

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

FINAL REPORT

(Adopted at the September 12, 2014 plenary session)

## SUMMARY

Bearing in mind that the Republic of Haiti was not party to the MESICIC when the First Round of MESICIC was conducted, the present preliminary draft report is a comprehensive review of the Republic of Haiti's implementation of the provisions of the Inter-American Convention against Corruption that the Committee of Experts of the MESICIC selected for review in the First Round and the Fourth Round.

The provisions selected for review in the First Round are those provided in Article III, paragraph 1 (Standards of conduct: conflicts of interest, conservation of public resources, obligation to report); Article III, paragraph 2 (Mechanisms to enforce the standards of conduct); Article III, paragraph 4 (Systems for registering income, assets and liabilities); Article III, paragraph 9 (Oversight bodies); Article III, paragraph 11 (Participation by civil society); Article XIV (Assistance and Cooperation), and Article XVIII (Central Authorities).

Article III, paragraph 9 was selected for the Fourth Round, which concerns the "oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts."

The review was conducted in accordance with the Convention, the Report of Buenos Aires, the Committee's Rules of Procedure and the methodologies it adopted for on-site visits and for the Fourth Round, including the criteria therein established for equal and impartial treatment for all the States party, functional equivalence, and the purpose of both the Convention and MESICIC of promoting, facilitating and strengthening cooperation among the States Party in the prevention, detection, punishment, and eradication of corruption.

The review was carried out taking into account the response received from the Republic of Haiti to the questionnaire, the information compiled by the Technical Secretariat, and a new and important source of information, namely the on-site visit conducted between April 8 and 10, 2014 by the preliminary review subgroup for the Republic of Haiti, composed of Ecuador and Panama, with the support of the Technical Secretariat. During that visit, the information furnished by the Republic of Haiti was clarified and expanded and the opinions of civil society organizations were heard. This provided the Committee with objective and complete information on those topics, assisting with the gathering of information on best practices.

In keeping with the methodology for the Fourth Round in the case of States not parties to the MESICIC in the First Round, the review of the Convention provisions selected for the First and Fourth Rounds is to determine whether Haiti has a legal framework for each of the topics and oversight bodies reviewed, whether the legal framework is adequate for promoting the purposes of the Convention and whether there are objective results. The pertinent recommendations were formulated on the basis of those observations.

### FIRST ROUND

With respect to the review of standards of conduct and mechanisms to enforce them, the recommendations made to the Republic of Haiti included the following: establish standards of conduct to regulate, specifically and in detail, those situations that could constitute conflicts of interest for senior government officials (such as Ministers and Secretaries of State), members of Parliament and members of the Judicial Branch and the Public Prosecution Service, as well as the appropriate mechanisms to enforce them; adopt the Decree ("*Arrêté*") setting the fines to be paid in the event of mismanagement ("*fautes de gestion*"), in accordance with the provisions of Article 80 of the Decree of February 16, 2005, on the preparation and execution of the finance laws; and conduct a study to identify the principal difficulties

that public officials encounter when filing complaints concerning acts of corruption of which they are aware, with a view to identifying challenges and recommending corrective measures.

Regarding the review of the systems for registering income, assets and liabilities, the recommendations made included the following: publish the list of names of those who fail to comply with the obligation to file an asset declaration and update that list periodically, and establish administrative sanctions for those who fail to comply with the obligation to file an asset declaration within thirty (30) days of the date on which they left public service; these sanctions might include fines and disqualification from any public office until such time as the final asset declaration is filed.

With regard to the mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption, the recommendations included the following: develop regulatory instruments that classify as public any information and documents relating to the performance of public sector organs and entities, with the exceptions established under the legal system; and instruments that give every person the right to request information, to consult documents that are in the possession of or under the control of public institutions and that concern official measures, and to request a copy of them, with the exception of the cases protected by law; and issue an Executive Order clearly establishing the composition, mandate and authorities of the Mixed Consultative Committee created under Article 6 of the Decree establishing the ULCC, so as to enable a consultation mechanism to materialize that in turn will open up fora where nongovernmental organizations and civil society can express their views and submit proposals on preventing corruption.

As for mutual assistance, mutual technical cooperation and central authorities, the following was recommended: establish a unit or office of legal cooperation within the Ministry of Justice and Public Security and ensure that said authority has sufficient resources and technical preparation to promptly formulate and respond to requests for assistance and cooperation made pursuant to the Convention, and consider the possibility of ratifying the Inter-American Convention on Mutual Assistance in Criminal Matters and participate actively in the Meetings of Ministers of Justice or Other Ministers or Attorneys General of the Americas (REMJA) and its Working Group on Legal Cooperation in Criminal Matters.

Based on the review and contributions made throughout the report, the following were among the general recommendations also offered: design and implement, where appropriate, training programs for public servants responsible for application of the systems, standards, measures, and mechanisms included in this report, in order to ensure that they are thoroughly understood and properly handled and applied; and select and develop procedures and indicators, as appropriate, for verifying follow-up of the recommendations contained in this Report, and notify the Committee accordingly through the Technical Secretariat.

#### FOURTH ROUND

The oversight bodies of the Republic of Haiti reviewed in this report are: the Anti-Corruption Unit (ULCC); the Superior Court of Accounts and of Administrative Disputes (CSC/CA); the National Public Procurement Commission (CNMP); the Superior Council of the Judicial Branch (CSPJ), and the General Inspectorate of Finance (IGF).

Some of the recommendations formulated to the Republic of Haiti for its consideration in connection with the aforementioned bodies are, among others, the following:

Strengthen the ULCC, the CSC/CA, the CSPJ and the IGF by ensuring that they have the infrastructure they need to properly perform their functions, and the conditions necessary to attract and retain the

required human resources, especially in their regional offices, taking the availability of resources into account.

In the case of the ULCC, consider providing it with the authority to conduct *ex officio* investigations of acts of corruption, and establish formal mechanisms enabling cooperation between the ULCC and the organs and entities of the Judicial Police in Haiti, so as to avoid duplicating investigations and wasting resources; should conflicts of jurisdiction arise, ensure that the ULCC, given its area of expertise, is assigned priority status for purposes of investigating corrupt acts.

In the case of the CSC/CA, adopt the implementing decrees (“*Arrêtés d’application*”) regulating the procedures by which the chambers of the CSC/CA function, their rules of procedure, the statute of the judges and other CSC/CA officials and the institution’s internal regulations, so that the Decree of November 23, 2005 can be applied in full; prepare a study to explain the reasons why the CSC/CA has entered so few debit rulings (“*Arrêt de Débet*”) against defaulting officials, and, in coordination with the other relevant oversight bodies like the ULCC, the Public Prosecution Service and the Judicial Branch, take the necessary action to carry out, in practice, the strategy for combatting corruption in Haiti and to make good on the country’s commitment not to allow those who commit acts of corruption to go unpunished.

In the case of the CNMP, strengthen the measures necessary to determine the membership of and establish the Committee for Settlement of Differences (CRD), so that it may begin to operate and ensure that it has autonomy in its operations; as well as develop procedures to effectively check for incompatibilities and conflicts of interest in the case of members of the CNMP and the incompatibilities established in articles 22 and 23 of the Law of June 10, 2009.

In the case of the CSPJ, strengthen the independence of the Judicial Branch and implement a mechanism that ensures that the formation of the judiciary (“la magistrature”) is neither obstructed nor paralyzed by failure to appoint or confirm judges. If presidential approval is not given, that the public is informed of the reasons why approval was withheld; and consider including, in the powers of the CSPJ, the authority to select, promote, recertify, and discipline the officers of the Public Prosecution Service, in order to provide those officers with full guarantees of independence and impartiality in discharging their duties.

With regard to the IGF, in conjunction with the National School of Financial Administration (ENAF), promote a curriculum to train professionals specializing in public sector auditing; consider making IGF accountability a legal requirement, which would include publication of its annual performance report containing information on its activities, the results obtained, and the institution’s internal performance. The report should show that the scheduled audits were performed, and contain a list of the recommendations made to the audited entities and their current status.

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

**REPORT ON IMPLEMENTATION IN THE REPUBLIC OF HAITI OF THE CONVENTION  
PROVISIONS SELECTED FOR REVIEW WITHIN THE FRAMEWORK OF THE FIRST AND  
FOURTH ROUNDS <sup>1</sup>**

**INTRODUCTION**

**1. Contents of the Report**

[1] This report begins with a comprehensive review of the implementation, in the Republic of Haiti, of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for the First Round of Review. The provisions selected for the First Round are those provided in Article III, paragraph 1 (Standards of conduct: conflicts of interest, conservation of public resources, obligation to report); Article III, paragraph 2 (Mechanisms to enforce the standards of conduct); Article III, paragraph 4 (Systems for registering income, assets and liabilities); Article III, paragraph 9 (Oversight bodies); Article III, paragraph 11 (Participation by civil society); Article XIV (Assistance and Cooperation), and Article XVIII (Central Authorities).<sup>2</sup>

[2] Second, the report presents a review of the implementation of the provision of the Inter-American Convention against Corruption selected by the Committee of Experts of the MESICIC for the Fourth Round of Review. The provision selected appears in paragraph 9 of Article III of the Convention, which concerns the “oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts.”

[3] Third, the report will examine the best practices that Haiti has voluntarily expressed its willingness to share relating to the oversight bodies under review in this report.

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

[4] According to the official records of the OAS General Secretariat, the Republic of Haiti ratified the Inter-American Convention against Corruption on April 14, 2004, and deposited its instrument of ratification on June 7, 2004.

[5] In addition, on December 9, 2010 the Republic of Haiti signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption.

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<sup>1</sup> This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on September 12, 2014, at its Twenty-fourth Meeting, held at OAS Headquarters, September 8-12, 2014.

<sup>2</sup> Bearing in mind that the Republic of Haiti was not party to the MESICIC when the First Round of MESICIC was conducted, Chapter XII of the Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption selected in the Fourth Round and for Follow-up on the Recommendations Formulated in the First Round (document SG/MESICIC/doc. 289/11 rev. 2) provides that “States that were not party to the Mechanism during the First Round of Review shall be subject to the methodology adopted by the Committee for that Round [(SG/MESICIC/doc.21/02)], insofar as the review of the Convention provisions that were selected for that Round are concerned, except with regard to their oversight bodies, which will be analyzed according to the methodology adopted by the Committee for the Fourth Round, taking into account that the Committee agreed at its Eighteenth Meeting that those bodies would be analyzed comprehensively.”

## I. SUMMARY OF INFORMATION RECEIVED AND THE ON-SITE VISIT

### 1. Response of the Republic of Haiti

[6] The Committee wishes to acknowledge the cooperation that it received from the Republic of Haiti throughout the review process and, in particular, from the Anti-Corruption Unit (ULCC), which was evidenced, *inter alia*, in its Response to the Questionnaire and the constant willingness to clarify or complete its contents, and in the support for the on-site visit to which the following paragraph of this report refers. Together with its response, the Republic of Haiti sent the provisions and documents it considered pertinent. The Response as well as the provisions and documents may be consulted at the following webpage: [http://www.oas.org/juridico/english/mesicic4\\_hti.htm](http://www.oas.org/juridico/english/mesicic4_hti.htm)

[7] The Committee notes that the country under review gave its consent for the on-site visit, in accordance with provision 5 of the *Methodology for Conducting On-Site Visits*.<sup>3</sup> As members of the preliminary review subgroup, the representatives of Ecuador and Panama conducted the on-site visit from April 8 – 10, 2014, with the support of the MESICIC Technical Secretariat. The information obtained on that visit is included in the appropriate sections of this report, and its agenda of meetings is appended thereto, in keeping with provision 34 of the *Methodology for Conducting On-Site Visits*.

[8] For its review, the Committee took into account the information provided by the Republic of Haiti up to April 10, 2014, the date on which the aforementioned on-site visit ended, as well as that furnished and requested by the Secretariat and the members of the review subgroup to carry out its functions, in keeping with the *Rules of Procedure and Other Provisions*; the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round*; and the *Methodology for Conducting On-Site Visits*. This information is available at the following web page: [http://www.oas.org/juridico/english/mesicic\\_docs\\_en.htm](http://www.oas.org/juridico/english/mesicic_docs_en.htm).

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

[9] The Committee did not receive any documents from civil society organizations within the time period established by the Committee in the schedule, in accordance with Article 34(b) of the Committee's *Rules of Procedure*.

[10] Nonetheless, during the on-site visit to the Republic of Haiti, information was gathered from civil society and private sector organizations, professional associations and academics, who were invited to participate in the meetings held for that purpose, pursuant to provision 27 of the *Methodology for Conducting On-Site Visits*. A list of invitees is included in the agenda of the on-site visit, which has been annexed to this report. This information is reflected in the appropriate sections of this report, wherever pertinent.

## II. REVIEW, CONCLUSIONS, AND RECOMMENDATIONS ON THE STATE PARTY'S IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED FOR THE FIRST AND FOURTH ROUNDS:

### A) REVIEW OF THE IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED FOR THE FIRST ROUND

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<sup>3</sup> Document SG/MESICIC/doc.276/11 rev. 2, available at: [http://www.oas.org/juridico/english/met\\_onsite.pdf](http://www.oas.org/juridico/english/met_onsite.pdf)

## **1. Legal-institutional framework<sup>4</sup>**

[11] Haiti is an indivisible, sovereign, independent, free, democratic and unified Republic (Article 1 of the Constitution of March 29, 1987, as amended by the constitutional law of May 9, 2011). The Constitution guarantees the independence of the three branches of government upon which the State's organization essentially rests (arts. 59, 60 and 60(1)). The three (3) branches of government are: the Executive, the Legislative and the Judicial.

[12] Legislative power is vested in the two chambers of Parliament: the Chamber of Deputies, which has ninety-nine (99) members, one for every electoral district, and the Senate, which has thirty (30) members or three (3) per geographic department. Finally, judicial authority is exercised by the Supreme Court (*Cour de Cassation*), five (5) appellate courts, eighteen (18) courts of first instance, courts of the peace -one (1) per municipality- and the special courts (labor, juvenile and the two Property Courts that operate in Artibonite Department). The Judicial Branch is administered by the Superior Council of the Judicial Branch (CSPJ).

[13] There are also specialized jurisdictions that include the Superior Court of Accounts and of Administrative Disputes (CSA/CA) –a financial and administrative court-, the Permanent Electoral Council (CEP) (Art. 197 of the Constitution), which handles disputes involved in electoral challenges, the Constitutional Council (Art. 190 *bis* of the Constitution), which adjudges the constitutionality of laws, regulations and the administrative actions of the Executive Branch, and lastly the High Court of Justice (ACJ) (Art. 185 of the Constitution) which sits in judgment of members of the Executive Branch, the justices of the Supreme Court [*Cour de Cassation*], officers of the Public Prosecution Service assigned to the Supreme Court, members of the Superior Court of Accounts and of Administrative Disputes, members of the Permanent Electoral Council and the Ombudsperson.

[14] The Haitian juridical system is based on the Roman-Germanic tradition.

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

### **1.1. CONFLICTS OF INTEREST**

#### **1.1.1. Existence of provisions in the legal framework and/or other measures and enforcement mechanisms**

[15] The Republic of Haiti has a set of provisions regarding standards of conduct, among which the following should be noted:

[16] - Constitutional provisions that apply to all public servants in general, such as the provisions contained in Article 235 of the 1987 Constitution, which states that “*Government employees and officials shall be exclusively in the service of the State. It is their duty to abide faithfully by the norms and principles of ethics set forth in the Civil Service Law.*” Likewise, Article 221 prohibits the holding of two or more salaried public offices at the same time, except for posts in education.

[17] - Constitutional provisions that apply to members of the National Assembly, such as those that appear in articles 91 and 96 of the 1987 Constitution (as amended), which provide, respectively, that to be a member of the Chamber of Deputies or the Senate, one must, *inter alia*, “*have full enjoyment of one's civil and political rights and must never have been convicted of and sentenced for a felony*” (i.e. life or

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<sup>4</sup> Haiti's Response to the Questionnaire within the framework of the Fourth Round, p. 1.

fixed-term imprisonment coupled with civic disqualification) and “*should that be the case, have been relieved of one’s responsibilities as an administrator of public funds.*” Furthermore, Article 129(1) of the 1987 Constitution provides that “*Service as a member of the Legislature is incompatible with any other State-remunerated function, except that of teaching.*” For their part, Articles 131 and 132 of the Constitution specify those not qualified to serve as either a Deputy or Senator.

[18] - Constitutional provisions that apply to the President and Prime Minister, such as those contained in articles 135 and 157 of the 1987 Constitution, which list the requirements necessary to qualify for those offices, one of which is that the individual must “*have full enjoyment of his/her civil and political rights and must never have been convicted of and sentenced for a felony*” and must “*never have been relieved of his/her duties if he/she has been an auditor of public funds.*”

[19] – Constitutional provisions that apply to the Ministers and Secretaries of State, such as the one that appears in Article 168 of the 1987 Constitution and provides that “[*m*]inisterial office is incompatible with the exercise of all other public functions, except for higher education.”

[20] - Constitutional provisions that apply to judges, such as the one that appears in Article 179 of the 1987 Constitution and reads as follows: “*Service on the bench is incompatible with the exercise of any other salaried position, except teaching.*”

[21] - Legal provisions that apply to public servants,<sup>5</sup> such as those stipulated in the Decree of May 17, 2005 on the Revision of the General Civil Service Statute,<sup>6</sup> articles 165 to 181 of which establish the duties and obligations of public servants. Notable among these provisions are articles 173 to 175, which provide that public servants may not maintain direct or indirect private interests that could influence their judgment in discharging their functions and the duties entrusted to them. Article 17 of that Decree prohibits “*the holding of more than one salaried position in public service, with the exception of teaching, unless specific provisions state otherwise.*” Also, under Article 48 of that Decree, in order to qualify for the civil service, the individual must enjoy his/her full civil and political rights.

[22] - Legal provisions that apply to civil servants and whose purpose is to prevent conflicts of interest, such as those that appear in the Prime Ministerial Decree of April 11, 2013, which spells out the deontological standard that applies to civil service officials, Article 8 of which requires that every person entering the civil service must take a sworn oath to discharge his/her functions “*with loyalty, discretion and conscientiously*”, without seeking or accepting instruction from any outside authority that would be incompatible with his/her public functions. Furthermore, Article 26 of that same decree provides that “a civil servant called upon to perform a mission or issue an opinion on matters in his/her area of expertise shall be free of any influence, interest or relationship that could compromise his/her objectivity and professionalism vis-à-vis that mission.”

[23] In that regard, the Decree also lists conduct in which civil servants shall not engage, such as “*accepting gifts, courtesies or other benefits, except those of modest use and value*” (Article 20); “signing,

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<sup>5</sup> For purposes of this decree, Article 8 provides that a public servant shall be “*any public official of Haitian nationality named to a full-time, permanent position by virtue of a definitive appointment, at one of the levels of the administrative hierarchy.*” Its Article 4 provides that “*a public official is any natural person who has received an appointment or public-law contract to perform a service for an institution or public person in the National Public Administration.*”

<sup>6</sup> Article 9 of this Decree provides that “*the civil service is composed of public officials who are staff.*” Article 2 of the Decree of May 17, 2005, concerning the organization of the State’s central administration, provides that “*the National Public Administration is composed of a set of organs, institutions and public services created under the Constitution and the laws of the Republic and assigned to either: a) the Administration of the State or b) the Administration of the provinces.*” Article 3 provides that the State Administration includes the Central Administration and the organs of the Judicial Branch, of the Legislative Branch and of the Independent Institutions.

preparing and producing in someone else's name, or even affixing said person's name to letters, statements and presentations related to one's mission or to the functions of the Administration to which he/she belongs" (Article 19); engaging in partisan political propaganda or religious proselytism while in public service (Article 27); "performing one's functions under conditions that could cloud one's judgment and stain the image of the institution he/she represents" (Article 28).

[24] - Legal provisions that apply to judges and members of the Public Prosecution Service, such as those that appear in articles 41 to 47 of the Law of November 27, 2007 ("Statute of the Judiciary"), which provide, *inter alia*, that service as a judge or a member of the Public Prosecution Service is incompatible with holding legislative office or any other elected office, except for teaching (Article 43). Articles 44 and 45 provide that former office holders and former candidates for elective office in a given jurisdiction, as well as attorneys and notaries, must wait five years before they qualify for service on the bench or in the Public Prosecution Service.

[25] Article 46 of that law provides that "*Judges and officers in the Public Prosecution Service who are relatives, in-laws, cohabiting or domestic partners, up to and inclusive of first cousins, may not act as either judge or prosecutor in the same case within the same jurisdiction or at different levels of the court system. Similarly, judges may not preside over, or officers of the Public Prosecution Service represent the State in, cases in which they are parties or in which a family member, in-law, cohabiting or domestic partner, up to and inclusive of first cousins, has some stake.*"

[26] - Legal provisions are also in place that apply to certain public servants and are geared to preventing conflicts of interest, such as those that appear in Article 318 of the 1987 Haitian Customs Code, which states that "*officials and employees of the General Customs Administration are prohibited from participating, either directly or indirectly, in commercial import and export transactions. Similarly, every employee is prohibited from owning or operating, either in whole or in part, vessels, ships, wharves and other assets that have any connection to the importation and exportation of goods.*"

[27] - The Law of June 10, 2009 also contains provisions intended to prevent conflicts of interest. Its articles 22 and 23 specify the categories of legal and natural persons who do not qualify to submit proposals in public procurement processes and under public works concession agreements.

[28] The Republic of Haiti also has mechanisms by which to enforce compliance with those standards of conduct, notably the following:

[29] - The Decree of May 17, 2005, on the Revision of the General Civil Service Statute. In its articles 182 to 200, that decree establishes sanctions for disciplinary offenses. Its Article 184 provides that "*failure to comply with the civil servant's duties and obligations provided for in this decree shall constitute a disciplinary offense and expose the civil servant to a sanction, without prejudice, depending on the case, to the reparations associated with his/her civil liability and the penalties provided under the Penal Code for common crimes.*"

[30] - The Prime Ministerial Decree of April 11, 2013, which spells out the deontological standard that applies to civil service officials. Its Article 92 provides that "*a civil servant's failure to comply with the rules of ethics and deontology defined under the Code, either in the exercise of his/her functions or elsewhere, shall expose him/her to a disciplinary sanction in accordance with the Decree of May 17, 2005 concerning revision of the General Civil Service Statute and without prejudice to the penalties that criminal law establishes for the case.*"

[31] Likewise, articles 30 to 47 refer, in order, to the disciplinary, criminal and civil liability of civil servants, which may be cumulative. Articles 48 to 59 concern the disciplinary process for violations of deontological standards.

[32] – The Decree of May 17, 2005, concerning the organization of the State’s central administration, Article 40(2) of which provides that “*Under the General Civil Service Statute, disciplinary authority is part of the minister’s authority to manage the career of civil service personnel who are assigned to the ministry in said minister’s charge, and gives him/her the authority to apply the disciplinary measures allowed under that Statute thus ensuring that discipline, order and internal security are maintained within the ministry.*” In the case of the staff of the Prime Minister’s Office,<sup>7</sup> disciplinary authority rests with the Prime Minister, as provided in Article 26(2).

[33] - The sanctions provided under the laws governing certain public servants, such as judges and members of the Public Prosecution Service, contained in the Law of November 27, 2007 (“Statute Governing the Judiciary”), articles 63 to 65 of which concern, in that order, their civil, criminal and disciplinary liability; and articles 66 and 67, which make the enforcing institutions the Ministry of Justice and Public Security (in the case of members of the Public Prosecution Service) and the Superior Council of the Judicial Branch (in the case of judges).

[34] - The Law on Prevention and Repression of Corruption (Law of March 12, 2014) which, under its Article 5.13, punishes with between three and nine years’ imprisonment and a fine of one hundred and fifty thousand to two hundred and fifty thousand gourdes, any person embodying public authority, or entrusted with a public service mission, or invested with public elective office, who, directly or indirectly, takes on, receives, or keeps any kind of stake in an enterprise or operation, in respect of which he or she, at the time of the act, has responsibility for overseeing, administering, liquidating, or paying for.

[35] - Articles 90 to 94 of the law of June 10, 2009, provide a range of sanctions for anyone who bid on or was awarded a public procurement contract, but was then found to have engaged in fraudulent practices, and for any contracting authority found to be guilty of such practices.

[36] - The organs and agencies that have the authority to enforce compliance with these standards of conduct, such as the Office of Management and Human Resources (the OMRH), the Anti-Corruption Unit (ULCC), the National Public Procurement Commission (the CNMP), and the Superior Council of the Judicial Branch (the CSPJ), which will be discussed in Chapter II (B) of this report.

### **1.1.2. Adequacy of the legal framework and/or of other measures and enforcement mechanisms**

[37] With respect to the constitutional and legal provisions addressing standards of conduct intended to prevent conflicts of interest and the mechanisms to enforce them examined by the Committee, based on the information available to it, they constitute, as a whole, a body of measures relevant to promoting the purposes of the Convention.

[38] Nonetheless, the Committee considers it appropriate to formulate certain observations regarding the advisability of complementing and developing to certain legal provisions that refer to the aforementioned standards and mechanisms.

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<sup>7</sup> Article 20 of the Decree of May 17, 2005 provides that the *Office of the Prime Minister*, a governmental organ headed by the Prime Minister, performs policy-related, administrative and technical functions. The *Office of the Prime Minister* is composed of: 1) the Office of the Prime Minister’s Private Secretary; 2) the Prime Minister’s Cabinet, and 3) the General Secretariat of the Office of the Prime Minister.

[39] First, the Committee notes that the broadest legal regulations on standards of conduct to prevent conflicts of interest are Decree of May 17, 2005 on revision of the General Civil Service Statute, and the Prime Ministerial Decree of April 11, 2013, which spells out the deontological standard that applies to civil service personnel. However, the standards on conflicts of interest and the respective disciplinary process provided under each of these decrees apply only to civil service personnel and not government personnel; the latter is a more inclusive term that covers anyone either appointed or hired on contract to work for an institution or public agency of the National Government.

[40] The Committee observes, for example, with the exception of the standards provided for the 1987 Constitution, there are no specific and more detailed standards to prevent conflicts of interest that apply to senior government officials (such as ministers and secretaries of state; as well as for members of the cabinets of the President of the Republic, of the Prime Minister, and of the ministers and secretaries of state, among others mentioned in Article 11 of the Decree of May 17, 2005). Because standards and mechanisms to prevent conflicts of interest are important for building citizen confidence and trust in the integrity of public institutions and in the public decision-making process, especially at its highest level, the Committee will make a recommendation in this regard (see recommendation “a” in section 1.1.4 of Chapter II (A) of this report).

[41] Second, the Committee was also unable to find standards on conflicts of interest and effective enforcement mechanisms that apply in the case of senators and members of the Chamber of Deputies. The Committee will make a recommendation in this regard (see recommendation “b” in section 1.1.4 of Chapter II (A) of this report).

[42] Third, the Committee observes that there are no express standards to prevent conflicts of interest subsequent to one’s time in public service and applicable to all public servants in general,<sup>8</sup> such as a rule prohibiting former public servants from involvement with entities with which they had recent association or in which they had performed any kind of intervention by virtue of their competence. The Committee will make a recommendation in this regard (see recommendation “c” in section 1.1.4 of Chapter II (A) of this report).

[43] Fourth, the Committee observes that no provision is made for Ethics Committees or any other mechanisms suitable for promoting or providing advisory assistance or guidance on ethics, to disseminate existing standards and answer questions from public servants about possible conflicts of interests and take steps to quickly remedy any situations detected that involve conflicts of interest, and it notes that this could be achieved, for instance, by implementing a system of excusals and recusals. The Committee will make a recommendation in this regard (see recommendation “d” in section 1.1.4 of Chapter II (A) of this report).

[44] Concerning this specific observation, during the on-site visit to Haiti, prominent Haitian academics expressed their views on the matter, among them the Dean of the Institute of Higher Learning in Business and Economics (*Institut des Hautes Etudes Commerciales et Economiques* -IHECE), who underscored the need to establish Ethics Committees through the anti-corruption focal points in the ministries, services and public enterprises, pursuant to the provision contained in the decree creating the Anti-Corruption Unit (ULCC) and to include a good social marketing program in ethics instruction, so as to educate government personnel exposed to potential corruption and members of the private sector.<sup>9</sup>

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<sup>8</sup> Article 1 of the Inter-American Convention against Corruption provides that ““Public official”, “government official”, or “public servant” means any official or employee of the State or its agencies, including those who have been selected, appointed, or elected to perform activities or functions in the name of the State or in the service of the State, at any level of its hierarchy.”

<sup>9</sup> [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_sc\\_amos.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_sc_amos.pdf).

[45] Fifth, regarding the system by which to apply for and enter the civil service and the legal regime in force governing incompatibilities and disqualifications, the Committee believes it is important that the Republic of Haiti consider having preventive mechanisms, such as databases on criminal, administrative or other records that help the government determine whether those entering the civil service are unfettered by the kinds of interests or relationships that could constitute a conflict of interest under the existing standards. It is important to create said mechanisms to facilitate the performance of the preventive function of competent bodies such as the Office of Management and Human Resources (OMHR) and thereby avoid appointments in violation of the legal regime in force governing incompatibilities and disqualifications within the civil service. The Committee will make a recommendation in this regard (see recommendation “e” in section 1.1.4 of Chapter II (A) of this report).

[46] During the on-site visit, the representatives commented that they were in the process of setting up an integrated, centralized system for human resource management, which would include a database containing the professional records of Haitian civil servants.

[47] Sixth, the Committee notes that there are no mechanisms in place to determine, in actual cases, whether a civil servant has a conflict of interest and, if so, to promptly take the necessary measures to protect the public interest and enforce the prescribed penalties, such as separation from service, the civil servant’s removal from any official role in the matter, forfeiture of any private individual interests that are in conflict with the civil servant’s functions, or nullification of any decision taken by the individual who has a conflict of interest. Considering the situation, the Committee will make a recommendation (see recommendation “f” in section 1.1.4 of Chapter II (A) of this report).

[48] With regard to this observation, during the on-site visit the Chair of the Administrative Board of the Haitian Chamber of Conciliation and Arbitration (CAAH) underscored the need to enforce, in an effective manner, the penalties prescribed in the standards and to publicize them so as to deter potential offenders.<sup>10</sup>

[49] Seventh, the Committee believes that Haiti might consider the possibility of establishing more specific rules on conflicts of interest that are more stringent in the case of civil servants working in certain areas of the Administration of the State, where a conflict of interest would be more damaging for the State and would affect the citizenry’s perception of public integrity. The Committee will make a recommendation in this regard (see recommendation “g” in section 1.1.4 of Chapter II (A) of this report).

