into account. (See recommendation (c) in chapter IV, section 2 of this report.)

[124] Furthermore, the Committee notes that the CGR has sent the findings of its investigations to the relevant entities for the apportionment of responsibility. The Complaints and Investigations Unit has personnel responsible for following-up on these transfers. However, the Committee has no information on the outcome of those proceedings, such as the number of investigations referred to the Public Prosecution Service that have given rise to criminal proceedings, or the number of investigations sent to institutions that resulted in the apportionment of administrative responsibility or the imposition of disciplinary penalties on the accused public servant. The Committee will formulate a recommendation in that regard. (See recommendation 2.4.6 in chapter II of this report.)

[125] Third, regarding the functions of the CGR with respect to punishment of acts of corruption that give rise to administrative, disciplinary, or civil liability, in its response to the questionnaire, the country under review explained that the CGR *"has powers with regard to the administrative or civil liability for irregular conduct on the part of civil servants or private individuals who administer public funds. It also has authority to be a party in judicial proceedings concerning acts of corruption. As regards administrative and civil liability, or clear and evident absolute nullity of administrative*

59. *Ibid.*

acts and contracts, the Office of the Comptroller has the power to open preliminary investigations and administrative proceedings to clarify any irregularities detected during the comprehensive inspection of obligated entities ... in order to uncover the truth and issue a decision, as appropriate, apportioning responsibilities -disciplinary and/or civil- or acquitting those involved, and/or ruling on the clear and evident absolute nullity of administrative acts and contracts.”⁶⁰

[126] The response to the questionnaire also contains a number of tables reflecting the results of the exercise of the above powers by the CGR.⁶¹ Those tables have yielded the following information: Table 1 – details the legal basis of the above powers; Tables 2 and 3, respectively – between 2007 and 2011, the CGR opened 511 administrative proceedings and concluded 489 administrative proceedings; Table 4 - between 2007 and 2012, 9 cases were found admissible, 28 cases are ongoing pending a final decision, 33 cases have a final decision which has not been confirmed, 14 cases have a confirmed final decision in which execution is being monitored, and 13 cases have been suspended; Table 5 – between 2007 and 2011, 42 administrative proceedings were closed; Table 6 – shows the number and type of penalties imposed between 2007 and 2011, including prohibitions against admission or readmission, public and nonpublic reprimand, dismissal, suspension, and civil liability; Table 7 – 440 persons were punished between 2007 and 2011; Table 8 – there were a total of 47 acquittals between 2007 and 2011.

[127] The 2011 Annual Report of the CGR contains the following table showing penalties imposed by the CGR on civil servants for losses caused to the Treasury between 2007 and 2011:

	2007	2008	2009	2010	2011
Prohibition against admission or readmission to positions in the Treasury	15	15	20	21	4
Disciplinary penalty	94	80	81	64	64
Penalty for civil liability	1	-	1	18	4
Total	110	95	102	103	69

[128] With respect to this table, the document from “Costa Rica Integra”, submitted by “Estado de la Nación” mentions the following: *“It is surprising that penalties for civil liability, which would entail civil servants meeting the costs of their acts, are little used.”*⁶² In this connection, the country under review explains that the penalty for civil liability is not applicable to all cases, because not all cases involve monetary loss to the public treasury, but that an active determination is made as to whether this remedy is appropriate in all cases involving economic loss. Additionally, the CGR informed that it is developing a project for the adoption of policies for responsibility, which includes matters related to civil responsibility. The Committee will formulate a recommendation on this point. (See recommendation 2.4.7 in chapter II of this report.)

[129] In fourth place, as regards the functions of the CGR with respect to punishment of acts of corruption that give rise to criminal liability, the response to the questionnaire explains, *“as regards criminal liability of public servants for acts of corruption, the Office of the Comptroller General has the authority to intervene as a party in judicial proceedings in this area, with a particular emphasis on anything concerning offenses committed by public servants in which the protected legal interest are state funds or the duty of probity. The CGR may intervene as a party in proceedings as a victim,*

60. *Ibid.*, p. 50.

61. *Ibid.*, p. 50 to 55.

62. See the document presented by *Estado de la Nación*, as a civil society organization, p. 13, *supra* note 21

complainant, or civil plaintiff and, furthermore, if requested by a court of the Republic, as an amicus curiae."⁶³

[130] In this connection, the response to the questionnaire includes a table that shows that between 2007 and 2011, the CGR took part in a total of 71 such cases, with the following results: 15 cases were closed because the facts did not constitute a crime or there was insufficient evidence to prove the charges; in 2 cases, nonjudicial procedures were used; 47 cases are still under investigation by the Public Prosecution Service with an indictment yet to be presented; in 6 cases indictments have been presented and preliminary hearings are pending; and in 1 case a criminal conviction has been handed down.

[131] As regards the annual reports prepared by the CGR, the Committee notes that they contain an enormous amount of information, which is indicative of the CGR's broad range of functions. However, upon reviewing those reports, the Committee found that the information they contain varies from year to year. In that connection, during the on-site visit, CGR representatives explained that the serving Comptroller determines what information should be included with the aim of improving the performance of the civil service.

[132] In the course of the on-site visit, representatives of civil society organizations and scholars mentioned that the overall problem was that the majority of public institutions are required to submit annual reports but there are no standards regarding what they should report. In addition, the document from "Costa Rica Integra", submitted by "Estado de la Nación" notes, "*This is significant in view of the absence of rules in the country regarding the basic contents of institutional annual reports.*"⁶⁴

[133] With respect to the CGR, as was mentioned earlier, Article 184(3) of the Constitution establishes the minimum contents for the annual reports it issues. Nonetheless, the Committee considers that it would be convenient for the CGR to continue its efforts to use simple language in those reports so that they are more understandable to the public and thus widely disseminate its contents. The Committee will offer a recommendation in that regard. (See recommendation 2.4.10 in chapter II of this report.)

2.4. Conclusions and recommendations

[134] Based on the comprehensive review of the CGR in the foregoing sections, the Committee formulates the following conclusions and recommendations:

[135] Costa Rica has considered and adopted measures intended to maintain and strengthen the Office of the Comptroller General as an oversight body, as indicated in Chapter II, Section 2 of this report.

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

- 2.4.1. Provide the CGR with sufficient human and financial resources to carry out its functions properly, within available resources, particularly where verification of sworn statements is concerned. (See chapter II, sections 2.2 and 2.3).

63. See response of Costa Rica to the questionnaire in the fourth round, p. 54, *supra* note 4.

64. See the document presented by *Estado de la Nación*, as a civil society organization, p. 13, *supra* note 21

- 2.4.2. Where appropriate, seek the necessary technical cooperation from other states and cooperation agencies that would allow the CGR to develop technological tools which would permit automated verification of the information contained in the sworn statements, such as, for example, a data warehouse. (See chapter II, section 2.2 of this report.)
- 2.4.3. Continue the process of improving the CGR website in order to make it even more useful for disseminating information to the public, accountability, and, in general, anticorruption efforts. (See chapter II, section 2.2 of this report.)
- 2.4.4. Consider the introduction by the CGR Training Center of a permanent public administration training program with a preventive focus, in keeping with its functions under Law 7428. (See chapter II, section 2.2 of this report.)
- 2.4.5. Consider the possibility of standardizing the information platforms used by the oversight bodies, in order to improve and facilitate, among other aspects, the institutional coordination and the timely exchange of information between them. (See chapter II, section 2.2 of this report.)
- 2.4.6. Continue efforts for the proper follow-up on the outcome of investigations conducted by the CGR and referred to the Public Prosecution Service or public administration institutions, respectively, in order to have access to information on the results of those proceedings and determine if they led to the institution of criminal proceedings, apportionment of administrative responsibility, or imposition of disciplinary penalties. (See chapter II, section 2.3 of this report.)
- 2.4.7. Continue to promote the CGR's project to develop policies related to responsibilities in the CGR, including the issue of civil liability. (See chapter II, section 2.3 of this report.)
- 2.4.8. Continue efforts to use simple language in the CGR annual report, so that it is more understandable to public and thus widely disseminate its contents. (See chapter II, section 2.3 of this report.)

3. OFFICE OF THE OMBUDSMAN OF THE REPUBLIC (*DEFENSORÍA DE LOS HABITANTES DE LA REPÚBLICA*)

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

[137] The Office of the Ombudsman of the Republic (Ombudsman or DHR) has a set of provisions in its legal framework, as well as other measures that refer, *inter alia*, to the following:

[138] As regards its objectives and functions, Article 1 of Law 7319 (Ombudsman Law) provides that the DHR is the body charged with protecting the rights and interests of the country's inhabitants. The same provision states that the DHR shall ensure "*that the workings of the public sector are consistent with moral principles; justice; the Constitution; the laws, conventions, treaties, and agreements signed by the Government; and generally recognized principles of law.*" It is also required to advance and raise awareness about the rights of the country's inhabitants." Executive Decree 22266 (Rules of Procedure of the Ombudsman) grants it the following general powers: "*to protect the rights and interests of the country's inhabitants from threats, disturbances, restrictions, or*

violations caused by actions and failures to act in the administrative activity of the public sector (Article 6.1); to ensure that the public sector's functions are in accordance with morality, justice, and law (Article 6.2); to ensure the proper operation, efficiency, and prompt provision of public services (Article 6.3); to develop programs for advancing and raising awareness about the rights of the country's inhabitants (Article 6.4)."

[139] Article 2 of Law 7319 provides that the DHR is attached to the legislative branch and enjoys operational, administrative, and decision-making independence in the performance of its activities.

[140] As regards the jurisdiction of the DHR and the existence of concurrent functions with other entities, Article 12 of Law 7319 provides at its pertinent part that, without prejudice to the constitutional and legal powers of the law courts, the DHR may open, either *sua sponte* or upon request, any investigation to clarify conduct, acts, or omissions in the public sector administration. The second paragraph of Article 12 provides that the DHR may inspect government offices without prior notice and request documents or other necessary information. The third paragraph of this provision makes it mandatory for all government servants, except those who enjoy immunity, to present themselves at the DHR when summoned.

[141] With respect to exceptions to the jurisdiction of the DHR, Article 12 of Law 7319 provides that the DHR may not intervene in decisions of the Supreme Electoral Tribunal on electoral matters [Article 12(1)]. Additionally, Article 19(2) provides that the DHR shall not take cognizance of complaints on which a judicial decision is pending and shall suspend proceedings should the interested party file suit or a judicial appeal on the subject matter of the complaint. Nevertheless, it may continue with the investigation of the general problems highlighted in the complaints, and communicate to the CSJ any administrative irregularities detected in agencies of the judicial branch.

[142] The head of the DHR, the Ombudsman of the Republic, is appointed by absolute majority of the legislature for a term of four years, and may be reelected once, in accordance with Article 3 of Law 7319. Article 6 recognizes the following grounds for termination of duties of the Ombudsman: resignation, death or incapacity, negligence or gross violations in the performance of official duties, conflict of interests, and a conviction for a crime committed with intent. Article 17 of the Rules of Procedure of the DHR sets out the procedure for the investigation and removal of the Ombudsman by the legislature in the event of negligence or gross violations.

[143] As regards the DHR staff, Article 24 of the agency's Rules of Procedure provides that the DHR shall have the required complement of professional, technical, and administrative staff. Article 24 also provides that the Ombudsman shall be at liberty to appoint and remove staff, as necessary, to ensure the performance of its functions and the exercise of its authority.

[144] With respect to the appointment of the agency's staff, the Statutes on Selection, Promotion, and Appointments in the Office of the Ombudsman of the Republic establishes procedures for internal and external competitions for the above designations. In its response to the questionnaire, the state under review mentioned that *"The agency has its Statutes on Selection, Promotion, and Appointments, which contains the procedure for filling positions, either by internal or external competitions or via direct appointment without a competition. Those statutes provides that all appointments or promotions without a competition shall be on the basis of a study and a report issued by the Department of Human Resources, including a well-founded justification in each case. The Statutes also require that the decision of the head of the agency be duly grounded. In that regard, the current administration has opted for both internal and external competitions for permanent*

*appointments; for interim appointments or temporary substitutions, it has opted to consider the recommendations of directors or department chiefs in appointing stand-ins for those positions.*⁶⁵

[145] DHR officials, like any other civil servants in Costa Rica, are subject to the general rules on ineligibility, conflict of interests, prohibitions, and liability described in section 1.1 of this report. Same time, Article 9 of Law 7319 also mentions conflicts of interest and prohibitions that apply specifically to DHR officials.

[146] As for documents and manuals that describe the functions of its staff, the DHR has its Post Description Manual. During the on-site visit, DHR representatives noted that this manual is being updated.

[147] As regards training in the DHR, in its response to the questionnaire, the country under review said, “ *As yet there is no periodic training plan for staff. However, in the second half of 2012, the institution has been developing an ongoing training program for the institution's employees. The DHR reports that budgetary constraints undermine the possibility of having a necessary continuous training program.*”⁶⁶ During the on-site visit, DHR representatives confirmed that this problem continues and that, as yet, the agency does not have a comprehensive training program. However, they also explained that they have used their existing contacts with other institutions in order for staff members of the DHR to take advantage of outside training opportunities.

[148] As to the existence of documented working procedures for the DHR, the agency has a "Macro Processes Manual on Protection of Rights [*Manual de Macroproceso de Protección de Derechos*], “*which governs the different rights-protection proceedings that the agency institutes.*”⁶⁷

[149] In that regard, Article 14 of Law 7319 explains the nature of the interventions of the DHR, stipulating that they do not substitute the acts of the administration, but are designed to control compliance with the law. In particular, Article 14(2) provides that if the DHR “becomes aware of an unlawful or arbitrary act, it shall advise the organ concerned and recommend the appropriate rectification, as required by law. *However, if it believes that the act may constitute a criminal offense, it shall report it to the Public Prosecution Service.*”

[150] As regards decision-making in the DHR, the above-mentioned Macro Processes Manual on Protection of Rights describes how the DHR should treat the complaints and intervention requests that it receives, pursuant to the LDHR and its Regulation. Article 43 of the Manual requires the review of final reports by the Office of the Director of Defense of the DHR, as well as final and binding approval of final reports containing recommendations by the Ombudsman or Assistant Ombudsman, in the event of delegation by the head of the agency.

[151] With respect to measures for enforcing the above recommendations, Article 14 of Law 7319 provides that “*The unjustified failure to abide by the recommendations of the DHR, may be grounds for reprimand for the non-complying official, or, in the event of repeated non-compliance, a recommendation of suspension or dismissal, without regard what is provided in the second paragraph of this Article.*” In the course of the on-site visit, DHR representatives explained that while the agency's recommendations are nonbinding, their effect is to exercise control and exert moral pressure. They also explained that the regulatory framework of the DHR is not based on

65. See response of Costa Rica to the questionnaire in the fourth round, p. 20, *supra* note 4.

66. *Ibid.*, p. 24.

67. *Ibid.*, p. 27.

punitive authority but on the exercise of constructive influence. In that regard, the representatives noted that the position of the DHR in society coupled with its legal legitimacy lend weight to its recommendations. They also explained that in addition to the provisions of Article 19(2) of Law 7319, should an institution decide not to implement a recommendation from the DHR, it must provide written justification for that decision.

[152] As regards internal control, the DHR has an internal auditor's office which evaluates oversight mechanisms and processes complaints concerning infractions of internal control standards and the provisions contained in Law 8292 (Internal Control Code).

[153] For addressing complaints, the DHR has a Services Controller's Office, which ensures that users are given an efficient and quality service. It is also the body to which citizens may express dissatisfaction or suggestions with respect to the work of the DHR.⁶⁸ Furthermore, Article 22 of Law 7319 provides the possibility of presenting a petition for review of decisions, acts and reports of the DHR.

[154] With regard to institutional strengthening and quality improvement measures implemented, the response to the questionnaire mentions that the administrative division of the DHR is carrying out a project *"on documentation and improvement of process as a starting point for implementing a quality control system. The project was launched in January this year with motivation and training workshops for all officials, implemented by department. At present, the process review stage is underway with a view to documenting all the procedures in the division's departments, using manuals to define the working methodologies. The aim is to implement a culture of ongoing improvement aimed at streamlining processes and lightening workloads without sacrificing the quality of the service provided to members of the public who seek the institution's assistance."*⁶⁹ The response also explained, *"The DHR is implementing an institutional risk model to ensure fulfillment of its mission, vision, objectives, and goals through the identification, analysis, assessment, management, and review of risks, which are continuously reported and documented."*⁷⁰

[155] As regards implementation of modern technologies, the DHR has its Rights Protection Data System (*Sistema Informático de Protección de Derechos*), which is used to store, record, assign, and process information on rights protection, including official communications and receipt of documentation. The system *"expedites staff performance."*⁷¹

[156] For the purposes of informing the citizenry about its objectives and functions, the response to the questionnaire mentions that such information is disseminated through talks, workshops, and courses imparted by the DHR.⁷² In this regard, the response explained that the Promotion and Awareness area of the DHR organized around 100 activities of this type in 2011. Complaints may also be submitted online at the DHR website (<http://www.dhr.go.cr/denuncia.html>).

