

MECHANISM FOR FOLLOW-UP ON
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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ECUADOR
FINAL REPORT

(Adopted at the March 21, 2014 Plenary Session)

SUMMARY

This report contains a comprehensive analysis of the implementation in the Republic of Ecuador of Article III, paragraph 9, of the Inter-American Convention against Corruption, referring to a “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 agencies; and of the follow-up of the implementation of the recommendations served on Ecuador during the First Round.

The analysis 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 analysis with 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 inputs for the review were the Republic of Ecuador’s reply to the questionnaire, information gathered by the Technical Secretariat, and, as a new and important source of information, the on-site visit conducted between October 1 and 3, 2013, by the members of the review subgroup for Ecuador, composed of Chile and Venezuela, with the support of the Technical Secretariat, during which the information furnished by Ecuador 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, providing the Committee with objective and complete information on those topics, assisting with the obtaining of information on best practices, and providing Ecuador with the opportunity of offering and/or requesting technical assistance for the purposes of the Convention.

The review of the oversight bodies was intended, in accordance with the terms of the Fourth Round methodology, to determine whether they had a legal framework, whether it was appropriate, and whether the expected results are attained; and, taking those observations into account, the relevant recommendations were issued to the Country under review.

The following Ecuadorian oversight bodies were studied for this report: the Citizen Participation and Social Oversight Council (CPCCS), the State Prosecution Service (FGE), the Office of the Comptroller General of the State (CGE), and the Judicial Function.

The recommendations formulated for consideration by Ecuador in connection with these agencies were geared toward objectives including the following:

For the CPCCS: strengthening inter-institutional coordination; implementing internal regulations for processing complaints, allegations, and claims related to the pursuit of its objectives and to the performance of its personnel; creation of an Internal Audit Unit; and providing it with the human and budgetary resources necessary to ensure full compliance with its duties of preventing, detecting, and investigating acts of corruption.

For the FGE: updating its post classification manual; strengthening the institution by providing it with the human and budgetary resources necessary to ensure full compliance with its duties; strengthening information systems and procedures to streamline the preliminary inquiry and follow-up process in order ensure the timely processing of cases, particularly those related to corruption and the removal of obstacles, so prosecutorial inquiries into the crimes of embezzlement and illicit enrichment can be launched promptly.

For the CGE: finalize the implementation of the Organic Organizational Process Management Statute of the Comptroller General's Office, strengthening the institution by providing it with the human and budgetary resources necessary to ensure full compliance with its duties of overseeing the statements of net worth presenting by employees of the public administration, and developing mechanisms for the more efficient and expeditious restitution of harm caused to the State.

For the agencies of the Judiciary and the Judicature Council: implementing the new judicial career, implementing the Organic Functional Post Classification Manual and the Occupational Index of the Judicature Council, together with their corresponding internal manuals, implementing the Organic Organizational Process Management Statute of the Judicature Council, and establishing an comprehensive information system to gather data on the substantiation of different types of crimes in general and specifically those considered in the Convention.

The best practices regarding which Ecuador provided information involved, essentially, the FGE's implementation of the Integrated System of Prosecutorial Actions (SIAF) which seeks, *inter alia*, to reduce the backlog of cases related to reports of indications of criminal liability submitted by the CGE; and the creation of the Judicial Function's Management Transparency Unit, the powers and responsibilities of which include ensuring transparency and efficiency in the Judicial Function and strengthening inter-institutional anticorruption coordination.

Regarding follow-up on the recommendations formulated for Ecuador in the First Round and regarding which the Committee found that additional attention was required in the Second Round report, based on the methodology for the Fourth Round and bearing in mind the information provided by Ecuador in its reply to the questionnaire and during the on-site visit, it was determined which of those recommendations had been satisfactorily implemented; which required additional attention; and which required reformulating. A list of those still current was also prepared, which can be found in Annex I of this report.

Some of the recommendations served on Ecuador in the First Round that remain in effect or that were reformulated involved such issues as strengthening the oversight agency responsible for the implementation of the Law on Transparency and Access to Public Information, continuing to enforce measures for the imposition of restrictions on those leaving public service, and repealing its *desacato* contempt laws.

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

**REPORT ON IMPLEMENTATION IN THE REPUBLIC OF ECUADOR 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. Report Contents

[1] This report presents, first, a comprehensive review of the Republic of Ecuador'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 Ecuador has voluntarily expressed its will to share relating to the oversight bodies under review in this report.

[3] Third, as agreed on by the MESICIC Committee of Experts at its Eighteenth Meeting, in compliance with recommendation 9(a) of the Third Meeting of the Conference of MESICIC States Parties, it will address the implementation of the recommendations served on the Republic of Ecuador by the MESICIC Committee of Experts in the report adopted for that country in the First Round that have been deemed to require additional attention in the reports adopted for it in the Second and Third Rounds, which are available on the internet at the following address: http://www.oas.org/juridico/spanish/mec_inf_ecu.pdf.

2. Ratification of the Convention and Adhesion to the Mechanism

[4] According to the official records of the OAS General Secretariat, the Republic of Ecuador ratified the Inter-American Convention against Corruption on May 26, 1997, and deposited its instrument of ratification on June 2 of that year.

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

I. SUMMARY OF INFORMATION RECEIVED

1. Response from the Republic of Ecuador

¹ This report was adopted by the Committee in accordance with the provisions of Articles 3 (g) and 25 of the Committee's Rules of Procedure, at the March 21, 2013 plenary session, within the framework of the Twenty – Third Meeting of the Committee, held at OAS headquarters in Washington, D.C., from March 17 to 21, 2013.

[6] The Committee would like to note the cooperation that it received from the Republic of Ecuador throughout the review process and, in particular, from the Citizen Participation and Social Oversight Council (CPCCS), which was evidenced, *inter alia*, in its response to the Questionnaire and in its constant willingness to clarify or complete its contents, as well as in its support for the on-site visit referred to in the following paragraph of this report. Together with its response, the Republic of Ecuador sent the provisions and documents it considered pertinent. That reply, along with said provisions and documents, may be consulted at the following web page: http://www.oas.org/juridico/spanish/mesicic4_ecu.htm.

[7] In addition, the Committee notes that the country under review granted its consent for an on-site visit in accordance with provision No. 5 of the *Methodology for Conducting On-site Visits*, which was carried out on October 1 to 3, 2013, by the representatives of Chile and Venezuela, in their capacity as members of the review subgroup, with the support of the Technical Secretariat of the MESICIC. The information obtained during the visit is included in the relevant sections of this report and its agenda is enclosed herewith, in accordance with provision No. 34 of the *Methodology for Conducting On-site Visits*.

[8] In carrying out its review, the Committee took into account the information furnished by the Republic of Ecuador up until June 20, 2013, as well as the information provided by the country under review and requested by the Secretariat and the members of the review subgroup in order to comply with their duties as stipulated in the *Rules of Procedure and Other Provisions, the Analysis Methodology for the Implementation of the Provision of the Inter-American Convention against Corruption Selected for the Fourth Round*, and the *Methodology for Conducting On-site Visits*. http://www.oas.org/juridico/spanish/mesicic4_ecu.htm

2. Documents and opinions received from Civil Society Organizations and/or, *inter alia*, Private Sector Organizations, Professional Organizations, Academics, or Researchers.

[9] The Committee did not receive, within the deadline set in the Schedule for the Fourth Round, documents from civil society organizations as provided for in Article 34.b of the Committee's Rules of Procedure.

[10] Nevertheless, during the on-site visit to the Republic of Ecuador, information was collected from society civil, the private sector, professional associations, academics, and researchers who were invited to attend meetings toward that goal, in compliance with provision No. 27 of the *Methodology for Conducting On-site Visits*, as listed on the agenda of the on-site visit included in this report. This information is contained in the relevant sections of the report, as applicable for its purposes.

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, PARAGRAPH 9, OF THE CONVENTION)

[11] The Republic of Ecuador has a series of oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts, including the following: the Citizen Participation and Social Oversight Council (CPCCS), the Office of the

Comptroller General of the State (CGE), the Superintendency of Companies, the Superintendency of Banking and Insurance (SBS), the Superintendency of Telecommunications, the Superintendency of Popular and Solidary Economy, the Superintendency of Market Power Oversight, the Office of the People's Defender (DP), the agencies of the Judicial Function and the Judicature Council, the State Prosecution Service, the National Money Laundering Council (CONCLA), and the Undersecretariat of Transparency and Management.²

[12] The following paragraphs offer a brief description of the purposes and functions of the four agencies selected by the Republic of Ecuador to be reviewed in this report.

[13] The CPCCS promotes and encourages the exercise of rights relating to citizen participation; it fosters training in citizenship, values, transparency, and anticorruption efforts; it establishes mechanisms for accountability, citizen oversight, and social control over matters of public interest; it investigates complaints regarding actions or omissions that affect citizen participation or foster corruption; and it appoints authorities.

[14] The State Prosecution Service (FGE), under its constitutional and legal powers and either on an *ex officio* basis or at the request of an interested party, conducts pretrial investigations and criminal proceedings. During proceedings it brings public action in accordance with the principles of timeliness and minimal criminal intervention, paying particular attention to the public interest and to victims' rights. If merit is found, it brings charges against the suspected perpetrators before the competent judge and pursues the charges in the substantiation of the criminal prosecution.

[15] The Office of the Comptroller General of the State is a technical body responsible for overseeing how state resources are used and the attainment of the objectives of state institutions and of those private-law corporate entities that make use of public resources. It has its own legal identity and administrative, financial, budgetary, and organizational autonomy, and it is responsible for the Transparency and Social Oversight Function.

[16] Agencies of the Judiciary and the Judicature Council. The Judicature Council is the body responsible for the governance, administration, oversight, and discipline of the Judicial Function. The National Court of Justice is the supreme body for the administration of regular justice and, as such, is responsible for administering justice and punishing those found guilty of those offenses referred to in the Inter-American Convention against Corruption that Ecuadorian law defines as crimes.

1. CITIZEN PARTICIPATION AND SOCIAL OVERSIGHT COUNCIL (CPCCS)

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

[17] The Citizen Participation and Social Oversight Council (CPCCS) has a set of provisions in its legal framework, as well as other measures that refer, *inter alia*, to the following:

[18] Regarding its nature, objectives, and functions, Article 204 of the Constitution of the Ecuadorian Republic (CRE) states that the CPCCS is a part of the Transparency and Social

² On February 10, 2014, the Republic of Ecuador reported the creation of the Superintendency of Information and Communications, under the Organic Communications Act published in the Official Register, Supplement No. 22, June 25, 2013

Oversight Function and that it consequently enjoys its own legal personality and administrative, financial, budgetary, and organizational autonomy.

[19] The duties and powers of the CPCCS are set out in Article 208 of the CRE, which provides, in addition to those duties and powers provided for by law, as follows: (1) To promote citizen participation, encourage public deliberation processes, and foster training in citizenship, values, transparency, and the fight against corruption. (2) To establish accountability mechanisms in public institutions and public sector entities, and to assist in citizen oversight and social control processes. (3) To urge other agencies of the Function to act, obligatorily, on matters that in the Council's opinion warrant intervention. (4) To investigate complaints involving actions or omissions affecting citizen participation or creating corruption. (5) To issue reports establishing the existence of indications of responsibility, formulate the necessary recommendations, and pursue the corresponding legal actions. (6) To appear as a party in proceedings opened as a result of its investigations. When a judgment finds that the commission of the crime involved the misappropriation of resources, the competent authority shall proceed to seize assets from the convict's personal net worth. (7) To assist in the protection of people who report acts of corruption. (8) To request, from any agency or official of state institutions, information it deems necessary for its investigations or processes. Individuals and institutions shall cooperate with the Council, and those that refuse to do so shall be punished in accordance with the law. (9) To organize the process and oversee transparency in the actions of the citizen committees that select state authorities. (10) To appoint the principal authorities of the Office of the Attorney General of the State and of the superintendencies from the three-name shortlists proposed by the President of the Republic, following the applicable citizen oversight and challenge procedure. (11) To appoint the principal authorities of the Office of the People's Defender, Public Defense Office, State Prosecution Service, and Office of the Comptroller General of the State, upon completion of the corresponding selection process. (12) To appoint the members of the National Electoral Council, Electoral Disputes Tribunal, and Judicature Council, upon completion of the corresponding selection process.

[20] Regarding the exceptions to the scope of its functions, during the on-site visit, the CPCCS noted that the Organic Code for Territorial Organization, Autonomy, and Decentralization (COOTAD) provides that the promotion of citizen participation falls – primarily but not exclusively – to the decentralized, autonomous governments.³

[21] In addition, Article 13 of the Organic Law of the CPCCS (LOCPCCS) states that its powers in encouraging transparency and anticorruption efforts are as follows: (1) Promote institutional policies on transparency in the management of public affairs, ethics in the use of goods, resources, and in the exercise of public functions and citizen access to public information. (2) Request, from any agency or official of state institutions, information it deems necessary for its investigations or processes. Individuals and institutions shall cooperate with the Council, and those that refuse to do so shall be punished in accordance with the law. (3) Private-law individuals or entities that provide services or perform activities of public interest that fail to submit the information of interest to the investigation within the deadlines set in the Law on Transparency and Access to Public Information shall be punished by the corresponding oversight agency at the request of the Citizen Participation and Social Oversight Council, regardless of whatever civil or criminal actions might be admissible. (4) Request institutions of the public sector to attend to requests or complaints lodged by the public, and investigate individual complaints that affect participation, create corruption, or go against the social interest. (5) Issue reports ruling on the existence of indications of responsibility assessed by the Council, in

³ See PowerPoint presentation: http://www.oas.org/juridico/ppt/mesicic4_ecu_CPCCS4.ppt#277,1,Slide 1.

accordance with the applicable internal regulations and provided that the determination has not been made by another agency of the same function, in addition to formulating the necessary recommendations and bringing the corresponding legal actions. (6) Appear as a party, since the reports issued obligatorily require processing and have the force of evidence, in proceedings opened as a result of its investigations. (7) Request the Prosecutor's Office to protect people making complaints or serving as witnesses in the investigations conducted by the Council, through the victim and witness protection system. In cases of imminent risk, it shall call for immediate action by the Prosecutor's Office.

[22] With regard to mechanisms for resolving any conflicts of jurisdiction that might arise, Article 436.7 of the CRE grants the Constitutional Court the general power to settle conflicts of competence or authority between functions of the State or agencies created under the Constitution, as is the case with the CPCCS.

[23] Regarding interinstitutional coordination mechanisms, the CPCCS has signed 28 different framework agreements⁴ and specific interinstitutional cooperation pacts with decentralized, autonomous governments, public institutions, universities, and nongovernmental organizations. In addition, since January 2013, the CPCCS has been working with the Office of the People's Defender, the Public Defense Office, and the State Prosecution Service on an initiative for the construction of a "National Network for the Protection of Rights and Combating Corruption." Its objectives include providing appropriate and effective answers to members of the public who lodge requests or claims related to the protection of their rights and the fight against corruption, in the institutions involved; strengthening procedures for the streamlined referral of complaints from the public in any of these areas to the competent agency; providing preferential treatment to priority-attention groups in conditions of social and economic vulnerability; and holding regular meetings to follow up on the established strategies and referred cases, to share information, and to monitor the actions taken.⁵

[24] In compliance with Article 39 of the LOCPCCS, it adopts its decisions by an absolute majority of the members of the Council's plenary and, if the vote is tied, the President has the deciding vote. As to whether these decisions can be appealed, Article 173 of the CRE states that the resolutions of any state authority may be challenged both through administrative channels and with the corresponding agencies of the Judicial Function.

[25] The selection of the CPCCS's senior authorities – its councilors – is provided for in Article 207, final section, of the CRE, which states that the Council shall comprise seven principal councilors and seven alternates; and that the principal councilors shall elect from among their number its President, who shall be its legal representative, for a period of time equal to one-half of his or her mandate. The councilors shall be selected from among candidates proposed by social organizations and the public. The selection process shall be organized by the National Electoral Council, which shall conduct the corresponding public merit-based competition, with public candidacies, oversight, and right of challenge as provided for by law.

[26] Regarding the duration of the authorities' mandates, Article 205 of the Constitution provides that "*the representatives of the entities that make up the Transparency and Social Control Function shall serve for periods of five years, shall have National Court immunity, and shall be subject to impeachment by the National Assembly.*"

⁴ On February 10, 2014, Ecuador reported that there are 72 agreements to date.

⁵ Response of the Republic of Ecuador to the Fourth Round Questionnaire, p. 114.

[27] Details of the process for electing councilors are set out in Articles 19 to 35 of the LOCPCCS, and include details regarding requirements, disqualifications, announcements, candidacies, admissibility process, public and merit-based competition, assessment criteria, affirmative action measures, qualification, requalification, publication of results, challenges, assignment order, proclamation and investiture, competition oversight, and disqualifications from performing oversight.

[28] The determination of the human resources necessary for the CPCCS's operations and the way in which they are provided is governed by the Organic Public Service Law (LOSEP), published in the Second Supplement of Official Register No. 294 on October 6, 2010. This includes the regime governing disqualifications and incompatibilities and responsibility for actions, which are included in the LOSEP itself.

[29] The requirements for entry into public service are set out in Article 5 of the LOSEP, section (h) of which states that it shall be necessary "To have been declared the winner in the public merit-based competition, except in the case of popularly elected or freely appointed and removable public servants."

[30] In addition, the CPCCS has its own Internal Personnel Administration Regulations, dated April 10, 2010, which sets out the basic requirements for admission to the CPCCS, in accordance with the framework set by the Constitution and the applicable Organic Law in force at the time of their adoption;⁶ it also has a Recruitment and Selection Subsystem, which regulates the conduction of public merit-based competitions.⁷

[31] Specific descriptions of the duties of the CPCCS's personnel are defined in the Post Description, Appraisal, and Classification Manual, adopted by the Ministry of Labor Relations by means of resolution No. MRL-2012-057 on September 14, 2012.

[32] The country under review, in its reply,⁸ reports that using the Post Description, Appraisal, and Classification Manual, a progressive analysis is conducted of the positions held by its officers, optimizing personnel assignments according to skills and providing the necessary training in the area of their competences; it also enclosed the 2009-2013 training plan.⁹

[33] Regarding the existence of documented procedures for performing their tasks, or of manuals or guides dealing with those duties, the CPCCS has a Procedures Manual, which applies both in Quito and in the provincial offices; it also has Organic Process Regulations and Rules of Procedure for the Plenary of the CPCCS, among other instruments.¹⁰

[34] The CPCCS has undertaken institutional strengthening actions and quality improvement efforts, including the drafting of several sets of internal instructions for improving efficiency; the public investment project called "Decentralization of CPCCS value-adding processes in the 24 provinces of Ecuador," adopted by the agency's plenary by means of resolution No. 006-209-

⁶ See http://www.cpccs.gob.ec/docs/6_CPCCS.pdf.

⁷ See PowerPoint presentation by the CPCCS during the on-site visit:
http://www.oas.org/juridico/ppt/mesicic4_ecu_CPCCS7.ppt#264,1,Slide 1

⁸ Response of the Republic of Ecuador to the Fourth Round Questionnaire, p. 64.

⁹ See: Training plan for CPCCS personnel, for the years 2009-2013
http://www.oas.org/juridico/PDFs/mesicic4_ecu_capa.pdf.

¹⁰ Response of the Republic of Ecuador to the Fourth Round Questionnaire, pp. 72-75.

CPCCS 2012 of October 25, 2012; and the hiring of a consultancy firm to prepare an Institutional Strategic Plan which is expected to be ready for implementation in the near future.¹¹

[35] In its reply, the country under review reports that the CPCCS has been working on the development of technological tools in accordance with the regulations to facilitate effectiveness and efficiency in the pursuit of its functions, and also to allow due oversight of the institution, processes which imply an ordered productive chain in the organization with the use of human, technological, physical, and financial resources. It provided a list of those tools, which included electronic systems for purchasing and accountability, those used for the selection processes for its authorities, those used to select the people responsible for oversight, and others.¹²

[36] In its reply, the country under review reports that by means of its web page, the CPCCS provides the public with information about its objectives and functions; about the procedures established for the fulfillment of its responsibilities; and guidance on how to pursue formalities with the agency. In addition, it reports that through the General Office for the Coordination of Social Communication, Participatory Communication, and Public Attention, it has organized activities in different areas such as publications, multimedia, radio and television campaigns, media attention, and, in general, dissemination of the Council's activities in its three fields of focus: transparency and anticorruption, citizen participation and social oversight, and appointment of authorities.¹³

[37] As regards how the budgetary resources necessary for its operations are assured, Article 54 of the LOCPCCS states that the Council is to be funded with: (1) Resources from the General State Budget, in an amount sufficient to ensure the agency's full functioning and the execution of the powers conferred on it; (2) Funds from agreements with national or international agencies, either public or private, that work on topics related to citizen participation, social oversight, transparency, and anticorruption, subject to a ruling from the Office of the Attorney General of the State; and (3) Other funds due to it in accordance with the law.

[38] In its reply, the country under review added that the Ministry of Finance, after the year's General State Budget has been adopted, assigns the annual budget of the Citizen Participation and Social Oversight Council, using the eSIGEF financial management system and according to the formula presented by the institution, into a single account known as the sole current account.¹⁴

[39] As for accountability, the CPCCS has a methodology for rendering accounts to the public. This is carried out by the National Accountability Subcoordination and involves gathering information and publishing it on the web page, participation mechanisms including public forums, and the presentation of the Institutional Accountability Report to the President of the Transparency and Social Oversight Function Coordination Agency (FTCS).¹⁵

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

[40] The Citizen Participation and Social Oversight Council (CPCCS) has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were briefly

¹¹ *Ibid.*, pp. 75-77.

¹² *Ibid.*, pp. 77-78.

¹³ *Ibid.*, pp. 90-94.

¹⁴ *Ibid.*, pp. 108-109.

¹⁵ *Ibid.*, pp. 116-118.

described in section 1.1 of this report. Nonetheless, the Committee considers it appropriate to formulate certain observations in relation thereto:

[41] First, the Committee notes that Article 208.4 of the Constitution of the Republic of Ecuador (CRE) includes, among the duties and powers of the CPCCS, “*investigat[ing] complaints involving actions or omissions affecting citizen participation or creating corruption.*” Similarly, Article 13.4 of the Organic Law of the CPCCS (LOCPCCS) stipulates that it is to “*...investigate individual complaints that affect participation, create corruption, or go against the social interest.*” In addition, Article 13.5 of the LOCPCCS states that the CPCCS’s powers include the authority to “*Issue reports ruling on the existence of indications of responsibility assessed by the Council, in accordance with the applicable internal regulations and provided that the determination has not been made by another agency of the same function, in addition to formulating the necessary recommendations and bringing the corresponding legal actions.*”

[42] In that regard, during the on-site visit, the representatives of the CPCCS stated that the Council’s reports concluding investigations are not always taken into account when investigating and prosecuting offenses defined in the Criminal Code, and that they are working with the Prosecution Service on information management so as to avoid duplication of investigations and make optimum use of State resources. In view of the foregoing, the Committee considers that inter-institutional coordination mechanisms need to be strengthened to enhance the effectiveness of the provision contained in Article 13, paragraph 6 of the LOCPCCS, which states that follow-up of reports issued by the CPCCS is mandatory and such reports have evidentiary value. The Committee will make recommendation (see recommendations 1.4.1 in Chapter II of this report).

[43] Second, in connection with the protection of the right to citizen participation in the public administration, the Committee notes that the aforementioned Article 208.4 of the CRE states that the CPCCS is to investigate “*actions or omissions affecting citizen participation*” or “*affecting social interest,*” while sections 5 and 6 of that article respectively establish that the Council shall “*issue reports ruling on the existence of indications of responsibility, formulate the necessary recommendations, and pursue the corresponding action*” and “*appear as a party in proceedings opened as a result of its investigations....*”

[44] On this point, the Committee notes that there is no provision with a definition clearly identifying the actions or omissions that affect citizen participation or describing the effects on social interest that the CPCCS is required to investigate. Consequently, it is similarly unclear how the responsibility created by those actions or omissions is determined, whom the recommendations are issued to, what the scope of the investigations carried out is, before what authority the corresponding legal actions are to be pursued, or before which agency proceedings are to be brought as a result of those investigations. In light of the foregoing, the Committee will formulate a recommendation (see recommendation 1.4.2. in Chapter II of this report).

[45] Third, the Committee notes that in addition to the anti-corruption functions assigned by the CRE, the CPCCS is also charged with promoting citizen participation in public administration. Under Article 208 of the CRE, paragraph 1, the CPCCS shall “*promote citizen participation, encourage public deliberation processes, and foster training in citizenship, values, transparency, and the fight against corruption.*” Similarly, paragraph 2 of Article 208 instructs it to “*... assist in citizen oversight and social control processes.*” On this point, during the on-site visit the CPCCS’ representatives stated that the task of appointing senior authorities, assigned to the CPCCS under sections 9 to 12 of Article 208 of the CRE, consumes a large amount of their time and institutional resources, considering the total amount available to fully perform the CPCCS’ three main functions, which are of equal importance under the mandate given in articles

207 et seq. of the CRE. The Committee therefore believes that the State under review could strengthen those areas, ensuring that the CPCCS has sufficient human and budgetary resources to fully perform the functions assigned to it by the CRE with respect to promoting mechanisms for citizen participation in public administration and preventing and combating corruption; the Committee will formulate a recommendation to that effect (see recommendation 1.4.3 in Chapter II of this report).

