

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

FINAL REPORT

(Adopted at the September 13, 2013 plenary session)

SUMMARY

This report contains the comprehensive review of the implementation in Guatemala of Article III, paragraph 9, of the Inter-American Convention against Corruption, covering “oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts,” which was selected by the MESICIC Committee of Experts for the Fourth Round; of the best practices reported by those bodies; and of the follow-up of the implementation of the recommendations formulated to Guatemala during the First Round.

The review was conducted in accordance with the Convention, the Report of Buenos Aires, the Committee’s Rules of Procedure, and the methodologies it has adopted for conducting on-site visits and for the Fourth Round, including the criteria set out therein for guiding the review based on equal treatment for all the States Parties, functional equivalence, and the common purpose of both the Convention and the MESICIC of promoting, facilitating, and strengthening cooperation among the States Parties in the prevention, detection, punishment, and eradication of corruption.

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

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

The oversight bodies in Guatemala reviewed in this report are: The Presidential Commission on Transparency and Electronic Government (COPRET); the Office of the Attorney General; the Comptroller General of the Republic (CGC); and the Judicial Branch.

Some of the recommendations formulated to Guatemala in relation to the foregoing oversight bodies address purposes such as the following:

With respect to the COPRET, consider taking the steps necessary to transform the institution into a permanent body; the preparation of manuals that describe the functions of its personnel and documented procedures for the execution of responsibilities; completing and implementing the COPRET training program in the areas of transparency and the fight against corruption; establishing specific procedures to address complaints regarding the COPRET; and promoting the actions necessary to ensure greater compliance with the Law on Access to Information.

With respect to the Office of the Attorney General, consider ensuring that disciplinary decisions regarding its personnel can be effectively implemented; appointing the required members of the Council of the Office of the Attorney General; and implementing training regarding the Law on Access to Public Information;

With respect to the Comptroller General of Accounts, consider providing the institution with sufficient human and financial resources to adequately comply with its responsibilities; bringing trusts used to fund government projects or services under the oversight of the institution; taking steps to foster the submission of complaints, including the acceptance of anonymous complaints and complaints via internet; and issuing documents that describe detailed procedures for CGC personnel in the performance of their functions.

With respect to the Judicial Branch, consider: establishing specialized anticorruption judges and courts; completing the proposed new version of the Civil Procedural Code; issuing and/or publishing manuals describing the functions of non-judicial personnel as well as documented procedures for determining the responsibility of judges and magistrates for their actions; and issuing and/or publishing an annual report.

The best practices regarding which Guatemala provided information refer, in summary, to the monitoring of the Executive Branch administrative and financial processes by the COPRET; the reorganization of the Office of the Anticorruption Prosecutor of the Office of the Attorney General; and the implementation of Trial Hearings (*Juicio por Audiencias*) by the Judicial Branch.

With regard to follow-up on the recommendations formulated to Guatemala in the First Round and with respect to which, the Committee, in the Second and Third Round reports, found required additional attention, based on the methodology for the Fourth Round and bearing in mind the information provided by Guatemala in its response to the questionnaire and during the on-site visit, a determination was made as to which of those recommendations had been satisfactorily implemented, which required additional attention, and which required reformulation. A list of those still pending was also prepared, and has been included in Annex 1 of the report.

Progress related to the implementation of those recommendations includes Guatemala's criminalization of illicit enrichment through the passage and entry into force of the Law against Corruption.

Some of the recommendations formulated to Guatemala in the First Round that remain outstanding, or which were reformulated, address purposes such as strengthening the implementation of laws and systems to regulate conflicts of interest; optimizing the verification sworn statements of net worth and considering their publication; and considering the design and implementation of state policies regarding mutual assistance and technical cooperation.

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

**REPORT ON IMPLEMENTAION IN GUATEMALA OF THE CONVENTION PROVISION
SELECTED TO BE REVIEWED IN THE FOURTH ROUND, AND ON THE FOLLOW-UP
ON THE RECOMMENDATIONS FORMULATED IN THE
FIRST ROUND^{1/}**

INTRODUCTION

1. Contents of the Report

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

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

[3] Third, as agreed by the Committee of Experts of the MESICIC at its Eighteenth Meeting, in compliance with recommendation 9(a) of the Third Meeting of the Conference of States Parties to the MESICIC, this report will address the follow-up of implementation of the recommendations that the Committee of Experts of MESICIC formulated to Guatemala in the First Round and that it deemed to require additional attention in the reports it adopted for that country in the Second and Third Rounds, which may be consulted at the following:

2. Ratification of the Convention and adherence to the Mechanism

[4] According to the official records of the OAS General Secretariat, Guatemala ratified the Inter-American Convention against Corruption on July 3, 2001.

[5] In addition, Guatemala signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on December 19, 2001.

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of Guatemala

[6] The Committee wishes to acknowledge the cooperation that it received, throughout the review process, from Guatemala throughout the review process, and in particular from the Presidential Commission on Transparency and Electronic Government (COPRET), which was evidenced, *inter alia*, in the response to the Questionnaire and in the constant willingness to clarify or complete its contents, and in the support for the on-site visit to which the following paragraph of this report refers. Together

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

with its response, Guatemala sent the provisions and documents it considered pertinent. That response and the provisions and documents may be consulted at the following webpage: http://www.oas.org/juridico/spanish/mesicic4_gtm_sp.htm

[7] The Committee also notes that the country under review gave its consent for the on-site visit, in accordance with provision 5 of the *Methodology for Conducting On-Site Visits*.² As members of the preliminary review subgroup, the representatives of St. Kitts and Nevis and Suriname conducted the on-site visit from April 16 to 18, 2013, with the support of the MESICIC Technical Secretariat. The information obtained during that visit is included in the appropriate sections of this report, and the agenda of meetings is attached thereto, in keeping with provision 34 of the *Methodology for Conducting On-Site Visits*.

[8] For its review, the Committee took into account the information provided by Guatemala up to April 18, 2013, as well as that furnished and requested by the Secretariat and the members of the review subgroup to carry out its functions, in keeping with the *Rules of Procedure and Other Provisions*; the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round*; and the *Methodology for Conducting On-Site Visits*. This information may be consulted at the following webpage: http://www.oas.org/juridico/english/mesicic_rounds.htm

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

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

[10] Additionally, during the on site visit to the country under review from April 16 to 18, 2013, information was gathered from civil society and private sector organizations; professional associations; academic and investigators, who were invited to participate in the meetings held for that purpose, pursuant to provision 27 of the *Methodology for Conducting On-Site Visits*. A list of invitees is included in the agenda of the on site visit, which has been annexed to this report. This information is reflected in the appropriate sections of this report, as appropriate.

II. REVIEW, CONCLUSIONS, AND RECOMMENDATIONS ON THE IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISION SELECTED FOR THE FOURTH ROUND:

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

[11] Guatemala has a set of oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts, among which the following are

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

³ These documents were received on January 16, 2012, and are available at: http://www.oas.org/juridico/spanish/mesicic4_gtm_sp.htm

highlighted: the Presidential Commission on Transparency and Electronic Government (COPRET); the Office of the Attorney General (MP); the Comptroller General of Accounts (CGC); and the Judicial Branch.

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

[13] The Presidential Commission on Transparency and Electronic Government (*Comisión Presidencial de Transparencia y Gobierno Electrónico* – COPRET), is a support institution to the President, created to promote transparency and the fight against corruption. Its objectives are to promote a culture of transparency and the fight against corruption in the entities of the Executive Branch, through the implementation of tools that allow for free access to public information and the promotion of Open Government.

[14] The Office of the Attorney General (*Ministerio Público* – MP), is an auxiliary institution of the public administration and the tribunals. It is autonomous in its functions and its purpose is to ensure the strict compliance with the laws of the State. It is the body responsible for the exercise of public criminal actions against public servants and individuals who incur in crimes of any nature. Accordingly, it receives, investigates and criminally prosecutes criminal offenses before the tribunals of justice.

[15] The Comptroller General of Accounts (*Contraloría General de Cuentas* – CGC), is a technical, decentralized institution, responsible for auditing the income, expenditure, and in general all monetary interests of the organisms of the State, the municipalities, decentralized and autonomous entities, as well as any person that receives or collects State funds.

[16] The Judicial Branch is an independent body, which, through its various tribunals, issues judgments and promotes their execution.

1. PRESIDENTIAL COMMISSION ON TRANSPARENCY AND ELECTRONIC GOVERNMENT (COPRET)

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

[17] The Presidential Commission on Transparency and Electronic Government (COPRET or Commission), has a set of provisions in its legal framework, as well as other measures that refer, *inter alia*, to the following:

[18] The COPRET was created by Governmental Agreement No. 360-2012 (Agreement 360-2012), for the purpose of coordinating the implementation of the measures deriving from international conventions in the area of transparency, electronic government, the fight against corruption and open government (Article 2, Agreement No. 360-2012). In addition, the document submitted by the country under review during the on-site visit describe the institution as one of “...*support to the functions of the President of the Republic in promoting transparency and the fight against corruption in the Executive Branch.*”⁴

[19] Article 6 of Agreement 360-2012 assigns the Commission the following specific functions: coordinating the establishment of the relevant strategies, actions or proposals, in order for Executive

⁴ This document, titled COPRET Panels 3 & 4, is available here:
http://www.oas.org/juridico/spanish/mesicic4_gtm_sp.htm

Branch institution to include activities for the promotion of transparency, electronic government, the fight against corruption and open government, in their annual plans (Article 6(a)); recommending the design of instruments for the implementation of mechanisms for electronic government, transparency, the fight against corruption, the management of institutions and public servants (Article 6(b)); promoting public actions and initiatives, both national and international, in the areas of transparency, electronic government, the fight against corruption and open government, in order to strengthen budgetary transparency (Article 6(c)); promoting actions to contribute to compliance with the Law on Access to Public Information and the implementation of electronic government (Article 6(d)); promoting a culture of transparency and the fight against corruption (Article 6(e)); supporting attention to the public and citizen orientation in the areas of transparency, and promoting and encouraging participation (Article 6(f)); coordinating the participation of the Executive Branch in national and international forums on electronic government (Article 6(g)); following-up to and ensuring the implementation of those international commitments acquired by the State in the areas of transparency, electronic government, the fight against corruption, a well as promoting the inclusion in the domestic legal framework of those non-binding international instruments subscribed to and ratified by Guatemala (Article 6(h)); ensuring the harmonization of proposals, programs and technical/financial assistance executed by international organizations or cooperation agencies in Guatemala in the above areas (Article 6(i)); and others as assigned by the President of the Republic (Article 6(j)).

[20] As regards its structure, Article 3 of Agreement 360-2012, provides that the COPRET is composed of the Presidential Commission, which is in turn made up of the Vice-President of the Republic and the Presidential Secretary for Executive Coordination. In addition, Article 4 of Internal Agreement No. 1-2013, provides that the substantive bodies of the COPRET are the Presidential Commission and the Executive Directorate, the latter including the Offices of the Coordinator/Executive Director, and the Deputy Executive Director, under whom fall the following units: Unit for Strengthening Public Expenditure, Unit for Promoting Citizen Participation for Transparency, the Unit of Transparency Indicators and Initiatives and the Fight against Corruption, and the Unit for Coordinating and Strengthening Electronic Government.

[21] Article 4 also creates (1) Administrative and Financial Units: Administrative, Financial and Human Resources Departments; (2) Support Units: Legal, Planning, Social Communication and International Cooperation Units; and (3) the Oversight Unit, made up of the Internal Audit Unit.

[22] With respect to the scope of its functions, as noted above, Article 2 of Agreement 360-2012 and Article 6 of Internal Agreement No. 1-2013 refer to coordination by the Commission within the Executive Branch. In addition, Article 13 of Agreement 360-2012 requires dependencies of the Executive Branch to provide information to the Commission as requested.

[23] In this connection, during the on-site visit, it was explained that the Commission has neither jurisdiction nor authority over independent state bodies, such as the Comptroller General of Accounts or the Judicial Branch, among others.

[24] The highest authority of the COPRET is the Coordinator/Executive Director (Article 2, Agreement 360-2012), who is appointed by the President of the Republic (Article 8, Agreement 360-2012).

[25] With respect to the personnel of the Commission, during the on-site visit it was explained that COPRET personnel are hired based on the needs of the various units of the institution, and based on

the functions established by Internal Agreement No. 1-2013. It was also explained that the Directors and Deputy Directors of the various units of the COPRET are trust personnel of the Coordinator, and accordingly may be freely appointed and removed.

[26] The remainder of the Commission is hired through competition based on merit. During the course of the on-site visit, the representatives of the COPRET noted that the personnel of the Secretariat for Transparency (now the COPRET), were hired through an outside company that was contracted to manage recruitment. In addition, it was explained that a large portion of the personnel of the institution is made up of individuals who are long-standing civil servants with expertise in various areas related to the responsibilities of the Commission.

[27] All personnel of the COPRET are subject to the responsibilities, obligations and prohibitions imposed upon public servants by the Civil Service Law, Decree No. 1748 and its Regulation, Governmental Agreement No. 18-98.

[28] In addition, the Law on the Integrity and Responsibility of Public Officials and Employees is also applicable to COPRET employees, contains provisions establishing incompatibilities and prohibitions applicable to public employees. In addition, this law establishes three types of responsibility for public servants: administrative responsibility, when the action or omission contravenes the legal administrative framework, or constitutes negligence or failure to comply with applicable laws or other provisions, but do not result in monetary damages (Article 8); civil responsibility, when the action or omission are committed in detriment of the public treasury (Article 9); and criminal, when the decision, resolution, action or omission constitute a crime or offense pursuant to criminal law.