[157] As regards ensuring the necessary budgetary resources for its operations, the budget of the DHR is included in the legislative branch budget *"and is subject to approval by the Ministry of finance and the Legislature."*⁷³

68. For more information, see <http://www.dhr.go.cr/contraloria.html>.

69. *Ibid.*, p. 27.

70. *Ibid.*, p. 32.

71. *Ibid.*, p. 28.

72. *Ibid.*, p. 30.

73. *Ibid.*, p. 34.

[158] As regards coordination mechanisms between the DHR and other organs, the response to the questionnaire notes that it "*participates in the National Advisory Council on Social Responsibility [Consejo Consultivo Nacional de Responsabilidad Social] (CCNRS), specifically as coordinator of the Transparency Committee. The CCNRS is an organization designed to serve as a multisectoral consensus-building and guidance platform on social responsibility aimed at promoting sustainable human development in Costa Rica. The impact envisaged under the strategic framework of the CCNRS would enable the implementation of sustainable environmental development policies, economic and social development initiatives, and socially responsible practices and behavior, in addition to encouraging a culture of transparency and accountability.*"⁷⁴

[159] Similarly, the Ombudsman represents the DHR in the National Commission for the Improvement of the Administration of Justice (CONAMAJ), the functions of which, according to Executive Decree No. 3498-J, include, among others, establishing, recommending or providing the means, activities and procedures in order for the entities related to administration of justice to coordinate their activities and programs (Article 2(a)); awareness-raising and coordination of the efforts aimed at improvement of the justice sector (Article 2(b)); and promoting citizen participation in matters related to justice.

[160] Furthermore, Article 14 of Law 7319 provides that if in the course of its activities the DHR becomes aware of an act that could constitute a criminal offense, it shall report it to the Public Prosecution Service.

[161] As regards accountability, Article 15 of Law 7319 requires the Ombudsman to submit an annual report on its activities to the Legislative Assembly. The same provision states that the Ombudsman shall appear before the Legislative Assembly to present an oral defense of the report. The response to the report is published on the DHR website (available at www.dhr.go.cr) and disseminated through activities carried out in different parts of the country.

[162] With respect to this topic, in 2004, the DHR created the Interagency Transparency Network [*Red Interinstitucional de Transparencia*] (RIF), which is "*an on-line tool by which institutions can upload state information on matters of interest to the public, such as, for example, budgets, income, expenditure, investment, payrolls, competitive bidding, hiring, procurement, suppliers, operating plans, activity and auditors reports, meeting minutes, decisions, agreements, projects, etc.*" and that it "*seeks to ensure the human and constitutional right of access to information; make current information about management of public resources more visible, understandable, and transparent; encourage citizen participation and accountability; restore public confidence in government institutions; and prevent acts of corruption.*"⁷⁵

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

[163] The DHR 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. Nonetheless, the Committee considers it appropriate to formulate certain observations in relation thereto:

[164] First, the Committee notes that the DHR has presented a legislative bill that would grant the body constitutional status, in order to ensure its stability and permanence.

74. *Ibid.*, p. 35.

75. *Ibid.*, p. 38.

[165] In addition to the foregoing, the Committee sees that the DHR has broad powers for discharging its responsibilities--including authority to carry out inspections without prior notice--and that government agencies and officials are required to collaborate with the DHR and provided it with the information that it requests; however, the Committee also notes that recommendations presented in DHR reports are not binding. In that regard, representatives of the DHR said that although the recommendations are not binding, there is moral pressure to implement them.

[166] In light of this situation, the Committee believes that it would be useful for Costa Rica to examine the advisability of giving the DHR a higher rank, in order to ensure, *inter alia*, that its recommendations have a greater impact and influence in the fight against corruption. The Committee will formulate a recommendation taking into account the foregoing. (See recommendations 3.4.1 and 3.4.6 in chapter II of this report.)

[167] Second, regarding difficulties in the performance of its functions and duties, during the on-site visit, DHR representatives indicated that the institution has a shortage of financial and human resources. In that connection, they explained that they have too few members of staff for the amount of work and the number of complaints that the institution processes. The Committee will formulate a recommendation in this regard (See recommendation 3.4.2 in chapter II of this report.)

[168] Third, as was mentioned during the on-site visit, as a result of the above lack of resources, the DHR does not have a comprehensive training program for its staff. The Committee believes that having such a training program is essential, *inter alia*, for ensuring regular, ongoing advancement of the institution's staff. The Committee will formulate a recommendation in this regard. (See recommendation 3.4.3 in chapter II of this report.)

[169] Fourth, it was revealed during the on-site visit that there is a lack of uniformity in the basic contents of annual reports submitted to the Legislative Assembly under Article 15 of Law 7319. As a result, the contents of the reports depend on the decision of the Ombudsman and vary from year to year. The Committee is of the opinion that having uniform criteria in this regard would be beneficial for the country under review as it would make it easier to measure the effectiveness with which the DHR fulfills its purposes and responsibilities. The Committee will formulate a recommendation bearing in mind these considerations. (See recommendation 3.4.4 in chapter II of this report.)

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

[170] Based on the response of the country under review to the questionnaire and the on-site visit, information was gathered regarding the results obtained by the DHR with respect to the fulfillment of its functions, including the following:

[171] First, as regards measures connected with prevention of corrupt practices, in its response to the questionnaire, the country under review explained that for the past several years the DHR has carried out an activity to mark International Right to Know Day, in order "*to raise awareness about the right of access to public information.*"⁷⁶ Furthermore, together with the UNDP, the DHR established the "Journalism against Corruption" award in 2012, one of the purposes of which is to spread awareness of the effects of corruption. Lastly, the DHR also coordinates an annual discussion with the Committee to Restore Values [*Comisión de Rescate de Valores*], on topics to do with transparency, access to information, accountability, and citizen participation.

76. *Ibid.*, p. 44.

[172] Second, as regards the functions of the DHR in the area of investigation and detection of acts of corruption, the response to the questionnaire mentions that, in keeping with its obligation under Article 14 of Law 7319 to report any act that could constitute a criminal offense to the Public Prosecution Service, in recent years the DHR has presented five complaints.

[173] In that connection, during the on-site visit, DHR representatives said that there is little coordination with the Public Prosecution Service. As a result, they explained, very few cases have been referred to that entity and there is a lack of results in that regard. The Committee will formulate a recommendation taking into account the foregoing. (See recommendation 3.4.5 in chapter II of this report.)

[174] Coupled with the above, the Committee notes an absence of results indicating the level of implementation by state institutions of DHR recommendations. The Committee considers that having such figures could help in determining the effectiveness of the recommendations issued by the DHR. (See recommendation 3.4.6 in chapter II of this report.)

3.4. Conclusions and recommendations

[175] Based on the comprehensive review of the DHR in the foregoing sections, the Committee formulates the following conclusions and recommendations:

[176] Costa Rica has considered and adopted measures intended to maintain and strengthen the Office of Ombudsman of the Republic as an oversight body, as indicated in Chapter II, Section 3 of this report.

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

- 3.4.1. Consider analyzing the possibility of granting the DHR a higher rank. (See Chapter II, Section 3.2 of this report.)
- 3.4.2. Provide the DHR with sufficient human and financial resources to carry out its functions properly, within available resources, particularly where prevention, detection, and investigation of acts of corruption are concerned. (See Chapter II, Section 3.2 of this report.)
- 3.4.3. Establish a comprehensive training program for DHR staff, in order, *inter alia*, to ensure regular, ongoing advancement of the institution's staff, and provide the DHR with the necessary resources for that purpose. (See Chapter II, Section 3.2 of this report.)
- 3.4.4. Establish uniform criteria and parameters on the basic contents of the annual reports submitted to the Legislative Assembly under Article 15 of Law 7319. (See Chapter II, Section 7319 of this report.)
- 3.4.5. Increase the coordination with the Public Prosecution Service, in order to ensure that the DHR complies with its obligation to inform the Public Ministry of facts of which it becomes aware that indicate the commission of a criminal offense and follow-up on the disposition of those cases. (See Chapter II, Section 3.3 of this report.)

- 3.4.6. Keep a record of results that indicate the level of compliance with, or implementation of, recommendations of the DHR by state institutions in order, *inter-alia*, to assist in determining the effectiveness of the recommendations it issues. (See Chapter II, Section 3.3 of this report.)

4. PUBLIC PROSECUTION SERVICE (*MINISTERIO PÚBLICO*)

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

[178] The Public Prosecution Service (MP) has a set of provisions in its legal framework, as well as other measures that refer, *inter alia*, to the following:

[179] Regarding its structure, under Article 1 of Law 7442 (Organizational Law of the Public Prosecution Service), the MP is an organ of the judicial branch that performs its functions in the criminal justice sphere. Article 3 of Law 7442 provides that the MP enjoys “*full functional independence in the exercise of its legal and regulatory powers and functions and, consequently, may not be impelled or interfered with by any authority other than the courts of justice in its sphere of responsibility.*”⁷⁷ Furthermore, Article 7 of this law provides that the MP shall have nationwide jurisdiction.

[180] As regards its objectives and functions, Article 3 of Law Him 7442 provides that the function of the MP is to request the criminal courts to enforce the law by bringing criminal actions and conducting preparatory investigations into publicly actionable crimes.

[181] The MP has a special anticorruption unit called the Probity, Transparency, and Anticorruption Prosecution Unit [*Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción*] (FAPTA), which was created by MP Administrative Circular 03-PPP. This special prosecution unit deals with the most serious corruption offenses involving public servants and private individuals, as well as cases in which the accused is a judicial official. Additionally, Item 7.7 of this circular grants the FAPTA the following functions: To prevent corruption among Public Prosecution Service officials and criminal prosecution auxiliary staff [7.7(a)]; to investigate and bring to trial criminal cases on corruption-related offenses in which the accused is an official of the Public Prosecution Service or any other member of the criminal prosecution auxiliary staff, an official of the Judicial Investigation Agency, a judge, or any other public servant [7.7(b)]; to instill the institutional values of the Public Prosecution Service in its staff [7.7(c)]; to apply efficiently, fairly, and objectively the system of consequences envisaged for Public Prosecution Service officials [7.7(g)]; to establish active and passive transparency policies [7.7(h)]; to establish probity policies in the Public Prosecution Service [7.7(i)]; to establish guidelines on the recruitment of new staff into the institution so as to ensure probity and transparency in future officials [7.7(j)]; and to encourage citizen participation in reporting unlawful acts committed by officials of the Public Prosecution Service and its auxiliary staff [7.7(l)].

[182] In its response to the questionnaire, the country under review said that there are no exceptions to the MP’s jurisdiction and that it may institute criminal proceedings against any civil servant or private citizen for offenses contrary to official duties in the civil service. However, the response explains that “*in the case of members of the supreme powers and officials who are required by the Constitution to be impeached by the Legislative Assembly in order to stand trial, it is necessary to*

77. *Ibid.*, p. 13.

follow the special procedure established in Title V ("Procedure for the Trial of Members of Supreme Powers") of the Code of Criminal Procedure (Law 7594).⁷⁸

[183] The head of the Public Prosecution Service is the Prosecutor General who, in accordance with Article 23 of Law 7442, shall be appointed by an absolute majority of all the members of the Full Court for a term of four years and may be reelected for terms of the same length. The same article also provides that, to be appointed, the Prosecutor General shall meet the same requirements as those demanded of a judge.

[184] With respect to liability of the Prosecutor General, Article 24 of Law 7442 provides that the imposition of penalties on the Prosecutor General requires that the procedure established in the Judicial Branch Organizational Law be followed, but that vacation of their appointment requires a two-thirds vote of all the members of the Full Court.

[185] Under Article 27 of Law 7042, the Prosecutor General shall appoint assistant prosecutors, prosecutors, and auxiliary prosecutors and that for the purposes of entry to the MP the effort shall be made to comply with the recruitment program that the Court shall regulate based on the recommendations of the Prosecutor General and the Judiciary School. Accordingly, the MP has a recruitment program as well as Rules of Procedure on Entry to the Public Prosecution Service, which established the basic requirements for the positions of prosecutor and auxiliary prosecutor. As regards the MP's auxiliary staff, Article 2 of the Rules of Procedure provide that they shall be governed by the provisions of the Judicial Branch Organizational Law and the Civil Service Statute. For its part, Article 39 of Law No. 7442 provides that the MP's Training and Supervision Unit shall organize, *inter alia*, the MP staff selection and recruitment programs in coordination with the Judiciary School and the Personnel Department.

[186] Furthermore, Article 44 of Law 5155 (Judicial Service Statute) provides that MP officials "*shall enjoy the right of tenure, provided that they enter the judicial service in due manner and are not fixed-term staff; and they may only be removed through a forcible downsizing of services or when there is due cause to order their transfer or exchange for another position at the same grade or lower, or if their termination is for the good of the public service, or when they engage in conduct that constitutes grounds for dismissal in accordance with this statute, its implementing regulations, the Judicial Branch Organizational Law, or the Labor Code.*"

[187] With respect to liability of MP officials, the response indicates that they are subject to the same general rules on ineligibility, conflict of interests, prohibitions, and liability as any other Costa Rican civil servant and, in particular, the disciplinary rules set forth in Law 7333 (Judicial Branch Organizational Law)⁷⁹

[188] As regards the human resources of the FAPTA, the response to the questionnaire states that the entity has "*an assistant prosecutor; three groups of prosecutors, who are organized into two groups with three auxiliary prosecutors under the supervision of a coordinating prosecutor, in addition to another group with two auxiliary prosecutors and one coordinating prosecutor. There is also an auxiliary prosecutor in charge of examining complaints filed against prosecutors and auxiliary staff. In addition, there is an administrative support staff: one judicial coordinator, judicial auxiliaries, cleaners, and legal technicians.*"⁸⁰ Regarding the FAPTA's staff, during the on-site visit, the

78. *Ibid.*, p. 21.

79. *Ibid.*

80. *Ibid.*, p. 24.

representatives of the agency reported that they did not have the 20 prosecutors that the executive branch of government assigned to the Public Prosecution Service in 2005 for dealing with corruption offenses, because some of those positions were used by the previous Prosecutor General to strengthen other areas of the MP; as a result, the FAPTA was left with only 15 of the 20 planned prosecutors.

[189] As regards decision-making in the MP, during the on-site visit, representatives of the MP explained that each prosecutor is responsible for managing the matters he or she is assigned. Nevertheless, decision-making must follow the institutional hierarchy, with adjustments to that order requiring the consent of the Assistant Prosecutor or Prosecutor General, as established in Article 18 of Organic Law of the Public Ministry.

[190] As regards mechanisms for reviewing decisions adopted by the MP, Article 71 of Law 7594 (Code of Criminal Procedure) grants the victim the right to appeal against dismissal or acquittal decisions. Furthermore, during the on-site visit, representatives of the MP explained that the possibility of disapproval also exists, where a judge may oppose a dismissal or acquittal and return the case to the prosecutor to take additional steps. The prosecutor may maintain or change their position. Should they maintain it, however, the judge may decide to submit the matter to the prosecutor's superior for an opinion.

[191] As for documents and manuals that describe the functions of its staff, the MP has the Judiciary Position Grade Description Manual, which contains information on every grade of position in the MP. Specifically with respect to the FAPTA, circulars issued by the Prosecutor General describe the functions of its staff.⁸¹

[192] As regards training imparted by the MP, Article 39 of Law No. 7442 provides that the MP's Training and Supervision Unit shall organize, among other things, the MP's staff training program. In that regard, in its response to the questionnaire, the country under review mentioned, "*That unit devises an annual program for all the staff, which is imparted both in person and virtually; it also provides training on issues specifically requested by special prosecution units based on their needs assessment. Some of the courses received by the FAPTA include: Challenging judgments, Oral proceedings, Public-sector corruption detection and investigation techniques, Interpreting financial statements.*"⁸²

[193] The MP has documented procedures for carrying out its work, through circulars and directives issued by the Office of the Prosecutor General; and the FAPTA, through its administrative guidelines and instructions. The response to the questionnaire mentions that circulars 10-2003, 19-2004, and 03-PPP-2010, issued by the Prosecutor General, describe the procedures by which the FAPTA carries out its work.⁸³

[194] As regards implementation of modern systems or technologies, the response to the questionnaire explains that "*the MP is in the first stage of the so-called "Fiscalía electrónica" [electronic prosecutor's office] project, which has the following objectives: introduction of a new management model for processing criminal investigations and integration of the prosecutor's office in the electronic criminal justice system instituted in the Second Judicial Circuit of San Jose. In January this year a pilot project was launched at one of the prosecution units that comprise the*

81. *Ibid.*, p. 28.