[46] The Committee also notes that during the on-site visit, in the interviews with civil society organizations, the private sector, and academics, the Representative of the Latin American Faculty of Social Sciences (FLACSO – Ecuador) stated, during the panel session on mechanisms for civil society participation in the public administration, that one of the difficulties detected was that the CPCCS was more involved in the selection of the oversight authorities than in supporting citizen participation.

[47] Fourth, during the on-site visit, the representatives of the CPCCS stated that one of their difficulties was the fact that the CPCCS, in contrast to its predecessor, the Civic Corruption Control Commission (CCCC), is not empowered to act on an *ex officio* basis. Thus, Article 208.4 of the CRE clearly stipulates that the functions of the CPCCS shall include “*investigat[ing] complaints alleging actions or omissions ...*” Based on that, it is clear that the Constitution itself states that the Council shall only investigate complaints and does not assign it the authority to begin *ex officio* investigations. Although the Committee notes this difficulty, it will refrain from issuing an opinion on this matter considering that it deals with a point of constitutional law.

[48] Similarly, during the on-site visit, the CPCCS’s representatives noted that another difficulty was that the Council did not have punitive powers. In this sense, the Committee notes that the Constitution, at Article 208.5, instructs the CPCCS to issue reports establishing the existence of indications of responsibility, to formulate the necessary recommendations, and to pursue the corresponding legal actions, but that it does not empower the Council to order sanctions. The Committee notes the difficulty identified by the CPCCS, but it will refrain from issuing an opinion on this matter considering that it deals with a point of constitutional law.

[49] Fifth, the Committee notes that Article 208.3 of the CRE instructs the CPCCS to “*urge other agencies of Government to act, obligatorily, on matters that in the Council’s opinion warrant intervention.*” Likewise, as noted in previous paragraphs, the Constitution empowers the CPCCS to formulate recommendations (paragraph 5 of Article 208) and to pursue legal action. In this sense, during the on-site visit, the CPCCS said that one its challenges was the “obligation of public agencies to accept the recommendations issued by the social oversight process,”¹⁶ in that those agencies did not always implement the recommendations issued by the CPCCS.

[50] Regarding this point, the Committee notes that the Constitution does not make those recommendations mandatory; however, and as previously noted, Article 13, paragraph 6 of the LOCPCCS provides that follow-up of reports issued by the CPCCS is mandatory and such reports have evidentiary value. Furthermore, the Constitution authorizes the CPCCS to urge the other institutions in this branch of government to take mandatory action on matters that warrant their intervention. Here, the Committee believes that the State under review could conduct a study on the degree to which the CPCCS’ recommendations are implemented and, in those cases in which its recommendations are not being implemented, examine the reasons why so as to identify the challenges and take corrective action. The Committee will formulate a recommendation (see recommendation 1.4.4 in Chapter II of this report).

¹⁶ [http://www.oas.org/juridico/ppt/mesicic4_ecu_CPCCS3.ppt#263,8,ACOMPANAMIENTO FUNCIÓN JUDICIAL RETOS](http://www.oas.org/juridico/ppt/mesicic4_ecu_CPCCS3.ppt#263,8,ACOMPANAMIENTO%20FUNCION%20JUDICIAL%20RETOS)

[51] Sixth, the Committee notes that Article 208.7 of the CRE includes, among the CPCCS's functions, that of assisting with the protection of people who report acts of corruption, and that Article 13.7 of the LOCPCCS stipulates that the CPCCS is to request the Prosecution Service to protect complainants and witnesses in the investigations that the Council carries out, through the victim and witness protection system. On this point, during the on-site visit the CPCCS's representatives noted that although a system for the protection of victims and witnesses in criminal proceedings does exist, there was no particular system in place for protecting corruption whistleblowers in other arenas, such as administrative venues. They therefore underscored the need to uphold the rights of whistleblowers, particularly public servants, including their job security.

[52] The Committee is aware of the importance to the CPCCS's purpose of strengthening the legal framework for the protection of whistleblowers and of other people capable of providing valuable information in the investigative or disciplinary proceedings over which it has jurisdiction; however, bearing in mind that recommendations were already formulated to the country under review regarding the protection of corruption whistleblowers in the first two rounds of review, it will address this matter in the section of this report addressing follow-up on the recommendations from the First Round.

[53] It should be noted that during the on-site visit, in the interviews with civil society organizations, the private sector, and researchers and academics, the representatives of the ESQUEL Foundation stated that there was a lack of interest in reporting acts of corruption among the public, caused by fear, disinformation, and a lack of protection.

[54] Seventh, regarding the way in which complaints, allegations, and claims related to the pursuit of its objectives and to the performance of its personnel are handled, the Committee notes that in its reply to the questionnaire, the country under review noted that "*There is no unit for complaints, allegations, and claims, but work is underway on defining the lines to be followed within the organizational structure of the Citizen Participation and Social Oversight Council to deal with all complaints, allegations, and claims presented in accordance with all formalities.*"¹⁷ During the on-site visit, the representatives of the CPCCS stated that they had prepared a set of proposed amendments to the CPCCS's Internal Personnel Administration Regulations and a draft set of regulations for processing complaints and requests related to actions or omissions by the CPCCS's officers, employees, and workers, and that those documents were under review for their subsequent presentation, review, and adoption by the Plenary of the Council.¹⁸ The Committee believes that it is important for the CPCCS to have within its organizational structure a set of internal regulations for processing such complaints and allegations, particularly bearing in mind the nature of the Council, and, accordingly, it will formulate a recommendation (see recommendation 1.4.5 in Chapter II of this report)

[55] Eighth, the Committee notes that during the on-site visit, the CPCCS's representatives stated that although the Council has an internal auditor appointed by the Comptroller General, in accordance with the terms of Chapter 2 of the Organic Law of the Office of the Comptroller General of the State (LOGGE), it does not have an internal auditing unit. In that regard, Article 14 of the LOGGE states that "*The institutions of the State shall have an Internal Auditing Unit, when justified, which shall depend technically and administratively on the Office of the Comptroller General of the State which, for its creation or elimination, shall issue a prior report. The auditing personnel shall be appointed, removed, or transferred by the Comptroller General of the State,*

¹⁷ Response of the Republic of Ecuador to the Fourth Round Questionnaire, p. 105.

¹⁸ See http://www.oas.org/juridico/pdfs/mesicic4_ecu_resum.pdf, p. 19.

and the wages and salaries and expenditure for the operations of internal auditing units shall be met by the same institutions of the State that they serve and monitor ...”

[56] In that context, the Committee believes that country under review could analyze whether the levels of responsibility and functions assigned to the CPCCS justify the creation of an internal auditing unit, pursuant to Article 14 of the LOCGE¹⁹, and to that end it will formulate a recommendation (see recommendation 1.4.6 in Chapter II of this report).

[57] Ninth, in its reply, the country under review reports that since the Internal Personnel Administration Regulations of the CPCCS were adopted prior to the enactment of the Organic Law of the Public Service (LOSEP), the following new regulations are currently under review in order to adapt them to the provisions of that law and its regulations: CPCCS Internal Regulations for the Administration of Human Talent of Workers Under the Labor Code, CPCCS Internal Personnel Administration Regulations, and Sanctions Regulations for Employees of the CPCCS. On this point, the Committee underscores the importance of keeping internal regulations up to date, so they are in line with current legislation, and it will formulate a recommendation in that regard (see recommendation 1.4.8 in Chapter II of this report).

[58] Tenth, with regard to the matter of training, when the CPCCS budget for 2012 was examined on the occasion of the on-site visit, it was observed that out of a total budget of USD \$14,345,659, a line item upwards of USD \$203,244.07 was for training staff from all areas of the institution; 72% of that amount was executed in 2012. Here, the Committee is of the view that the State under review could strengthen the amount it allocates in its budget for training on anti-corruption issues so as to have sufficiently well-trained and informed staff, especially considering the functions that the Constitution confers upon the CPCCS in preventing and combating corruption. The Committee will formulate a recommendation (see recommendation 1.4.8 in Chapter II of this report).

[59] Finally, during the on-site visit, the CPCCS identified the following among its technical cooperation needs: the development of methodological tools, within the scope of its functions; follow-up, monitoring, and evaluation; systematization and historical record-keeping; exchanges of innovative practices, mechanisms, or tools; and the design and production of educational materials.²⁰ The Committee notes the needs highlighted by the CPCCS and the need for the country under review to provide it with the necessary support, and it invites the States Parties and other cooperation agencies to assist the institution with these topics. The Committee will formulate a recommendation (see recommendation 1.4.9. in Chapter II of this report).

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

[60] 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 Citizen Participation and

¹⁹ On February 10, 2014, in its document of remarks to the preliminary draft report, Ecuador informed that *“In its Organic Organizational Process Management Regulations, the CPCCS has created the “National Directorate of Internal Auditing”, headed by a Director who has not yet been appointed. However, the CPCCS is in the process of designating the Director, working in coordination with the Office of the State Comptroller General.”*

²⁰ See: [http://www.oas.org/juridico/ppt/mesicic4_ecu_CPCCS3.ppt#265,10,NECESIDADES COOPERACIÓN TÉCNICA](http://www.oas.org/juridico/ppt/mesicic4_ecu_CPCCS3.ppt#265,10,NECESIDADES%20COOPERACI%C3%93N%20T%C3%A9CNICA)

Social Oversight Council (CPCCS), with respect to the fulfillment of its functions, including the following:

[61] First, during the on-site visit, the country under review presented statistical data on the results of its efforts in detecting and investigating acts of corruption, most notably the following:

a. Cases inherited from former agencies between 2008 and 2010 and current status

Table No. 1

VARIABLE	National Anticorruption Secretariat (SNA)	Civic Corruption Control Commission (CCCC)	TOTAL
Not admitted	2242	255	2497
Follow-up	319	36	355
TOTAL	2561	291	2852

[62] The Committee notes that the information on Table No. 1 indicates how many of the cases inherited by the CNCCS during the 2008/2010 transition period were admitted and how many were rejected, but that it does not indicate how many were suspended for whatever reason, how many were closed because of the triggering of statutory limitations, how many were archived before a decision on the merits of the case could be adopted, nor how many were referred to the agency responsible for adopting such a decision.

b. Cases presented to the Citizen Participation and Social Oversight Council, in its final form, after March 2010

Table No. 2

ADMISSION				
VARIABLES	2010	2011	2012	TOTAL
ADMITTED	340*	12	133	485
NOT ADMITTED	307	8	237	552
ARCHIVED	217	43	128	388
TRANSPARENCY	228	148	55	431
TOTAL	1,092**	211	553	1,856

* Number includes the 40 cases belonging to the CPCCS (temporary)

** Number includes the 314 cases of the CPCCS (temporary)

Table No. 3

INVESTIGATION				
VARIABLES	2010	2011	2012	TOTAL
Archived	7	226	65	298
Under legal advice	4	90	93	187
TOTAL	11	316	158	485

[63] The Committee notes that Tables Nos. 3 and 4 indicate how many cases were admitted, how many were not admitted, how many were archived, and how many were processed internally by the Subcoordinations of Transparency and Legal Advice. However, they do not indicate how many cases ended with the triggering of statutory limitations, how many were suspended for whatever reason, and how many were in a condition in which a decision on the merits of the case under investigation could be adopted.

Table No. 4

LEGAL ADVICE		
Ex SNA and CCC		265
CPCCS (temporary)		40
Archive		90
Institutions	Comptroller	88
	Prosecutor	14
TOTAL		497

[64] Regarding Table No. 4, the Committee notes that the information is not broken down by year and it is impossible to determine whether the 88 cases referred to the CGE and the 14 sent to the Prosecutor's Office were all presented in 2012 or since 2008; neither does it indicate whether all these cases involve indications of acts of corruption and, if so, which, or whether they are cases involving actions and omissions affecting the right of participation or the social interest.

[65] In light of the above comments, the Committee believes that with the information furnished by the State it is not possible to clearly establish how many cases involving cases of corruption over the past five years were suspended for whatever reason, in how many statutory limitations were triggered, how many were archived without reaching a decision on the merits of the case under investigation, and how many were referred to the competent body for the adoption of such a decision, in order to identify challenges and recommend corrective measures. Consequently, the Committee will formulate a recommendation (see recommendation 1.4.11 in Chapter II of this report).

[66] In addition, the Committee believes it would also be useful to prepare statistical data on the disciplinary proceedings brought within the CPCCS, in accordance with the LOSEP and its regulations, and with the CPCCS's Internal Personnel Administration Regulations and other provisions, including, *inter alia*, the total number of cases under investigation, the number of decisions adopted in connection with them, the number of those decisions in which responsibility was found or penalties were imposed, the number of those decisions in which no responsibility was found or resulting in acquittals, and the number of those decisions involving the extinction of the punishment or responsibility because the decision was not adopted within the stipulated deadline (see recommendation 1.4.12 in Chapter II of this report).

[67] Finally, the Committee also notes that as stated in section 1.2 above, regarding adequacy of the legal framework, that under Article 208.5 of the Constitution, one of the duties of the CPCCS, in addition to issuing reports determining the existence of indications of responsibility and pursuing the corresponding legal actions, is to formulate the necessary recommendations. In this sense, the Committee believes that it would be very useful for the country under review to have the CPCCS compile statistics on how many recommendations it has issued, how many of

those involve the topic of prevention and combating corruption, how many have been implemented and by which institutions, how many are still being implemented, and how many have not been implemented and the reasons for that, in order to identify challenges and adopt corrective measures. In light of the foregoing, the Committee will formulate a recommendation (see recommendation 1.4.13. in Chapter II of this report).

1.4. Conclusions and recommendations

[68] Based on the comprehensive review of the Citizen Participation and Social Oversight Council (CPCCS) carried out in the foregoing sections, the Committee offers the following conclusions and recommendations:

[69] **The Republic of Ecuador has considered and adopted measures intended to maintain and strengthen the Citizen Participation and Social Oversight Council (CPCCS) as an oversight agency, as indicated in section 1 of Chapter II of this report.**

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

- 1.4.1. Strengthen the inter-institutional coordination mechanisms, when applicable, between the CPCCS, the State Public Prosecution Service (FGE), and the Office of the State Comptroller General (CGE) in order to enhance the effectiveness of the provision contained in Article 13, paragraph 6 of the LOCPCCS, which states that follow-up of reports issued by the CPCCS is mandatory and such reports have evidentiary value (see section 1.2 of Chapter II of this report).
- 1.4.2. Also consider regulating Article 208.4 of the Constitution of the Republic of Ecuador (CRE), and Article 13.4 of the Organic Law of the CPCCS (LOCPCCS), in order to clearly define the actions or omissions “that affect citizen participation” and that “affect the social interest” that the CPCCS is required to investigate, and to define how the responsibility they cause is created, to whom the recommendations are to be served, what is the scope of the investigations carried out, before which authority the corresponding legal actions are to be brought, and before which agency proceedings are to be initiated as a result of those investigations (see section 1.2 of Chapter II of this report).
- 1.4.3. Strengthen the areas of the CPCCS whose functions include that of preventing and combating corruption, promoting and protecting fostering citizen participation in public administration, so that it has sufficient human and budgetary resources to fully perform the functions that the Constitution and the LOCPCCS confer upon it, being in mind the resources available (see section 1.2 of Chapter II of this report).
- 1.4.4. Conduct a study on the degree to which the recommendations made in the CPCCS’ reports that contain indications of responsibility and have been referred to the appropriate authorities are implemented; and, in the cases in which these recommendations have not been implemented by the public agencies, examine the reasons why so as to identify challenges and take corrective action. (See section 1.2. of Chapter II of this report).

- 1.4.5. Take the measures necessary to ensure that the CPCCS has an organizational structure and internal regulations for processing complaints, allegations, and claims related to the pursuit of its objectives and to the performance of its employees and officers (see section 1.2 of Chapter II of this report).
- 1.4.6. Create an Internal Auditing Unit within the CPCCS, pursuant to the terms of Chapter 2 of the Organic Law of the Office of the Comptroller General of the State (LOGGE) (see section 1.2 of Chapter II of this report).
- 1.4.7. Ensure that the CEPCCS's internal personnel regulations are up to date and, accordingly, are in line with current legislation on the matter (see section 1.2 of Chapter II of this report).
- 1.4.8. Strengthen the budget allocation for training on anticorruption topics, bearing in mind the available resources, in order to ensure its personnel is adequately trained in and aware of the topic, particularly taking into consideration the functions assigned to the CPCCS by the Constitution in the areas of preventing and fighting corruption (see section 1.2 of Chapter II of this report).
- 1.4.9. Conduct the necessary negotiations with other States and cooperation agencies, to provide the CPCCS with the technical cooperation needed for the development of methodological tools; follow-up, monitoring and evaluation; systematization and historical record-keeping; exchanges of innovative practices, mechanisms, or tools; and the design and production of educational materials (see section 1.2 of Chapter II of this report).
- 1.4.10. Complete and itemize the statistical information on the detection of acts of corruption, by year and including the transition period, so as to clearly establish how many cases were suspended for whatever reason, how many were concluded on account of the triggering of statutory limitations, how many were archived without a decision being reached on the merits in the case under investigation, and how many were referred to the competent body for a decision on the merits, in order to identify challenges and, if applicable, adopt corrective measures (see section 1.3 of Chapter II of this report).
- 1.4.11. Prepare statistical data on the disciplinary proceedings pursued within the CPCCS, pursuant to the LOSEP and its regulations, to the CPCCS Internal Personnel Administration Regulations, and to other provisions, including, *inter alia*, the total number of cases investigated; the number of decisions adopted in connection with them; the number of those decisions in which responsibility was found or penalties were imposed; the number of those decisions in which no responsibility was found or resulting in acquittals; and the number of those decisions in which the statutory limitations was triggered with respect to the sanction or the responsibility was extinguished as a result of a failure to adopt a decision within the established deadlines, in order to identify challenges and, if applicable, adopt corrective measures (see section 1.3 of Chapter II of this report).
- 1.4.12. Compile statistics on how many recommendations the CPCCS has issued, how many of them fall within the framework of preventing and fighting corruption, how many have been implemented and by which agencies, how many are pending implementation, and how many have not been implemented and the

reasons therefore, in order to identify challenges and, if applicable, adopt corrective measures (see section 1.3 of Chapter II of this report).

2. STATE PROSECUTION SERVICE (FGE)

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

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

[72] In determining its nature, Article 194 of the Constitution of the Ecuadorian Republic (CRE) states that the FGE is an autonomous agency of the Judicial Function, single and indivisible, which is to operate on a decentralized basis with administrative, economic, and financial autonomy; and that its lead authority and legal representative is the Prosecutor General, who is to act in accordance with constitutional principles, rights, and guarantees of due process.

[73] Regarding its objectives and functions, Article 195 of the CRE states that the FGE “*shall direct, either on an ex officio basis or at the request of an interested party, pretrial investigations and criminal proceedings; during the proceedings it will represent the State in accordance with the principles of timeliness and minimal criminal intervention, paying particular attention to the public interest and to victims’ rights. If it finds merit, it shall accuse the suspects before the competent judge, and it shall pursue the accusation in the substantiation of the criminal prosecution...*” No exceptions are set for the scope of its functions.

[74] Regarding interinstitutional coordination mechanisms, in its reply the country under review indicates that it has cooperation agreements with such institutions as the Interior Ministry, National Police, decentralized, autonomous governments, Judicature Council, Ministry of Justice, National Statistics and Census Institute, National Planning Secretariat, Public Defense Office, National Assembly, Transparency Function, and office of the Comptroller General of the State, in order to meet its objectives, goals, and other duties under the Constitution and law, be they assigned either directly or indirectly.²¹ In addition, the Interinstitutional Flagrant Offense Units were created, as part of an interinstitutional project with the Judicature Council and all the other players involved in criminal proceedings, to reduce the time spent processing offenses detected *in flagrante* and for which there are two units, located in Quito and Guayaquil.²²

[75] In connection with mechanisms for obtaining public support in discharging its functions, during the on-site visit the FGE’s representatives said that there were 35 comprehensive service attention points (SAI) across the nation, including such facilities as waiting rooms, organized attention systems (turns), and cubicles offering total privacy for justice system users to narrate facts when filing complaints with the Prosecutor’s Office.²³

[76] As to how it adopts its decisions, in its reply the country under review indicates that decisions are made hierarchically in accordance with its organizational structure. In addition, it said that within the scope of the State Prosecution Service’s competence, provincial prosecutors and prosecutors in general adopt their decisions, according to the phase and/or stage of the proceedings in the criminal trial, by means of resolutions, in order to fully comply with the

²¹ Response of the Republic of Ecuador to the Fourth Round Questionnaire, pp. 110-113.

²² *Ibid.*, p. 67.

²³ See: PowerPoint presentation at: http://www.oas.org/juridico/ppt/mesicic4_ecu_fge4.ppt.

functions assigned to them by the Constitution and other adjective and substantive provisions of criminal law.²⁴

[77] With respect to review remedies against the FGE's decisions, Article 76.7.m of the CRE provides that "*In all proceedings in which rights and obligations of any kind are decided, the right of due process shall be assured, including as a basic guarantee the possibility of appealing the sentence or resolution in all procedures in which rights are decided on.*" In this regard, in its reply the country under review states that all parties involved in criminal proceedings have the right to lodge the remedies identified in the Code of Criminal Procedure.²⁵

[78] With regard to its principal authorities, Article 195 of the CRE states that "*...The Prosecutor General is its lead authority and legal representative and shall act in accordance with constitutional principles, right, and guarantees of due process.*" Article 196 of the Constitution further states that the Prosecutor General of the State is to meet the following requirements: (1) Be an Ecuadorian citizen in enjoyment of his or her political rights; (2) Hold a tertiary-level degree in law that is legally recognized in the country and possess knowledge of administrative management; and (3) Have exercised with notable propriety and probity in the legal profession, the judiciary, or university teaching in the field of criminal law for a minimum period of ten years.

[79] Regarding his or her mandate, Article 196 of the CRE also provides that the Prosecutor General of the State shall serve for a period of six years and may not be reelected. In addition, Article 208.11 of the CRE, in conjunction with Article 283 of the Judicial Function Law, states that the Prosecutor General is to be appointed by the Citizen Participation and Social Oversight Council (CPCCS), pursuant to the procedures set forth in Articles 120, 209, and 210 of the Constitution.

[80] As for the agency tasked with holding the Prosecutor General responsible for his or her actions and deciding on his or her continued service in that position, Article 131 of the CRE provides that the National Assembly may impeach the Prosecutor General for noncompliance with duties, at the request of at least one quarter of its members, and his or her removal shall require the favorable vote of an absolute majority of the members of the National Assembly.

[81] Complaints, allegations, and claims related to the FGE's pursuit of its objectives and to the performance of its personnel are to be heard, processed, and resolved by the Judicature Council. The Prosecutor General of the State is exempted from this process since, as noted above, the investigation and resolution of matters involving that office falls to the National Assembly.²⁶

[82] In order to determine the human resources necessary for its operations and how they are provided, in its reply to the questionnaire, the country under review reports that the incumbents of senior positions are freely appointed and removable and that they are listed in Article 8 of the FGE's Organic Organizational Management Statute;²⁷ the exception is the Prosecutor General of the State, who has a fixed-term appointment under Article 196 of the CRE, which provides that the Prosecutor General shall serve a six-year term and may not be re-elected; the other exceptions are the Provincial Prosecutors who, under Article 42 of the Organic Code of the Judiciary, are members of the prosecutorial career service.

²⁴ Response of the Republic of Ecuador to the Fourth Round Questionnaire, p. 38.

²⁵ *Ibid.*, pp. 38-39.

²⁶ *Ibid.*, p. 46.

²⁷ *Ibid.*, p. 53.

[83] Similarly, Article 52 of the Organic Code of the Judicial Function states that all admissions of personnel to the Judicial Function shall be by means of public, merit-based competition, subject to challenge processes and social oversight, and encouraging parity between men and women. Since the FGE is a part of the Judicial Function, this provision applies to it. In addition, in its reply the country under review indicated that candidates for nonsenior positions are selected by means of merit-based competitions, which are regulated and overseen by the Judicature Council pursuant to instruction No. 140-2012.²⁸

[84] Disqualifications, incompatibilities, and responsibilities are established in Articles 77, 78, 79, 102, 103, 104, 107, 108, and 109 of the Organic Code of the Judicial Function.

[85] Regarding manuals or other documents describing the duties of its personnel, in its reply the country under review reports that the FGE has the Public Prosecution Service Post Description, Appraisal, and Classification Manual, in force since 2007.²⁹ It also has other documents, such as the Human Resource Administration Policy Manual, the Performance Evaluation Manual, and the Human Resource Subsystem Planning Manual.

[86] Regarding regular job training for its personnel, in its reply the country under review reports that since 1997, the FGE has had the National Directorate of the Prosecutor School and that, under Resolution No. 003-A-FGE-2012 of the Organic Organizational Process Management Statute, adopted on March 23, 2012, the mission of the Prosecutor School is to “*Devise, coordinate, and execute training programs to strengthen the knowledge of the employees of the State Prosecution Service, to improve their levels of competence and enable them to discharge their powers and responsibilities effectively, contributing to their professionalization, permanence, and promotion within the prosecutorial and administrative-prosecutorial careers.*”³⁰

[87] As regards documented procedures for institutional strengthening tasks and actions or for quality improvements that have been implemented, the State under review has the Organic Organizational Process Management Statute of the State Public Prosecution Service,³¹ which, according to information reported during the on-site visit, is in the process of being implemented. In addition, in compliance with Article 9 of the Statute, the Service Quality Management and Institutional Development Committee has already been created. This Committee is responsible for proposing, monitoring, and assessing the implementation of policies, provisions, and priorities for improving the institution’s efficiency. Also, two coordination units have been set up to improve coordination within the institution; and the National Legal Medicine and Forensic Science System has been created, which means that experts will be incorporated into the FGE.³²

[88] Regarding the implementation of modern technologies to facilitate its tasks, in its reply the country under review reports actions including the start of work on process automation through the Plan for the Design and Development of the Computerized Records Tool. Ecuador also reported that: “*Work also began with the Physical Archive Project for cases in all the country’s provinces, which are currently working with their own computerized tools for managing those physical documents and with the document treatment standards set down in the*

²⁸ *Ibid.*, pp. 53-54.