[50] On this subject, the Dean of the Institute of Higher Learning in Business and Economics (IHECE) emphasized how important it is to single out those areas where the risk is greater and where the functions performed expose civil servants to conflicts of interest; he also highlighted the need to revise the codes of ethics and deontology of the ministries and public services so as to establish a well-defined system of incompatibilities.<sup>11</sup>

[51] Eighth, the Committee believes it is important that all members of the Judicial Branch and of the Public Prosecution Service have their own codes of ethics, which should include specific provisions on conflicts of interest, to add to the important standards already contained in the Statute of the Judiciary. The Committee will make a recommendation in this regard (see recommendation “h” in section 1.1.4 of Chapter II (A) of this report).

[52] Finally, the Committee believes it is important that programs be routinely conducted to disseminate standards of conduct among all public servants and instruct them in those standards,

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<sup>10</sup> [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_henri.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_henri.pdf)

<sup>11</sup> [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_sc\\_amos.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_sc_amos.pdf)

including the rules on conflicts of interest, as well as training and refresher programs on those standards (see general recommendation “a” of Chapter II (A) of this report).

[53] The need for instruction and for citizen awareness about ethics in public service was an issue frequently raised by the representatives of civil society, professional associations and academics during the on-site visit to Haiti.

### **1.1.3. Results of the legal framework and/or of other measures and enforcement mechanisms**

[54] Haiti has not provided information on results in this area. Hence, the Committee cannot do a comprehensive assessment of the results and will, therefore, make the necessary recommendations (see general recommendations “b” and “c” in Chapter II (A) of this report).

### **1.1.4. Conclusions and Recommendations**

**[55] The Republic of Haiti has considered and adopted measures to establish, maintain and strengthen standards of conduct aimed at preventing conflicts of interest and mechanisms to enforce them, as described in section 1.1 of Chapter II (A) of this report.**

[56] In light of the comments made in that section, the Committee suggests that the Republic of Haiti consider the following recommendations:

- a) Establish standards of conduct that specifically regulate, in detail, situations that could constitute conflicts of interest for senior government officials (such as ministers and secretaries of state) and for the other officers mentioned in Article 11 of the Decree of May 17, 2005, on the revision of the General Civil Service Statute, and establish the appropriate enforcement mechanisms (see section 1.1.2 of Chapter II (A) of this report).
- b) Establish a Code of Legislative Ethics that regulates, in specific and detailed terms, those situations that could constitute conflicts of interest for senators and members of the Chamber of Deputies, and establish the appropriate enforcement mechanisms (see section 1.1.2 of Chapter II (A) of this report).
- c) Establish the proper restrictions for those who leave public office or public service, such as a rule prohibiting them from having any role in cases in which they intervened by virtue of their office or vis-à-vis the entities with which, in discharging their office, they had a recent association; in the latter case, a reasonable period of time should be established (see section 1.1.2 of Chapter II (A) of this report).
- d) Design and implement mechanisms to promote instruction and guidance in ethics, such as Ethics Committees or other suitable mechanisms by which to publicize the existing standards of conduct, answer inquiries from public servants about possible cases of conflicts of interest, and take measures to swiftly remedy any situations detected that involve conflicts of interest, such as a system of excusals and recusals (see section 1.1.2 of Chapter II (A) of this report).
- e) Create or strengthen the existing mechanisms that ensure that no appointments made are in violation of the regime of disqualifications and incompatibilities in force within the civil service, such as databases of criminal, administrative or other records that enable the government to check whether those entering the civil service have any interests or

relationships that could constitute a conflict of interest under the standards in force (see section 1.1.2 of Chapter II (A) of this report).

- f) Create and put into practice mechanisms that make it possible to determine, in actual cases, whether someone in public service has a conflict of interest and that make it possible to take the measures necessary to protect the public interest and enforce the appropriate sanctions, such as the public servant's separation from service, his/her removal from any official role in the matter, forfeiture of the private individual interests that are in conflict with the public servant's function, or nullification of any decision taken by the individual who has a conflict of interest (see section 1.1.2 of Chapter II (A) of this report).
- g) Establish more specific and more stringent rules on conflicts of interest in the case of public servants working in certain areas of government administration that could cause enormous damage to the State and affect, through their unethical behavior, the citizenry's perception of the integrity of Haiti's civil servants (see section 1.1.2 of Chapter II (A) of this report).
- h) Establish Codes of Ethics for members of the Judicial Branch and of the Public Prosecution Service, which should include specific provisions on conflicts of interest, to add to the existing standards contained in the Statute of the Judiciary (see section 1.1.2 of Chapter II (A) of this report).

## **1.2. STANDARDS OF CONDUCT AND MECHANISMS TO ENSURE THE PROPER CONSERVATION AND USE OF RESOURCES ENTRUSTED TO GOVERNMENT OFFICIALS**

### **1.2.1. Existence of provisions in the legal framework and/or of other measures and enforcement mechanisms**

[57] The Republic of Haiti has a set of provisions concerning these standards, among which the following should be noted:

[58] – The Decree of February 16, 2005, concerning the general rules of public accounting, Article 10 of which states that every year, each Ministry must submit to the Ministry of the Treasury and the Superior Court of Accounts and of Administrative Disputes (CSC/CA) a detailed inventory of the movable and immovable assets for which it is responsible. Article 11 prohibits any unauthorized person, whether public servant or private citizen, from having any involvement in the management of public funds.

[59] Article 13 establishes two categories of officials authorized to intervene in the operations in which the budget of the State and other public entities is executed: the officers authorizing spending and the auditors of public accounts, whose functions are incompatible.

[60] Articles 14 to 22 concern the authorizing officers and their responsibilities, whereas articles 23 to 45 concern the auditors of public accounts and their responsibilities. In general, the authorizing officers are natural persons who head the services of the State and its territorial divisions and who incur and order expenditures of public funds. They may delegate their authorities and, where appropriate, arrange for someone to act in their place. The Minister of Finance is the chief, central and single authorizing officer for the revenues and expenditures in the State Budget, the attached budgets and special treasury accounts.

For their part, auditors of public accounts are anyone who regularly takes charge of the handling, conservation and management of public funds or assets of the State and territorial divisions.

[61] Article 21 provides that “*the authorizing officer is the sole party liable for any commitments he/she may have made that are in violation of the laws and regulations in force or that exceed the assigned appropriations.*” As for the auditors of public accounts, Article 35 provides that “*(...) they bear personal and pecuniary liability for the transactions they perform, from the time they are installed to the date their resignation or separation takes effect. That liability includes the operations of the auditors of public accounts, administrators, officials or officials acting under their authority and the acts of de facto auditors of public accounts of which they have knowledge but fail to report that information to their superiors (...)*”.

[62] Likewise, Article 32 expressly states that “*apart from any personal and pecuniary liability they may incur, auditors of public accounts shall be subject to the disciplinary system established in the statute that governs them. Consequently, auditors of public accounts are not required to comply with irregular orders that might compromise their pecuniary and personal responsibility, except in the case of a written order issued by the Minister of Finance or superiors who are auditors of public accounts. In this way, any liability would be incurred by the superiors and not their subordinates.*”

[63] Under Article 39, an auditor of public accounts incurs pecuniary liability by virtue of a debit ruling, which may be administrative or jurisdictional in nature.

[64] The Republic of Haiti also has mechanisms by which to enforce compliance with those standards of conduct, notably the following:

[65] – The Decree of November 23, 2005, which establishes the structure and operations of the Superior Court of Accounts and of Administrative Disputes (CSC/CA) and provides that the CSC/CA shall adjudge the acts of the Public Administration, the accounts of the authorizing officers and auditors of accounts holding public funds. It also assists the Legislature and the Executive Branch in monitoring execution of the budget and public accounts.

[66] When examining the accounts of *de jure* or *de facto* auditors (*comptables*) of public accounts,<sup>12</sup> pursuant to articles 18 and 19 of the Decree, the CSC/CA may enter a declaration of liability, called a “debit ruling” (“*Arrêt de Débet*”) against the defaulter, or a declaration clearing the official of any liability, called a “quietus” (“*Arrêt de Quitus ou de Décharge*”).

[67] – The Decree of February 16, 2005, which concerns the general rules of public accounting, Article 38 of which provides that the pecuniary liability of an auditor of public accounts takes effect upon issuance of a debit ruling, which may be administrative or jurisdictional in nature. An administrative debit ruling is decreed by the Minister of Finance. A jurisdictional debit ruling is delivered by the jurisdictional accounting entity under the conditions specified in the CSC/CA law. Debit rulings have the same effects and are subject to the same enforcement rules that apply in the case of jurisdictional rulings. They are enforceable immediately, notwithstanding any remedies that may be filed with the higher courts.

[68] – The Decree of February 16, 2005 on the preparation and enforcement of finance laws, articles 67 to 77 of which provide that the transactions involved in execution of the budget are subject to three-way oversight (executive, judicial and legislative). Executive oversight is done *a priori* by the group of financial comptrollers under the minister of finance. Judicial control is by the CSC/CA, which confirms,

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<sup>12</sup> Under Article 3 of the Decree of November 23, 2005, the CSC/CA does not have jurisdiction over the officers who authorize spending, except for those it has declared to be *de facto* auditors (“*comptables de fait*”).

“based on the record and, if necessary, in situ, whether the income and expenditures described in the public accounts statements are in order, and checks whether the appropriations, the funds and the assets administered by the State services and other legal persons under Public Law are being properly used.” The legislative control is *a posteriori*, and comes in the wake of the discussion and passage of the finance bill.

[69] Under articles 79 to 81 of the Decree of February 16, 2005, the officers who authorize spending shall face disciplinary, criminal and civil sanctions for any offenses and/or infractions they commit in the performance of their functions, without prejudice to any sanctions imposed by the Court of Accounts established under Article 80<sup>13</sup> and whose enforcement must be regulated (Article 81). Under Article 186 of the Constitution (Article 79 of the Decree), authorizing officers who are in government are subject only to sanctions imposed by the High Court of Justice.

[70] Articles 82 to 91 concern the personal and pecuniary liability of auditors of public accounts (“*comptables publics*”). Article 85 provides that a *de facto* auditor of public accounts (“*comptable de fait*”) is anyone who, without normal authorization for the purpose, plays some role in maintaining, managing or conserving public funds or public assets. A *de facto* auditor of public accounts (“*comptable de fait*”) faces the same liabilities as a *de jure* auditor of public accounts (“*comptable de droit*”), without prejudice to the criminal actions brought against him/her.

[71] The Republic of Haiti’s response to the questionnaire<sup>14</sup> states that “*When the CSC/CA verdict is against an auditor of accounts holding public funds, he/she shall be prosecuted in accordance with the provisions of Article 150 of the Criminal Code. It is important to note that if the CSC/CA’s guilty verdict is against an auditor of accounts holding public funds, a lien shall be placed on his/her property to secure repayment of the amounts owed, pursuant to a law of September 7, 1870, amended by the decree of December 28, 1943 on the liability of public officials.*”

[72] – Article 2 of the Decree of May 17, 2006 creating the General Inspectorate of Finance (IGF) establishes the IGF’s objectives, which include that of checking, overseeing and ensuring the technical, administrative and financial auditing and serving as auditor of accounts, both *a priori* and *a posteriori*, for the entire national government.

[73] – The Law on Prevention and Repression of Corruption (Law of March 12, 2014) which, under its Article 5.4, provides that “*any person who diverts for a purpose other than that intended, for his/her personal use, or for the benefit of a third party, any good belonging to the State, to a territorial collective,*

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<sup>13</sup> Article 80 of the Decree of February 16, 2005, reads as follows: “*Any person in a cabinet position, any official, representative, manager or agent of the State who, for whatever reason, is called to account by the court of accounts, may face penalties for public sector mismanagement.*

*The penalty shall be a fine whose amount shall be determined by a scale established by the Minister of Finance, taking into account the harm the State has suffered and the salary of the official in question as of the date of the offense.*

*Any person who violates the standards pertaining to execution of the State’s revenues and expenditures or management of State-owned assets or who, after being entrusted with protecting or controlling those assets, has given his/her approval for incriminating decisions, may face a penalty for public sector mismanagement*

*Any person who, in the performance of his/her functions, derives or seeks to derive some unjustified advantage, pecuniary or otherwise, for himself/herself or for a third party, may face a penalty for public sector mismanagement.*

*Any person who, out of ignorance of his/her obligations, does something prejudicial to the public administration may also face punishment for public sector mismanagement “*

<sup>14</sup> Haiti’s response to the questionnaire within the framework of the Fourth Round, p. 6.

*to an independent institution, or to an autonomous body, that he/she has received to safeguard or manage or for any other purpose by reason of his/her position, shall be punished by imprisonment, ordered to return the good, and fined in an amount equal to three times the value of the diverted good.”*

### **1.2.2. Adequacy of the legal framework and/or of other measures and enforcement mechanisms.**

[74] The standards and mechanisms to ensure the conservation and proper use of resources entrusted to public officials, which the Committee examined using the information it has available, are relevant for promoting the purposes of the Convention.

[75] Having said this, based on the information at its disposal, the Committee observes that the procedures for enforcing the penalties established in Article 80 of the Decree of February 16, 2005 concerning the preparation and enforcement of finance laws are not regulated. This means that the CSC/CA does not have the authority to enforce the appropriate fines on those sanctioned for mismanagement (“*fautes de gestion*”). This represents a major weakness in terms of the existing mechanisms’ ability to enforce the standards on the conservation and proper use of public resources. The Committee will make a recommendation in this regard (see recommendation in section 1.2.4 of Chapter II (A) of this report).

### **1.2.3. Results of the legal framework and/or of other measures and enforcement mechanisms**

[76] In the response received from the Republic of Haiti in this regard,<sup>15</sup> it observes that “*Annual checks done by CSC/CA inspectors have uncovered cases involving irregularities. Those cases have been forwarded to the CSC/CA’s Financial Affairs Chamber to review the accounts of the public officials suspected to be at fault. The Financial Affairs Chamber has already issued six (6) debit rulings in the course of the last five years.*”

[77] The foregoing notwithstanding, and bearing in mind that the CSC/CA’s results will be reviewed in a comprehensive manner in Chapter II (B) of this report, the Committee will make relevant observations and specific recommendations regarding the results obtained by the Court in the corresponding section.

### **1.2.4. Conclusions and Recommendations**

[78] **The Republic of Haiti has considered and adopted measures intended to establish, maintain, and strengthen standards of conduct to ensure the conservation and proper use of resources entrusted to public officials in the performance of their functions, as described in section 1.2 of Chapter II (A) of this report.**

[79] In light of the comments made in that section, the Committee suggests that the Republic of Haiti consider the following recommendation:

- Adopt the Decree (“*Arrêté*”) setting the fines to be paid in the event of mismanagement (“*fautes de gestion*”), in accordance with the provisions of Article 80 of the Decree of February 16, 2005, on the preparation and execution of the finance laws (see section 1.2.2 of Chapter II (A) of this report).

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<sup>15</sup> Haiti’s response to the questionnaire within the framework of the Fourth Round, p. 7

### **1.3. STANDARDS OF CONDUCT AND MECHANISMS CONCERNING MEASURES AND SYSTEMS REQUIRING GOVERNMENT OFFICIALS TO REPORT TO APPROPRIATE AUTHORITIES ACTS OF CORRUPTION IN THE PERFORMANCE OF PUBLIC FUNCTIONS OF WHICH THEY ARE AWARE**

#### **1.3.1. Existence of provisions in the legal framework and/or of other measures and enforcement mechanisms**

[80] The Republic of Haiti has a set of provisions regarding the aforementioned standards of conduct and mechanisms, among which the following should be noted:

[81] – The 1987 Constitution, Article 241 of which requires public officials to report to appropriate authorities any offenses committed against the State and any illicit enrichment of which they are aware.

[82] – The Code of Criminal Procedure, Article 19 of which provides that every official must report to the Government Commissioner (a representative of the Public Prosecution Service) any crimes and offences that have come to his/her attention in the performance of his/her functions.

[83] The Republic of Haiti also has mechanisms for enforcing the standards of conduct mentioned above, notably the following:

[84] – Haitian citizens are able to file complaints of acts of corruption through several avenues: by filing a complaint, either directly with the office of the ULCC or by telephone, dialing the toll-free “5656” telephone number. They may also lodge their complaint by way of the ULCC website: [www.ulcc.gouv.ht](http://www.ulcc.gouv.ht).

#### **1.3.2. Adequacy of the legal framework and/or of other measures and enforcement mechanisms**

[85] The standards and mechanisms in relation to the measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

[86] However the Committee believes it might be useful for the Republic of Haiti to consider strengthening the mechanisms it has in this area.

[87] The obligation to report acts of corruption and any other violation of the provisions contained in the decrees and codes governing the civil service is intended not just to prevent acts of corruption but also to prohibit any conduct that may itself constitute an act of corruption. Therefore, to reinforce these mechanisms, the Republic of Haiti might consider including that obligation among the duties and obligations set forth in the Decree of May 17, 2005, on Revision of the General Civil Service Statute, the Prime Ministerial Decree of April 11, 2013, which spells out the standard of deontological ethics that applies to civil service personnel, and the Codes of Ethics adopted for different areas and public offices.

[88] The Committee considers that if the obligation to report were included in the duties and obligations envisaged by the aforementioned disciplinary system, the disciplinary penalties and the procedure for enforcing them would be clearly established. This would ensure punishment for violation of the duty to report.

[89] The proposed measure would also serve as the adoption, within the public administration sphere, of supplementary disciplinary measures additional to the measures under criminal law in effect in this area in the country under review. The Committee will make a recommendation in this regard (see recommendation “a” in section 1.3.4 of Chapter II (A) of this report).

**1.3.3. Results of the legal framework and/or of other measures and enforcement mechanisms**

[90] The following information was provided in the response from the Republic of Haiti:<sup>16</sup>

[91] “*Since the creation of the ULCC in September 2004, the institution has received two hundred seven (207) complaints from government officials and civil society organizations (...)*”.

[92] According to the ULCC’s 2012-2013 annual report, the number of complaints received, by year, is as follows:<sup>17</sup>

<b>(OCTOBER 2004 TO THE PRESENT)</b>	<b>2004-2005</b>	<b>2005-2006</b>	<b>2006-2007</b>	<b>2007-2008</b>	<b>2008-2009</b>	<b>2009-2010</b>	<b>2010-2011</b>	<b>2011-2012</b>	<b>2012-2013</b>	<b>TOTAL</b>
NUMBER OF COMPLAINTS RECEIVED	8	7	25	32	27	13	8	38	45	<b>203<sup>18</sup></b>

[93] The Committee is of the view that the above information shows that complaints involving the corrupt acts to which the Convention refers have been brought to the ULCC’s attention. However, it notes that the information is not itemized in such a way that one could distinguish complaints filed by public officials from those filed by the general public. The Committee also observes that there is no consistent trend in the numbers of complaints received; indeed, the figures for the last two periods (2011-2012 and 2012-2013) account for approximately 41% of all the complaints the ULCC has received since the time it was established.

[94] However, because the number of complaints received is still low, the Committee deems it important for the country under review to consider conducting a study to pinpoint the principal difficulties that public officials encounter when attempting to file complaints concerning any corrupt acts of which they are aware, with a view to identifying challenges and recommending corrective measures. The Committee will make a recommendation in this regard (see recommendation “b” of section 1.3.4 of Chapter II (A) of this report).

[95] On the other hand, the Committee applauds Haiti’s effort to offer public officials and the general public some novel ways by which to lodge complaints involving corrupt acts, like the toll-free “5656” telephone line and the ULCC’s web page. The Committee believes it might be helpful to consider implementing training programs to educate public officials about their obligation to file complaints with the competent authorities concerning any acts of corruption of which they are aware and to consider publicizing the aforementioned existing mechanisms for filing complaints of acts of corruption, thereby encouraging their use. The Committee will make recommendations in this regard (see recommendations “c” and “d” in section 1.3.4 of this report).

<sup>16</sup> Haiti’s response to the questionnaire within the framework of the Fourth Round, p. 8.

<sup>17</sup> Annual Report of the Anti-Corruption Unit (ULCC) for the 2012-2013 Fiscal Period, p. 15.

<sup>18</sup> Regarding the difference between the number of complaints given in the questionnaire and the number in the 2012-2013 report, it is important to point out that the annual 2012-2013 tally corresponds to information on complaints between October 2012 and September 2013, while the self-evaluation report also includes complaints for the last three months of the year 2013.

[96] Concerning this topic, during the on-site visit, the representative of the Haitian Chapter of the International Association of Women Judges (CHAIFEJ) presented a number of observations.<sup>19</sup> She began by pointing out that the rule on complaints does not help or motivate citizens to report corrupt acts. She noted, for example, that in order to file a complaint, the complainant must pay out-of-pocket for copies of the complaint.<sup>20</sup>

[97] The Judge underscored the fact that establishment of the “5656” telephone line for complaints of alleged corrupt acts does represent progress. However, she queried the anonymous nature of these complaints and underscored how important it is to make the public aware of the existence of the toll-free number. She also highlighted the importance of giving thought to establishing this system in the Public Prosecution Service and other government offices.<sup>21</sup>

[98] She also noted that while the ULCC has a web page for filing complaints, most Haitians are illiterate, which means that the ULCC would have to accept anonymous complaints, at least for purposes of launching a preliminary investigation. In her opinion, by refusing to accept anonymous complaints in a country where there is no guarantee that complainants could be protected, the ULCC would run the risk of ignoring many cases of corruption. She also maintained that accepting anonymous complaints constitutes a pragmatic approach in the sense that the focus should not be on the complainant but rather on the corrupt act to be investigated.

[99] The CHAIFEJ representative also pointed out the low number of complaints the ULCC has received (207 complaints in the ULCC’s nine years of existence), which would average out to fewer than two complaints per month. In her opinion, this is a low figure for a country like Haiti. She went on to say that one possible explanation would be the communications deficit within the Haitian Public Administration; she noted, however, that there were other explanations as well, such as the lack of awareness about this issue.

[100] The Committee took note of the concerns conveyed by the CHAIFEJ representative and the concerns expressed during the on-site visit by other representatives of civil society concerning the need for legislation and measures to protect complainants acting in good faith in Haiti. However, the review contained in this report is confined to the measures and systems requiring government officials to report to appropriate authorities any acts of corruption in the performance of public functions of which they are aware (Article III, paragraph 1, of the Convention).

[101] Here, the Committee notes that the systems for protecting public servants and private citizens who, in good faith, report acts of corruption (Article III, paragraph 8 of the Convention) is a topic selected for review in the Second Round of the MESICIC. Hence, the Committee will not do a comprehensive review of the topic in this report; instead, it reserves the right to examine and express its views on it during the Second Round.

[102] Finally, other than the information already reported above, the Committee has no information that has been processed in such a way as to enable it to do a comprehensive assessment of the standards and mechanisms on this subject. The Committee will make recommendations in this regard (see general recommendations “b” and “c” of Chapter II (A) of this report).

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<sup>19</sup> [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_sc\\_norah.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_sc_norah.pdf)

<sup>20</sup> Haiti expresses the following: “It is important to point out that the observations of the representative of the Haitian Chapter of the International Association of Women Judges (CHAIFEJ) during the on-site visit regarding the photocopying expenses paid by the complainant refer to complaints filed with the Government Commission, because the ULCC possesses all the resources needed to receive complaints and denunciations free of charge. However, citizens are free to report a case of corruption either to the ULCC or to trial court prosecutors.”

<sup>21</sup> Haiti expresses the following: “The judge’s fears are unwarranted. The anonymity of calls made to ‘5656’ is guaranteed.”

### 1.3.4. Conclusions and Recommendations

[103] **The Republic of Haiti has considered and adopted measures to establish, maintain and strengthen standards of conduct and mechanisms concerning measures and systems requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware, as described in section 1.3 of Chapter II (A) of this report.**

[104] In light of the comments made in that section, the Committee suggests that the Republic of Haiti consider the following recommendations:

- a) Include among the duties and obligations established in the Decree of May 17, 2005, on Revision of the General Civil Service Statute, in the Prime Ministerial Decree of April 11, 2013, which spells out the standard of deontological ethics that applies to civil service officials, and in the Codes of Ethics adopted for different areas and public offices, the obligation to report acts of corruption and any other violation of the provisions established in those decrees and codes (see section 1.3.2 of Chapter II (A) of this report).
- b) Conduct a study to identify the principal difficulties that public officials encounter when filing complaints concerning acts of corruption of which they are aware, with a view to identifying challenges and recommending corrective measures (see section 1.3.2 of Chapter II (A) of this report).
- c) Instruct public officials about their responsibility to report any acts of corruption committed in the performance of public functions of which they are aware and the reason for it (see section 1.3.2 of Chapter II (A) of this report).
- d) Publicize the existing mechanisms for filing complaints of acts of corruption, such as the “5656” telephone line and the ULCC’s web page (see section 1.3.2 of Chapter II (A) of this report).

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

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

[105] The Republic of Haiti has a set of provisions concerning these systems, among which the following should be noted:

[106] – The 1987 Constitution, Article 241 of which makes it incumbent upon those public officials who are legally so required, to file a declaration of their assets, liabilities and net worth with the Clerk of the Civil Court within thirty (30) days of entering public service. That article also provides that the Government Commissioner (a representative of the Public Prosecution Service) should take the steps he/she deems necessary to verify the accuracy of the declaration.

[107] – The Law of February 12, 2008, concerning asset declarations, articles 2, 3, 8, 8(1) and 8(2) of which require that certain categories of political figures, public officials and other government personnel<sup>22</sup>

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<sup>22</sup> Article 7 of the Law of February 12, 2008, indicates the political figures and public officials subject to that formality. They are members of the three branches of government, officials who authorize spending and *de facto* and *de jure* auditors of public accounts, locally elected officials, and politically exposed persons (members of the cabinet of the President, the Prime Minister, the Ministers and secretaries of State). Article 6 also provides that the Anti-Corruption Unit (ULCC) shall publish the list of those required to file asset declarations.

file an asset declaration with the clerk of their local civil court within thirty (30) days of their entry into public service and within thirty (30) days of the date on which they left public service.

[108] Furthermore, under Article 10, the declaration must be updated if the taxable assets reported in the public servant's most recent tax return increased by 40%.

[109] The regulations governing the format and content of the asset information that must be provided appear in articles 11 to 15 and include the movable and immovable assets of the person filing the declaration, his/her spouse and underage children. Under Article 13, the Anti-Corruption Unit (ULCC) is charged with devising a form to facilitate the filing of asset declarations (Article 13).<sup>23</sup>

[110] Under articles 4, 9 and 16, the ULCC is charged with gathering the information supplied by the persons filing the declarations, processing that information and preserving it. If the asset declaration is not filed within the aforementioned time period, the ULCC sends the interested party a reminder, and grants him/her a new filing deadline. If the interested party fails to meet the new deadline, a report is filed with the Minister of the Economy and Finance for purposes of withholding one quarter of the pay of the individual concerned; in the case of the declaration to be filed upon leaving the civil service, the report is to be filed with the competent Government Commissioner for purposes of enforcement of the sanctions called for under Article 18 of the law.

[111] Articles 14 and 14(1) provide that the ULCC is responsible for detecting any change in the declarant's net worth and, if need be, requesting additional information. Furthermore, should a significant increase in assets be detected, it is the job of the ULCC to contact the declarant, by registered mail, if warranted. If the declarant fails to comply, his/her file will be referred to the authorities charged with the follow-up, for the purposes prescribed by law.

[112] Article 5 of the law provides that the sworn declaration of assets shall be confidential and indicates the circumstances under which the ULCC could disclose its content. Article 19, for its part, lists the penalties for ULCC officials or court clerks found guilty of having disclosed or made public any information contained in the declarant's declaration without said declarant's authorization.

[113] Furthermore, during the on-site visit the ULCC representatives provided information on how the Unit processes asset declarations, which is a 6-stage process that uses an electronic database especially designed to facilitate the ULCC's work.<sup>24</sup>

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

[114] The norms regarding the systems for registering income, assets and liabilities that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

[115] Nevertheless, the Committee believes that the Republic of Haiti should consider strengthening the systems it has in this area.

[116] First, the Committee finds that articles 5 and 19 of the Law of February 12, 2008, provide that the data supplied by public officials in the sworn declaration shall be confidential and prohibit their unauthorized disclosure.

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<sup>23</sup> The form is available at: [http://www.oas.org/juridico/PDFs/mesicic4\\_hti\\_patri.pdf](http://www.oas.org/juridico/PDFs/mesicic4_hti_patri.pdf)

<sup>24</sup> For more information, see: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_ulcc\\_pro.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_ulcc_pro.pdf)

[117] Inasmuch as the Convention makes express reference to the systems for making such declarations public, “where appropriate”, the Committee believes that the Republic of Haiti must, in keeping with the fundamental principles of its legal system, consider regulating the conditions, procedures and other relevant aspects with regard to disclosure of those declarations. The Committee will make a recommendation in this regard (see recommendation “a” in section 2.4 of this report).<sup>25</sup>

[118] Second, the Committee notes that there is no provision requiring that the declaration be periodically updated. The Law of February 12, 2008 only requires that the declaration be updated in the event of a 40% increase in the taxable assets, based on the latest tax return filed by the declarant. In practice, this could be difficult to prove. The Committee will recommend that the Republic of Haiti consider making it mandatory to update the asset declaration on a periodic basis (see recommendation “b” in section 2.4 of this report).

[119] Third, Article 18 of the Law of February 12, 2008 makes it incumbent upon the ULCC “*to request from the various State agencies and offices the lists of persons who are required to declare their assets.*” However, nowhere in the Law are those agencies and offices required to provide that information to the ULCC, nor are any penalties established for directors in the event they fail to comply or are late in complying with the obligation to provide the list when so requested by the ULCC. The Committee will make a recommendation in this regard (see recommendation “c” in section 2.4 of Chapter II (A) of this report).

[120] Moreover, the Committee observes that under Article 6 of the Law of February 12, 2008, it is up to the ULCC to publish the list of political figures, public officials and government officials required to declare their assets. Here, the Committee believes that the country under review should consider having the ULCC publish the list of those who have failed to comply with the obligation to file the asset declaration; furthermore, that list should be periodically updated. The Committee will make a recommendation in this regard (see recommendation “d” in section 2.4 of Chapter II (A) of this report).

[121] During the on-site visit to Haiti, representatives of civil society like the Dean of the Institute of Higher Learning in Business and Economics (IHECE) said that the ULCC should make that information public.<sup>26</sup>

[122] Fourth, the Committee notes that the only penalty prescribed by law for those who fail to comply with the obligation to file their asset declaration when they leave public service is a criminal penalty. The Committee believes it is important for the Republic of Haiti to consider imposing administrative sanctions on those who fail to comply with the obligation to declare their assets within thirty (30) days of the date on which they leave public service; these might include fines and disqualification from any public office so long as the final asset declaration has not been filed (see recommendation “e” of section 2.4 of Chapter II (A) of this report).

[123] Fifth, the Committee observes that from the provision contained in Article 4 of the Law of February 12, 2008, one can clearly infer that the intention is to use the declarations to detect possible cases of illicit enrichment (an offense criminalized subsequent to the on-site visit, with the May 2014 enactment of the Law on Prevention and Repression of Corruption of March 12, 2014 – Article 5.2). However, the Committee believes that the country under review would best be advised to also use those declarations as a suitable means of preventing conflicts of interest whenever appropriate, bearing in mind that the declarations contain information that could be used for that purpose, such as the information

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<sup>25</sup> Haiti expresses the following: “Publishing government officials’ asset declarations was already considered during the drafting, in 2008, of the bill on asset declarations, but Parliament rejected disclosure, preferring to keep them confidential.”