82. *Ibid.*

83. *Ibid.*

structure to be implemented in the course of several months this year. Implementation of the remaining units is scheduled for completion in 2013."⁸⁴

[195] As regards providing members of the public with information about the objectives and functions of the MP, the response to the questionnaire explains that this is done in three ways: (1) the MP website, which contains, among other things, information about how and where to lodge complaints, information about criminal offenses in Costa Rica, circulars and guidelines issued by the Office of the Prosecutor General, notices of competitive hiring processes, and annual reports; (2) its offices, where complaints can be filed in person; and (3) the Press Office, which is in charge of distributing institutional information of public interest to the mass media.⁸⁵

[196] As regards internal control, the MP is subject to the provisions of Law 8292 (Internal Control Code) as well as those contained in Manual of General Standards on Internal Control of the CGR and the entities and organs subject to its supervision. The response to the questionnaire notes that under Article 39 of Law 7442, the MP's Training Supervision Unit is responsible for verifying compliance with the provisions of Law 8292 and the above Manual, as well as for "supervising compliance with the guidelines issued by the Prosecutor's Office and monitoring staff performance."⁸⁶ The response also notes that in 2010, this unit prepared a supervision guide for monitoring the performance of prosecution units.

[197] With regard to mechanisms for addressing claims, complaints, or reports of wrongdoing in connection with the fulfillment of its objectives and the conduct of its staff, the MP has a Prosecutorial Inspection Unit attached to the Office of the Prosecutor General, whose basic purpose is to seek the truth in each case investigated and issue a corrective or punitive ruling, depending on the fault reported; it also has the Judiciary Service Comptroller's Office, which has offices in each of the country's judicial circuits. In addition, the FAPTA has a complaints unit, which deals with complaints relating to its criminal cases.⁸⁷

[198] As regards ensuring the necessary budget resources for its operations, the response to the questionnaire mentions that *"the MP annually presents a preliminary draft budget to the Judiciary Budget Committee for analysis, which ensures the necessary resources for an efficient service."*⁸⁸

[199] As to mechanisms for coordination with other state agencies and for securing the support of the citizenry in carrying out its functions, the response to the questionnaire mentions the creation of a strategic partnership between the MP, PGR, CGR, and the Costa Rican Institute on Drugs, with the aim of establishing an interagency coordination mechanism for assistance and cooperation to tackle corruption.⁸⁹ In this context, the above four institutions signed a letter of intent in June 2010. The Interagency Committee was created in 2012, composed of one representative from each of the institutions. The response also mentions that the MP has made an arrangement with the Second Judicial Circuit Criminal Court of the Treasury and Civil Service Criminal Jurisdiction to ensure access for prosecutors to the judicial branch's "virtual desk" [*escritorio virtual*].

84. *Ibid.*, p. 31.

85. *Ibid.*, p. 33.

86. *Ibid.*

87. See: http://ministeriopublico.poder-judicial.go.cr/servicios/inspeccion_fiscal.html

88. See response of Costa Rica to the questionnaire for the fourth round, p. 34, *supra* note 4.

89. *Ibid.*

[200] Additionally, the Rules for the application of the Law of the Treasury and Civil Service Criminal Jurisdiction (Circular No. 36-3003 of the CSJ), establish the process whereby, once a corruption complaint has been evaluated, it is transferred to the FAPTA, which assumes control of the case (articles 2 to 6 of the Rules)

[201] As regards accountability mechanisms with respect to the MP, Law 7442 requires, at Article 25(i), the presentation of an annual report to the full court on its work, including criminal prosecution policies and general instructions established, provision of resources, legal proposals, And any other matter that the Prosecutor General deems appropriate. These annual reports are published on the MP website at: <http://ministeriopublico.poder-judicial.go.cr/transparencia/Index%20memorias.html>. The MP website also has a section entitled "Transparency and Probity," which contains information, *inter alia*, on budget execution, the structure of the MP, distribution of technological equipment, indicators for attaining internal control goals, and the Strategic Plan 2007-2011 assessment findings.

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

[202] The Public Prosecution Service 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. Nonetheless, the Committee considers it appropriate to formulate certain observations in relation thereto:

[203] First, as regards accountability mechanisms, the Committee notes that as with the PEP (which reports to the PGR), the FAPTA, as one of the MP's prosecution units, does not have its own annual report. As a result, most of the FAPTA's accountability reporting is done through the relevant section in the MP's annual report. However, upon reviewing the 2011 Annual Report of the MP, the Committee found that although the FAPTA had been operational for more than one year at that point, its results filled less than one page in the more than 100 pages of the report. Furthermore, the report contains little useful information on the FAPTA's results in carrying out its functions. The Committee will formulate a recommendation in that regard. (See recommendation 4.4.1 in chapter II of this report.)

[204] Second, with respect to mechanisms for supplying information to the public, raising awareness about the procedures established for carrying out its functions, and providing guidance on filing complaints, the Committee notes that the FAPTA does not have its own website and there is little information on the entity at the Public Prosecution Service's website. In that regard, in its report, *Estado de la Nación* notes, "Most of the responses for this questionnaire were compiled from a special official letter ... that the FAPTA prepared at the request of the researchers owing to the fact that information on that order of detail is not available, either in the annual reports, or on the website."⁹⁰ It should be mentioned that in November 2012, the MP website ranked 102nd out of the 133 Internet sites assessed in the INCAE Business School's "Assessment of Quality in Public Services Provisions through Digital Media in Costa Rica" [*Evaluación de la calidad de la prestación de servicios públicos por medios digitales en Costa Rica*].⁹¹ Bearing in mind the importance of the website for the above-described purposes, the Committee will formulate a recommendation. (See recommendation 4.4.2 in chapter II of this report.)

90. See the document presented by *Estado de la Nación*, as a civil society organization, p. 33, *supra* note 21

91. This document is available in Spanish at: <http://www.gobiernofacil.go.cr/e-gob/gobiernodigital/premios/InformeWeb2012.pdf>

[205] Third, at the meetings with the FAPTA in the course of the on-site visit, the institution's representatives said that it lacked sufficient human resources to discharge its assigned responsibilities properly. In that regard, they explained that when the FAPTA was conceived, the President of the Republic announced that it would have 20 prosecutors and that, therefore, the approved budget made provision for 20 prosecutors. In this regard, they explained that in 2005, the President of the Republic assigned 20 prosecutor positions to the Public Prosecution Service for dealing with corruption offenses; however, some of these positions were used by the previous Prosecutor General to bolster other areas of the MP, as a result of which the FAPTA was left with only 15 of the 20 planned prosecutors: that is, 75% of the prosecutors originally provided for. The Committee will formulate a recommendation taking this situation into account. (See recommendation 4.4.3 in chapter II of this report.)

[206] Fourth and in connection with the foregoing, prosecutors explained that the staffing shortage meant that they had to establish an order of priority for cases to be addressed by the FAPTA, leaving provincial or district prosecutors to process the balance of cases. In this connection, they noted that the foregoing highlights the importance of having an anticorruption prosecutor in each province. The Committee will offer a recommendation in that regard. (See recommendation 4.4.4 in chapter II of this report.)

[207] Fifth, during the on-site visit they said that the FAPTA's only investigators were in the judicial investigation agency's Fraud Unit. In addition, the response times of these investigators are slow because they do not work exclusively on the investigation of corruption offenses; instead, they also have responsibilities in the investigation of other offenses. In addition, there is a need for a unit comprising investigators who have received specific training in the anticorruption area. The Committee will formulate a recommendation. (See recommendation 4.4.5 in chapter II of this report.)

[208] Sixth, at the meetings of the Public Prosecution Service during the on-site visit, several FAPTA prosecutors explained that although they (the prosecutors) receive specific training in offenses associated with malfeasance in public office, the same was not true with respect to judges assigned to examine cases of that type. Therefore, prosecutors explained that training for judges in this area could strengthen efforts to punish acts of corruption. The Committee will formulate a recommendation taking this situation into account. (See recommendation 5.4.2 in chapter II of this report.)

4.3. Results of the legal framework and/or other measures

[209] Based on the response of the country under review to the questionnaire and the on-site visit, information was gathered regarding the results obtained by the Public Prosecution Service with respect to the fulfillment of its functions, including the following:

[210] Concerning the function of investigating and detecting acts of corruption, the response to the questionnaire includes a table on processing of cases of malfeasance in public office between 2007 and 2011, which covers both the cases processed up to 2010 by the erstwhile *Fiscalía de los Delitos Económicos* [Financial Crime Prosecution Unit] (the entity tasked with prosecuting malfeasance in public office prior to 2011) and those processed by the FAPTA in 2011. The table shows the following number of new cases registered per year: 105 in 2007, 201 in 2008, 129 in 2009, 163 in 2010, and 460 in 2011. Furthermore, the response contains a series of tables that show the number of cases in process (new and finalized) in the FAPTA in 2011, the number of cases in process (new and finalized) in the FAPTA by virtue of the creation of the Treasury and Civil Service Criminal

Jurisdiction between 2007 and 2011, and the number of cases processed by the FAPTA before the Treasury and Civil Service Criminal Jurisdiction in the same interval, among other information.

[211] With regard to the above figures, the Committee notes a marked upswing in the number of new cases following the inception of the FAPTA in 2011, which suggests that the entity is achieving one of its purposes. Furthermore, the Committee takes note of the observation made by the country under review in its response to the questionnaire that more cases are being handled by the FAPTA, which is also disposing of a larger number of cases.

[212] However, during the on-site visit, a number of representatives of civil society organizations and scholars mentioned that one frequent complaint from members of the public was the long duration of corruption trials. In that regard, the document presented by *Estado de Nación* mentions “*the delay in finalizing corruption cases, especially high-profile ones, with many such trials lasting more than 10 years without a final decision being reached.*” The document added, “*This delay in justice contributes to the public’s sense that such cases go unpunished.*”⁹² On this point, the Committee notes an absence of statistics on the average length of cases prosecuted in the Treasury and Civil Service Criminal Jurisdiction by the MP, which could assist in identifying the steps needed to increase efficiency in processing cases. The Committee will offer a recommendation. (See recommendation 4.4.6 in chapter II of this report.)

[213] During the on-site visit, representatives of the FAPTA presented a graph that shows the following with respect to cases investigated and processed by the FAPTA in 2011: Total cases – 178; Rejected – 48; Joined – 18; Referral to another authority – 89; Lack of jurisdiction – 9; Acquittals – 8; Indictment – 4; Timeliness criteria – 2.

[214] A graph was also presented that shows the following data with respect to cases received from all subnational prosecution units in the country for processing by the FAPTA: Total cases – 1295; Rejected – 632; Joined – 3; Referral to another authority – 231; Lack of jurisdiction – 0; Acquittals – 302; Indictment – 125; Timeliness criteria – 0.

[215] Regarding the figures contained in the above table, the Committee notes that the FAPTA, as the entity of the MP charged with the prosecution of malfeasance in public office, is acting as an adequate mechanism for centralizing and channeling complaints of malfeasance in public office. The figures also suggest a degree of coordination between the FAPTA and subnational prosecution units.

[216] However, with respect to cases received by the FAPTA from subnational prosecution units in 2011, the Committee finds that a substantial number of them – 632 cases (49%) – were rejected while 302 (23%) resulted in acquittals. The Committee is concerned by the fact that almost 75% of the cases received from subnational prosecution units in 2011 were rejected or resulted in an acquittal, while just 10% led to indictments formally submitted to the courts.

[217] As regards the criteria used by the Public Prosecution Service in processing cases, in the course of the on-site visit, FAPTA representatives explained that when a complaint gives rise to the assumption that a crime has been committed, the case is investigated and submitted for trial. In this regard, it is strange that the majority of cases from subnational prosecution units, which, presumably, have been assessed by those units in keeping with the Rules on Enforcement of the Treasury and Civil Service Criminal Jurisdiction Law, should have been rejected.

92. See the document presented by *Estado de la Nación*, as a civil society organization, p. 27, *supra* note 21.

[218] The Committee believes that the country under review could benefit from a study to determine the reasons why a low number of cases submitted to the FAPTA by subnational prosecution units lead to a formal indictment in court, and it will formulate a recommendation in that connection. (See recommendation 4.4.7 in chapter II of this report.)

[219] In addition, the Committee does not have information on the follow-up conducted on the 320 cases⁹³ referred to another authority. On this point, the document presented by Estado de la Nación offers the opinion that *“the number of rejections and case referrals is increasing, which is a worrying indicator, as the likelihood increases of complaints not being brought to trial. When this happens, no adequate information is provided about what happens to the majority of cases that do not end up in court, which fuels the public’s sense of impunity.”*⁹⁴ The Committee will formulate a recommendation in view of the absence of results in this area. (See recommendation 4.4.8 in chapter II of this report.)

[220] The Committee also notes an absence of results on the FAPTA’s performance of its functions with regards to investigating cases of corruption in which the accused is an official of the Public Prosecution Service or the judiciary, and it will formulate a recommendation in that respect. (See recommendation 4.4.9 in chapter II of this report.)

[221] Finally, given that the Committee finds no statistics on the number of cases that result in no charges being filed or an acquittal because the statute of limitations has run or because of the extinction of liability for lack of a decision within statutory time limits, it will make an appropriate recommendation. (See recommendation 4.4.10 in chapter II of this report.)

4.4. Conclusions and recommendations

[222] Based on the foregoing comprehensive analysis of the Public Prosecution Service, the Committee offers the following conclusions and recommendations:

[223] Costa Rica has considered and adopted measures intended to maintain and strengthen the Public Prosecution Service as an oversight body, as indicated in Chapter II, Section 1 of this report.

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

- 4.4.1. Establish uniform criteria and parameters on the contents of the annual report of the Public Prosecution Service, and endeavor to include relevant information about the performance of the FAPTA’s functions and responsibilities, in particular, where detection and investigation of acts of corruption are concerned. (See Chapter II, Section 4.2 of this report.)
- 4.4.2. Strengthen the website of the Public Prosecution Service with the inclusion of relevant information on the FAPTA and, so that the website might serve as a useful mechanism for informing the public about the objectives and functions of the latter, provide information about the procedures established for carrying out those

93. The sum of the 89 cases investigated by the FAPTA and referred to another agency, and the 231 cases submitted to the FAPTA by subnational prosecution units and then referred by the FAPTA to another agency.

94. See the document presented by *Estado de la Nación*, as a civil society organization, p. 49, *supra* note 21.

functions and offer guidance to the public on how to present complaints to it. (See Chapter II, Section 4.2 of this report.)

- 4.4.3. Provide the FAPTA with sufficient human and financial resources to carry out its functions properly, within available resources. (See Chapter II, Section 4.2 of this report.)
- 4.4.4. Consider the possibility of assigning an anticorruption prosecutor from the FAPTA to each province in the country. (See Chapter II, Section 4.2 of this report.)
- 4.4.5. Consider the possibility of establishing a unit composed of investigators specializing in anticorruption matters, within the judicial investigation agency. (See Chapter II, Section 4.2 of this report.)
- 4.4.6. Keep statistical records on the average length of corruption cases processed by the FAPTA, including information about the investigation and trial stages, respectively, in order to help identify the steps needed to increase efficiency in processing cases. (See Chapter II, Section 4.3 of this report.)
- 4.4.7. Conduct a study to determine the reasons why a low number of cases submitted to the FAPTA by sub-national prosecution units lead to a formal indictment in the courts. (See Chapter II, Section 4.3 of this report.)
- 4.4.8. Strengthen follow-up on cases referred by the FAPTA to another authority for processing and keep a record on how those cases conclude. (See Chapter II, Section 4.3 of this report.)
- 4.4.9. Keep statistical records on the FAPTA's performance of its functions with regards to investigating cases of corruption in which the accused is an official of the Public Prosecution Service or the judiciary, in order to identify challenges and recommend corrective measures. (See Chapter II, Section 4.3 of this report.)
- 4.4.10. Keep statistical records on the results of activities involving its investigation and detection of acts of corruption, so as to have available information on the number of cases in each of the last five years that were ready for a decision, as well as information on the number of cases that resulted in no charges being filed or an acquittal because the statute of limitations has run or because of the extinction of liability for lack of a decision within statutory time limits, in order to identify challenges and recommend corrective measures. (See Chapter II, Section 5.3 of this report.)