²⁹ *Ibid.*, p. 61.

³⁰ *Ibid.*

³¹ Official Register, Supplement 268, March 23, 2012.

³² Response of the Republic of Ecuador to the Fourth Round Questionnaire, pp. 65-69. See also http://www.oas.org/juridico/ppt/mesicic4_ecu_fge3.ppt.

occupational safety and health procedures. Those sites now allow rapid access to documents by attorneys and other justice sector stakeholders who require physical copies of case files for formalities, while ensuring security in the handling of documents and access to case files.”³³ During the on-site visit, the State also reported that it has a new electronic system for cases, which is streamlining a large proportion of the FGE’s work.

[89] Regarding the way in which the public are provided with information about its objectives and functions, they are informed of the procedures established for the performance of its functions and they are given guidance about how to pursue formalities with them; during the on-site visit, the CPCCS stated that this is the task of the Directorate of Social Communication, the function of which is to generate efficient, timely, and inclusive information and communications processes regarding the actions of the Prosecutor’s Office through the *Fiscalía Ciudadana* institutional magazine, communiqués and press releases, the FGE’s official web site, social networks, printed materials, media contacts, and the 1800-Fiscalía telephone hot line.

[90] As regards mechanisms for internal control and dealing with claims, complaints, or allegations related to the pursuit of its objectives and to the performance of its personnel, since the FGE is a part of the Judicial Function, all claims, complaints, and allegations against its officers are under the jurisdiction of the Judicature Council, as provided for in Articles 198 and 181 of the Constitution, and the procedures of that latter agency will be examined in the section dealing with the Judicial Function.

[91] The foregoing notwithstanding, the FGE’s Directorate of Criminal Prosecution Management is in charge of reviewing those cases in which civil servants of the State Public Prosecution Service, in the exercise of their functions, fail to observe the procedural rules or engage in conduct that constitutes a disciplinary infraction, in which case the Directorate of Criminal Prosecution Management receives the complaint and proceeds to examine the content or documents attached. If any indication of administrative responsibility is discovered, the matter is referred to the Council of the Judiciary for disciplinary proceedings and the corresponding penalty, without prejudice to any civil or criminal action that may be in order.

[92] The way in which the budgetary resources necessary for the operations of the FGE are assured is set out in Articles 95, 96, 108-111, and 113 of the Organic Planning and Public Finance Code.

[93] Finally, as for the agency’s accountability, according to Article 12.b.9 of the FGE’s Organic Organizational Process Management Statute, the Prosecutor of the Nation is to present the public, the National Assembly, and the Judicature Council with an annual report on its work and accountability. This must necessarily include a list of the cases and judicial proceedings in which it has played a part, broken down by areas, type and number of requests received, and the measures taken to deal with and process them, together with statistical data to give a clear overview of the work carried out. In addition, the General Secretariat of the FGE is tasked with gathering and processing the information created by each of the directorates and offices, in order for the agency’s Directorate of Social Communication to prepare the institutional accountability report.

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

³³ Response of the Republic of Ecuador to the Fourth Round Questionnaire, p. 67.

[94] The State Prosecution Service (FGE) 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:

[95] First, regarding the determination of the human resources necessary for its operations and the way in which they are provided, the Committee notes that although the country under review indicates in its reply that the incumbents of senior positions are freely appointed and removable in compliance with Article 8 of the FGE's Organic Organizational Management Statute (EOGOGFE), that article simply lists the senior positions but at no point states that those occupying them are freely appointed and removable.

[96] Thus, Article 8 of the EOGOGFE lists 18 senior positions, including that of the Prosecutor General, who is not freely appointed and removable but is instead governed by a separate procedure under Article 208.11 of the CRE, in accordance with Article 283 of the Judicial Function and Articles 120, 209, and 210 of the Constitution.³⁴ Neither can the Committee find it clearly specified in any provision which positions are freely appointed and removable. In this sense, the Committee believes the country under review could clearly establish this within the corresponding legal instruments, and, to that end, it will formulate a recommendation (see recommendation 2.4.1 in Chapter II of this report).

[97] Second, with regard to the manuals describing the functions of its employees, the Committee notes that although the FGE has a post classification manual, it predates the 2008 Constitution. It is the document known as the "Public Prosecution Service Post Classification Manual".³⁵ The Committee therefore believes that the country under review could revise this manual to bring it up to date, in line with the current CRE³⁶. The Committee will formulate a recommendation (see recommendation 2.4.2 in Chapter II of this report).

[98] Third, the Committee notes that in its reply, the country under review noted that one of its difficulties in preventing, detecting, and punishing corrupt acts was that the National Court of Justice, by means of a resolution of February 24, 2010, published in Official Register No. 154,³⁷ ruled that bringing public criminal action for the crimes of illicit enrichment and embezzlement

³⁴ Art. 8. Senior positions. The senior positions established in the structure organizational of the State Prosecution Service are: 1. Prosecutor General of the State. 2. Provincial Prosecutor. 3. Coordinator of Mission Management. 4. Coordinator of Resource Management. 5. Director of Legal Advice. 6. Director of Planning. 7. Director of International Affairs. 8. Director of Social Communication. 9. Director of Internal Auditing. 10. Director of Criminal Policy. 11. Director of Procedural Management. 12. Director of Investigations. 13. Director of Victim Protection. 14. Director of the Truth and Human Rights Commission. 15. Director of Human Talent. 16. Director of Financial Administration. 17. Director of Information Technologies. 18. Director of the Prosecutor School.

³⁵ *Ibid.*, p. 61.

³⁶ On its document of remarks to the draft preliminary report, of February 10, 2014, the country under review reported that "As for the recommendation that the post classification manual be updated, it should be noted that during 2013, the Public Prosecution Service was working on preparation of the Manual for Description, Evaluation and Classification of Posts within the Service. Once the technical study was completed, it was sent to the Ministry of Labor Relations for review; it was approved and forwarded to the Ministry of Finance, pursuant to Memorandum No. MRL-2013-0396, of August 16, 2013. In memorandum No. MINFIN-DM-2014-0018, dated January 9, 2014, the Minister of Finance issued a favorable budgetary finding, so that the Ministry of Labor Relations might issue the manual within its area of competence."

³⁷ See

http://www.cortenacional.gob.ec/cnj/images/pdf/resoluciones_obligatorias/32%20Informe%20previo%20de%20Contraloria.pdf.

required a prior report from the Office of the Comptroller General of the State establishing the existence of indications of criminal liability.³⁸ During the on-site visit, the representatives of the FGE explained that although this resolution does not require a report from the CGE for the preliminary inquiry, it does demand it for the prosecutorial investigation, and this leads to delays and obstacles, such as the inability for preventive custody to be ordered until the CGE has addressed the matter. The Committee believes that the country under review could remove those obstacles in order to streamline the prosecution of the crimes of embezzlement and illicit enrichment and, to that end, it will formulate a recommendation in the section dealing with the Judicial Function (see recommendation 4.4.2 in Chapter II of this report).

[99] Fourth, in its reply, the country under review noted that one of its difficulties was that *“The investigation teams for corruption offenses in each and every one of the agencies tasked with combating the phenomenon are very small (State Prosecution Service, Transparency Secretariat³⁹, CPCCS, Quito Honesto): they have few members, limited economic and logistical resources, and few technical tools for gathering digital evidence.”*

[100] *“There is no listening equipment, for tapping telephones, or cameras and audio-visual recording devices, which are of importance in examining and gathering evidence in minor corruption.”⁴⁰*

[101] In addition, during the on-site visit, the FGE’s representatives stated that they have around 540 prosecutors, but that they have lost 150 prosecutors, who have moved on to posts in the jurisdictional bodies of the Judicial Branch⁴¹. Furthermore, prosecutors will continue to be lost because a number of prosecutors still with the FGE are on the list of eligible candidates for new judges. In addition, regarding the agency’s workload, they said that the FGE received around 250,000 filings in 2012 alone, and that it had submitted a request for an increase of 250 in its headcount, approval of which was still pending at the time of the visit.⁴² The Committee believes that the State under review could strengthen the FGE by providing it with the human and budgetary resources necessary for it to perform its duties in full, on which point it will formulate a recommendation (see recommendation 2.4.3. in Chapter II of this report)

[102] Finally, during the on-site visit, the FGE’s representatives identified the following as being among their technical cooperation needs: specialized technical training for the strengthening of interinstitutional teams; training for justice operators in best state practices and results obtained; provision of financial and logistical resources for anticorruption efforts; donations of listening equipment, wire-tap equipment, and audiovisual recording devices; and strengthened international cooperation. Furthermore, the FGE believes that the principal need in the area of technical cooperation is specialized training in order to bolster the inter-institutional and institutional teams of justice operators on issues related to transparency, anti-corruption, juridical deontology and ethics, as well as the exchange of experiences and knowledge with the States Parties by way of internships and educational programs on best practices, plans, programs and projects in the fight against corruption. The Committee notes the needs highlighted by the FGE and the need for the country under review to provide it with the necessary support, and it invites the States Parties and other cooperation agencies to assist the institution with those topics.

³⁸ Response of the Republic of Ecuador to the Fourth Round Questionnaire, pp. 174-175.

³⁹ Today Office of the Under Secretary for Transparency and Management.

⁴⁰ *Ibid.*, p. 176.

⁴¹ During the plenary session, the State under review reported that this process had been by means of a public merit-based competition.

⁴² In its document of comments on the draft preliminary report, the State under review indicates that it has been making additional efforts to provide the FGE with human resources.

The Committee will formulate a recommendation (see recommendation 2.4.4 in Chapter II of this report).

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

[103] 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 office of the State Prosecution Service (FGE), with respect to the fulfillment of its functions, including the following:

[104] During the on-site visit, the country under review presented statistics on the results achieved through its investigations of acts of corruption,⁴³ notably the following:

Table No. 1:

FGE State Prosecution Service Ecuador					
COMPLAINTS OF CORRUPTION OFFENSES RECEIVED BY THE STATE PROSECUTION SERVICE BY YEAR					
OFFENSE	2009	2010	2011	2012	2013 (Jan-Jun)*
EMBEZZLEMENT	453	426	355	365	364
EXTORTION	53	75	113	119	52
ILLICIT ENRICHMENT	60	75	37	22	18
BRIBERY	148	111	154	116	54
TOTAL	714	687	659	622	488

* Figures for 2009 to 2012 are from the National Integrated System of Prosecutorial Actions and Statistics (SINAEP), while the 2013 (Jan-Jun) figures are from the Prosecution Service Integrated Administration System (SIAF).

Source: State Prosecution Service (FGE)
Prepared by: Directorate of Criminal Policy – DELITOSCOPIO

[105] First, in connection with Table No. 1 above, which reports the number of complaints lodged with the FGE for the crimes of embezzlement, extortion, illicit enrichment, and bribery over the past five years, the Committee notes that there appears to be a downward trend as regards allegations of illicit enrichment. On this point, the Committee believes that it would be useful for the country under review to conduct a study and gather information on the possible causes for that decrease, in order to identify challenges and recommend corrective measures. The Committee will formulate a recommendation (see recommendation 2.4.5 in Chapter II of this report).

Table No. 2:

FGE State Prosecution Service Ecuador					
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⁴³ The statistics may be seen at http://www.oas.org/juridico/ppt/mesicic4_ecu_fge1.ppt

STATUS OF PROCEEDINGS	EMBEZZLEMENT				
	2009	2010	2011	2012	2013 (Jan-Jun)
PRELIMINARY INQUIRIES	586	492	352	411	245
PROSECUTORIAL INVESTIGATIONS	177	130	78	65	50
RULINGS FOR CHARGES	18	71	55	60	39
RULINGS FOR NONCONTINUATION	8	18	11	18	6
MIXED RULINGS	5	19	15	8	8
DISMISSALS	46	38	32	20	13
CONVICTIONS	26	47	30	49	21
ACQUITTALS	11	24	22	24	10
MIXED JUDGMENTS	1	3	4	6	24
THROWN OUT	206	207	118	106	22
PROVISIONAL ARCHIVING	4	22	34	11	9
FINAL ARCHIVING	1	10	25	34	14

Source: State Prosecution Service (FGE)
Prepared by: Directorate of Criminal Policy – DELITOSCOPIO

Table No. 3:

FGE State Prosecution Service Ecuador					
STATUS OF PROCEEDINGS	ILLCIT ENRICHMENT				
	2009	2010	2011	2012	2013 (Jan-Jun)
PRELIMINARY INQUIRIES	65	75	34	26	58
PROSECUTORIAL INVESTIGATIONS	19	1	4	5	6
RULINGS FOR CHARGES	0	1	1	0	0
RULINGS FOR NONCONTINUATION	0	1	1	0	0
MIXED RULINGS	0	0	0	0	0
DISMISSALS	0	1	1	0	0
CONVICTIONS	0	0	1	0	1
ACQUITTALS	0	0	0	0	0
MIXED JUDGMENTS	0	0	0	0	0
THROWN OUT	23	17	5	23	6
PROVISIONAL ARCHIVING	0	6	1	3	2
FINAL ARCHIVING	1	0	2	10	0

Source: State Prosecution Service (FGE)
Prepared by: Directorate of Criminal Policy – DELITOSCOPIO

Table No. 4

FGE State Prosecution Service Ecuador					
STATUS OF PROCEEDINGS	BRIBERY				
	2009	2010	2011	2012	2013 (Jan-Jun)
PRELIMINARY INQUIRIES	111	70	118	89	45
PROSECUTORIAL INVESTIGATIONS	26	25	23	25	18
RULINGS FOR CHARGES	9	19	11	6	4
RULINGS FOR NONCONTINUATION	2	8	3	4	7
MIXED RULINGS	0	0	1	1	0
DISMISSALS	16	9	15	3	6
CONVICTIONS	2	3	4	3	2
ACQUITTALS	1	4	6	3	2
MIXED JUDGMENTS	0	0	0	0	0
THROWN OUT	110	80	75	28	21
PROVISIONAL ARCHIVING	3	11	53	12	2
FINAL ARCHIVING	1	3	18	45	11
Source: State Prosecution Service (FGE) Prepared by: Directorate of Criminal Policy – DELITOSCOPIO					

Table No. 5

FGE State Prosecution Service Ecuador					
STATUS OF PROCEEDINGS	EXTORTION				
	2009	2010	2011	2012	2013 (Jan-Jun)
PRELIMINARY INQUIRIES	53	71	101	118	53
PROSECUTORIAL INVESTIGATIONS	11	15	13	13	4
RULINGS FOR CHARGES	0	6	10	9	3
RULINGS FOR NONCONTINUATION	0	2	2	8	1
MIXED RULINGS	0	0	1	1	0
DISMISSALS	6	4	3	6	3
CONVICTIONS	3	3	6	4	1
ACQUITTALS	1	0	3	3	0
MIXED JUDGMENTS	2	0	0	0	1
THROWN OUT	35	38	37	26	6
PROVISIONAL ARCHIVING	1	3	9	7	3
FINAL ARCHIVING	0	1	6	19	5
Source: State Prosecution Service (FGE) Prepared by: Directorate of Criminal Policy – DELITOSCOPIO					

[106] Second, from the information furnished by the State under review in Tables 2 to 5, the Committee notes that Ecuador keeps statistics on the procedural status of the corruption offenses of embezzlement, illicit enrichment, bribery, and extortion. However, the way that the information is presented does not allow a comprehensive analysis of the topic to be performed. The Committee therefore believes it would be beneficial for the State under review to conduct a

detailed study of the occurrence and evolution of each of the corruption offenses and their procedural status, which would allow this statistical basis to be clear and easily interpreted by all users, and use this information to identify challenges and adopt corrective measures, if necessary. The Committee will make a recommendation on this point (see recommendation 2.4.6 in Chapter II of this report).

[107] Finally, on the topic of preliminary inquiries, the Committee notes that during the on-site visit, the representatives of the FGE stated that under current legal provisions, such inquiries should take between one and two years. However, they are detecting that some inquiries take much longer than that. On this point, they reported they were working on a new and more efficient electronic system for allocating and following up on cases for prosecutors, so that such investigations take no longer than six months and proceedings in general are speeded up. On this point, the Committee believes that the State under review would benefit from the implementation of measures and systems using modern information technologies to streamline proceedings even further in order to ensure the timely processing of cases, and it will formulate a recommendation (see recommendation 2.4.7 in Chapter II of this report).

2.4. Conclusions and recommendations

[108] Based on the comprehensive review of the State Prosecution Service (FGE) carried out in the foregoing sections, the Committee offers the following conclusions and recommendations:

[109] The Republic of Ecuador has considered and adopted measures for maintaining and strengthening the State Prosecution Service (FGE) as an oversight agency, according to the contents of section 1 of Chapter II of this report.

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

- 2.4.1. Take the steps necessary so that the FGE's General Process Statute clearly specifies which positions in the FGE are freely appointed and removable (see section 2.2 of Chapter II of this report).
- 2.4.2. Update the Public Prosecution Service Post Classification Manual of 2007, considering that this manual predates the Constitution of 2008⁴⁴ (see section 2.2 of Chapter II of this report).
- 2.4.3. Strengthen the FGE by providing it with the human and budgetary resources that will make it possible to ensure full compliance with its functions, in accordance with the available resources (see section 2.2 of Chapter II of this report).
- 2.4.4. Conduct the necessary negotiations with other States and cooperation agencies to provide the FGE with the technical cooperation it needs to obtain specialized technical training for strengthening interinstitutional teams; training for justice

⁴⁴ On its document of remarks to the draft preliminary report, of February 10, 2014, the country under review reported that "As for the recommendation that the post classification manual be updated, it should be noted that during 2013, the Public Prosecution Service was working on preparation of the Manual for Description, Evaluation and Classification of Posts within the Service. Once the technical study was completed, it was sent to the Ministry of Labor Relations for review; it was approved and forwarded to the Ministry of Finance, pursuant to Memorandum No. MRL-2013-0396, of August 16, 2013. In memorandum No. MINFIN-DM-2014-0018, dated January 9, 2014, the Minister of Finance issued a favorable budgetary finding, so that the Ministry of Labor Relations might issue the manual within its area of competence."

operators in best state practices and results obtained; provision of financial and logistical resources for anticorruption efforts; donations of listening equipment, wire-tap equipment, and audiovisual recording devices; and strengthened international cooperation; as well as specialized training in order to bolster the inter-institutional and institutional teams of justice operators on issues related to transparency, anti-corruption, juridical deontology and ethics; and the exchange of experiences and knowledge with the States Parties, by way of internships and educational programs on best practices, plans, programs and projects in the fight against corruption (see section 2.2 of Chapter II of this report).

- 2.4.5. Conduct a study to determine the reasons for the downward trend in the number of complaints alleging crimes of illicit enrichment lodged with the FGE, in order to identify challenges and recommend corrective measures (see section 2.3 of Chapter II of this report).
- 2.4.6. Conduct a detailed study of the occurrence and evolution of each of the corruption offenses and their procedural status, which would allow this statistical basis to be clear and easily interpreted by all users, and use this information to identify challenges and adopt corrective measures, if necessary (see section 2.3 of Chapter II of this report).
- 2.4.7. Take the steps necessary to strengthen the FGE's modern systems for information and follow-up, in order to ensure the timely processing of cases, particularly those related to acts of corruption, in consideration of the available resources (see section 2.3 of Chapter II of this report).

3. OFFICE OF THE COMPTROLLER GENERAL OF THE STATE (CGE)

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

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

[112] Under Article 211 of the Constitution of the Republic (CRE), the CGE “... *is a technical body responsible for controlling the use of state resources and the attainment of objectives by the institutions of the State and the private-law corporate entities that make use of public resources.*” The CGE also has its own legal personality and administrative, financial, budgetary, and organizational autonomy (CRE, Article 204).

[113] For its objectives and functions, Article 212 of the CRE states that the CGE's functions, in addition to those determined by law, shall be: (1) To direct the administrative control system, which comprises the internal auditing, external auditing, and internal oversight of public sector entities and of private entities that make use of public resources; (2) To determine administrative and civil responsibilities and indications of criminal liability, related to the matters and undertakings it oversees, without detriment to the functions that in this area correspond to the State Prosecution Service; (3) To issue regulations for the pursuit of its functions; and (4) To advise organs and entities of the State when they so request.

[114] As for functions that are shared with other agencies and authorities, under Article 204 of the CRE, the CGE, the Citizen Participation and Social Oversight Council (CPCCS), the Office

of the People's Defender, and the superintendencies make up the Transparency and Social Control Function, which "*shall promote and pursue the oversight of public sector agencies and organs, and of individuals and entities in the private sector that provide services or undertake activities of public interest, so they can do so with responsibility, transparency, and equity; shall promote and encourage citizen participation; shall protect the exercise and observance of rights; and shall prevent and combat corruption.*"

[115] In terms of interinstitutional coordination mechanisms, in addition to the mechanism provided in Article 206 of the CRE, which states that the lead officials of the agencies of the Transparency and Social Control Function are to establish a coordinating body and to elect, from among their number, each year, the President of the Function, the CGE has signed institutional cooperation agreements with such other agencies as the National Public Procurement Service (INCOP/SERCOP), the Office of the People's Defender, and the Citizen Participation and Social Oversight Council.⁴⁵

[116] As to how institutional decisions are made, in its reply⁴⁶ the State under review indicated that these decisions are taken by the Comptroller General, as the legal representative of the institution and the highest authority for governmental oversight and auditing of public management, in accordance with the provisions of the Constitution and the law. The decisions of the CGE that imply a finding of administrative responsibilities and civil liabilities may be challenged before the Administrative Law Courts, in accordance with the provisions of articles 45 and 52 of the LOCGE. Audit reports, reports on special reviews, reports consisting of expert opinions or any reports that it is required by law to issue shall not be subject to challenge, nor shall the proceedings that established the indicia of criminal culpability.

[117] Through the remedy of review, the CGE examines the original decisions it issues on any matter that concerns a determination of fault-based unlimited civil liability, either ex officio or at the request of the party directly affected by those decisions, following the procedure established in articles 60 to 64 of the LOCGE.

[118] Regarding how its principal authorities are appointed, and the bodies with competence for holding them responsible for their actions and deciding on their continued service in those positions, Article 205 of the CRE provides as follows: "*The representatives of the entities that make up the Transparency and Social Control Function shall serve for periods of five years, shall have National Court immunity, and shall be subject to impeachment by the National Assembly. If such impeachment proceedings are brought and removal is ordered, a new appointment process must be followed. In no instance may the Legislative Function appoint replacements.*"

[119] *Their principal authorities shall be Ecuadorian nationals in the enjoyment of their political rights and they shall be selected by public, merit-based competitions in the applicable cases, with public candidacies, oversight, and right of challenge.*⁴⁷

[120] In line with the constitutional provision, Articles 29 and 32 of the Organic Law of the Office of the Comptroller General of the State establish that the agency's legal representative shall be the Comptroller General of the State, who is the lead government authority for overseeing and auditing the public administration.

⁴⁵ See http://www.oas.org/juridico/ppt/mesicic4_ecu_cge4.ppt.

⁴⁶ Response of the Republic of Ecuador to the Fourth Round Questionnaire, pp. 40-41.

⁴⁷ As already stated, the CGE is a part of the Transparency Function.

[121] Regarding the determination of the human resources necessary for its operations and the way in which they are provided, under Article 3.1 of the LOSEP, published in 2010, the organs and agencies of the Executive, Legislative, Judicial and Indigenous Justice, Electoral, and Transparency and Social Control Functions, and of the Office of the Attorney General of the State and the Constitutional Court, are subject to its provisions. Since the CGE is a part of the Transparency and Social Control Function, the determination of its human resources is subject to that law.

[122] The requirements for admission into public service that apply to the CGE are set forth in Article 5 of the LOSEP, section (h) of which provides the following: *“To have been declared the winner in the public merit-based competition, except in the case of popularly elected or freely appointed and removable public servants.”* In addition, the public merit-based competitions are regulated by Agreement MRL-2012-56 of April 20, 2012, issued by the Ministry of Labor Relations.

[123] The regime of disqualifications and incompatibilities for public service, including service within the CGE, is set out in Articles 6 to 14 of the LOSEP.

[124] The CGE has the Post Description, Appraisal, and Classification Manual of the Office of the Comptroller General of the State, which was issued by the Ministry of Labor Relations in 2012.⁴⁸ In addition, during the visit, the CGE’s representatives said that the personnel were periodically given training in those functions under the Annual Training Plan.