<sup>26</sup> [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_sc\\_amos.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_sc_amos.pdf)

requested on the asset declaration form regarding outstanding claims, debts and other existing obligations of the declarant, his/her spouse or partner, and their dependent children, and regarding the request that the amount of any outstanding claims, debts and other obligations be disclosed as well as the nature and name of the creditor or beneficiary. The Committee will make a recommendation in this regard (see recommendation “f” in section 2.4 of Chapter II (A) of this report).

[124] The Committee also feels that the Republic of Haiti could consider requiring even more information from the declarant to cover some additional matters involving information that could prove useful in preventing conflicts of interests, such as those provided for in the “Model Law on the Declaration of Interest, Income, Assets and Liabilities of Persons Performing Public Functions.” These include the declarant’s membership on boards of directors, administrative and supervisory boards, advisory boards, or any collegiate board, whether the position on the board is remunerated or honorary; and identification of any public posts or positions held by the declarant in the two years immediately preceding the declaration, whether paid or honorary, and as director, employee, consultant or representative of any commercial or nonprofit undertaking, specifying the organization that hired the official (see recommendation “g” in section 2.4 of Chapter II (A) of this report).

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

[125] In the response received from the Republic of Haiti in this respect,<sup>27</sup> the following information is provided:

[126] *“After compiling the data the ULCC ensures that it is preserved in a database designed for that purpose; the seven hundred ninety-one (791) declarants thus far (100%) are stored in the database. All members of the Government have filed their asset declarations. The information on the other categories of civil servants can be viewed at the ULCC website: [www.ulc.gouv.ht](http://www.ulc.gouv.ht).”*

[127] However, according to the ULCC’s 2012-2013 annual report,<sup>28</sup> the number of declarations received and the number of declarations pending receipt for the period from October 2012 to September 2013, is as follows:

<b>Categories</b>	<b>Number of forms received</b>	<b>Number of pending forms</b>
<b>President</b>	1	0
<b>Prime Minister</b>	1	0
<b>Ministers</b>	20	0
<b>Secretaries of State</b>	10	0
<b>Senators in the 48th Congress</b>	6	24
<b>Senators in the 49th Congress</b>	6	24
<b>Deputies in the 48th Congress</b>	33	66

<sup>27</sup> Haiti’s response to the questionnaire within the framework of the Fourth Round, p. 10.

<sup>28</sup> Annual Report of the Anti-Corruption Unit (ULCC) for the 2012-2013 Fiscal Period, p. 8.

<b>Deputies in the 49th Congress</b>	13	86
<b>Judges</b>	189	-
<b>Alternates/commissioners</b>	62	-
<b>Directors General and Deputies currently in office</b>	76	6
<b>Other political figures</b>	55	--
<b>Total</b>	472	--

[128] Based on the above information, the Committee observes that on the whole, approximately 70% of those required to file an asset declaration have done so; this includes senior officers in the executive and judicial branches of government. However, the Committee is troubled that the vast majority of senators and deputies who served in the 48th and 49th Congresses have not yet filed; according to what the Committee was told during the on-site visit, and that none of these senators or deputies has faced the penalties prescribed in the Law of February 12, 2008.

[129] Furthermore, that annual report also states the following: *“On May 9, 2013, the ULCC conveyed to the Minister of the Economy and Finance the list of directors general, deputy directors general and other officials (141 notifications from court officials) that did not file their asset declaration, so that one quarter (1/4) of their pay could be withheld. The ULCC is awaiting a reply from the MEF before taking the senior officers who have not fulfilled that legal obligation to criminal court, pursuant to the provisions of the law of February 12, 2008.”*<sup>29</sup>

[130] The fact that the ULCC is still waiting for a reply from the Ministry of the Economy and Finance (MEF) to enforce the penalty of withholding one fourth (1/4) of the officials’ salary would seem to suggest that in practice that are problems with actual enforcement of sanctions.

[131] Based on the information reported in the preceding paragraphs, the Committee strongly recommends that the Republic of Haiti consider taking the necessary measures to effectively and swiftly enforce the existing criminal and/or administrative penalties in the case of those who fail to comply with their obligation to file an asset declaration within the prescribed time period or who file late and/or report incomplete, inaccurate or false information (see recommendation “h” in section 2.4 of Chapter II (A) of this report).

[132] In this respect, it is important to note that during the on-site visit, some representatives of civil society were highly critical of the failure to enforce penalties in the case of those who do not comply with the duty to file an asset declaration, especially the ULCC’s difficulties in enforcing sanctions in the case of politicians like deputies and senators.<sup>30</sup>

[133] Moreover, the Committee notes that no information was presented in connection with articles 17 and 18 of the Law of February 12, 2008, concerning the number of officials who have faced the criminal penalty for filing an incomplete, inaccurate or false declaration.

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<sup>29</sup> Annual Report of the Anti-Corruption Unit (ULCC) for the 2012-2013 Fiscal Period, p. 9

<sup>30</sup> See the presentation by the Vice President of the National Association of Haitian Media (ANMH), available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_sc\\_harold.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_sc_harold.pdf)

[134] It is also noted that under Article 241 of the 1987 Constitution, it is up to the Government Commissioner (a representative of the Public Prosecution Service) to take the measures he/she deems necessary to verify the accuracy of an asset declaration.

[135] According to what was reported by the ULCC representatives during the on-site visit, *“the form that the clerk of the court must fill out only contains summary information from the declarant that needs no particular elaboration in order to be compiled and recorded.”*<sup>31</sup>

[136] Thus, since the information given by the declarant is not checked at the time the asset declaration is recorded by the clerk of the civil court, for the Committee it is essential that complete information be made available to it about the work being done by the Public Prosecution Service to check the accuracy of the asset declarations and the findings, as well as information about the enforcement of the penalties provided for in articles 17 and 18 of the Law. Unfortunately, the Committee did not have that information at its disposal, which makes any assessment impossible. The Committee will make a recommendation in this regard (see recommendation “i” in section 2.4 of Chapter II (A) of this report).

[137] The Committee also notes that the ULCC is to check for any changes in assets. However, during the on-site visit, the ULCC representatives reported the following: *“as for the analysis of the content of the declarations, based on samplings the ULCC reserved judgment until after the vote on the Law on Prevention and Repression of Corruption, which contains the provisions necessary to suppress illicit enrichment.”*<sup>32</sup> That law was enacted in May 2014, subsequent to the on-site visit.

[138] During the on-site visit the ULCC representatives also reported that *“[o]n April 4, 2013, the ULCC sent the office of the prosecutor assigned to the Port-au-Prince court of first instance a case involving a former director general suspected of filing a false asset declaration. During the investigation of complaints against the former official, it was discovered that he had failed to disclose the bank accounts held in the names of his underage children, which is a violation of Article 11 of the law on asset declarations.”*<sup>33</sup>

[139] Finally, apart from what was reported above, the Committee has no other information that has been processed in such a way as to enable a comprehensive evaluation of the results of the standards and mechanisms on this subject. The Committee will make recommendations in this regard (see general recommendations “b” and “c” in Chapter II (A) of this report).

## 2.4. Conclusions and Recommendations

[140] **The Republic of Haiti has considered and adopted measures intended to establish, maintain and strengthen systems for registering income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public, as described in section 2 of Chapter II (A) of this report.**

[141] In light of the comments made in that section, the Committee suggests that the Republic of Haiti consider the following recommendations:

- a) Establish and enforce regulations to govern the conditions, procedures and other relevant aspects that pertain to disclosure of asset declarations, in accordance with the

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<sup>31</sup> See the document presented by the ULCC during the on-site visit, p. 12, available at:

[http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_ulcc\\_rep.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_ulcc_rep.pdf)

<sup>32</sup> *Ibid.*, pp. 12-13.

<sup>33</sup> *Ibid.*, p. 14.

fundamental principles of the legal system of the Republic of Haiti (see section 2.2 of Chapter II (A) of this report).

- b) Consider establishing an obligation requiring that the asset declaration be updated or filed on a periodic basis (see section 2.2 of Chapter II (A) of this report).
- c) Consider making it mandatory for the various State institutions and agencies, when the ULCC so requests, to provide a list of those required to file asset declarations; also, establish appropriate penalties in the event of noncompliance or late compliance with that obligation (see section 2.2 of Chapter II (A) of this report).
- d) Publish the list of names of those who fail to comply with the obligation to file an asset declaration and update it periodically (see section 2.2 of Chapter II (A) of this report).
- e) Consider establishing administrative sanctions for those who fail to comply with the obligation to file an asset declaration within thirty (30) days of the date on which they leave public service; these sanctions might include fines and disqualification from any public office until such time as the final asset declaration is filed (see section 2.2 of Chapter II (A) of this report).
- f) Improve the systems for reviewing the content of the sworn asset declarations so that those declarations also serve as a useful tool for detecting and preventing conflicts of interest, where appropriate, and for detecting possible cases of illicit enrichment (see section 2.2 of Chapter II (A) of this report).
- g) Consider expanding the information requested from the declarants to include some additional matters involving information that might prove useful in preventing conflicts of interest, such as the declarant's membership on boards of directors, administrative and supervisory boards, advisory boards, or any collegiate board, whether the position be remunerated or honorary; and identification of any public posts or positions held by the declarant in the two years immediately preceding the declaration, whether paid or honorary, and as director, employee, consultant or representative of any commercial or nonprofit undertaking, specifying the organization the hired the official (see section 2.2 of Chapter II (A) of this report).
- h) Take the measures necessary to effectively and swiftly enforce the existing criminal and/or administrative penalties in the case of those who fail to comply with their obligation to file an asset declaration within the prescribed time period or who file late and/or report incomplete, inaccurate or false information (see section 2.3 of Chapter II (A) of this report).
- i) Publish results that reflect the work done by the Public Prosecution Service to check the accuracy of the asset declarations, as well as information about the enforcement of the penalties provided for in the Law of February 12, 2008 with a view to identifying challenges and recommending corrective measures (see section 2.3 of Chapter II (A) of this report).

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

### **3.1. GENERAL PARTICIPATION MECHANISMS**

#### **3.1.1. Existence of provisions in the legal framework and/or of other measures**

[142] The Republic of Haiti has a set of constitutional provisions that uphold principles and individual rights and guarantees that enable, facilitate and protect participation by civil society and nongovernmental organizations in efforts to combat corruption, such as the right of petition (Article 29) and the individual freedoms (articles 24 to 27.1), freedom of conscience (articles 28 to 29.1), freedom of expression (articles 30 to 30.2), and freedom of association and assembly (articles 31 to 31.3).

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

[143] Based on the information available to it, the Committee observes that Haiti's Constitution contains provisions that protect and promote the fundamental freedoms and rights of persons, which is an important foundation that enables civil society and nongovernmental organizations to operate freely and independently, thereby helping to prevent corruption.

[144] Although, in its response to the questionnaire,<sup>34</sup> the Republic of Haiti states that there is no legal framework in place to encourage civil society and nongovernmental organizations to participate in efforts to prevent corruption, it also reports that key component six (6) of its National Anti-Corruption Strategy involves a set of measures to strengthen the activity of the media and of civil society.<sup>35</sup>

[145] Nevertheless, and bearing in mind the categories to which the method for examining Convention Article III, paragraph 11 refers,<sup>36</sup> in each of the corresponding sections the Committee will have some observations and will make a number of specific recommendations on the subject.

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

[146] Because the country under review did not provide any information on the results in this area, a comprehensive evaluation cannot be done.

### **3.2. MECHANISMS FOR ACCESS TO INFORMATION**

#### **3.2.1. Existence of provisions in the legal framework and/or of other measures**

[147] The Republic of Haiti has certain provisions and measures relating to these mechanisms, such as Article 40 of the 1987 Constitution, which makes it incumbent upon the State to inform the public “*via the oral, written and televised media, in Creole and in French, of the laws, orders, decrees, international agreements, treaties and conventions, especially those that affect the national life, except for information pertaining to national security.*”

[148] Moreover, in the response to the questionnaire<sup>37</sup> it was reported that “*the Government informs the public of the activities it undertakes through a weekly publication of the Council of Government, which appears every Wednesday; it retransmits that information directly via Haitian National Radio and Television (RTNH); that programming is then rebroadcast by other private media outlets. Furthermore, every ministry and decentralized and/or autonomous State entity has its own website.*”

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<sup>34</sup> Haiti's response to the questionnaire within the framework of the Fourth Round, p. 11.

<sup>35</sup> National Anti-Corruption Strategy, p. 41. Available at: [http://www.oas.org/juridico/PDFs/mesicic4\\_hti\\_strat.pdf](http://www.oas.org/juridico/PDFs/mesicic4_hti_strat.pdf)

<sup>36</sup> Methodology for review of the implementation of the provisions of the Convention selected within the framework of the first round, Chapter V, D, (SG/MESICIC/doc.21/02).

<sup>37</sup> Haiti's response to the questionnaire within the framework of the Fourth Round, p. 12.

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

[149] In its response to the questionnaire,<sup>38</sup> the Republic of Haiti states that “*Nevertheless, Haiti does not yet have a law defining the right of access to information.*”

[150] The Committee observes that provisions that regulate the right of access to public information and requiring observance of that right are lacking. Taking into account the foregoing, the Committee will make the corresponding recommendations (see recommendations “a”, “b”, “c”, and “d” in section 3.2.4 of Chapter II (A) of this report).

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

[151] The country under review did not provide information regarding results in this area. Taking into account the foregoing, the Committee cannot carry out a comprehensive evaluation of this matter and will therefore make the corresponding recommendations (see general recommendations “b” and “c” in Chapter II (A) of this report).

### **3.2.4. Conclusions and Recommendations**

[152] **The Republic of Haiti has not yet considered and adopted measures intended to establish, maintain and strengthen mechanisms for access to information, as described in section 3.2 of Chapter II (A) of this report.**

[153] In light of the comments made in that section, the Committee suggests that the Republic of Haiti consider the following recommendations:

- a) Develop regulatory instruments that classify as public any information and documents pertaining to the performance of public sector organs and entities, with the exceptions prescribed by the law; and instruments that give every person the right to request information, to consult documents that are in the possession of or under the control of public institutions and that concern official measures, and the right to request a copy of them, with the exception of the cases protected by law (see section 3.2.2 of Chapter II (A) of this report).
- b) Develop and regulate procedures for receiving applications for access to information and responding to them in a prompt manner. For cases in which such applications are denied, a system of sanctions should be established to punish failure to provide information (see section 3.2.2 of Chapter II (A) of this report).
- c) Implement training and dissemination programs about the mechanisms for access to information, in order to make it easier for public servants and citizens to understand those mechanisms (see section 3.2.2 of Chapter II (A) of this report).
- d) Optimize the use of the available technology to facilitate access to public information (see section 3.2.2 of Chapter II (A) of this report).

## **3.3. MECHANISMS FOR CONSULTATION**

### **3.3.1. Existence of provisions in the legal framework and/or of other measures**

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<sup>38</sup> Haiti’s response to the questionnaire within the framework of the Fourth Round, p. 12.

[154] In Haiti's response to the questionnaire,<sup>39</sup> it writes that "*Article 6 of the decree of September 8, 2004, for creation of the ULCC, provides for the establishment of a joint advisory committee to promote cooperation between the public administration and civil society. However, the decree establishing that committee has not yet been published.*"

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

[155] Based on the information available to it, the Committee believes it is important that the Mixed Consultative Committee referenced in Article 6 of the decree creating the ULCC be established as soon as possible, while clearly specifying what its composition, mandate and authorities will be, in order to open up fora where nongovernmental organizations and civil society can express their views and submit proposals for consideration and, wherever appropriate, provide training and the instruments needed for those mechanisms to be implemented effectively. Taking into account the foregoing, the Committee will make recommendations in this regard (see recommendations "a" and "b" in section 3.3.4 of Chapter II (A) of this report).

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

[156] Considering that the country under review did not provide the information on these mechanisms that would have enabled the Committee to make a comprehensive evaluation of the results of the standards and mechanisms referred to above, it will make recommendations in this regard (see general recommendations "b" and "c" of Chapter II (A) of this report).

### **3.3.4. Conclusions and Recommendations**

[157] **The Republic of Haiti has not yet considered and adopted measures intended to establish, maintain and strengthen mechanisms for consulting civil society and nongovernmental organizations on efforts intended to prevent corruption, as described in section 3.3 of Chapter II (A) of this report.**

[158] In light of the comments made in that section, the Committee suggests that the Republic of Haiti consider the following recommendations:

- a) Issue a Presidential Decree clearly establishing the composition, mandate and authorities of the Mixed Consultative Committee created under Article 6 of the Decree establishing the ULCC, so as to enable a consultation mechanism to materialize that in turn will open up fora where nongovernmental organizations and civil society can express their views and submit proposals on preventing corruption (see section 3.3.2 of Chapter II (A) of this report).
- b) Design and put into practice programs to publicize the consultation mechanisms and, where appropriate, provide training and the instruments needed for those mechanisms to be implemented effectively (see section 3.3.2 of Chapter II (A) of this report).

## **3.4. MECHANISMS TO ENCOURAGE PARTICIPATION IN PUBLIC ADMINISTRATION**

### **3.4.1. Existence of provisions in the legal framework and/or of other measures**

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<sup>39</sup> Haiti's response to the questionnaire within the framework of the Fourth Round, p. 12.

[159] In Haiti's response to the questionnaire,<sup>40</sup> it indicates that "*Mechanisms are in place to encourage civil society and NGOs to actively participate in the adoption of public policies. In effect, the decree of February 16, 2005, on the preparation and execution of finance laws, provides that beginning in June of each year the Government shall publish the proposed budget for the coming fiscal period, which gives civil society organizations an opportunity to react to the proposal and formulate the proposed changes that they consider useful; for example, the Civil Society Initiative (ISC) and the Croissance Group (GC) participate quite regularly in the proposed budget following its publication. The same thing happens with most private media outlets.*"

[160] Also mentioned are, among others, the joint activities conducted by the Anti-Corruption Union and the *Fondation Héritage Pour Haïti* (the Haitian Chapter of Transparency International), such as activities to raise awareness and presentation of the proposed law on transparency and combatting corruption.<sup>41</sup>

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

[161] The measures taken by the country under review to encourage participation in public administration by civil society and nongovernmental organizations, as described above, represent progress toward achieving the Convention's purposes.

[162] Nevertheless, the Committee urges the country under review, taking its domestic legal system into account, to consider developing standards and procedures that establish, maintain and strengthen those mechanisms that enable civil society and nongovernmental organizations to take active part in the processes whereby public policies and decisions are taken, as part of the effort to prevent corruption; likewise, programs could be crafted and put into place to publicize these mechanisms. With the foregoing in mind, the Committee will make recommendations in this regard (see recommendations "a" and "b" in section 3.4.4 of Chapter II (A) of this report).

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

[163] As mentioned in the preceding section, the Committee believes that the joint activities conducted by the Anti-Corruption Unit and the *Fondation Héritage Pour Haïti* represent progress toward accomplishing the Convention's purposes. However, the Committee did not have any additional information that would have enabled it to carry out a comprehensive review of this matter. Therefore, the Committee will make recommendations in this regard (see general recommendations "b" and "c" of Chapter II (A) of this report).

### **3.4.4. Conclusions and Recommendations**

[164] **The Republic of Haiti has considered and adopted measures intended to establish, maintain and strengthen mechanisms that encourage participation in public administration by civil society and nongovernmental organizations, as described in section 3.4 of Chapter II (A) of this report.**

[165] In light of the comments made in that section, the Committee suggests that the Republic of Haiti consider the following recommendations:

- a) Develop, taking into account its domestic legal system, standards and procedures that establish, maintain and strengthen mechanisms to encourage the participation by civil society and nongovernmental organizations in the processes of adopting public policies and

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<sup>40</sup> Haiti's response to the questionnaire within the framework of the Fourth Round, p. 13.

<sup>41</sup> Haiti's response to the questionnaire within the framework of the Fourth Round, p. 13.

decisions, as part of the effort to prevent corruption (see section 3.4.2 of Chapter II (A) of this report).

- b) Craft and put into place specific programs to publicize the mechanisms to encourage participation in public administration (see section 3.4.2 of Chapter II (A) of this report).

### **3.5.MECHANISMS FOR PARTICIPATION IN THE FOLLOW-UP OF PUBLIC ADMINISTRATION**

#### **3.5.1. Existence of provisions in the legal framework and/or of other measures**

[166] Haiti's response to the questionnaire<sup>42</sup> states that "*for purposes of preparing the proposed Finance Law for the coming fiscal period, the decree of [February] 16, 2005 on preparation and enforcement of Finance Laws establishes a calendar of 15 points that fall between October 15 and June 30. That proposal is published to enable civil society organizations and nongovernment organizations (NGOs) to react.*

[167] *The information pertaining to the budget and execution of spending is published at the website of the Ministry of the Economy and Finance ([www.mefhaiti.gouv.ht](http://www.mefhaiti.gouv.ht)).*"

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

[168] The measures adopted by the country under review in connection with mechanisms to encourage civil society and the nongovernmental organizations referenced in the preceding section to participate in the follow-up of public administration represent progress toward accomplishing the purposes of the Convention.

[169] Nevertheless, the Committee is urging the country under review to consider developing, in keeping with its domestic legal system, standards and procedures that establish, maintain and strengthen those mechanisms that allow civil society and nongovernmental organizations to actively participate in the follow-up of public administration as part of the efforts intended to prevent corruption by promoting new forms of control by the public, such as citizen oversight committees to monitor public activities or public works. Also, programs to publicize these mechanisms can be designed and put into practice. Based on the foregoing, the Committee will make recommendations in this regard (see recommendations "a" and "b" in section 3.5.4 of Chapter II (A) of this report).

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

[170] In its response to the questionnaire, the country under review provides the following information on the results in this area: "*The Civil Society Initiative (ISC) has already published comments on the 2011-2012 finance bill. The ISC has also had a hand in improving management of the country's economy through the "PAGE" program, launched by the Ministry of the Economy and Finance with the support of the World Bank. Finally, the ISC has undertaken to follow up on the establishment of the Anti-Corruption Unit (ULCC) and the National Public Procurement Commission (CNMP) (ref: [www.isc.ht](http://www.isc.ht)).*"

[171] However, no additional information was provided concerning how the country under review takes account of any commentary made about the annual budget bills. As a result, a comprehensive evaluation of this matter cannot be carried out. The Committee will make the corresponding recommendations (see general recommendations "b" and "c", Chapter II (A) of this report).

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<sup>42</sup> Haiti's response to the questionnaire within the framework of the Fourth Round, p. 14.

### 3.5.4. Conclusions and Recommendations

[172] **The Republic of Haiti has considered and adopted measures intended to establish, maintain and strengthen mechanisms to encourage civil society and nongovernmental organizations to participate in the follow-up of public administration, as described in section 3.5 of Chapter II (A) of this report.**

[173] In light of the comments made in that section, the Committee suggests that the Republic of Haiti consider the following recommendations:

- a) Develop, taking into account its own domestic legal system, standards and procedures that establish, maintain and strengthen mechanisms to encourage civil society and non-governmental organizations to participate in the follow-up of public administration as part of the effort to prevent corruption by promoting new forms of social control, such as community oversight committees to oversee public activities or public works (see section 3.5.2 of Chapter II (A) of this report).
- b) Design and implement specific programs to publicize the mechanisms for encouraging participation in the follow-up of public administration (see section 3.5.3 of Chapter II (A) of this report).

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

### 4.1. MUTUAL ASSISTANCE

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

[174] The Republic of Haiti has provisions on this subject, among which the following should be noted:

[175] – The Law of November 11, 2013, which establishes penalties for money laundering and terrorism financing, whose Title V (articles 79 to 84) provides a legal framework on mutual assistance in criminal matters related to money laundering and terrorism financing (Article 79). The money laundering crimes include those stemming from the commission of a crime related to corruption and misappropriation of public funds by persons in public service (Article 8 (k)).

[176] As for the procedure by which to request mutual assistance, Article 80 provides that the investigative procedures and preliminary proceedings are to be conducted in accordance with Haitian law. Article 81 authorizes the use of precautionary or preventive measures against funds or property associated with the crime or crimes named in the request for mutual assistance and provides that *“The competent judge hearing a case involving a request for legal assistance seeking precautionary measures shall order the requested measures in accordance with Haitian law. He/she may also enforce the measure whose effects are most similar to the measures requested. If the request is framed in general terms, the competent judge shall order the most appropriate measures under the law.”*

[177] *In the event of opposition to the enforcement of measures not contemplated under Haitian law, the competent judge hearing a request for enforcement of precautionary measures ordered abroad may replace the measures ordered abroad with measures allowed under Haitian law whose effects are most like the effects of the measures whose enforcement is requested (...)*”

[178] Under Article 82 of that law, *“In the case of a request for mutual assistance to issue an order of confiscation, the court shall act at the behest of the authority in charge of the inquiry. The order of*

*confiscation must be against an asset that constitutes the proceeds or the instrument of a crime and that is within Haitian territory or is an obligation to pay a given sum of money that matches the value of that asset.*” Furthermore, under Article 83, in the case of trials conducted abroad, the Haitian State has the power to decide the disposition of property seized within its territory at the request of the foreign authority, unless an agreement signed with the requesting government provides otherwise.

[179] – In February 2008, Haiti signed a Memorandum of Understanding with the OAS General Secretariat to Participate in the OAS’ Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition.<sup>43</sup>

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

[180] The provisions cited in the preceding section can help achieve the Convention’s purposes of promoting and facilitating mutual assistance among the States Parties, and can serve the specific ends of the Convention that pertain to the investigation and prosecution of acts of corruption, provided they are used for that purpose.

[181] In this respect, the Committee would like to highlight the importance that the provisions that the Republic of Haiti has on the subject of mutual assistance, and those of the Inter-American Convention against Corruption, are enforced in actual cases of acts of corruption, which presupposes an adequate command of their provisions by those competent to enforce them. This is true not just from the standpoint of Haiti as a requested country, but also –and most especially- as a country seeking the legal cooperation of other States in criminal matters. Taking the foregoing into account, the Committee will make a recommendation in this regard (see recommendation “a” in section 4.1.4 of Chapter II (A) of this report).

[182] Furthermore, the Committee believes that Haiti should consider ratifying the Inter-American Convention on Mutual Assistance in Criminal Matters and participate actively in the Meetings of Ministers of Justice or Other Ministers or Attorneys General of the Americas (REMJA) and its Working Group on Legal Cooperation in Criminal Matters (see recommendation “b” in Section 4.1.4 of Chapter II (A) of this report).

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

[183] The country under review did not provide information on the results in this area, thereby precluding a comprehensive review of the matter. Therefore, the Committee will make the corresponding recommendations (see general recommendations “b” and “c” of Chapter II (A) of this report).

[184] Moreover, during the on-site visit, the Director General of the Ministry of Justice and Public Security (MJSP) was asked to provide information on requests for mutual assistance in criminal matters. Unfortunately, the Committee did not receive any response to its request for information.

[185] The Committee believes it is important for the Republic of Haiti to design and implement an information program that enables its authorities to constantly follow up on requests for mutual assistance that concern acts of corruption and, in particular, those contemplated in the Convention (see recommendation “c” in Section 4.1.4 of Chapter II (A) of this report).

#### **4.1.4. Conclusions and Recommendations**

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<sup>43</sup> Text of the Memorandum of Understanding: [http://www.oas.org/juridico/PDFs/mesicic4\\_hti\\_accord.pdf](http://www.oas.org/juridico/PDFs/mesicic4_hti_accord.pdf). For more information on the OAS’ Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition, see: <http://www.oas.org/juridico/mla/index.html>

[186] **The Republic of Haiti has considered and adopted certain measures related to mutual assistance, in accordance with the provision contained in Article XIV of the Convention and as described and reviewed in Section 4.1 of Chapter II (A) of this report.**

[187] In light of the comments made in that section, the Committee suggests that the Republic of Haiti consider the following recommendations:

- a) Design and implement a comprehensive training and dissemination program for the competent authorities and officials, so that they are made aware of and are able to apply the provisions contained in the Convention and in other treaties that the Republic of Haiti has signed that concern mutual assistance in the investigation or prosecution of acts of corruption (see section 4.1.2 of Chapter II (A) of this report).
- b) Consider the possibility of ratifying the Inter-American Convention on Mutual Assistance in Criminal Matters and participate actively in the Meetings of Ministers of Justice or Other Ministers or Attorneys General of the Americas (REMJA) and its Working Group on Legal Cooperation in Criminal Matters (see section 4.1.2 of Chapter II (A) of this report).
- c) Design and implement an information program that enables Haitian authorities to constantly follow up on requests for mutual assistance that concern acts of corruption, in particular, those contemplated in the Convention (see section 4.1.2 of Chapter II (A) of this report).

## **4.2. MUTUAL TECHNICAL COOPERATION**

### **4.2.1. Existence of provisions in the legal framework and/or of other measures**

[188] In Haiti's response to the questionnaire on this subject,<sup>44</sup> it observes that "*Under the provisions of Article 276.2 of the Constitution, conventions ratified by Haiti become part of a legal framework suitable for broad mutual technical cooperation with other States.*"

[189] It was also reported that the ULCC has received budgetary support from the World Bank in the amount of five hundred thousand (500,000) U.S. dollars.<sup>45</sup>

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

[190] The Committee is pleased to find that, according to the information provided in the response received from the country under review, the support of international organizations and cooperation agencies has been enlisted to provide Haiti with assistance in its fight against corruption. Furthermore, although not expressly mentioned in the response to the questionnaire, the Committee has learned of the support that some States Parties to the MESICIC have provided to Haiti in this area, which is important for the purposes stipulated in the Convention.

[191] However, the Committee believes that the Republic of Haiti might consider the idea of identifying and prioritizing specific areas in which it believes technical cooperation from other States parties is needed in order to build up Haiti's capacity to prevent, detect, investigate and punish acts of corruption. The Committee also encourages the other States Parties to redouble their efforts to share

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<sup>44</sup> Haiti's response to the questionnaire within the framework of the Fourth Round, p. 15.

<sup>45</sup> Haiti's response to the questionnaire within the framework of the Fourth Round, p. 32.

technical cooperation with Haiti on the most effective ways and means to fulfill the Convention's purposes. The Committee will make a recommendation in this regard (see recommendation in section 4.2.4 of Chapter II (A) of this report).

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

[192] Based on the comments made in section 4.2.2 above, the Committee applauds the fact that the country under review has developed cooperation programs to combat corruption and believes the State would be well served to continue the efforts that this involves.

[193] However, because no additional information was provided concerning the results in this area, the Committee cannot carry out a comprehensive evaluation of the matter and will therefore make the corresponding recommendations (see general recommendations "b" and "c" of Chapter II (A) of this report).