5. TREASURY AND CIVIL SERVICE CRIMINAL JURISDICTION

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

[225] The Treasury and Civil Service Criminal Jurisdiction (hereinafter also the “Treasury Criminal Jurisdiction” or “Jurisdiction”) has a set of provisions in its legal framework, as well as other measures that refer, *inter alia*, to the following:

[226] Under Article 1(b) of Law 8275 (Law Creating the Treasury and Civil Service Criminal Jurisdiction), the main purpose of the entity is to hear and issue final decisions on malfeasance in public office and tax offenses, as well as those contained in the Customs Code and the Organizational Law of the Central Bank of Costa Rica.

[227] Article 2 of the above law provides that the courts of justice shall take cognizance of the offenses mentioned in that law through the Treasury and Civil Service Lower Criminal Court and the Treasury and Civil Service Criminal Tribunal. Article 2 also provides that if the matters to be heard by the courts created in that law are not sufficient to warrant the existence of the specialized tribunal, the Court may assign it jurisdiction over other subject matter in the framework of the judicial circuit where it is located.

[228] Accordingly, Supreme Court of Justice Circular 36-3003 on the Rules on Enforcement of the Treasury and Civil Service Criminal Jurisdiction Law, states, at Article 1, *“It shall be incumbent upon the Treasury and Civil Service Lower Criminal Court of the Second Judicial Circuit of San Jose to take on the additional responsibility of hearing the matters referred to in the Law Creating the Treasury and Civil Service Criminal Jurisdiction. This shall be done by a roster of the judges in those chambers, in keeping with their respective competencies. Consequently, that lower court shall assume the additional responsibility of addressing the new cases submitted to that jurisdiction. The preliminary investigation stage shall be dealt with by a judge; the intermediate stage shall be presided over by a different judge from the one who handled the preliminary investigation. The trial shall take place before the criminal tribunal of that circuit as an additional responsibility.”*

[229] As regards the independence of the Jurisdiction in carrying out its functions, Article 2 of Law 7333 (Judicial Branch Organizational Law) provides, *“The judicial branch is only bound by the Constitution and the law. The decisions that it issues in the matters under its jurisdiction do not impose on it more responsibilities than those expressly set forth in the principles of law.”* In addition to the foregoing, Article 5 of Law 7594 (Code of Criminal Procedure) provides, at its pertinent part, that in performing their adjudicatory function, judges are independent from all members of the state powers. Article 5 also provides, *“In no circumstances may the organs of the state take it upon themselves to try cases, or reopen those concluded by a final decision; neither may they interfere in a proceeding. They shall comply with and enforce the orders of judges, in keeping with the decisions adopted.”*

[230] As regards the exercise of overlapping functions, in its response, the country under review explains that owing to its purpose and autonomy, there were no overlapping functions where the judicial branch was concerned. The country under review also explained in its response that there are no exceptions to the jurisdiction of the judicial branch. In that regard, Article 3 of Law 8275 provides at its pertinent part that all judges of the Treasury and Civil Service Criminal Jurisdiction that are established shall have nationwide jurisdiction and their seat shall be in the judicial circuit designated by the Supreme Court of Justice.

[231] With respect to the adoption of decisions in the Treasury and Civil Service Criminal Jurisdiction, the response to the questionnaire explains that *“the procedure for trying cases that correspond to the Treasury and Civil Service Criminal Jurisdiction is covered in the Code of Criminal Procedure (Law 7594). This procedure has the features of an accusatory system composed*

of three stages (preliminary investigation, intermediate, and public oral trial), with the possibility of appealing against the judgment issued by the criminal tribunal.”⁹⁵

[232] As regards appropriate mechanisms for reviewing decisions adopted, the response mentions that *“decisions issued by the trial tribunal may be appealed before the appellate tribunal and a cassation appeal may be submitted to the Third Chamber of the Supreme Court of Justice.”*⁹⁶ In addition, Articles 320 and 340 of the Code of Criminal Procedure provide for the possibility of appeal by the MP or the victim against a decision to acquit.

[233] As regards the highest authority in the Treasury and Civil Service Criminal Jurisdiction, Article 156 of the Constitution provides that the Supreme Court of Justice is the superior tribunal in the judicial branch and that all judicial branch tribunals, officials, and employees answer to it. Article 157 of the Constitution provides that the Supreme Court shall be composed of the justices necessary to ensure good service. In that regard, the response notes that the Supreme Court is composed of 22 justices distributed in three cassation chambers: First, Second, and Third Cassation Chambers, each with five members. It also comprises a Constitutional Chamber, which has seven members⁹⁷

[234] As regards the election of Supreme Court justices, Article 158 of the Constitution provides that they shall be elected for terms of eight years by a vote in favor of two thirds of the Legislative Assembly. Article 159 sets out the eligibility requirements for a Supreme Court justice.

[235] As to the removal or imposition of disciplinary sanctions on Supreme Court justices, Article 165 of the Constitution provides that justices of the Supreme Court *“may only be suspended through a formal finding of grounds for prosecution, or on other grounds stipulated by the law in the relevant chapter of the disciplinary rules. In the latter case, the decision shall be taken by the Supreme Court of Justice in a secret ballot with the vote in favor of at least two thirds of all of its members.”* Furthermore, the response to the questionnaire says, *“If the same number of court justices consider that the appropriate course of action is vacation of the appointment, the Court shall notify the Legislative Assembly of that fact so that it might adopt the appropriate decision. Corrections in terms of warnings and reprimands shall be adopted by a simple majority of all the court justices. In proceeding against a justice, the Court shall appoint one of its members as the investigating body.”*⁹⁸

[236] As regards ensuring the necessary resources for the operations of the Treasury and Civil Service Criminal Jurisdiction, Article 3 of Law No. 7333 provides that the Supreme Court of Justice shall decide the number of processing and decision-making judges, in addition to all the other judicial staff that all courts should have regardless of their category and subject matter jurisdiction. To that end, it shall take into consideration the needs of each chamber with a view to ensuring the best possible provision of justice. In that connection, the response to the questionnaire explains that *“this appointment of staff is done bearing in mind the information provided by the Superior Council of the Judiciary in its annual report, which, in addition to describing the workings of the courts of the Republic and the other organs, departments, and offices of the judicial branch, details the needs that*

95. See response of Costa Rica to the questionnaire in relation to the judicial branch p. 3, available at:

http://www.oas.org/juridico/PDFs/mesicic4_cri_juris.pdf

96. *Ibid.*, p. 4.

97. *Ibid.*, p. 5.

98. *Ibid.*, p. 6.

*exist in terms of staffing, facilities, and resources for ensuring the proper and correct performance of judicial functions.*⁹⁹

[237] The recruitment of judiciary officials, including those in the Treasury and Civil Service Criminal Jurisdiction, is governed by the provisions of Law 5155 (Civil Service Statute). Article 66 of the Statute establishes the judicial career system, the purpose of which is to “*organize by means of competitions and examinations, the entry, transfer, and promotion of all justice administration officials, except Supreme Court justices, from the lowest ranked to the most senior positions in the judiciary.*” For its part, Article 18 of the Statute contains the eligibility requirements for joining the Judicial Service.

[238] As regards liability of judicial branch officials, the response to the questionnaire explains that they are subject to the same general rules on ineligibility, conflict of interests, prohibitions, and liability as all other Costa Rican government servants, as well as by the special regime, which is primarily governed by the Organic Law of the Judicial Branch.¹⁰⁰

[239] The judiciary has a Post Classification and Description Manual, which specifies the functions of officials in the Treasury Criminal Jurisdiction, including, among other information, their nature, typical duties, and responsibilities.

[240] As regards periodic training for judicial branch officials, Law No. 6593 provides that this is the responsibility of the Judiciary School, without prejudice to such other training mechanisms as the Court may introduce. Law No. 8275, Article 4, specifically instructs the Judiciary School to provide ongoing training to officers of the Criminal Taxation Jurisdiction in the areas of their competence. As for specific training imparted, the response to the questionnaire says that “*at present, the Judiciary School offers a Specialization Program for judges that includes a Basic General Remedial Course and a Criminal Specialization Program. An Initial Training Program for Judgeship Candidates (hereinafter FIAJ, for the Spanish) was recently launched. It is intended for legal professionals who aspire to serve as judges, and aims to provide them with the resources for a better performance and planning of their activities.*”¹⁰¹ In addition, the judicial branch website has a Virtual Training Center for providing online training to judicial officials.

[241] The response to the questionnaire mentions the existence of documented working procedures for the judicial branch: Law 7594 (Code of Criminal Procedure), the second part of which outlines the various procedures that criminal proceedings involve as well as alluding to the bodies that comprise it and the persons responsible for conducting those proceedings; Law 8275, which governs the subjective, procedural, and regulatory dimensions of the Treasury and Civil Service Criminal Jurisdiction; and Article IX of Circular 36-2003 of the Full Court of the Judicial Branch (Rules on Enforcement of the Treasury and Civil Service Criminal Jurisdiction Law).

[242] As regards institution-building measures, the response mentions that the Supreme Court of Justice has implemented a project on Oral Proceedings and Modern Management in the lower criminal court and criminal tribunal responsible for the Treasury and Civil Service Criminal Jurisdiction, which is carrying out a study, review, redesign, and implementation of new working methods adapted to the characteristics and needs of each chamber, taking as its guiding principles the institutional policies of access to justice, oral proceedings, and “zero paper”.

99. *Ibid.*

100. *Ibid.*, p. 8.

101. *Ibid.*, p. 9.

[243] As regards implementation of modern systems and technologies, during the on-site visit, the members of the MESICIC committee had an opportunity to visit the offices of the Digital Criminal Court, which aims, *inter alia*, to reduce the time taken to settle cases and improve the perception of and attention to the public.¹⁰²

[244] As regards providing members of the public with information about the objectives and functions of the Treasury and Civil Service Criminal Jurisdiction, the procedures established for carrying out its functions, and how to submit complaints to it, the response to the questionnaire explains that this is done in three ways: (1) through the Office of the Services Controller, which, *inter alia*, provides information and guidance to the public on the organization, workings, and services offered by the judicial branch; (2) the Press and Organizational Communication Department, which distributes institutional information of public interest to the mass media; and (3), its offices, where injured parties can learn about the status of their case and talk to the judge presiding over the proceedings.¹⁰³

[245] With respect to internal control mechanisms, all judicial branch entities, including the Treasury Criminal Jurisdiction, are subject to Law 8292 (Internal Control Code). Accordingly, the Superior Council of the Judiciary has an Internal Control Unit, which “*is the body responsible for verifying compliance with Law 8292 within the organization and with the ‘Manual of General Standards on Internal Control of the CGR and the entities and organs subject to its supervision.’ It also implements operational plans, self-assessment processes, and the Risk Appraisal System (SERVI-PJ). The unit has nationwide jurisdiction.*”¹⁰⁴

[246] As regards attention given to claims and complaints in connection with the fulfillment of its objectives, the judicial branch has, in first place, the Office of the Services Controller of the judicial branch, an organ attached to the Superior Council of the Judiciary “*responsible for ensuring that members of the public receive the best possible attention in all of their dealings with any area of the judiciary, including, of course, the Treasury and Civil Service Criminal Jurisdiction.*”¹⁰⁵

[247] Furthermore, the judicial branch has the Judicial Inspection Tribunal, which, in accordance with Article 184 of Law 7333, “*exercises regular and permanent control over all judicial employees and monitors their correct performance of their duties; processes complaints presented against those employees; investigates information when any irregularity comes to its attention, and adopts the appropriate decision with respect to the disciplinary regime, without prejudice to the authority of other organs and officials of the judicial branch in such matters.*”

[248] For its part, Article 183 of Law No. 7333 provides that faults attributable to members of the Superior Council of the Judiciary or the Judicial Inspection Tribunal shall be taken up by the Full Court.

[249] As regards ensuring the necessary budgetary resources, the response to the questionnaire explains that “*the judicial branch supplies the material needs of the judicial chambers in charge of the Treasury and Civil Service Criminal Jurisdiction. Specifically, the General Administrator of the Second Judicial Circuit of San Jose, where the Lower Criminal Court and the Criminal Tribunal on Public Finances are located, draws up the preliminary draft budget which is examined and approved*

102. *Ibid*, p. 11.

103. *Ibid*, p. 12.

104. *Ibid*.

105 *Ibid*, p. 13.

by the Superior Council of the Judiciary — Article 81 (17) of the Judicial Branch Organizational Law (Law 7333). Final approval of the judicial branch budget rests with the Supreme Court of Justice. It is worth noting that budget information can be checked by members of the public via a link provided by the Judicial Branch Planning Department.”¹⁰⁶

[250] As regards mechanisms for coordination with other oversight bodies, the response to the questionnaire notes that the Public Prosecution Service coordinates with the Lower Criminal Court of the Second Judicial Circuit.¹⁰⁷ As a result of this coordination, all prosecutors have access to the “virtual desk” where they can consult the Court’s database. In addition, the response to the questionnaire¹⁰⁸ mentions the coordination mechanism established in Circular 36-3003, Rules on Enforcement of the Treasury and Civil Service Criminal Jurisdiction Law, which provides that “*the local prosecutor shall receive the complaint and carry out the preliminary investigation, as appropriate. Using locally available means of communication, the prosecutor shall request the leave of the Lower Criminal Court of the Second Judicial Circuit of San Jose to carry out any act that might require the judge’s approval (such as, for example, imposition or amendment of precautionary measures, preliminary evidence requests, searches, seizures, etc.). As appropriate, the Judge of the Lower Criminal Court of the Second Judicial Circuit of San Jose shall rule on the request and, as necessary, instruct the judicial authority in the place where the act occurred to take the necessary steps, should it be necessary to collect evidence there.*”

[251] As regards accountability, Article 80 of Law 7333 provides that the Superior Council of the Judiciary shall submit an annual report to the Supreme Court of Justice on its operations and those of the tribunals of the Republic and all other judicial branch organs, departments, and offices. As for the contents of the report, the same provision states that “*it shall include the needs which, in its opinion, need to be met in terms of staffing, facilities, and resources to ensure the proper and correct performance of judicial functions. Before preparing the report it shall ask the tribunals, lower courts, and the other organs, offices, and departments for an annual report on work carried out and concrete needs.*”

[252] In addition, Article 180 of the above law provides that each Tribunal shall submit to the Council in the first fortnight of January each year, a report on the work carried out the previous year. For its part, Article 179 requires that heads of chambers submit a quarterly report to the Superior Council on cases received, pending, and settled, indicating what final or intermediate judgments have been issued, justification for delays, and other information of interest. The response mentions that the above information is processed by the Judicial Branch Planning Department and published on that department’s website at: <http://www.poder-judicial.go.cr/planificacion/>

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

[253] The Treasury and Civil Service Criminal Jurisdiction 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. Nonetheless, the Committee considers it appropriate to formulate certain observations in relation thereto:

[254] First, at meetings held with representatives of civil society organizations, the private sector, and scholars in the framework of the on-site visit, several of those present said that the public considers

106. *Ibid.*

107. *Ibid.*

108. *Ibid.*, p. 16.

judicial delay to be a serious problem in Costa Rica. In that same connection, the President of the Second Criminal Chamber said in the course of the meetings held with members of the judiciary that the most commonly heard criticism of the entity, from society's point of view, was judicial delay.

[255] The Committee notes with respect to the foregoing that the representatives of the judicial branch were unable to say if having a specialized tribunal and lower court of the kind authorized by the Law Creating the Treasury and Civil Service Criminal Jurisdiction would help to remedy the problem of judicial delay. It was also unclear if there were sufficient offenses in this area to justify the creation of a specialized lower court and tribunal. In the opinion of the president of the Second Criminal Chamber, part of the problem also stemmed from the concentration of all corruption-related and civil service offenses in San Jose. The Committee believes that it would be very useful for the country under review to evaluate if the number of cases involving offenses of the kind mentioned in the Law Creating the Treasury and Civil Service Criminal Jurisdiction merits the creation of specialized courts in the manner envisaged by law, and it will formulate a recommendation in that regard. (See recommendation 5.4.1 in chapter II of this report.)

[256] Second, during the on-site visit, representatives of the FAPTA mentioned the need for additional specialized training for judges on offenses involving malfeasance in public office. Representatives of the Public Prosecution Service added that lack of specialized knowledge on the part of many judges was causing delays in judicial proceedings. Similarly, the response to the questionnaire also says that the staff of the Treasury and Civil Service Criminal Jurisdiction would benefit from more training in this category of offenses. One judge said that she had received no training in that area in her eight years of service. The Committee will formulate a recommendation bearing in mind this need and the problems mentioned in the preceding paragraph. (See recommendation 5.4.2 in chapter II of this report.)