[125] Regarding documented procedures for discharging its tasks, the CGE has the Organic Organizational Process Management Statute of the Office of the Comptroller General of the State, published in 2012.⁴⁹

[126] Regarding the implementation of modern systems or technologies for discharging its duties, in its reply the country under review reported: *“In the implementation of modern systems or technologies to facilitate the pursuit of its duties, in order to continue with the strengthening of the external oversight system carried out by the Technical Oversight Agency through the execution of government auditing, for the year 2011 the Directorate of Planning and Institutional Evaluation planned the development and continuity of the institutional improvement project related to the ‘Implementation of the AutoAudit Computer Tool,’ which is currently under execution, adopted by means of Agreement 002 CG of January 12, 2010.”* In addition, the reply also reports that videoconferencing has been introduced as a working tool and that work has begun on the implementation of the SISCON Integrated Control System, to optimize follow-up of the oversight operating plans.⁵⁰

[127] Regarding the way the public is informed about its objectives and functions, and about the procedures established for compliance with and guidance on formalities with this agency, in its reply the country under review reports that the CGE publishes all its institutional information by means of an information portal on its web page.⁵¹

⁴⁸ Resolution No. MRL-FI-2012-0337, July 3, 2012.

http://www.oas.org/juridico/pdfs/mesicic4_ecu_resFI.pdf.

⁴⁹ Official Register No. 243, February 9, 2012. Amendments, Official Register 827, November 9, 2012.

⁵⁰ Response of the Republic of Ecuador to the Fourth Round Questionnaire, pp. 69-70.

⁵¹ www.contraloria.gob.ec.

[128] As regards mechanisms for internal control and for dealing with claims, complaints, or allegations related to the pursuit of its objectives and to the performance of its personnel, the CGE has the Rules of Procedure for Receiving and Processing Complaints for Administrative Investigation within the Office of the Comptroller General of the State⁵²

[129] Article 57.j of those Rules of Procedure provides that the Directorate of Human Talent is the body responsible for enforcing the institutional disciplinary regime. Thus, Article 79 of the LOSEP Regulations (RGLOSEP) provide that “*in line with the nature of the institution’s management, the UATH⁵³ shall be required to prepare internal regulations for the administration of human talent, establishing the aspects of institutional management to which sanctions arising from the minor and serious faults provided for in law shall apply.*”

[130] The CGE’s budgetary resources are assured under Articles 292 and 293 of the CRE,⁵⁴ and under Article 30 of the LOCGE.⁵⁵

[131] Finally, the CGE’s public accountability mechanisms are published on the agency’s web page, from 2007 to 2012, with documents available to the public. In its reply, the country under review also reports that the document made available annually to the public is prepared with the information provided by all the units that make up the technical oversight agency, coordinated by the corresponding administrative unit.⁵⁶

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

[132] The Office of the Comptroller General of the State (CGE) 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:

[133] First, the Committee notes that the CGE has the Organic Organizational Process Management Statute of the Comptroller General’s Office, published in 2012, which is still in process of implementation. The Committee believes that the prompt implementation of this instrument is of the utmost importance for the optimal functioning of the agency, and it will

⁵² Agreement 034-CG-2009, published in the Supplement to Official Register No. 50, October 20, 2009.

⁵³ Autonomous Human Talent Units.

⁵⁴ Article 292 of the CRE provides: “*The General State Budget is the instrument for determining and managing the State’s income and spending, and it includes all the income and expenses of the public sector, with the exception of those that correspond to social security, the public banking system, public companies, and the decentralized, autonomous governments*”; and Article 293: “*The formulation and execution of the General State Budget shall be subject to the National Development Plan. The budgets of the decentralized, autonomous governments and those of other public entities shall be adapted to the regional, provincial, cantonal, and parish plans, respectively, under the aegis of the National Development Plan, without detriment to their competences and autonomy.*”

⁵⁵ Article 30 of the LOCGE stipulates: “*The budget of the Office of the Comptroller General of the State shall be funded with: (a) (Amended by Art. 2 of Law 2004-42, R.O. 404, 23-VIII-2004). The transfer of five thousandths of the budgeted income of all the institutions of the State and, in a proportional amount, of the private-law corporate whose capital stock, equity, net worth, or fiscal participation is comprise of public resources and that, under this law, are subject to the oversight of the Office of the Comptroller General of the State (...); (b) The income provided for in other legal provisions; (c) its self-management resources; and (d) Other income.*”

⁵⁶ Response of the Republic of Ecuador to the Fourth Round Questionnaire, p. 116.

formulate a recommendation in that regard (see recommendation 3.4.1 in Chapter II of this report).

[134] Second, as regards the regime for human resources and internal control mechanisms, the Committee notes that the CGE does not have the Internal Human Talent Regulations, as required by Article 79 of the General Regulations of the Organic Public Service Law (RGLOSEP), which would, *inter alia*, establish the aspects of institutional management to which sanctions arising from the minor and serious faults provided for in law, including those not arising from a complaint, would apply⁵⁷. In light of the importance of regulating the human resource regime, including the agency's disciplinary regime, the Committee will formulate a recommendation (see recommendation 3.4.2 in Chapter II of this report).

[135] Third, the Committee notes that during the on-site visit, the representatives of the CGE identified a series of difficulties related to recording and overseeing statements of net worth. Since this topic is related to the follow-up of the recommendations formulated in the first round, the Committee will address the matter in that section.

[136] Nonetheless, the Committee also notes that on that occasion, the CGE's representatives stated they did not have enough staff to oversee the statements of net worth of the entire administration. Bearing in mind the importance of this function entrusted to the CGE, and that there are more than 500,000 public servants in Ecuador, the Committee believes that the country under review could ensure that the agency has adequate human, technological and budgetary resources to enable it to perform this task in full. The Committee will formulate a recommendation on that point (see recommendation 3.4.3 in Chapter II of this report).

[137] Fourth, the Committee notes that although the CGE's web page contains a great deal of information that is of use to the public, including a link called Únete al Control ("Connect with Oversight"), which contains a form for receiving and processing complaints for administrative investigation within the CGE, the form refers specifically to the admission of complaints involving the improper use of state vehicles and related to the improper, illegal, or inefficient management and/or use of state resources and assets, but not to admitting complaints about other irregularities committed by officials or to the formulation of suggestions and comments. On this point, the Committee believes that it would be most beneficial for the agency to expand the scope of the complaints mailbox on its web site, in order to further assist the public in presenting complaints and allegations, and it will formulate a recommendation (see recommendation 3.4.4 in Chapter II of this report).

[138] Finally, during the on-site visit, the CGE's representatives highlighted their technical cooperation needs, including the following: strengthening processes, systems, oversight regulations, human talent, ties with civil society, and management and public ethics; they also reported that work was underway to secure an operation with the Inter-American Development Bank. The Committee thus notes the needs highlighted by the FGE and the need for the country under review to provide it with the necessary support, and it invites the States Parties and other cooperation agencies to assist the institution with those topics. The Committee will formulate a recommendation (see recommendation 3.4.5 in Chapter II of this report).

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

⁵⁷ On its document of remarks to the draft preliminary report, Ecuador informed that in the meantime the Substitute Regulations for Staff Management of the Office of the State Comptroller General, adopted through Decision No. 025-RH of November 24, 2006, was being applied.

[139] 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 Comptroller General of the State, with respect to the fulfillment of its functions, including the following:

[140] First of all, in its reply the State under review⁵⁸ presented statistics on its results with the pursuit of its functions in detecting acts of corruption; they were also presented again during the on-site visit.⁵⁹ Later, the CGE submitted additional statistical data.⁶⁰ However, other than the information on the actions suspended or not carried out by the CGE, this information does not allow a comprehensive analysis of the topic to be conducted.

[141] Accordingly, the Committee believes that the State under review would benefit by standardizing the information gathered in this kind of statistics, which would ensure their consistency and facilitate their analysis, in order to identify challenges and recommend corrective measures, if necessary, and it will formulate a recommendation on that point (see recommendation 3.4.6 in Chapter II of this report).

[142] On this point, the Committee notes an upward trend in oversight actions suspended or not carried out by the CGE on the basis of technical criteria. Accordingly, the Committee believes that the State under review would benefit from having those actions carried out in later periods by the CGE, if it deems necessary. It will formulate a recommendation to that effect (see recommendation 3.4.7 in Chapter II of this report).

[143] Second, regarding the amounts of the fines imposed, or of the repayments to the State ordered and credited to the public coffers over each of the past five years, during the on-site visit the country under review presented statistical data for the period 2008 to 2012,⁶¹ which is summarized below.⁶²

Table No. 1

RESULTS OF QUALITY CONTROL MANAGEMENT					
Description	Amount ordered				
	2008	2009	2010	2011	2012
Suggested administrative responsibilities	13,974,139.62	19,059,864.67	10,459,606.62	6,166,345.61	6,658,628.82
Suggested administrative responsibilities	215,754,033.89	233,401,493.72	102,079,252.71	67,476,830.05	111,180,344.57

⁵⁸ Response of the Republic of Ecuador to the Fourth Round Questionnaire, pp. 152-154.

⁵⁹ The statistics can also be seen at http://www.oas.org/juridico/ppt/mesicic4_ecu_cge1.ppt.

⁶⁰ See: internet links at http://www.oas.org/juridico/spanish/mesicic4_ecu.htm in the section “Documents received during the on-site visit,” in the section on the CGE, under the header “Additional information.”

⁶¹ See: http://www.oas.org/juridico/ppt/mesicic4_ecu_cge1.ppt#269,11.

⁶² The breakdown of the statistics may be found at http://www.oas.org/juridico/spanish/mesicic4_ecu.htm in the section “Documents received during the on-site visit,” in the section on the CGE, under the header “Additional information.”

Indications of criminal liability	71,074,065.10	15,105,432.59	4,846,773.70	60,253,211.91	134,173,034.72
Oversight actions executed	1584	2006	1575	1649	2279
Total amount ordered	300,802,238.61	257,566,791.98	117,382,633.03	133,896,387.57	252,012,088.11

Table No. 2⁶³

Collections⁶⁴				
2008	2009	2010	2011	2012
1,231,478.49	1,130,999.51	1,502,117.26	1,068,876.59	2,434,907.49

[144] Regarding the information provided on Tables 1 and 2 above, the Committee notes that there is a need to develop mechanisms to enable the State to recover the damages caused more efficiently and swiftly, and to develop a mechanism to follow up on the recommendations arising from civil and administrative responsibilities and indications of responsibility suggested by the CGE. Accordingly, taking into consideration the importance of restituting the harm caused to the State, the Committee will formulate recommendations (see recommendations 3.4.8 and 3.4.9 in Chapter II of this report).

3.4. Conclusions and recommendations

[145] Based on the comprehensive review of the Office of the Comptroller General of the State (CGE) carried out in the foregoing sections, the Committee offers the following conclusions and recommendations:

[146] **The Republic of Ecuador has considered and adopted measures for maintaining and strengthening the Office of the Comptroller General of the State (CGE) as an oversight agency, according to the contents of section 1 of Chapter II of this report.**

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

3.4.1 Take the steps necessary to complete the implementation of the Organic Organizational Process Management Statute of the Comptroller General’s Office, published in 2013 (see section 3.3 of Chapter II of this report).

3.4.2 Prepare and implement the CGE’s Internal Human Talent Regulations, establishing the aspects of institutional management to which sanctions arising from the minor and serious faults provided for in the Organic Public Service Law (LOSEP), pursuant

⁶³ See: internet link “[MESICIC Recaudaciones](http://www.oas.org/juridico/spanish/mesicic4_ecu.htm)” at http://www.oas.org/juridico/spanish/mesicic4_ecu.htm in the section “Documents received during the on-site visit,” in the section on the CGE, under the header “Additional information.”

⁶⁴ Collected by the CGE only.

to Article 79 of the LOSEP Regulations⁶⁵ (see section 3.3 of Chapter II of this report).

- 3.4.3 Strengthen the CGE, ensuring that it has the human, technological and budgetary resources necessary to fully discharge its duties in overseeing the statements of net worth of officers of the public administration, when required, taking into consideration the available resources (see section 3.3 of Chapter II of this report).
- 3.4.4 Take the appropriate steps to facilitate participation by the public in the complaints and allegations process, such as expanding the scope of the complaints mailbox on the CGE's web site to cover irregularities committed by its officers (see section 3.3 of Chapter II of this report).
- 3.4.5 Conduct the necessary negotiations with other States and cooperation agencies to provide the CGE with the technical cooperation necessary for the strengthening of processes, systems, oversight regulations, human talent, ties with civil society, and management and public ethics (see section 3.3 of Chapter II of this report).
- 3.4.6 Ensure that the statistical information on the results of the CGE's efforts regarding its duty of detecting acts of corruption is gathered and presented in a consistent and coherent way, facilitating its analysis, in order to identify challenges and recommend corrective measures, if necessary (see section 3.3 of Chapter II of this report).
- 3.4.7 Evaluate the periodic review mechanisms for annual planning and ensure that actions suspended or postponed for grounded technical reasons are rescheduled for subsequent periods.
- 3.4.8 Take the steps necessary to develop mechanisms that will allow the efficient and timely recovery of damages inflicted on the State (see section 3.3 of Chapter II of this report).
- 3.4.9 Take the steps necessary to develop a follow-up mechanism for the recommendations suggested by the CGE to the agencies over which it has jurisdiction, in terms of the amounts arising from civil or administrative responsibilities or from indications of criminal liability, in order to determine the effective results of those recommendations and to be able to identify challenges and recommend corrective actions, if necessary (see section 3.3 of Chapter II of this report).

4. AGENCIES OF THE JUDICIARY AND THE JUDICATURE COUNCIL

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

[148] The agencies of the Judiciary and the Judicature Council have a set of provisions in its legal framework, as well as other measures that refer, *inter alia*, to the following:

[149] Article 167 of the Constitution of the Republic of Ecuador (CRE) establishes that the power of administering justice arises from the people and is exercised by the agencies of the Judiciary and by the other agencies and functions established in the Constitution.

⁶⁵ In its comments document, the State under review indicates that meanwhile it has the Substitute CGE Administration Regulations, issued in 2006 by means of Agreement No. 025-RH.

[150] According to Article 177 of the CRE, the Judicial Function comprises jurisdictional agencies, administrative agencies, auxiliary agencies, and autonomous agencies.

[151] Article 178 of the CRE, in turn, provides “*The jurisdictional agencies, without prejudice to other agencies with the same powers recognized by the Constitution, are those tasked with administering justice, and shall be the following: (1) The National Court of Justice. (2) Provincial courts of justice. (3) Such courts and tribunals as the law may establish. (4) Magistrates’ courts. The Judicature Council is the body responsible for the governance, administration, oversight, and discipline of the Judicial Function (...)*”

[152] Article 155 of the Organic Code of the Judicial Function (COFJ) stipulates that, pursuant to the territorial division of the State, the courts and tribunals are to be organized as follows: (1) The National Court of Justice, with jurisdiction throughout the nation’s territory, with its corresponding specialized chambers; (2) The provincial courts, with their corresponding specialized chambers, with jurisdiction over a province, made up of judicial districts; (3) The courts and tribunals with jurisdiction over an entire district’s territory, or a section thereof, with a section covering one or several cantons or one or several parishes in a canton; and (4) The magistrates’ courts, which can have jurisdiction over a neighborhood, a district, or a specific area of a parish.

[153] Article 184 of the CRE stipulates that the functions of the National Court of Justice (CNJ), in addition to those determined by law, shall be: (1) To hear review remedies, annulment remedies, and all others provided for by law; (2) Develop the system of jurisprudential precedent based on three-time judgments; (3) Hear proceedings brought against public servants who enjoy immunity; (4) Present legislative bills related to the justice administration system.

[154] Article 254 of the Code of Judicial Organization (COJ) states that the Judicature Council is the sole body responsible for the governance, administration, oversight, and discipline of the Judicial Function.

[155] Regarding the principles governing the justice administration, including matters related to the autonomy of the Judicial Function, Article 168 of the CRE provides as follows: (1) The agencies of the Judiciary shall enjoy internal and external independence. All violations of this principle shall lead to administrative, civil, and criminal responsibility, in accordance with the law. (2) The Judicial Function shall enjoy administrative, economic, and financial autonomy. (3) By reason of jurisdictional unity, no authority from the other functions of the State may discharge functions involving the administration of regular justice, without prejudice to the jurisdictional powers recognized in the Constitution. (4) Access to the administration of justice shall be free of charge. The regime of court fees shall be set by law. (5) All stages of trials and decisions shall be public, except for those cases expressly stipulated by law. (6) The substantiation of proceedings in all matters, venues, stages, and formalities shall be conducted by means of the oral system, in accordance with the principles of concentration, contradiction, and disposition.

[156] Regarding the exercise of functions in conjunction or simultaneously with other authorities, in its reply the State under review reports that the administration of regular justice is the task solely of the Judicial Function, exercised through the bodies mentioned in Article 178 of the CRE. However, constitutional control and electoral oversight are performed by the Constitutional Court and the Electoral Disputes Tribunal, respectively.⁶⁶

⁶⁶ Response of the Republic of Ecuador to the Fourth Round Questionnaire, p. 16.

[157] In the jurisdictional arena, possible conflicts of jurisdiction are directly related to the procedural provisions that establish principles, procedures, agencies, and venues and that are set down in the Organic Code of the Judicial Function (COFJ).⁶⁷

[158] Regarding its interinstitutional coordination mechanisms, the State under review, both in its reply and during the on-site visit, reported that it has a series of agreements with the FGE and the Interior Ministry for the “Interinstitutional In Flagrante Crime Unit,” “Interinstitutional Flagrancy Services Unit,” and “Early Attention for Perpetrators, Accomplices, and Accessories after the Fact” projects.⁶⁸ One of the objectives of the Flagrancy Units is to reduce judicial process time, which prevents case overload and contributes to the achievement of justice, to combating impunity and corruption, all of which redounds to the benefit of public confidence in the system as a democratic institution.

[159] Judges’ decisions are adopted by means of decrees, deeds, and judgments, and appeals against them may be filed through judicial channels. Under Article 76.7.1 of the CRE, all judicial decisions must be duly grounded, which is taken as meaning an indication of the legal provisions or principles on which they are based and an explanation of the relevance of their enforcement vis-à-vis the facts of the case.⁶⁹

[160] The decisions of the Judicature Council (CJ) are adopted by a simple majority and, in the event of a tie, the person chairing the session shall have the deciding vote (Constitution, Art. 181, final section; and COFJ, Art. 263). In addition, Article 31 of the COFJ states that resolutions issued in nonjurisdictional proceedings that recognize, declare, establish, restrict, or eliminate rights are acts of the public or fiscal administration and may be challenged at jurisdictional venues. Article 119 of the COFJ further provides that in disciplinary matters, the CJ’s decisions are liable to review by jurisdictional venues, but not through administrative channels.

[161] For compliance with judgments, Article 230 of COFJ creates the penal guarantee courts, while in non-criminal matters the specialized first instance court is called upon to enforce the corresponding judgments. At the same time, the enforcement and follow-up of the decisions adopted by the plenary of the CJ in the area of its competence is the task of the General Directorate and the Provincial Directorates.⁷⁰

[162] As to the way in which its principal authorities are appointed, Article 179 of the CRE states that the CJ shall comprise five delegates and their corresponding alternates, who shall be elected by the Citizen Participation Council, through a public process of scrutiny and oversight, from shortlists of three names submitted by the President of the National Court of Justice, whose representative shall serve as its chair, by the Prosecutor General of the State, by the Public Defender, by the Executive Function, and by the National Assembly. Those delegates shall serve for periods of six years. In addition, the CJ shall present an annual report to the National Assembly, which may oversee and judge its members.

[163] In compliance with Article 183 of the CRE, the judges of the National Court of Justice (CNJ) shall be elected by the Judicature Council by means of a procedure involving public, merit-based competitions, with social challenges and oversight. In addition, Article 182 of the CRE

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, pp. 109-110. See also: PowerPoint presentation at http://www.oas.org/juridico/ppt/mesicic4_ecu_cos3.ppt

⁶⁹ *Ibid.*, pp. 32-38.

⁷⁰ *Ibid.* See also http://www.oas.org/juridico/ppt/mesicic4_ecu_cos4.ppt.

states that the CNJ shall be made up of twenty-one judges, who shall be appointed for periods of nine years, who may not be reelected, with one third being elected every three years, and who shall be removable from their positions in accordance with the law.

[164] The country under review also has the Rules of Procedure for Public, Merit-based Competitions and Citizen Challenges and Oversight,⁷¹ the Instructions for Public, Merit-based Competitions and Citizen Challenges and Oversight for the selection and appointment of judges of the National Court of Justice,⁷² and the Substitute Regulations for Public, Merit-based Competitions and Citizen Challenges and Oversight for the selection and appointment of employees of the Judicial Function.⁷³

[165] The selection of personnel to perform duties is carried out by the plenary of the Judicature Council, subject to the corresponding technical report. Admission depends on public, merit-based competitions with citizen challenges and oversight; consequently, employees are not freely appointed and removable, with the exception of the senior levels and advisors. Both the Organic Code of the Judicial Function (COFJ) and the Organic Public Service Law (LOSP) establish requirements for employment and, in addition, set grounds for disqualifications, incompatibilities, and responsibilities for actions in the performance of duties.⁷⁴

[166] Regarding the existence of manuals or other documents describing employees' functions, in its reply the country under review reports that it has adopted the Organic Functional Post Classification Manual and the Occupational Index.⁷⁵

[167] For the ongoing training of the Judicial Function's personnel in their duties, the School of the Judicial Function has been created. As stated during the on-site visit, it is operation and has provided continuous training courses and continuous improvement for staff members, etc.

[168] Regarding the actions for institutional strengthening or for quality improvement that have been implemented, in its reply the country under review reports that the Judicature Council, in conjunction with the CNJ, the FGE, and the Public Defense Office (DP), has drawn up the 2013-2019 Judicial Function Strategic Plan.⁷⁶

[169] Regarding the implementation of modern systems or technologies to facilitate its work, during the on-site visit the country under review reported the existence of the Ecuadorian Automatic Judicial Formalities System (SATJE). This allows the swift performance of all formalities in judicial proceedings, such as electronic/automatic drawing of lots, document reception, case follow-up (from reception by the courts up to final judgment), electronic notifications, criminal/traffic records, alimony collections and payments, rentals of judicial lockers, summonses, information on touch screens, information on the internet, and other basic applications for the institution's operations.⁷⁷ Ecuador also indicated that this system is to be

⁷¹ Resolution 006-2011 of August 19, 2011, as amended by Resolution 0119-2011 of November 10, 2011.

⁷² Resolution 007-2011 of August 24, 2011.

⁷³ Resolution 108-2012, as amended by Resolution 021-2013 of April 15, 2013, and Resolution 067-2013 of July 9, 2013.

⁷⁴ Response of the Republic of Ecuador to the Fourth Round Questionnaire, p. 48.

⁷⁵ *Ibid.*, p. 61.

⁷⁶ *Ibid.*, p. 64.

⁷⁷ See: <http://www.funcionjudicial.gob.ec/www/pdf/informatica/PLANESTRATEGICOOPERATIVODNI-CJ.pdf>.

replaced by the Judicial Justice Information System 2.0, which is already being implemented at the first-instance courts and its planned to be linked to the FGE.⁷⁸

[170] Regarding the way in which the public are provided with information about its objectives and functions, are informed of the procedures established for the performance of its functions, and are given guidance about how to pursue formalities, in its reply the country under review reports that information for the public and users of the justice system is, in general, available on the CNJ's web page, under the Institutional Transparency link, whereas the CJ publishes this information under the Transparency links on its own web site.

[171] Regarding mechanisms for internal control and dealing with claims, complaints, or allegations related to the pursuit of its objectives and to the performance of its personnel, in its response, the State under review reported that the CJ serves as the disciplinary body of the Judicial Function⁷⁹, and the procedures for this are regulated by the Rules of Procedure for the Exercise Disciplinary Power and, for this purpose, the CJ's Disciplinary Control Unit has been set up⁸⁰.

[172] The budgetary resources necessary for the operations of the Judicial Function are ensured by the National Development Plan which, under Article 280 of the Constitution, is the instrument governing public policies, programs, and projects, the programming and execution of the State's budget, the investment and allocation of public resources, etc.

[173] For accountability, Article 179 of the CRE provides that *"The Judicature Council shall present an annual report to the National Assembly, which may oversee and judge its members."* Both the CJ and the CNJ give public account of their undertakings in accordance with Article 7 of the Organic Law on Transparency and Access to Information (LOTAIP), and they make this information available on their web pages, including their annual reports. During the on-site visit, the representatives of the Judicial Function indicated that the information for the accountability reports was compiled by means of the electronic system, including budgetary issues, planning, and results.

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

[174] The agencies of the Judiciary and the Judicature Council have 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:

[175] First of all, as regards interinstitutional coordination mechanisms, the Committee notes no mechanism of that kind intended specifically to assist the prevention, detection, investigation, prosecution, and punishment of acts of corruption was identified either in the response or during

⁷⁸ See <http://www.funcionjudicial.gob.ec/index.php/es/component/content/article/25-consejo-judicatura/235-justicia-20>.

⁷⁹ Response of the Republic of Ecuador to the Fourth Round Questionnaire, p. 99. See also http://www.funcionjudicial-pichincha.gob.ec/mis_modulos/resoluciones/RESOLUCION%20PDF%2016.pdf.

⁸⁰ In its observations regarding the draft preliminary report, sent on February 10, 2014, Ecuador reported that "...after sending the responses to the Questionnaire for Ecuador and after the on-site visit was conducted, the Plenary of the Judicature Council, through Resolution 168-2013 of October 30, 2013, approved the new Organic Organizational Process Management Statute, paragraph 3.1.3 of which creates the National Disciplinary Control Subdirectorate, which replaces the Disciplinary Control Unit."

the on-site visit. Taking into consideration that such a mechanism would foster greater inter-institutional coordination, the Committee will make a recommendation on this point (see recommendation 4.4.1 in Chapter II of this report).