#### **4.2.4. Conclusions and Recommendations**

[194] **The Republic of Haiti has considered and adopted certain measures in the area of mutual technical cooperation, in keeping with Article XIV of the Convention and as described and examined in section 4.2 of Chapter II (A) of this report.**

[195] In light of the comments made in that section, the Committee suggests that the Republic of Haiti consider the following recommendations:

- Identify and prioritize specific areas in which the Republic of Haiti believes it needs technical cooperation from other States parties in order to strengthen its capacity to prevent, detect, investigate and punish acts of corruption (see section 4.2.2 of Chapter II (A) of this report).

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

#### **5.1. Existence of provisions in the legal framework and/or of other measures**

[196] In its response to the questionnaire,<sup>46</sup> the Republic of Haiti indicates that under Haitian law, the Central Authority for mutual assistance is the Minister of Justice and Public Security.

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

[197] The fact that the Republic of Haiti has designated the Minister of Justice and Public Security as an authority responsible for filing and receiving requests for mutual legal assistance is a step forward in the implementation of the Convention, given the importance attached to fulfillment of the obligations assigned to it.

[198] Nevertheless, the OAS General Secretariat has not received formal notification of the designation of a central authority to serve as the conduit for the mutual assistance and mutual technical cooperation provided for in the Convention; designating a central authority would facilitate communication and coordination with the central authorities of other States Parties for those purposes. The Committee will make a recommendation on this point (see recommendation "a" in section 5.4 of Chapter II (A) of this report).

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<sup>46</sup> Haiti's response to the questionnaire within the framework of the Fourth Round, p. 16.

[199] Also, during the on-site visit, the Director General of the Ministry of Justice and Public Security (MJSP) observed that the Ministry has the human and financial resources needed to properly formulate and receive requests for mutual assistance made pursuant to the Convention. However, in its response to the questionnaire,<sup>47</sup> Haiti reports that the Ministry does not have an office or service for international legal cooperation specifically charged with handling all requests for legal assistance received from foreign jurisdictions. The Committee will make a recommendation in this regard (see recommendation “b” in section 5.4 of Chapter II (A) of this report).

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

[200] Please see section 4.1.3 above.

### **5.4. Conclusions and Recommendations**

[201] **The Republic of Haiti has considered and adopted certain measures relating to the designation of the central authorities referred to in Article XVIII of the Convention, as described and reviewed in section 5 of Chapter II (A) of this report.**

[202] In light of the comments made in that section, the Committee suggests that the Republic of Haiti consider the following recommendations:

- a) Report the designation of central authorities to the OAS General Secretariat, according to the formalities provided for that purpose (see section 5.2 of Chapter II (A) of this report).<sup>48</sup>
- b) Establish a unit or office of legal cooperation within the Ministry of Justice and Public Security and ensure that said authority has sufficient resources and technical preparation to promptly formulate and respond to requests for assistance and cooperation made pursuant to the Convention (see section 5.2 of Chapter II (A) of this report).

## **6. GENERAL RECOMMENDATIONS**

[203] Based on the review and contributions made throughout this report, the Committee suggests that the Republic of Haiti consider the following general recommendations:

- a) Design and implement, where appropriate, training programs for public servants responsible for application of the systems, standards, measures, and mechanisms considered in this Report, in order to ensure that they are adequately understood, managed and implemented.
- b) Select and develop procedures and indicators, as appropriate, for verifying follow-up of the recommendations contained in this Report, and notify the Committee accordingly by way of the Technical Secretariat. For said purposes, the country under review could consider taking into account the list of the most widely used indicators applicable to the inter-American system and that were available for selection by the country under review, and which have been published by the Technical Secretariat of the Committee at the OAS website, as well as information resulting from the review of the mechanisms developed pursuant to recommendation 6(c) below.

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<sup>47</sup> Haiti’s response to the questionnaire within the framework of the Fourth Round, p. 16.

<sup>48</sup> OAS Form for Designation of the Central Authority under OAS Conventions, available at: [https://www.oas.org/dil/esp/OAS\\_form\\_designacion\\_autoridad\\_central.doc](https://www.oas.org/dil/esp/OAS_form_designacion_autoridad_central.doc)

- c) Develop, as appropriate and where none exists, procedures to review the mechanisms mentioned herein and the recommendations contained herein.

## 7. FOLLOW-UP

[204] The Committee will consider the periodic reports from the Republic of Haiti on its progress in implementing the above recommendations in the framework of the Committee's plenary meetings, as prescribed in Article 29 of the Rules of Procedure.

[205] The Committee will also review the progress made with implementation of the recommendations made in the present report, as prescribed in Articles 31 and, as necessary, 32 of the Rules of Procedure.

### **B) REVIEW OF THE IMPLEMENTATION OF THE CONVENTION PROVISION SELECTED FOR THE FOURTH ROUND**

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

[206] The Republic of Haiti has a set of oversight bodies<sup>49</sup> with a view to developing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts, among which the following are highlighted: the Superior Court of Accounts and of Administrative Disputes (CSC/CA); the Anti-Corruption Unit (ULCC); the Central Financial Investigations Unit (UCREF); the National Public Procurement Commission (CNMP); the General Inspectorate of Finance (IGF); the Superior Council of the Judicial Branch (CSPJ), the judicial police and the corps of auditors of public accounts.

[207] The following is a brief description of the purposes and functions of the five bodies selected by the Republic of Haiti for review in the present report.

[208] The Anti-Corruption Unit (ULCC): the ULCC was created by a decree of September 8, 2004 (*Moniteur* N° 6, Monday, September 13, 2004). It is an autonomous institution under the protection of the Ministry of the Economy and Finance (MEF). Its mission is to focus on combatting all forms of corruption in public administration (ref: Article 2).

[209] The Superior Court of Accounts and of Administrative Disputes (CSC/CA): Under the decree of November 23, 2005 (*Moniteur* N° 24, Friday, March 10, 2006), the CSC/CA has the authority to adjudge the accounts of the *de facto* and *de jure* auditors of accounts, and enter debit rulings against defaulters or issue a *quietus* clearing the official of any liability. If a debit ruling is entered against the defaulter, the case files are referred to the Public Prosecution Service to take the necessary steps toward the

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<sup>49</sup> The Methodology approved for the Fourth Round (document SG/MESICIC/doc.289/11 rev.2) states the following in Section IV, in reference to Article III, paragraph 9 of the Convention which concerns oversight bodies: "With respect to the foregoing provision, the review shall consider if the measures adopted by the States Parties in this respect are designed "to create, maintain and strengthen" oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts, as provided in Article III (9) of the Convention. - To that end, first, note will be made of the oversight bodies in the country concerned that would be relevant for the purposes of the above provision of the Convention, that is, for preventing, detecting, punishing, and eradicating corrupt acts. - Second, bearing in mind that in the States Parties to the MESICIC there are numerous oversight bodies that have been assigned the aforementioned purposes, each country will select four or five such bodies, taking into account their institutional importance and that their assigned functions encompass one or more of the purposes of preventing, detecting, punishing, and eradicating corrupt acts that trigger disciplinary; administrative; financial or civil, and criminal responsibility."

corresponding criminal proceedings. If the official in question is a principal authorizing officer (a minister), the case file is referred to the Legislature. It is an independent and autonomous institution.

[210] The National Public Procurement Commission (CNMP): The mission of the CNMP, created by a decree of November 23, 2004, is to see that public funds are properly used in public procurement. Under a law of June 10, 2009 (*Moniteur* N° 78, Tuesday, July 28, 2009), which repealed the aforementioned decree, the CNMP regulates and controls the system for processing public procurement and public works contracts (Art. 9).

[211] The General Inspectorate of Finance (IGF): The IGF is a decentralized body of the Ministry of the Economy and Finance (MEF). Created by a decree of March 17, 2006 (*Moniteur* N° 47 of May 25, 2006), its main mission is to verify, control and implement, *a priori*, the technical, financial and administrative auditing in the whole of Public Administration (Art. 2).

[212] The Superior Council of the Judicial Branch (CSPJ): the mission of the CSPJ is to oversee observance of the disciplinary rules by members of the judiciary. Under Article 2 of the law that creates the CSPJ, it is also the Judicial Branch's administrative body (*Moniteur* N° 112, Thursday, December 20, 2007).

## **1. THE ANTI-CORRUPTION UNIT (ULCC)**

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

[213] The Anti-Corruption Unit (ULCC) has a set of provisions in its legal framework, as well as other measures concerning, among others, the following:

[214] Created by the Decree of September 8, 2004, the ULCC is an administrative body with administrative and financial autonomy, operating under the supervision of the Ministry of the Economy and Finance (MEF). It has its own legal personality and competence throughout the Republic of Haiti (Article 1). Its main mission is to combat corruption, in all its forms, in the public administration (Article 2).

[215] The ULCC is headquartered in Port-au-Prince, but has five regional offices as well (in Cap-Haitien, Cayes, Hinche, Miragoâne, and Saint-Marc). Its functions are spelled out in Article 4 of the Decree of September 8, 2004, and include, *inter alia*, that of crafting and implementing a strategy for combatting corruption; compiling anti-corruption laws and proposing amendments to the existing anti-corruption laws or new laws; and monitoring for observance of the Inter-American Convention against Corruption.

[216] The ULCC's decisions are administrative in nature and are taken by a Board of Directors composed of the Director General, the Director of Operations and the Administrative and Financial Director. Appeals to challenge those decisions are to be filed with the Administration Council, which has three members and is chaired by the Minister of the Economy and Finance (Article 5). The Board of Directors' main functions are set forth in Article 7.

[217] The Director General of the ULCC is appointed by an executive order adopted by the Council of Ministers (Article 8) and may be replaced at any time. The Director General and ULCC officials are vested with the authorities given to officers in the Judicial Police (OPJ). They may, in effect, conduct investigations and inquiries into persons suspected of corruption. They are authorized to detect corruption-related offenses, to compile the corresponding evidence and to pursue the authors and bring them to justice (Article 9).

[218] Under Article 12, paragraph 2 of the Decree of September 8, 2004, ULCC officials may, acting on a written order from the Director General and for purposes of establishing the commission of crimes of corruption, compile evidence, conduct inquiries and investigations of all public servants and inspect the bank accounts or other finances of any person suspected of corruption or of his/her relatives or front-men. Furthermore, Article 20 of the Law on Prevention and Repression of Corruption (Law of March 12, 2014) provides that banking or professional secrecy cannot be invoked as grounds for refusing to provide that information to the ULCC.

[219] As for human resources, Article 10 of the Decree of September 8, 2004, provides for the establishment of a Specific Statute for ULCC Officials. However, according to the information received during the on-site visit, the order establishing this Specific Statute has not been issued. Instead, the law currently being applied in the case of ULCC officials is the Decree of May 17, 2005, establishing the General Civil Service Statute. That law provides the specific cases of disqualification or incompatibility that apply to civil servants in general. The order of April 2, 2013, which establishes the contracting methods, also applies to ULCC officials.

[220] The Director of Operations and the Administrative and Financial Director are appointed by the Director General. They may only be removed from their posts for the causes indicated in the decree of May 17, 2005, concerning the civil service. They may be promoted to their position internally or win the position on a competitive basis.

[221] In addition to the disciplinary proceedings provided for in the 2005 decree on the civil service, legal action can also be brought against ULCC officials in correctional court in the event of a violation of the institutional secrecy and confidentiality duty, pursuant to Article 18 of the Decree of September 8, 2004. According to what was reported by the ULCC representatives during the on-site visit, no cases of this type have come up since the Unit's establishment.

[222] The ULCC has one hundred fifteen (115) employees: nine-five (95) civil servants and twenty (20) contract personnel. The main office has a staff of seventy-one (71). There are forty-four (44) employees in the five (5) regional offices.

[223] As for training, during the on-site visit the ULCC representatives supplied a list of all training activities between 2009 and March 2014 in which its staff participated, both in Haiti and abroad. The training concerned such relevant topics as ethics, transparency, financial investigation, accountability, investigative techniques and others.<sup>50</sup>

[224] The manuals or documented procedures for performing the ULCC's tasks include its Internal Regulations<sup>51</sup> and a circular about the procedure to be followed in handling cases, from the time they are received up to and including the report declaring the case closed.<sup>52</sup> Furthermore, the investigative procedures are established in the Code of Criminal Investigation. Also, under Article 19 of the Law on Prevention and Repression of Corruption, the investigative techniques provided for under the Law on Money Laundering apply also to investigations into acts of corruption.<sup>53</sup>

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<sup>50</sup> For more information, see: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_ulcc\\_rep.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_ulcc_rep.pdf) and [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_ulcc\\_form.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_ulcc_form.pdf)

<sup>51</sup> Available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_ulcc\\_reg.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_ulcc_reg.pdf)

<sup>52</sup> Available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_ulcc\\_enq.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_ulcc_enq.pdf)

<sup>53</sup> Under Article 38 of the Law on penalties that apply in the case of money laundering and terrorism financing activities, “ *In order to obtain evidence of money laundering or terrorism financing, the examining judge presiding over the case may, as part of the inquiry and for a specified period of time, order the following: a) monitoring of bank accounts and other similar accounts; b)*

[225] Furthermore, the National Anti-Corruption Strategy<sup>54</sup> developed by the ULCC and adopted by the Council of Ministers in 2009, provides general and specific objectives calculated to prevent and combat corruption and a plan of action for waging that fight.

[226] The ULCC has a web page<sup>55</sup> to keep the public informed of its activities. There it also provides the public with special services, such as an electronic form for filing complaints.<sup>56</sup> The website is also used to publish various documents, such as laws, anti-corruption strategy, annual reports, surveys and other information pertaining to the ULCC's performance. During the on-site visit, the Committee was also told that the ULCC organizes informal talks and presentations on its activities for audiences that include students, representatives of the private sector and the general public.<sup>57</sup>

[227] In addition, Article 6 of the Decree of September 8, 2004, authorizes the Ministry of the Economy and Finance (MEF) to establish a mixed consultative committee to promote cooperation among the various branches of government, public enterprise and civil society.

[228] As for the mechanisms for internal control, during the on-site visit the Committee was told that there is no internal auditing unit within the ULCC. However, according to subparagraph 9 of Article 7 of the Decree of September 8, 2004, the Board of Directors of the ULCC is accountable to the MEF and required to file quarterly reports.

[229] As for budgetary resources, according to the information requested and received during the on-site visit, the total annual budget (operating budget plus investment budget) earmarked for the ULCC in the last five years is the following (in Haitian gourdes):<sup>58</sup> G51,000,000 (2008-9); G51,000,000 (2009-10); G51,000,000 (2010-11); G60,000,000 (2011-12); and G\$75,000,000 (2012-13).<sup>59</sup> The ULCC has received budgetary assistance from the World Bank in the amount of five hundred thousand (500,000) U. S. dollars.

[230] As for coordination mechanisms, according to subparagraph 5 of Article 7 of the decree of September 8, 2004, the main functions of the ULCC Board of Directors include *referral of cases to the judicial authorities following an investigation into facts that may constitute crimes of corruption, so that legal action can be brought and ensure that the suspects are prosecuted.*

[231] During the on-site visit, it was explained that the ULCC does not have the competence to enforce penalties in cases of corruption. Its mission is to conduct investigations and, where appropriate, relay the case files to the judicial authorities. The ULCC conducts its investigations on the basis of complaints filed alleging acts of corruption committed by civil service personnel. Furthermore, it can conduct investigations pursuant to a letter rogatory from the Government Commissioner or examining judge.

[232] For its part, Article 11 of the Decree of September 8, 2004, provides that ULCC personnel can request the help of the police for purposes of an investigation.

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*access to data processing systems, networks and servers; c) audio or video taping or photographing of acts and behavior or conversations, and d) interception and confiscation of mail."*

<sup>54</sup> Available at: [http://www.oas.org/juridico/PDFs/mesicic4\\_hti\\_strat.pdf](http://www.oas.org/juridico/PDFs/mesicic4_hti_strat.pdf)

<sup>55</sup> <http://ulcc.gouv.ht/>

<sup>56</sup> [http://ulcc.gouv.ht/?page\\_id=37](http://ulcc.gouv.ht/?page_id=37)

<sup>57</sup> Available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_ulcc\\_rep.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_ulcc_rep.pdf)

<sup>58</sup> 1 U.S. dollar = approximately 44 Haitian gourdes (as of May 27, 2014).

<sup>59</sup> During the on-site visit, the Committee was informed that there were plans to double the ULCC's budget in 2013-14. However, as of April 2014, the national budget for 2013-14 had not been approved. It was reported that, under Haitian law, until the budget for the current fiscal year is approved, the budget approved for the previous year is used. See complete information on the ULCC's budget at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_ulcc\\_rep.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_ulcc_rep.pdf).

[233] During the visit the Committee was also informed that there are no inter-institutional agreements on the subject of corruption, nor any single body charged with settling conflicts of jurisdiction. It was noted, however, that “*there are no conflicts of jurisdiction since the Public Prosecution Service is the organ charged with prosecuting cases involving repression of crime and illegal acts (...) In effect, the ULCC works for the Public Prosecution Service. If the ULCC is seized of a complaint at the same time as the Public Prosecution Service, the ULCC leaves the investigation in the hands of the Public Prosecution Service.*”<sup>60</sup>

[234] Finally, in June 2012 the Haitian Government established an inter-institutional committee to combat contraband, tax fraud, money laundering and corruption, coordinated by the Director General of the ULCC and composed also of the Directors General of the General Customs Administration (AGD), the Office of the Director General of Taxation (DGI), the central financial investigations unit (UCREF), the Government Commissioner attached to the court of first instance of the jurisdiction in question and the Haitian National Police (PNH).

[235] Furthermore, on June 26, 2013, the Prime Minister appointed the ULCC’s Director General to coordinate the sectorial public procurement working group, also composed of the directors of the IGF, the CNMP and the CSC/CA.

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

[236] The ULCC has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 1.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures:

[237] First, during the on-site visit, the ULCC informed that it does not have the power to conduct investigations on its own initiative; instead it can only investigate complaints that come to it from the public, the Government Commissioners (Public Prosecution Service) or the Examining Judges.

[238] In this regard, following the May 2014 enactment of the Law on Prevention and Repression of Corruption, which criminalizes, *inter alia*, illicit enrichment, the Committee believes it is essential for the ULCC to be strengthened by considering providing it with the authority to conduct investigations on its own initiative so that it can effectively enforce the new law. The Committee will make a recommendation in this regard (see recommendation 1.4.1 in section 1.4 of Chapter II (B) of this report).

[239] Second, the Committee notes that some members of the Board and committees established under the Decree of September 8, 2004, and under the terms of the National Anti-Corruption Strategy, have not yet been constituted.

[240] For example, the ULCC’s Administration Council, established under Article 5 of the Decree of September 8, 2004, has not yet been set up. Without the Administration Council there is no way to appeal a decision by the Board of Directors to close an investigation. The Committee will make a recommendation in this regard (see recommendation 1.4.2 in section 1.4 of Chapter II (B) of this Report).

[241] The Consultative Committee intended to promote cooperation among the various branches of government, public enterprise and civil society has not been set up either. Its composition, mandate and

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<sup>60</sup> For more information on the mechanisms enabling institutional coordination between the ULCC and other Haitian oversight bodies, see: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_ulcc\\_rep.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_ulcc_rep.pdf)

authorities were to have been approved by executive order (“*arrêté Présidentiel*”) following an evaluation of the ULCC’s first year of activity.

[242] Although the Committee recognizes the ULCC’s willingness to work with civil society, which various members of civil society underscored during the on-site visit and as reflected, for example, in the Declaration of Port-au-Prince<sup>61</sup> and the process whereby the Law on Prevention and Repression of Corruption was drafted, the Committee believes that institutionalizing the involvement of civil society, public enterprise and the various branches of government would strengthen the effort to prevent and combat corruption in Haiti. The Committee will make a recommendation in this regard (see recommendation 1.4.3 in section 1.4 of Chapter II (B) of this report).

[243] Furthermore, the National Anti-Corruption Strategy calls for the creation of a follow-up mechanism, in the following terms:

[244] *“The executive board, composed of representatives from the various sectors participating directly in the fight against corruption in Haiti, shall be in charge of follow-up and evaluation of the strategy. Civil society, representatives from government, the media and NGOs will be among the principal partners in that fight. The ULCC will manage a database containing statistical data on the proposals prepared to determine what the key components of the strategy will be.”*

[245] Given the foregoing, and based on the information available to it, the Committee observes that said executive board has not yet been set up. The Committee believes that it might be beneficial to follow-up on the strategy, featuring civil society participation and evaluating the progress and challenges encountered so as to update, whenever necessary, the strategy’s content and plan of action. The Committee will make recommendations in this regard (see recommendations 1.4.4 and 1.4.5 in section 1.4 of Chapter II (B) of this report).

[246] Third, concerning the ULCC’s budget, the Committee notes that while it has been gradually increasing in the last five years, it represents only 0.057% of the national budget; after a drop in 2011-12, that percentage has gradually increased from 0.048% in 2010-11 to 0.057% in 2012-13.

[247] During the on-site visit, the representatives from the ULCC highlighted the main difficulties that the Unit encounters. One is the inadequacy of the ULCC headquarters in Port-au-Prince. According to the ULCC representatives, the physical space is not sufficient to accommodate the Unit’s full staff, which has meant that its staff has to work on shifts.

[248] Another significant challenge is the ULCC’s decentralization. It was reported that in addition to the existing five regional offices, the ULCC plans to open another four regional offices in the years ahead. However, the existing regional offices already have difficulty hiring personnel, for two main reasons: one is the lack of trained personnel at those offices; the other difficulty, which is not exclusive to the ULCC, is reportedly the low wages paid by the Haitian civil service, which can be as much as three times less than what NGOs pay, making it difficult to hire trained personnel and/or retain those already trained.

[249] Given the foregoing, and considering the ULCC’s important role in preventing and repressing corruption and its need for infrastructure and the human and financial resources necessary to discharge its responsibilities, the Committee will make a recommendation in this regard (see recommendation 1.4.6 in section 1.4 of Chapter II (B) of this report).

[250] Fourth, the Committee found two reports on the ULCC’s activities: one for the period 2004-2011 and another for the period 2012-13, both published at the ULCC’s web page. However, the Committee

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<sup>61</sup> Available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_ulcc\\_dec.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_ulcc_dec.pdf)

was unable to find any legal provision requiring the ULCC to prepare and publish annual reports, or specifying what the contents of such reports must be. As a result, the ULCC has published only two “annual” reports in its ten years of existence.

[251] The Committee also believes that it would be helpful for the ULCC’s annual reports to include information on the current status of implementation of each of the key components of the National Anti-Corruption Strategy, an account of the investigations concluded and sent to the Judicial Branch and/or to the competent organs like the Public Prosecution Service or the Superior Court of Accounts and Administrative Disputes, and the current status of those inquiries. This would enable the public to identify possible stumbling blocks to the prosecution and/or punishment of cases under ULCC investigation. The Committee will make a recommendation in this regard (see recommendation 1.4.7 in section 1.4 of Chapter II (B) of this report).

[252] Fifth, on the question of inter-institutional cooperation measures, the Committee observes that the Director of the ULCC has coordinated important initiatives like the Inter-Institutional Committee to Combat Contraband, Tax Fraud, Money Laundering and Corruption, and the Sectorial Working Group on Public Procurement, established in 2012 and 2013, respectively.

[253] Nevertheless, during the on-site visit, it was reported that under Article 8 of the Code of Criminal Investigation, the ULCC and the Judicial Police have shared authority to investigate acts of corruption criminalized under Haitian criminal law.<sup>62</sup>

[254] On this matter, the Committee believes it is essential to consider establishing formal mechanisms enabling cooperation between the ULCC and the organs and entities of the Judicial Police in Haiti, so as to avoid duplicating investigations and wasting resources and, should conflicts of jurisdiction arise, to ensure that the ULCC, given its area of expertise, is assigned priority status for purposes of investigating acts of corruption. The Committee will make a recommendation in this regard (see recommendation 1.4.8 in section 1.4 of Chapter II (B) of this report).

[255] Sixth, the Committee believes it is essential for the country under review to consider adopting a Specific Statute for ULCC Personnel, in keeping with Article 10 of the Decree of September 8, 2004, as well as a manual of positions, containing profiles describing the posts within the ULCC. The Committee will make a recommendation in this regard (see recommendation 1.4.9 in section 1.4 of Chapter II (B) of this report).

[256] Seventh, the Committee suggests that were a guide to be prepared and published, in French and Creole, it would help those interested in filing a complaint concerning acts of corruption. The guide should explain the procedures to be followed and the type of information needed from the complainant so that his/her complaint can be useful to the ULCC’s investigative work. The Committee will make a recommendation in this regard (see recommendation 1.4.10 in section 1.4 of Chapter II (B) of this report).

[257] The Committee reiterates the recommendation made in section 1.2.4 of Chapter II (A) of this report, about the need for the country under review to consider publicizing the existing mechanisms for filing complaints of acts of corruption, like the “5656” telephone line, so as to encourage their use, especially by citizens who do not have internet access or who do not know how to read or write.

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<sup>62</sup> Under Article 9 of the Code of Criminal Investigation, the functions of Judicial Police are performed by the Public Prosecution Service, the examining judges, justices of the peace, agents of the rural and urban police forces, and agents of the social police under the Institute of Social Welfare and Investigations.

[258] Finally, the Committee takes note of the important training activities in which ULCC personnel participated on issues pertaining to prevention and repression of corruption, especially regarding monitoring for any increases in civil servants' net worth.

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

[259] Through Haiti's response to the questionnaire and the on-site visit, the Committee compiled information regarding the ULCC's results, among which the following are noted:

[260] First, Haiti's response<sup>63</sup> describes the various measures and programs undertaken by the ULCC to prevent corruption, salient among them the drafting of the bill on prevention and repression of corruption;<sup>64</sup> preparation of the National Anti-Corruption Strategy; a study done on the extent of corruption in transactions between the public sector and private sector; organization of workshops to raise awareness of and circulate information about the problem of corruption; airing of brief public-service announcements on radio and television; and involvement in radio and television programs, public discourse, seminars and workshops to raise awareness among the various members of civil society and educate them about the fight to combat corruption in Haiti.<sup>65</sup>

[261] The Committee believes that this information demonstrates that important measures have been taken within the ULCC for the purpose of preventing acts of corruption and in furtherance of its assigned functions in this regard.

[262] However, the Committee found that whereas information is presented on pages 6 to 8 of the ULCC's 2004-2011 Report on the Status of the Fight against Corruption, along with a table summarizing the public awareness campaigns that the ULCC conducted between 2004 and 2011,<sup>66</sup> the Unit's 2012-2013 Annual Report does not contain similar information and reports only briefly about the public awareness campaigns conducted by the ULCC's provincial offices.<sup>67</sup>

[263] The ULCC representatives reported the following during the on-site visit: *"Since 2011, the ULCC has been focusing on activities related to Haiti's international commitments. After partnering with Mexico to do the evaluation of Brazil within the framework of the United Nations mechanism, the ULCC undertook a self-evaluation of Haiti using the UN mechanism and the MESICIC. At the same time it had to conduct the evaluation of the Republic of Trinidad and Tobago, in partnership with Guyana. As a result, it was unable to conduct the nationwide public awareness campaign. The ULCC opted instead to conduct educational activities, like visits to schools and participation in radio broadcasts, in lectures-discussions and in press conferences."*<sup>68</sup>

[264] It was also reported that owing to insufficient funds *"of the four (4) studies programmed to build upon the 2007 survey on governance and corruption, only one could be conducted, which was the study on the level of corruption in private enterprises that provide services to the State."*<sup>69</sup>

[265] In light of the above, the Committee understands the difficulties encountered and encourages the ULCC to consider, based on the resources available, continuing and increasing the public awareness campaigns it conducts to publicize its work of combatting corruption and promoting public ethics; it also

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<sup>63</sup> Haiti's response to the questionnaire within the framework of the Fourth Round, pp. 33-35.

<sup>64</sup> This law, which the ULCC proposed in 2009, was enacted on May 7, 2014.

<sup>65</sup> The list of public awareness campaigns and training activities is available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_ulcc\\_rep.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_ulcc_rep.pdf) y [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_ulcc\\_form.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_ulcc_form.pdf)

<sup>66</sup> Available at: [http://www.oas.org/juridico/PDFs/mesicic4\\_hti\\_etat.pdf](http://www.oas.org/juridico/PDFs/mesicic4_hti_etat.pdf)

<sup>67</sup> Available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_ulcc\\_bil.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_ulcc_bil.pdf)

<sup>68</sup> See: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_ulcc\\_rep.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_ulcc_rep.pdf)

<sup>69</sup> See: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_ulcc\\_pres.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_ulcc_pres.pdf)

encourages it to continue and build on the National Anti-Corruption Strategy and the study on the extent of corruption in transactions between the public and private sectors. The Committee will make a recommendation in this regard (see recommendation 1.4.11 in section 1.4 of Chapter II (B) of this report).

[266] Second, during the on-site visit, the following table was presented showing the number of complaints the ULCC has received and their current status:<sup>70</sup>

<b>(FROM OCTOBER 2004 TO THE PRESENT)</b>	<b>2004-2005</b>	<b>2005-2006</b>	<b>2006-2007</b>	<b>2007-2008</b>	<b>2008-2009</b>	<b>2009-2010</b>	<b>2010-2011</b>	<b>2011-2012</b>	<b>2012-2013</b>	<b>TOTAL</b>
NUMBER OF COMPLAINTS RECEIVED	8	7	25	32	27	13	8	38	48	<b>206</b>
NUMBER OF INVESTIGATIONS COMPLETED		2	7	9	6	1	3	10	32	<b>70</b>
NUMBER OF UNRESOLVED COMPLAINTS		-	4	6	3	-	1	7	10	<b>31</b>
NUMBER OF COMPLAINTS THAT TRIGGERED INVESTIGATIONS	8	7	21	26	24	13	7	31	33	<b>170</b>
NUMBER OF CASES REFERRED TO THE COURTS AND/OR TO THE COMPETENT AUTHORITIES		2	3	3	3	1	2	3	10	<b>27</b>

[267] From the information contained in the above table, the Committee observes that the average number of complaints that the ULCC received each year was roughly 23. Although the number increased in the last two years, it is still relatively low. As noted in the preceding section, the Committee believes it is important to consider giving the ULCC the means it needs to conduct *ex officio* investigations.

[268] Furthermore, although the topic of systems for protecting public servants and private citizens who, in good faith, report acts of corruption (Article III, paragraph 8 of the Convention) was selected for review in the framework of the Second Round of the MESICIC, the Committee is encouraged by the fact that Article 18 of the Law on Prevention and Repression of Corruption provides for the adoption of a law to protect whistleblowers and persons who witnessed acts of corruption. The Committee hopes to be able to review the contents of that law and its implementation in the next report it prepares on the Republic of Haiti.

[269] The Committee also notes that approximately 15% of the complaints received throughout the entire period have been classified as having had no follow-up, because the facts alleged did not constitute acts of corruption. Moreover, 34% of the complaints received were finalized and 39% were referred to the courts and/or to the competent authorities.