[257] Third and in connection with the foregoing, in the response to the questionnaire and at the meetings held with the PEP during the on-site visit, representatives of that agency explained that a strategy was also needed to provide judges with information, *inter alia*, on the legal basis and objectives of the concept of social harm. The Committee will formulate a recommendation in that connection. (See recommendation 5.4.3 in chapter II of this report.)

[258] Fourth, during the on-site visit, representatives of the Treasury Criminal Jurisdiction mentioned the need for additional financial resources. They said in that regard that they had reported problems concerning their workload and shortage of funds to the head of the judicial branch. The Committee will offer a recommendation. (See recommendation 5.4.4 in chapter II of this report.)

[259] Fifth, it was mentioned during the on-site visit that some judges do not have access to the virtual docket in some courtrooms, which would make it easier for them to carry out their duties. The Committee will offer a recommendation. (See recommendation 5.4.5 in chapter II of this report.)

5.3. Results of the legal framework and/or other measures

[260] Based on the response of the country under review to the questionnaire and the on-site visit, information was gathered regarding the results obtained by the Treasury and Civil Service Criminal Jurisdiction and with respect to the fulfillment of its functions, including the following:

[261] As regards the functions of the Treasury Criminal Jurisdiction concerning punishment of acts of corruption that give rise to criminal liability, the response to the questionnaire included the

following table, which, according to the country under review, “shows the annual caseload of the Criminal Tribunal, in addition to the number of cases in which a judgment was issued as a percentage of the total number of cases finalized, which was 68.07% in 2007, 69.81% in 2008, 64.73% in 2009, 72.50% in 2010, and 70.89% in 2011. Thus, the number of cases in which a judgment was issued by the Criminal Tribunal on crimes of malfeasance in public office as a proportion of the total number of cases on which that tribunal pass judgment was 27.71% in 2007, 20.54% in 2008, 29.53% in 2009, 24.46% in 2010, and 29.69% in 2011.”

DEVELOPMENTS IN THE CRIMINAL TRIBUNALS FROM 2007 TO 2011						
Year	In process as of January 1 each year	New cases registered	Cases re-registered	Cases finalized	Ruling with judgment	Ruling with judgment on crimes of malfeasance in public office
2007	804	532	97	758	516	143
2008	682	447	71	530	370	76
2009	673	589	100	570	369	109
2010	799	527	68	451	327	80
2011	943	624	142	646	458	136

[262] The Committee notes that the above table shows that between 2007 and 2011, the majority (approximately 70%) of finalized cases included rulings with a judgment.

[263] Furthermore, in its response, the country under review also presented a table showing the number of judgments issued in the Treasury and Civil Service Criminal Jurisdiction from 2007 to 2011, including decisions to file charges and acquittals, in addition to the type of offense corresponding to those judgments.¹⁰⁹

[264] With respect to that table, the country under review said, “The decisions included one acquittal, cases in which the statute of limitations had run or liability had been extinguished, and cases in which the alleged crime did not exist, was not committed by the accused, did not constitute a recognized criminal offense, there was uncertainty that the accused had committed the offense, there were justifying grounds, or the accused was innocent. Based on the foregoing, we do not have sufficient statistical information that would enable us to determine how many of those acquittals were due to the running of the statute of limitations or extinction of liability and how many can be attributed to other factors.”¹¹⁰ In view of the absence of information on the number of cases that result in no charges being filed or an acquittal because the statute of limitations had run or because of the extinction of liability for lack of a decision within statutory time limits, the Committee will formulate a recommendation. (See recommendation 5.4.6 in chapter II of this report.)

[265] In that same connection, The Committee notes that the information presented does not allow a determination of the number of cases in each of the last five years that were ready for a decision. The Committee will make an appropriate recommendation. (See recommendation 5.4.6 in chapter II of this report.)

109. *Ibid.* p. 17.

110. *Ibid.*

[266] Finally, with respect to the judicial delay mentioned in section 5.2 above, the Committee notes an absence of statistics on the average length of corruption-related cases disposed of in the Treasury Criminal Jurisdiction, which could assist in identifying the steps needed to increase efficiency in processing cases. The Committee will offer an appropriate recommendation. (See recommendation 5.4.7 in chapter II of this report.)

5.4. Conclusions and recommendations

[267] Based on the foregoing comprehensive analysis of the Treasury and Civil Service Criminal Jurisdiction, the Committee offers the following conclusions and recommendations

[268] Costa Rica has considered and adopted measures intended to maintain and strengthen the Treasury and Civil Service Criminal Jurisdiction as an oversight body, as indicated in Chapter II, Section 5 of this report.

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

- 5.4.1. Conduct a study to determine if there is unjustified delay in judicial proceedings dealing with corruption offenses, and if such a delay exists, determine the causes and take the necessary corrective measures. (See Chapter II, Section 5.2 of this report.)
- 5.4.2. Establish a permanent training program on corruption offenses for judges responsible for hearing these types of offenses. (See Chapter II, Section 5.2 of this report.)
- 5.4.3. Establish mechanisms to make those judges that are responsible for hearing cases related to corruption offenses, aware of the legal basis and objectives of the concept of social harm, and raise awareness of the extent of social harm that corruption causes and the need to establish adequate reparation for it. (See Chapter II, Section 5.2 of this report.)
- 5.4.4. Provide the Treasury and Civil Service Criminal Jurisdiction with sufficient financial resources to carry out its functions properly, within available resources. (See Chapter II, Section 5.2 of this report.)
- 5.4.5. Provide all judges that are responsible for hearing cases related to corruption offenses, with access to the virtual docket in courtrooms, in order to make it easier for them to carry out their duties (See Chapter II, Section 5.2 of this report.)
- 5.4.6. Keep statistical records on punishment of acts of corruption, so as to have available information on the number of cases in each of the last five years that were ready for a decision, as well as information on the number of cases that resulted in no charges being filed or an acquittal because the statute of limitations had run or because of the extinction of liability for lack of a decision within statutory time limits, in order to identify challenges and recommend corrective measures. (See Chapter II, Section 5.3 of this report.)

- 5.4.7. Keep statistical records on the average length of corruption cases disposed of by those judges responsible for hearing corruption cases, in order to help identify the steps needed to increase efficiency in processing cases. (See Chapter II, Section 5.3 of this report).

III. BEST PRACTICES

[270] 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 wishes to share with the other member countries of the MESICIC in the belief that they could be of benefit to them:

- In relation to the PEP:

[271] “Restitution for social harm in corruption-related offenses”: The PEP took the initiative of presenting civil claims for redress for social harm caused by acts of corruption. The purpose of those proceedings included, *inter alia*, “to make society aware of the different kinds of social harm that corruption inflicts on the system, including loss of credibility and respect for institutions, weakening of the democratic system, deterioration of the population’s well-being, undermining of the country’s economy, under-development, etc.”¹¹¹ The response to the questionnaire also indicates that these proceedings have enabled the recovery of a sum equivalent to US\$15,741,461.59.

[272] Finally, the country under review described the challenges of implementing this best practice, which include the need “to strengthen the mechanism for determining the limits of social harm, both qualitatively and quantitatively speaking, so as to enable it, via a universally applicable formula, to be appropriately estimated on a case-by-case basis. There would also be benefits to be gained from designing a strategy that informs justice sector operators and civil society in general about its legal basis and aims, and, in particular, spreads awareness about the extent of social harm caused by corruption and the need to introduce proper reparation for it.”¹¹² (See recommendations 1.4.5 and 5.4.4 in chapter II of this report.)

- In relation to the CGR:

[273] The training program entitled “New Audit Program”: An induction program implemented by the various CGR units for popularly elected officials, including the president and vice presidents of the Republic, government ministers and the heads of decentralized institutions, congressional deputies, city councilors, mayors, deputy mayors, municipal governors and deputy governors, senior management of active administration entities, legislative advisers, and advisers to government ministers and the heads of decentralized institutions. The program covers such topics as prohibitions, obligations and responsibilities, internal control and internal audits, administrative procurement, and treatment of complaints. It also provides printed materials, including a guide on the principal responsibilities and prohibitions in the exercise of public office. The program is implemented by the various operational units of the Office of the Comptroller General at the start of each new government term and may be taken either in person or on line.

111. See response of Costa Rica to the questionnaire in the fourth round, p. 39, *supra* note 4.

112. *Ibid*, p. 63.

- In relation to the Treasury and Civil Service Criminal Jurisdiction:

[274] The Project on Oral Proceedings and Modern Management of Judicial Chambers at the Lower Criminal Court and Criminal Tribunal of the Second Judicial Circuit of San Jose: Launched in February 2008, the project introduces new working methods that include an oral system for hearings, “going paperless” through computerization of court records, organization of tasks and roles, and new procedural management processes to ensure ongoing improvements. The objectives of the project include “to facilitate and assist in the organization of oral proceedings in which the hearing is the central component, reduction of case settlement time, and an improvement in user perception and attention.”¹¹³

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 REVIEW ROUND¹¹⁴

[275] This section of the report refers to progress, information, and new developments in Costa Rica in connection with the recommendations and measures suggested by the Committee in the report of the First Round that were deemed to require additional attention in the reports of the Second and Third Rounds,^{115/} 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, reformulate them, in accordance with provisions contained in section VI of the methodology adopted by the Committee for the Fourth Round.

[276] This section also takes note of any difficulties in implementing the above recommendations and measures to which the state 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 THEM (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. Standards of conduct intended to prevent conflicts of interest and enforcement mechanisms

Recommendation 1.1:

Measure b), which requires further attention in the framework of the reports from the Second and Third Rounds:

Strengthen the system of recruitment into the public administration and the existing rules governing incompatibility and disqualification, taking into account the following aspects, in light of the scope of legislation and the positions identified by law:

- i. Supplement the rules of entry into the public service by strengthening the preventive mechanisms that facilitate detection of possible conflicts of interest that might impede such entry, including senior public positions.*

113. See response of Costa Rica to the questionnaire in relation to the Judicial branch, p. 3, *supra* note 96

114. The recommendations that, following this review, still require additional attention or have been reframed are listed in Annex I to this report.

115. Available at: <http://www.oas.org/juridico/english/cr1.htm>

- ii. *Develop other mechanisms to identify or detect any unexpected cause that could occur in the performance of public duties which could give rise to a conflict of interest.*
- iii. *Consider the possibility of implementing measures as appropriate to establish and put into effect systems and mechanisms of a preventive nature for detecting conflicts of interest in the public service. Among other alternatives, consideration could be given to the feasibility of creating instruments such as the declaration or registry of interests or activities for certain public posts, either as part of the system of declarations of income, assets and liabilities, or as an independent instrument, and of having that instrument periodically updated, as well as creating*

[277] In its response to the questionnaire for the Fourth Round,¹¹⁶ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that contribute to progress in its implementation, the following:

[278] – The issuance by the CGR of the Public Sector Internal Control Standards, “*which establish an implementation strategy for formalizing commitments, policies for handling possible fraud, corruption, or unethical conduct, and conflict of interest management.*” *The CGR plans to implement a project to detect acts that could constitute grounds for liability (conflict of interests and prohibitions in government procurement).*”

[279] – The 2012 Institutional Operational Plan of the Office of the Director General of the Civil Service (DGSC), which envisages, *inter alia*, the following measures to be concluded in December 2012: design of a system or guidelines for detection of conflicts of interests; preparation of a study on incompatibilities in teaching and model guidelines for preventing incompatibilities in teaching.

[280] – The presentation to the Legislative Assembly by the PEP, CGR, MP, and Costa Rican Institute on Drugs of a proposed partial amendment to the Law on Corruption and Illicit Enrichment of Public Servants, which includes, *inter alia*, provisions for strengthening the rules on conflict of interests and ineligibility.

[281] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure b) of the recommendation contained in section 1.2 of Chapter IV of this report and of the need for the latter to continue to give attention thereto, bearing in mind that many of the measures reported by the country under review for strengthening the rules on conflict of interests are still pending. The measure will be renumbered as measure a).

Measure d), which requires further attention in the framework of the reports from the Second and Third Rounds:

Maintain duly up-to-date, expand and improve the registry of persons disqualified for public service under the Civil Service Regime, so that it may constitute, if it is not already, an effective instrument for preventing and detecting appointments to the public service that might be contrary to the provisions on prohibitions and disqualifications. Consider the possibility of requiring consultation of this register prior to the appointment of public servants of specified rank and category.

116. See section on follow-up in Costa Rica’s response to the questionnaire, p. 3, available at: http://www.oas.org/juridico/PDFs/mesicic4_cri_resp_avances.pdf.

[282] In its response to the questionnaire for the Fourth Round,¹¹⁷ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that lead it to conclude that it has been satisfactorily considered, the following:

[283] – The measures adopted by the DGSC “*to improve the the register of ineligible persons, ensure that the information it contains is kept current, and facilitate its use as an effective mechanism in preventing and detecting appointments that break the rules on prohibitions and ineligibility,*” including an automated system that “*allows a 100% check of the register of ineligible persons for every appointment made.*”

[284] – The inclusion of the register of ineligible persons in the design of the Automated Job and Human Resource Management System (SAGETH) developed by the DGSC and in process of implementation.

[285] – The adoption in December 2011 of the Organization and Service Rules on the Disciplinary and Annulment Powers of the CGR in Government Finances, which incorporates, *inter alia*, the Treasury’s Punishment Records System (SIRSA). Article 60 of the above rules requires the registration of disciplinary sanctions, sanctions for financial responsibility or damages, and prohibitions on admission or readmission to positions in the Treasury issued by the CGR. In addition, Article 61 provides that any member of the public may consult the SIRSA. Finally, Article 72 requires the consultation of the SIRSA by all persons subject to CGR oversight before making appointments to positions in the Treasury.

[286] The Committee takes note of the satisfactory consideration of measure d) above, bearing in mind, among other developments, that it is now a requirement to include penalties issued by the CGR in the above register and that consultation of the register in 100% of appointments made has been achieved.

[287] Furthermore, in the response to the questionnaire, the country under review reports the need to reinforce the regulatory framework on conflicts of interest in the public sector so as to strengthen its preventive effect. In light of this situation, the Committee considers it appropriate to recommend the following measure b):

[288] b) Implement such provisions as it deems appropriate to strengthen the regulatory framework on conflicts of interest in order to further advance corruption prevention activities carried out by oversight organs, in general, and the PEP, in particular.

1.2. Standards of conduct to prevent conflicts of interest and mechanisms to enforce them

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

117. *Ibid*, pp. 4 -5

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:

Measure b), which requires further attention in the framework of the reports from the Second and Third Rounds:

Assess the relevance of offering greater protection to civil servants who report acts of corruption, especially in cases where their hierarchical superiors are involved in the acts being reported.

[289] In its response to the questionnaire for the Fourth Round,¹¹⁸ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, steps that contribute to progress in its implementation, the following:

[290] – The creation in the Public Prosecution Service of the Crime Victim Assistance Unit, the main function of which is to assist all victims of crimes and manage the protection program for victims, witnesses, and other persons involved in criminal proceedings. The protection measures may be implemented both in and outside the context of proceedings, and include identity protection, use of technological media such as videoconferencing, and physical protection, among others.

[291] – The issuance of the Rules on Management of the Special Protection Fund for Victims, witnesses, and other persons involved in criminal proceedings.

[292] – The publication of Law 8630, which partially amends the Law on Corruption and Illicit Enrichment by extending protection mechanisms to the administrative level.

[293] – DHR decision 733-DH of 2009, creating the Labor Affairs Division to process labor complaints and “...to which public servants may turn for assistance when they have been the target of threats or reprisals in the workplace as a result of reporting acts of corruption, in order to obtain counsel for their defense and ensure that due process is properly observed in the relevant administrative proceeding.”

[294] – The draft law partially amending the Law on Corruption and Illicit Enrichment, which “proposes to add a provision (Article 4 bis) to Law 8422 that would include administrative protection measures for public servants, whistleblowers, witnesses, and anyone who provides relevant evidence in preliminary investigations or proceedings in connection with alleged acts of corruption, failure to act with due probity, conflicts of interest, or any other irregular situation that affects the Treasury, with the intention of averting any detriment to themselves in their employment.” Among other things, the proposed law would empower each institution to order protection measures, either *ex officio* or at the request of the interested party.

[295] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure b) of the recommendation contained in Chapter IV, section 1.3, of this report and of the need for the latter to continue to give attention thereto, bearing in mind that the proposed amendment of Law 8422, which would establish additional protection measures for public officials, remains pending.