[176] Second, the Committee notes that in the interviews with the Citizen Participation and Social Oversight Council (CPCCS) and the State Prosecution Service (FGE) that took place during the on-site visit, both agencies stated, among the difficulties they face, that the resolution of the National Court of Justice (CNJ) of February 24, 2010, published in Official Register No. 154, of March 19, 2010, requiring a prior report from the Comptroller General of the State (CGE) for the initiation of criminal proceedings for embezzlement and illicit enrichment, frequently poses an obstacle to the prosecution of such cases. The Committee believes that the State under review could remove those obstacles in order to expedite the prosecution of embezzlement and illicit enrichment and on that point it will formulate a recommendation (see recommendation 4.4.2 in Chapter II of this report).

[177] Regarding this matter, it should be noted that in the interviews with civil society organizations, the private sector, researchers, and academics during the on-site visit, the Representative of the ESQUEL Foundation said that this CNJ resolution had created problems, in that in the absence of a report from the CGE, preventive custody cannot be ordered in cases involving embezzlement and illicit enrichment.

[178] Third, on the topic of human resources, the Committee notes that although the Title II of the Organic Code of the Judicial establishes the judicial career, during the on-site visit the staff of the CNJ stated that at present the career was not regulated and, consequently, was not being implemented. They added that the new judicial career was being designed and that it would be regulated by a resolution from the plenary of the CJ. The Committee stresses the vital importance for the country under review to adopt and implement, as soon as possible, the regulations for the judicial career, in consideration also of the recommendations made in the second round, when the hiring of public servants was analyzed. The Committee will formulate a recommendation⁸¹ (see recommendation 4.4.3 in Chapter II of this report).

[179] Similarly, the Committee notes that regarding the Organic Functional Post Classification Manual and the Occupational Index, both in the response to the questionnaire and during the on-site visit the country under review reported that although the plenary of the Judicature Council had approved the documents in question, they had not yet been implemented. Likewise, they added that the Post Description, Appraisal, and Classification Manual was to be prepared over the coming six months.⁸² The Committee underscores the importance of implementing these internal regulations within the CGE and it will formulate a recommendation on the point (see recommendation 4.4.4 in Chapter II of this report).

[180] Fourth, regarding the existence of documented procedures for discharging its tasks, in its reply to the questionnaire the country under review indicated that to ensure the CJ's organizational structure, it required, *inter alia*, the "*Organic Organizational Process Management Statute of the CJ, together with internal manuals and regulations to allow the introduction of a meritocracy within the Judicial Function, through the effective and efficient*

⁸¹ In its observations regarding the draft preliminary report, submitted on February 10, 2014, Ecuador reported that "...through Resolution No.014-2014, of January 28, 2014, it is resolved to approve salary in the categories of the judicial career system and in the career system for prosecutors."

⁸² Response of the Republic of Ecuador to the Fourth Round Questionnaire, p. 61. See also: http://www.oas.org/juridico/ppt/mesicic4_ecu_cos6.ppt#259.4.Slide.4.

management of the integrated human talent system.”⁸³ On this point, during the on-site visit the CJ’s staff stated that the Organic Organizational Process Management Statute of the CJ had not been implemented, and neither had all the internal manuals and regulations, because they were being reviewed. They said that meanwhile they were working with resolutions in specific cases, based on legal analyses⁸⁴. The Committee underscores the importance of these internal regulations being in place within the Judicial Function as promptly as possible and it will formulate a recommendation on that point (see recommendation 4.4.5 in Chapter II of this report).

[181] Fifth, regarding accountability and the information given to the public about the agency’s objectives and functions; about the procedures established for the fulfillment of its responsibilities; and guidance on how to pursue formalities with it, the Committee notes that the annual reports and other documents published on the CJ’s website are in an illegible format (“flipping book”) which is difficult to handle, which hinders access to the information available. In addition, in its reply to the questionnaire, the State under review states that the CNJ’s website has a “*basic orientation guide on the official page, so the public can be directed correctly regarding the places where requests are to be lodged.*”⁸⁵ However, upon accessing the page, that guide is not available⁸⁶. The Committee therefore believes that the State under review could optimize the use of web pages to expand and improve the use of these tools, on which point it will formulate recommendations (see recommendations 4.4.6. and 4.4.7 in Chapter II of this report).

[182] Similarly, regarding the mechanisms for dealing with claims, complaints, or allegations related to the pursuit of its objectives and to the performance of its personnel, the Committee notes that the websites of neither the CJ nor the CNJ, which serve the Judicial Function in general, have a mailing function for complaints. On this point, the Committee believes it would be very useful for the agency to include a link of that kind on its website, in order to further assist the public in presenting complaints and allegations, and it will formulate a recommendation in that regard (see recommendation 4.4.8. in Chapter II of this report).

[183] Sixth, during the on-site visit, the CNJ’s staff said that one of their difficulties was the lack of a computer system to gather information on the substantiation of different types of offenses in general and those set out in the Convention specifically. It should be noted that the SATJE computer system is only implemented in the first and second instance courts. The Committee believes that the State under review would benefit from providing the Judicial Function with necessary budgetary and technical resources for a computer system of this kind, to serve as a tool for the substantiation of facts related to corruption offenses and, to that end, it will formulate a recommendation (see recommendation 4.4.9 in Chapter II of this report).⁸⁷

[184] Finally, during the on-site visit, the representatives of the CNJ said their technical cooperation needs included the need to implement a comprehensive computerized system to

⁸³ *Ibid.*, p. 60.

⁸⁴ In its observations regarding the draft preliminary report, submitted on February 10, 2014, Ecuador reported that “On October 30, 2013, the Plenary of the Council of the Judicature resolved to approve the “Organizational Process Management Statute, which includes the Value Chain, Procedural Map, the Organic Structure, and the Descriptive Structure of the Council of the Judicature and the reform thereof.”

⁸⁵ *Idem*, p. 78.

⁸⁶ In its observations regarding the draft preliminary report, submitted on February 10, 2014, Ecuador reported that “In addition, the CNJ website has a Guiding Consultations Portal of the Office of the President of the National Court of Justice, to address the public’s concerns with non-binding informative responses.”

⁸⁷ See http://www.oas.org/juridico/ppt/mesicic4_ecu_cnj2.ppt#256.1.Slide_1

collect data on the substantiation of the different types of crime covered by the Convention. The Committee thus notes the needs highlighted by the CPCCS and the need for the country under review to provide it with the necessary support, and it invites the States Parties and other cooperation agencies to assist the institution with those topics. The Committee will formulate a recommendation (see recommendation 4.4.11 in Chapter II of this report).⁸⁸

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

[185] 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 agencies of the Judiciary and the Judicature Council with respect to the fulfillment of its functions, including the following:

[186] First of all, during the on-site visit, the staff of the CNJ said one difficulty was the fact that part of the information is collected manually, and there was no comprehensive computerized system for keeping reliable and consistent statistics that could be of use in conducting a comprehensive analysis of its results.

[187] Thus, the Committee notes that the statistical tables presented by the CNJ both in the response and during the on-site visit are inconsistent and do not allow a comprehensive analysis of the results of its sanction functions to be carried out.⁸⁹ On this point, the Committee underscores the importance of having reliable statistical data to clearly indicate the number of decisions adopted in corruption cases, how many concluded with charges of responsibility or sanctions, how many did not lead to charges, and how many were closed due to the triggering of statutory limitations. The Committee will formulate a recommendation (see recommendation 4.4.12 in Chapter II of this report).

[188] In addition, it should be noted that during the on-site visit, at the meeting with civil society organizations, the private sector, researchers, and academics, the representatives of the Guayas College of Lawyers stated there were excessive delays in judicial proceedings, together with difficulties in controlling case files and other problems of corruption in the judicial system. They added that these problems had not yet been overcome but that they hoped, with the streamlining of the process and the elimination of the judicial operator's visits to judges, pursuant to the Judicial Function reform process established by the Judicature Council, these difficulties will be reduced over time and ultimately eliminated.

[189] Regarding statistical information on the sanctioning of corrupt acts giving rise to disciplinary, administrative, economic, or civil responsibility, during the on-site visit the Judicature Council provided the following information:

⁸⁸ See: http://www.oas.org/juridico/ppt/mesicic4_ecu_cnj2.ppt#256.1.Slide.1.

⁸⁹ See http://www.oas.org/juridico/spanish/mesicic4_ecu.htm, "Judicial Function" section.

DISCIPLINARY PROCEEDINGS RESOLVED BY YEAR					
YEAR	DISMISSALS	SUSPENSIONS	FINES	WARNINGS	TOTAL
2013	198	81	43	18	340
2012	365	247	95	12	719
2011	101	133	34	9	277
2010	36	45	58	31	170
2009	52	31	93	67	243
2008	114	59	265	114	552

TYPE OF FINE	TOTAL SANCTIONS
FINE OF 40% OF MONTHLY SALARY	1
FINE OF 25% OF MONTHLY SALARY	5
FINE OF 4 TIMES BASIC MINIMUM WAGE	6
FINE OF 30% OF MONTHLY SALARY	11
FINE OF 20% OF MONTHLY SALARY	16
FINE OF 3 TIMES BASIC MINIMUM WAGE	24
FINE OF 1 TIMES BASIC MINIMUM WAGE	41
FINE OF 50% OF MONTHLY SALARY	49
FINE OF 5% OF MONTHLY SALARY	79
FINE OF 2 TIMES BASIC MINIMUM WAGE	79
FINE OF 10% OF MONTHLY SALARY	277
TOTAL	588

[190] Regarding the above statistical information, although it can be seen that the CJ has been discharging its disciplinary duties, it is not possible to determine whether all those sanctions were the result of corrupt acts or of other causes giving rise to disciplinary responsibility. Nor can it be determined whether the fines in the second table were the result of responsibilities arising from

corrupt acts or other causes, what the fine amounts were, and whether they were actually collected. In addition, the information is not broken down by year.

[191] In light of the foregoing, the Committee will formulate a recommendation for the country under review to consider completing and breaking down these statistics in accordance with the terms of the Fourth Round Questionnaire, in order to identify challenges and recommend corrective measures, if necessary (see recommendation 4.4.13 in Chapter II of this report).

4.4. Conclusions and recommendations

[192] Based on the comprehensive review of the Judicial Function carried out in the foregoing sections, the Committee offers the following conclusions and recommendations:

[193] The Republic of Ecuador has considered and adopted measures for maintaining and strengthening the Judicial Function as an oversight agency, according to the contents of section 1 of Chapter II of this report.

- 4.4.1 Take the steps necessary to implement coordination mechanisms with other public entities, when appropriate, such as the State Prosecution Service (FGE), the Office of the Comptroller General of the State, the Citizen Participation and Social Oversight Council (CPCCS), and others, with the specific purpose of working together to optimize the detection, prosecution, and punishment of corruption cases (see section 4.2 of Chapter II of this report).
- 4.4.2 Take the steps necessary to ensure there are no obstacles preventing the FGE from proceeding on a timely basis with prosecutorial inquiries into the crimes of embezzlement and illicit enrichment (see section 4.2 of Chapter II of this report).
- 4.4.3 Take the steps necessary to adopt and enforce the regulations of the new judicial career, taking into consideration the recommendations formulated during the Second Round of Review (see section 4.2 of Chapter II of this report).
- 4.4.4 Take the steps necessary to implement the Organic Functional Post Classification Manual and the Occupational Index of Judicature Council, together with the relevant internal manuals (see section 4.2 of Chapter II of this report).
- 4.4.5 Take the steps necessary to implement the Organic Organizational Process Management Statute of the Judicature Council (see section 4.2 of Chapter II of this report).
- 4.4.6 Ensure that the annual reports of the Judicature Council and of the National Court of Justice are available on their web sites in a legible and accessible format that is of use to the public, and optimize the accountability process (see section 4.2 of Chapter II of this report).
- 4.4.7 Include the basic orientation guide on the web site of the National Court of Justice, to guide the public on how and where to direct their requests (see section 4.2 of Chapter II of this report).
- 4.4.8 Include a mailing function for complaints on the agencies of the Judiciary and the Judicature Council web sites, in order to further assist the public with presenting complaints and allegations (see section 4.2 of Chapter II of this report).

- 4.4.9 Provide the agencies of the Judiciary and the Judicature Council with the necessary budgetary and technical resources so that it will have a comprehensive computer system to gather data on the substantiation of different types of crimes in general and specifically those considered in the Convention (see section 4.2 of Chapter II of this report)
- 4.4.10 Conduct the necessary negotiations with other states and cooperation agencies to provide the Judicial Function with the comprehensive technical cooperation needed for the implementation of a computer system to gather data on the substantiation of the different types of offenses established in the Convention; together with the need for permanent training for justice operators on the offenses covered in the Convention (see section 4.2 of Chapter II of this report).
- 4.4.11 Maintain consistent and reliable statistical data to clearly indicate: the number of decisions adopted by the jurisdictional agencies in connection with corruption cases, the number that led to the establishment of responsibility or sanctions, the number in which responsibility was not established, and the number that were closed due to the triggering of statutory limitations, in order to identify challenges and recommend the adoption of corrective measures, if necessary (see section 4.2 of Chapter II of this report).
- 4.4.12 Complete and break down the statistical information on disciplinary proceedings within the Judicial Function related to corrupt acts giving rise to responsibility, to determine the total number of cases investigated in the past five years, the number of decisions adopted in connection with them, the number of those decisions in which responsibility was found or penalties were imposed, the number of those decisions in which no responsibility was found or resulting in acquittals, and the number of those decisions involving the extinction of the punishment or responsibility because statutory limitations were triggered, in order to identify challenges and recommend the adoption of corrective measures, if necessary (see section 4.2 of Chapter II of this report).

III. BEST PRACTICES

[194] As provided for in section V of the *Analysis Methodology for the Implementation of the Provision of the Inter-American Convention against Corruption Selected for the Fourth Round* and the *Structure* adopted by the Committee for reports in that round, the following section addresses the best practices identified by the State that it wishes to share with the other States Parties to the MESICIC, believing that they could be of benefit to them:

- In connection with the State Prosecution Service (FGE):

[195] The FGE is implementing the Integrated System of Prosecutorial Actions (SIAF),⁹⁰ the aims of which include helping eliminate the backlog of cases related to reports of indications of criminal liability submitted by the CGE, in addition to shortening the duration of preliminary enquiries. The SIAF is a technological tool that generates alerts for prosecutors and for the controllers of the Procedural Management Unit.⁹¹

- In connection with the Judicial Function:

⁹⁰ Resolution No. 016 FGE-2013 http://www.oas.org/juridico/pdfs/mesicic4_ecu_res016.pdf.

⁹¹ See examples of alerts at http://www.oas.org/juridico/pdfs/mesicic4_ecu_ejem.pdf.

[196] The creation of the Management Transparency Unit of the Judicial Function by means of resolution 043-2013 of May 22, 2013, the powers and responsibilities of which include overseeing transparency and efficiency in the Judicial Function, promoting a culture of transparency and self-monitoring, strengthening interinstitutional coordination against corruption, transparency in public procurement, and the creation of policies to control conflicts of interest.⁹²

IV. FOLLOW-UP OF PROGRESS AND NEW INFORMATION AND DEVELOPMENTS RELATED TO THE IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE COUNTRY REPORT FOR THE FIRST ROUND OF REVIEW⁹³

[197] In the following sections the Committee will address the progress and new information and developments in the Republic of Ecuador regarding the recommendations formulated and the measures suggested by the Committee for implementation in the First Round reports and on those that it deemed to require additional attention in the Second and Third Round reports;⁹⁴ it will proceed, as appropriate, to take note of those that have been satisfactorily considered and of those that require additional attention by the country under review; and, if applicable, it will refer to the ongoing relevance of those recommendations and measures and to their rephrasing or reformulation, in accordance with the terms of section VI of the Methodology adopted by the Committee for the Fourth Round.

[198] In this section of the report the Committee will also note the difficulties in implementing these recommendations and measures that the country under review has reported, together with the technical cooperation it has requested in pursuit of them.

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

Standards of conduct to prevent conflicts of interest and mechanisms to enforce compliance

Recommendation 1.1.1.

Strengthen the implementation of laws and regulations governing conflicts of interest.

Measure (a) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Accurately identify implications, prohibitions, incompatibilities, and disqualifications related to conflicts between private interests and the public interest.

[199] In its reply, the country under review presents information regarding this measure;⁹⁵ of which, the Committee notes the following as steps contributing to its implementation:

[200] - The forms published by the Ministry of Labor Relations in November 2012, including the following: Control of Multiple Employment; Nepotism; No legal impediment for

⁹² See: http://www.oas.org/juridico/ppt/mesicic4_ecu_cos2.ppt.

⁹³ A list of the recommendations still requiring additional attention after this analysis, and those that have been reformulated, may be found in Annex I of this report.

⁹⁴ Available at: <http://www.oas.org/juridico/spanish/ecu.htm>.

⁹⁵ Response of the Republic of Ecuador to the Questionnaire, p. 36.

holding a position in compliance with Article 3 of the Regulations of the Public Service Law (LOSEP).

[201] - The adoption of the personnel selection subsystem, the purposes of which include increasing transparency in the process whereby public officials are hired pursuant to the LOSEP and for them to be all closed, which would be considered a conflict of interest.

[202] - The entry into force of the new LOSEP (October 2010), which includes provisions against nepotism and disqualifications related to conflicts of interest (Arts. 6 and 24, sections [i] and [j]), such as maintaining commercial, partnership, or financial relations, either directly or indirectly, with taxpayers or contractors of any institution of the State, in those cases in which the public servant, by reason of his functions, must personally attend those matters.

[203] - Organic Law of Public Companies (October 2009), Article 14 of which stipulates bans and disqualifications, including those related to nepotism, or to the existence of signed contracts in force with the public company or, in general, with the State in activities related to the purpose of the public company.

[204] - Organic Law of Citizen Participation (April 2010), Article 79 of which deals with observatories, and which states that they are to comprise groups of individuals or civic organizations that have no conflicts of interest with the subject they observe.

[205] - Organic Code for Territorial Organization, Autonomy, and Decentralization (October 2010), Article 329 of which establishes grounds for disqualifications of members of legislative bodies.

[206] - Organic Law of Popular and Solidary Economy of the Financial System (May 2011), Article 148 of which contains provisions applicable to conflicts of interest and nepotism.

[207] - Organic Law on the Regulation and Control of Market Power (October 2011), Article 46 of which deals with dedication and diligence and refers to the topic of disqualifications and conflicts of interest.

[208] - Organic Law of the National Public Procurement System, Article 63.4 of which deals with conflicts of interest arising from family relations.

[209] The Committee noted that the origin of measure (b) of the recommendation in section 1.1.1 of Chapter IV of this report can be traced back to the First Round analysis, in which the Committee stated that:

[210] *“Article 123 of the Constitution stipulates that public servants must abstain from becoming involved in cases where their interests conflict with those of the agency or entity for whom they provide services. Although this provision could be broadly interpreted to cover cases of conflicts of interest related to trade union interests, or circumstances such as membership in a professional association or a non-governmental organization, the Committee believes that it would be appropriate for the Republic of Ecuador to consider legally fleshing out this constitutional concept by specifically regulating the most relevant possibilities vis-à-vis such situations. This would complement the standards established by the Law on Administrative Careers and the Civil Service and its Regulation, which contain provisions dealing with other conflict of interest situations.”*

[211] In light of the foregoing, the Committee takes note of the steps taken by the Country under review to progress in its implementation of measure (b) of the recommendation in section 1.1.1 of Chapter IV of this report, and the need for it to continue to give attention thereto, considering that the situations described above – which could arise from private interests, such as professional considerations, or from circumstances such as a public employee’s membership in a professional association or a nongovernmental organization, etc. – have still not been regulated.

Measure (b) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

[212] *Establish adequate restrictions, as applicable and for a reasonable period, for those who cease to exercise a public function.*

[213] In its reply, the country under review presents information regarding this measure,⁹⁶ of which the Committee notes the following measures as steps which contribute to progress in its implementation:

[214] The enactment of the following statutes, which include restrictions in this regard: Organic Law on the Regulation and Control of Market Power, Organic Law of Popular and Solidary Economy of the Financial System, Social Security Law, General Law of Financial System Institutions, and Law Creating the Financial Security Network.

[215] Art. 153 of the Constitution of Ecuador, which provides that *“Those who have served as Ministers of State and senior civil servants as defined by law, once they have left those positions and during the following two years, may not be a part of the boards or management teams or serve as the legal representatives or attorneys in fact of national or foreign private corporate entities that enter into contracts with the State, be it for the execution of public works, provision of public services, or exploitation of natural resources, under a concession, partnership, or any other contractual mechanism, nor may they serve as officials of international financial institutions to which the country is in debt.”*

[216] In addition, the Committee notes that during the on-site visit, the representatives of the country under review indicated that the Organic Public Service Law (LOSP), adopted in 2010, fails to impose adequate restrictions for a reasonable period on those who leave a public position.

[217] The Committee takes note of the steps taken by the country under review to progress in its implementation of measure (b) of the recommendation in section 1.1.1, Chapter IV, of this report, and of the need for it to continue to give attention thereto.

Measure (c) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Design and implement mechanisms to publicize and provide training on the standards of conduct, including those involving conflicts of interest, to all government officials and employees, to respond to requests for advice and consultation on the standards by public servants, and to provide further training or periodic updating regarding them.

[218] In its reply, the country under review presents information regarding this measure,⁹⁷ of which, the Committee notes the following as steps contributing to its implementation:

⁹⁶ *Ibid.*, pp. 40-44.

[219] - Mechanisms to publicize and train public servants on the topics referred to in measure (c), such as the CPCCS's Transparent Practice Model;

[220] - The skills and abilities of personnel regarding public ethics developed by the CGE through its Training Directorate;

[221] - Ongoing training on anticorruption matters, including the topics at hand, by the FGE;

[222] - The workshops and talks at the national level to publicize the Institutional Code of Ethics by the Human Talent Directorate, run by the Superintendency of Companies, etc.⁹⁸

The Committee takes note of the steps taken by the country under review to progress in its implementation of measure (c) of the recommendation in section 1.1.1, Chapter IV, of this report, and of the need for it to continue to give attention thereto, considering that although it can be seen that its institutions have developed and implemented mechanisms to disseminate the standards of conduct and to train public servants regarding them, it is not clear that the topic of conflicts of interest is included therein, or that mechanisms have been put in place to resolve queries lodged by public servants in connection with them.

Measure (d) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Conduct evaluations of the use and effectiveness of the standards of conduct for preventing conflicts of interest and of the mechanisms existing in Ecuador to enforce these standards, as instruments for preventing corruption. As an outcome from said evaluations, consider the adoption of measures to promote, facilitate, and consolidate or ensure the effectiveness of these instruments for this purpose.

[223] In its reply, the country under review presents information regarding this measure, of which the following are highlighted:

[224] - The studies conducted by the Ministry of Labor Relations to identify possible anomalies and the verification of information of public complaints or accusations about different public services.

[225] The Committee takes note of the need for the country under review to continue paying attention to measure (d) of the recommendation in section 1.1.1, Chapter IV, of this report, considering that it has not yet assessed the use and effectiveness of the standards of conduct for preventing conflicts of interest referred to therein.

Measure (e) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Carry out a study on the possibility of compiling the standards of conduct for the correct, honorable, and proper fulfillment of public functions referred to in the Convention.

[226] In its response, the country under review presents information and new developments relating to this recommendation, of which the Committee notes the following as a step which contributes to its implementation:⁹⁹

⁹⁷ *Ibid.*, pp. 45-54.

⁹⁸ *Ibid.*, pp. 44-54.

[227] *“The Republic of Ecuador has in force a large number of ‘codes of ethics’ and other standards of conduct, issued individually by each public institution, and for that reason a compilation of those provisions was included in Ecuador’s response to the First Round Questionnaire. It should be noted that the National Assembly has begun an analysis of that compilation, with a view to updating it on the basis of the amendments arising from the Constitution of the Republic in force in Ecuador since October 2008 and all the legislation developed from the new constitutional precepts (...).”*

[228] The Committee also notes that in the response to the questionnaire, the National Assembly states that *“One of the main problems observed in the implementation of this recommendation is the considerable regulatory dispersion of the ethics and behavior provisions enacted for public servants and, regrettably, because of the many different institutional criteria, it has not been possible to reach agreements regarding their standardization”*; that *“for the implementation of this recommendation, the National Assembly should intervene as the representative body of the Legislative Function and as the oversight agency of the Office of the Comptroller General of the State”*; and that *“as regards the specific technical cooperation needs, it must be noted that other countries’ experiences with implementing the recommendation and the use of comparative law are tools that would allow a better adaptation to the domestic stage.”*

[229] On this point, the Committee notes that during the on-site visit, the National Assembly completed the information provided in the response and stated:¹⁰⁰

[230] *“In the year 2004, the National Assembly carried out its first analysis based on the identification of all the provisions related to the matter and later, with the constitutional change of 2008 and the legal amendments introduced to bring the secondary legislation into line with the new legal regime, updated that compilation of regulations and enclosed it with the response to the First Round recommendations follow-up questionnaire, in 2013.*

[231] *“This regulatory compilation is part of a process of analyzing and studying the current legal and constitutional framework in Ecuador; using legal techniques and in accordance with the recommendation formulated by the Committee of Experts, it will allow an analysis to be carried out into the possibility of compiling the different standards of conduct that exist and assessing the extent to which the regulatory dispersion can be reduced, considering that in Ecuador, public officials are subject to three kinds of responsibilities: administrative, civil, and criminal.”*

[232] The Committee, in consideration of the foregoing, takes note of the step taken by the country under review toward the implementation of measure (e) of the foregoing recommendation, of the need for it to continue paying attention to it, as well as of the difficulties described by the country under review.