[29] With respect to the existence of manuals that describe the functions of personnel, during the on-site visit, it was explained that the Commission is in the process of drafting such manuals, in line with standards required by the National Office of the Civil Service (ONSEC). Additionally, the COPRET is preparing manuals of procedures, functions and protocols, as required by Numeral 1.10 of the General Standards for Internal Control of the Comptroller General of Accounts.⁵ Once completed, it was explained these manuals will be adopted through Internal Agreements of the COPRET, and pursuant to Article 11 of Governmental Agreement No. 360-2012, which authorizes the Commission to issue the internal provisions that it considers necessary.

[30] With respect to the taking of decisions by the COPRET, during the course of the on-site visit, it was explained that as a support body, the COPRET does not take decisions in terms of issuing criminal or administrative sanctions. Furthermore, the documentation provided by the COPRET during the on-site visit notes the following with respect to decision-making by the Commission, *“The strategies and actions to promote transparency and open government are developed as a technical aspect of the units for strengthening government, the unit of transparency indicators and initiatives, and the unit of electronic government, for presentation and discussion with the Presidential Commission, as a collegiate*

⁵ Numeral 1.10 of the General Standards for Internal Control, issued by the Comptroller General of Accounts, provides as follows: *“1.10 MANUALS OF FUNCTIONS AND PROCEDURES. The highest authority of each public institution, shall support and promote the drafting of manuals of functions and procedures for each post and process related to the different activities of the institution.”*

body, and, once the plan of action is approved for implementation, it is validated in an inter-institutional forum for feasibility of application.”⁶

[31] “That is, decisions to approve strategies are taken by the Vice President and the Presidential Secretary for Executive Coordination, while the Presidential Secretariat for Programming and Planning has responsibility for institutional implementation of strategies to ensure their inclusion on the public policy agenda and the agenda of each Ministry.”⁷

[32] “With regard to service to citizens in connection with cases of possible corruption, once the case analysis is submitted, the Executive Director has responsibility for taking the decision to refer the report to the Office of the Attorney General where grounds exist to believe that a crime has been committed,⁸ or to the Office of the Comptroller General of Accounts where the analysis suggests possible administrative liability.”⁹

[33] Similarly, as regards review or appeal mechanisms for decisions that are adopted by the COPRET, Decree No. 119-96, the Contentious Administrative Law, provides that resolutions issued by the highest authority of an institution may be challenged via the “revocatoria” mechanism (Article 9), while decisions taken by those other than the highest authority of an institution may be challenged via the “revocatoria” mechanism (Article 7).

[34] With respect to internal controls, the COPRET has an Internal Audit Unit, created pursuant to Article 17 of Internal Agreement No. 1-2013. This Unit, which has operational independence, provides direct support to the Coordinator of the COPRET, and is responsible, inter-alia, for the permanent evaluation of the internal control structure of the institution, as well as operational systems and the flow of institutional information. This Unit also has a Manual for Special (non-programmed) Audits.

[35] With regard to mechanisms for addressing claims, complaints, or reports of wrongdoing in connection with the fulfillment of its objectives and conduct of its staff, during the review process, COPRET officials explained that the Department of Human Resources is responsible for handling these complaints, and that pursuant to Article 74 of the Civil Service Law, there are four categories of sanctions that can be imposed: (1) verbal admonition for minor infractions; (2) written admonition; (3) Suspension without pay for up to 30 days; and (4) Suspension without pay in the event of incarceration.

[36] With regard to institutional strengthening of the COPRET, during the on-site visit, the representatives of the institution explained that through its Department of Human Resources, the COPRET is preparing a plan for training its personnel in the support and substantive units, and that additionally, they have signed an agreement with the National Institute for Public Administration (INAP), in order to provide additional training for COPRET personnel. At present, INAP offers the following opportunities: Degree and Masters in Public Administration, Doctorate in Public Administration and Public Policies, Diplomas in the Law against Corruption, Diplomas in Public Management, and Diplomas in Electronic Government. COPRET representatives indicated that it is anticipated that additional relevant programs will be developed, such as diplomas in Open Government, International Anti-Corruption Conventions, Social Oversight of Public Management;

⁶ See the document titled COPRET Panels 3 and 4, available at: http://www.oas.org/juridico/spanish/mesicic4_gtm_sp.htm

⁷ Ibid.

⁸ COPRET representatives explained that this refers to ex-officio complaints.

⁹ Ibid.

and courses on results-based budgeting, the existing public management systems (SIGES, SICOIN and SIAF)¹⁰, government audits, public relations, and working as a team.

[37] Furthermore, with respect to the implementation and use of modern technologies to facilitate its work, the COPRET notes that an evaluation of public institutions is being carried out within the framework of the United Nations Public Administration Network, which examines four areas: (1) Human Capital, examining the professionalism of personnel; Online services, assessing the ease of use and description of the services offered by State entities via their internet portals; (3) E-Participation, evaluating the ability of the public to inform themselves, and to provide feedback to on the programs and services of the government; and (4) Infrastructure, evaluating the hardware and software used by the institutions to carry out their internal responsibilities, with the public, and interconnectivity with other institutions.

[38] Additionally, the COPRET has created an online electronic system to increase transparency and accountability for Executive Branch Ministries and Secretariats in areas such as food, telephone usage, per diems and fuel. This system can be accessed by the public via the COPRET internet portal, at: <http://www.transparency.gob.gt>. The COPRET has also created the internet portal for National Reconstruction, available at: <http://plandereconstruccion.transparencia.gob.gt/>, in order to promote transparency and accountability in reconstruction efforts following the November, 2012 earthquake.

[39] As regards ensuring the necessary budgetary resources for the operations of the COPRET, Article 9 of Agreement No. 360-2012 provides that the Ministry of Public Finance is to assign the Commission the necessary resources for the fulfillment of its functions. In this regard, during the on-site visit, COPRET representatives indicated that for 2012, the predecessor institution to the COPRET (the SECYT) was assigned approximately 15 million quetzals, which was sufficient because the institution only operated for six months. The COPRET representatives explained that for 2013, the Commission has been assigned approximately 30 million quetzals. They further indicated that the financial resources assigned to the institution are sufficient for it to adequately perform its functions.

[40] With regard to the coordination mechanisms with other State oversight bodies and to obtain support from the public for the fulfillment of its functions, in March 2013, the COPRET signed an inter-institutional Agreement for Action against Corruption. This Agreement was signed by the Vice-President of the Republic, the President of the Judicial Branch, the Attorney General, the Comptroller General of Accounts, and the Public Prosecutor of the Nation. As a result of this Agreement, an Anticorruption round-table met for the first time in April of 2013.

[41] Additionally, with respect to possible overlap between the functions of the COPRET consistent in the receipt of complaints regarding allegations of corruption or lack of transparency, COPRET officials explained that from the moment that a complaint is received, a procedure is followed whereby cross-checks are performed to determine whether (1) prior complaints have been received by the COPRET on the matter; (2) whether complaints have been received on the matter at other competent institutions; and (3) whether there is indication that a crime or administrative infraction has taken place. In the event that any of the foregoing situations are present, the COPRET forwards the case to the appropriate institution, along with the supporting documents, and also contributes to the subsequent investigation.

¹⁰ SIGES is the Management System, SICOIN is the Integrated Accounting System, and SIAF is the Integrated Financial Administration System.

[42] The COPRET has also developed its assigned function of coordinating Executive Branch efforts through different working groups, including: (1) Technical Group on Open Government, with the participation of the Directors of Social Communication of all the institutions and the Directors of Planning of the various Executive Branch Ministries; (2) Technical Institutional Round-Table on Electronic Government, with the participation of entities responsible for system development, such as the National Program for Competitiveness, the National Institute for Public Administration and the National Secretariat for Science and Technology; and (3) Technical Table for National Reconstruction, created as an ad hoc technical group to inform and assist citizens in the wake of the November, 2012 earthquake.

[43] A memorandum of understanding is also being negotiated with the Mexican Federal Institution for Access to Information and Data Protection (IFAI), in order to promote joint actions against corruption, and to join the Transparency and Access to Information Network.

[44] The COPRET has three main mechanisms for accountability and for providing information to the public: (1) the COPRET internet portal, <http://www.transparencia.gob.gt>, which provides information on the work of the institution, as well as mechanisms whereby the public can request information or present complaints regarding corruption or lack of transparency;¹¹ (2) Periodic and Annual Reports to the Congress of the Republic, as required by Article 24 of the Law on the General Budget and Income and Expenses of the State, which analytical reports on budget execution to be submitted to Congress every four months, through the Ministry of Public Finance. These reports are available on the Congress' internet portal. Additionally, copies of the reports are also transmitted to the State Accountability Directorate and the Comptroller General of Accounts; and (3) Quarterly and Annual Reports, which are neither required nor regulated, but which the institution intends to publish in January of each year as a matter of good practice. It was explained that the reports will include information on the various projects and work plans of the institution, as well as the objectives and scope of each process, its results and processes still to be concluded. Additionally, the Annual Report will include financial information of the COPRET.

[45] In addition, the document presented by COPRET representatives during the on-site visit explains that in order to promote transparency, the institution has promoted the follow-up to the transparency initiatives of the World Bank, including the Construction Sector Transparency Initiative (COST) and the Extractive Industries Transparency Initiative (EITI). Similarly, Guatemala made a declaration before the Open Government Society (OGP), the execution of which entails the creation of additional opportunities for citizen participation and social oversight.¹²

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

[46] The COPRET has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were briefly described in section 2.1 of this report. Nonetheless, the Committee considers it appropriate to formulate certain observations in relation thereto:

[47] First, the Committee observes that the COPRET was only recently created. During the on-site visit, COPRET representatives explained that the institution's predecessor, the Secretariat for Oversight and Transparency (SECYT), was declared unconstitutional by the Constitutional Court in November, 2012. The representatives explained that while the creation of the Secretariat was lawful,

¹¹ During the course of the on-site visit, the COPRET representatives noted that the internet portal of the institution also complies with Article 10 of the Law on Access to Public Information, which requires all institutions to have an electronic portal.

¹² See the document presented by the COPRET during the on-site visit, at p. 15, supra note 4.

the Constitution requires that the functions of Secretary's (highest authority) be established by law. According to the COPRET authorities, following the creation of the Secretariat, the legislature never approved the draft law containing the Secretaries functions, resulting in the ruling of unconstitutionality.

[48] Subsequent to the above ruling, the COPRET was created to continue the functions previously carried out by the SECYT, in addition to other responsibilities, including the promotion of electronic government. During the on-site visit, the COPRET representatives stressed the need for the COPRET to be transformed back into a permanent Secretariat and for the functions of the authority of the institution to be formally adopted by the legislature. This is particularly important considering that this institution coordinates all Executive Branch transparency and anticorruption initiatives, and that Agreement No. 360-12, which creates the Commission, provides that it will only exist for 6 years.

[49] The importance of the Executive Branch anticorruption body having a certain degree of permanence and institutionality was echoed by the representatives of *Accion Ciudadana* during the meetings held with civil society institutions during the course of the on-site visit. The representatives noted that historically, Executive Branch anticorruption bodies have not been created by the legislature and accordingly lack independence. They added that these bodies are frequently dissolved and replaced when a new administration comes into power, further reducing the impact and continuity of their activities.

[50] In light of the foregoing considerations, the Committee believes it important for the country under review to consider adopting the legislation necessary to transform the COPRET into a permanent institution of the Executive Branch. It should be noted that during the on-site visit, this issue was noted by the COPRET representatives as the principal difficulty for the proper fulfillment of its functions. The Committee will formulate a recommendation in this regard. (See recommendation 1.4.1 in chapter II of this report.)

[51] Second, the Committee observes that the response to the questionnaire presented by the country under review noted, with respect to difficulties for the fulfillment of the functions, that the SECYT lacked the "*...necessary independence to carry out its preventive oversight responsibilities. For this reason it needs to be strengthened, in order for it to function in all the agencies and entities of the State, as it is now circumscribed to the Executive Branch.*"¹³

[52] While the Committee recognizes that the above comment by the country under review was made in relation to the COPRET's predecessor institution - the SECYT, the Committee considers that the comment is nonetheless applicable to the COPRET, taking into account that (1) the COPRET replaced the SECYT; (2) the COPRET carries out largely the same functions as did the SECYT in the areas of transparency and anticorruption; and (3) the scope of action of the COPRET is also limited to the Executive Branch.

[53] In light of these considerations, the Committee considers it important for the country under review to examine whether it is necessary to implement the changes required to (1) grant the COPRET a greater degree of independence in order for it to better carry out its functions regarding the promotion of transparency and anticorruption; and/or (2) expand the authority of the COPRET, so as to enable it to carry out its functions related to transparency and anticorruption, with respect to

¹³ See the response of Guatemala to the Questionnaire for the Fourth Round, at p. 72, available at: http://www.oas.org/juridico/spanish/mesicic4_gtm_sp.htm

institutions and entities that do not form part of the Executive Branch. (See recommendation 1.4.2 in chapter II of this report.)

[54] Third, and with respect to the existence of manuals describing the functions of the personnel of the COPRET, the Committee notes that these are still being developed. The Committee will formulate a recommendation on this point, taking into considering that the Commission only began operating in 2013. (See recommendation 1.4.3 in chapter II of this report.)

[55] Fourth, and in similar sense, the Committee observes that manuals containing documented procedures for the execution of responsibilities are also still being prepared, as required by the General Standards for Internal Control of the Comptroller General of Accounts. The Committee will also formulate a recommendation on this point. (See recommendation 1.4.4 in chapter II of this report.)

[56] Fifth, the Committee observes that the COPRET is still in the process of designing and implementing its training program, as noted above in Section 1.1. The Committee will formulate a recommendation on this point. (See recommendation 1.4.5 in chapter II of this report.)