[270] Haiti’s response<sup>71</sup> also reports that “*Twenty-two (22) completed investigations were referred to the Government Commissioner to prosecute the necessary judicial proceedings. Court decisions were handed down in two of the cases referred to the Government Commissioner; however, the cases were ultimately closed because the decisions of the examining judge were overturned on appeal. ULCC agents have forty (45) (sic) cases under investigation.*”

<sup>70</sup> See: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_ulcc\\_pres.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_ulcc_pres.pdf)

<sup>71</sup> Haiti’s response to the questionnaire within the framework of the Fourth Round, pp. 35-36.

[271] “(...) Furthermore no conviction has been handed down against those corrupted or of corrupting influence. Convictions would deter anyone tempted to commit a corrupt act.”

[272] The Chair of the Administrative Board of the Chamber of Conciliation and Arbitration of Haiti (CCAH) said the following during the on-site visit:<sup>72</sup> “The view of the general public –and not just civil society- is that except for the ULCC, oversight bodies currently play a less relevant role.

[273] *Could it be that the bodies in question have communication or reporting problems? Is the lack of action real or perceived?*

[274] *Furthermore, because so little information has been forthcoming from either the press or the rumor mill, the most widespread impression is that there is a lack of cohesion and coherence between those organs and the ULCC.*

[275] *On a number of occasions, comments were heard to the effect that the investigations conducted by the ULCC are usually obstructed by the authority prosecuting the court case, i.e., the public prosecution service. Why would that be?*

[276] *Perhaps the course of action to follow would be to somehow communicate and explain the investigations to civil society, taking care to exercise all necessary discretion.*

[277] *The effect could be to cultivate within the public the sense that impunity is gaining ground day by day, which only serves to encourage further corruption.”*

[278] During the on-site visit, the ULCC representatives pointed out another important challenge for effective prosecution and punishment of those guilty of acts of corruption: “Article 2 of the decree of November 23, 2005, concerning the organization and functions of the Superior Court of Accounts and of Administrative Disputes (CSC/CA) states that said Superior Court examines and adjudges the accounts of authorizing officials and auditors of public funds. Furthermore, based on a ruling of the Supreme Court [Cour de Cassation] of the Republic, dated July 24, 2001 (case of Alexandre Paul et al. v. Public Prosecution Service, which the government commissioner filed with the Port-au-Prince court of first instance),<sup>73</sup> no court case alleging misappropriation of funds can be brought against an auditor of public funds without the CSC/CA first entering a debit ruling declaring said auditor to be in default. Whenever the ULCC encounters a case involving misappropriation of public funds, it refers the case to the CSC/CA.” In its almost thirty years of existence, the CSC/CA has entered only six debit rulings against officials (“arrêt de débet”).

[279] The Committee observes with concern that the efforts made by the ULCC to investigate acts of corruption do not appear to prosper in court, with the result that, as Haiti itself pointed out in its response to the questionnaire, no one has been convicted of corruption in Haiti. This would seem to contribute, according to the State under review, to the public’s sense that such crimes go unpunished and makes it difficult to reduce the perception of corruption in the country.

[280] The foregoing notwithstanding, the Committee observes that one important challenge has been conquered with the May 2014 enactment of the Law on Prevention and Repression of Corruption, which includes new crimes associated with acts of corruption, increases the penalties for the conduct already criminalized and extends the statutes of limitations.

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<sup>72</sup> [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_henri.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_henri.pdf)

<sup>73</sup> Available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_ulcc\\_alex.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_ulcc_alex.pdf)

[281] However, the Committee feels that the law by itself is not sufficient; commitment on the part of the other organs and entities is needed to combat corruption in Haiti, by moving forward with prosecution of cases involving acts of corruption. The Committee will make recommendations in this regard (see recommendations 2.4.11, 2.4.12, 2.4.13 and 4.4.3 in sections 2 and 4 of Chapter II (B) of this report).

#### **1.4. Conclusions and Recommendations**

[282] Based on the comprehensive review conducted with respect to the Anti-Corruption Unit (ULCC) in the foregoing sections, the Committee offers the following conclusions and recommendations:

[283] **The Republic of Haiti has considered and adopted measures intended to maintain and strengthen the ULCC, as described in section 1 of Chapter II (B) of this report.**

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

- 1.4.1. Consider providing the Anti-Corruption Unit (ULCC) with the authority to conduct *ex officio* investigations of acts of corruption (see section 1.2 of Chapter II (B) of this report).
- 1.4.2. Consider amending the Decree of September 8, 2004 regarding the other persons who, besides the Minister of Economy and Finances, should be members of the Administration Council of the ULCC and establish said Council (see section 1.2 of Chapter II (B) of this report).
- 1.4.3. Issue a Presidential Decree (“*Arrêté Présidentiel*”) spelling out the membership, mandate and authorities of the Mixed Consultative Committee to promote cooperation among the various branches of government, public enterprise and civil society in the fight against corruption, and designate the membership of that Committee (see section 1.2 of Chapter II (B) of this report).
- 1.4.4. Establish the executive board for follow-up of the National Anti-Corruption Strategy, with representatives of the government, civil society, the media and other relevant players participating (see section 1.2 of Chapter II (B) of this report).
- 1.4.5. Evaluate the progress made with implementation of the National Anti-Corruption Strategy and the challenges encountered so as to update, as needed, the strategy’s content and plan of action (see section 1.2 of Chapter II (B) of this report).
- 1.4.6. Strengthen the ULCC by guaranteeing that it has the infrastructure needed to perform its functions and the conditions necessary to attract and retain the human resources required in its regional offices, taking into account the availability of resources (see section 1.2 of Chapter II (B) of this report).
- 1.4.7. Establish a provision requiring the ULCC to prepare and publish annual reports on its performance and the results of its activities, which should also include information on the current status of implementation of each of the key components of the National Anti-Corruption Strategy, the results of the investigations concluded and sent to the Judicial Branch and/or to the competent organs, and the current status of those inquiries (see section 1.2 of Chapter II (B) of this report).

- 1.4.8. Establish formal mechanisms enabling cooperation between the ULCC and the organs and entities of the Judicial Police in Haiti, so as to avoid duplicating investigations and wasting resources and, should conflicts of jurisdiction arise, to ensure that the ULCC, given its area of expertise, is assigned priority status for purposes of investigating acts of corruption (see section 1.2 of Chapter II (B) of this report).
- 1.4.9. Adopt a Specific Statute for ULCC Personnel, and create and implement a manual of positions containing profiles describing the posts with the ULCC (see section 1.2 of Chapter II (B) of this report).
- 1.4.10. Prepare and distribute a guide, in French and Creole, to help those interested in filing a complaint of acts of corruption, explaining the procedures to be followed and the type of information needed from the complainant so that his/her complaint can be useful to the ULCC's investigative work (see section 1.2 of Chapter II (B) of this report).
- 1.4.11. Continue and expand the public awareness campaigns it conducts to publicize its work of combating corruption and promoting public ethics; continue and build on the National Anti-Corruption Strategy and the study on the extent of corruption in transactions between the public and private sectors, prepared by the ULCC, within available resources (see section 1.3 of Chapter II (B) of this report).

## **2. THE SUPERIOR COURT OF ACCOUNTS AND OF ADMINISTRATIVE DISPUTES (CSC/CA)**

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

[285] The Superior Court of Accounts and of Administrative Disputes (CSC/CA) has a set of provisions in its legal framework, as well as other measures concerning, among others, the following:

[286] The Superior Court of Accounts and of Administrative Disputes (CSC/CA) is an independent institution, provided for in articles 200 to 205 of the Constitution. Under the provisions of the Constitution, the CSC/CA is *“responsible for administrative and jurisdictional control of Government receipts and expenditures and verification of the accounts of State enterprises and of territorial divisions”* (Article 200).

[287] The CSC/CA also participates *“in preparation of the budget and is consulted on all matters concerning legislation on public finances and on all draft financial or commercial contracts, agreements and conventions to which the State is party. It has the right to conduct audits in all government agencies.”* (Article 200-4).

[288] Article 2 of the Decree establishing the organization and functions of the CSC/CA (Decree of November 23, 2005) provides that *“The CSC/CA is an independent institution whose mission is to review and verify the acts of the government and the accounts of authorizing officers and auditors of public funds, and to assist the Legislature and the Executive Branch in monitoring enforcement of the laws and regulations.”*

[289] Under Article 5 of the decree of November 23, 2005, the CSC/CA's principal authorities are as follows: *“1) review and verify the accounts of the de facto and de jure auditors of accounts and either declare their performance satisfactory or take the necessary measures, as appropriate, to have them found culpable under civil or criminal law; 2) confirm, amend or nullify the actions of authorities in the public administration that are not in conformity with the laws and regulations; 3) issue its reasoned*

*opinion on all draft financial, commercial or industrial agreements to which the State is party; 4) present to the Legislature a report –which shall be published- on the regularity of the State’s financial transactions; 5) participate in the preparation of the General Budget of the Republic through concurring opinions; 6) exercise administrative and jurisdictional control of public resources; 7) check the accounts of the various public agencies and organisms in the Central and Decentralized Administration of the State; 8) verify the civil society institutions that are beneficiaries of subsidies from the Public Treasury, from autonomous organs and from territorial divisions or all the national and international institutions that execute projects for and in the name of the State and the territorial divisions; 9) order/certify verification of, or verify, as appropriate, the enterprises in which the State or its decentralized entities have a stake; 10) certify the general accounts of the Nation, including those of the Central Administration, those of the territorial divisions, those of the autonomous entities and the special accounts of the Treasury; 11) receive the inventory of movable and immovable assets of the Public Administration and the other organs and institutions mentioned in paragraph 8, and authorize their disposal under the conditions prescribed in the laws and administrative regulations; 12) propose to the branches of government the legislative or regulatory reforms that are related to the CSC/CA’s mission and that it considers to be in the public interest; 13) fulfill all research, executive, advisory and consultative functions that the branches of government entrust to it.”*

[290] As for the exceptions to its functions, the CSC/CA does not have any authority vis-à-vis officials who authorize spending, except those whom it has declared to be *de facto* auditors of accounts or who, like any other person, would be liable for any irregularities that might constitute mismanagement (paragraph 2 of Article 3 of the decree of November 23, 2005).

[291] Decisions are by decree and are issued in the name of the Republic. Those decisions must be well founded; otherwise they will be deemed null and void. Under Article 10 of the Decree of November 23, 2005, spelling out the organization and functions of the CSC/CA, the latter’s decisions may be subject to review by the Council of the Court. The CSC/CA’s decisions are not subject to appeal, except to the Supreme Court [*Cour de Cassation*] (Article 200.2 of the Constitution).

[292] The CSC/CA’s ordinary jurisdiction is exercised when three (3) judges are present; the Public Prosecution Service must be represented (Article 10-1 of the Decree of November 23, 2005). The decisions of those judges either find the *de facto* or *de jure* auditor liable, in which case the decision is a “debit ruling” (“*Arrêt de Débet*”), or they clear the official of any liability, in which case the decision is called a “quietus” (“*Arrêt de Quitus ou de Décharge*”).

[293] When the Court’s oversight results in a “debit ruling”, both houses of the Legislature shall be notified immediately, as shall the Office of the Secretary of the Presidency, the Office of the Secretary of the Prime Minister, and the Minister of Finance if the order refers to one or more members of the Minister’s Cabinet (Article 20-1 of the Decree of November 23, 2005).

[294] On the other hand, when the decision concerns a *de facto* or *de jure* auditor of public accounts, the debit ruling and the corresponding documents or other evidence are to be referred to the Government Commissioner or the Examining Judge, so that the necessary judicial proceedings may be conducted (Art. 20-2 of the Decree of November 23, 2005).

[295] Under Article 20 of the Decree of November 23, 2005, a debit ruling (“*Arrêt de Débet*”) has two (2) distinct characteristics: “a) if the imputable act is the result of negligence, inconsistency or irresponsibility on the part of the *de facto* or *de jure* auditors of public accounts or the suspects, they owe the corresponding restitution, reparations, and pecuniary penalties to the affected agency or organ. Notification shall be made to the Ministry of Finance for purposes of enforcing the decree; b) when generally accepted means of evidence have established that the imputable act has redounded to the direct

*or indirect benefit of the de facto or de jure auditor, the debit ruling shall be processed in the manner described below.”*

[296] As to the manner the senior officers of the CSC/CA are selected, Article 200.5 of the Constitution sets forth the requirements for membership on the CSC/CA. Also, under Article 200.6 of the Constitution, the members of the CSC/CA are elected by the Senate and appointed by executive order. They have ten-year terms and cannot be removed from the bench (Article 201 of the Constitution). Members of the Superior Court of Auditors and Administrative Disputes answer to the High Court of Justice for any serious offenses committed in the performance of their functions (Article 203 of the Constitution). The authorities of the CSC/CA and its Council members are set forth, respectively, in articles 48 and 49 of the Decree of November 23, 2005. The members of the Council and the Government Commissioner assigned to the CSC/CA have the rank of appellate court judge (Article 59 of the Decree of November 23, 2005).

[297] As for the manner in which human resources needed for their operations are identified for the CSC/CA and how they are provided, the response to the questionnaire received from the country under review states the following: *“There is no established policy for recruitment of staff. The latter are government employees who are either permanent or on contract. Nevertheless, articles 29-1, 29-2, 29-3 and 29-4 set forth the procedures that must be completed to acquire the status of an inspector. Under the Decree of November 23, 2005, the personnel of the CSCCA should enjoy special status, but thus far no provision has been adopted establishing a regime of disqualifications and incompatibilities.”*<sup>74</sup>

[298] Under Article 29-3 of the Decree of November 23, 2005, the inspectors (*“enquêteurs”*) *“enjoy all the administrative and police protections that guarantee their independence in the peaceful exercise of their functions. Their services may be terminated only for grievous wrongdoing duly recognized and punishable under the law; the specific statute for this category shall be determined in the corresponding implementing decree.”*

[299] Furthermore, according to information requested during the on-site visit, the CSC/CA has a total staff of 842.

[300] As for the existence of manuals, handbooks or other documents describing the functions of the staff working for the CSC/CA, Haiti’s response to the questionnaire reads as follows: *“One year later, the CSCCA did not have a procedural handbook describing the functions of its different categories of personnel. Nevertheless, a draft of its internal rules provides a brief description of those functions. On the other hand, the Office of the Director of Auditing, which is one of the two technical directorates that assist the Financial Chamber, has attempted to define the functions of its technical personnel in a document.”*<sup>75</sup>

[301] As for staff training, according to what Haiti reports in its response to the questionnaire, thus far the CSC/CA has not established any ongoing training regimen for its staff. Only occasionally are its technical teams able to participate in two- or three-day training seminars organized by outside agencies.<sup>76</sup>

[302] As for the guides, manuals or documented procedures for the performance of its functions, the CSC/CA has a manual of verification procedures consisting of eight thematic verification guidebooks.

[303] As for internal control mechanisms, according to Haiti’s response to the questionnaire, an Office

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<sup>74</sup> Haiti’s response to the questionnaire within the framework of the Fourth Round, p. 24.

<sup>75</sup> *Ibid.*, p. 24.

<sup>76</sup> *Ibid.*, p. 24.

of the Director of Internal Control was informally set up and is in charge of establishing and enforcing suitable control mechanisms; however, certain difficulties have conspired to prevent this directorate from operating in practice.

[304] Under the provisions of Article 62 of the Decree of November 23, 2005, the Senate of the Republic must, by June 1 of every administrative period, instruct an auditing firm to audit the accounts of and work performed by the CSC/CA. The audit report shall be sent to the two houses of Parliament and to the Executive Branch for the procedures prescribed by law.

[305] As for the manner budgetary resources necessary for the CSC/CA to function are ensured, the CSC/CA presents its operating budget to the Executive Branch which, in the final analysis, assigns it an appropriation in the general budget, financed against the global funds provided in the General Budget. According to the information requested during the on-site visit, the total annual budget (the operating budget plus the investment budget) earmarked for the CSC/CA in the last five years is as follows (expressed in Haitian gourdes):<sup>77</sup> G271,061,592 (2008-9); G303,375,255 (2009-10); G340,000,193 (2010-11); G391,811,256 (2011-12); and G\$465,756,268 (2012-13).<sup>78</sup>

[306] As for the manner information is supplied to the public, according to what the Committee was told during the on-site visit, the CSC/CA does not have a website; instead, it uses other means of communication, such as interviews granted to the press and presentations given *ex cathedra* by one of its technical directorates on the occasion of informative meetings, in the presence of senior State officials.

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

[307] The Superior Court of Accounts and of Administrative Disputes (CSC/CA) has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 2.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures:

[308] First, the Committee notes that the term of the previous members of the Council of the CSC/CA ended in July 2013. Up until just prior to the Committee's visit in April 2014, the CSC/CA Council members had not been appointed. Articles 60, 60-1 and 60-2 of the Decree of November 23, 2005, state the rules and deadlines for selecting the ten (10) members of the CSC/CA Council, a process that is to get underway six (6) months before the end of the term of the incumbent members.

[309] Unfortunately, the Committee confirmed that the delay in selecting the members of the CSC/CA's Council has meant that the CSC/CA has gone approximately nine (9) months without its Council. The result has been that for those nine months, there was no way to, *inter alia*, enforce the proper penalties against *de facto* or *de jure* auditors who committed some offense in the performance of their functions, which is one of the functions of the Council of the Court under Article 48 of the Decree of November 23, 2005.

[310] To avoid that situation in the future, the Committee hopes that the procedures and deadlines established in articles 60, 60-1 and 60-2 of the Decree of November 23, 2005, will be observed and followed, so as to avoid protracted delays in the appointment of members of the CSC/CA's Council. The Committee will make a recommendation in this regard (see recommendation 2.4.1 in section 2.4 of Chapter II (B) of this report).

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<sup>77</sup> 1 U.S. dollar = approximately 44 Haitian gourdes (as of May 27, 2014).

<sup>78</sup> For the complete information on the CSC/CA's budget, see: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_CSCCA\\_inf.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_CSCCA_inf.pdf).

[311] Second, the Committee finds that Article 63 of the Decree of November 23, 2005, established a one-year time period, starting as of the date of publication of that Decree, to adopt implementing decrees (“*Arrêtés d’application*”) regulating the procedures by which the chambers of the CSC/CA are to function, their rules of procedure, the statute of the judges and other CSC/CA officials, and the institution’s internal regulations.

[312] However, none of these regulations has been approved thus far. During the on-site visit, the representatives of the CSC/CA explained that they are relying on the previous decree (the Decree of November 10, 1983) to steer the CSC/CA’s proceedings, even though that decree was repealed in Article 65 of the Decree of November 23, 2005.

[313] Furthermore, in its own response to the questionnaire, Haiti acknowledges that the lack of a statute for magistrates and other CSC/CA officials means that there are no provisions subjecting them to a legal regime governing disqualifications and incompatibilities.

[314] The Committee feels that this creates a legal problem that is not conducive to a stronger CSC/CA and therefore urges the country under review to consider issuing the regulations indicated in Article 63 of the Decree of November 23, 2005, with a view to full enforcement of that decree. The Committee will make a recommendation in this regard (see recommendation 2.4.2 in section 2.4 of Chapter II (B) of this report).

[315] Third, according to what the representatives of the CSC/CA told the Committee during the on-site visit, the conditions necessary for the CSC/CA’s administrative decentralization are not in place, nor are procedures for appointing the magistrates and other officials in the decentralized territorial courts. During the on-site visit, the representatives of the CSC/CA reported that a bill for an organic law of the CSC/CA that will address this matter is currently being finalized.

[316] However, the Committee believes that if the new law is enacted without the necessary regulations, the above-described problems with implementation of the Decree of November 23, 2005, will persist.

[317] Given the foregoing, the Committee believes that the country under review should consider establishing conditions enabling the CSC/CA’s decentralization and developing the procedures for appointing the magistrates and other officials in the territorial courts. The Committee will make a recommendation to that effect (see recommendation 2.4.3 in section 2.4. of Chapter II (B) of this report).

[318] Fourth, the Committee observes that although paragraph 4 of Article 5 of the Decree of November 23, 2005 requires publication of the report sent to Parliament regarding the regularity of the State’s financial transactions, those reports are not being made public. The explanation given by the representatives of the CSC/CA during the on-site visit was that the Decree does not state whether the CSC/CA or Parliament is to make the report public.

[319] During the on-site visit, the CSC/CA representatives also reported that since its facilities were moved in 2013, the CSC/CA has not been connected to the internet, which means that it is unable to access the State Electronic Accounts System (SYSDEP) and unable to maintain its website.

[320] In view of the above, the Committee feels it is important for the country under review to consider undertaking the efforts necessary to ensure that the CSC/CA has uninterrupted access to the internet, thus enabling it to maintain its institutional website, publish its reports and have constant access to the SYSDEP. The Committee will make a recommendation in this regard (see recommendation 2.4.4 in section 2.4. of Chapter II (B) of this report).

[321] Fifth, the Committee did not find any provision requiring CSC/CA accountability through publication of annual performance reports on its activities, the results achieved, and the institution's internal performance, its goals and what it has accomplished.

[322] The Committee also observes that the reports referenced in Article 62 of the Decree of November 23, 2005 are not being published; those reports are to be prepared by an auditing firm selected each year by the Senate to review the CSC/CA's accounts and check its work.

[323] Given the foregoing, and in order to enhance the CSC/CA's transparency and accountability, the Committee will make recommendations in this regard (see recommendations 2.4.5 and 2.4.6 in section 2.4. of Chapter II (B) of this report).

[324] Sixth, the Committee was unable to confirm the existence of a manual containing job descriptions of the positions within the CSC/CA. Nor was it able to verify the existence of any ongoing CSC/CA staff training policy. The Committee will make a recommendation in this regard (see recommendations 2.4.7 and 2.4.8 in section 2.4. of Chapter II (B) of this report).

[325] Seventh, the Committee finds that although the CSC/CA budget has increased in absolute terms, going from approximately G303,375,254.92 in the 2009-2010 period to G465,756,268.28 in 2012-2013, those figures represent a small increase in the CSC/CA budget as a percentage of the total budget, from 0.34% in 2009-2010 to 0.35% in 2012-2013.

[326] Moreover, during the on-site visit, the CSC/CA representatives explained that its work is not what it should be because of insufficient human and financial resources, and the absence of the infrastructure needed to connect to the internet. By way of example, and as noted in the previous section, the CSC/CA has been unable to establish and set in motion its Directorate of Internal Control. The CSC/CA also faces the same challenge reported by the ULCC and other organs and entities interviewed during the visit, which is the low salary offered by the Haitian civil service, which can be as much as three times lower than the salaries that NGOs pay, making it difficult to hire specialized personnel and/or retain the staff already trained.

[327] Based on the foregoing and given the importance of the CSC/CA's work and the need for it to have the infrastructure and human and financial resources it requires to properly perform its functions, the Committee will make a recommendation in this regard (see recommendations 2.4.9 and 2.4.10 in section 2.4. of Chapter II (B) of this report).

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

[328] In the response by the country under review,<sup>79</sup> regarding the results of the CSC/CA, the following is reported:

[329] *“As previously observed, the CSC/CA reviews and verifies the accounts of the de facto and de jure auditors of accounts and either approves them or, when necessary, takes the required measures to have them found culpable under civil or criminal law. Over the last five (5) years, the CSC/CA has conducted one hundred sixty (160) verifications at the level of the Central Administration and the Territorial Divisions. Those investigations have led to six (6) debit rulings (finding an obligation to pay, débet).*

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<sup>79</sup> Haiti's response to the Questionnaire within the framework of the Fourth Round, pp. 27-28.

[330] (...) *The CSC/CA only reviews and verifies the accounts of de jure or de facto auditors of accounts. Any criminal and civil liabilities must be prosecuted by the Government Commissioner and the Director General of the Office of the Director General of Taxation (DGI).*

[331] (...) *The difficulties that the CSCCA has encountered in achieving its objectives can be traced to the fact that the institutions subject to its oversight do not always take the appropriate measures to ensure that the financial reports are properly prepared and presented and are reliable, and to preserve supporting and related documents. This situation poses a serious problem that makes it all the more difficult for the CSCCA to perform its assigned functions."*

[332] In addition, in the documents provided on the occasion of the on-site visit, the following additional results are presented:<sup>80</sup>

<i>a) Committees formed by the CSC/CA's Office of the Director of Accounts Reconciliation: fiscal period 2009 to 2014</i>	<i>b) Reports sent to the Secretary/to the Office of the Secretary of the CSC/CA</i>
<b>2008-2009</b>	<b>2008-2009</b>
<i>Committees formed</i> 33	<i>Financial audit</i> 19
<b>2009-2010</b>	<i>Liability release request</i> 6
<i>Committees formed</i> 18	<i>Total</i> 25
<b>2010-2011</b>	<b>2009-2010</b>
<i>Committees formed</i> 23	<i>Financial audit</i> 17
<b>2011-2013</b>	<i>Liability release request</i> 5
<i>Committees formed</i> 36	<i>Total</i> 22
<b>2013-2014</b>	<b>2010-2011</b>
<i>Committees formed</i> 9	<i>Financial audit</i> 12
<b>Total</b> 119	<i>Liability release request</i> 6
	<i>Total</i> 18
	<b>2011-2013</b>
	<i>Financial audit</i> 17
	<i>Liability release request</i> 26
	<i>Total</i> 43
	<b>2013-2014</b>
	<i>Financial audit</i> 3
	<i>Liability release request</i> 7
	<i>Total</i> 10
	<b>Overall Total</b> 118

[333] The information shown above appears to confirm what the country itself described in its response to the questionnaire and what civil society reported, mentioned at section 1.3 above, concerning how few debit rulings the CSC/CA has entered since its establishment. In all, it has entered just six (6) debit rulings against officials, half of which came in last five (5) years. Unfortunately the Committee did not have at its disposal any information that would explain the specific causes of this situation.

[334] The situation described above poses a fundamental problem for effective punishment and policing of acts of corruption since, as indicated in section 1.3 of Chapter II (B) above, under the Supreme Court's

<sup>80</sup> See the documented presented by the CSC/CA subsequent to the on-site visit, available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_CSCCA\\_inf.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_CSCCA_inf.pdf)

existing case law, the CSC/CA must enter a debit ruling against an official in order for the latter to face criminal prosecution for acts of corruption.

[335] The Committee believes it is imperative that the country under review consider examining the reasons that there are so few CSC/CA-entered debit rulings and consider, in coordination with other relevant control agencies like the ULCC, the Public Prosecution Service and the Judiciary, that appropriate measures be taken to carry forward Haiti's anti-corruption strategy and the country's commitment to ending impunity in the case of those who commit corrupt acts. The Committee will make a recommendation in this regard (see recommendation 2.4.11 in section 2.4. of Chapter II (B) of this report).

[336] In connection with this observation, the Vice President of the Haitian National Media Association (ANMH) gave the following commentary during the on-site visit:<sup>81</sup> *“Thus far, the CSC/CA has not found a single senior Haitian State official culpable of misappropriation of funds. In Haiti's contemporary history, the only time an attempt was made to punish corrupt administrators dates back to August 26, 1975, the date on which the stamp trial got underway. Apart from that case, most former State officials in Haiti receive an order clearing them of any liability. Nevertheless, Haiti has the reputation of being a corrupt country. One wonders, then, who is responsible for the corruption in our country. It is clear that the Superior Court of Accounts and of Administrative Disputes should discharge its mission to better effect, in accordance with the Decree of November 23, 2005, which redefines its organization and functions. Perhaps the Court of Accounts might be more diligent about requesting the annual accounts of the de facto and de jure auditors, as required under Article 16 of that decree?”*

[337] On the other hand, the information presented does not include the outcome of the six (6) debit rulings issued to date. There is no information, for example, about how many of those rulings involved one or more members of a ministerial cabinet and whether both houses of Parliament, the Office of the Secretary of the Presidency, the Office of the Secretary of the Prime Minister and the Minister of Finance were notified pursuant to Article 20-1 of the decree of November 23, 2005, and what the outcome was.

[338] The information provided does not indicate how many of the debit rulings involved a *de jure* or *de facto* auditor of public accounts and, as required under Article 20-2 of the decree of November 23, 2005, whether they were reported to the Government Commissioner or Examining Judge for purposes of pursuing the necessary judicial proceedings and, if so, what the outcome was.

[339] Given the foregoing and bearing in mind that Article 93 of the Constitution requires that the Chamber of Deputies authorize criminal prosecution of senior officers in the executive branch,<sup>82</sup> and Article 91 of the Criminal Code requires the President's authorization in such cases, the Committee considers that in the interests of transparency and accountability, the Republic of Haiti, by means of coordination among the relevant organs and entities (the CSC/CA, the ULCC, the Public Prosecution Service, the Judicial Branch, the Chamber of Deputies and others), where appropriate, should consider maintaining and publishing information concerning the total number of investigations or verifications conducted; the number of declarations of liability (debit rulings) entered, or the number of *quietus* orders issued clearing an official of any liability; the number of debit rulings entered of which the competent authorities under Articles 20-1 and 20-2 of the Decree of November 23, 2005 were notified and the outcome, indicating whether or not the Chamber of Deputies and/or the President authorized prosecution.

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<sup>81</sup> See the presentation by the Vice President of the Haitian National Media Association (ANMH), available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_sc\\_harold.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_sc_harold.pdf)

<sup>82</sup> They are: the President, the Prime Minister, the Ministers and Secretaries of State, all of whom stand trial before the Supreme Court.

The Committee will make a recommendation in this regard (see recommendation 2.4.12 in section 2.4. of Chapter II (B) of this report).

[340] Furthermore, the Committee did not obtain any information on any amounts actually recovered by the Office of the Director General of Taxation (DGI). Here, the Committee recommends that the country under review consider, in coordination with the DGI, developing and publishing comprehensive statistical data concerning the amounts that flowed to the public coffers as a result of compliance with the decisions of the CSC/CA, data showing the amounts that the DGI actually recovered, with a view to identifying challenges and recommending corrective measures. The Committee will make a recommendation in this regard (see recommendation 2.4.13 in section 2.4. of Chapter II (B) of this report).

[341] Lastly, the CSC/CA encounters other difficulties in endeavoring to accomplish its objectives, such as the fact that the institutions will not prepare the documents in full or in standardized format, which would enable the CSC/CA to perform its work. Here, the Committee believes it is important for the country under review to consider having the CSC/CA partner with the General Inspectorate of Finance (IGF) for a joint review of the situation and explore possible solutions that would enable the CSC/CA to get reliable and complete financial information from the institutions subject to its oversight, and preserve the supporting and related documents. The Committee will make a recommendation in this regard (see recommendation 2.4.14 in section 2.4. of Chapter II (B) of this report).