118. *Ibid.*, pp. 6-8.

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

Recommendation 2:

Measure d), which requires further attention in the framework of the reports from the Second and Third Rounds:

Regulate the conditions, procedures and other aspects relating to the public disclosure, as appropriate, of declarations of income, assets and liabilities, subject to the Constitution and the fundamental principles of law.

[296] In its response to the questionnaire for the Fourth Round,^{119/} the country under review provides the following information on the foregoing measure:

[297] *“Under Article 24 of the Law on Corruption and Illicit Enrichment of Public Servants (Law 8422) and its Implementing Regulations (Executive Decree 32333), the contents of sworn statements are confidential and, therefore, not subject to disclosure.”*

[298] In that regard, the Committee notes that Article 24 of Law 8422 provides that the contents of sworn statements are confidential *“without prejudice to such access to them as may be required by special committees of inquiry of the Legislative Assembly, the Office of the Comptroller General, the Public Prosecution Service, and the tribunals of the Republic for the purpose of investigating and corroborating the possible commission of infractions and crimes envisaged in the law.”*

[299] Regarding the foregoing, during the course of the on-site visit, representatives of the CGR explained that there has been a long-running debate in Costa Rica over whether or not sworn statements should be made public and if such disclosure would violate the right to privacy of public servants required to submit them. In particular, they mentioned that the Constitutional Chamber has held that the publication of certain information about a declarant would infringe that right. The Annual Plan of the CGR’s Complaints and Investigations Area provides for a project that would conduct a legal study to determine the viability of the total or partial publication of statements

[300] Also during the on-site visit, representatives of civil society organizations and scholars mentioned the potential usefulness of publishing sworn statements, or at the least, the more relevant information contained in them. In this connection, they noted that most high-profile corruption cases in the country have broken as a result of charges made by civil society organizations and the media and that access to sworn statements was now being demanded so that they might serve as an additional societal oversight tool.

[301] The Committee is of the opinion that disclosure of statements is all the more important when one considers that the CGR does not verify the overwhelming majority of sworn statements and, therefore, they contribute very little to several of their intended purposes, such as detection of conflicts of interest and acts of corruption.

[302] As regards the opinions of the Constitutional Chamber, the Committee feels that the country under review might consider making sworn statements public without including the information that the Constitutional Chamber has deemed confidential.

119. *Ibid.*, p. 8.

[303] Therefore, the Committee considers it appropriate to reframe measure d) in chapter IV, section 2, of this report as follows:

[304] a) Consider repealing the statutory impediments that currently prohibit disclosure of sworn statements of net worth.

[305] b) Consider publishing the statements without including the information whose disclosure the Constitutional Court has ruled would violate the right to privacy, subject to the Constitution and the fundamental principles of its legal system.

Measure e), which requires further attention in the framework of the reports from the Second and Third Rounds:

Establish systems for the effective and efficient verification of the contents of sworn declarations of income, assets and liabilities, establishing occasions and time limits for such verifications, strengthening the powers of the CGR for scheduling verifications, ensuring that the verification applies to a representative number of declarations, and establishing actions to overcome obstacles to required sources of information; and take the necessary decisions to ensure cooperation between the CGR and other sectors, such as the financial and taxation authorities, to facilitate the exchange of information for verifying the contents of these declarations.

[306] In its response to the questionnaire for the Fourth Round,^{120/} the country under review presents information and new developments with respect to the above measures, of which the Committee notes, as steps that contribute to progress in its implementation, the following:

[307] – The System of Sworn Statements of Net Worth (SDJB) of the CGR, which serves “*to collect digital statements which are fed into an automated database that makes it more efficient ... to verify the quality of the information declared as well as to analyze inconsistencies in statements and conduct automatic checks by comparing various related databases (internal and external).*”

[308] In addition, the response notes, “*For the purposes of that verification a computerized tool was implemented that makes it possible to compare the information contained in the statements with databases of other systems available at the oversight organ, in particular, institutions such as the National Records Office ... National Insurance Institute ... Highway Safety Council ... Supreme Electoral Tribunal ... Costa Rican Electricity Institute ... Ministry of Health ... and the Costa Rican Social Security Fund ... to which end agreements have been signed with a number of those agencies.*”

[309] In relation to the foregoing, the Committee takes note of some of the steps taken by Costa Rica to implement aspects of the above measure concerning cooperation between the CGR and other sectors. However, the Committee has no information about collaboration with important sectors for verifying sworn statements, such as financial and tax authorities.

[310] Furthermore, as described in chapter II, section 2, of this report, in the course of the on-site visit CGR representatives explained, *inter alia*, that owing to a staff shortage, the CGR only verifies a sample (a little over 100) of the approximately 15,000 sworn statements received each year.

120. *Ibid.*, pp. 9-10.

[311] In view of the foregoing, the Committee takes note of the need for the country under review to continue to give attention to the implementation of measure e) of the recommendation contained in section 2 of Chapter IV of this report, which will be renumbered as measure c).

[312] During the on-site visit it was also mentioned that neither the public ethics procurators of the PEP, judges, nor prosecutors in the Public Prosecution Service were covered by the sworn statements regime and, therefore, they are not required to submit sworn statements of net worth. Subsequent to the on-site visit, the country under review informed that Law No. 9093, approved on October 19, 2012, requires judges as well as Public Prosecution Service prosecutors to file sworn statements.

[313] In this sense, the Committee believes that, given the important role that the PEP plays in the fight against corruption, as well as the high profile of many of the corruption cases that it investigates and processes, it would be useful for the country under review to consider including public ethics procurators and any other PEP officials deemed appropriate in the system of sworn statements of net worth. Accordingly, the Committee considers it appropriate to offer the following recommendation:

[314] d) Consider adopting the necessary provisions or measures to public ethics procurators and any other officials of the Office of Public Ethics deemed appropriate in the system of sworn statements of net worth.

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 in the framework of the reports from the Second and Third Rounds:

Strengthen the Offices of the Comptroller General, the Public Ethics Prosecutor, the Ombudsman, and the Attorney General as oversight bodies, in their functions relating to enforcement of Articles 1, 2, 4 and 11 of the Convention, in order to ensure that such control is effective; give them greater support and the resources necessary to carry out their functions; and establish mechanisms for coordinating their activities, as appropriate, and for their continuous evaluation and monitoring.

[315] In its response to the questionnaire for the Fourth Round,¹²¹ the country under review provides the following information on the foregoing measure:

[316] – “ *The oversight organs of the Republic of Costa Rica (CGR, PEP, MP, DHR) have been strengthened in recent years through concrete measures described in the first section of this report. Accordingly, for the purposes of review of compliance with this recommendation, we would refer the reader to the contents of that section.*”

[317] The Committee considers it appropriate to eliminate recommendation 3.1 above, bearing in mind that the four bodies that are the subject of this recommendation (CGR, PEP, MP, and DHR) have been examined in sections 1, 2, 3, and 4, respectively, in chapter II of this report. Accordingly, the relevant recommendations for strengthening those organs may be found in the above sections.

121. *Ibid.*, pp. 11-12.

Recommendation 3.2. which requires further attention in the framework of the reports from the Second and Third Rounds:

[318] In its response to the questionnaire for the Fourth Round,^{122/} the country under review provides the following information on the foregoing recommendation:

[319] *“The Office of Public Ethics has developed a system for registering information on processing of administrative complaints and criminal proceedings in cases of malfeasance in public office in which the Unit is a party. This information system makes it possible to assess various aspects of corruption, extrapolate conclusions, and make decisions based on those data.”*

[320] *“For its part, the Office of the Comptroller General has implemented internal information systems that keep a record of information on its oversight functions. Inter alia, it has the sworn statements system, a complaints system, an ex-post audit system, and a punishment records system.”*

[321] The Committee considers it appropriate to eliminate recommendation 3.2 above, bearing in mind that all the oversight bodies evaluated in the first review round have been examined in sections 1, 2, 3, and 4, respectively, in chapter II of this report, where the relevant recommendations for evaluating their performance of their functions have been made.

4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11, OF THE CONVENTION)

4.1. General participation mechanisms

The Committee did not formulate recommendations in this section.

4.2. Mechanisms for access to information

Recommendation 4.2.

Institute legal rules and measures to support access to public information.

Measure b), which requires further attention in the framework of the reports from the Second and Third Rounds:

Consider the advisability of integrating and systematizing in a single regulatory text the provisions that ensure access to government information.

[322] In its response to the questionnaire for the Fourth Round,^{123/} the country under review presents information and new developments with respect to the above measures. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[323] – The two proposed laws amending the Law on Corruption and Illicit Enrichment of Public Servants: One has been introduced in the Legislative Assembly and defines the main aspects of the right of access to information; the other is an initiative of the vice president of the Republic, *“which has led to the creation of a working group composed of representatives of civil society (Grupo Costa*

122. *Ibid.*, pp. 11-12.

123. *Ibidem*, p. 13.

Rica Íntegra) and government organs (Supreme Electoral Tribunal, Office of the President of the Republic, Ministry of National Planning and Economic Policy, Office of Public Ethics, Office of the Comptroller General, Ombudsman, and the Secretariat of the Supreme Court of Justice) with the aim of reaching consensus on a draft law that develops the constitutional right of access to public information.”

[324] As regards access to information in the country under review, during the on-site visit the Committee had occasion to consult several sectors of Costa Rican society including, in addition to representatives of state bodies, scholars, civil society, and the private sector.

[325] In this regard, it is worth noting, in first place, that while the majority of those consulted believed that a comprehensive law in this area was sorely needed, a number of them also expressed misgivings that such a law might limit the information that could be accessed by establishing exceptions as to what constitutes public information or creating bureaucratic barriers that could impair the exercise of this right or erode the tradition of openness in providing information that exists at present. By way of an example, some said that certain institutions have no impediments to access to information and that members of the public can request information in person and be given it immediately.

[326] However, during the on-site visit the Committee also noted the following difficulties arising from the absence of specific provisions in this area: (1) As there are no minimum requirements governing what records should be kept, the information kept by institutions and, therefore, available to the public is quite limited on occasion. In that regard, in its report, *Estado de la Nación* was critical of the quality of the information published by oversight bodies in their annual reports and on their websites;¹²⁴ (2) the fragmentary nature of standards makes it harder for citizens to know what information they are entitled to and where and how to request it; and (3) if an institution refuses to hand over information, a citizen has to appeal to the Constitutional Chamber, which in most cases rules in favor of the disclosure. In that regard, it was explained that, through its opinions, the Constitutional Chamber has been defining the framework and scope of the right of access to information.

[327] The Committee takes note of the steps taken by the state country review to advance in its implementation of measure b) of the recommendation contained in section 4.2 of Chapter IV of this report and of the need for it to continue to give attention thereto, bearing in mind that a comprehensive law on the right of access to information is not yet in place. The measure will be renumbered as measure a).

Measure c), which requires further attention in the framework of the reports from the Second and Third Rounds:

Continue to create and to strengthen the Departmental Comptrollers' Offices, giving them the necessary human, technical and financial resources and publicizing the system and the services it offers, consistent with the study that the country conducted.

124 With respect to recording results on fulfillment by oversight bodies of their objectives and functions, such as minimum standards on the information that accountability mechanisms ought to contain and on supplying information to the public, the Committee has made recommendations in chapter II of this report.

[328] In its response to the questionnaire in the Fourth Round,¹²⁵ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that lead it to conclude that it has been satisfactorily considered, the following:

[329] – Executive Decree 34587 of 2008, which governs the Technical Secretariat within the National System of Service Comptrollers as a technical organ of the Ministry of National Planning and Economic Policy (MIDEPLAN) responsible for providing support to comptrollers, with authority to set guidelines and directives for improving the service, following up on their work, and implementing training activities, among other measures.

[330] – The activities carried out by the Technical Secretariat in 2009 and 2010, which include: (1) permanent updating of the Official Register of Service Comptrollers; (2) induction and training for new service comptrollers; (3) advisory services to service comptrollers on specific matters; (4) support for different activities programmed by service comptrollers; (5) participation in the National Committee on Consumer Policy; (6) steps taken to appoint professional human resources in the Secretariat; and (7) receipt and review of the regulations, procedural manuals, and work plans of different service comptrollers.

[331] – Coordination between the Technical Secretariat and the DHR “to ensure assistance on service comptrollers, in addition to supporting the Citizen Participation Forum Project (EPC-ICE), and coordinating with Estado de la Nación for the chapter on Strengthening Democracy through Service Comptrollers.

[332] – The activities carried out by the Technical Secretariat in 2011, including: (1) Two workshops held by the Technical Secretariat in 2011 for the service comptrollers staff on use of Microsoft Excel to prepare activity reports and reports on citizen participation in public administration; (2) participation in the World Consumer Rights Day Fair; (3) work meetings held with service comptrollers in municipalities; (4) systematization of a feedback workshop and preparation of the 2011 work plan; (5) review of the service comptrollers 2011 annual work plans; (6) update of the methodological guidelines for preparing the 2011 Annual Report; (7) work meetings held with different service comptrollers on preparing Annual Reports; (8) preparation of the 2010 National Service Comptrollers System Review, “Una visión actual de las Contralorías de Servicios” [“A Current Vision of Service Comptrollers”]; (9) Annual assessment and feedback workshop on the operations of service comptrollers and the Technical Secretariat; (9) provision of technical assistance and permanent response to queries by institutional service comptrollers on matters connected with their activities.

[333] The Committee takes note of the satisfactory consideration of measure c) above, bearing in mind the activities to strengthen service comptrollers, including, *inter alia*, the adoption of Executive Decree 34587 as well as the advisory services and support provided to service comptrollers by the MIDEPLAN Technical Secretariat.

Measure d), which requires further attention in the framework of the reports from the Second and Third Rounds:

Strengthen the mechanisms that guarantee the right of access to public information, so that it cannot be denied for reasons other than those determined by law, or on the basis of rules other than those established, establishing for this purpose, among other aspects, the following: i) procedures for

125. *Ibidem*, pp. 13-17.

accepting requests and responding to them on a timely basis; ii) requirements on admissibility and consequences when such requirements are not met; iii) reasons why a request may be denied; iv) method for communicating with the applicant; v) prompt and specialized administrative remedies for appealing a decision made by a public servant who improperly denies access to the information requested; and vi) increase the number of sanctions so as to cover a broader spectrum of circumstances that could hamper, delay or prevent the exercise of this right and that involve the conduct of public servants.

[334] In its response to the questionnaire for the Fourth Round,^{126/} the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that contribute to progress in its implementation, the following:

[335] – The two proposed laws amending the Law on Corruption and Illicit Enrichment of Public Servants: One has been introduced in the Legislative Assembly and defines the main aspects of the right of access to information; the other is an initiative of the vice president of the Republic, “*which has led to the creation of a working group composed of representatives of civil society (Grupo Costa Rica Íntegra) and government organs (Supreme Electoral Tribunal, Office of the President of the Republic, Ministry of National Planning and Economic Policy, Office of Public Ethics, Office of the Comptroller General, Ombudsman, and the Secretariat of the Supreme Court of Justice) with the aim of reaching consensus on a draft law that develops the constitutional right of access to public information.*”

[336] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure d) of the recommendation contained in section 4.2 of Chapter IV of this report and of the need for it to continue to give attention thereto, bearing in mind that a comprehensive law that describes the procedures for exercising the right of access to information is not yet in place. This measure will be renumbered as measure b).

4.3. Mechanisms for consultation

Recommendation 4.3.

Measure d), which requires further attention in the framework of the reports from the Second and Third Rounds:

The possibility of formulating specific provisions within the current constitutional and legal framework to promote the creation and recognition of bodies representing civil society organizations and institutions at the municipal level, authorized to review and to propose public policies in specified areas, establishing at the same time the right to obtain information as appropriate.

[337] In its response to the questionnaire in the Fourth Round,¹²⁷ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that lead it to conclude that it has been satisfactorily considered, the following:

[338] – Law 3859 of April 1967 (Law on Community Development),¹²⁸ which creates the National Bureau of Community Development as an executive branch organ attached to the Ministry of the

126. *Ibidem*, p. 18.

127. *Ibidem*, pp. 19-20.

Interior and Police and as a basic instrument of development responsible for promoting, guiding, coordinating, and evaluating community-based organizations in the country, in order to achieve their active and responsible participation in fulfilling the objectives of the National Plan for Economic and Social Development.

[339] – Article 15 of Law 3859, which provides that those communities in the country that wish to organize in order to engage in comprehensive or specific development activities for their own benefit and that of the country may do so in the form of district, canton, regional, provincial, or national associations, which shall abide by the provisions contained in this law.