[57] Sixth, and with respect to the mechanisms for proving information to the public, the Committee notes that the internet portal of the COPRET contains a great deal of useful information and tools, such as the Guate Transparente mechanism and the tool for presenting complaints regarding lack of transparency and/or corruption. However, the Committee also considers that it would be useful for the institution to also publish its basic documents, such as for example, Governmental Agreement No. 360-2012, as well as other the other provisions that are issued for the purpose of regulating its functions and activities. (See recommendation 1.4.6 in chapter II of this report.)

[58] Seventh, with respect to the mechanisms for public accountability in the COPRET, the Committee observes that there is no regulation for the Annual Reports that the institution intends to issue. The Committee considers that it would be useful for the country under review to issue provisions specifically requiring the preparation and publication of these reports, as well as clear guidelines as to what their content should be. The Committee will formulate a recommendation in this regard. (See recommendation 1.4.7 in chapter II of this report.)

[59] Eighth, and with regard to internal controls in the COPRET, the Committee denotes an absence of an established internal procedure or unit specifically charged with receiving and handling complaints regarding COPRET officials or personnel. The Committee will formulate a recommendation taking this into account. (See recommendation 1.4.8 in chapter II of this report.)

[60] Ninth, the Committee notes that pursuant to Article 6(d) of Governmental Agreement No. 360-2012, the COPRET is responsible for promoting actions to contribute to compliance with the Law on Access to Public Information for entities of the Executive Branch. In this sense, during the on-site visit, COPRET representatives demonstrated the manner in which requests for information can be presented online. In addition, COPRET representatives explained that in fulfillment of their legal functions, the COPRET has been coordinating with other Executive Branch institutions to ensure compliance with the Law on Access to Public Information, and that part of this process involves a logo¹⁴ which is of obligatory use throughout this branch of government.

¹⁴ A standard icon was designed, which identifies where to click to obtain PUBLIC INFORMATION on all of the internet pages of the entities of the Executive Branch (14 Ministries and 29 Secretariats and Commissions),

[61] Notwithstanding these and other efforts, during the on-site visit, representatives of the civil society organization Mutual Support Group of Guatemala, noted several areas of concern with respect to implementation of the Law on Access to Public Information, which entered into force in 2009. In particular, they noted: (1) lack of compliance with Article 10 of the Law, which requires institutions to maintain, at minimum, basic information on the institution up-to-date and readily available; (2) for 2012, only 227 of the 1300 (17%) State institutions required to present an access to information report to the Human Rights Prosecutor pursuant to Article 48 of the Law had complied with that obligation;¹⁵(3) lack of application of Article 61 of the Law, which envisages administrative and criminal sanctions for infringement of the Law. In this sense, during the on-site visit, Accion Ciudadana noted that they had presented complaints regarding access to information to the Office of the Attorney General (MP), but that MP representatives were unsure what unit within that institution was responsible for investigating and prosecuting cases relating to access to information; and (4) general lack of knowledge on the part of public servants of their legal obligations pertaining to access to information.¹⁶

[62] With regard to the above issues, the Committee considers that for the purposes of ensuring that citizens in the country under review are able to properly exercise their right to access public information and to ensure compliance with the Law, it is important for the COPRET to continue these important coordination activities that it executes with respect to entities of the Executive Branch.

[63] With respect to the other oversight bodies examined in this report and which do not form part of the Executive Branch, but which are nonetheless obligated to comply with the Law on Access to Public Information, the Committee notes the existence of an inter-institutional agreement between the COPRET and these institutions (CGC, MP, and Judicial Branch), which calls, inter-alia, for the parties to agree to a plan which includes actions to improve the perception of the country regarding the fight against corruption. Similarly, the Committee notes that the COPRET has prepared a draft National Plan of Transparency and Anticorruption.¹⁷ The Committee considers that it might be useful for the COPRET to seek to include actions to improve compliance with the provisions of the Law on Access to Public Information in the plans that are agreed upon, as well as in the National Plan of Transparency and Anticorruption prepared by the COPRET, and it will formulate a recommendation in this regard. (See recommendation 1.4.9 in chapter II of this report.)

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

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

[65] First, with respect to measures relating to the prevention of corruption, during the on-site visit, the COPRET representatives reported that a group of 290 public servants had concluded the first

in order to access the obligatory information required by Articles 10 and 11 of the Law on Access to Public Information.

¹⁵ See the presentation of the Mutual Assistance Group (GAM), available at:

http://www.oas.org/juridico/spanish/mesicic4_gtm_sp.htm

¹⁶ Municipalities, as well as Decentralized and Autonomous Entities do not fall within the scope of action of the COPRET.

¹⁷ See the presentation on best practices of the COPRET, available at:

http://www.oas.org/juridico/spanish/mesicic4_gtm_sp.htm

phase of training in the area of Electronic Government and the Law against Corruption. It is anticipated that more than two-thousand public servants will receive similar training during 2013.¹⁸

[66] Information was also provided on a Diploma Course on the Law against Corruption, which is being implemented at the initiative of the Vice-President of the Republic and the COPRET, with the support of the National Institute for Public Administration (INAP).¹⁹ As of the date of the on-site visit, approximately 500 public servants from 78 public sector institutions had taken the course.

[67] The Commission has also coordinated the Electronic Government Plan, including a technical round-table with the different government institutions involved, such as the National Program for Competitiveness (PRONACOM), the National Secretariat for Science and Technology (SENACYT), the INAP, and the COPRET Electronic Government Coordination and Strengthening Department. The drafting of this Plan is the first step to allow public sector entities to be evaluated by the United Nations Public Administration Network, in the areas of human capital, infrastructure, on-line services and citizen participation.²⁰

[68] An Open Government Plan has also been created, resulting in the conformation of technical round-tables, intended to foster actions by organized civil society, the business sector, and academics, and to lead to social oversight.²¹ The technical round tables have been presented with the proposed National Plan for Transparency and the Fight against Corruption, among other information, in order for them to provide feedback.

[69] During the on-site visit, COPRET representatives explained that the SECYT (now the COPRET), has issued alerts regarding mismanagement and/or corruption in various sectors, resulting in the responsible Ministers either resigning or being required to report before congressional committees on the matter. The representatives explained that the COPRET will continue to carry out this function.

[70] In addition, during the on-site visit, COPRET representatives presented a draft National Policy of Transparency and Anticorruption, which contains guidelines for public institutions regarding preventive measures as well as open government.

[71] Another function previously carried out by the SECYT and now continued by the COPRET is receiving and preliminary analysis of complaints alleging corruption or lack of transparency. In this regard, during the lifetime of the SECYT (April, 2012 - February, 2013), that institution received 582 complaints. Since the creation of the COPRET in February, 2013, up to the date of the on-site visit, the institution had received 74 complaints.

[72] Together with this information, the COPRET representatives presented charts which indicate that the number of complaints received by the SECYT increased steadily each month, following its creation, and decreased in the months following the declaration of unconstitutionality. Similarly, since its February, 2013 creation, the number of complaints received by the COPRET has increased on a monthly basis, starting with 0 complaints received in February, 16 complaints received in

¹⁸ See also, the document "COPRET Panels 3 & 4, at p. 22, supra note 4.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

March, and 57 complaints received as of the date of the conclusion of the on-site visit (April 18, 2013).²²

[73] Regarding the above figures and information, the Committee notes that since their respective creation, the SECYT and now the COPRET, have played an important role in the prevention and detection of acts of corruption and lack of transparency.

[74] However, with respect to the complaints received and processed by the COPRET, the Committee notes an absence of information indicating the type of violation that gave rise to those complaints. The Committee considers that it might be useful, particularly as regards the COPRET's functions related to the prevention of acts of corruption, for it to maintain statistics showing not only the results of complaints generally, but which also indicate the number of each type of violation alleged. This information might be of use to the COPRET in determining which areas should receive increased attention and focus as far as its preventive activities are concerned, and the Committee will formulate a recommendation bearing this fact in mind. (See recommendation 1.4.10 in chapter II of this report.)

1.4. Conclusions and recommendations

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

[76] Guatemala has considered and adopted measures intended to maintain and strengthen the Presidential Commission on Transparency and Electronic Government as an oversight body, as indicated in Chapter II, Section 1 of this report.

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

- 1.4.1. Consider adopting the legislation necessary to transform the Presidential Commission on Transparency and Electronic Government into a permanent institution of the Executive Branch, with its own budget. (See Chapter II, Section 1.2 of this report.)
- 1.4.2. Examine whether it is necessary to implement the changes necessary to:
 - a. Grant the Presidential Commission on Transparency and Electronic Government a greater degree of independence, in order for it to better carry out its functions related to the promotion of transparency and anticorruption (See Chapter II, Section 1.2 of this report.); and
 - b. Expand the authority of the Presidential Commission on Transparency and Electronic Government, so as to enable it to carry out its functions related to transparency and anticorruption, with respect to institutions and entities that do not form part of the Executive Branch (See Chapter II, Section 1.2 of this report.).

²² Ibid.

- 1.4.3. Complete the process of preparing manuals that describe the functions of the personnel of the Presidential Commission on Transparency and Electronic Government. (See Chapter II, Section 1.2 of this report.)
- 1.4.4. Complete the process of preparing manuals that contain documented procedures for the execution of responsibilities of the personnel of the Presidential Commission on Transparency and Electronic Government. (See Chapter II, Section 1.2 of this report.)
- 1.4.5. Complete the design and implementation of the Presidential Commission on Transparency and Electronic Government training program in the areas of transparency and the fight against corruption, for personnel of the institution, public servants of other institutions, as well as the public at large, as appropriate. (See Chapter II, Section 1.2 of this report.)
- 1.4.6. Ensure that the basic documents of the Presidential Commission on Transparency and Electronic Government, such as the Governmental Agreement creating the institution, as well as the Agreements and other documents that it issues, are published on its internet portal. (See Chapter II, Section 1.2 of this report.)
- 1.4.7. Issue the provisions necessary to require the preparation and publication of annual reports by the Presidential Commission on Transparency and Electronic Government, which include clear guidelines on the contents of those reports. (See Chapter II, Section 1.2 of this report.)
- 1.4.8. Establish specific procedures to address complaints regarding the Presidential Commission on Transparency and Electronic Government's fulfillment of its responsibilities, as well as regarding the performance of COPRET officials and personnel. (See Chapter II, Section 1.2 of this report.)
- 1.4.9. Include guidelines to improve compliance with the provisions of the Law on Access to Public Information in the in the National Plan of Transparency and Anticorruption; and promote, in coordination with other relevant oversight bodies, including, among others, the Office of the Attorney General, the Comptroller General of the Republic, and the Judicial Branch, the actions necessary to ensure greater compliance with the provisions of the Law on Access to Public Information, including, inter-alia, training activities for public servants with respect to their obligations under the law, and mechanism for disseminating information to the public regarding the exercise of this right. (See Chapter II, Section 1.2 of this report.)
- 1.4.10. Maintain statistics which demonstrate not only the disposition of complaints received and processed by the Presidential Commission on Transparency and Electronic Government, but which also indicate the number of each type of offense that is alleged in those complaints, so that this information can be used to indicate which areas may be in need of additional prevention activities. (See Chapter II, Section 1.3 of this report.)

2. OFFICE OF THE ATTORNEY GENERAL (MP)

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

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

[79] Article 251 of the Political Constitution of the Republic, which establishes the Office of the Attorney General as an auxiliary body of the public administration and of the tribunals, with autonomous functions, responsible for ensuring the strict compliance with the laws of the State.

[80] Article 252 further provides that the head of the MP is the Attorney General, who is responsible for criminal prosecutions. The Article also provides that the Attorney General must be a barred attorney, and to be appointed, must have the same qualities as a Magistrate of the Supreme Court of Justice.²³ Additionally, the Attorney General is appointed by the President of the Republic, from a list of six candidates proposed by a nominating committee, made up by the President of the Supreme Court, the deacons of the schools of Law and Political Science of the State universities, the President of the Board of Directors of the School of Law and Notaries of Guatemala, and the President of the Honor Tribunal of the School of Law and Notaries of Guatemala. Finally, Article 251 also provides a four year term of office for the Attorney General; affords him or her the same immunities enjoyed by magistrates of the Supreme Court of Justice; and also provides for removal by the President for just cause.²⁴

[81] The Organic Law of the Office of the Attorney General (LOMP), Decree No. 40-94, which at Article 2 establishes the following as functions of the MP: (1) investigating public crimes and promoting criminal prosecution before the tribunals; (2) exercising civil actions in those cases provided by law and advising those complainants regarding private crimes; (3) directing the police and other security apparatus of the State in the investigation of crimes; and (4) maintaining the rule of law and respect for human rights.

[82] Article 3 of the LOMP provides that the Office of the Attorney General acts independently, of its own accord and in compliance with the functions assigned by law, and that it is not subordinate to any other branch of government, subject to exceptions provided by the LOMP.

[83] With respect to the budget of the MP, Article 3 provides that its budget will be included in the General Budget of the Nation, and grants the MP autonomy in the execution of its budget. In this connection, the response of the country under review notes that “*Budgetary resources are guaranteed with contributions from the Central Government, which are provided annually by the Congress of the Republic, and additionally, with contributions from international cooperation both in the form of projects as well as bilateral donation agreements.*”²⁵

[84] Article 9 of the LOMP provides that the Office of the Attorney General is composed of the following bodies: (1) Attorney General of the Republic; (2) the Council of the MP; (3) District and Section Prosecutors; (4) Prosecutors; and (5) Assistant Prosecutors.