#### **2.4. Conclusions and Recommendations**

[342] Based on the comprehensive review conducted with respect to the Superior Court of Accounts and of Administrative Disputes (CSC/CA) in the foregoing sections, the Committee offers the following conclusions and recommendations:

[343] **Haiti has considered and adopted measures intended to maintain and strengthen the CSC/CA as an oversight body, as described in section 2 of Chapter II (B) of this report.**

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

- 2.4.1. Ensure that the procedures and time periods established in articles 60, 60-1 and 60-2 of the Decree of November 23, 2005, are observed and followed, so as to avoid protracted delays in the appointment of members of the Council of the Superior Court of Accounts and of Administrative Disputes (CSC/CA) (see section 2.2 of Chapter II (B) of this report).
- 2.4.2. Adopt implementing decrees (“*Arrêtés d’application*”) regulating the procedures by which the chambers of the CSC/CA are to function, their rules of procedure, the statute of the judges and other CSC/CA officials and the institution’s internal regulations, so that the Decree of November 23, 2005 can be enforced in full (see section 2.2 of Chapter II (B) of this report).
- 2.4.3. Consider the adoption of the legislative or regulatory measures necessary to establish the conditions that will enable the CSC/CA’s decentralization and procedures for appointing the magistrates and other officials of the territorial courts (see section 2.2 of Chapter II (B) of this report).

- 2.4.4. Make the necessary efforts to guarantee the CSC/CA uninterrupted access to the internet, so that it can maintain its institutional website, publish its reports, and have constant access to the SYSDEP (see section 2.2 of Chapter II (B) of this report).
- 2.4.5. Consider establishing a legal provision requiring CSC/CA accountability, including publication of annual performance reports disclosing its activities, the results obtained, and the institution's internal performance, its goals and what it has accomplished (see section 2.2 of Chapter II (B) of this report).
- 2.4.6. Establish the CSC/CA's website and keep it up-to-date so that the public has ready access to information on its work. Ensure that the website contains, *inter alia*, the CSC/CA's reports to Parliament on the regularity of the State's financial transactions, its performance reports, the audits of its accounts, its strategic plans, the applicable laws, its procedural handbooks or guides and announcements to fill the institution's vacancies (see section 2.2 of Chapter II (B) of this report).
- 2.4.7. Create a manual containing job descriptions of the positions with the Court of Accounts, to include, *inter alia*, the job title, grade, responsibilities and skills required to perform the job, and then publish the manual at the institution's website (see section 2.2 of Chapter II (B) of this report).
- 2.4.8. Adopt and put into practice an ongoing training policy for CSC/CA personnel, to include, *inter alia*, training in forensic auditing (see section 2.2 of Chapter II (B) of this report).
- 2.4.9. Strengthen the CSC/CA by ensuring it has the infrastructure needed to properly perform its functions and the conditions that will enable it to attract and retain the necessary human resources, taking the availability of resources into account (see section 2.2 of Chapter II (B) of this report).
- 2.4.10. Formally establish and launch the CSC/CA's Directorate of Internal Control (see section 2.2 of Chapter II (B) of this report).
- 2.4.11. Prepare a study to explain the reasons why the CSC/CA has entered so few debit rulings ("*Arrêt de Débet*") against officials and, in coordination with the other relevant oversight bodies like the ULCC, the Public Prosecution Service and the Judicial Branch, take the necessary action to carry out, in practice, the strategy for combating corruption in Haiti and to make good on the country's commitment not to allow those who commit corrupt acts to go unpunished (see section 2.3 of Chapter II (B) of this report).
- 2.4.12. By coordinating with the appropriate bodies, where applicable, maintain and publish information on the total number of investigations or verifications conducted: the number of declarations of liability (debit rulings) entered against officials or declarations clearing an official of any liability (*quietus*); the number of debit rulings referred to the competent authorities pursuant to articles 20-1 and 20-2 of the Decree of November 23, 2005, and their results, indicating whether or not authorization for prosecution was obtained from the Chamber of Deputies and/or the President, all in order to identify what the challenges are and recommend remedial measures (see section 2.3 of Chapter II (B) of this report).
- 2.4.13. In coordination with the Office of the Director General of Taxation (DGI), prepare and publish comprehensive statistical data on the amounts that flowed to the government coffers as a result of compliance with CSC/CA decisions, data that are to contain

information on the amounts actually recovered by the DGI, with a view to identifying challenges and recommending corrective measures (see section 2.3 of Chapter II (B) of this report).

- 2.4.14. Together with the General Inspectorate of Finance (IGF), explore possible solutions enabling the CSC/CA to obtain complete and reliable financial information from the institutions subject to its oversight, and to preserve supporting and related documents (see section 2.3 of Chapter II (B) of this report).

### **3. THE NATIONAL PUBLIC PROCUREMENT COMMISSION (CNMP)**

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

[345] The National Public Procurement Commission (CNMP) has a set of provisions in its legal framework, as well as other measures concerning, among others, the following:

[346] The Law of June 10, 2009, establishes the general norms for public procurement and public works contracting and makes the CNMP the national government's normative body, whose mission is to regulate and oversee the system for public procurement and public works contracting (Article 9).

[347] The order of May 25, 2012, setting the thresholds for awarding contracts and the thresholds for the intervention of the National Public Procurement Commission (CNMP),<sup>83</sup> establishes the amount above which the CNMP may intervene in a procurement process.

[348] The CNMP answers to the Prime Minister. Its authorities are spelled out in Article 10 of the Law of June 10, 2009, and notably include preparation of regulations on public procurement and public works contracting agreements to be consistent with public procurement policy; disclosure of information on public procurement, while ensuring observance of the established threshold amounts; conducting investigations into matters related to public procurement; working with government institutions that oversee government finances and providing them with all relevant and useful information; enforcing administrative sanctions;<sup>84</sup> applying procedures for independent auditing of public procurement; publishing, on a quarterly basis, the list of businesses or suppliers guilty of serious breaches of the procurement clauses of their contracts and that, under the conditions spelled out in the law and the regulations, can no longer be awarded procurement contracts; issue opinions in the context of extrajudicial settlements reached through the Committee for Settlement of Differences in the case of litigation arising out of the approval or performance of public procurement and public works contracts.

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<sup>83</sup> Article 2. The thresholds above which the institutions of the Administration of the State (with the exception of those listed in Article 3 of this order) and the Department Collectivities are required to pursue public procurement are set, according to their nature, as follows:

1. Forty million (40,000,000.00) gourdes for the procurement of works;
2. Twenty-five million (25,000,000.00) gourdes for the procurement of equipment;
3. Twenty million (20,000,000.00) gourdes for the procurement of services and consultancies.

<sup>84</sup> Article 91 of the Law of June 10, 2009 provides that "*Any wrongdoing committed by bidders and contractors shall lead to the appropriate administrative sanctions, which the National Public Procurement Commission shall enforce, notwithstanding any civil and criminal sanctions prescribed by law and regulations.*" The sanctions that the CNMP can apply are spelled out in articles 91-1 to 92 of that law. Moreover, the CNMP also has the authority to enforce disciplinary sanctions in the case of officials of the contracting authorities referenced in articles 93 and 94 of the law.

[349] Furthermore, articles 213 to 221 of the Decree Implementing the Law of June 10, 2009, provide that the CNMP exercises *a priori* and *a posteriori* oversight of public contracting and describe the respective procedures in detail.<sup>85</sup>

[350] Under Article 11 of the Law of June 10, 2009, the office of the director of the CNMP has a team of five (5) members, appointed on a competitive basis to three-year terms, which may be renewed only one time. One member serves as coordinator. The decisions of the CNMP are taken on a collegiate basis.

[351] Articles 11 to 14 of the Law of June 10, 2009, and articles 5 to 7-1 of the Decree of October 26, 2009, spelling out the organization and functions of the CNMP, establish the procedures for selecting, nominating and designating the members of the CNMP. Its members are designated by decree, in accordance with the selection procedure established in Article 12 of that law and in articles 5 *et seq.* of the Decree of October 26, 2009.<sup>86</sup>

[352] Articles 13 to 15-1 of the Decree of October 26, 2009, spell out the rights and obligations of the members of the CNMP. For its part, Article 16 of that decree specifically provides that the functions of a member of the CNMP “*are incompatible with any direct or indirect interest in businesses bidding on government contracts, and with any function that pays a salary or benefits, remuneration or advantage of the type that private businesses afford. The same applies to the member’s spouse. The members of the National Public Procurement Commission may not hold elective office or provide advisory services pertaining to the CNMP’s mission and authorities.*”

[353] The CNMP’s technical and administrative structures are set forth in the Decree of October 26, 2009 and include a Technical Secretariat (articles 18 to 26); an Office of the Administrative and Financial Director (articles 27 to 30), and an Office for Coordination of the Departmental Public Procurement Commissions (articles 31 to 32-1).

[354] Also, a Departmental Public Procurement Commission (CDMP) has been created in each geographic department of the country (articles 38 and 39 of the Decree of October 26, 2009);<sup>87</sup> these commissions supervise the regulation and oversight of public procurement transactions. Their authorities are spelled out in articles 42-1 to 43 of the Decree of October 26, 2009, which establishes the organization and functions of the CNMP. The members of the CDMP make independent, collegiate decisions relating to approval of procurements within their respective departments. Since September 2013, two (2) CDMP have been established: one in the south (Cayes) and the other in the north (Cap-Haïtien).

[355] The structure of the CNMP also features a Committee for Settlement of Differences<sup>88</sup> (the CRD), established under articles 95 to 95-5 of the Law of June 10, 2009, and articles 225 to 227-4 of the Decree

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<sup>85</sup> *A posteriori* oversight is shared with the internal control organs within the contracting authorities, which must supply the CNMP with a quarterly report on all contracts awarded during the quarter, irrespective of the thresholds (Article 220 of the Decree Implementing the Law of June 10, 2009).

<sup>86</sup> Under Article 12 of the Law of June 10, 2009, the members of the CNMP “*are appointed by the Prime Minister following a process of selection that compares candidates’ credentials and an evaluation of the candidates in a public hearing held by a special panel consisting of six (6) persons. Four (4) panel members shall be from the public sector and shall be designated by the chief executive; the other two (2) shall come from outside the public sector and be selected by private sector associations and organized civil society groups.*”

<sup>87</sup> The CDMP are decentralized structures of the CNMP and are hierarchically answerable to it. Their members serve three-year terms and are recruited on a competitive basis. The method of recruiting and selecting the members of the CDMP is described in articles 40 to 41 of the Decree of October 26, 2009, which spells out the organizational arrangements and functions of the National Public Procurement Commission (CNMP).

<sup>88</sup> Under Article 95-2 of the Law of June 10, 2009 and Article 227 of its Implementing Decree, the CRD has five (5) members: one representative of the CNMP, two other representatives of the Public Administration, which includes a representative of the Secretary General of the Office of the Prime Minister, one retired magistrate or an attorney with the qualifications and experience needed for this type of litigation, selected by mutual agreement of both parties; one representative designated by the private

Implementing that Law. The CRD's authorities are defined in Article 228 of the Decree Implementing the Law of June 10, 2009 and include, *inter alia*, that of receiving complaints from interested parties alleging irregularities committed prior to, during and after the conclusion or execution of public procurement contracts or public works concession agreements and that constitute violations of criminal law, which are the jurisdiction of the criminal courts; ruling on irregularities and violations of the norms governing public procurement; and recommending to the CNMP that it enforce the disciplinary sanctions provided under the law and regulations, as well as those provided, *inter alia*, in articles 91-1 to 92 of the Law of June 10, 2009, against parties that bid on, are candidates for or hold public works contracts.

[356] Under Article 33-1 of the Decree of October 26, 2009, CNMP personnel are recruited on a competitive basis and are subject to the provisions of the Decree of May 17, 2005. Article 33-2 provides that contractors are also selected by competition and their rights and obligations are set forth in the contract. Under Article 34, CNMP personnel are prohibited from having any direct or indirect stake in a business that participates in public procurement.

[357] According to what the CNMP representatives reported during the on-site visit, the CNMP has a staff of 51, all of whom are on contract.

[358] As for training, during the on-site visit the CNMP representatives supplied information on the training activities the Commission has either conducted or co-sponsored.<sup>89</sup> The CNMP representatives report that since the Law of June 10, 2009 took effect, training has been provided on an annual basis, the only exception being the 2010-2011 period. Over 740 individuals have received training in that five-year period.

[359] As for the documented procedures for the performance of its functions, the CNMP has produced a set of guidebooks, manuals and other standardized documents to provide guidance to procurement authorities during the preparation of the bidding documents and of the report on the review and evaluation of bids submitted; and pertaining to the ethical conduct of the actors involved in the public procurement process, such as: standardized documents pertaining to the evaluation of tenders and follow-up of the performance of public contracts;<sup>90</sup> a standardized document pertaining to tendering for construction work contracts;<sup>91</sup> application form to submit proposals for consulting services and model contracts;<sup>92</sup> standardized document for bidding on supply contracts;<sup>93</sup> standardized form to bid for service contracts;<sup>94</sup> standardized document to bid for contracts to supply data processing and office automation equipment;<sup>95</sup> document for a two-stage tendering process for public works contracts;<sup>96</sup> a compilation of general administrative clauses that apply in the case of public works contracts;<sup>97</sup> a compilation of general administrative clauses that apply to government contracting of intellectual services;<sup>98</sup> a compilation of

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sector associations, with a reputation for competence, professionalism, impartiality and experience in the area of public procurement. That representative will be designated with the consent of the private petitioner.

<sup>89</sup> The details of the CNMP's training activities are available at:

[http://www.oas.org/juridico/PDFs/mesicic4\\_hti\\_cnmp\\_listedeact.pdf](http://www.oas.org/juridico/PDFs/mesicic4_hti_cnmp_listedeact.pdf)

<sup>90</sup> Available at: <http://www.cnmp.gouv.ht/documentstypes/download?id=90d8267e>

<sup>91</sup> Available at: <http://www.cnmp.gouv.ht/documentstypes/download?id=a7fb0b77>

<sup>92</sup> Available at: <http://www.cnmp.gouv.ht/documentstypes/download?id=08dd3227>

<sup>93</sup> Available at: <http://www.cnmp.gouv.ht/documentstypes/download?id=cf8c5319>

<sup>94</sup> Available at: <http://www.cnmp.gouv.ht/documentstypes/download?id=9e10ebdc>

<sup>95</sup> Available at: <http://www.cnmp.gouv.ht/documentstypes/download?id=a0b78460>

<sup>96</sup> Available at: <http://www.cnmp.gouv.ht/documentstypes/download?id=6fae5ee4>

<sup>97</sup> Available at: <http://www.cnmp.gouv.ht/documentstypes/download?id=59258841>

<sup>98</sup> Available at: <http://www.cnmp.gouv.ht/documentstypes/download?id=d495052a>

general administrative clauses that apply to public works contracts,<sup>99</sup> and a charter of ethics that applies to actors involved in public procurement and public works contracting.<sup>100</sup>

[360] As for the use of modern systems and technologies to facilitate the CNMP's work, during the on-site visit its representatives reported that with support from the World Bank a Public Contracts Information and Management System (SIGMP) has been developed, consisting of a web/intranet site that allows the various users involved in the system to perform tasks such as online publication of tender announcements, consultation of the tendering documents, downloading of system files, etc. The system also helps control the information flows generated by the online procurement process.<sup>101</sup>

[361] To keep citizens informed of its activities, the CNMP has set up and maintains a website<sup>102</sup> where information pertaining to public procurement in general can be published. The CNMP's website features, *inter alia*, general information about the Commission and its activities, which includes information on the award of contracts (including information on the contracts concluded under the Emergency Law), announcements of the opening of tendering, laws on public procurement and contracting, annual reports, the above-mentioned manuals/handbooks and standardized documents pertaining to tendering, and a box at the website where anonymous complaints can be filed.<sup>103</sup>

[362] Concerning accounting, financial, budgetary, operational and asset supervision, according to the information reported in Haiti's response to the questionnaire, the CNMP undergoes a financial audit by the CSC/CA. Its operating budget is audited by the CSC/CA and the investment budget report is presented to the Ministry of Planning and External Cooperation.

[363] As for its budgetary resources, according to the information requested and received during the on-site visit, the total annual budget (operating budget plus investment budget) earmarked for the CNMP in the last five years is as follows (expressed in Haitian gourdes):<sup>104</sup> G39,339,909 (2009-10); G45,000,000 (2010-1); G60,000,000 (2011-12); G85,000,000 (2012-13); and G\$68,000,000 (2013-14).

[364] As for transparency and accountability, according to the information reported in Haiti's response to the questionnaire, the information on approved public procurement is published at the internet site, as indicated above. As part of its activities, the CNMP produces an annual report, which is published at the internet site.

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

[365] The CNMP has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 3.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures.

[366] First, the Committee would like to point out that the topic on "Government Systems for the Procurement of Goods and Services" is not one of the provisions selected for review in this round and will be examined in greater detail in the report on the Second Round of the MESICIC on Haiti. Therefore the review of the CNMP will be limited to the activities having to do with the prevention and repression

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<sup>99</sup> Available at: <http://www.cnmp.gouv.ht/documentstypes/download?id=8ee069cb>

<sup>100</sup> Available at: <http://www.cnmp.gouv.ht/documentstypes/download?id=07e9ba5f>

<sup>101</sup> For more information about the SIGMP, see: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_CNMP\\_sys.pub](http://www.oas.org/juridico/pdfs/mesicic4_hti_CNMP_sys.pub).

<sup>102</sup> <http://www.cnmp.gouv.ht/>

<sup>103</sup> <http://www.cnmp.gouv.ht/denonciation/create>

<sup>104</sup> 1 U.S. dollar = approximately 44 Haitian gourdes (as of May 27, 2014).

of corruption which, under the Law of June 10, 2009 and its Implementing Decrees, are part of the Commission's mandate.

[367] Second, the Committee observes that in order to enforce the existing sanctions effectively and efficiently track procurement and performance of public works contracts and agreements, the CNMP needs the support of the contracting authorities.

[368] However, according to the information reported during the on-site visit, the CNMP does not always receive the support it requires from the contracting authorities. For example, Article 220 of the Decree Implementing the Law of June 10, 2009 provides that the contracting authorities shall present a quarterly report on all contracts that the entity awarded during the quarter. The Committee observes that only four such reports have been submitted in the last ten years, and are published at the CNMP's website.<sup>105</sup>

[369] The Committee also notes that one of the functions of the CNMP is to disseminate, on a quarterly basis, the list of businesses and suppliers that are guilty of serious breaches of the procurement clauses of their contracts and are not, therefore, to continue to participate in government procurement. However, according to what was reported during the on-site visit, and as provided in articles 16 to 20 of the Decree of December 21, 2012, which approves the Code of Ethics for parties to public procurement and public works contracts, it is up to the contracting authority to propose to the CNMP that sanctions be enforced against a business or supplier either bidding for or holding procurement or public works contracts, and that the names of any such businesses be entered on the Commission's black list.

[370] Without the assistance of the contracting authorities, the CNMP cannot effectively discharge its oversight functions. Therefore, the Committee believes it is important that the country under review consider strengthening, with the help of the General Inspectorate of Finance (IGF) and other relevant bodies, the capability of the contracting authorities to file quarterly reports with the CNMP and that the quality of the information presented to the Commission be assured so as to contribute to effective preventive oversight of public procurement. To do this, the country under review could consider strengthening or expanding, as applicable, the units that specialize in tendering and procurement in the ministries and other contracting authorities.

[371] Furthermore, the Committee also believes that appropriate measures need to be taken to give the CNMP the authority to establish administrative sanctions for the contracting authorities that fail to file the quarterly reports, those that file late or those that report inaccurate information.

[372] In view of the foregoing, the Committee will make recommendations in this regard (see recommendations 3.2.1, 3.4.2, and 3.4.3 in section 3.4. of Chapter II (B) of this report).

[373] Third, the Committee observes that one of the functions assigned to the CNMP is the enforcement of administrative sanctions, such as those specified in articles 90 to 94 of the Law of June 10, 2009.

[374] However, before those sanctions can be enforced, the CNMP must have a recommendation from the Committee for Settlement of Differences (CRD) which has proved to be difficult to set up, according to the information reported in the State's own response to the questionnaire<sup>106</sup> and in its most recent Annual Report available, which is for 2011-2012. That report states the following:<sup>107</sup> "*With the exception*

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<sup>105</sup> <http://www.cnpm.gouv.ht/rapportstrimestriels/indexall>. Furthermore, the CNMP has prepared a prototype of the quarterly reports in order to facilitate the presentation of information and standardization of the content. That prototype report is available at: <http://www.cnpm.gouv.ht/guidedesautresdocuments/download?id=e2b6d13a>

<sup>106</sup> Haiti's response to the questionnaire within the framework of the Fourth Round, p. 41.

<sup>107</sup> See the CNMP's Annual Report for 2011-12, p. 30, available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_CNMP\\_rap11.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_CNMP_rap11.pdf)

*of the CNMP representative and the representative selected by the Secretary General of the Prime Minister's Office, both of whom have one-year terms, the members are elected at the time the Committee is seized of a dispute. The Committee for Settlement of Differences, which has five members, shall be formed only when a difference is there to be settled, since one of its members has to be selected by mutual agreement of the parties to the dispute; the member selected by private sector associations must have the approval of the private complainant. Therefore, during the first quarter of the fiscal period, the CNMP has undertaken the measures necessary to retain the two (2) members who have a one-year terms, i.e., the representative the CNMP designates and the representative that the Secretary General of the Prime Minister's Office designates. A decision by the prime minister formalized the selection of these two (2) members and the other representative of the public administration. Once the essential components of this structure are in place, it will be able to more quickly determine when it must meet to settle a dispute."*

[375] Also, during the on-site visit the CNMP representatives provided information on the results of a validation workshop on the report evaluating the system for authorization and management of public procurement, which was held in November 2013,<sup>108</sup> where it is recommended that to guarantee its independence, the CRD should be placed under the CSC/CA or under the Office of Management and Human Resources (OMRH).

[376] Based on the foregoing, the Committee believes that to enforce the sanctions provided for in the Law of June 10, 2009, Haiti should consider strengthening the measures to determine the membership of and establish the CRD, so that it may begin to operate and, at the same time, ensure that the Committee has autonomy in its operations. The Committee will make recommendations in this regard (see recommendations 3.4.4 and 3.4.5 in section 3.4. of Chapter II (B) of this report).

[377] Fourth, the Committee observes that Article 16 of the Decree of October 26, 2009, spelling out the organizational structures and functions of the CNMP, establishes the regime of incompatibilities of CNMP members, under which no member of the CNMP shall have a direct or indirect conflict of interest with a bidding company. However, no details are provided as to the procedures to be followed to establish the presence of a conflict of interest or the incompatibilities referenced in articles 22 and 23 of the Law of June 10, 2009. Furthermore, the Committee observes that the Decree in question does not establish similar incompatibility rules to apply to members of the CDMP. The Committee will make recommendations in this regard (see recommendations 3.4.6 and 3.4.7 in section 3.4. of Chapter II (B) of this report).

[378] Fifth, during the on-site visit the CNMP representatives reported that the procedural handbooks for human, financial and material resource administration and management, referenced in Article 37 of the Decree of October 26, 2009, have not yet been approved. They also reported that the CNMP's internal regulations are on the drawing board and should be ready in 2015, as should a set of internal regulations on the process of selecting contractors, in keeping with Article 33-2 of the October 26, 2009 Decree, spelling out the selection criteria, standard terms of reference and incompatibilities. The Committee will make recommendations in this regard (see recommendations 3.4.8 and 3.4.9 in section 3.4. of Chapter II (B) of this report).

[379] Sixth, during the on-site visit, the CNMP reported that no complaints had been received since the anonymous complaints box was introduced at its website. Here, the Committee believes that the country under review should consider more widely publicizing the complaints box, and preparing and publishing a guide, in French and Creole, to provide assistance to those interested in filing complaints of irregularities and/or conflicts of interest, to explain the procedures and the type of information needed from the complainant to make the complaint useful to the CNMP's investigative work. The Committee

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<sup>108</sup> See: <http://www.cnmp.gouv.ht/guidedesautresdocuments/download?id=55a373a3>

will make a recommendation in this regard (see recommendation 3.4.10 in section 3.4. of Chapter II (B) of this report).

[380] Finally, during the on-site visit it was reported that no activities had been conducted in coordination and in cooperation with other institutions; the only exception was the CSC/CA, with which the CNMP must, by law, coordinate. The representatives also observed that coordination is getting underway with the ULCC on a proposal for a public procurement observatory and that they have participated in the Sectorial Working Group on Public Procurement, mentioned in section 1.1 of Chapter II (B).

[381] Accordingly, the Committee feels it is important for the country under review to consider expanding and strengthening inter-institutional cooperation between the CNMP and the IGF, the OMRH, the ULCC and other bodies charged with assisting it with the prevention of and administrative sanctions imposed for corrupt acts committed in public procurement processes. The Committee will make a recommendation in this regard (see recommendation 3.4.11 in section 3.4. of Chapter II (B) of this report).

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

[382] Through the Republic of Haiti's response to the questionnaire and the on-site visit, information was compiled on the CNMP's performance, notably the following:

[383] First, in the response from the country under review to the questionnaire,<sup>109</sup> the following information is reported on the CNMP's anti-corruption activities: *"As for what has been accomplished in the last five (5) years, the CNMP has set up a well-regulated system for public procurement and for awarding public works contracts. At the present time, there is one law and seventeen (17) implementing decrees (...) Two major sets of training activities have been conducted: one with the firm SOFRECO in 2007 and the other with the staff of the CNMP in 2012 and 2013. With the support of the Organization of American States (OAS) and the Inter-American Development Bank (IDB), an online training course was offered to the public and to high-level officials of public institutions (2011-2012). A number of training courses have already been organized, especially at the request of the Ministry of the Interior and the Territorial Divisions, the Provisional Electoral Council, and civil society. An evaluation was just completed of the system for authorizing and managing public procurement. The CNMP is preparing the prototype documents for procurements that exceed the threshold amounts and for authorizing public procurements when states of emergency are in effect."*

[384] Likewise, as reported in section 3.1 above, on the occasion of the on-site visit the CNMP representatives supplied more detailed information on the training activities the Commission has either conducted or co-sponsored,<sup>110</sup> which include both instruction in the application of the law on the subject of bidding and public works, as well as presentations at ULCC-organized events on the institutions' roles and responsibilities in combatting corruption.

[385] However, Haiti's response to the questionnaire underscores the need to continue and expand the CNMP's training activities, as follows: *"It is worth noting that despite the existing regulations governing public procurement, the issue of authorizing public procurement is not well understood in our milieu. The CNMP should undertake to explain the system so that all the actors are able to understand it."*

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<sup>109</sup> Haiti's response to the questionnaire within the framework of the Fourth Round, p. 43.

<sup>110</sup> The details on the CNMP's training activities are available at:  
[http://www.oas.org/juridico/PDFs/mesicic4\\_hti\\_cnmp\\_listedeact.pdf](http://www.oas.org/juridico/PDFs/mesicic4_hti_cnmp_listedeact.pdf)

[386] Given the foregoing, the Committee takes note of the considerable efforts undertaken by the CNMP to train the actors in the system and feels that it would be beneficial for the CNMP to continue and expand its training activities, especially with the support of other organs and entities like the ULCC, so as to include courses and modules on the prevention and investigation of bribery of contracting authorities, collusion among bidders and conflicts of interest in the context of procurement and public works. The Committee will make a recommendation in this regard (see recommendation 3.4.12 in section 3.4. of Chapter II (B) of this report).

[387] Second, as for its performance in enforcing the administrative sanctions provided under the law, Haiti's response to the questionnaire states the following: *"Although the law provides for investigations, the CNMP has not yet conducted any because the opportunity has not presented itself. It is important to note that the CNMP plays no direct role in procurement (...) One of the authorities given the CNMP is to impose administrative sanctions should irregularities be detected in the approval and execution of public procurements. The offenses and the sanctions are discussed in section 2 of Chapter 1 of title IV of that law. No recourse has prospered given the difficulties encountered in setting up the Committee for Settlement of Differences (CRD)."*

[388] In view of the foregoing, the Committee notes with concern that the sanctions provided for under the Law of June 10, 2009, its implementing decree, and the Code of Ethics for persons involved in public procurement have never been enforced. As observed in section 3.2 above, that situation is a result of a lack of support on the part of the contracting authorities and the difficulties encountered in selecting the CRD members.

[389] The Committee hopes that Haiti will take the appropriate steps to enforce the existing law and that the results of CNMP/CRD investigations will be presented showing the total number of cases investigated and ready for a decision; the number of decisions taken on the cases; the number of decisions that resulted in attribution of liability or a sanction; the number of these decisions in which no liability was found or that ended in an acquittal; and the number of cases that closed due to the statute of limitations or extinction of liability because no decision was taken within the prescribed time period. The Committee will make a recommendation in this regard (see recommendation 3.4.13 in section 3.4. of Chapter II (B) of this report).

### **3.4. Conclusions and Recommendations**

[390] Based on the comprehensive review conducted with respect to the National Public Procurement Commission (CNMP) in the foregoing sections, the Committee offers the following conclusions and recommendations:

[391] **Haiti has considered and adopted measures intended to maintain and strengthen the CNMP as an oversight body, as described in section 3 of Chapter II (B) of this report.**

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

- 3.4.1. Strengthen the contracting authorities' abilities to file quarterly reports with the National Public Procurement Commission (CNMP) and establish mechanisms to ensure the quality of the information submitted to the CNMP, for the sake of effective preventive control of public procurement (see section 3.2 of Chapter II (B) of this report).
- 3.4.2. Consider strengthening or expanding, as applicable, the units that specialize in bidding and procurement in the ministries and other contracting authorities (see section 3.2 of Chapter II (B) of this report).

- 3.4.3. Consider giving the CNMP the authority to establish administrative sanctions to enforce in the case of contracting authorities who fail to file quarterly reports, file late, or provide inaccurate information (see section 3.2 of Chapter II (B) of this report).
- 3.4.4. Strengthen the measures necessary to determine the membership of and establish the Committee for Settlement of Differences (CRD), so that it may begin to operate (see section 3.2 of Chapter II (B) of this report).
- 3.4.5. Ensure that the CRD has autonomy in its operations (see section 3.2 of Chapter II (B) of this report).
- 3.4.6. Develop procedures to effectively check for incompatibilities and conflicts of interest in the case of the members of the CNMP and the incompatibilities established in articles 22 and 23 of the Law of June 10, 2009 (see section 3.2 of Chapter II (B) of this report).
- 3.4.7. Establish incompatibility rules that apply to the members of the Departmental Public Procurement Commissions (CDMP), and the procedures by which to check for incompatibilities and conflicts of interest among their members (see section 3.2 of Chapter II (B) of this report).
- 3.4.8. Adopt the procedural handbooks for human, financial and material resource administration and management, referenced in Article 37 of the Decree of October 26, 2009 (see section 3.2 of Chapter II (B) of this report).
- 3.4.9. Adopt internal regulations to govern the CNMP and a set of internal rules on the process of selecting contractors, in keeping with Article 33-2 of the October 26, 2009 Decree spelling out the selection criteria, standard terms of reference and incompatibilities (see section 3.2 of Chapter II (B) of this report).
- 3.4.10. More widely publicize the method the CNMP makes available for filing anonymous complaints and prepare and publish a guide, in French and Creole, to provide assistance to those interested in filing complaints of irregularities and/or conflicts of interest, to explain the procedures and the type of information needed from the complainant to make the complaint useful to the CNMP's investigative work (see section 3.2 of Chapter II (B) of this report).
- 3.4.11. Expand and strengthen inter-institutional cooperation between the CNMP and the IGF, the OMRH, the ULCC and other bodies charged with assisting it with its work in preventing corrupt acts in government contracting and enforcing administrative sanctions (see section 3.2 of Chapter II (B) of this report).
- 3.4.12. Continue and expand the CNMP's training activities, especially with the support of other organs and entities like the ULCC, so as to include courses and modules on the prevention and investigation of bribery of contracting authorities, collusion among bidders and conflicts of interest in the context of procurement and public works contracting (see section 3.3 of Chapter II (B) of this report).
- 3.4.13. Prepare comprehensive statistical data on the results of investigations conducted within the CNMP/CRD showing the total number of cases investigated and ready for a decision; the number of decisions taken on the cases; the number of decisions that resulted in attribution of liability or a sanction; the number of decisions in which no liability was found or that ended in an acquittal; and the number of cases that closed due to the statute

of limitations or extinction of liability because the decision was not taken within the prescribed time period; with a view to identifying challenges and recommending corrective measures (see section 3.3 of Chapter II (B) of this report).