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

Recommendation 1.2.1

Strengthen resource control systems within the public administration.

⁹⁹ Response of the Republic of Ecuador to the follow-up questionnaire, pp. 58-66.

¹⁰⁰ See: http://www.oas.org/juridico/ppt/mesicic4_ecu_seg1.ppt.

Measure (a) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Consider the possibility of having the Bill on Modernizing the Criminal Treatment of Corruption, mentioned in Chapter II, Section 1.2.2 of this report, adopted by the appropriate authority once the corresponding procedures have been completed.

[233] In its reply, the country under review presents the following information regarding this measure:¹⁰¹

[234] *“The ‘Bill on Modernizing the Criminal Treatment of Corruption’ referred to in section 1.2.2, Chapter II, of the First Round Report was not passed by the Legislative Function. However, in the Republic of Ecuador, as was reported in the reply to the Third Round Questionnaire, the ‘Preliminary Draft of the Organic Code of Criminal Guarantees,’ which offers a comprehensive reform with amendments to substantive, adjective, and execution provisions of criminal law, was prepared by the Ministry of Justice and Human Rights and presented to society civil for its comments and seeks to align the Ecuadorian criminal justice system with the provisions of the current Constitution and international standards.” Currently (as will be detailed below), the National Assembly (Legislative Function) is discussing it, as the “Draft Comprehensive Organic Criminal Code” (...)*

[235] Accordingly, the Committee notes that measure (a) of the foregoing recommendation refers to the passage of a bill that no longer exists; consequently, measure (a) of the recommendation in section 1.2.1, Chapter IV of this report is no longer valid.

Measure (b)

This measure was considered satisfactorily and, consequently, no further information about it need be supplied.

Measure (c) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Conduct an evaluation of the use and effectiveness of the standards of conduct for ensuring the conservation and proper use of public resources and of the mechanisms existing in Ecuador to enforce these standards, as instruments for preventing corruption. As an outcome from said evaluation, consider the adoption of measures to promote, facilitate, and consolidate or ensure the effectiveness of these instruments for this purpose.

[236] In its reply, the country under review submitted information regarding this measure,¹⁰² of which the following is noted:

[237] *“The evaluation of the use and effectiveness of the standards of conduct for ensuring the conservation and proper use of public resources has, among its mechanisms, the oversight actions carried out by the Office of the Comptroller General of the State, pursuant to Article 212.1 of the Constitution of the Republic of Ecuador, in the Organic Law of the Comptrollership General of the State (...)”*

¹⁰¹ *Ibid.*, p. 67.

¹⁰² *Ibid.*, p. 76-80.

[238] The Committee takes note of the need for the Country under review to continue paying attention to measure (c) of the recommendation in section 1.2.1, Chapter IV, of this report, considering that no evaluation has yet been conducted of the use and effectiveness of the standards of conduct for ensuring the conservation and proper use of public resources and of the mechanisms for compliance therewith that exist in Ecuador, as referred to therein.

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

Recommendation 1.3.1

Strengthen existing mechanisms in the Republic of Ecuador that require public servants to report to appropriate authorities acts of corruption in the performance of public functions.

Measure (a) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Develop the constitutional law (Article 97.14, Constitution) that establishes the duty and responsibility to report and combat acts of corruption in the case of public servants that fail to report such acts, through the identification of the pertinent administrative liabilities and their corresponding sanctions.

[239] In its response, the State under review submitted information and new developments relating to this measure. In this regard, the Committee notes the following as a step that contribute to progress in the implementation thereof:¹⁰³

[240] - Art. 22 of the LOSEP establishes the duties of public servants, including, *inter alia*, section (g), which provides: “*Informing their immediate superiors of facts that could cause harm to the administration.*” Thus, noncompliance with those duties, as provided for in Arts. 41 to 43 of that Law, gives rise to administrative sanctions, regardless of any civil or criminal action that might arise therefrom.

[241] - Article 292 of the Criminal Code, which sets a criminal sanction penal of between fifteen days and six months, for public officials or police officers who, aware that a crime has been committed, fail to give immediate notice to an investigating magistrate (currently, a prosecutor).

[242] The Committee, in consideration whereof, takes note of the satisfactory consideration of measure (a) of recommendation 1.3.1 above.

Measure (b) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Facilitate compliance with said constitutional obligation by using the means of communication judged to be appropriate, by regulating its use, and by developing the witness protection program established under the law, such that informants are guaranteed more protection, than the ones that exist currently, against potential threats or retaliation that may be directed toward them as a consequence of complying with this obligation.

¹⁰³ *Ibid.*, pp. 81-90.

[243] In its reply, the country under review presented information related to this measure, of which the Committee highlights the following:¹⁰⁴

[244] *“Under the 2008 Constitution of the Republic of Ecuador, which is currently in force, the State Prosecution Service is responsible for the functioning of the National System for the Protection and Assistance of Victims, Witnesses, and Other Participants in Criminal Trials (...).”* In its response, the Country under review describes this protection system and provides statistics relating to its implementation by the FGE.

[245] On this point, the Committee would like to point out that the existence of the National System for the Protection and Assistance of Victims, Witnesses, and Other Participants in Criminal Trials was already cited as a step forward in the Third Round report.

[246] In addition, the Committee notes that during the on-site visit, the CPCCS’s representatives stated that in spite of the existence of this system for protecting victims and witnesses in criminal proceedings, there is no specific system for the protection of those who report acts of corruption in other areas, such as the administrative arena. They therefore underscored the need to uphold the rights of those whistleblowers, particularly public servants, including their job security.

[247] In consideration of the foregoing, the Committee notes the need for the country under review to pay additional attention to the implementation of measure (b) of the foregoing recommendation.

Measure (c) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Train public servants about the existence and purpose of the responsibility to report to appropriate authorities acts of corruption in the performance of public functions.

[248] In its response, the country under review submitted information and new developments relating to this measure, of which the Committee notes the following as steps that contribute to progress in its implementation:¹⁰⁵

[249] - *“Within specialized training, the curriculum has been designed, including the anticorruption training project for prosecutors and administrative personnel of prosecution services. The responsibility of training for the Function Judicial as a whole falls to the Judicature Council, with only specialized training in topics concerning the institution being the responsibility of the Prosecutor School.”*

[250] - *“The Organic Regulations of the Judiciary School state that its purpose is the correct selection, initial training, continuous and specialized training, and academic evaluation of the performance of the employees of the Judicial Function, and of the teachers and trainers of the Judiciary School. Its regulations were published in Official Register No. 189 on October 14, 2003. The resolution is attached.”*

[251] - *“The Prosecutor School cooperated with the National Council of the Judicature, with the Judiciary School, in the areas of anticorruption. It must also expand its domestic cooperation with the National Transparency Secretariat and with the Citizen Participation and*

¹⁰⁴ *Ibid.*, pp. 91-96.

¹⁰⁵ Response of the Republic of Ecuador to the follow-up questionnaire, pp. 97-98.

Social Oversight Council, and with international cooperation agencies and universities and specialized scientific societies.”

[252] In its reply, the country under review listed the following among the difficulties it faced: *“The structure of the Prosecutor School did not allow for proper academic development; it did not have the budget necessary for carrying out the corresponding academic events; there was a lack of equality in the training of prosecutors and officers; it did not have a multidisciplinary team for working; and the online training platform was not put in place. (www.fiscalia.gob.ec)”*

[253] In consideration of the foregoing, the Committee takes note of the step taken by the country under review to implement measure (c) of the foregoing recommendation and of the need for it to continue to give attention thereto, in that although it can be seen that its public officials have received training on anticorruption matters, it cannot be determined whether training was provided specifically on the existence and purpose of the duty of reporting, to the appropriate authorities, acts of corruption detected in the performance of public functions. The Committee also notes the difficulties identified by the Country under review.

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

Recommendation 2.1

Strengthen systems for the disclosure of income, assets and liabilities.

Measure (a) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Regulate the conditions, procedures and other appropriate aspects related to publicizing the sworn declarations of net worth) of public servants (including income, assets and liabilities, as appropriate.

[254] In its reply, the State under review presents information and new developments that indicate that measure (a) of recommendation 2.1 above is not applicable to the State under review.¹⁰⁶

[255] *“Regarding this suggested measure, Article 66.19 of the Constitution of the Republic of Ecuador ensures people “the right to the protection of data of a personal nature, including access to and decisions about information and data of that kind, and the protection thereof. The gathering, archiving, processing, distribution, or dissemination of such data or information shall require the authorization of the owner or the mandate of law.” This provision agrees with the terms of Article 92 of the Constitution, which regulates habeas data actions.*

[256] *“Article 6 of the Organic Law on Transparency and Access to Information Public states that personal public information not subject to the principle of disclosure shall be considered confidential, including that arising from personal basic rights guaranteed by the Constitution.*

[257] *“In order for this right to be applied in accordance with the spirit of the constitutional provision, the office of the Comptroller General of the State, through Agreement*

¹⁰⁶ Response of the Republic of Ecuador to the follow-up questionnaire, pp. 99-101.

No. 011-CG, published in the Official Register, Supplement No. 600 of May 28, 2009, ruled that: “Employees of state institutions and personnel charged with the oversight of sworn statements of net worth in the office of the Comptroller General of the State shall observe confidentiality and absolute secrecy in handling those statements. Only with a court order will copies of those statements be handed over.”

[258] “The regulations governing the registering and oversight of sworn statements of net worth may be found on the web page www.contraloria.gob.ec/normatividad_vigente.asp.”¹⁰⁷

[259] The Committee, in consideration whereof, concludes that measure (a) of the foregoing recommendation is not applicable to the State under review and is therefore no longer current.

Measure (b) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Review and follow up on compliance by public servants with the obligation to present a sworn declaration of net worth (including income, assets and liabilities), pointing out the degree of compliance and suggesting suitable measures to modify or correct the situation.

[260] In its response, the country under review submitted information and new developments relating to this measure, of which the Committee notes the following as steps that contribute to progress in its implementation:¹⁰⁸

[261] “Over the past four years, Ecuadorian public servants’ level of compliance with the obligation of filing statements of assets has been around 95%, considering that the Constitution sets this requirement for holding such a position and, in fact, if a public servant takes office without filing a statement, he is punishable by law with the immediate cancellation of the appointment and the irrevocable termination of his employment, together with the removal of any authority that breaches this provision. The Office of the Comptroller General of the State conducts permanent follow-up of timely compliance with the filing of the initial sworn statements of net worth, and it reports cases of noncompliance to the nominating authority for the adoption of the corresponding legal actions.”

[262] In addition, in its reply the country under review identified the following difficulties:

[263] “The law grants a period of 20 days in which to file the statements due at the end of the period in office. The Constitution states that failure to present such a statement shall be taken as an indication of illicit enrichment; there is, however, no sanction, except any that may arise from the special auditing examination that will be conducted for suspicion of illicit enrichment. In order to prevent public servants failing to file sworn statements at the end of their mandates, which is essential for comparing them to the assets declared at the start thereof, the Office of the Comptroller General of the State has ordered agencies’ personnel chiefs to require them as a necessary document for processing the conclusion of service.”

[264] “The only difficulty in evaluating and monitoring public servants’ compliance with the obligation of filing sworn statements is related to the number of public employees subject to that obligation, at around 500,000. Consequently, in addition to the strategies described in the

¹⁰⁷ *Ibid.*, p. 100.

¹⁰⁸ Response of the Republic of Ecuador to the follow-up questionnaire, pp. 99-101.

*previous paragraphs, random checks must be conducted and the actions must be focused on specific employees who are responsible of the political and administrative leadership of the State, which could possibly lead to lower ranking public servants being neglected.*¹⁰⁹

[265] In addition, the Committee notes that during the on-site visit, the CGE's representatives identified the following difficulties:

[266] - The Organic Law of the CGR states that sworn statements are to be presented every two years. However, it has not been made clear whether that timeframe applies to all public officials. A legislative amendment has been requested, with one of the justifications for it being to clarify this matter.

[267] The Committee, in consideration of the foregoing, takes note of the step taken by the country under review for the implementation of measure (b) of the foregoing recommendation and of the need for it to continue giving attention thereto, and it also notes the difficulties identified by the Country under review.

Measure (c) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Optimize systems for reviewing the contents of sworn declarations of net worth with the objective of detecting and preventing conflicts of interest, as well as detecting possible cases of illicit enrichment.

[268] In its response, the Country under review submitted information and new developments relating to this measure, of which the Committee notes the following as steps that contribute to progress in its implementation:¹¹⁰

[269] *“In 2000, the Office of the Comptroller General of the State implemented a computer system for recording and controlling sworn statements of net worth, into which it inputs information on public servants' assets. The system was modified in 2009 to facilitate the automatic comparison of statements. In accordance with specific parameters, it provides alerts about cases of increases in assets warranting investigation, as a prior step to establishing an assumption of illicit enrichment.*

[270] *“However, due to the number of sworn statements of net worth from which data must be input, over the past two years a study has been underway into the need for new software that would allow the on-line registration of the information and that, in addition, would provide alerts about possible cases of illicit enrichment. This software is being developed by technicians from the Office of the Comptroller General of the State, and it was began in May 2012 with the adoption of the document “Vision and Scope of the Sworn Statements of Assets Project.” The aim is that by the year 2013, the sworn net worth statements process can be automatic, using modern technological standards on a web platform, allowing interoperability with the current and future infrastructure of the Office of the Comptroller General of the State.*

[271] *“In addition, the Office of the Comptroller General of the State has prepared a bill for the control and registration of sworn statements of net worth, given the need to update the current legislation, which has been in force since May 2003, to bring it into line with the provisions of the current Constitution of the Republic of Ecuador, and to establish effective*

¹⁰⁹ *Ibid.*, p. 104.

¹¹⁰ Response of the Republic of Ecuador to the follow-up questionnaire, p. 110.

procedures for detecting possible cases of illicit enrichment. This bill includes the elimination of the obligation of filing statements of net worth by means of public deeds (given before a notary); the introduction of on-line registering of asset statements, using an electronic form; greater participation by state institutions' human resource management agencies in overseeing the timely presentation of statements and in forwarding them to the Office of the Comptroller General of the State; and setting the timeframe for updates of statements of net worth at every two years."

[272] In the same response to the questionnaire, the country under review also identified the following difficulties:

[273] *"According to its constitutional and legal powers, the Office of the Comptroller General of the State is responsible for taking steps to detect possible cases of illicit enrichment through the examination and comparison of sworn statements of net worth. This instrument was not designed to detect conflicts of interest, but, in some way, serves to prevent them, as described below:*

[274] *"According to Article 232 of the Constitution of the Republic, persons with an interest in the areas to be overseen or regulated, or representing third parties with such interests, may not serve as officers or members of executive boards of agencies charged with the state power of oversight and regulation.*

[275] *"Public servants shall refrain from acting in cases in which their interests are in conflict with those of the agency or entity in which they are employed.*

[276] *"Consequently, conflicts of interest are regulated by the Constitution of the Republic as a reason for disqualification from admission to public service and, if a conflict arises once the position has been assumed, the public servant involved must refrain from acting. Therefore, sworn statements of net worth are a useful tool for preventing conflicts of interest, given that under the Organic Public Service Law, public servants must include in their assets statements a sworn affirmation that they are not involved in nepotism or the prohibitions or disqualifications provided for in the Constitution of the Republic and current legislation. On the contrary, this instrument, in and of itself, is not the most effective way to detect conflicts of interest."*

[277] In addition, during the on-site visit, the CGR's representatives stated that the new computerized system would streamline the process, particularly if the requirement for asset statements to be made by means of a public deed (enacted before a notary public) is eliminated. Another difficulty is its failure to include electronic signatures, because implementation thereof is expensive; consequently, statements must still be filed in person. Regarding this point, the Committee notes the importance of allowing simple electronic signatures¹¹¹ and of having the resources for implementing the system.

[278] The Committee, in consideration of the foregoing, takes note of the steps taken by the country under review to implement measure (c) of the foregoing recommendation; it also notes the difficulties identified by the country under review and the need for it to continue paying attention to it.

¹¹¹ Article 13 of the Law on Electronic Commerce, Electronic Signatures, and Data Messages (Law No. 2002-67) defines electronic signatures as follows: "Art. 13. *Electronic signature. Data in an electronic format set down in a data message, attached thereto, or logically associated therewith, that can be used to identify the owner of a signature as regards the data message, and to indicate that the owner of the signature accepts and acknowledges the information contained in the data message.*"

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

Recommendation 3.1

Strengthen the oversight bodies concerning the functions they perform related to the effective enforcement of the provisions of Articles 1, 2, 4, and 11 of the Convention, with the objective of ensuring the effectiveness of such oversight, as follows: provide them with the necessary resources to do an excellent job; ensure that they receive improved support for their activities; establish mechanisms that enable effective institutional coordination of their activities, as appropriate, as well as the ongoing evaluation and monitoring of these activities.

[279] In its reply, the country under review offers information related to recommendation 3.1, of which the Committee highlights the following:¹¹²

[280] *“In accordance with the powers assigned to the Transparency and Social Oversight Function Coordination Agency, the “National Plan for the Prevention and Combat of Corruption 2013 – 2017” was adopted on January 15, 2013. This plan is based “... on the principles of the constitutional rule of law and justice” and it offers a programmatic proposal aimed at fostering a culture of preventing and combating corruption in the country. It proposes the creation of a national system in which all members of the anticorruption community and the public share forums, best practices, and projects intended to instill a culture of secular ethical values as a prerequisite for the full enjoyment and guarantee of rights.”*

[281] *“The Plan is a first step toward setting the foundations for the construction of a ‘national system’ that will bring together plans, stakeholders, and institutions involved in anticorruption efforts in the country, for which the signing of a National Anticorruption Agreement is planned.”*

[282] Considering that an updated analysis of the strengthening and interinstitutional coordination of the oversight agencies referred to in recommendation 3.1 was provided in Chapter II of this Report, the Committee refers back to the comments in that chapter related to each of those agencies as regards this issue and, consequently, considers that recommendation 3.1 is now redundant.

Recommendation 3.2

[283] This recommendation was satisfactorily considered and, consequently, no further information on it is required.

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. Mechanisms for access to information

Recommendation 4.1.1.

¹¹² Response of the Republic of Ecuador to the follow-up questionnaire, pp. 111-113.

Strengthen mechanisms for guaranteeing access to public information.

Measure (a) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Strengthen the mechanisms designed to enforce the right of civil society and of citizens to access to public information and to appeal decisions under which requests for information are denied, so as to guarantee easy access to said mechanisms and to ensure that the mechanisms are effective in protecting the right to public information. In this respect, consider the possibility of having the Draft Basic Law on Access to Public Information, mentioned in Chapter II, Section 4.2.2 of this report, adopted by the appropriate authority once the corresponding procedures have been completed.

[284] In its response, the country under review presents information and new developments relating to this measure, of which the Committee notes the following as steps that contribute to progress in its implementation:¹¹³

[285] - The steps taken to implement the Organic Law on Transparency and Access to Public Information (LOTAIP) and its Regulations, (RLOTAIP), by the Office of the People's Defender, which is the executing agency for those provisions, including the definition of the structure of the coordination team; operational planning; establishing and socializing the guidelines to be followed for the reception of annual reports on the right of access to public information; the creation of methodological and data-processing tools for overseeing compliance with the presentation of reports, including improvements to the computerized indicator system and the groundwork for a new registry of entities obliged to comply with the LOTAIP, etc.

[286] - Training activities for public institutions intended to promote the right of access to information, including the National Public Institutions Training Program, by the Office of the People's Defender; and the training activities provided through the Undersecretariat of Transparency and Management.¹¹⁴

[287] In its reply, the country under review also identifies a series of institutional challenges and difficulties; these are summarized below:

[288] The Office of the People's Defender:¹¹⁵

- The need to design strategies for interconnecting the actions of the National Transparency Coordination Office with those of other agencies responsible for ensuring rights from within civil society.
- Establishing a permanent supply of training on the right of access to public information, addressing its two dimensions: the right of all citizens to access public information, and the obligation of the public sector institutions to provide timely information.
- Strengthening the data-processing system so institutions can submit their reports in an electronic format.

¹¹³ Response of the Republic of Ecuador to the follow-up questionnaire, p. 113-141.

¹¹⁴ *Ibid.*, pp. 123-140.

¹¹⁵ *Ibid.*, p. 125.

- Implementing the process for monitoring and overseeing compliance with the LOTAIP and establishing guidelines and procedures for its consolidation within the Office of the People's Defender and its dissemination among public institutions and private institutions that receive public funds.
- Developing cooperative ties between civil society and the Office of the People's Defender, and assembling a network involving the State and civic organizations to strengthen access to information.

[289] The Undersecretariat of Transparency and Management:¹¹⁶

- Failure of public servants to attend training workshops.
- Delegates were not from the areas responsible for inputting or managing LOTAIP information.
- Some institutions still not totally open to facilitating the processes of information presentation and publication, particularly financial information.
- Public companies have lower rates of compliance with Art. 7 of the LOTAIP compared to public institutions, which indicates their levels of commitment.

[290] In addition, the Committee notes that during the on-site visit, the representatives of the Office of the People's Defender stated that they had a staff of only seven officers to cover the 1,511 public institutions subject to the LOTAIP and that, moreover, those officers are not specialists. They reported that work was underway to open new profiles to replace those officers, but that there were no plans to increase their numbers. The Committee notes that this is a very small number of officers to deal with all the institutions subject to the LOTAIP, particularly bearing in mind that during the visit mention was made of plans to add a registry of private institutions that are subject to the LOTAIP.

[291] They added that the DF does not yet have software for the swift and easy processing of information, that everything is processed manually, and that an agreement has been signed with Eurosocal to work on the implementation of suitable software during 2014.

[292] Regarding confidential information, Article 17.b of the LOTAIP provides as follows: "*The right to access public information shall not proceed exclusively in the following cases: ... (b) Information expressly indicated as confidential in current law.*" Similarly, under Article 18 of the LOTAIP, "*Public institutions shall prepare, every six months and broken down by topics, an index of the case files classified as confidential. In no instance shall that index be considered confidential information. This index of confidential information shall indicate the date of the resolution and the duration of the confidentiality.*"

[293] On this topic, during the on-site visit the DP's representatives said that there were difficulties in that not every institution had laws identifying which information is to be kept confidential, which gave the officers a broad margin of discretion. Moreover, confidential information must be communicated to the DP. However, to date the institutions have not sent this information to the DP, which further hinders the effective enforcement of the LOTAIP. They also

¹¹⁶ *Ibid.*, p. 148.

reported that Executive Decree No. 16 of June 2013¹¹⁷ has been criticized by civil society, on the grounds that these organizations consider it as restricting their access to information.

[294] The Committee, in consideration of the foregoing, notes the steps taken by the country under review toward implementing measure (a) of the foregoing recommendation and it notes the difficulties highlighted. Accordingly, the Committee reformulates measure (a) as follows (See Annex I, recommendation 2.1, measure b):

- Consider strengthening the mechanisms designed to enforce the right of civil society and of citizens to access public information and to appeal decisions under which requests for information are denied, so as to guarantee easy access to said mechanisms and to ensure that the mechanisms are effective in protecting the right to public information. Accordingly, it is suggested that consideration be given to strengthening the oversight agency responsible for implementing the Organic Law on Transparency and Access to Information (LOTAIP), to ensure it has the human and budgetary resources necessary for the proper performance of its functions, taking into consideration the available resources.

[295] In addition, during the on-site visit, the following comments were made during the interviews with civil society organizations, the private sector, academics, and researchers:

[296] The Corporación Participación Ciudadana civil society organization stated that the challenges facing the full implementation of the Organic Law on Transparency and Access to Public Information (LOTAIP) included the following:

- Instead of creating a new oversight agency for the enforcement of the LOTAIP, the task had been assigned to the Office of the People's Defender, an agency that has highly constrained resources for discharging that function.
- There was a need for strengthened controls from both the State and the public (social control).
- Strengthened training was needed, for both members of the public and public officials.
- Legal amendments were needed as regards the sanctions for noncompliance with the LOTAIP, as well as for determining which information is to be considered confidential.
- Judges needed training on how information access cases are dealt with by the courts. In many cases they are not fully familiar with the legislation, which prevents them from understanding which information must be public and which is to be considered confidential.
- Sufficient statistics on the results of the implementation of the LOTAIP do not exist. There is a 2011 study by the National Court of Justice, but it is not believed to be adequate.
- It is not clear how many institutions are obliged to abide by the LOTAIP since there is no complete register including, in addition to government institutions, public companies, municipalities, universities, and, in general, any institution that receives public funds.
- In their opinion, a Personal Data Protection Law is needed.

[297] In addition, Corporación Participación Ciudadana described as a step forward resolution 0 of the Office of the People's Defender, published in the Official Register,

¹¹⁷ See: http://www.oas.org/juridico/pdfs/mesicic4_ecu_dec16.pdf.

Supplement 579 of November 18, 2011, setting the parameters for the enforcement of Articles 7 and 12 of the LOTAIP; together with the gradual increase in the obliged institutions' levels of compliance.