[85] Article 17 of the LOMP provides that the Council of the Office of the Attorney General is composed of the Attorney General, who presides the Council, three Prosecutors elected by the

²³ See also, Article 13 of the Organic Law of the Office of the Attorney General.

²⁴ Article 14 of the Organic Law of the Office of the Attorney General provides that “*Just cause is understood to be the commission of a crime during the exercise of his or her function, for which there has been a conviction at trial, and the poor performance of the obligations of the post established by this law...*”

²⁵ See the response of Guatemala to the Questionnaire for the Fourth Round, at p. 53, *supra* note 11.

general assembly of prosecutors of the MP from among District and Section Prosecutors, and three members elected by the Legislative Branch, from among unsuccessful aspirants to the position of Attorney General.

[86] Pursuant to Article 18 of the LOMP, the Council of the Office of the MP is charged, inter-alia, with; (1) proposing to the Attorney General, the appointment of District and Section Prosecutors, Prosecutors and Assistant Prosecutors; (3) Adopting the proposal of the Attorney General with respect to the determination of the locations of District Prosecutors Offices as well as the creation or elimination of sections of the MP; (4) advising the Attorney General; and (5) the other functions established by law.

[87] The MP also has an Anticorruption Prosecutors Office (“*Fiscalia Contra la Corrupcion*”), created by the Council of the MP, at the request of the Attorney General, through Agreement No. 03-99, which at Article 1, provides that this Office investigates and prosecutes acts of corruption involving public officials or employees.

[88] With respect to the scope of its functions, Article 10 of the LOMP provides that the authority of the MP extends throughout the national territory. In this regard, the response of the country under review states that there are no exceptions to the actions of the MP.²⁶ Similarly, Article 5 of the LOMP provides that the MP is one indivisible entity throughout the State.

[89] With respect to the exercise of concurrent functions, the response of the country under review provides that “*The function of the Office of the Attorney General ...is independent and is carried out in coordination with the Judicial Branch, the Government Ministry, the National Civil Police and other institutions that intervene in criminal proceedings. For the fulfillment of its functions, the Office of the Attorney General is authorized to request the collaboration of any public official or administrative authority of the bodies of the State and its decentralized, autonomous and semi-autonomous entities.*”²⁷ The response also notes that there are no mechanisms for resolving conflicts of competence with other institutions, because the functions of criminal prosecution and investigation are exclusive to the MP.²⁸

[90]The response of the country under review notes with respect to coordination with other state institutions, that there are a series of formal mechanisms, such as inter-institutional agreements. During the course of the on-site visit, the MP representatives noted that the MP had recently entered into an inter-institutional agreement including the Comptroller General of Accounts, the Judicial Branch, the COPRET, and the Public Prosecutor. In addition, the representatives noted that Informal exchanges of information also take place between the MP and other institutions and organizations, as well as round tables at which different institutions participate depending on the topic at hand.

[91] With respect to decision making by the MP, the response of the country under review notes that the Attorney General is responsible for determining the general policy of the MP and the criteria for exercising criminal prosecutions.²⁹ In addition, pursuant to Article 18 of the LOMP, the Council of the MP is responsible, inter-alia, for proposing the appointment of district attorneys, section attorneys, prosecutors and auxiliary prosecutors, to the Attorney General (Article 18(1)); and providing advice to the Attorney General when he requires it (Article 18(4)).

²⁶ Ibid. at p. 47.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid., at p. 48.

[92] With respect to internal mechanisms for challenging decisions, Article 68 of the LOMP establishes a procedure whereby prosecutors that receive instructions that they believe to be contrary to law may object (in writing) to the person that issued the instruction. If the issuer insists on the legitimacy of the instruction, the matter is submitted to the immediate hierarchical superior, who shall decide the matter, and who may elect to receive advice from a group of prosecutors under his or her direction, or request an opinion from the Council of the MP. When the instruction in question has been issued by the Attorney General, Article 68 further provides that the matter will be decided by the Council of the MP.

[93] With respect to external appeal mechanisms, the response of the country under review to the questionnaire, states that *“The review of the decisions of the highest authority of the Office of the Attorney General may be made through use of the recourses and actions established for the effective control of constitutionality.”*³⁰

[94] Human resources of the Office of the Attorney General are recruited pursuant to the LOMP, Article 75 of which provides that District and Section Prosecutors, Prosecutors and Assistant Prosecutors are appointed following a competition taking into account the requirements for the post and the background and experience of the candidates. Article 77 requires the Council of the MP to form a Competition Tribunal, which evaluates the candidates and prepares a list of those who have been selected, ranking the selected candidates in order from those who received the highest score to the lowest score. Additionally, Article 78 requires appointments to fill post to be made exclusively from the list in order of merit.

[95] With regard to administrative personnel, Article 59 of the LOMP provides that the Attorney General will issue regulations for the hiring of administrative staff of the Office of the Attorney General.

[96] With respect to discipline of MP personnel, Article 62 of the LOMP provides that sanctions will be imposed by District or Section Prosecutors, and heads of units, or in the case of termination or suspension, by the Attorney General. In addition, Article 63 of the LOMP provides, *inter-alia*, a mechanism for a person who has been sanctioned to appeal that decision, and with respect to decisions issued by the Attorney General, appeals are heard by the Council of the MP. Article 63 also provides that the respective sanction cannot be imposed until the appeal process is finalized.

[97] With regard to the existence of manuals or documents for the execution of tasks, the response notes that there are procedural manuals that are complemented by General Instructions issued by the Attorney General, as well as a Human Resources Manual of Norms and Procedures, issued pursuant to Agreement No. 47-2010.³¹

[98] In terms of institutional strengthening and the implementation of modern technologies or systems, the response to the questionnaire notes that Information System for Cases of the Office of the Attorney General (SICOMP) is utilized for the evaluation of personnel of the institution.³² In addition, during the on-site visit, representatives of the MP made a power point presentation on this system and the manner in

³⁰ Ibid.

³¹ Ibid., at p. 51.

³² Ibid., at p. 52.

which it is being used to inter-alia, gather feedback from the public on the services provided by the MP, as well as improve the performance of MP personnel.³³

[99] In a similar sense, during the on-site visit, a presentation was also given on a “Project to Expand the Regionalization and Strengthening of the Central Headquarters of the General Supervision Unit”, which is the unit responsible for the internal control with respect to MP personnel³⁴

[100] Article 81 of the LOMP creates the Training Unit of the MP, and charges it, inter-alia, with promoting, executing and organizing training courses for personnel of the MP, as well as those who aspire to join the institution. The Unit has its own component on the internet portal of the MP, available at <http://unicap.mp.gob.gt/>, which contains a great deal of information, including monthly calendars of the training opportunities being provided by the Unit.

[101] With respect to the manner of informing the public about its objectives, functions and procedures, inter-alia, the response to the questionnaire notes that pursuant to its Organic Law, the Office of the Attorney General is required to publish an annual report containing information on results, and explaining the successes and difficulties in fulfilling its objectives, as well as a detailed report on budget execution.³⁵ Similarly, the response explains that the MP has an information office which is responsible for providing orientation to the public regarding the functions of the MP, as well as to comply with the Law on Access to Public Information.³⁶

[102] The MP also has an institutional internet portal, available at www.mp.gob.gt, and which provides, inter-alia, information on the background, structure, and functions of the MP, its strategic plan, news bulletins, annual reports, an FAQ section, and vacancy announcements.

[103] With respect to internal controls, Article 41 of Agreement No. 12-2007, the Regulation on Organization and Functioning of the Office of the Attorney General, creates the Internal Audit Unit, and makes it responsible for internal controls in the MP, as well as for carrying out audits of MP finances.

[104] With regard to the handling of complaints against MP personnel, Article 39 of Agreement No. 12-2007 creates the General Supervision Unit, which, according to the response of the country under review, is responsible for administrative matters, including the reception of these types of complaints. The response also notes that these types of complaints are investigated by the Internal Affairs Unit.³⁷

[105] With regard to mechanisms for accountability, Article 16 of the LOMP requires the publication of an annual report to inform citizens of the results of its activities, which must also be submitted to the President of the Republic and to the Judicial Branch. Article 16 also requires the report to contain: (1) a summary of the work carried out in the term; (2) an analysis of the services provided, including obstacles and measures adopted to resolve them; (3) a compilation of the general instructions issued by the Attorney General and the decisions and recommendations issued by the Council of the MP; (4) details on budget execution; and (5) concrete proposals on the modifications or improvements necessary. The response of the country under review notes that the MP’s Department of Planning is responsible for the

³³ This presentation, titled Office of the Attorney General Performance Evaluation Unit Presentation, is available here: http://www.oas.org/juridico/spanish/mesicic4_gtm_sp.htm

³⁴ This presentation is available here: http://www.oas.org/juridico/spanish/mesicic4_gtm_sp.htm.

³⁵ See the response of Guatemala to the Questionnaire for the Fourth Round, at p. 52, supra note 11.

³⁶ Ibid.

³⁷ Ibid., at pp. 52-53

compilation and processing of the information necessary for the MP's annual report.³⁸ The response also notes that the MP issues press releases and holds press conferences to publicize important actions, and more recently, has made use of social media to inform the public of its activities and to receive immediate feedback.

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

[106] The Office of the Attorney General has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were briefly described in section 2.1 of this report. Nonetheless, the Committee considers it appropriate to formulate certain observations in relation thereto:

[107] First, during the course of the on-site visit, the representatives of the Office of the Attorney General related a serious and ongoing problem with the operation of the Council of the MP, in that since 2010, the Council of the Office of the Attorney General has been unable to be constituted. They explained that historically, it has been difficult to fill the three members of the Council that the LOMP requires the Legislative Branch to appoint from among non-winning candidates to the post of Attorney General. The representatives further explained that because membership on the Council is neither full-time nor well remunerated, former Attorney General candidates have been unwilling to serve as members.

[108] As noted above in section 2.1, the LOMP provides an appeal mechanism for those officials and employees of the MP with respect to whom a resolution calling for disciplinary action has been issued. This appeal is made either to the hierarchical supervisor, or to the Council of the Office of the Attorney General in the event that the Attorney General issued the sanction.

[109] MP representatives explained that the Council has met to perform some of its other statutory functions, such as proposing candidates for the different posts for prosecutors, with the Councilmembers that Article 19 of the LOMP requires be elected from the general assembly of prosecutors of the MP. However, MP representatives explained that because appeals of disciplinary actions must be heard by the entire Council, this important function cannot be carried out.

[110] As a consequence of the foregoing, the respective sanctions that have been issued cannot be executed. During the on-site visit it was further explained that the disciplinary resolutions that have been issued, and which cannot be implemented until an appeal has been exhausted, address both minor sanctions resulting from minor infractions, as well as serious violations for which the resolution calls for suspension or termination.³⁹ The Committee is concerned that at present there is no functioning mechanism allowing for the execution of disciplinary sanctions issued by the Attorney General, and considers it very important for the country under review to take the steps necessary to remedy this situation as soon as possible. The Committee will formulate a recommendation bearing this circumstance in mind. (See recommendation 2.4.1 in chapter II of this report.)

[111] Second, with regard to the function of the Council consisting of proposing candidates for the different categories of prosecutor posts throughout the MP, the Committee observes that this function has been carried out by the Council, composed of the Attorney General and the MP prosecutors that have been appointed by the General Assembly of the MP, and without the inclusion, through no fault

³⁸ Ibid., at p. 54.

³⁹ See the Chart presented by the Office of the Attorney General, in Section 2.3 of this Report.

of the MP, of the members of the Council that have yet to be appointed by the Legislature, and who could then be considered more independent, i.e., not under the direct control of the Attorney General. As a result, all of the input for candidates for prosecutorial posts comes from within the MP itself, i.e., from the Attorney General and MP prosecutors. The Committee is of the view that this situation is also demonstrative of the need for the Council to be fully constituted, so that it can more adequately and impartially carry out the functions assigned to it by the LOMP and the Committee will formulate a recommendation in this regard. (See recommendation 2.4.2 in chapter II of this report.)

[112] Third, and also with respect to the information contained on the MP internet portal, the Committee observes that it contains a great deal of useful information. Nonetheless, the Committee observes that while the portal lists the basic laws governing the creation, organization and operation of the institution, it does not contain links to those documents, nor to the many Agreements (regulations) issued by the Attorney General.

[113] In addition, the Committee observes that the internet portal of the MP includes a page with information on the Council of the MP. In this regard, and despite the fact that based on information provided by the MP, only the three council members that are to be appointed by the legislative branch are pending appointment, the internet page is blank with respect to all of the members that need to be appointed, giving the impression that the Council is not operating at all, or that its only members are the Attorney General and the Council Secretary.

[114] The Committee considers that it would be useful and important for the MP to update its internet portal, through the inclusion of the names of those members of the Council who have been appointed, as well as of the basic documents (laws and regulations) of the institution. The Committee will formulate a recommendation bearing these points in mind. (See recommendation 2.4.3 in chapter II of this report.)

[115] Fourth, during the on-site visit, representatives of the MP presented information regarding difficulties encountered by the institution in the performance of its functions regarding corruption. The first of these mentioned consists in the excessive use by defendants in criminal proceedings of procedural motions, such as those provided by the Law on Amparo and other applicable provisions, as a means to delay and obstruct prosecutions. By way of example, MP personnel noted instances in which scores of oftentimes merit-less motions have been filed with respect to a single case. Representatives of the MP explained that to remedy this problem, changes to existing legislation, possibly including the Law on Amparo and others would need to be considered. The Committee will formulate a recommendation addressing this issue. (See recommendation 2.4.4 in chapter II of this report.)