#### **4. THE SUPERIOR COUNCIL OF THE JUDICIAL BRANCH (CSPJ)**

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

[393] The Superior Council of the Judicial Branch (CSPJ) has a set of provisions in its legal framework, as well as other measures concerning, among others, the following:

[394] Article 184.2 of the 1987 Constitution (as amended) provides that administration and control of the Judicial Branch are entrusted to the Superior Council of the Judicial Branch, which supervises and disciplines judges and magistrates and has general authority to report on and make recommendations regarding the situation of the Judiciary.

[395] Regarding its objectives and functions, under the Law of November 13, 2007 that created the CSPJ, its functions include the administration, oversight, discipline and deliberation of the Judicial Branch. It is also called upon to recommend candidates for the head court and update the personnel files of all magistrates (Article 1).<sup>111</sup> Likewise, the CSPJ manages and administers the operating budget assigned to the courts and tribunals (Article 15) and has general authority to report and make recommendations regarding the situation of the judiciary and all questions pertaining to the justice system, especially those that concern its independence and *modus operandi* (Article 36).

[396] As for exceptions to its functions, the CSPJ does not have the authority to appoint or discipline members of the Public Prosecution Service or administrative or support personnel in the Judicial Branch, who are under the authority of the Ministry of Justice and Public Security (MJSP). Furthermore under Article 184.1 of the Constitution, the justices of the Supreme Court [*Cour de Cassation*] can only be tried by the High Court of Justice.

[397] Under articles 15 and 16 of the Law of November 13, 2007, the CSPJ is to be assisted by a Technical Secretariat, divided into two technical directorates: the Office of the Director of Administrative Matters and Budget and the Office of the Director of Judicial Inspection.

[398] Under Article 17 of the Law of November 13, 2007, the functions of the Office of the Director of Administrative Matters and Budget include that of administering the Judicial Branch's material and financial resources, in accordance with what the law prescribes; assisting with preparation of the Judicial Branch's proposed budget; and participating in the drafting of administrative norms and procedures on management of material and financial resources and their implementation.

[399] Under Article 20 of the Law of November 13, 2007, the functions of the Office of the Director of Judicial Inspection include that of ensuring that the courts operate within the laws of the Republic and the norms and regulations established by law; ensuring that the court fees that the law prescribes are enforced; controlling the enforcement of the statutory norms regarding judicial personnel; and receiving complaints and claims.

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<sup>111</sup> Article 174 of the 1987 Constitution provides that the justices on the Supreme Court and appellate court judges have ten-year appointments. For their part, judges serving on the courts of first instance have seven-year appointments. The process whereby the appellate court judges and the judges of the courts of first instance are reconfirmed is set forth in articles 15 and 16 of the Law that approves the Statute of the Judiciary ("*Loi portant Statute de la Magistrature*"). The justices of the peace and members of the Public Prosecution Service do not have terms and can be removed at any time.

[400] Under Article 4 of the Law of November 13, 2007, the Council shall be composed of nine members: the Chief Justice of the Supreme Court [*Cour de Cassation*], who chairs the Council; one (1) justice of the Supreme Court, elected by a majority vote of his/her peers to serve as Vice Chair; the Government Commissioner to the Supreme Court; a judge of the Court of Appeals, elected by a majority vote of his/her peers on the Court of Appeals; one (1) judge of a court of first instance, elected by a majority vote of his/her peers; one (1) official from the Public Prosecution Service assigned to the Court of First Instance and selected for the Council by the Minister of Justice and Public Security; one (1) incumbent judge of a Court of the Peace, elected by the justices of the peace previously selected by the Government Commissioner for his/her respective jurisdiction; one (1) person representing civil society, appointed by the Ombudsperson from a list a three names submitted by human rights organizations, and one (1) dean, elected by the Assembly of deans in office.

[401] Article 5 of the Law of November 13, 2007, sets out the requirements for membership on the CSJP. Its members are appointed by executive order (Article 6) to serve a three-year term, which can be renewed only once, except in the case of those who, by law, are automatically members by virtue of their office. That term begins as of the date they take their oath of office (articles 7 and 8). Article 9 of the law guarantees the independence of the members of the CSPJ.

[402] Under Article 10, magistrates serving on the CSPJ shall not be nominated for any other judicial office, even one at the same level, for the duration of their term on the Council, unless they resign prior to the appointment process. Under Article 12 of that law, any member of the CSPJ can be tried for serious misconduct or wrongdoing in the performance of his/her functions.

[403] Under Article 13 of the Law of November 13, 2007, the Council shall meet at least once a month, but shall not deliberate unless at least five (5) of its members are present. Decisions are taken by a majority vote. In the event of a tie, the vote of the Chair is the tie breaker. The Council's decisions are thus taken on a collegiate basis.

[404] Article 22 of the Law of November 13, 2007 determines who may file disciplinary complaints with the CSPJ. Articles 23 to 34 of the law establish the procedure to follow and the applicable sanctions. When a complaint is filed with the Council involving a judge or court clerk, the Chair of the CSPJ turns over the case file to a disciplinary commission composed of three (3) members of the Council, who decide whether the complaint is admissible (Article 24).

[405] Within a period of no more than thirty days, the disciplinary commission is to present its decision to the assembly for consideration. If the disciplinary commission considers the complaint to be admissible, the Council may, at the request of the Minister of Justice and Public Security, order preventive measures with respect to the magistrate in question, if the case so warrants (Article 34). The Chair of the Council selects one of its members as rapporteur to write the opinion (Article 25).

[406] The disciplinary proceeding is adversarial based (Article 26) and the CSPJ meets behind closed doors, except when the judge requests a public hearing (Article 27).

[407] The disciplinary sanctions are spelled out in Article 28 of the Law of November 13, 2007, and include reprimands that are entered into an individual's record; being relieved of certain judicial functions; and leave without pay. The Council may also decide to remove a judge from the bench upon a verdict of misconduct (Article 29).

[408] Under Article 32 of the Law of November 13, 2007, within fifteen (15) days of its issuance, the judge or magistrate in question shall be notified of the Council's decision, as shall the complainant and

the Ministry of Justice and Public Security.<sup>112</sup> If the CSPJ finds that the facts denounced constitute a crime or other illegal act, it shall also refer the case to the competent criminal court. Nevertheless, public prosecution shall not have the effect of stopping the disciplinary proceedings (Article 33). Disciplinary decisions may be appealed with the full membership of the Council (Article 31).

[409] As for the manner in which staffing is decided, Article 19 of the Law of November 13, 2007 provides that the Director of Administrative Matters and Budget shall be recruited on a competitive basis. Article 21 of that law provides that the Director and inspectors with the Office of the Director of Judicial Inspection must have, at the least, a degree in law.

[410] According to what the CSPJ representatives reported during the on-site visit, the CSJP has 9 career staff members and 14 under contract. The decree of May 17, 2005, establishing the General Civil Service Statute, applies to career staff members. That statute stipulates the specific cases of incapacity or incompatibility that apply to civil servants in general. Contract personnel are hired directly and the decision to keep them in their respective posts is up to their immediate superiors and those to whom they are accountable.<sup>113</sup>

[411] As for training for members of the Judicial Branch, Haiti has a Judiciary School (EMA) which is for initial and ongoing training of magistrates and the officers of the Judicial Branch, as provided in Article 3 of the Law on the EMA. However, during the on-site visit, the CSPJ representatives reported that the Council does not have a basic and advanced professional training plan in place to ensure that its personnel have the proper instruction. However, it plans to develop and implement a program to train future inspectors before assigning them to their posts. It also plans to provide training to heads of jurisdiction in the administration and management of courts and tribunals, and to create management units within them.<sup>114</sup>

[412] As for the existence of manuals or documented procedures for performing functions, according to what the CSPJ representatives reported during the on-site visit, the Council does not yet have methods and mechanisms in place to enable future inspectors to ensure operational oversight of the jurisdictions and evaluate the judges by objective criteria. A handbook is being prepared for the judicial inspectors. In the meantime, the Council demands that all heads of jurisdiction file monthly reports on judicial activity.<sup>115</sup>

[413] As for the internal control mechanisms, according to what was reported in Haiti's response to the questionnaire, the CSPJ does not yet have an internal control mechanism. To date, the Central Administration has not received any complaint against any member of the CSPJ staff.<sup>116</sup>

[414] Concerning its budgeted resources, according to what was reported in the response received from the country under review to the questionnaire, the CSPJ submits a budget proposal to the Ministry of the Economy and Finance. The Government then presents it to the Haitian Parliament before the budget takes effect. Parliament's Permanent Commission on the Economy, Finance, Trade and the Budget may

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<sup>112</sup> Under Article 67 of the Law approving the Statute of the Judiciary ("*Loi portant Statute de la Magistrature*") it is the Ministry of Justice and Public Security that enforces the CSPJ's disciplinary decisions.

<sup>113</sup> See the document presented by the CSPJ during the on-site visit, available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_CSJP\\_notes.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_CSJP_notes.pdf)

<sup>114</sup> See the document presented by the CSPJ during the on-site visit, available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_CSJP\\_notes.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_CSJP_notes.pdf)

<sup>115</sup> See the document presented by the CSPJ during the on-site visit, available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_CSJP\\_notes.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_CSJP_notes.pdf)

<sup>116</sup> Haiti's response to the questionnaire within the framework of the Fourth Round, p. 60.

invite the Council to explain the text submitted. The Council has a global budget covering the operations of the Central Administration (the Technical Secretariat), the courts and the tribunals of the Republic.<sup>117</sup>

[415] According to information requested and provided during the on-site visit, the total annual budget (operating budget plus investment budget) assigned to the CSPJ for fiscal period 2012-2013 was G706,274,965.70 (Haitian gourdes).<sup>118</sup> That amount, which is 0.60% of the State's budget, is divided to cover management and operation of the Council's central administration (50,000,000 Haitian gourdes), the operations of the Supreme Court (79,006,029.25 Haitian gourdes), the five appellate courts (61,137,572.58 Haitian gourdes), the 18 courts of first instance and the 179 courts of the peace (595,137,393.12 Haitian gourdes).<sup>119</sup>

[416] As for the coordination mechanisms, under articles 69 and 70 of the Law of November 13, 2007, which approved the Statute of the Judiciary, the CSPJ must, together with the Ministry of Justice and Public Security, certify judges and the officials in the Public Prosecution Service. Furthermore, the CSPJ has a Public Relations Committee charged with maintaining contacts with national and international institutions so as to harmonize the reports with those of other institutional organs.

[417] As for the way in which information is made available to the public, under Article 37 of the Law of November 13, 2007, at the end of each court year the CSPJ is to prepare and publish a report on its activities and the situation of the Judiciary. According to what the CSPJ representatives reported during the on-site visit, the Council has published an informative brochure about its current members and the laws recently enacted as part of the reform of the justice system, including the law that created the CSPJ. The first annual report on the CSPJ's activities and the situation of the judiciary is being printed. While they await implementation of a CSPJ strategy and a unit enabling the CSPJ to communicate with the public, in keeping with its internal rules, Council members provide information to the public at their personal discretion.<sup>120</sup>

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

[418] The Superior Council of the Judicial Branch (CSPJ) has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 4.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures:

[419] First, the Committee observes that although it was created by a Law of November 13, 2007, the CSPJ did not go into operation until July 2012, when all nine (9) of its members were designated.<sup>121</sup>

[420] The CSPJ representatives also indicated that under Article 175 of the 1987 Constitution, the President of the Republic must also name the judges selected by the CSPJ. They observed the following in this regard: “(...) *the President of the Republic is not given a deadline by which to appoint a judge once the Council has requested the appointment. The inertia on the part of the Executive Branch could become an obstacle to the normal functioning of the Superior Council of the Judicial Branch itself and,*

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<sup>117</sup> *Ibid.*, pp. 61-62.

<sup>118</sup> 1 U.S. dollar = approximately 44 Haitian gourdes (as of May 27, 2014).

<sup>119</sup> See the document presented by the CSPJ during the on-site visit, available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_CSJP\\_notes.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_CSJP_notes.pdf)

<sup>120</sup> See the document presented by the CSPJ during the on-site visit, available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_CSJP\\_notes.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_CSJP_notes.pdf)

<sup>121</sup> According to what the CSPJ representatives reported during the on-site visit, “*the delay was attributable to the fact that the President of the Supreme Court [Cour de Cassation], who is the Chair ex officio of the Superior Council of the Judicial Branch, had not been appointed by President René Preval. The reason for withholding the appointment has not been made public.*” See the document presented by the CSPJ during the on-site visit, available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_CSJP\\_notes.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_CSJP_notes.pdf)

*by extension, of the courts and tribunals. The fear that their term might not be renewed may affect the independence of certain magistrates in the exercise of their functions and explain certain failures to comply with the duties of the office. No provision has been made for an institutional mechanism to solve the problem should it occur.”*<sup>122</sup>

[421] The Committee believes that the delay in appointing the President of the Supreme Court and the resulting delay in setting up the CSPJ, make it impossible for this oversight body to perform its important functions and does nothing to contribute to the independence of the Judicial Branch or to strengthen it. Furthermore, the fact that the judges and magistrates selected or reconfirmed in their posts by the CSPJ must then get presidential approval is yet another impediment to an independent Judicial Branch. While the Committee recognizes that this is a constitutional issue, it will make recommendations to the country under review given how important it is that the Judicial Branch have the necessary independence (see recommendation 4.4.1 in section 4.4. of Chapter II (B) of this report).

[422] Second, during the on-site visit, representatives of the State under review and of civil society underscored the fact that Haitian law does not establish terms or guarantees for members of the Public Prosecution Service. Indeed, under Article 17 of the Law approving the Statute of the Judiciary (“*Loi portant Statute de la Magistrature*”) and Article 35 of the Law of November 13, 2007, which creates the CSPJ, both the selection and the decisions on promotions, discipline and tenure of members of the Public Prosecution Service in their posts are the responsibility of the Ministry of Justice and Public Security (MJSP).

[423] Here, the Committee believes that in order to provide the officers of the Public Prosecution Service with full guarantees of independence and impartiality in discharging their duties and in order to prevent influence by the executive branch in decisions regarding criminal prosecution, consideration be given to awarding the power to select, promote, recertify, and discipline officers of the Public Prosecution Service to the CSPJ.

[424] As observed in Section 1.3 of Chapter II (B) of this report, during the on-site visit representatives of civil society were highly critical of the failure to provide the members of the Public Prosecution Service [the *Parquet*] with the necessary guarantees. According to the civil society representatives, the lack of guarantees is said to be one of the reasons why ULCC investigations into acts of corruption get nowhere in the Public Prosecution Service.

[425] Given the foregoing, the Committee will make a recommendation to the country under review (see recommendation 4.4.2 in section 4.4. of Chapter II (B) of this report).

[426] Third, the Committee confirms that the Judicial Branch’s budget as a whole –but especially the CSPJ’s budget- is very small, representing, respectively, 0.54% and 0.04% of the State’s total budget in 2012-2013.

[427] The CSPJ representatives pointed to a number of problems obstructing its ability to effectively perform its functions, especially its limited human resources (9 civil servants and 14 contract personnel), and the need to install internet connections in the appellate courts and other tribunals in order to enable them to communicate in real time with the CSPJ.

[428] They also observed that, for a variety of reasons, many judges are still awaiting back pay, which they said might be one of the reasons for the problems in the courts and might explain why some judges are corrupt.

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<sup>122</sup> See the document presented by the CSPJ during the on-site visit, available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_CSJP\\_notes.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_CSJP_notes.pdf)

[429] The Committee will make recommendations in this regard to the country under review (see recommendations 4.4.3 and 4.4.4 in section 4.4. of Chapter II (B) of this report).

[430] Fourth, the Committee observes that the CSPJ's Office of the Director of Judicial Inspection is not yet in operation. Furthermore, the Law of November 13, 2007, which creates the CSPJ, does not contain a provision legally requiring that the Director and the Inspectors be selected by public competition, not even in the case of contractors, although during the on-site visit the CSPJ representatives said that a decision has been made to hold a competition and the CSPJ is currently in the recruitment process with a view to establishing the Office of the Director of Judicial Inspection.

[431] The CSPJ representatives also reported that a guide to judicial inspection is being put together, to enable future inspectors to ensure operational oversight of jurisdictions and evaluate judges by objective criteria.

[432] Given the foregoing, the Committee will make recommendations in this regard (see recommendations 4.4.5 and 4.4.6 in section 4.4. of Chapter II (B) of this report).

[433] Fifth, as reported earlier in section 1.1.2 of Chapter II (A) of this report, the Committee confirmed that there are no Codes of Ethics exclusively for members of the Judicial Branch or the Public Prosecution Service. The Committee believes that it would be beneficial for these Codes of Ethics to be approved and for them to include specific provisions on conflicts of interest, over and above the important provisions contained in the Statute of the Judiciary. The Committee also feels that once those Codes of Ethics are approved, they should be widely disseminated; and activities should be conducted to raise awareness of the Codes' contents. The Committee will make recommendations in this regard (see recommendations "h" in section 1.1.4 of Chapter II (A) of this report and recommendation 4.4.7 in section 4.4. of Chapter II (B) of this report).

[434] Sixth, while a Judiciary School does exist, during the on-site visit the CSPJ representatives said that the Council does not yet have a basic and advanced professional training plan to ensure that its staff has the proper instruction. However, the Council does have plans to prepare and implement a training plan for future inspectors before they are assigned to their posts. The Committee therefore believes that the appropriate measures need to be taken so that CSPJ personnel have training specifically related to the investigation and prosecution of acts of corruption. Furthermore, the Committee believes that the instruction given to magistrates and judges through the Judiciary School could include such topics as judicial ethics and conflicts of interest and heighten their awareness of the role of the Judiciary in combatting corruption (see recommendations 4.4.8 and 4.4.9 in section 4.4. of Chapter II (B) of this report).

[435] Seventh, during the on-site visit, the CSPJ representatives reported that it still did not have a manual spelling out the functions of CSPJ personnel, but that a set of Internal Regulations was being finalized to complement and explain the standards governing its organization and functions. They went on to say that once those Internal Regulations are approved, the CSPJ's Technical Secretariat would draw up the description and requirements for each position. The Committee will make a recommendation in this regard (see recommendation 4.4.10 in section 4.4. of Chapter II (B) of this report).

[436] Eighth, the Committee observes that there is no set of detailed regulations governing the disciplinary procedures established in articles 22 to 35 of the Law of November 13, 2007, which created the CSPJ. Furthermore, during the on-site visit the Committee observed that the process of certifying and reconfirming judges and prosecutors, required under articles 15, 69 and 70 of the Law approving the Statute of the Judiciary ("*Loi portant Statute de la Magistrature*"), has still not been implemented owing to the fact that the terms of reference and conditions for that procedure have not been developed. The

Committee will make a recommendation in this regard (see recommendations 4.4.11 and 4.4.12 in section 4.4. of Chapter II (B) of this report).

[437] Finally, the Committee notes that the CSPJ does not have an institutional website and that although Article 37 of the Law of November 13, 2007, requires the CSPJ to prepare and publish, at the end of each judicial year, a report on its activities and the situation of the judiciary, no report has been published thus far. According to what the CSPJ representatives reported during the on-site visit, the Council was in the process of preparing its first report, which would be published shortly. Furthermore, according to those representatives, the aforementioned Article 37 does not specify precisely to whom the report and the recommendations made by the Superior Council of the Judicial Branch are to be sent: the Executive Branch or Parliament.

[438] In this respect, the Committee believes it is important that the report reflect the CSPJ's main activities and goals, and convey information regarding the selections and appointments of judges and prosecutors, and their evaluation and certification, which are responsibilities of the CSPJ. Likewise, the report should also contain information on how resources are being used and on any disciplinary proceedings, including a summary of the complaints received, the preliminary investigations conducted and the disciplinary proceedings conducted over the course of the year, specifying whether or not sanctions were imposed and if so what those sanctions were.

[439] In view of the foregoing and taking into account the importance of public accountability with respect to the CSPJ's activities, the Committee will make recommendations in this regard (see recommendations 4.4.13 and 4.4.14 in section 4.4. of Chapter II (B) of this report).

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

[440] Through information provided during the on-site visit, the following was compiled regarding the performance of the Superior Council of the Judicial Branch (CSPJ):

[441] *“Since its creation, the Council has instituted 21 inquiries: following the necessary inquiries, a disciplinary decision is pending in three (3) cases; another three (3) cases resulted in dismissal; one (1) decision was taken by forming a disciplinary tribunal; no decision has been made in one (1) case opened at the Council's initiative; in the thirteen remaining cases the inquiries are still in the preliminaries.”*

[442] The Committee believes that the above information demonstrates that although the CSPJ began operating less than two years ago and still does not have an office of the Director of Judicial Inspection, it has launched disciplinary inquiries targeting judges. However, the Committee did not have complete information about the number of complaints received under articles 22 and 23 of the Law of November 13, 2007, which created the CSPJ, how many of these were dismissed and why, how many investigations were closed, how many ended because of the statute of limitations and in how many sanctions were actually enforced and of what type. The Committee will make a recommendation in this regard (see recommendation 4.4.15 in section 4.4. of Chapter II (B) of this report).

### **4.4. Conclusions and Recommendations**

[443] Based on the comprehensive review conducted with respect to the Superior Council of the Judicial Branch (CSPJ) in the foregoing sections, the Committee offers the following conclusions and recommendations:

[444] **Haiti has considered and adopted measures intended to maintain and strengthen the CSPJ as an oversight body, as described in section 4 of Chapter II (B) of this report.**

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

- 4.4.1. Strengthen the independence of the Judicial Branch and implement a mechanism that ensures that the formation of the judiciary (“*la magistrature*”) is neither obstructed nor paralyzed by failure to appoint or confirm judges. If presidential approval is not given, that the public is informed of the reasons why approval was withheld (see section 4.2 of Chapter II (B) of this report).
- 4.4.2. Consider including, in the powers of the Superior Council of the Judicial Branch (CSPJ), the authority to select, promote, recertify, and discipline the officers of the Public Prosecution Service, in order to provide those officers with full guarantees of independence and impartiality in discharging their duties (see section 4.2 of Chapter II (B) of this report).
- 4.4.3. Strengthen the CSPJ, especially its Office of the Director of Judicial Inspection, by ensuring that it has the human, financial and technological resources needed to properly perform its functions, taking the availability of resources into account (see section 4.2 of Chapter II (B) of this report).
- 4.4.4. Strengthen the Judicial Branch and its career service, especially by making certain that judges receive their salaries on time (see section 4.2 of Chapter II (B) of this report).
- 4.4.5. Consider making public competition a legal requirement in the case of all CSPJ civil service personnel and contractors, including –and most especially- competition for the positions of Director and Investigator in the Office of the Director of Judicial Inspection (see section 4.2 of Chapter II (B) of this report).
- 4.4.6. Adopt the manual for judicial inspection, so that future inspectors are able to guarantee functional oversight of the courts and the judges, and evaluate them on the basis of objective criteria (see section 4.2 of Chapter II (B) of this report).
- 4.4.7. Widely disseminate the Codes of Ethics of the Judicial Branch and the Public Prosecution Service, once they are approved, and conduct the necessary activities to create an awareness of their contents (see section 4.2 of Chapter II (B) of this report).
- 4.4.8. Take the appropriate measures so that the CSPJ staff have training specifically related to the investigation and prosecution of acts of corruption (see section 4.2 of Chapter II (B) of this report).
- 4.4.9. Expand the training given to magistrates and judges to include topics like judicial ethics, conflicts of interest and awareness of the role of the Judicial Branch in combatting corruption (see section 4.2 of Chapter II (B) of this report).
- 4.4.10. Adopt and publish the CSPJ’s Internal Regulations and a manual of posts describing the functions of its staff and the skills required to perform those functions (see section 4.2 of Chapter II (B) of this report).
- 4.4.11. Establish detailed rules to govern the disciplinary proceedings provided for in articles 22 to 35 of the Law of November 13, 2007, which created the CSPJ (see section 4.2 of Chapter II (B) of this report).

- 4.4.12. Approve the terms of reference and conditions that must be met for the process of certification and reconfirmation of judges and prosecutors and launch that process, pursuant to articles 15, 69 and 70 of the Law approving the Statute of the Judiciary (see section 4.2 of Chapter II (B) of this report).
- 4.4.13. Establish the CSPJ's website and then maintain and update it so as to give the public easy access to information about the work the institution is doing. Make certain that the website features, *inter alia*, its annual reports, relevant laws, its manuals or handbooks of procedure and the announcements to fill the institution's vacant posts (see section 4.2 of Chapter II (B) of this report).
- 4.4.14. Establish regulations to govern the content of the annual reports that the CSPJ is required to publish under Article 37 of the Law of November 13, 2007, which created the CSPJ, stipulating, *inter alia*, that the reports must contain information on the CSPJ's principal activities and goals; on the procedures for selecting and appointing judges and prosecutors and for evaluating and certifying them; and information on how the CSPJ's resources are being used and on any disciplinary proceedings conducted over the course of the year, to include a brief summary of the complaints received, the inquiries and disciplinary proceedings conducted that year, specifying whether sanctions were enforced and if so what they were (see section 4.2 of Chapter II (B) of this report).
- 4.4.15. Prepare and publish comprehensive statistical data on the results of the disciplinary inquiries conducted within the CSPJ, to show how many complaints were received pursuant to articles 22 and 23 of the Law of November 13, 2007, which created the CSPJ; how many were dismissed and why; how many inquiries were closed; how many were time-barred by the statute of limitations, and in how many sanctions were actually enforced and of what kind, all for the purpose of identifying the challenges and recommending remedial measures (see section 4.3 of Chapter II (B) of this report).

## **5. THE GENERAL INSPECTORATE OF FINANCE (IGF)**

### **5.1. Existence of provisions in the legal framework and/or of other measures.**

[446] The General Inspectorate of Finance (IGF) has a set of provisions in its legal framework, as well as other measures concerning, among others, the following:

[447] With respect to its objectives and functions, under Article 2 of the Decree of March 17, 2006, concerning the establishment of the IGF, the institution's missions are as follows: to check, oversee and conduct the *a priori* and *a posteriori* technical, administrative, financial and accounts auditing of the entire National Public Administration; study all the issues and take measures of all kinds related to public finances, public accounting, public investments, public procurement, the assets of the State and of the local units, and measures associated with budgetary rigor and financial discipline.

[448] Likewise, under Article 3 of that decree, the IGF advises the Minister of the Economy and Finance (MEF) and, in that capacity, comes up with recommendations pertaining to any and all areas within its competence. Article 4 provides that, on instruction from the MEF, the IGF may, under exceptional circumstances, conduct a variety of studies and investigations within its area of competence, provided the constitutional principle of separation of powers is not violated.

[449] As for its authorities, under Article 2 of the Decree of March 17, 2006, they include monitoring to ensure observance and enforcement of the rules and procedures for public accounting, as they are defined in the Decree on preparation and enforcement of Finance Laws and the Decree of February 16, 2005, concerning the general regulations governing public accounting; ensure that the Public Treasury's central accounting comports with the accounting of the public administrations; periodically check the status of the Treasury's general account and special accounts; before presenting the annual accounts, ensure compliance with the formalities for executive, judicial and legislative approval and that the existing standards and procedures have been followed in the public deeds issued and records established; check to ensure that the officers authorizing spending in the ministries, the territorial divisions, public entities and public or mixed enterprises have discharged their functions properly; check to ensure proper financial and accounts management on the part of any organ receiving a subsidy from the Public Treasury or a State organism (independent institution, territorial division or public or mixed enterprise), irrespective of its statute and regardless of whether the subsidy covers all or part of its expenses; periodically audit the system of public investments, especially management of funds, programs and public investment projects, regardless of their sources of financing; and help craft, put into practice and evaluate public policies in the IGF's sphere of competence.

[450] As for how decisions are taken, according to what was reported in Haiti's response to the questionnaire the IGF does not play a role in the decision related to any interventions carried out. The IGF's role is to detect the strong points that could be further improved and any weaknesses and dysfunctions, and to propose solutions that will make for improvement. The decision to carry out the recommendations is in the hands of the authorities of the institutions being evaluated. The IGF prepares timetables for implementation of the recommendations and presents them to the audited institutions for consideration. In any event, a petition can be filed with the Minister in charge of finances asking that the appropriations be provided in the national budget so that the measures proposed in a given report can be taken.

[451] Under Article 7 of the Decree of March 17, 2006, the IGF has an Office of the General Director, assisted by an Advisory and Internal Auditing Unit, an Office of the Director for Oversight of the Public Administration, an Office of the Director to Oversee Management of Public Funds, an Office of the Director of Administration and Finance, and an Office of the Director of Human Resources. The respective functions and authorities of each unit and directorate are set forth in articles 8 to 16 of that Decree.

[452] As for manner in which senior officials are selected, Article 8 of the Decree of March 17, 2006 provides that *"Hierarchically speaking, the IGF is under the authority of a category A, level 1 official in the executive staff, with a career of at least fifteen (15) years in the administration, in the economic and/or financial area. He/she shall have the title of Director General and the level of Inspector General I or Superior Inspector General (Special Class). The selection of the Director General of the IGF is done according to the methods and conditions set forth in the Specific Statute for the Corps of Inspectors; he/she is appointed by decree following a proposal from the minister of the economy and finance."* Article 8-1 of the Decree establishes the same conditions and requirements to be named Deputy Director General.