[298] Similarly, the Coordinadora de Radio Popular Educativa del Ecuador (CORAPE) stated that:

- The level of information was not equal everywhere. For example, since the LOTAIP concentrates on web pages, rural populations do not always have access to it. In addition, citizens with lower levels of education, in areas where literacy rates are minimal or nonexistent, could not read this information even if they had internet access.
- Community radio serves to cover many of those shortcomings, particularly as regards accountability. In CORAPE's opinion, community radio can serve as a useful alternative tool for keeping those sectors of the population informed.
- Only 40% of the population has internet access, but they are concentrated in urban areas.
- CORAPE does not have yet have concessions as a community media outlet, even though in 2008 it was recognized as such. The organization said it required equitable treatment.

[299] Finally, the representative of the Latin American Faculty of Social Sciences (FLACSO) said there was a heavy turnover in the officials responsible for providing information.

Measure (b) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Carry out a study on the use and effectiveness of mechanisms for access to information held by (or under the control of) public institutions in Ecuador, as instruments to prevent corruption. Based on the outcome of this study, Ecuador should consider the adoption of measures designed to promote, facilitate, consolidate and ensure the effectiveness of these mechanisms for this purpose.

[300] In its response, the country under review presents information and new developments relating to this measure, of which the Committee notes the following as steps that contribute to progress in its implementation:¹¹⁸

[301] The Citizen Participation and Social Oversight Council (CPECS):¹¹⁹

[302] *“Since the country does not have tools for the period, systematic, and contextualized measurement of transparency in public sector entities and in private entities where there is a public interest, in all of Ecuador's provinces, in late 2010 the Participation and Social Oversight Council hired a consulting company to develop a prototype transparency index based on a mathematical model, taking into account three levels of institutions that handle public resources: centralized, decentralized, and private. Calculating each institution's level of transparency will provide guidelines for appropriate and timely interventions in their management and for addressing shortcomings in transparency.”*

[303] The Office of the People's Defender:

¹¹⁸ Response of the Republic of Ecuador to the follow-up questionnaire, pp. 142-151.

¹¹⁹ *Ibid.*, pp. 142-143.

[304] *“In order to assess compliance with the Law on Transparency and Access to Public Information (LOTAIP), the Office of the People’s Defender prepares consolidated nationwide reports and checks that the agencies and institutions subject to the law are meeting their public information disclosure obligations.”*¹²⁰

[305] On this point, the Committee notes the information provided from the reports received by the DP (2010-2013); reports received vs. national registry (2011-2013); reports received by the DP by province (2011-2012); reports received by State Function; and reports received by type of organization.¹²¹

[306] In addition, the interinstitutional cooperation activities carried out by the DF to promote and protect the right of access to information with the CPCCS and the Undersecretariat of Transparency Management, as well as with other national and international institutions and organizations, such as Quito Honesto, Red de Transparencia y Acceso a la Información (RTA), and horizontal cooperation projects with Eurososocial.

[307] In consideration of the foregoing, the Committee takes note of the steps taken by the country under review to implement measure (b) of the foregoing recommendation and of the need for it to continue to give attention thereto, considering that it has not yet evaluated the use and effectiveness of the mechanisms for access to information held or controlled by the Ecuadorian public institutions to which it refers. It also notes the difficulties highlighted by the country under review.

4.2. Consultation mechanisms

Recommendation 4.2.

Complement existing consultative mechanisms by establishing procedures, as appropriate, that enable public consultations to take place prior to the development of public policies and the final approval of legal provisions.

Measure (a) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Increase the publication and dissemination of draft legal provisions and hold transparent processes that enable consultation with interested sectors concerning the preparation of draft laws, decrees or resolutions by the Executive Branch.

[308] In its response, the country under review submitted information and new developments relating to this measure, of which the Committee notes the following as steps that contribute to progress in its implementation.¹²²

[309] The National Assembly reports that: *“The National Assembly’s current web site has a link called ‘Processing of legislative bills,’ which contains a grid or table with uninterrupted information from May 2009 to date, and which publishes and disseminates*

¹²⁰ *Ibid.*, p. 143.

¹²¹ *Ibid.*, pp. 143-151.

¹²² Response of the Republic of Ecuador to the follow-up questionnaire, p. 152-173.

*legislative bills and the different stages in their approval processes. The direct link to the page is: <http://www.asambleanacional.gob.ec/tramite-de-las-leyes.html>.*¹²³

[310] Later in the reply, the National Assembly adds: *“The National Assembly, in compliance with the terms of the final section of Article 66 of the Organic Law of the Legislative Function, has designed and implemented the System for the Reception of Proposals or Bills presented, on an individual basis, by members of the public.*

[311] *“Using this system, through the institutional web site and a simple, user-friendly mechanism, members of the public can submit proposals or suggested provisions directly to the National Assembly and receive updates on their processing.*

[312] *“Those initiatives from the public will be sent through the system to the Technical Legislative Unit, which will process them and, if appropriate, draft the corresponding bill for publication on the National Assembly web site, so the members of the Assembly can read them and, if they wish, sign up to support them.*

[313] *“This will enable public initiatives, provided they meet the requirements set by Article 134.1 of the Constitution and of Article 54.1 of the Organic Law of the Legislative Function, to be heard and assessed by the Legislative Management Council for subsequent processing by the corresponding legislative committee.*

[314] *“Finally, the system allows legislative bills to be displayed so the public can learn about their contents and progress and express their opinions on their adoption.”*

[315] *“In addition the National Assembly has developed a computer system that gathers together information on its activities; this serves to provide data on the actions of its members and political coalitions during plenary sessions, and so all kinds of statistics can be extracted in real time.”*

[316] In addition, the CPCCS notes that in the year 2012 it approved policies on citizen participation, social oversight, accountability, transparency, and combating corruption. These policies were developed in consultation with social organizations, public institutions, and the general public and consolidated in a single document, disseminated, and validated by the citizens and experts and submitted to the Transparency and Social Oversight Coordinating Agency, (FTCS).

[317] The Committee, in consideration of the foregoing, takes note of the steps taken by the country under review to implement measure (c) of the foregoing recommendation, as well as of the need for it to continue paying attention thereto, and it notes the difficulties highlighted by the country under review, together with the need for it to continue paying attention to them.

[318] In addition, the Committee notes that during the on-site visit, at the meetings with civil society organizations, private enterprise, academics, and researchers, the representatives of Grupo FARO stated that the system could be improved to allow greater diversity, including spontaneous forms of participation, and not only those allowed under the current regulations. They also stated that Executive Decree 16 was very restrictive and that a dialogue panel is being set up with the institution in charge of its implementation.

¹²³ *Ibid.*, p. 152.

[319] Grupo CERES said that the dialogue with the government was limited and that the communications channels could be improved.

[320] Measure (b) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

[321] *Take the necessary measures to establish and define the institutionalization of consultations with civil society. In this respect, the Committee suggests that the Republic of Ecuador consider the possibility of having the Draft Basic Law on Social Control of Public Authority, mentioned in Chapter II, Section 4.3.2 of this report, adopted into law by the appropriate authority once the corresponding procedures have been completed.*

[322] In its response, the Country under review submitted information and new developments relating to this measure, of which the Committee notes the following as steps that contribute to its satisfactory consideration:¹²⁴

[323] The enactment in April 2010 of the Organic Citizen Participation Law (LOPC), the aim of which is to encourage, foster, and guarantee the exercise of the participation rights of citizens, collectives, municipalities, communities, indigenous peoples and nationalities, Afro-Ecuadorian and Montubio peoples, and other forms of licit organization, in a protagonistic way, in relevant decision-making processes, collective autonomous organization, and public administration regimes with public involvement; to establish forums, mechanisms, instruments, and procedures for public deliberation between the different levels of the state apparatus and society, to follow up on public policies and the provision of public services; to strengthen public power and its forms of expression; and to set the foundations for the functioning of participatory democracy and for social accountability and oversight initiatives (LOPC, Article 1).

[324] The Committee, in consideration of the foregoing, takes note of the satisfactory consideration of the implementation of measure (b) of the foregoing recommendation.

Measure (c) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Carry out a comprehensive study on the use and effectiveness of existing consultative mechanisms in Ecuador, as instruments to prevent corruption. Based on the outcome of this study, Ecuador should consider the adoption of measures designed to promote, facilitate, consolidate and ensure the effectiveness of these mechanisms for this purpose.

[325] In its reply, the country under review did not mention anything related to implementation of this measure. The Committee notes the need for it to continue paying attention to it.

4.3. Mechanisms for encouraging participation in the public administration

Recommendation 4.3.1

Strengthen and continue to implement mechanisms to encourage civil society organizations and NGOs to participate in the public administration, and to make progress with repealing rules that could discourage such participation.

¹²⁴ Response of the Republic of Ecuador to the follow-up questionnaire, pp. 161-173.

Measure (a) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Establish mechanisms, in addition to those that already exist, to strengthen the participation of civil society and non-governmental organizations in efforts to prevent corruption and to raise public awareness of the problem; as well, promote the awareness and use of established participatory mechanisms. In this respect, consider the possibility of having the Draft Basic Law on Social Control of Public Authority, mentioned in Chapter II, Section 4.4.2 of this report, adopted into law by the appropriate authority once the corresponding procedures have been completed.

[326] In its response, the country under review submitted information and new developments relating to this measure, of which the Committee notes the following as steps that contribute to progress in its implementation:¹²⁵

[327] *“The actions indicating the implementation of this measure include measures that develop the constitutional provisions regarding the promotion of citizen participation in Ecuador:*

- Citizen Participation Law (Official Register, Supplement 175, April 20, 2010), which establishes mechanisms to encourage civil society and nongovernmental organizations to participate in efforts to prevent corruption and to develop public awareness of the problem.
- Citizen Oversight Regulations (Official Register, Supplement 226, July 1, 2010).

[328] In addition, the Committee takes note of the mechanisms described by the country under review, in the section in which the CPCCS is analyzed, where it reports that it has implemented mechanisms including the following:¹²⁶

- **Participatory forums for discussion:** Public hearings, people’s assemblies, assemblies, and consultative councils.
- **Social oversight and control mechanisms:** Observatories, electoral observation, citizen oversight, accountability, “empty chair”.
- **Participatory mechanisms at the national level:** Public agendas for citizen consultation, national equality councils, Plurinational and Intercultural Civic Assembly for Living Well, sectoral civic councils, National Planning Council.
- **Participatory mechanisms at the local level:** Local assemblies, assemblies in indigenous, Afro-Ecuadorian, and Montubio territories, forums for local-level citizen participation, planning councils of decentralized, autonomous governments, participatory budgets, citizen participation systems, urban neighborhood and parish councils, dialogue panels, permanent, technical, or special committees with citizen participation in rural parish councils, cantonal councils for the protection of rights, intersectoral coordination agendas, sectoral public policy councils of the Executive Function, watershed councils, drinking water boards, irrigation boards, public requests for intervention in managing the competences of decentralized, autonomous governments, municipalities.

¹²⁵ Response of the Republic of Ecuador to the follow-up questionnaire, pp. 152-173.

¹²⁶ Response of the Republic of Ecuador to the Fourth Round questionnaire, pp. 124-125.

- Mechanisms for strengthening participation by civil society and nongovernmental organizations, belonging to the CPCCS's participation promotion efforts, including local civic assemblies, training courses for trainers, training and advisory services for public employees, youth, and the general public, promotion of citizen participation through art, support for good participation practices that work for inclusion with equity through the implementation of competitive funds and the creation of forums for public debate on topics of interest to the citizenry, as cited in section D.i of the Questionnaire.

[329] In consideration of the foregoing, the Committee takes note of the satisfactory consideration of measure (a) of the foregoing recommendation, and of the difficulties identified by the country under review.

Measure (b) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Repeal the so-called 'laws on contempt.'

[330] In its response, the country under review submitted information and new developments relating to this recommendation, of which the Committee notes the following as a step which contributes to its implementation:¹²⁷

[331] *"In the articles of the draft Comprehensive Criminal Code, it can be seen that the crimes referred to in the recommendation have been eliminated, but because this is still at the bill stage, there is no guarantee that this will be maintained in the final version."*¹²⁸

[332] In consideration of the foregoing, the Committee takes note of the steps taken by the country under review to implement measure (b) of the foregoing recommendation and of the need for it to continue to give attention thereto.

4.4. Mechanisms for participation in monitoring public administration

Recommendation 4.4.1

Strengthen and continue to implement measures that encourage civil society and non-governmental organizations to participate in the monitoring of the public administration.

Measure (a) suggested by the Committee, which requires additional attention in the terms set out in the Second and Third Round Reports:

Promote ways, when appropriate, that enable public servants to permit, facilitate or assist civil society and non-governmental organizations to develop activities for monitoring their public

¹²⁷ Response of the Republic of Ecuador to the follow-up questionnaire, p. 178-179.

¹²⁸ In its comments to the draft preliminary report of February 10, 2014, the country under review reported that *"The Comprehensive Organic Criminal Code has been issued through its publication in the Official Register No. 180 Supplement of February 10, 2014, which as provided in its Final Provision, enters into effect one hundred eight [days] after its publication in the Official Register, with the exception of the provisions amending the Organic Code of the Judicial Function, which enter into effect as of their publication in the Official Register. The First Repealing Provision of the new Code repeals the Penal Code, published in the Supplement to the Official Register No. 147 of January 22, 1971 and all its amendments, which includes Articles 230, 231, 232, and 233, provisions that were covered in measure b), recommendation 4.3.1 and that are no longer provided in the new Code."* They also informed that said provisions will be repealed on August 10, 2014.

activities. In this respect, consider the possibility of having the Draft Basic Law on Social Control of Public Authority, mentioned in Chapter II, Section 4.5.2 of this report, adopted into law by the appropriate authority once the corresponding procedures have been completed.

[333] In its response, the country under review submitted information and new developments relating to this measure, of which the Committee notes the following as steps that contribute to progress in its implementation:¹²⁹

- The enactment of the Organic Citizen Participation Law in May 2010.
- Information on the accountability processes implemented by the CPCCS, geared essentially toward transparency in the public administration and, consequently, toward the fight against corruption, which facilitate the monitoring of the public administration are detailed in the response to item D.i in the questionnaire.
- The training and strengthening activities of the Undersecretariat for Transparency and Management¹³⁰ (SNTG).
- Public accountability hearings.¹³¹
- The SNTG's mobile offices, which serve to receive complaints from the public and, in turn, to provide the corresponding legal advice and information on the SNTG's functions.¹³²

[334] On this point, the Committee notes that during the on-site visit, the CPCCS's representatives identified among their difficulties the existence of real problems with the implementation of the new regulations, particularly with local authorities, and that the resources necessary to make those rights of participation a reality have not been forthcoming. They said there was a need for planning and follow-up by the citizenship, in addition to a lack of comprehensive training on public participation. They reported that efforts were underway to include the topic in study plan at both the high-school and university levels. They also stated their belief that there was a failure to implement the regulations and reported that they were signing a series of agreements with other institutions in order to facilitate public participation.

[335] In consideration of the foregoing, the Committee notes the steps taken by the country under review to implement measure (a) of the foregoing recommendation; it also notes the difficulties identified by the country under review and the need for it to continue paying attention to the matter, and it reformulates the measure in the following terms:

- Promote ways, when applicable, that enable public servants to permit, facilitate or assist civil society and non-governmental organizations to develop activities for monitoring their public activities.

[336] It should also be noted that during the on-site visit, at the meetings with civil society organizations, the private sector, academics, and researchers, the following comments were offered¹³³:

¹²⁹ Response of the Republic of Ecuador to the follow-up questionnaire, pp. 179-187.

¹³⁰ *Ibid.*, pp. 179-181.

¹³¹ *Ibid.*, pp. 181-184.

¹³² *Ibid.*, p. 184.

[337] With reference to the citizen oversight units, Grupo FARO noted that there was a need for a prohibition to keep the observed institution from using any kind of veto or restriction on the reports generated by this oversight process. They added that the regulations for these oversight units impose so many obstacles that they are unable to perform their tasks effectively, and that there was a need for guarantees in requesting and receiving information from institutions.

[338] In turn, the Cantonal Assembly of Montúfar underscored the need to strengthen the processes of the National Public Procurement System as regards citizen oversight units for processes and as regards the signing of contracts and the adjudication of works projects and services.

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

Recommendation 5.1

Determine and prioritize specific areas in which the Republic of Ecuador needs technical cooperation from other States and international cooperation agencies to strengthen its capacity to prevent, detect, investigate and punish acts of corruption.

[339] In its response, the country under review submitted information and new developments relating to this measure, of which the Committee notes the following as steps that contribute to progress in its implementation:¹³⁴

[340] - The CPCCS indicates that in the areas of transparency and anticorruption efforts, international cooperation is needed for the following institutional projects:

- Institutionalize a mechanism for the systematic measurement of transparency and work on public policies and tools to ensure transparency in the public administration through the creation of an **“Index of transparency in Ecuadorian public institutions and institutions that handle public funds.”**
- Provide the public with information in accessible language, to empower social oversight of the public administration, transparency, and anticorruption efforts, through the creation of **“Mechanisms for the monitoring and evaluation of the FTCS public policy cycle and of the recommendations issued pursuant to international anticorruption instruments.”**
- Establishment of a specific program for the protection of corruption whistleblowers.

¹³³ In its remarks to the draft preliminary report, of February 10, 2014, the country under review stated that *“The citizens have received the technical guidelines needed on the part of the CPCCS, to ensure that the presentation of the PURPOSE – as the point of departure – of oversight is well formulated. According to the procedure for formation of a citizen oversight unit as established in the Citizen Oversight Regulations, the CPCCS receives their personal documents and the registration form and verifies that the requirements are met, and then an information transfer workshop is convened to subsequently ACCREDIT THEM as overseers.*

“The CPCCS immediately proceeds to notify the observed institution of the start of the oversight, inserting in the text of that notice Articles 22 and 23 of the LOTAIP on the obligation of public, private, and social institutions whose activities affect the interests of society to ensure access to the information that the oversight requires to achieve its objectives, and on the sanctions for failure to comply with that law. “This procedure has somehow make it possible to “strengthen” the management of the oversight units from the very start of their oversight process.”

¹³⁴ Response of the Republic of Ecuador to the follow-up questionnaire, pp. 187-192.

[341] - The State Prosecution Service reports that "...*technical cooperation among the states parties on the most effective ways of preventing, detecting, investigating, and punishing acts of corruption must be maintained: for example, coordination between the specialized national police and foreign police forces in monitoring contraband and fraud and even in locating and pursuing people sought by the national courts. The latter aspect has been welcomed as a mechanism for mutual support in the fight against corruption and organized crime; for example, in recent days, the Interior Ministry coordinated with neighboring countries in locating and detaining some convicts who had escaped from justice.*" In addition, the FGE provided a long list of topics on which it requires technical cooperation.

[342] - The Transparency and Social Control Function noted the need for "*technical cooperation from other States Parties and cooperation international agencies, specifically with the 'Implementation of the National Plan for the Prevention and Combat of Corruption,' a task assigned by constitutional mandate to that function of the state...*"

[343] Similarly, the FGE states that "*One of the main problems that has arisen in the implementation of international cooperation is the time that the requested assistance takes to materialize; consequently, there is a need for tools to allow more direct communications with the agency that is to provide, for example, certain international assistance, in order to avoid unnecessary filters that could delay obtaining it.*"

[344] The Committee, in consideration of the foregoing, notes the steps taken by the country under review to implement the foregoing recommendation; it also notes the difficulties identified by the country under review and the need for it to continue paying attention to it.

Recommendation 5.2

Continue efforts to foster technical cooperation exchanges with other State Parties on the most effective ways and means to prevent, detect, investigate and punish acts of corruption.

[345] In its response, the country under review submitted information and new developments relating to this measure, of which the Committee notes the following as steps that contribute to progress in its implementation:¹³⁵

[346] - Participation by the CPCCS in different technical assistance exchange experiences, such as workshops and meetings under the United Nations Convention against Corruption, for the implementation of that instrument.

[347] - Promotion by the CGE of a policy of open cooperation with the Organization of Latin American and Caribbean Supreme Audit Institutions (OLACEFS), to develop the abilities of a large number of public servants at the national level. In addition, the Office of the Comptroller General of the State has received cooperation from several of the region's auditing agencies, which have provided technical assistance in several areas; this has also helped strengthen institutional management capacities and led to cooperation activities, under agreements signed with the oversight agencies of Peru, Colombia, Chile, Taiwan, Nicaragua, and Guatemala.

[348] - The FGE has established accords and cooperated with oversight agencies, branches of government, and international authorities, through the signing of international agreements; the possibility therefore exists to conduct joint investigations with the Attorney

¹³⁵ Response of the Republic of Ecuador to the follow-up questionnaire, pp. 193-198.

General's Office of Colombia and with the Public Prosecution Service of Peru. In these it has exchanged expert techniques in the areas of crime detection and investigation of crimes, and support has also been received from various items of technical equipment donated by the States Parties; in practice, however, there have been no experiences with corruption offenses.

[349] In addition, the FGE stated that the main difficulty was the lack of an effective policy for cooperation and coordination among the states parties for the enforcement of the policies implemented and compliance with the provisions of the international agreements and memoranda of understanding between the States Parties' prosecutors, attorneys general, and prosecution services; that situation led to delays in replying to cooperation requests, but it was being resolved by the Prosecutor General.

[350] The Committee, in consideration of the foregoing, notes the steps taken by the country under review to implement the foregoing recommendation; it also notes the difficulties identified by the country under review and the need for it to continue paying attention thereto.

Recommendation 5.3

This recommendation was satisfactorily considered and, consequently, no further information on it is required.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

The Committee made no recommendations on this matter for the Republic of Ecuador.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1

Design and implement, when appropriate, training programs for the civil servants responsible for enforcing the system, standards, measures, and mechanisms referred to in this report, in order to ensure that they are adequately understood, managed, and put into practice.

[351] In its response, the country under review submitted information and new developments relating to this measure, of which the Committee notes the following as steps that contribute to progress in the implementation thereof:¹³⁶

[352] *“Under the 2012 Training Plan of the Office of the Comptroller General of the State, adopted by the Comptroller General on January 16, 2012, that year's internal and external training components covered a range of topics including the following: occupational safety and health, internal oversight, integrated responsibilities system, oversight of the National Public Procurement System, training in the use of AUTOAUDIT, management auditing, strategic planning, performance indicators, public investment projects, comprehensive hierarchy, asset management, public procurement, social oversight, citizen participation, ethics, etc. (...)”*

[353] *“... It should be noted that the Directorate of Public Service Policies and Provisions, with the approval of the Undersecretariat for Policies and Provisions, prepared the Technical Standard of the Training Subsystem, which was published in Official Register No. 865*

¹³⁶ Response of the Republic of Ecuador to the follow-up questionnaire, pp. 198-201.

on January 8, 2013. This Standard can be found on the internet at: <http://www.relacioneslaborales.gob.ec/biblioteca/>.”

[354] “...The units charged with preparing the ‘Technical Standard of the Training Subsystem’ within the Ministry of Labor Relations were the Undersecretariat for Policies and Provisions and the Directorate of Public Service Policies and Provisions.”

[355] “...The National Secretariat for Management Transparency (currently the Secretariat for Management Transparency) signed a contract with the National Higher Studies Institute (IAEN), to conduct training cycles on the topics of transparency, social oversight, and prevention of corruption for public employees at the national level during the year 2011. On-site and on-line courses were held and attended by 360 employees from 45 public institutions...”

[356] In consideration of the foregoing, the Committee notes the steps taken by the country under review toward implementing the above recommendation, along with the need for it to continue to pay attention to the matter.

Recommendation 7.2

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 Country under review and posted on the OAS web site 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.

[357] In its response, the country under review submitted information and new developments relating to this measure, of which the Committee notes the following as steps that contribute to progress in its implementation:¹³⁷

[358] In order to effectively implement the international anticorruption conventions (Inter-American Convention against Corruption and United Nations Convention against Corruption) and other similar international agreements, the CPCCS contracted professional advisory services for the design of a comprehensive system for coordinating the follow-up of the implementation of the recommendations made by the corresponding international technical agencies. This design will allow the launch of the Follow-up System, which includes the development of a computer system and the collection of indicators, involving all the Ecuadorian institutions involved in the fight against corruption.

[359] In consideration of the foregoing, the Committee notes the steps taken by the country under review toward implementing the above recommendation, along with the need for it to continue to pay attention to the matter.

Recommendation 7.3

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 in this report.

¹³⁷ Response of the Republic of Ecuador to the follow-up questionnaire, pp. 198-201.

[360] In its response, the country under review submitted information and new developments relating to this measure, of which the Committee notes the following as steps that contribute to progress in its implementation:¹³⁸

[361] The FGE's Directorate for Criminal Policy is implementing the *Delitoscopio*, which is a mechanism for follow up on, monitoring, and developing indicators related to some of the actions implemented by the State Prosecution Service, and it is a technical agency specializing in quantitative and qualitative methodologies responsible for gathering, processing, analyzing, and publishing crime indicators in order to provide valid, standardized, and timely information to be used in the design, execution, and evaluation of public security policies.

[362] In consideration of the foregoing, the Committee notes the steps taken by the country under review toward implementing the above recommendation, along with the need for it to continue to pay attention to the matter.

¹³⁸ Response of the Republic of Ecuador to the follow-up questionnaire, pp. 198-201.

ANNEX I

CURRENT AND REFORMULATED RECOMMENDATIONS ON THE TOPICS ANALYZED IN THE FIRST ROUND

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

Standards of conduct to prevent conflicts of interest and mechanisms to enforce compliance

Recommendation 1.1.1.