[116] It should be noted that the difficulty resulting from this situation was also noted by representatives of the Judicial Branch, as well as the organization Myrna Mack, during the meetings held with civil society during the framework of the on-site visit, where they too suggested that a limitation on procedural motions needed to be considered, due to the fact that they are being used to delay trials.

[117] Fifth, and also in terms of a difficulty leading to delays in the prosecution of corruption offenses, MP representatives noted that audits, which are generally carried out by the Comptroller General of Accounts (CGC), are required in many such prosecutions. However, MP representatives explained that because the CGC lacks sufficient personnel to carry out these audits in a timely

manner, the MP often hires qualified external auditors to carry out these necessary audits.⁴⁰ The problem they have encountered is that some judges only accept audits that have been performed by CGC auditors, notwithstanding the fact that accepting audits only from the CGC is a matter of practice, rather than a requirement imposed by law, according to MP personnel. Accordingly, they were of the opinion that specific training for judges was necessary in this regard. Similarly, they noted an overall need for there to be specially trained anticorruption judges. In light of this circumstance, the Committee will formulate the appropriate recommendations in Sections 3 and 4 of this report, regarding the CGC and the Judicial Branch, respectively. (See recommendations 3.4.1 and 4.4.1.)

[118] Sixth, during the on-site visit, and as discussed in section 1.2 above, the Committee notes various factors which may be impacting the proper application of the Law on Access to Public Information. One such issue noted by civil society representatives during the on-site visit, is that public servants often are not familiar with their obligations under the Law. Furthermore, with respect to the Office of the Attorney General in particular, Accion Ciudadana related having presented complaints regarding access to information to the Office of the Attorney General (MP), but that MP representatives were unsure what unit within the institution was responsible for investigating and prosecuting cases relating to failure to comply with provisions on access to information. In this sense, the Committee considers that it would be useful for the MP to consider the implementation of training programs for its personnel on their responsibilities under the Law on Access to Public Information, both in terms of their legal obligation to respond to information requests, as well as the function of the MP regarding the investigation and prosecution of cases of non-compliance with the Law. The Committee will formulate a recommendation in this regard. (See recommendation 2.4.5 in chapter II of this report.)

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

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

[120] First, with respect to measures relating to the prevention of corruption, the response to the questionnaire reports two events that were executed in 2011: a Regional Seminar on Ethics; and a workshop titled, "Improvements in Corruption Cases."⁴¹

[121] With respect to the foregoing, the Committee also observes that the response of the country under review to the questionnaire notes, as a difficulty experienced by the MP, "*...the lack of ongoing and widespread training for all MP areas; therefore, it is considered necessary for the Public Ministry to receive training in all administrative and fiscal areas.*"⁴²

⁴⁰ With respect to the possibility of having its own auditors, the Office of the Attorney General noted that "*Here it is vital to mention that, since Agreement 7-2013, which established the Criminal Analysis Directorate, the Office of the Attorney General has a financial analysis department made up of auditors, which is preparing to engage in financial investigations of corruption cases, as well as other crimes, and building up the qualified staff it needs to conduct the necessary audits. However, an ongoing problem is that some judges only accept audits performed by auditors of the Office of the Comptroller General of Accounts (Contraloría General de Cuentas – CGC), even though accepting only CGC audits is a custom, not a legal requirement.*"

⁴¹ See the response of Guatemala to the Questionnaire for the Fourth Round, at p. 70, supra note 11.

⁴² Ibid., at p. 72.

[122] In this regard, the Committee observes, as noted above in section 2.1, that the website of the Training Unit lists a great deal of training activities that are being organized and executed by the Unit, which address a variety of topics and are given to a variety of audiences, including prosecutors, students and officials of other government institutions. Nonetheless, as noted by the country under review, the Committee considers that while the courses offered by the Training Unit are immensely valuable, they address very specific and specialized topics. In this connection, the Committee considers that it might be useful for the MP, through its Training Unit, to organize a comprehensive and permanent training course for all personnel of the MP, with respect to the proper fulfillment of their functions, as well as provide additional training in areas related to the prevention, detection and persecution of corruption. The Committee will formulate a recommendation in this regard. (See recommendation 2.4.6 in chapter II of this report.)

[123] Second, with respect to the results of the functions of the MP related to the investigation and criminal prosecution of acts of corruption involving public servants, during the on-site visit, the representatives of the MP provided statistics from the Anticorruption Prosecutor's Office indicating that: (1) from January to December, 2012, there were a total of 25 people convicted and in addition, there were 17 other persons connected to criminal proceedings for acts of corruption; and (2) from January – March, 2013, there were 30 persons convicted and in addition, there were 9 other persons connected to criminal proceedings for acts of corruption.

Year	Persons convicted for crimes of corruption	Persons connected to criminal proceedings for corruption cases (awaiting trial)
January to December 2012	25	17
January to March 2013	30	9

[124] Similarly, the Committee notes that the Annual Reports published by the Office of the Attorney General and available on its internet portal, provide statistics on the results achieved by the Anticorruption Prosecutor's Office,⁴³ including, inter-alia, information on the number of cases received, resolved, dismissed, suspended, archived, transferred, as well as on the number of persons convicted.

[125] The Committee considers that the above results and information indicate that the Anticorruption Prosecutor's Office is achieving results in terms of criminal prosecution of acts of corruption. Nonetheless, the Committee notes that there are no results available indicating how many cases have prescribed because they were not completed within the statutory time periods, nor is there information on the types of acts of corruption involved in each case. The Committee considers that maintaining results in these areas would assist the Office of the Attorney General in determining whether additional efforts should be implemented, either in terms of speeding up prosecutions so as to avoid prescription, or increasing prevention activities in certain areas where acts of corruption are more prevalent. The Committee will formulate a recommendation in this regard. (See recommendation 2.4.7 in chapter II of this report.)

[126] Third, with respect to the investigation and administrative sanction of employees and officials of the Office of the Attorney General, the response of the country under review to the questionnaire

⁴³ Annual Reports published by the Office of the Attorney General are available here: <http://www.mp.gob.gt/acerca-del-mp/en-construccion/>

indicates that during the past 5 years, 718 requests of disciplinary action were presented to the Attorney General. Of those, 541 resulted in the imposition of sanctions. Similarly, the response indicates that over the past 5 years, 384 requests of disciplinary action were transferred to District and Section Prosecutors, as well as to other heads of units. Of those, 277 resulted in a finding of responsibility. The response further indicates that the total number of disciplinary resolutions that resulted in either a finding of no responsibility or absolution is 217, with 15 cases being archived.

[127] With respect to the above results, the Committee observes that they indicate that approximately 75% of the requests for disciplinary action presented to the Attorney General result in a finding of responsibility, and approximately 72% of similar requests presented to other superiors result in a finding of responsibility. While these statistics indicate a high percentage in terms of findings of responsibility, the Committee notes that these figures refer to cases which have already been investigated, and which are then transferred to the appropriate authority of the Office of the Attorney General for a decision on sanctions. However, the Committee observes an absence of information indicating how many public servants were investigated overall, and how investigations resulted in a finding of no responsibility, or were concluded in some other manner. The Committee will formulate a recommendation in this regard. (See recommendation 2.4.8 in chapter II of this report.)

[128] Fourth, and also with respect to the discipline of MP personnel, the presentation made by MP representatives during the on-site visit includes the following chart, which shows the sanctions imposed by the Attorney General in 2011 and 2012:

Sanctions	Number	Appeals that need to be heard by the Council of the MP
Termination	86	65
Suspension	63	38
Written admonition	33	15
Verbal admonition	8	5
TOTAL	190	123

[129] As noted above in section 2.2, the Committee is concerned with the lack of enforcement of disciplinary decisions taken in the MP, and particularly, with the fact that based on the above information, there are at least 65 staff members of the institution who have arguably committed infractions serious enough to merit termination, but who are still exercising their functions. The Committee will formulate a recommendation in this regard. (See recommendation 2.4.1 in chapter II of this report.)

2.4. Conclusions and recommendations

[130] Based on the comprehensive review of the Office of the Attorney General in the foregoing sections, the Committee formulates the following conclusions and recommendations:

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

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

- 2.4.1. Take the measures necessary so that disciplinary decisions taken with respect to personnel of the Office of the Attorney General can be executed in a timely manner. (See Chapter II, Section 2.2 of this report.)
- 2.4.2. Take the steps necessary for the timely appointment of all of the statutorily required members of the Council of the Office of the Attorney General (MP), so that it can fully and effectively carry out the functions assigned to it by the Organic Law of the Office of the Attorney General, including, among others, proposing candidates for prosecutorial positions throughout the MP to the Attorney General. (See Chapter II, Section 2.2 of this report.)
- 2.4.3. Update and maintain up to date the information on the internet portal of the Office of the Attorney General, so as to include information on those members of the Council of the Office of the Attorney General that have been appointed; as well as on the basic documents regarding the creation, organization and operation of the Office of the Attorney General and the regulations issued by the Attorney General regarding for the operation and/or management of the institution. (See Chapter II, Section 2.2 of this report.)
- 2.4.4. Adopt the appropriate corrective measures, either through considering the modification of the Law on Amparo and other relevant provisions, or through such other means as may be deemed necessary, in order to eliminate circumstances that paralyze or delay criminal proceedings. (See Chapter II, Section 2.2 of this report.)
- 2.4.5. Issue the regulations or documents necessary to expressly assign a unit within the Office of the Attorney General, the responsibility for the investigation and prosecution of cases involving lack of compliance with the Law on Access to Public Information; and implement a training program on this Law for personnel of the Office of the Attorney General, which would address both the legal obligation of the Office of the Attorney General to respond to information requests, as well as its function of investigating and prosecution alleged non-compliance with the provisions of the Law. (See Chapter II, Section 2.2 of this report.)
- 2.4.6. Organize and implement, through the Training Unit of the Office of the Attorney General (MP), a comprehensive and permanent training course for all personnel of the MP, with respect to the proper fulfillment of their functions; and provide additional training in areas related to the prevention, detection and persecution of corruption. (See Chapter II, Section 2.3 of this report.)
- 2.4.7. Maintain results which detail the types of corruption offenses that are prosecuted, as well as on the number of criminal cases that have prescribed because they were not completed within the statutory time periods, in order to identify challenges and take corrective measures, such as the need to speed up prosecutions or increase prevention related activities in certain areas. (See Chapter II, Section 2.3 of this report.)
- 2.4.8. Maintain results on the discipline of personnel of the Office of the Attorney General, indicating the number that have been investigated, as well as how many

investigations resulted in a finding of no responsibility, in order to identify challenges and take corrective action. (See Chapter II, Section 2.3 of this report.)

3. COMPTROLLER GENERAL OF ACCOUNTS (CONTRALORIA GENERAL DE CUENTAS)

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

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

[134] With regard to its objectives, Article 3 of Decree No. 31 of 2002, the Organic Law of the Comptroller General, provides that the CGC is responsible, *inter-alia*, for: (a) determining if the institutional management of the entities subject to its supervision is carried out based on criteria of probity, efficacy, efficiency, transparency, economy and equity; (b) supporting the design and implementation of civil society participation mechanisms to strengthen transparency, probity and credibility in public management; (c) promoting and supervising the responsibility of public servants; (d) carrying out audits and issuing recommendations for updating, modernizing and maintaining systems; (e) promoting training activities for public servants responsible for the administration, execution or supervision of State funds; (h) ensuring probity, transparency and honesty in public administration; and (i) promoting and supervising the quality of public expenditure.

[135] In terms of its functions, Article 4 of the Organic Law of the CGC provides, *inter-alia*, that the attributions of the CGC include, *inter-alia*, being responsible for governmental control, and the institutions and persons subject to that control are obligated to comply with the provisions or rulings that it issues within its sphere of competence (Article 4(a)); carrying out examinations of financial-administrative operations and transactions through audits, and issues audit reports pursuant to GAAP and existing governmental standards (Article 4(b)); regulating internal institutional controls and the management of internal audit units, and proposes measures to improve their efficiency and efficacy (Article 4(c)); evaluating the results of the management of the institutions subject to its control, based on probity, efficacy, efficiency, transparency, economy and equity (Article 4(d)); auditing, ruling on and issuing reports on the financial statements and the execution of the General Budget of the State, as well as of autonomous and decentralized entities (Article 4(e)); promoting *ex officio* and being party to Account Trials (“*Juicios de Cuentas*”) against public servants; (Article 4(f)); requiring the immediate suspension of public servants when facts evidencing a crime have been detected, and reporting them to the competent authorities (Article 4(g)); appointing temporary controllers in the entities under its control, when it is proven that their economic-financial stability is being compromised (Article 4(h)); when required, exclusively hiring independent public accountants and independent auditors to carry out audits in the institutions and persons subject to its control (Article 4(l)); promoting anticorruption mechanisms (Article 4(n)); verifying the veracity of the information contained in the sworn statements submitted by public servants (Article 4(o)); and assisting the Office of the Attorney General with investigations of crimes against the public treasury (Article 4(t)).

[136] Article 232 of the Constitution provides that the CGC is a technical and decentralized institution, while Article 1 of the Organic Law of the CGC provides that it enjoys functional technical and administrative independence. Similarly, Article 1 of the Organic Law of the CGC provides that it has competence throughout the national territory.

[137] With respect to the scope of its functions, Article 2 of its Organic Law provides that the CGC carries out external supervision with respect to State bodies, autonomous and decentralized institutions, municipalities and their businesses, other institutions that make up the public non-financial sector, as well as non-financial institutions in which the State participates or in which State funds are involved.

[138] Article 2 of the Organic Law of the CGC also provides an exception to the scope of the CGC's functions, whereby public sector institutions subject to supervision by another institution are not subject to supervision by the CGC. During the course of the on-site visit, CGC representatives explained that this provisions refers to institutions that form part of the financial/banking sector, and which are thus subject to supervision by the Superintendence of Banks.