[453] Likewise, under Article 11 of that Decree, every directorate or unit of the IGF *is headed by a career staff member with at least ten (10) years seniority and having, as a minimum, the grade of level II Inspector General with the rank of Director; his/her appointment to the post is decreed by virtue of a decision of the minister, with a reasoned opinion from the IGF Director General.*

[454] As for the staff of the IGF, their training and the human resources system, the IGF is covered by the Decree of May 17, 2005, which establishes the general civil service statute, and by the Decree

establishing the Specific Statute of the Professional Corps of IGF Inspectors, which regulates, *inter alia*, the inspectors' career service,<sup>123</sup> recruitment on a competitive basis, promotion and remuneration. Staff training can be provided through the National School of Financial Administration (ENAF),<sup>124</sup> from which a large percentage of its inspectors have graduated. In the event of a breach of discipline, the matter can be referred to the Inspectors Corps' Disciplinary Board (articles 21 and 22 of the Statute), which cannot rule on the substantive aspects of their work; it can only address failures to observe the standards of ethics and deontology established in articles 25 to 28 of the Decree of March 17, 2006 and in the Prime Ministerial Decree of April 11, 2013, which spells out the standard that applies to civil service officials.

[455] As for job descriptions and manuals or documented procedures for the performance of posts, the IGF has, *inter alia*, a manual of procedures for conducting missions<sup>125</sup> and a handbook of internal regulations.<sup>126</sup> During the on-site visit, the IGF representatives reported that a handbook of post descriptions is being prepared and should be ready by late 2014.

[456] As for the mechanisms for internal control, according to the information supplied in Haiti's response to the questionnaire, the IGF has a unit of Advisory Services and Internal Auditing (UCAI) whose function is to check for observance of the principles and regulations governing the institution's functions in technical and administrative interventions and the civil service in general. In general terms, under Article 12 of the Decree of March 17, 2006, the UCAI's chief authorities are to supervise the IGF's internal audit and carry out any specific mandate that the Minister of the Economy and Finance or his/her representative entrusts to the Unit.

[457] As for how the budgetary resources necessary for its operation are ensured, the IGF draws up its estimated budget on the basis of its program of activities and submits it to the Minister of the Economy and Finance for consideration. The Minister then approves the appropriations being requested. According to the information requested during the on-site visit, the total annual budget (operating budget plus investment budget) assigned to the IGF in the last five years is as follows (in Haitian gourdes):<sup>127</sup> G47,490,996 (2008-9); G48,874,543 (2009-10); G63,688,058 (2010-11); G66,522,849 (2011-12), and G80,170,420 (2012-13).<sup>128</sup>

[458] As for coordination of its functions with other bodies, in addition to the Sectorial Working Group on Public Procurement, whose membership also includes the directors of the ULCC, the CNMP and the CSC/CA, during the on-site visit information was presented concerning the IGF's coordination with two of these institutions (the CSC/CA and the ULCC).

[459] It was reported that there is no legal nexus between the IGF and the CSC/CA; in other words, the IGF is not legally required to send to the CSC/CA copies of reports intended only for the MEF and the parties being audited. Nevertheless, for the sake of coordination, the two institutions have created a steering committee to ensure that the interventions (calendar) follow the methodology. As part of the executive branch, one of the IGF's functions is to point out the weaknesses and functional flaws, and make recommendations for improvements and directional changes. For its part, in performing its review and verification of accounts, the CSC/CA has the authority to enforce sanctions should it find inaccuracies and irregularities. Summarizing, the IGF proposes measures to straighten out accounts before

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<sup>123</sup> An IGF inspector's career path is hierarchically organized into the following grades and levels: Auxiliary Inspector (Levels 1 to 3); Inspector Verifier (levels 4 to 6); Principal Inspector (levels 7 to 9); Inspector General II (levels 10 to 12); Inspector General I (levels 13 to 15) and Special Inspector General (Special Class) (levels 16 to 20).

<sup>124</sup> For more detailed information on the training activities in which IGF personnel have participated, see the presentation the institution delivered on the occasion of the on-site visit, available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_IGF\\_pres.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_IGF_pres.pdf)

<sup>125</sup> Available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_IGF\\_man.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_IGF_man.pdf)

<sup>126</sup> Available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_IGF\\_reg.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_IGF_reg.pdf)

<sup>127</sup> 1 U.S. dollar = approximately 44 Haitian gourdes (as of May 27, 2014).

<sup>128</sup> See complete information on the IGF budget at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_IGF\\_pres.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_IGF_pres.pdf).

the Court imposes sanctions. Moreover, in some cases the IGF ensures follow-up of certain recommendations contained in the CSC/CA reports prepared in the wake of interventions in public institutions.<sup>129</sup>

[460] It was reported that interactions with the ULCC are better orchestrated and more clear-cut, since both institutions come under the same ministry, which in this case is the Ministry of the Economy and Finance, and that the lines of collaboration and demarcation are more sharply defined. The general approach that sets the pace of relations between the two bodies is determined by the Minister of the Economy and Finance, who has the authority to forward cases processed by the IGF involving persons suspected of corruption. Since the IGF does not have legal authority to investigate cases of corruption, the ULCC becomes its principal interlocutor, although in the case of an intervention, preventive measures can be taken (closing of an accountant position, for example) where acts of corruption have been established.<sup>130</sup>

[461] As for accountability and the way in which information is conveyed to the public, according to the information reported in Haiti's response to the questionnaire, given the nature of the IGF's interventions and the purpose of its activities, it has limited direct interaction with the public. The reports the IGF issues, either on instructions or in the course of planned missions, are for the Minister of the Economy and Finance. Hence, the IGF has no control over the decision to make its findings public, either in whole or in part. Conversely, work has gotten underway on preparation of a document, at the end of the fiscal period, summarizing the purpose of the measures taken by the IGF, the activities carried out and the short- and long-term outlooks. While that document is being prepared, the institution is pondering the idea of creating an internet site (or eventually using a window on the Ministry's website) where the title of the missions will be listed along with a brief description of certain interventions, described in very general and broad terms.

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

[462] The General Inspectorate of Finance (IGF) has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 5.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures:

[463] First, the Committee observes that although the IGF's budget has increased in absolute terms, from approximately G47,490,996 Haitian gourdes in the period 2008-2009 to G80,170,420 gourdes in 2012-2013, those figures do not represent an increase in the IGF's budget as a percentage of the State's total budget, as it remains at 0.06%.

[464] Furthermore, during the on-site visit the IGF representatives highlighted the institution's main difficulties. Chief among them is the fact that the IGF has a limited number of inspectors, 20 in all; according to the IGF representatives, the institution would need at least 50 inspectors to be able to perform its functions more effectively. However, like the ULCC, the IGF has limited physical space, which makes expanding its staff difficult.

[465] The IGF has another challenge in common with the ULCC and the other organs and entities interviewed, which is the low salaries offered by the Haitian civil service, which can be as much as three times less than what the NGOs pay. This makes it difficult to hire specialized personnel and/or retain the

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<sup>129</sup> See the document the IGF presented during the on-site visit, available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_IGF\\_notes.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_IGF_notes.pdf)

<sup>130</sup> *Ibid.*

staff already trained. They also pointed out that the National School of Financial Administration (ENAF) should offer a curriculum to train professionals specializing in auditing within the public sector.

[466] Based on the above and given the importance of the IGF's work and the need for it to be able to rely on the infrastructure and human and financial resources it requires to properly perform its functions, the Committee will make recommendations in this regard (see recommendations 5.4.1 and 5.4.2 in section 5.4. of Chapter II (B) of this report).

[467] Second, the Committee confirms that the IGF does not have an institutional website, and the law does not demand IGF accountability in the form of an annual performance report containing information on its activities and the results obtained, and the institution's internal performance, to indicate that the programmed audits were actually carried out.

[468] In that sense, according to the information reported in Haiti's response to the questionnaire,<sup>131</sup> *"(...) the IGF plans to present an annual bulletin which will describe the various interventions conducted; it also plans to create an internet site where summaries of certain reports could be made public."*

[469] Given the foregoing and considering the importance of accountability with respect to the IGF's activities, the Committee will make recommendations in this regard (see recommendations 5.4.3 and 5.4.4 in section 5.4. of Chapter II (B) of this report).

[470] Fourth, during the on-site visit the IGF representatives reported that the IGF still does not have a manual describing the functions its staff perform. They also reported, however, that the post description manual was in the process of being prepared and should be completed by late 2014. The Committee will make a recommendation in this regard (see recommendation 5.4.5 in section 5.4. of Chapter II (B) of this report).

[471] Lastly, the Committee takes note of the important training activities in which the IGF inspectors participate and encourages the IGF to continue to promote ongoing training for its staff through the ENAF and other national and international institutions.

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

[472] In Haiti's response<sup>132</sup> to the questionnaire, it reported the following concerning the results of the General Inspectorate of Finance (IGF):

[473] *"As previously noted, the IGF can be entrusted with investigations into alleged acts of corruption or suspect performance. In fact, in the last five (5) years the IGF intervened on four (4) different occasions in connection with cases in which there were reasonable suspicions of corruption or influence peddling."*

[474] *Reports have been issued on the cases, in which a follow-up of responsibilities is done. The reports have also followed up on the corrective measures aimed at remedying the problems identified within the system. Since the IGF cannot itself follow up on its reports, they are referred to the offices responsible for the follow-up activities."*

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<sup>131</sup> Haiti's response to the questionnaire within the framework of the Fourth Round, p. 53.

<sup>132</sup> Haiti's response to the questionnaire within the framework of the Fourth Round, p. 54.

[475] Also, during the on-site visit the representatives not only provided more details on the cases referred to the ULCC but also said the following concerning the follow-up of the IGF's recommendations:<sup>133</sup>

[476] *“The penalties imposed on institutions that fail to implement the [IGF's] recommendations are not included in the law establishing the IGF. However, reminders can be sent to these institutions and to the highest levels of the hierarchy to encourage them to fulfill their obligations. If any penalty should exist, it would be a moral sanction in this circumstance. If, however, some of the recommendations cannot be carried out because of budgetary constraints, the IGF can propose to the Minister of the Economy and Finance that the approved appropriations be included in the institution's budget so that that these specific commitments can be honored.”*

[477] Given the foregoing, the Committee believes that the country under review should consider granting the IGF the authority to order administrative sanctions in the case of authorities of institutions that, without any explanation, fail to comply with the IGF's recommendations. In the meantime, an important step in that direction would be for the IGF to publish, in its own annual report, a list of the recommendations made to the entities audited and their current status. The Committee will make recommendations in this regard (see recommendations 5.4.3 and 5.4.6 in section 5.4. of Chapter II (B) of this report).

[478] The Committee also believes it is important for the country under review to consider establishing coordination among the IGF, the ULCC, the CSC/CA, the Office of the Director General of Taxation (DGI), the OMRH, the Public Prosecution Service and the Judicial Branch, so that they can share information on the status of each case of fraud or corruption uncovered by the IGF and then referred to the appropriate institutions, from the time the complaint is received to the time it is finally resolved, indicating the sanctions imposed and the amount actually recovered, with a view to identifying challenges and recommending corrective measures. The Committee will make a recommendation in this regard (see recommendation 5.4.7 in section 5.4. of Chapter II (B) of this report).

#### **5.4. Conclusions and Recommendations**

[479] Based on the comprehensive review conducted with respect to the General Inspectorate of Finance (IGF) in the foregoing sections, the Committee offers the following conclusions and recommendations:

[480] **Haiti has considered and adopted measures intended to maintain and strengthen the IGF as an oversight body, as described in section 5 of Chapter II (B) of this report.**

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

- 5.4.1. Strengthen the IGF by ensuring that it has the infrastructure and human resources it needs to properly perform its functions and the conditions that will enable it to attract and retain its auditors and inspectors, taking into account available resources (see section 5.2 of Chapter II (B) of this report).
- 5.4.2. Promote, in conjunction with the National School of Financial Administration (ENAF), a curriculum to train professionals specializing in public sector auditing (see section 5.2 of Chapter II (B) of this report).

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<sup>133</sup> See the document presented by the IGF during the on-site visit, available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_IGF\\_notes.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_IGF_notes.pdf)

- 5.4.3. Consider making IGF accountability a legal requirement, which would include publication of its annual performance report containing information on its activities, the results obtained and the institution's internal performance. The report should show that the scheduled audits were performed, and contain a list of the recommendations made to the audited institutions and their current status (see section 5.2 of Chapter II (B) of this report).
- 5.4.4. Establish a website with information on the IGF and keep it up to date so as to give the public easy access to information about the institution's work. Ensure that the website features, *inter alia*, its performance reports, its strategic plans, the relevant laws, its manuals or handbooks of procedure, and the announcements to fill the institution's vacant posts (see section 5.2 of Chapter II (B) of this report).
- 5.4.5. Complete preparation of the manual describing the posts within the IGF and publish the manual on the web page indicated in the recommendation above; the manual should include, *inter alia*, the title and grade of the posts, the responsibilities that each involves and the skills required to perform them (see section 5.2 of Chapter II (B) of this report).
- 5.4.6. Give the IGF the authority to order administrative sanctions for officials of those institutions that, without any justification, fail to comply with the IGF's recommendations (see section 5.3 of Chapter II (B) of this report).
- 5.4.7. Establish coordination among the IGF, the ULCC, the CSC/CA, the Office of the Director General of Taxation (DGI), the OMRH, the Public Prosecution Service and the Judicial Branch, so that information can be shared on the status of each fraud or corruption case uncovered by the IGF and then referred to the appropriate institution, from the time the complaint is received to its final resolution, with an indication of the sanctions imposed (civil, administrative and/or criminal) and the amount actually recovered, with a view to identifying challenges and recommending corrective measures (see section 5.3 of Chapter II (B) of this report).

### III. BEST PRACTICES

[482] In accordance with Section IV of the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round* and the *Format* adopted by the Committee for the Reports of said Round, reference is made to the best practices identified by the country under review, which it has expressed its wish to share with the other member States of the MESICIC, as it could be beneficial to them:

#### **- With respect to the Anti-Corruption Unit (ULCC):**

[483] "*Declaration of Port-au-Prince.*"<sup>134</sup> *This six-page document is dated April 21, 2005, and bears the signature of forty-eight (48) leaders of political parties. It was prepared after two workshops (Thursday April 20 and Friday April 21, 2005) organized at the initiative of the ULCC together with the Fondation Héritage pour Haïti (FHH). The signatories of that document recommended that the institutions charged with preventing and punishing corruption be strengthened and given the independence necessary to perform their respective mandates. They undertook a series of commitments,*

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<sup>134</sup> Available at: [http://www.oas.org/juridico/pdfs/mesicic4\\_hti\\_ulcc\\_dec.pdf](http://www.oas.org/juridico/pdfs/mesicic4_hti_ulcc_dec.pdf)

*which included ethical practices within their political parties, the formation of an anti-corruption commission in the two houses of Parliament in the next session of Congress, promotion of decency and honesty, ratification of the two conventions the country had signed on the subject of corruption, and heightening public awareness to the corrosive effects of corruption.*

[484] For more information regarding the Declaration, please see Annex I, pages 66 to 68, of the response to the questionnaire.

**ANNEX I**

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

<b><u>Monday, April 7, 2014</u></b>	
16:00 hrs. – 16:45 hrs. <u>Place: Hotel Karibe</u>	<b>Coordination meeting between representatives of the member States of the Subgroup and the Technical Secretariat.</b>
17:00 hrs. – 18:00 hrs. <u>Place: Hotel Karibe</u>	<b>Coordination meeting between representatives of the country under review, the member states of the Subgroup and the Technical Secretariat.</b>
<b><u>Tuesday, April 8, 2014</u></b>	
9:00 hrs. – 12:30 hrs. <u>Place: Hotel Karibe</u>	<b>Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, academics or researchers.</b>
9:00 hrs. – 10:45 hrs.	<p><b>Oversight bodies</b></p> <ul style="list-style-type: none"> <li>• <b>Civil society’s view on the role of oversight bodies and the fight against corruption in Haiti</b></li> </ul> <p><b>Topics for the First Round of Analysis</b></p> <ul style="list-style-type: none"> <li>• <b>Conflicts of Interest</b></li> <li>• <b>Sworn declarations of assets, liabilities and net worth</b></li> <li>• <b>Civil Society’s Participation and Access to Public Information</b></li> <li>• <b>Mutual Assistance</b></li> </ul>
	<p><u>Participants:</u></p> <p>Marilyn B. ALLIEN, <i>President, Fondation Héritage Pour Haïti, the Haitian Chapter of Transparency International (TI)</i></p> <p>Carlos HERCULE, <i>President, Port-au-Prince Bar Association</i></p> <p>Philippe ARMAND, <i>President, American Chamber of Commerce in Haiti (AmCham)</i></p> <p>Norah Amilcar JEAN-FRANCOIS, <i>Judge of the Port-au-Prince Court of Appeals, Executive Director of the Haitian Chamber of the International Association of Women Judges (CHAIFEJ)</i></p> <p>Amos DUROSIER, <i>Professor of Economic Sciences, Dean of the Institute of Higher Learning in Business and Economics (IHECE).</i></p> <p>Rosny DESROCHES, <i>Executive Director, Civil Society Initiative (ISC)</i></p> <p>Henri BAZIN, <i>Professor and Chair of the Administrative Board of the</i></p>

	<p><i>Haitian Conciliation and Arbitration Chamber (CCAH)</i></p> <p>Hérold JEAN-FRANCOIS, <i>Vice President of the National Association of Haitian Media (ANMH)</i></p>
	<p><b>ii. Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional associations, academics or researchers (Continuation)</b></p>
11:00 hrs. – 12:45 hrs.	<p><b>Oversight bodies</b></p> <ul style="list-style-type: none"> <li>• <b>Civil society’s view on the role of oversight bodies and the fight against corruption in Haiti</b></li> </ul> <p><b>Topics of the First Round</b></p> <ul style="list-style-type: none"> <li>• <b>Conflicts of interest</b></li> <li>• <b>Sworn declarations of assets, liabilities and net worth</b></li> <li>• <b>Civil Society’s Participation and Access to Public Information</b></li> <li>• <b>Mutual Assistance</b></li> </ul> <p><u>Participants:</u></p> <p>Marilyn B. ALLIEN, <i>President, Fondation Héritage pour Haïti, Haitian Chapter of Transparency International (TI)</i></p> <p>Carlos HERCULE, <i>President, Port-au-Prince Bar Association</i></p> <p>Philippe ARMAND, <i>President, American Chamber of Commerce in Haiti (AmCham)</i></p> <p>Norah Amilcar JEAN-FRANCOIS, <i>Judge of the Port-au-Prince Court of Appeals, Executive Director of the Haitian Chamber of the International Association of Women Judges (CHAIFEJ)</i></p> <p>Amos DUROSIER, <i>Professor of Economic Sciences, Dean of the Institute of Higher Learning in Business and Economics (IHECE).</i></p> <p>Rosny DESROCHES, <i>Executive Director, Civil Society Initiative (ISC)</i></p> <p>Henri BAZIN, <i>Professor and Chair of the Administrative Board of the Haitian Conciliation and Arbitration Chamber (CCAH)</i></p> <p>Hérold JEAN-FRANCOIS, <i>Vice President of the National Association of Haitian Media (ANMH)</i></p>
12:45 hrs. – 14:15 hrs.	<p><b>Luncheon</b></p>
14:15 hrs. – 17:45 hrs. Place: <i>Hotel Karibe</i>	<p><b>The Anti-Corruption Unit (ULCC)</b></p>
14:15 hrs. – 15:30 hrs.	<p><b>Panel 1:</b></p> <ul style="list-style-type: none"> <li>• <b>Institutional Introduction (10 minutes).</b></li> <li>• <b>Autonomy</b></li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Functions and authorities</b></li> <li>• <b>Overlapping or shared functions and authorities</b></li> <li>• <b>Functions and authorities and mechanisms for inter-institutional coordination</b></li> <li>• <b>Human resources</b></li> <li>• <b>Training</b></li> <li>• <b>Mechanisms of internal control</b></li> <li>• <b>Accountability mechanisms</b></li> <li>• <b>Budget system</b></li> </ul>
	<p><u>Participants:</u></p> <p>Antoine ATOURISTE, <i>Director General, Lead Expert (MESICIC)</i></p> <p>Joseph Jean FIGARO, <i>Director of Operations, Alternate Expert (MESICIC)</i></p> <p>Jean Robert FRANCOIS, <i>Administrative and Financial Director</i></p> <p>Yvlore PIGEOT, <i>Head of the Legal Department, Alternate Expert (MESICIC)</i></p> <p>Renoix LAVENTURE, <i>Head of the Audit Department</i></p> <p>Marie Carmen ST-SURIN, <i>Head of the Department of Personnel</i></p> <p>Donald MARCELIN, <i>Head of the Information Technology Department</i></p> <p>Gassendy CALICE, <i>Head of the Department of Statistics and Planning</i></p> <p>Ernst CHALUMEAU, <i>Head of the Department of Surveys/Research</i></p>
<p>15:45 hrs. – 17:45 hrs.</p>	<p><b>Panel 2:</b></p> <ul style="list-style-type: none"> <li>• <b>Declarations of Assets, Liabilities and Net Worth</b></li> <li>• <b>Results in terms of the performance of the Unit’s functions</b></li> <li>• <b>Difficulties impairing the accomplishment of its purposes</b></li> </ul> <p><u>Participants:</u></p> <p>Antoine ATOURISTE, <i>Director General, Lead Expert (MESICIC)</i></p> <p>Joseph Jean FIGARO, <i>Director of Operations, Alternate Expert (MESICIC)</i></p> <p>Jean Robert FRANCOIS, <i>Administrative and Financial Director</i></p> <p>Yvlore PIGEOT, <i>Head of the Legal Department, Alternate Expert (MESICIC)</i></p> <p>Renoix LAVENTURE, <i>Head of the Audit Department</i></p> <p>Marie Carmen ST-SURIN, <i>Head of the Department of Personnel</i></p> <p>Donald MARCELIN, <i>Head of the Information Technology Department</i></p>

	Gassendy CALICE, <i>Head of the Department of Statistics and Planning</i> Ernst CHALUMEAU, <i>Head of the Department of Surveys/Research</i>
17:45 hrs. – 18:15 hrs.	<b>Informal meeting</b> <sup>135/</sup> with the representatives of the member states in the Subgroup and the Technical Secretariat.
<b><u>Wednesday, April 9, 2014</u></b>	
8:30 hrs. – 10:15 hrs. <u>Place:</u> <i>Hotel Karibe</i>	<b>The General Inspectorate of Finance (IGF)</b>
	<p><b>Panel 3:</b></p> <ul style="list-style-type: none"> <li>• <b>Institutional introduction (10 minutes)</b></li> <li>• <b>Functions</b></li> <li>• <b>Functions and authorities and mechanisms for inter-institutional coordination</b></li> <li>• <b>System by which staff and senior officers enter the service of the IGF</b></li> <li>• <b>Human resources</b></li> <li>• <b>Training and manuals of post descriptions</b></li> <li>• <b>Procedural handbooks and technological systems</b></li> <li>• <b>Accountability mechanisms</b></li> <li>• <b>Budget system</b></li> <li>• <b>Results in terms of the performance of the Unit’s functions</b></li> <li>• <b>Difficulties impairing the accomplishment of its purposes</b></li> </ul>
	<p><u>Participants:</u></p> <p>Jude Patrick SALOMON, <i>Director General</i></p> <p>Roméro LATRY, <i>Director of the Internal Audit Board</i></p> <p>Evans PIERRE, <i>Director of Oversight of the Public Administration</i></p> <p>Jean Chanone BEAUBLANC, <i>Inspector</i></p>
10:45 hrs. – 12:45 hrs.	<b>The National Public Procurement Commission (CNMP)</b>

<sup>135</sup>. The second paragraph of item 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><u>Place:</u> <i>Hotel Karibe</i></p>	
	<p><b>Panel 4:</b></p> <ul style="list-style-type: none"> <li>• <b>Institutional Introduction (10 minutes)</b></li> <li>• <b>Functions and authorities</b></li> <li>• <b>System by which staff and senior officers enter the service of the CNMP</b></li> <li>• <b>Human resources</b></li> <li>• <b>Training and manuals of post descriptions</b></li> <li>• <b>Procedural handbooks and technological systems</b></li> <li>• <b>Budget system</b></li> <li>• <b>Mechanisms for internal control/ Accountability mechanisms</b></li> <li>• <b>Functions and authorities and mechanisms for inter-institutional coordination</b></li> <li>• <b>Results in terms of the performance of the Unit's functions/Difficulties impairing the accomplishment of its purposes</b></li> </ul> <p><u>Participants:</u>          Lucien MOISE, <i>Member</i>          Claude V. REGIS, <i>Member</i>          Martin JEAN-LOUIS, <i>Member</i>          Fabienne DAVIS, <i>Member</i>          Claude DALBERG, <i>Principal Technical Secretary</i></p>
<p>12:45 hrs. – 14:15 hrs.</p>	<p><b>Luncheon</b></p>
<p>14:15 hrs. – 17:15 hrs. <u>Place:</u> <i>Hotel Karibe</i></p>	<p><b>The Superior Council of the Judicial Branch (CSPJ)</b></p>
<p>14:15 hrs. – 15:45 hrs.</p>	<p><b>Panel 5:</b></p> <ul style="list-style-type: none"> <li>• <b>Institutional introduction (10 minutes)</b></li> <li>• <b>Functions and authorities</b></li> <li>• <b>System by which its senior officers join the CSPJ</b></li> <li>• <b>Human resources</b></li> <li>• <b>Training</b></li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Procedural handbooks</b></li> <li>• <b>Mechanisms for internal control</b></li> <li>• <b>Budget system</b></li> </ul>
	<p><u>Participants:</u>  Anel Alexis JOSEPH, <i>President</i>  Antoine NORGAISSE, <i>Vice President of the Supreme Court, Councilor</i>  Thiers MALETTE, <i>Government Commissioner assigned to the Supreme Court, Councilor</i>  Max ELIBERT, <i>Councilor</i>  Pharaon GUSTAVE, <i>Councilor</i>  Jean Etienne MERCIER, <i>Councilor</i>  Lionel C. BOURGOIN, <i>Technical Secretary</i></p>
<p>16:00 hrs. – 17:15 hrs.</p>	<p><b>Panel 6:</b></p> <ul style="list-style-type: none"> <li>• <b>Functions and authorities and mechanisms for inter-institutional coordination</b></li> <li>• <b>Accountability mechanisms</b></li> <li>• <b>Results in terms of the performance of the Unit’s functions/Difficulties impairing the accomplishment of its purposes</b></li> </ul> <p><u>Participants:</u>  Anel Alexis JOSEPH, <i>President</i>  Antoine NORGAISSE, <i>Vice President of the Supreme Court, Councilor</i>  Thiers MALETTE, <i>Government Commissioner assigned to the Supreme Court, Councilor</i>  Max ELIBERT, <i>Councilor</i>  Pharaon GUSTAVE, <i>Councilor</i>  Jean Etienne MERCIER, <i>Councilor</i>  Lionel C. BOURGOIN, <i>Technical Secretary</i></p>
<p>17:30 hrs. – 18:00 hrs.</p>	<p><b>Informal meeting</b> with the representatives of the member states in the Subgroup and the Technical Secretariat.</p>
<p><b>Thursday, April 10, 2014</b></p>	
<p>9:00 hrs. – 12:30 hrs.  <u>Place:</u> <i>Hotel Karibe</i></p>	<p><b>The Superior Court of Accounts and of Administrative Disputes (CSC/CA)</b></p>

<p>9:00 hrs. – 10:30 hrs.</p>	<p><b>Panel 7:</b></p> <ul style="list-style-type: none"> <li>• <b>Institutional Introduction (10 minutes)</b></li> <li>• <b>Exceptions to the scope of its functions and authorities</b></li> <li>• <b>The procedure by which its decisions are taken</b></li> <li>• <b>The system by which its highest-ranking officials join the CSC/CA</b></li> <li>• <b>Human resources</b></li> <li>• <b>Procedural handbooks and technological systems</b></li> <li>• <b>Mechanisms for internal control</b></li> <li>• <b>Budget system</b></li> </ul> <hr/> <p><u>Participants:</u>          Jean-Claude ROZIER, <i>Director of the Accounts Control Unit</i>          Joseph CHERISSAINT, <i>Head of the General Accounts Unit</i>          Salnave JEAN-PIERRE, <i>Director of Accounts Auditing</i>          Hansy LATORTUE, <i>Administrative Director</i></p>
<p>10:45 hrs. – 12:30 hrs.</p>	<p><b>Panel 8:</b></p> <ul style="list-style-type: none"> <li>• <b>Accountability mechanisms.</b></li> <li>• <b>Functions and authorities and mechanisms for inter-institutional coordination.</b></li> <li>• <b>Results in terms of the performance of its functions.</b></li> <li>• <b>Difficulties impairing the accomplishment of its purposes.</b></li> </ul> <hr/> <p><u>Participants:</u>          Jean-Claude ROZIER, <i>Director of the Accounts Control Unit</i>          Joseph CHERISSAINT, <i>Head of the General Accounts Unit</i>          Salnave JEAN-PIERRE, <i>Director of Accounts Auditing</i>          Hansy LATORTUE, <i>Administrative Director</i></p>
<p>12:30 hrs. – 14:00 hrs.</p>	<p><b>Luncheon</b></p>
<p>14:00 hrs. – 15:15 hrs. <u>Place:</u> <i>Hotel Karibe</i></p>	<p><b>Topics from the First Round</b></p>
	<p><b>Panel 9:</b></p> <ul style="list-style-type: none"> <li>• <b>Conflicts of interest</b></li> </ul>

	<p><u>Participants:</u></p> <p>Uder ANTOINE, <i>General Coordinator, Office of Management and Human Resources (OMRH)</i>          Antoine VERDIER, <i>Deputy Coordinator, Office of Management and Human Resources (OMRH)</i>          Elie JEAN PHILIPPE, <i>Coordinator of the Civil Service</i>          Wilfrid BIEN-AIME, <i>IDB consultant to help the OMRH implement the State Reform</i></p>
15:30 hrs. – 16:15 hrs. <u>Place:</u> <i>Hotel Karibe</i>	<b>Topics from the First Round</b>
	<p><b>Panel 10:</b></p> <ul style="list-style-type: none"> <li>• <b>Mutual Assistance/Central Authorities</b></li> </ul> <p><u>Participants:</u></p> <p>Roody ALY, <i>Director General, Ministry of Justice</i></p>
16:15 hrs. – 16:45 hrs.	<b>Informal meeting</b> with the representatives of the member states in the Subgroup and the Technical Secretariat.
16:45 hrs. – 17:15 hrs.	<b>Final meeting</b> <sup>136/</sup> among the representatives of the country under review, the member States in the Subgroup and the Technical Secretariat.

<sup>136</sup>. The third paragraph of provision 20 of the *Methodology for conducting on-site visits* reads as follows: “...At the end of the on-site visit, a meeting shall be held, to be attended by the Subgroup experts, the Technical Secretariat, and the Lead Expert of the country under review and/or the official appointed in his place in accordance with provision 10, second paragraph, of this Methodology. That meeting shall identify, if necessary, the information that, exceptionally, the country under review is still to submit through the Technical Secretariat and the deadline within which it is to do so, and it shall also coordinate any other pending matters arising from the on-site visit.”

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

**STATE UNDER REVIEW:**

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**Joseph Jean Figaro**

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**TECHNICAL SECRETARIAT OF THE MESICIC**

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