[340] – Article 30 of Law 3859, which recognizes the right of each community to register a comprehensive association or one or more associations for engaging in specific activities.

[341] – The registration of 2526 development associations in keeping with the provisions contained in Law 3859.

[342] – Executive Decree 36004 (Implementing Regulations on the General Law on Transfer of Executive Branch Authority) of May 2010, Article 8 of which provides, “*It shall be incumbent on each local entity to establish rules on the participation of community members in the transfer process and in the exercise of the transferred authority.*” In this regard, the response explains that “*municipal authorities and governors’ offices were granted the possibility of inviting representatives of civil society, development organizations, nongovernmental organizations, and other entities to participate in bodies such as canton institutional coordination councils (CCCI) responsible for preparing plans to coordinate the activities of state institutions in a particular territory, thus identifying and promoting activities through public policies for addressing local public interests.*”

[343] The Committee takes note of the satisfactory consideration of measure a) above, bearing in mind, *inter alia*, the existence of Law 3859, the creation of the National Bureau of Community Development, the registration of thousands of development associations under Law 3859, and Executive Decree 36004 which promotes citizen participation.

Measure e), which requires further attention in the framework of the reports from the Second and Third Rounds:

The possibility of formulating specific provisions within the current constitutional and legal framework to incorporate, organize, and recognize urban community institutions (neighborhood councils or committees) with the authority and right to present initiatives and requests for municipal works and services for their neighborhoods.

[344] In its response to the questionnaire for the Fourth Round,¹²⁹ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that lead it to conclude that it has been satisfactorily considered, the following:

128. This law was first brought to the attention of the Committee in the response of the country under review to the questionnaire in the fourth round. Therefore, it was not taken into consideration, either when the recommendation was framed, or on previous follow-up occasions (second and third rounds).

129. *Ibidem*, pp. 20-21

[345] – Law 3859 and its implementing regulations, which grant comprehensive development associations the necessary powers to submit initiatives and requests for municipal works and services with a local impact.

[346] – Article 19 of Law 3859, which requires the creation of a fund equivalent to 2% of the estimated income tax for that period to finance or facilitate funding for projects submitted to it by those associations under the relevant rules. The country under review reports that “50% of that fund is automatically distributed among the duly registered organizations for each period; the remaining 50% is put into a special fund that is allocated to business, infrastructure, training, real property procurement, and plant and equipment procurement projects, with priority given to those most in line with the country’s development policies, in accordance with the guidelines or directives issued by the appropriate authorities.”

[347] – Executive Decree 34624 (Rules on Management, Standardization, and Responsibility for Public Investment in Canton Road Networks), Article 8 of which reserves a special position for the representative of the canton’s comprehensive development associations on the Canton Highways Board (a public-sector body appointed by the municipal council of each canton, to which it reports on its performance, in keeping with Article 5(b) of Law 8114).

[348] – Law 8114 (Tax Simplification and Efficiency Law), Article 5 of which “instructs canton highways boards to propose to municipal councils uses for funds allocated by the State to municipalities for the upkeep, routine maintenance, periodic maintenance, improvement, and resurfacing of roads. Once those objectives are met, the remaining balance shall be allocated to the construction of new roads in the canton road network. The latter shall be understood as local roads, unclassified roads, and urban streets, according to the databases of the Planning Division of the Ministry of Public Works and Transport (MOPT).”

[349] The Committee takes note of the satisfactory consideration of measure e) above, bearing in mind, *inter alia*, the existence of well-developed standards governing the powers and rights of development associations in keeping with the meaning of the measure.

4.4. Mechanisms to encourage participation in public administration

Recommendation 4.4:

Measure a), which requires further attention in the framework of the reports from the Second and Third Rounds:

Establish additional mechanisms that strengthen the participation of civil society organizations in public management and especially in efforts to prevent corruption, and promote awareness of those mechanisms and their use.

[350] In its response to the questionnaire for the Fourth Round,¹³⁰ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that lead it to conclude that it has been satisfactorily considered, the following:

[351] – Law 3859 and the fund established in accordance therewith to provide support to development associations.

130. *Ibidem*, pp. 22-23.

[352] – The ongoing citizen participation strategy of the CGR to “*strengthen and generate systematic and comprehensive measures aimed at strengthening relations with the citizenry as a means to contribute to citizen oversight, strengthening, to that end, the CGR’s computerized platform, along with other communication media that need to be explored so as to offer an array of alternatives for promoting active citizen participation.*”

[353] – The citizen participation proposal implemented by the DHR in coordination with Tarrazú provincial government and civil society for implementing a transparency program that instills a culture of accountability, access to information, and citizen participation in order to ensure transparency in public administration in Tarrazú Canton.

[354] – The measures implemented by the Institute of Municipal Advisory Services and Development [*Instituto de Fomento y Asesoría Municipal*] (IFAM) to stimulate and strengthen citizen participation in the country’s cantons, including coordination with municipalities for the inclusion of mechanisms to cultivate a tradition of citizen participation in the organization and operations module of district councils as part of the IX Municipal Officials National Training Program 2010-2016, which IFAM ‘s designs and implements every four years. In that regard, in the course of the on-site visit, the MESICIC Committee met a representative of IFAM to hear about this national program.

[355] The Committee takes note of the satisfactory consideration of measure a) above, bearing in mind that measures and mechanisms designed to encourage civil society participation in public administration and efforts to prevent corruption have been and continue to be implemented.

Measure b), which requires further attention in the framework of the reports from the Second and Third Rounds:

Determine that the result derived from the exercise of these mechanisms be considered a vital contribution to the decision-making process.

[356] In its response to the questionnaire in the Fourth Round,¹³¹ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that lead it to conclude that it has been satisfactorily considered, the following:

[357] – The review carried out by the Ministry of National Planning and Economic Policy in 2011, “*which included visits to 19 cantons, markets, universities, parks, and bus stations as part of the “Project Costa Rica: A Long-Range vision,” with the aim of identifying opportunities, strengths, and threats that the country faces in the economic, social, environmental, and governance fields. The review provided a foundation for defining the long-term issues that are being discussed by various actors in society (public, private, academic, and social actors), which will enable MIDEPLAN to determine long-range objectives and goals with a view to securing the commitment of the different social actors to their implementation. In addition, under the “María Teresa Obregón Zamora” National Development Plan 2011-2014, visits were made to five of the country’s regions (Chorotega, Atlántica, Pacífico Central, Huetar Norte and Brunca) in order to include programs and projects in the national plan with the participation of stakeholders in each of those regions.*

[358] – The Municipal Strengthening and Decentralization Project (FOMUDE) implemented by IFAM, which, in partnership with the United Nations Development Programme (UNDP),

131. *Ibidem*, pp. 24-25.

“encouraged the participation of more than 800 people, who voluntarily gave life to Local Management Teams which, in turn, brought together more than 20,000 participants and helped them to agree on a set of aspirations and proposals that comprise the contents of 43 local human development plans, 186 district agendas, and 43 plans of action for those plans. As a result, half the country has a powerful local development tool that was developed in the framework of a comprehensive participatory process; (b) Based on the local development planning carried out, 41 local governments, with the participation of 271 of their officials, took the opportunity to frame their municipal strategic plans with a five-year horizon, including an ad hoc budgeting exercise. This process also gave rise to 24 municipal management improvement plans.”

[359] – The design by IFAM of the Rules on Subnational Planning with citizen participation.

[360] – Law 7593 (Public Services Regulator Law), Article 57 of which establishes the obligation to encourage participation in decision-making and rights-protection by users of regulated services.

[361] The Committee takes note of the satisfactory consideration of measure b) above, bearing in mind that the country under review has cited examples of bodies in which contributions from civil society have been considered as input in decision-making.

4.5 Participation mechanisms for follow-up of public administration

Recommendation 4.5:

Measure b), which requires further attention in the framework of the reports from the Second and Third Rounds:

Consider the implementation of awareness and training programs, in addition to those that already exist, directed at civil society and nongovernmental organizations on the aspects dealt with in sections 4.1 to 4.5 of this Report.

[362] In its response to the questionnaire in the Fourth Round,¹³² the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that lead it to conclude that it has been satisfactorily considered, the following:

[363] – The training activities carried out by the Public Services Regulator (ARESEP) on access to information and user rights.

[364] – The ARESEP Strategic Plan 2012-2016, the objectives of which include “a) To design the general plan on citizen participation for 2013 as a working guide that paves the way for effective promotion of citizen participation; b) establish partnership agreements with entities in order to facilitate citizen participation opportunities; c) research and identify the target group in order to ensure broader participation in promoting and strengthening users’ organizations; d) encourage public awareness of ARESEP, as well as knowledge of its functions, objectives, and citizen participation mechanisms so that citizens can exercise their rights fully as public services users; e) encourage the general public to organize into users’ groups in order to promote mechanisms to effectively protect their rights as users of public services; f) guide and encourage educational activities with community-based and users’ organizations on users’ rights as a means to empower them; g) propose an alternate and innovative channel of communication through technological tools

132. *Ibidem*, pp. 26-29.

that bring the regulator closer to the general public; h) draft rules or a resolution setting out the rights of public services users, in order to serve as a source of reference for citizen participation processes; and i) evaluate user perceptions about institutional performance and the quality of public services with a view to making use of those perceptions.”

[365] – The module organized by IFAM on the organization and workings of district councils in order to establish a dialogue between municipalities and communities as a means to “promote a culture of citizen participation in municipal management through properly functioning district councils that allow transparency and accountability as well as citizen oversight in local government affairs.”

[366] – The awareness campaigns promoted by IFAM as part of the FOMUDE Project to sensitize the public about the role of local governments and the importance of citizen participation.

[367] – The design by IFAM, in partnership with the CGR, DHR, and other state entities, of talks targeting the public on local planning, citizen participation and its mechanisms, and municipal administration, among other topics.

[368] – The computerized systems maintained by the CGR that serve as a citizen oversight mechanism, including the Public Budget Information System (SIPP), the Procurement Information System (SIAC), the Electronic Complaints System (SIDE), and the Treasury Punishment Records System (SIRSA), among others.

[369] The Committee takes note of the satisfactory consideration of measure b) above has been satisfactorily considered, bearing in mind, *inter alia*, the training activities and public awareness campaigns carried out by IFAM, ARESEP, and by the oversight bodies.

Measure d), which requires further attention in the framework of the reports from the Second and Third Rounds:

The convenience of establishing mechanisms within the existing legal framework, which grant civil and urban communities that are created and organized at the provincial level, functions and powers to monitor municipal works and services for the neighborhood, and the use of resources budgeted and allocated for that purpose.

[370] In its response to the questionnaire in the Fourth Round,¹³³ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that lead it to conclude that it has been satisfactorily considered, the following:

[371] – The efforts of services comptrollers to complement and strengthen existing mechanisms of societal oversight by civil society and urban communities.

[372] – The initiative of the Technical Secretariat of the National System of Service Comptrollers to develop a project for implementing the “Letters of Public Commitment” Program as an innovative tool that seeks to open up new opportunities for citizen participation in the processes of design, execution, management, and evaluation of services supplied by the public administration.

133. *Ibidem*, pp. 30-31.

[373] – The implementation of eight citizen audit teams in the framework of IFAM’s Municipal Strengthening and Decentralization Project (FOMUDE), as an instrument enabling the citizenry to evaluate and present plans for institutional processes that would help to make municipal management more efficient and transparent.

[374] The Committee takes note of the satisfactory consideration of measure d) above, bearing in mind, *inter alia*, the existence of mechanisms that allow civil society monitoring and oversight.

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

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

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

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

7. GENERAL RECOMMENDATIONS

Recommendation 7.1. which requires further attention in the framework of the reports from the Second and Third Rounds:

Design and implement, when appropriate, training programs for public servants in charge of applying the systems, standards, measures and mechanisms considered in this Report, with the objective of guaranteeing adequate knowledge, handling and implementation of the above.

[375] In its response to the questionnaire in the Fourth Round,¹³⁴ the country under review presents information and new developments with respect to the above recommendation, of which the Committee notes, as steps that lead it to conclude that it has been satisfactorily considered, the following:

[376] – The training programs carried out by the CGR in 2010 and 2011 for popularly elected officials as well as officials appointed by the Office of the President of the Republic, legislative advisers, heads of executive branch agencies, and legislators. Among other topics, the programs addressed prohibitions, obligations, and responsibilities of senior officials in the areas of internal control and audits, administrative procurement, and treatment of complaints.

[377] – The eight training activities carried out at the municipal level by the CGR in 2011 on means of access and opportunities for the use of comprehensive oversight products and services, and CGR information systems as tools at the service of municipal administration.

[378] – The training offered by the CGR in 2011 on, *inter alia*, preservation and proper use of public resources, the institutional risk assessment system, internal control and audits, accounting standards, administrative procurement, and the system of sworn statements of net worth, among others.

[379] – The PEP training program to raise awareness among public administration entities about ethics in the public office, covering topics such as “Ethics and Probity in Public Office,” “Criminal

134. *Ibid.*, p. 78.

Liability and Law 8422,” “Reporting Acts of Corruption,” “Offenses for Which the PEP Can Report and Prosecute Public Officials,” “Costa Rica’s Obligations As a Signatory of the International Conventions against Corruption,” “Strengthening Individual and Social Values in Connection with Public Ethics,” “Prohibitions in the Exercise of Liberal and Incompatible Professions,” and “Social Harm.”

[380] – The annual event held by the DHR in coordination with the National Committee to Restore Values, which focuses on transparency in the fight against corruption as a factor in social and economic development.

[381] – The training activities carried out by the Ministry of National Planning and Economic Policy to provide the necessary tools for those responsible for applying institutional systems, standards, measures, and mechanisms.

[382] – The training provided by ARASEP to its officials on conflicts of interest and proper use of public resources.

[383] The Committee takes note of the satisfactory consideration of recommendation 7.1, bearing in mind that the country has been implementing and continues to implement a variety of training activities on a large range of issues in the fight against corruption, in keeping with the recommendation.

Recommendation 7.2. which requires further attention in the framework of the reports from the Second and Third Rounds:

Select and develop procedures and indicators, as appropriate, which enable verification of the follow-up to the recommendations contained in this Report, and communicate the results of this follow-up to the Committee through the Technical Secretariat. With this in mind, consider taking into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee; as well, consider information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.

[384] In its response to the questionnaire in the Fourth Round,¹³⁵ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that lead it to conclude that it has been satisfactorily considered, the following:

[385] – The Plan of Action for Implementation of the Recommendations of the MESICIC in Costa Rica, adopted in 2010.

[386] – Law 8292 (Internal Control Code), which requires all entities and organs subject to the law to have an internal control system in place, in order to protect and preserve state property against loss, waste, misuse or unlawful acts; and to demand accurate and timely information, ensure operational efficiency and efficacy, and comply with the legal and technical standards. The response also mentions that “*the foregoing enables senior management and supervisors to maintain efficient control over the various operations of institutions and ensure effective support for decision-making.*”

¹³⁵ *Ibid.*, p. 78.

[387] – The Institutional Risk Assessment System (SERVI), which serves to identify risks and adopt measures to locate them at an acceptable risk level or, failing that, establish mechanisms to minimize the risk.

[388] – Other indicators used by the country under review, including the National Development Plan (PND), the Sustainable Development Indicators System (SIDES), follow-up on the Millennium Development Goals (MDGs), and preparation of the PND National Goals Assessment Report.

[389] The Committee takes note of the satisfactory consideration of recommendation 7.2 above, bearing in mind that the country has in place procedures and indicators to verify follow-up on the recommendations made in the First Review Round.

Recommendation 7.3. which requires further attention in the framework of the reports from the Second and Third Rounds:

Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this Report, and the recommendations contained in it.

[390] In its response to the questionnaire,^{136/} the country under review presents information and new developments with respect to the above recommendation, of which the Committee notes, as steps that contribute to progress in its implementation, the following:

[391] – The Plan of Action for Implementation of the Recommendations of the MESICIC in Costa Rica, adopted in 2010.

[392] – The holding of the Fifth National Congress on Treasury Management and Oversight, in which the CGR incorporated information on the joint work carried out by that institution and the internal auditors in the public sector. The response mentions that “*the initiative aims to develop instruments with which to evaluate and strengthen institutional ethics and measures to prevent corruption. The project included an analysis of benchmark ethical standards at the domestic and international level, a review of the perception of ethics in the public administration, and an evaluation of institutional ethics programs through internal audit units, aspects of which will be followed up and continued as part of the CGR’s external training program.*”

[393] The Committee takes note of the steps taken by the country under review to advance in its implementation of recommendation 7.3 in section 7 of chapter IV of this report and of the need for the latter to continue to give attention thereto, bearing in mind that the information supplied suggests that further evaluation and strengthening instruments are to be developed, but are not yet in place.