[139] With regard to the existence of shared functions with other oversight bodies, the response of the country under review notes that pursuant to Article 232 of the Constitution and Article 1 of its Organic Law, as a technical and decentralized institution, the supervision responsibilities of the CGC are exclusive, and it does not depend on any other State institution for the fulfillment of its responsibilities.⁴⁴

[140] In a similar, sense, the response of the country under review to the questionnaire notes that "*As regards mechanisms for resolving any conflicts of jurisdiction that may arise, administrative law assigns to the Office of the Comptroller General of Accounts sole authority for oversight of State assets and liabilities; therefore, there are no other bodies with the same functional jurisdiction.*"⁴⁵

[141] With respect to mechanisms for coordinating its functions with those of other oversight bodies, in March, 2013, the CGC signed an inter-institutional cooperation agreement between the Vice-President of the Republic, the Judicial Branch, the Office of the Attorney General, and the Public Prosecutor, in order to establish general cooperation mechanisms, channels of coordination and inter-institutional lines of action in order to fight corruption.

[142] Additionally, during the on-site visit, CGC representatives also noted that for the fulfillment of its functions, the CGC has also entered into cooperation agreements with the Office of Government of Puerto Rico, the Guatemalan Supreme Elections Tribunal, the Office of the Attorney General, the Panamanian Comptroller's Office, the Guatemalan Superintendent of Tax Administration, as well as various universities.⁴⁶

[143] As an additional means of obtaining the necessary support for the fulfillment of its functions, Article 7 of the Organic Law of the CGC provides that the CGC, through its auditors, shall have direct access to any source of information of the entities and persons subject to its supervision.

[144] With respect to the taking of decisions at the CGC, the response of the country under review notes that "*The decisions of the Office of the Comptroller are taken in hierarchical order. The institutional hierarchy, from top down, is: the Comptroller General of Accounts, the Deputy Comptroller for Probity, the Deputy Comptroller for Public Expenditure, and the Directors, each taking decisions in their specific area of jurisdiction. Authorities are not assigned to more than one body, since*

⁴⁴ See the response of the Guatemala to the Questionnaire for the Fourth Round, at p. 14, supra note 11.

⁴⁵ Ibid., at p. 15.

⁴⁶ Ibid., at p. 21.

the Office of the Comptroller General of Accounts is a decentralized and functionally independent institution whose decisions and resolutions are the responsibility of a single individual."⁴⁷

[145] Pursuant to Article 44 of the Organic Law of the CGC, resolutions issued by the Comptroller General may be challenged via the rehearing mechanism ("*recurso de reposicion*"),⁴⁸ while resolutions issued by Sub-Comptrollers, Directors and Chiefs of dependencies of the CGC may be challenged via the revocation mechanism ("*recurso de revocatoria*").^{49, 50}

[146] With regard to the election of the Comptroller General, Article 233 of the Constitution provides that the Comptroller General is elected by the Congress of the Republic for a four year term. The Article also provides that the Comptroller General may only be removed by the Congress in the event of negligence, the commission of a crime, and unsuitability. Additionally, the Article provides that the Comptroller cannot be reelected. Article 234 of the Constitution contains the requirements for being appointed as Comptroller General, while Article 235 authorizes the Comptroller to appoint and remove officials and employees of the CGC and to appoint controllers in matters of its competence, in accordance with the Civil Service Law.

[147] According to the response to the questionnaire, personnel of the Comptroller General are selected based on the Regulation of the Plan for Reclassification of Posts and the Administration of Salaries, created through Governmental Agreement No. 235-2008, which has been subsequently amended by Government Agreement No. 462-2011. This Regulation, at Article 5, classifies posts as either trust positions, made up of the Deputy Comptroller, Advisors, Director General, Directors and Chiefs of Departments (Article 5(a)); and administrative career personnel (Article 5(b)). This Regulation also provides procedures for the creation and abolition of posts.

[148] With respect to the hiring of personnel, the response notes that "*A group of high-level personnel may be freely appointed and removed, namely the Deputy Comptrollers and Directors. All other posts are filled through a recruitment, selection, hiring, and induction process.*"⁵¹ In this connection, Article 13(c) of the Organic Law of the CGC provides that the Comptroller General of Accounts is required to appoint and remove the employees of the institution in accordance with the provisions of the Civil Service Law.

[149] Additionally, during the course of the on-site visit, representatives of the CGC provided copies of Agreement No. A-159-2008, issued by the Comptroller General, and establishing the Code of Ethics for Employees of the CGC. Similarly, CGC personnel are also subject to the Law on Probity and

⁴⁷ Ibid., at p. 16.

⁴⁸ See also 9 of the Contentious Administrative Law, which provides in pertinent part, with respect to the rehearing mechanism, that "*Appeals for reversal may be lodged against ministerial resolutions and resolutions issued by the highest authorities—individual or collegiate—of decentralized or autonomous entities, within five days of notification thereof. Appeals are lodged directly with the authority whose resolution is the subject of the appeal.*"

⁴⁹ See also, Article 7 of the Contentious Administrative Law, which provides the following with respect to the revocation mechanism: "*Appeals for annulment of resolutions issued by the highest hierarchical administrative authority are instituted within the corresponding ministry or decentralized or autonomous entity. Such appeal shall be lodged within five days of notification of the resolution, as a petition to the administrative body that issued it.*"

⁵⁰ In addition to the two mechanisms indicated, there is also the possibility of filing a constitutional "amparo" action.

⁵¹ See the response of Guatemala to the Questionnaire for the Fourth Round, at p. 17, supra note 11.

Responsibilities of Public Officials and Employees, which at Articles 8, 9 and 10, establishes administrative, civil and criminal responsibility for administrative infractions, civil wrongs, and criminal actions, respectively. This law also contains provisions regarding incompatibilities for public service posts (Article 16), and prohibitions applicable to public servants (Articles 18 and 19).

[150] With respect to discipline of personnel of the CGC, the response to the questionnaire notes that this relationship is governed by the Collective Agreement on Working Conditions between two unions and the CGC.⁵²

[151] Training for CGC personnel is provided by the Center for Government Professionalism (CEPROG), a dependency of the CGC that, pursuant to the Regulation of the Organic Law of the CGC, is responsible for the planning, design, execution and evaluation of the internal and external training processes of the CGC (Article 32). During the course of the on-site visit, representatives of the CGC provided copies of many press bulletins, announcing and summarizing multiple training activities during 2012 and 2013, on a wide variety of topics, including those related to transparency and anticorruption.

[152] With respect to manuals describing the functions of its personnel, in addition to the Regulation of the Plan for Reclassification of Posts and the Administration of Salaries, the CGC has a Manual of Descriptive and Specific Post Categories.

[153] With respect to the existence of documented procedures or guides for the development of tasks, the response to the questionnaire notes that at point 1.10, the CGC General Standards for Internal Control require the maximum authority of each public entity to prepare a manual of functions of procedures for each post, with respect to the various activities of the entity.

[154] With respect to internal controls and mechanisms for processing complaints, the CGC has a General Inspection Unit, created pursuant to Article 17 of the Regulation of the Organic Law of the CGC, which is responsible for exercising quality control with respect to the work of the personnel of the CGC and of contracted auditing firms. Among its functions, the Regulation charges this Unit with, inter-alia, the design of criteria for qualifying and evaluating complaints (Article 21(d)); receiving, investigating and ruling on internal and external complaints regarding CGC personnel (Article 21(e)); carrying out reviews of work performed by auditors and CGC personnel, as a result of indicia or complaints of acts of corruption (Article 21(f)); coordinating investigations with audited bodies and with other oversight bodies in order to better handle investigations (Article 21(g)); and evaluating compliance with internal standards, investigating violations thereof and recommending relevant actions (Article 21(h)).

[155] The CGC also has an Internal Audit Unit (Article 11 of the Organic Law of the CGC), responsible for the continuous evaluation of CGC control systems and procedures (Article 22 of the Regulation of the Organic Law of the CGC).

[156] With regard to institutional strengthening and the use of modern technologies to support its work, during the course of the on-site visit, CGC representatives presented information on some of the information systems being used by the CGC, including the system of probity, the system for electronic notifications, electronic accountability system, the Integrated Financial Administration System (SIAD), the Integrated Accounting System (SICOIN Web), and the Governmental Audit System (SAG).

⁵² Ibid.

[157] For the purposes of informing the citizenry about its objectives and functions, the CGC has an institutional internet portal, available at <http://www.contraloria.gob.gt/>. As the response to the questionnaire indicates, this portal has information related to the functions, mission, vision, policies, strategies, audit reports, legislation, regulations, internal agreements, and manuals.⁵³

[158] As regards ensuring the necessary budgetary resources for its operations, Article 34 of its Organic Law provides that the CGC formulates and submits its budget to the Executive and the Congress, and that that budget should be increased pursuant to the real needs of the institutions and the financial position of the State; while Article 35 provides that the CGC is responsible for the administration, execution and control of the funds that are budgeted to the institution.

[159] During the course of the on-site visit, representatives of the CGC explained that public accountability is required by various provisions of the Organic Law of the CGC, including, inter-alia, Article 9, which requires the periodic publication of the list of entities that were examined in the respective period; Articles 17 and 21, which require the Deputy Comptroller for Quality of Public Expenditures (*Subcontralor de Calidad de Gasto Público*) and the Deputy Comptroller for Probity, respectively, to submit at least two biannual reports to the Comptroller and Congress, on all evaluations, analyses, studies, investigations, proposals and resolutions issued; and Article 25, which requires the Comptroller to submit reports to Congress at least twice per year. Additionally, this Article requires the Comptroller to submit an annual report to Congress, regarding all audits performed with respect to the financial statements and the budget execution of state institutions, and autonomous and decentralized bodies. Finally, Article 36 requires the CGC to submit an annual report of its activities to Congress.

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

[160] The CGC has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were briefly described in section 3.1 of this report. Nonetheless, the Committee considers it appropriate to formulate certain observations in relation thereto:

[161] First, regarding difficulties in the performance of its functions and duties, during the on-site visit, CGC representatives explained that one of the principal difficulties faced by the institution is the lack of resources, both in terms of personnel and physical resources (vehicles, computers, and software), that would enable it to more adequately fulfill its functions. In this sense, the response of the country under review to the questionnaire notes that the lack of personnel prevents the proper evaluation of institutions. The response adds that the CGC has approximately 700 auditors, but that they are responsible for evaluations with respect to more than 300 municipalities, as well as institutions of the Executive, Judicial and Legislative branches, and decentralized, autonomous and semi-autonomous institutions.⁵⁴

[162] In addition to possibly hampering the work of the CGC related to the investigation and sanction of acts of corruption, the Committee observes that the shortage of personnel at the CGC, and of auditors in particular, would appear to be having an adverse impact on the work of the Office of the Attorney General, in the sense that in order to avoid delays in the processing of corruption cases, that institution has had to resort to contracting external (non-CGC) auditors to perform audits, which are sometimes not accepted by the judges hearing the respective case. The Committee considers that it is imperative that the CGC have sufficient qualified personnel available to carry out its various auditing responsibilities, including those audits and evaluations specifically required by its Organic Law, as

⁵³ Ibid., at p. 19.

⁵⁴ Ibid., at p. 72.

well as those audits that are necessary for the processing of corruption cases by the Office of the Attorney General. The Committee will formulate a recommendation bearing these factors in mind. (See recommendation 3.4.1 in chapter II of this report.)

[163] Second, and also with respect to difficulties encountered by the CGC, during the on-site visit, CGC representatives explained that in recent years, the trend has been that a significant amount of public funds have been managed and administered through trusts (*fideicomisos*). Nonetheless, the representatives explained, the GCG has limited authority to oversee trusts of this nature. Accordingly, the representatives noted that legal reforms are necessary in order to remedy the situation. This situation is succinctly explained in a May, 2013 Executive Summary issued by the CGC, with respect to audits of trusts executed by the CGC during the 2012 fiscal year, which states, in pertinent part, that *“The definition of State trust is unique in that both commercial law and provisions of public administrative law are applicable to it. Hence the complications of accountability in the oversight of these trusts, which situation calls for a specific study to determine whether its definition should be rescinded, or the enactment of a law regulating public trusts promoted.”*⁵⁵ The Committee will formulate a recommendation bearing in mind the above circumstance. (See recommendation 3.4.2 in chapter II of this report.)

[164] Related to the foregoing, during the on-site visit, representatives of the Foundation for the Development of Guatemala (FUNDESA), noted an increasing use of private trusts to fund basic government services, and as a result, they suggested that modifications to the laws regarding trusts should be considered.

[165] Third, and with respect to the mechanisms for hiring staff members of the CGC, the Committee observes that virtually no information in this regard is available on the institution’s internet portal. By way of example, the CGC internet portal includes a tab titled “Human Resources Recruitment”. However, this tab only provides access to a link to an email address whereby recruitment information may be requested. The Committee considers that in the interest of transparency and accountability, it would be important for the CGC to ensure that information regarding hiring at the institution is readily available on its internet portal, and that any available vacancies that arise be similarly published on the internet portal. The Committee will formulate a recommendation in this regard. (See recommendation 3.4.3 in chapter II of this report.)

[166] Fourth, with respect to the reception and handling of complaints at the CGC regarding, among others, acts of corruption or financial mismanagement, the Committee notes that the internet portal of the CGC contains a “complaints” page, which provides information on where to present complaints, as well as access to a downloadable complaint form. The Committee notes with respect to the procedure for presenting complaints, that according to the information available online, complaints must be presented in person, either at the CGC headquarters, or at one of the various Departmental offices of the CGC. Similarly, the Committee observes that the internet portal specifically states that anonymous complaints will not be accepted. The Committee believes that it would be beneficial for the CGC to consider taking certain steps to foster and facilitate the presentation of complaints, and it will formulate a recommendation in this regard. (See recommendation 3.4.4 in chapter II of this report.)