Strengthen the implementation of laws and regulations governing conflicts of interest.

Suggested measures:

- a) Accurately identify implications, prohibitions, incompatibilities, and disqualifications related to conflicts between private interests and the public interest.
- b) Establish adequate restrictions, as applicable and for a reasonable period, for those who cease to exercise a public function.
- c) Design and implement mechanisms to publicize and provide training on the standards of conduct, including those involving conflicts of interest, to all government officials and employees, to respond to requests for advice and consultation on the standards by public servants, and to provide further training or periodic updating regarding them.
- d) Conduct evaluations of the use and effectiveness of the standards of conduct for preventing conflicts of interest and of the mechanisms existing in Ecuador to enforce these standards, as instruments for preventing corruption. As an outcome from said evaluations, consider the adoption of measures to promote, facilitate, and consolidate or ensure the effectiveness of these instruments for this purpose.
- e) Carry out a study on the possibility of compiling the standards of conduct for the correct, honorable, and proper fulfillment of public functions referred to in the Convention.

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

Recommendation 1.2.1

Strengthen resource control systems within the public administration.

Suggested measure:

- a) This measure is no longer current and therefore requires no additional information.

- b) This measure was considered satisfactorily and, consequently, no further information about it need be supplied.
- c) Conduct an evaluation of the use and effectiveness of the standards of conduct for ensuring the conservation and proper use of public resources and of the mechanisms existing in Ecuador to enforce these standards, as instruments for preventing corruption. As an outcome from said evaluation, consider the adoption of measures to promote, facilitate, and consolidate or ensure the effectiveness of these instruments for this purpose.

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

Recommendation 1.3.1

Strengthen existing mechanisms in the Republic of Ecuador that require public servants to report to appropriate authorities acts of corruption in the performance of public functions.

Suggested measure:

- a) Develop the constitutional provision (Article 83.8, Constitution) that establishes the duty and responsibility to report and combat acts of corruption in the case of public servants who fail to report such acts, through the identification of the pertinent administrative liabilities and their corresponding sanctions.
- b) Facilitate compliance with said constitutional obligation by using the means of communication judged to be appropriate, by regulating its use, and by developing the witness protection program established under the law, so that informants are guaranteed more protection than currently exists against potential threats or retaliation that may be directed toward them as a consequence of complying with this obligation.
- c) Train public servants about the existence and purpose of the responsibility to report to appropriate authorities acts of corruption in the performance of public functions.

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

Recommendation 2.1

Strengthen systems for the disclosure of income, assets and liabilities.

Suggested measures:

- a) This measure is not longer current.

- b) Review and follow up on compliance by public servants with the obligation to present a sworn declaration of net worth (including income, assets and liabilities), pointing out the degree of compliance and suggesting suitable measures to modify or correct the situation.
- c) Optimize systems for reviewing the contents of sworn declarations of net worth with the objective of detecting and preventing conflicts of interest, as well as detecting possible cases of illicit enrichment.

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

Recommendation 3.1

The Committee considered that this recommendation is no longer valid and, therefore, does not require additional attention.

Recommendation 3.2

This recommendation was satisfactorily considered and, consequently, no further information on it is required.

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. Mechanisms for access to information

Recommendation 4.1.1.

Strengthen mechanisms for guaranteeing access to public information.

Suggested measures:

- a) Strengthen the mechanisms designed to enforce the right of civil society and of citizens to access to public information and to appeal decisions under which requests for information are denied, so as to guarantee easy access to said mechanisms and to ensure that the mechanisms are effective in protecting the right to public information. Accordingly, strengthen the oversight agency responsible for implementing the Organic Law on Transparency and Access to Information (LOTAIP), to ensure it the human and budgetary resources necessary for the proper performance of its functions, taking into consideration the available resources. Similarly, consider the regulatory amendments necessary to optimize the effective implementation of the LOTAIP.
- b) Carry out a study on the use and effectiveness of mechanisms for access to information held by (or under the control of) public institutions in Ecuador, as instruments to prevent corruption. Based on the outcome of this study, Ecuador

should consider the adoption of measures designed to promote, facilitate, consolidate and ensure the effectiveness of these mechanisms for this purpose.

4.2. Consultation mechanisms

Recommendation 4.2.

Complement existing consultative mechanisms by establishing procedures, as appropriate, that enable public consultations to take place prior to the development of public policies and the final approval of legal provisions.

Suggested measures:

- a) Increase the publication and dissemination of draft legal provisions and hold transparent processes that enable consultation with interested sectors concerning the preparation of draft laws, decrees or resolutions by the Executive Branch.
- b) This measure had been satisfactorily considered.
- c) Carry out a comprehensive study on the use and effectiveness of existing consultative mechanisms in Ecuador, as instruments to prevent corruption. Based on the outcome of this study, Ecuador should consider the adoption of measures designed to promote, facilitate, consolidate and ensure the effectiveness of these mechanisms for this purpose.

4.3. Mechanisms for encouraging participation in the public administration

Recommendation 4.3.1

Strengthen and continue to implement mechanisms to encourage civil society organizations and NGOs to participate in the public administration, and to make progress with repealing rules that could discourage such participation.

Suggested measures:

- a) This recommendation had been satisfactorily considered.
- b) Repeal the so-called ‘laws on contempt.’

4.4. Mechanisms for participation in monitoring public administration

Recommendation 4.4.1

Strengthen and continue to implement measures that encourage civil society and non-governmental organizations to participate in the monitoring of the public administration.

Suggested measures:

- a) Promote ways, when appropriate, that enable public servants to permit, facilitate or assist civil society and non-governmental organizations to develop activities for monitoring their public activities.

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

Recommendation 5.1

Determine and prioritize specific areas in which the Republic of Ecuador needs technical cooperation from other States and international cooperation agencies to strengthen its capacity to prevent, detect, investigate and punish acts of corruption.

Recommendation 5.2

Continue efforts to foster technical cooperation exchanges with other State Parties on the most effective ways and means to prevent, detect, investigate and punish acts of corruption.

Recommendation 5.3

This recommendation was satisfactorily considered and, consequently, no further information on it is required.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

The Committee made no recommendations on this matter for the Republic of Ecuador.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1

Design and implement, when appropriate, training programs for the civil servants responsible for enforcing the system, standards, measures, and mechanisms referred to in this report, in order to ensure that they are adequately understood, managed, and put into practice.

Recommendation 7.2

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 Country under review and posted on the OAS web site 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.

Recommendation 7.3

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 in this report.

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

FOURTH ROUND OF REVIEW

AGENDA OF THE ON-SITE VISIT TO ECUADOR

Monday, September 30, 2013	
16:00 hrs. – 17:30 hrs. <i>Hotel Hilton Colón – Room: HILTON MEETINGS 1</i>	Coordination meeting between the representatives of the Member States of the Subgroup and the Technical Secretariat.
17:30 hrs. – 18:30 hrs. <i>Hotel Hilton Colón – Room: HILTON MEETINGS 1</i>	Coordination meeting between the representatives of the Country under review, the Member States of the Subgroup, and the Technical Secretariat
18:30 hrs. – 20:00 hrs. <i>Hotel Hilton Colón – Room: HILTON MEETINGS 1</i>	Working dinner (representatives of the Country under review, the Subgroup Member States, and the Technical Secretariat)

Tuesday, October 1, 2013	
08:30 hrs. – 9:45 hrs. <i>Hotel Hilton Colón – Room: FERNANDINA</i>	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers.^{139/}
Topic 1:	ACCESS TO INFORMATION
Participants:	<p><i>Corporación Participación Ciudadana Ecuador</i> Name: Dr. Simón Jaramillo Position: Deputy National Director</p> <p><i>Coordinadora de Radio Popular Educativa del Ecuador (CORAPE)</i> Name: Gissela Dávila Cobo Position: Executive Secretary</p> <p><i>Academic</i> Name: Dr. Isabel Ramos Position: Research Professor at FLACSO Ecuador (International and Communication Studies Program)</p>
9:50 hrs. – 11:20 hrs. <i>Hotel Hilton Colón –</i>	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers. (continued)

¹³⁹ We suggest inviting various organizations and individuals to attend under provision 27 of the Methodology, which authorizes inviting “civil society organizations and/or, *inter alia*, organizations of the private sector, professional associations, academics, or researchers” to attend these meetings.

<p><i>Room:</i> FERNANDINA</p>	
<p>Topic 2:</p>	<p>MECHANISMS FOR CIVIL SOCIETY PARTICIPATION IN THE PUBLIC ADMINISTRATION</p>
<p>Participants:</p>	<p>Grupo FARO Name: Dr. Alicia Arias Salgado Position: Director of the Capacity Building Area</p> <p>Consortio Ecuatoriano para la Responsabilidad Social (CERES) Name: Evangelina Gómez-Durañona Position: Executive Director</p> <p>Name: Sebastián Salgado Troya Position: Coordinator of the United Nations Global Compact in Ecuador</p> <p>Cantonal Assembly of Montúfar Name: Efrén Revelo Position: President</p> <p>Name: Dr. Darwin Pantoja Position: General Coordinator</p> <p>Academic Name: Dr. Santiago Ortiz Position: Research Professor at FLACSO Ecuador (Areas of research: citizen participation and territorial organization)</p>
<p>11:25 hrs. – 12:55 hrs. <i>Hotel Hilton Colón – Room:</i> FERNANDINA</p>	<p>Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers (cont.)</p>
<p>Topic 3:</p>	<p>PREVENTION, PROSECUTION, AND PUNISHMENT OF CRIMES OF CORRUPTION IN ECUADOR</p>
<p>Participants:</p>	<p>Fundación ESQUEL Name: Boris Cornejo Position: Executive President</p> <p>Bar Association of Guayas Name: Dr. Jimmy Salazar Gaspar Position: President</p> <p>Academic Name: Diego Zalamea Position: University lecturer, UASB (masters’ course in criminal procedural law)</p>
<p>12:55 hrs – 14:15 hrs</p>	<p>Lunch – Hotel Hilton Colón, Café Colón</p>
<p>14:15 hrs – 15:15 hrs <i>Hotel Hilton Colón – Room:</i> FERNANDINA</p>	<p>PANEL 1: CITIZEN PARTICIPATION AND SOCIAL OVERSIGHT COUNCIL</p>
<p>Topics:</p>	<p>1.1. FUNCTIONS, OBJECTIVES, AND STRUCTURE 1.2. RESULTS IN RELATION TO THE FULFILLMENT OF RESPONSIBILITIES</p>

Participants:	<p>Name: Fernando Cedeño Rivadeneira Position: President of the CPCCS</p> <p>Name: Dr. Mario Rivas Position: Technical Secretary for Transparency and Anticorruption</p> <p>Name: Dr. Santiago Machuca Position: Deputy National Coordinator for Admissions and Legal Guidance</p> <p>Name: Dr. Marcelo Jaramillo Position: Deputy National Coordinator for Legal Advice</p>
15:20 hrs – 16:05 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	<p>PANEL 2:</p> <p>CITIZEN PARTICIPATION AND SOCIAL OVERSIGHT COUNCIL</p>
Topics:	2.1. DIFFICULTIES ENCOUNTERED AND TECHNICAL COOPERATION NEEDS
Participants:	<p>Name: Alexandra Moncada Position: Technical Coordinator for Transparency, Anticorruption, Participation, and Social Oversight</p>
16:10 – 17:40 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	<p>PANEL 3:</p> <p>CITIZEN PARTICIPATION AND SOCIAL OVERSIGHT COUNCIL</p>
Topics:	<p>3.1. REGIME OF COMPETENCIES AND INTERINSTITUTIONAL COORDINATION MECHANISMS</p> <p>3.2. ADOPTION OF DECISIONS</p> <p>3.3. APPOINTMENT OF AUTHORITIES (PROSECUTOR GENERAL OF THE STATE, COMPTROLLER GENERAL OF THE STATE, MEMBERS OF THE JUDICATURE COUNCIL)</p>
Participants:	<p>Name: Alexandra Moncada Position: Technical Coordinator for Transparency, Anticorruption, Participation, and Social Oversight</p> <p>Name: Dr. Marcelo Jaramillo Position: Deputy National Coordinator for Legal Advice</p> <p>Name: Marcela Miranda Pérez Position: CPCCS Councilor</p>
17:45 hrs –18:30 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	<p>PANEL 4:</p> <p>CITIZEN PARTICIPATION AND SOCIAL OVERSIGHT COUNCIL</p>
Topics:	<p>4.1. HUMAN RESOURCE REGIME</p> <p>4.2. INTERNAL RULES/NORMS FOR THE FULFILLMENT OF ITS RESPONSIBILITIES</p>
Participants:	<p>Name: Fernando Cedeño Rivadeneira Position: President of the CPCCS</p> <p>Name: Priscila Kon Position: Deputy National Coordinator for Human Talent</p>

18:30 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	Informal Meeting ¹⁴⁰ between the representatives of the Subgroup Member States and the Technical Secretariat.
Wednesday, October 2, 2013	
8:30 hrs – 9:30 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	PANEL 5: Office of the Attorney General of the State
Topics:	5.1. FUNCTIONS, OBJECTIVES, AND STRUCTURE 5.2. RESULTS IN RELATION TO THE FULFILLMENT OF RESPONSIBILITIES
Participants:	Name: Dr. Galo Chiriboga Zambrano Position: Prosecutor General of the State Name: Santiago Velasco Andrade Position: Financial Administrative Director Name: Dr. Víctor Hugo López Position: Director for Procedural Management Name: Alejandro Fuentes Díaz Position: Mission Coordinator Name: Elizabeth Regalado Position: International Relations
9:35 hrs – 10:35 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	PANEL 6: Office of the Attorney General of the State
Topics:	6.1. DIFFICULTIES ENCOUNTERED AND TECHNICAL COOPERATION NEEDS 6.2. BEST PRACTICES
Participants:	Name: Santiago Velasco Andrade Position: Financial Administrative Director Name: Dr. Víctor Hugo López Position: Director for Procedural Management Name: Alejandro Fuentes Díaz Position: Mission Coordinator Name: Elizabeth Regalado Position: International Relations
10:40 hrs – 11:40 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	PANEL 7: Office of the Attorney General of the State
Topics:	7.1 LEGAL AND ADMINISTRATIVE HUMAN RESOURCES REGIME 7.2 INTERNAL RULES/NORMS FOR THE FULFILLMENT OF ITS RESPONSIBILITIES

¹⁴⁰ The second paragraph of provision 20 of the *Methodology for Conducting On-site Visits* states: “At the conclusion of the meetings on each day of the on-site visit, the Technical Secretariat shall organize an informal meeting with the members of the Subgroup, to exchange preliminary points of view on the topics addressed at those meetings.”

<p>Participants:</p>	<p>Name: Santiago Velasco Andrade Position: Financial Administrative Director</p> <p>Name: Dr. Víctor Hugo López Position: Director for Procedural Management</p> <p>Name: Alejandro Fuentes Díaz Position: Mission Coordinator</p> <p>Name: Elizabeth Regalado Position: International Relations</p>
<p>11:45 hrs – 12:45 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i></p>	<p>PANEL 8:</p>
<p>Topics:</p>	<p>Office of the Attorney General of the State</p> <p>8.1. REGIME OF COMPETENCIES 8.2. COORDINATION MECHANISMS WITH CIVIL SOCIETY 8.3. DISSEMINATION OF ITS OBJECTIVES AND FUNCTIONS</p>
<p>Participants:</p>	<p>Name: Santiago Velasco Andrade Position: Financial Administrative Director</p> <p>Name: Dr. Víctor Hugo López Position: Director for Procedural Management</p> <p>Name: Alejandro Fuentes Díaz Position: Mission Coordinator</p> <p>Name: Elizabeth Regalado Position: International Relations</p>
<p>12:45 hrs. – 14:15 hrs</p>	<p>Lunch – Hotel Hilton Colón, Café Colón</p>
<p>14:15 hrs – 15:15 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i></p>	<p>PANEL 9:</p>
<p>Topics:</p>	<p>AGENCIES OF THE JUDICIARY AND THE JUDICATURE COUNCIL</p> <p>9.1. OBJECTIVES, FUNCTIONS, AND STRUCTURE 9.2. RESULTS IN RELATION TO THE FULFILLMENT OF RESPONSIBILITIES</p>
<p>Participants:</p>	<p>NATIONAL COURT OF JUSTICE</p> <p>1. Name: Dr. Carlos Ramírez Romero Position: President of the National Court of Justice</p> <p>2. Name: Eduardo Paz Almeida Position: Third Judicial Assistant</p> <p>JUDICATURE COUNCIL</p> <p>1. Name: Néstor Arbito Chica Position: Member of the Judicature Council</p> <p>2. Name: Andrea Bravo Mogro Position: National Planning Director of the Judicature Council</p>

<p>15:20 hrs – 16:20 hrs Hotel Hilton Colón – Room: FERNANDINA</p>	<p>PANEL 10: AGENCIES OF THE JUDICIARY AND THE JUDICATURE COUNCIL</p>
<p>Topics:</p>	<p>10.1 DIFFICULTIES ENCOUNTERED AND TECHNICAL COOPERATION NEEDS 10.2 BEST PRACTICES 10.3 INTERINSTITUTIONAL COORDINATION MECHANISMS</p>
<p>Participants:</p>	<p>NATIONAL COURT OF JUSTICE</p> <ol style="list-style-type: none"> 1. Name: Dr. Paúl Iñiguez Ríos Position: National Judge of the National Court of Justice 2. Name: Dr. Darwin Aguilar Gordón Position: Interinstitutional Coordinator of the Office of the President of the National Court of Justice <p>JUDICATURE COUNCIL</p> <ol style="list-style-type: none"> 1. Name: Dr. Tomás Alvear Peña Position: National Director for Development and Continuous Improvements of the Judicature Council Judicial Service. 2. Name: Néstor Arbito Chica Position: Member of the Judicature Council 3. Name: Dr. Wilson Navarrete Ortiz Position: National Director for Management Transparency of the Judicature Council.
<p>16:25 hrs – 17:25 hrs Hotel Hilton Colón – Room: FERNANDINA</p>	<p>PANEL 11: AGENCIES OF THE JUDICIARY AND THE JUDICATURE COUNCIL</p>
<p>Topics:</p>	<p>11.1 ADOPTION OF DECISIONS 11.2 BUDGETARY REGIME 11.3 ACCOUNTABILITY</p>
<p>Participants:</p>	<p>NATIONAL COURT OF JUSTICE</p> <ol style="list-style-type: none"> 1. Name: Dr. Eduardo Bermúdez Coronel Position: Magistrate of the National Court of Justice 2. Name: Geovana Garzón Almeida Position: Third Judicial Assistant for Legal Advice <p>JUDICATURE COUNCIL</p> <ol style="list-style-type: none"> 1. Name: Néstor Arbito Chica Position: Member of the Judicature Council 2. Name: Dr. Andrés Segovia Salcedo Position: General Secretary of the Judicature Council. 3. Name: Alexandra Muñoz Santamaría Position: National Financial Director

17:30 hrs – 18:30 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	PANEL 12: AGENCIES OF THE JUDICIARY AND THE JUDICATURE COUNCIL
Topics:	12.1. HUMAN RESOURCE REGIME 12.2. INTERNAL REGULATIONS AND INTERNAL CONTROL MECHANISMS
Participants:	JUDICATURE COUNCIL 1. Name: Juan Manuel Chiriboga Arteta Position: National Director for Human Talent of the Judicature Council 2. Name: Luis Buenaño Orozco Position: National Administrative Director of the Judicature Council 3. Name: Doris Gallardo Cevallos Position: General Director of the Judicature Council 4. Name: Dr. Esteban Zavala Palacios Position: National Legal Director of the Judicature Council 5. Name: Federman Estrada Osejos Position: National IT Director of the Judicature Council
18:30 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	Informal Meeting^{141/} between the representatives of the Subgroup Member States and the Technical Secretariat.
Thursday, October 3, 2013	
08:30 hrs – 09:30 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	PANEL 13: OFFICE OF THE COMPTROLLER GENERAL OF THE STATE
Topics:	13.1. FUNCTIONS, OBJECTIVES, AND STRUCTURE 13.2. RESULTS IN RELATION TO THE FULFILLMENT OF RESPONSIBILITIES
Participants:	Name: Dr. Carlos Pólit Faggioni Position: Comptroller General of the State Name: Dr. Jorge Palacios Salcedo Position: Officer of the Department of Citizen Participation and Complaint Analysis
09:35 hrs – 10:35 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	PANEL 14: OFFICE OF THE COMPTROLLER GENERAL OF THE STATE

¹⁴¹ The second paragraph of provision 20 of the *Methodology for Conducting On-site Visits* states: “At the conclusion of the meetings on each day of the on-site visit, the Technical Secretariat shall organize an informal meeting with the members of the Subgroup, to exchange preliminary points of view on the topics addressed at those meetings.”

Topics:	14.1. DIFFICULTIES ENCOUNTERED AND TECHNICAL COOPERATION NEEDS
Participants:	Name: Dr. Tania Morán Domínguez Position: Head of the Department of Citizen Participation and Complaint Analysis
10:40 hrs – 11:40 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	PANEL 15: OFFICE OF THE COMPTROLLER GENERAL OF THE STATE
Topics:	15.1 HUMAN RESOURCE REGIME 15.2 INTERNAL CONTROL MECHANISMS
Participants:	Name: Dr. Jorge Palacios Salcedo Position: Officer of the Department of Citizen Participation and Complaint Analysis
11:45 hrs – 12:45 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	PANEL 16: OFFICE OF THE COMPTROLLER GENERAL OF THE STATE
Topics:	16.1. REGIME OF COMPETENCIES AND INTERINSTITUTIONAL COORDINATION MECHANISMS 16.2. DISSEMINATION OF OBJECTIVES AND FUNCTIONS
Participants:	Name: Dr. Marcelo Mancheno Position: Director for Ethical Issues, Citizen Participation, and Asset Oversight
12:45 hrs. – 14:15 hrs	Lunch – Hotel Hilton Colón, Café Colón
14:30 hrs –15:30 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	PANEL 17: FOLLOW-UP ON FIRST-ROUND RECOMMENDATIONS
Topic:	17.1. STANDARDS OF CONDUCT AND MECHANISMS FOR ENFORCING THEM
Participants:	<ul style="list-style-type: none"> - Ministry of Labor Relations Name: Adolfo Brinkmann Position: Deputy Secretary for Public Service Evaluation and Technical Oversight Name: Dr. Pedro Rueda Position: Advisor to the Minister of Labor Relations - CPPCS Name: Alexandra Moncada Position: Technical Coordinator for Transparency, Anticorruption, Participation, and Social Oversight - State Prosecution Service Name: Elizabeth Regalado Position: International Relations

	<ul style="list-style-type: none"> - National Assembly Name: Dr. Mónica Rodríguez Ayala Position: Coordinator of the Technical Legislative Unit Name: Dr. Richard González Position: Advisor to the Technical Legislative Unit - Office of the Comptroller General of the State: Name: Dr. Tania Morán Domínguez Position: Head of the Department of Citizen Participation and Complaint Analysis
15:35 hrs –16:35 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	PANEL 18: FOLLOW-UP ON FIRST-ROUND RECOMMENDATIONS
Topic:	18.1. MECHANISMS FOR CIVIL SOCIETY PARTICIPATION
Participants:	<ul style="list-style-type: none"> - National Assembly Name: Dr. Mónica Rodríguez Ayala Position: Coordinator of the Technical Legislative Unit Name: Dr. Richard González Position: Advisor to the Technical Legislative Unit - CPPCS Name: Víctor Argoti Position: Technical Secretary for Participation and Social Oversight Name: Julio Terán Position: Deputy National Coordinator for the Promotion of Participation - Undersecretariat for Management Transparency Name: Nora Arauz Sánchez Position: Deputy Secretary for Prevention and Transparency
16:40 hrs –17:25 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	PANEL 19: FOLLOW-UP ON FIRST-ROUND RECOMMENDATIONS
Topic:	19.1. ACCESS TO INFORMATION: THE LAW ON TRANSPARENCY AND ACCESS TO PUBLIC INFORMATION (LOTAIP) AND ITS IMPLEMENTATION
Participant:	<ul style="list-style-type: none"> - Office of the People’s Defender Name: Dr. Ramiro Rivadeneira Position: People’s Defender Name: Dr. Christian Bahamonde Position: National Advisor Name: Dr. Cristian Guaicha Position: National Coordinator for Transparency and Access to Public Information

17:30 hrs –18:15 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	PANEL 20: FOLLOW-UP ON FIRST-ROUND RECOMMENDATIONS
Topic:	20.1. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES
Participant:	Office of the Comptroller General of the State Name: Dr. Marcelo Mancheno Position: Director for Ethical Issues, Citizen Participation, and Asset Oversight
18:15 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	Informal meeting between the representatives of the Subgroup Member States and the Technical Secretariat.
18:45 hrs <i>Hotel Hilton Colón – Room: FERNANDINA</i>	Final meeting between the representatives of the Country under review, the Member States of the subgroup, and the Technical Secretariat.

**AUTHORITIES WHO SERVED AS CONTACTS IN THE COUNTRY UNDER REVIEW
FOR THE COORDINATION OF THE ON-SITE VISIT, AND REPRESENTATIVES OF
THE PRELIMINARY REVIEW SUBGROUP MEMBER STATES AND OF THE
MESICIC TECHNICAL SECRETARIAT WHO PARTICIPATED IN THE VISIT**

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