136. *Ibid.*, p. 49, *supra* note 4.

ANNEX I

OUTSTANDING AND REFORMULATED RECOMMENDATIONS REGARDING THE TOPICS REVIEWED IN THE FIRST ROUND

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE THEM (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. Standards of conduct to prevent conflicts of interests and mechanisms to enforce them

Recommendation:

Strengthening the implementation of laws and regulatory systems related to conflicts of interest, in order to permit the effective and practical enforcement of a system of public ethics.

Suggested measures:

- a. Strengthen the system of recruitment into the public administration and the existing rules governing incompatibility and disqualification, taking into account the following aspects, in light of the scope of legislation and the positions identified by law:
 - i. Supplement the rules of entry into the public service by strengthening the preventive mechanisms that facilitate detection of possible conflicts of interest that might impede such entry, including senior public positions.
 - ii. Develop other mechanisms to identify or detect any unexpected cause that could occur in the performance of public duties which could give rise to a conflict of interest.
 - iii. Consider the possibility of implementing measures as appropriate to establish and put into effect systems and mechanisms of a preventive nature for detecting conflicts of interest in the public service. Among other alternatives, consideration could be given to the feasibility of creating instruments such as the declaration or registry of interests or activities for certain public posts, either as part of the system of declarations of income, assets and liabilities, or as an independent instrument, and of having that instrument periodically updated, as well as creating and maintaining databases for search and consultation by the competent organs.
- b. Implement such provisions as it deems appropriate to strengthen the regulatory framework on conflicts of interest in order to further advance corruption prevention activities carried out by oversight organs, in general, and the PEP, in particular

1.2. Standards of conduct to prevent conflicts of interests and mechanisms to enforce them

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

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 existing mechanisms that require public servants to report to the appropriate authorities acts of corruption in the public service of which they are aware.

Suggested measure:

- Assess the relevance of offering greater protection to civil servants who report acts of corruption, especially in cases where their hierarchical superiors are involved in the acts being reported.

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

Recommendation

Improve the systems for supervising and evaluating the contents of declarations of income, assets and liabilities, and regulate their publication.

Suggested measures:

- a. Consider repealing the statutory impediments that currently prohibit disclosure of sworn statements of net worth.
- b. Consider publishing the statements without including the information whose disclosure the Constitutional Court has ruled would violate the right to privacy, subject to the Constitution and the fundamental principles of its legal system.
- c. Establish systems for the effective and efficient verification of the contents of sworn declarations of income, assets and liabilities, establishing occasions and time limits for such verifications, strengthening the powers of the CGR for scheduling verifications, ensuring that the verification applies to a representative number of declarations, and establishing actions to overcome obstacles to required sources of information; and take the necessary decisions to ensure cooperation between the CGR and other sectors, such as the financial and taxation authorities, to facilitate the exchange of information for verifying the contents of these declarations.
- d. Consider adopting the necessary provisions or measures to public ethics procurators and any other officials of the Office of Public Ethics deemed appropriate in the system of sworn statements of net worth.

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

The recommendation on this section was eliminated, bearing in mind that the bodies that are the subject of said recommendation have been examined in chapter II of this report. Accordingly, the relevant recommendations for strengthening those organs may be found in the above section.

4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11, OF THE CONVENTION)

4.1. General participation mechanisms

The Committee did not offer any recommendations in this section.

4.2. Mechanisms for access to information

Recommendation:

Institute legal rules and measures to support access to public information.

Suggested measures:

- a. Consider the advisability of integrating and systematizing in a single regulatory text the provisions that guarantee access to public information.
- b. Strengthen the mechanisms that guarantee the right of access to public information, so that it cannot be denied for reasons other than those determined by law, or on the basis of rules other than those established, establishing for this purpose, among other aspects, the following: i) procedures for accepting requests and responding to them on a timely basis; ii) requirements on admissibility and consequences when such requirements are not met; iii) reasons why a request may be denied; iv) method for communicating with the applicant; v) prompt and specialized administrative remedies for appealing a decision made by a public servant who improperly denies access to the information requested; and vi) increase the number of sanctions so as to cover a broader spectrum of circumstances that could hamper, delay or prevent the exercise of this right and that involve the conduct of public servants.

4.3. Mechanisms for consultation

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

4.4. Mechanisms to encourage participation in public administration

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

4.5 Participation mechanisms for follow-up of public administration

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

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

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

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

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

7. GENERAL RECOMMENDATION

Recommendation:

Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, as well as the recommendations contained in this report.

ANNEX II
AGENDA FOR THE ON-SITE VISIT TO COSTA RICA

<u>Tuesday, October 2, 2012</u>	
8:00 hrs. – 8:30 hrs. <i>Hotel San José Palace</i>	Coordination meeting between the representatives of the Member States of the Subgroup and the Technical Secretariat.
8:30 hrs. – 9:00 hrs. <i>Hotel San José Palace</i>	Coordination meeting between the representatives of the country under review, the Member States of the Subgroup and the Technical Secretariat
9:15 hrs. – 10:30 hrs. <i>Hotel San José Palace</i>	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers.^{137/}
	<p>Topics:</p> <ul style="list-style-type: none"> • Cooperation between civil society and oversight bodies in efforts aimed at preventing and combating corruption. • Needs for improvement in order to combat corruption in Costa Rica. • Access to information.
	<p><u>Participants:</u></p> <p><i>State of the Nation Program</i> <i>Name and title: Jorge Vargas Cullell, Director</i></p> <p><i>Costa Rica Integra, national contact for Transparency International</i> <i>Name and title: Eduardo Núñez, President</i></p> <p><i>Consultative National Committee for Social Responsibility of Costa Rica</i> <i>Name and title: Guido Alberto Monge Fernández, Executive Vice-President</i></p>
10:40 hrs. – 12:00 hrs. <i>Hotel San José Palace</i>	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers. (Continued).
	<p>Topics:</p> <ul style="list-style-type: none"> • Cooperation between the private sector and the oversight bodies in efforts aimed at preventing and combating corruption.

137. The following organizations and individuals were invited to participate, pursuant to article 27 of the Methodology, which allows invitation to participate to be extended to civil society organizations and/or, among others, private sector organizations, professional organizations, academics or researchers.

	<ul style="list-style-type: none"> • Access to information. <p><u>Participants:</u> Costa Rican Chamber of Commerce <i>Name and title: Luis Carlos Piedra, Economist</i> Costa Rica School of Lawyers <i>Name and title: Dennia Fernández, Assistant to the President</i> University of Costa Rica <i>Jorge Córdoba Ortega, Academic</i></p>
12:00 hrs. – 13:15 hrs.	Lunch
13:15 hrs. – 14:15 hrs. <i>Hotel San José Palace</i>	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers. (Continued)
	<p>Topic:</p> <ul style="list-style-type: none"> • Cooperation between the private sector and the oversight bodies in efforts aimed at preventing and combating corruption. • Access to information. <p><u>Participants:</u> Press and Freedom of Information Institute (IPLEX) <i>Name and title: Alejandro Delgado Fait, President</i> Academic/Researcher <i>Pablo Barahona Krüger, author of the book, “Corruption and Impunity: correlations and implications”</i></p>
14:45 hrs. – 17:45 hrs. <i>PEP Headquarters</i>	Public Ethics Prosecutor (PEP)
14:45 hrs. – 16:30 hrs.	<p>Panel 1:</p> <ul style="list-style-type: none"> • Institutional introduction – Objectives, functions & structure (10 minutes) • Institutional coordination mechanisms and regime of competencies. • Accountability mechanisms. • Results in relation to the fulfillment of its responsibilities. <p><u>Participants:</u></p>

	<p><i>Name and title: Gilbert Calderón Alvarado, Prosecutor-Director</i></p> <p><i>Tatiana Gutiérrez Delgado, Prosecutor</i></p> <p><i>Ricardo Jiménez Bonilla, Attorney of the PEP</i></p>
16:30 hrs. – 17:45 hrs.	<p>Panel 2:</p> <ul style="list-style-type: none"> • Difficulties with respect to the fulfillment of its responsibilities • Information on best practices with respect to its functions (El Daño Social) • Follow-up on recommendations from the First Round: <ul style="list-style-type: none"> ○ Initiative on access to information ○ Participation mechanisms – Draft Project for Municipal Strengthening and Decentralization (FOMUDE) by IFAM.
	<p><u>Participants:</u></p> <p><i>Name and title: Gilbert Calderón Alvarado, Prosecutor-Director</i></p> <p><i>Tatiana Gutiérrez Delgado, Prosecutor</i></p> <p><i>Ricardo Jiménez Bonilla, Attorney of the PEP</i></p>
18:15 hrs. <i>Hotel San José Palace</i>	Informal meeting ¹ between the representatives of the Member States of the Subgroup and the Technical Secretariat.
<u>Wednesday, October 3, 2012</u>	
8:00 hrs. – 12:00 hrs. <i>CGR Headquarters</i>	Comptroller General of the Republic (CGR)
8:00 hrs. – 10:00 hrs.	<p>Panel 3:</p> <ul style="list-style-type: none"> • Institutional introduction – Objectives, functions & structure (10 minutes) • Institutional coordination mechanisms and regime of competencies. • Adoption of decisions. • Accountability mechanisms. • Internal audits in the CGR. • Technology.
	<p><u>Participants:</u></p> <p><i>Name and title:</i></p> <p><i>Martha Acosta Zúñiga, Comptroller General of the Republic.</i></p>

	<p><i>Navil Campos Paniagua, Manager of the Area of Complaints of Investigations.</i></p> <p><i>Rosa Fallas Ibañez, Associate Manager of the Legal Division.</i></p> <p><i>Maritza Sanabria, Chief of the Corporate Governance Unit.</i></p> <p><i>Soledad Jiménez Cascante, Chief of the Information Services Unit.</i></p> <p><i>Manuel Martínez Sequeira, Manager of the Support Services Division.</i></p>
10:15 hrs. – 12:00 hrs.	<p>Panel 4:</p> <ul style="list-style-type: none"> • Follow-up to the recommendations from the First Round: <ul style="list-style-type: none"> ○ Sworn statements of income, assets and liabilities– publication and exchange of information. ○ System of Sworn Statements (SDJB) ○ Use of the System for Registering Penalties in the Public Treasury (SIRSA). ○ Citizen participation strategy.
	<p><u>Participants:</u></p> <p><i>Name and title:</i></p> <p><i>Martha Acosta Zúñiga, Comptroller General of the Republic.</i></p> <p><i>Navil Campos Paniagua, Manager of the Area of Complaints of Investigations.</i></p> <p><i>Rosa Fallas Ibañez, Associate Manager of the Legal Division.</i></p> <p><i>Maritza Sanabria, Chief of the Corporate Governance Unit.</i></p> <p><i>Soledad Jiménez Cascante, Chief of the Information Services Unit.</i></p> <p><i>Manuel Martínez Sequeira, Manager of the Support Services Division.</i></p>
12:00 hrs. – 13:15 hrs.	Lunch
13:15 hrs. – 14:30 hrs.	<p>Panel 5:</p> <ul style="list-style-type: none"> ○ Initiative on access to information. ○ Draft law reforming the Law against Corruption and Illicit Enrichment.
15:15 hrs. – 17:45 hrs.	Public Ministry

<p><i>Public Ministry Headquarters</i></p>	
<p>15:15 hrs. – 17:45 hrs.</p>	<p>Panel 6:</p> <ul style="list-style-type: none"> • Institutional introduction – Objectives, functions & structure (10 minutes) • Probity, Transparency and Anticorruption Prosecutor (FAPTA) • Institutional coordination mechanisms and regime of competencies. • Adoption of decisions. • Accountability mechanisms. • Results in relation to the fulfillment of its responsibilities. <hr/> <p><u>Participants:</u> <i>Name and title:</i> <i>Juan Carlos Cubillo, Assistant Prosecutor – Probity, Transparency and Anticorruption</i> <i>Criss Gonzáles Ugalde, Attorney</i> <i>Claudia Villafuerte Orellana, Attorney</i> <i>Milena Brenes Brenes, Attorney</i> <i>Andrea Rodríguez Sandí, Attorney</i> <i>Eida Solís Loría, Attorney</i> <i>Patricia Badilla Abarca, Attorney</i> <i>Jeffrey Gonzaga Flory, Attorney</i> <i>Maurice Ghesquiere Briceño, Attorney</i> <i>Fabian Serrano Soto, Attorney</i> <i>Freddy Calderón Chaves, Attorney</i></p>
<p>18:15 hrs. <i>Hotel San José Palace</i></p>	<p>Informal meeting between the representatives of the Member States of the Subgroup and the Technical Secretariat.</p>
<p><u>Thursday, October 4, 2012</u></p>	
<p>8:30 hrs. – 11:30 hrs. <i>Headquarters of the Office of the Ombudsman</i></p>	<p>Office of the Ombudsman (<i>Defensoría de los Habitantes de la República</i>)</p>
	<p>Panel 7:</p> <ul style="list-style-type: none"> • Institutional introduction – Objectives, functions & structure (10

	<p>minutes)</p> <ul style="list-style-type: none"> • Institutional coordination mechanisms and regime of competencies. • Legal and administrative human resources regime. • Accountability mechanisms. • Follow-up to the recommendations from the First Round: <ul style="list-style-type: none"> ○ Citizen participation proposal. ○ Access to informacion.
	<p><u>Participants:</u></p> <p><i>Name and title:</i></p> <p><i>Guillermo Bonilla Alcanza, Director of Control and Administrative Management.</i></p> <p><i>Luis Richmond Solis, official in the Department of Control and Administrative Management.</i></p> <p><i>Ricardo Varela Quirós, external advisor of the DHR.</i></p>
<p>11:30 hrs. – 13:00 hrs.</p>	<p>Lunch</p>
<p>13:00 hrs. – 17:30 hrs.</p>	<p>Treasury and Civil Service Criminal Jurisdiction (<i>Jurisdiccional Penal de Hacienda y de la Función Pública</i>)</p>
<p>13:00 hrs. – 15:00 hrs</p>	<p>Panel 8:</p> <ul style="list-style-type: none"> • Institutional introduction – Objectives, functions & structure (10 minutes) • Institutional coordination mechanisms and regime of competencies. • Legal and administrative human resources regime. • Adoption of decisions.
	<p><u>Participants:</u></p> <p><i>Names and titles:</i></p> <p><i>Marjorie Valenciano Arias</i> <i>Coordinator Criminal Court, Second Judicial Circuit</i></p> <p><i>Rocío Pérez Montenegro</i> <i>Coordinator Criminal Tribunal, Second Judicial Circuit</i></p> <p><i>Yogberth Mejías, Trial Judge</i></p>

	<p><i>Ernesto Bustos, Judicial Coordinator</i></p> <p><i>Jenny Quirós, Manager, Project – Office Management Improvement</i></p>
15:15 hrs. – 17:30 hrs	<p>Panel 9:</p> <ul style="list-style-type: none"> • Accountability mechanisms • Results in relation to the fulfillment of its responsibilities • Institutional strengthening or actions, or improvement of services rendered, Systems or the use of modern technology for the execution of tasks • Best practices (Digital Criminal Court) <p><u>Participants:</u></p> <p><i>Names and titles:</i></p> <p><i>Marjorie Valenciano Arias</i> <i>Coordinator Criminal Court, Second Judicial Circuit</i></p> <p><i>Rocío Pérez Montenegro</i> <i>Coordinator Criminal Tribunal, Second Judicial Circuit</i></p> <p><i>Yogberth Mejías, Trial Judge</i></p> <p><i>Ernesto Bustos, Judicial Coordinator</i></p> <p><i>Jenny Quirós, Manager, Project – Office Management Improvement</i></p>
17:45 hrs. – 18:15 hrs. <i>Hotel San José Palace</i>	Informal meeting between the representatives of the Member States of the Subgroup and the Technical Secretariat.
18:15 hrs. – 19:00 hrs. <i>Hotel San José Palace</i>	Final meeting ^{138/} between the representatives of the country under review, the Member States of the Subgroup and the Technical Secretariat.

138. 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.”

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

COUNTRY UNDER REVIEW:

COSTA RICA

Tatiana Gutierrez Delgado

Lead Expert of Costa Rica to the Committee of Experts of the MESICIC
Public Ethics Prosecutor
Attorney General's Office

MEMBERS STATES OF THE PRELIMINARY REVIEW SUBGROUP:

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Darshan Ramdhani

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