[167] With respect to the above situation, during the framework of the on-site visit, the civil society organization Accion Ciudadana noted that it was only fairly recently that the CGC stopped accepting

⁵⁵ This report is available here: http://www.contraloria.gob.gt/i_docs/FIDE_012/archivos/informe/informe.pdf

anonymous complaints, adding that in their opinion, this prohibition, coupled with the history of violence in the country, tends to inhibit complaints.

[168] Fifth, and with respect to training provided by the CGC, the Committee observes that the Center for Government Professionalism (CEPROG), offers a variety of relevant and valuable training activities which are open to public servants as well as to members of the public. These activities cover such areas as the recently enacted Law against Corruption, the system of sworn statements, the Law on Probity, as well as other topics related to anticorruption and transparency. Nonetheless, the Committee notes that the schedule of training courses available on the internet portal has not been updated for several months. The Committee considers that in order to ensure that public servants and members of the general public have knowledge of these types of training opportunities, additional efforts should be undertaken to ensure that such opportunities are widely disseminated, such as publishing information regarding these and other events in advance, and keeping the CEPROG training schedule permanently up to date. The Committee will formulate a recommendation on this point. (See recommendation 3.4.5 in chapter II of this report.)

[169] In this connection, during the on-site visit, representatives of Accion Ciudadana considered that there is an absence of adequate dissemination of the processes and systems in place at the CGC, and that the public is often not aware of their existence.

[170] Sixth, regarding the existence of documented procedures for the development of tasks, the Committee observes that the General Standards for Internal Control issued by the CGC requires each public entity to prepare a manual of functions and procedures for each post, with respect to the various activities of the entity. However, while the Committee has noted the existence of a Manual of Descriptive and Specific Post Categories for the CGC, no manual has been observed which details procedures or guides for CGC personnel. The Committee will formulate a recommendation on this point. (See recommendation 3.4.6 in chapter II of this report.)

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

[171] The response to the questionnaire of the country under review and the on-site visit yielded information on results obtained by the CGC in carrying out its functions, notably the following:

[172] First, and with regard to results of the CGC's activities related to prevention of acts of corruption, the response to the questionnaire notes that in 2009, the CGC implemented a training and anticorruption program⁵⁶ entitled "Supervision and Citizen Participation Sessions", in order to promote transparent processes in public administration.⁵⁷ This program consisted of 15 different meetings that took place throughout the different departments in Guatemala in 2009 and 2010, and which were attended by almost 10,000 individuals.

[173] Also related to prevention, the response further notes that in 2011, the CGC began the "I Declare Myself Transparent" campaign, in order to encourage public officials and employees to update their sworn statements, as required by law.⁵⁸

[174] Second, regarding the functions of the CGC consisting in the investigation and detection of acts of corruption of CGC personnel, the response to the questionnaire notes that in 2010, the CGC created the

⁵⁶ Training is programmed based on the needs that arise periodically.

⁵⁷ See the response of Guatemala to the Questionnaire for the Fourth Round, at p. 57, supra note 11.

⁵⁸ Ibid., at p. 59.

Citizen Complaints Management Unit, as well as an electronic system for managing and following-up on citizen complaints, known as SIGMA 7.⁵⁹ In addition, the response includes the following table, titled “Complaints against employees of the Comptroller General of Accounts over the past five years”:

Complaints	Total	2007	2008	2009	2010	2011
Resolved	20	3	5	3	2	7
Dismissed	5	1	0	0	3	1
Total	25	4	5	3	5	8

[175] With respect the figures included in the foregoing table, the Committee considers that 25 complaints over a five year period appears to be rather low, particularly considering that the CGC is one of the larger public institutions within the county under review. In this sense, the Committee notes, as discussed above in section 3.2, that complaints can only be submitted to the CGC in person and that furthermore, complaints cannot be submitted anonymously. The Committee considers that it would be very useful for the country under review, in addition to the steps already recommended in section 3.2 to address this issue, consider studying whether there may be additional factors contributing to the low number of complaints received by the CGC, and based on the results of that study, to take the additional corrective measures deemed appropriate. (See recommendation 3.4.7 in chapter II of this report.)

[176] Third, regarding the sanction of administrative infractions that result in civil penalties, the 2012 Annual Report of the CGC notes that in 2012, 8,826 financial sanctions were imposed on public officials and employees related to non-compliance with applicable legislation.⁶⁰ These sanctions totaled 7,564,862.62 Quetzals. With respect to these figures, the Committee notes that the Annual Report also includes a chart demonstrating the percentage of sanctions associated with each law infringed, including, the Organic Law of the CGC, the Law on Probity and Responsibility of Public Officials and Employees, the Law on State Contracting, the Law of the Accounts Tribunal, and the Organic Budget Law. Nonetheless, the Committee denotes and absence of information indicating how many of these pecuniary sanctions were applied due to acts of corruption, and considers that having this information would be useful insofar as determining areas that may need further attention. The Committee will formulate a recommendation on this point. (See recommendation 3.4.8 in chapter II of this report.)

[177] With respect to the detection of acts of corruption, the 2012 Annual Report of the CGC, indicates that in 2012, the CGC presented 297 criminal complaints to the Office of the Attorney General.

⁵⁹ Ibid., at. p. 60.

⁶⁰ See the 2012 Annual Report of the CGC, at p. 31, available at: http://www.contraloria.gob.gt/i_docs/i_mem_012.pdf

[178] The Committee considers that above results demonstrate that the CGC carried out a very large number of audits of various State institutions in the country under review, and that pecuniary sanctions are frequently imposed and collected as a result of the findings of those audits. Similarly, the Committee also observes that audit findings have resulted in cases being presented to the judicial branch for criminal prosecution. The Committee further notes that the results provided indicate the laws that have been most frequently infringed, and the Committee considers this valuable information for determining areas where additional focus may be needed.

[179] Nonetheless, the Committee notes an absence of results indicating, both at the administrative and criminal levels, the type of administrative infraction or criminal offense that has resulted in the application of pecuniary sanctions, or, as appropriate, the submission of criminal complaints to the judicial branch.⁶¹

[180] Fourth, with respect to the results of the investigation of acts of corruption that trigger criminal responsibility, the 2012 Annual Report of the CGC notes that in 2012, there were 566 legal actions in process that had been presented by the CGC to the Office of the Attorney General or to the respective courts, related to the investigation of crimes committed against the public treasury.⁶² Of these, 297 were cases presented to the Office of the Attorney General. Similarly, the 2011 Annual Report indicates that in 2011, 96 criminal cases were submitted to the Office of the Attorney General for prosecution.

[181] The Committee notes that the above results do not indicate the total number of investigations related to acts of corruption that were commenced; the number of investigations in which there was a finding that no wrongdoing took place; how many were suspended; how many may have prescribed for not being concluded in the established time periods; how many were filed without a decision being taken on the merits; nor how many were in a condition which would allow a decision on the merits to be taken.

[182] Similarly, the Committee observes that the annual reports present no information on the results of those cases presented to the Office of the Attorney General or to the respective courts for prosecution, nor is there any indication that follow-up take place with respect to those cases. The Committee will formulate recommendations bearing the foregoing points in mind. (See recommendations 3.4.9 and 3.4.10 in chapter II of this report.)

[183] Fifth, the Committee notes that the CGC publishes a report on the results of the entities that have been audited. These reports are available on the CGC internet portal. During the on-site visit, CGC representatives provided electronic versions corresponding to 2011. However, the Committee observes that reports of this nature are only available online up to 2010. The Committee considers that to ensure proper dissemination on the results of the audits carried out by the CGC, this report should continue to be published on its internet portal, and will formulate a recommendation in this regard. (See recommendations 3.4.11 in chapter II of this report.)

3.4. Conclusions and recommendations

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

⁶¹ Article 39 of Decree 31-2012 of the Congress of the Republic, the Organic Law of the CGC, establishes the procedure for the application of administrative sanctions.

⁶² See the 2012 Annual Report of the CGC, available at: http://www.contraloria.gob.gt/i_docs/i_mem_012.pdf

[185] Guatemala has considered and adopted measures intended to maintain and strengthen the Comptroller General of Accounts as an oversight body, as indicated in Chapter II, Section 3 of this report.

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

- 3.4.1. Provide the Comptroller General of Accounts with sufficient human and financial resources, including auditors and within available resources, so that it can fully and adequately carry out its functions, particularly those related to the audits and evaluations required by its Organic Law, as well as audits required by other oversight bodies for the processing of corruption cases or investigations. (See Chapter II, Section 3.2 of this report.)
- 3.4.2. Take the steps necessary, including consideration of whether legal reforms are necessary, to ensure that trusts that contain public funds or which are used to fund government services or projects, are subject to adequate oversight by the Comptroller General of Accounts. (See Chapter II, Section 3.2 of this report.)
- 3.4.3. Publish information regarding human resources recruitment at the Comptroller General of the Accounts on the internet portal of the institution, such as information on non-trust personnel vacancies that may occur. (See Chapter II, Section 3.2 of this report.)
- 3.4.4. Take the steps deemed necessary to foster the presentation of complaints regarding acts of corruption, such as considering the acceptance of anonymous complaints and/or the acceptance of complaints via the internet. (See Chapter II, Section 3.2 of this report.)
- 3.4.5. Undertake greater efforts to ensure wider and adequate dissemination of the training opportunities offered by the Center for Government Professionalism (CEPROG) of the Comptroller General of Accounts, such as, among others, publishing information regarding these types of events in advance, and keeping the CEPROG training schedule permanently up to date. (See Chapter II, Section 3.2 of this report.)
- 3.4.6. Issue manuals or documents that detail procedures to be followed by personnel of the CGC in the performance of their responsibilities. (See Chapter II, Section 3.2 of this report.)
- 3.4.7. Conduct a study to determine the factors that may be resulting in a low number of complaints received by the Comptroller General of Accounts, and based on the results of that study, take the corrective measures that may be deemed necessary. (See Chapter II, Section 3.3 of this report.)
- 3.4.8. Maintain results on the number of pecuniary sanctions imposed that are related to administrative infractions, as well as information on the types of acts of corruption that have result in the imposition of those sanctions, in order to identify challenges and implement corrective measures. (See Chapter II, Section 3.3 of this report.)

- 3.4.9. Maintain results on the investigations by the Comptroller General of Accounts resulting from the audits that it executes, which demonstrate: the number of investigations related to acts of corruption that have been commenced; the number of investigations that resulted in a finding of no wrongdoing; the number of investigations that have been suspended; the number of cases that have prescribed because they were not concluded within the required time period, how many cases have been archived; how many are in a condition which would allow a decision on the merits to be taken; as well as information on the type of administrative infraction or violation leading to the investigation, in order to identify challenges and implement corrective measures. (See Chapter II, Section 3.3 of this report.)
- 3.4.10. Maintain results which indicate the types of alleged acts of corruption that have been identified by the Comptroller General of Accounts, and which have resulted in criminal complaints being submitted to the Office of the Attorney General or to the judicial branch for prosecution, and follow-up on the results of those criminal prosecutions, in order to identify challenges and implement corrective measures. (See Chapter II, Section 3.3 of this report.)
- 3.4.11. Ensure that the reports on entities audited by the Comptroller General of Accounts (CGC), are published on the internet portal of the institution, in order, inter-alia, to promote adequate dissemination of the activities developed by the CGC. (See Chapter II, Section 3.3 of this report.)

4. JUDICIAL BRANCH (ORGANISMO JUDICIAL]

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

[187] The Judicial Branch has a set of provisions in its legal framework, as well as other measures that refer, *inter alia*, to the following:

[188] Article 51 of the Law of the Judicial Branch, Decree No. 2-89, makes the Judicial Branch responsible for imparting justice in accordance with the Constitution and the values and standards of the legal framework of the country.

[189] With respect to its functions, Article 52 of the Law of the Judicial Branch provides, inter-alia, that the jurisdictional functions of the Judicial Branch correspond to the Supreme Court of Justice and the tribunals that fall under it, and that administrative functions are the responsibility of the President of the Judicial Branch and the departments and bodies subordinate to the President.

[190] Article 54 of the Law of the Judicial Branch tasks the Supreme Court with the following functions, inter-alia: appoint, remove and sanctions judges and auxiliary personnel (Article 54(4)); request that the Congress remove magistrates of the Court of Appeals and other collegiate tribunals (Article 54(5)); issue the regulations, agreements and executive orders pursuant to law (Article 54(6)); approve the budget of the Judicial Branch (Article 54(7)); issue resolutions for the discipline of judges and magistrates (Article 54(8));⁶³ and propose draft laws (Article 54(10)).

⁶³ Regarding this, the representatives of the Judicial Branch explained that while the Law of the Judicial Branch dates to 1999, Decree 41-99 (Law on Judicial Careers) and Decree 48-99 (Civil Service Law of the Judicial Branch) were adopted in 1999, resulting in the creation of Administrative Bodies and processes for the

[191] Article 55 of the Law of the Judicial Branch makes the President of the Judicial Branch responsible for, inter-alia, appointing, sanctioning and removing administrative officials and employees (Article 55(1)); issue agreements, circulars, and instructions (Article 55(2)); execute the budget of the Judicial Branch (Article 55(5)); and impose sanctions (Article 55(9));

[192] Article 203 of the Constitution provides that magistrates and judges shall be independent in the performance of their functions, and that judicial functions are exercised exclusively by the Supreme Court of Justice and other tribunals established by law. This Article further provides that no other authority can intervene in the administration of justice. In this regard, the response of the country under review notes that “...to punish acts of corruption, a legal process is necessary in which the Office of the Attorney General intervenes as representative of society, as do other relevant actors.”⁶⁴

[193] Article 205 of the Constitution stipulates that the Judicial Branch shall have functional and financial independence as well as independence with respect to the selection of personnel, and that first instance magistrates and judges can only be removed for the causes provided by law.

[194] With respect to the taking of decisions in the Judicial Branch, the response explains that magistrates and judges make their decisions based on the principle of legality, in application of the law, and without intervention of any other authority.⁶⁵ Decisions are made individually in the case of Magistrates Courts (*Juzgados de Paz*) and Criminal Courts of First Instance, and are made collegially in the case of Chambers (*Salas*) or the Supreme Court of Justice.⁶⁶

[195] The response to the questionnaire further explains that judicial decisions made by magistrates or judges are reviewed by a superior tribunal when the litigants challenge the outcome of the respective trial. With respect to administrative decisions made by judges, these are reviewed by the Judicial Discipline Board and the Judicial Careers Council, pursuant to the Judicial Careers Law.

[196] According to Article 214 of the Constitution, the Supreme Court of Justice is made up of thirteen magistrates, one of whom is both the President of the Supreme Court as well as President of the Judicial Branch, with authority over all tribunals of the State. Pursuant to Article 215 of the Constitution, magistrates of the Supreme Court are elected by the Congress to serve a five year term, based on a list of 26 individuals presented by a nomination committee formed pursuant to the Law on Nomination Committees, Decree No. 12-2009.

[197] Article 215 further provides that the magistrates of the Supreme Court elect, from amongst themselves, the President of the Judicial Branch, for a one year term, without the possibility of reelection during that five year period of the Court. With respect to the removal of Supreme Court magistrates, the response indicates that as a result of the guarantee of non-removal provided by Article 205 of the Constitution, magistrates can only be removed by Congress for the causes established by law.⁶⁷

[198] Additionally, Article 206 of the Constitution grants magistrates and judges the right to a pre-trial (*antejuicio*), and provides in pertinent part, that “*The Congress of the Republic has jurisdiction*

discipline of judges and magistrates, as well as auxiliary, administrative and technical personnel, respectively. Those processes respect the right to due process and the right to appeal.

⁶⁴ See the response of Guatemala to the Questionnaire for the Fourth Round, at p. 35, *supra* note 11.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*, at p. 37.

to rule on the admissibility of instituting proceedings against the President of the Judicial Branch and the magistrates of the Supreme Court of Justice. The latter has jurisdiction in connection with all other magistrates and judges.”

[199] With respect to the recruitment of human resources by the Judicial Branch, this is carried out pursuant to the provisions of the Judicial Careers Law, Decree No. 41-99, with respect to operators of justice, and pursuant to the Civil Service Law of the Judicial Branch, Decree No. 48-99, with regard to auxiliary staff and administrative and technical staff.

[200] With regard to the existence of manuals or documents that describe the functions of personnel of the Judicial Branch, the response of the questionnaire notes that *“The Judicial Branch fulfills its substantive function in the framework of the Law on the Judicial Branch, in which are established the authorities of courts in general; specifically, for civil proceedings, in the Code of Civil and Mercantile Procedure; in the criminal area, in the Code of Penal Procedure; in the administrative area, in the Law on Administrative Litigation and the Law on the Accounts Tribunal; and, in the labor area, in the Labor Code.”*⁶⁸ Additionally, the response notes that the President of the Judicial Branch approved the manual of procedures of the Human Resources Discipline Regime Unit, through Resolution 318-2010. Also, a Procedures Manual for the Judicial Discipline Board was issued through Resolution 000661 of 2012, as well as a Procedures Manual for the Executive Secretariat of the Judicial Careers Council. During the on-site visit, the review team was provided with copies of various manuals describing the functions of various courts and tribunals of the Judicial Branch.

[201] With respect to actions taken for the purposes of institutional strengthening and the implementation of modern technologies to facilitate the work of the Judicial Branch, during the on-site visit, the review team was taken on a tour of various Judicial Branch facilities, including the Criminal Courts of First Instance and Appeal Tribunals, the Civil, Child and Family Courts and facilities, the Labor Court tribunals and facilities, and the newly created Criminal Femicide Court tribunals and facilities. In addition, representatives of the various courts explained the recent progress that has been made in terms of infrastructure throughout the Judicial Branch, thanks to funds obtained from foreign donors.

[202] During the on-site visit representatives of the Judicial Branch explained the progress that has been made in terms of modernizing the administration of justice in Guatemala, including, among others, the change from written to oral arguments in the processing of cases, which, together with other changes, have reduced the processing time for a large amount of cases; the System of Institutional Integrity of the Judicial Branch (SIIOJ), which is currently being implemented, and which is aimed at improving the results of the administration of justice, fighting against corruption and improving ethical standards,

[203] With respect to the manner in which citizens are provided with information on the objectives and functions of the Judicial Branch, the procedures established for carrying out its functions, and how to submit complaints to it, the response to the questionnaire notes that in fulfillment of the requirements of the Law on Access to Public Information, the Judicial Branch has created an internet portal, available at <http://www.oj.gob.gt/m>, in order to provide information about the institution and its services to citizens.⁶⁹ This internet portal contains, inter-alia, information on the structure of the Judicial Branch, relevant laws and regulations related and issued thereby, job vacancies, judicial bulletins, information on budgetary

⁶⁸ Ibid., at p. 42.

⁶⁹ Ibid., at p. 43,

execution, a form for access to information requests, as well as information on how to present complaints to the Judicial Branch, which may be done in person, by telephone, or electronically via the internet portal.

[204] The response also notes that the offices (*centros de gestion*) of the Judicial Branch also provide information about judicial processes and case information, as well as how to access the administration of justice.⁷⁰ Finally, the Social Communication Office prepares pamphlets, bulletins, press releases, as well as information for the internet portal, with regard to Judicial Branch activities.⁷¹

[205] With regard to internal controls in the Judicial Branch, as well as the manner of handling complaints, the Civil Service Law of the Judicial Branch, Decree No. 48-99, creates the General Supervision Unit for Tribunals, in order to ensure the prompt and adequate administration of justice. According to the response to the questionnaire, this Unit is responsible for supervising tribunals and courts throughout the State.⁷² As such, it carries out periodic inspections, when so instructed by the Supreme Court, one of its chambers, or the President of the Judicial Branch, in order to determine, inter-alia, whether cases have been dealt with impartially, and whether time periods and formalities have been adhered to. The General Supervision Unit is also responsible for performing investigations with respect to complaints presented against judges and other personnel of the Judicial Branch, when so ordered by the Judicial Careers Council. The Judicial Branch has also created telephone lines and an email account for the reception of complaints.

[206] Pursuant to Article 213 of the Constitution, the Supreme Court of Justice is responsible for preparing the budget for the Judicial Branch. This Article further provides that the budget assigned to the Judicial Branch shall not be less 2% of the income of the State, and that the funds derived from the administration of justice belong to the Judicial Branch, which is responsible for investing them.

[207] With respect to mechanisms for coordination with other oversight bodies, the Judicial Branch has entered into an agreement with the COPRET, the CGC, the Office of the Attorney General, and the Public Prosecutor of the Nation, in order to facilitate the follow-up of cases as well as the recommendation issued, inter-alia, by the MESICIC.⁷³

[208] As regards periodic training for judicial branch officials and employees, the School of Judicial Studies was created through Agreement No. 40-92, in order to provide training, education and improve judicial functions. According to the response to the questionnaire, the School proposes training policies as well as training opportunities for judicial personnel.

[209] With respect to accountability mechanisms, during the on-site visit, representatives of the Judicial Branch indicated that this is largely carried out via the internet portal of the institution, as well as through bulletins issued by the Social Communication Office of the Judicial Branch.

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

[210] The Judicial Branch has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were briefly described in section 4.1 of this report. Nonetheless, the Committee considers it appropriate to formulate certain observations in relation thereto:

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid., at p. 44.

⁷³ Ibid., at p. 45.

[211] First, with respect to training for judicial branch officials and employees, the Committee observes that this is provided by the School of Judicial Studies. However, the Committee also observes that the response to the questionnaire notes that one of the difficulties faced by the Judicial Branch with respect to the performance of the functions is the need to train judges and magistrates in the processing of corruption crimes and white collar offenses, and to increase their awareness of transparency and corruption issues.⁷⁴ Similarly, as reported in section 2.2 of this report, representatives of the Office of the Attorney General reported that the lack of training for judges in anticorruption matters has resulted in delays in the prosecution cases. The Committee will formulate a recommendation in this regard. (See recommendation 4.4.1 in chapter II of this report.)

[212] Second, and related to the foregoing, during the on-site visit, representatives of the Office of the Attorney General as well as representatives of civil society suggested that it would be useful for the Judicial Branch to consider the establishment of specialized anticorruption judges and courts, in order to make the prosecution of corruption offenses more timely and efficient. During the meetings held with the Judicial Branch, representatives of that institution, including the President of the Supreme Court, noted that one of the objectives of the steps that have been and are being taken to modernize the different areas of the Judicial Branch, is to reduce judicial delay, which is a constant concern of the public. In this sense, the Committee considers that it might be beneficial for the Judicial Branch, as part of the ongoing modernization process, to consider the utility and/or necessity of establishing specialized anticorruption judges and/or courts, in order to improve the Judicial Branch's performance of its functions related to the sanction of acts of corruption. (See recommendation 4.4.2 in chapter II of this report.)

[213] Third, during the on-site visit, representatives of the Civil Chamber of the Judicial Branch noted that as part of the ongoing effort to modernize the processing of cases, including those related to acts of corruption, a new version of the Civil Procedural Code is being prepared, which will include provisions related to oral arguments and simplified proceedings, among others.⁷⁵ The Committee considers it important for these efforts to continue and will formulate the corresponding recommendation. (See recommendation 4.4.3 in chapter II of this report.)

[214] Fourth, with regard to internal controls in the Judicial Branch, the Committee notes an absence of documentation regarding the background and functioning of the General Supervision Unit. In this regard, the Committee considers it important for the country under review to issue and/or publish documentation that clearly describes the functions and operation of this Unit, particularly taking into account that this Unit is responsible, inter-alia, for supervising tribunals and investigating complaints presented against judges and other personnel of the Judicial Branch. The Committee will formulate a recommendation in this regard. (See recommendation 4.4.4 in chapter II of this report.)

[215] Fifth, and similar to the foregoing, the Committee notes that pursuant to the Constitutional guarantees of judicial independence, judges and magistrates can only be removed by Congress pursuant to law. However, the Committee has not been presented with indication that there has been any regulation that further develops this constitutional principle, nor with information on processes related to the discipline of judges, magistrates or non-judicial personnel. The Committee will formulate a recommendation bearing this situation in mind. (See recommendation 4.4.5 in chapter II of this report.)

⁷⁴ Ibid., at p. 72.

⁷⁵ See the presentation titled, "Proyectos Camara Civil, Organismo Judicial", available at: http://www.oas.org/juridico/spanish/mesicic4_gtm_sp.htm.

[216] Sixth, and with respect to the existence of manuals that describe the functions of personnel, as well as the existence of manuals or documents describing procedures, the Committee recognizes, as noted in the response, that judicial functions are performed in accordance with applicable laws, including various procedural codes. In addition, the Committee observes that the Judicial Branch has issued various manuals detailing different procedures.⁷⁶ However, the Committee denotes an absence of manuals that describe the functions and responsibilities of non-judicial personnel employed by the Judicial Branch, and it will formulate a recommendation in this regard. (See recommendation 4.4.6 in chapter II of this report.)

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

[217] The response to the questionnaire of the country under review and the on-site visit yielded information on results obtained by the Judicial Branch in carrying out its functions, notably the following:

[218] First, with respect to results related to the sanction of criminal acts of corruption by the Judicial Branch, subsequent to the on-site visit, representatives of the Judicial Branch provided a chart showing the judgments issued regarding crimes involving actions against the administration of justice from 2009 to 2013.⁷⁷ The chart indicates the number of cases regarding which judgments were issued (guilty or absolutionary), by Justices of the Peace, Criminal First Instance Courts, Mixed First Instance Courts, First Instance Adolescents Criminal Courts, First Instance Criminal, Drug Activity and Environmental Courts and Tribunals, respectively. Additionally, the chart breaks the judgments down by the type of crime, including, among others, use of information, abuse of authority, failure to perform duties, disobedience, usurpation of functions, passive and active bribery, peculation, malicious peculation, embezzlement, fraud, and illegal demands.

[219] A second chart was also provided which shows the number of cases attended to by each of the courts that comprise the First Instance Criminal, Drug Activity and Environmental Tribunal, broken down by type of offense.⁷⁸

[220] The Committee notes that the two charts referenced above do not provide results on the number of cases that are ready for decision, or which can no longer proceed because the statute of limitations has expired.⁷⁹ The Committee will formulate a recommendation on this point. (See recommendation 4.4.7 in chapter II of this report.)

[221] Second, the Committee has not observed any results of the investigations performed by the General Supervision Unit for Tribunals with respect to the discipline of Judicial Branch officials and

⁷⁶ With respect to the existence of manuals, the Judicial Branch notes that *“As for a document describing the functions of non-judiciary staff, the Manual for Effective Personnel Management, based on the strategic guidelines contained in the Judiciary's Five-Year Strategic Plan 2011-2015, is in the process of being approved. It provides for the separation of jurisdictional and administrative functions in the Criminal Courts. It constitutes a tool for enhancing the managerial capabilities of the secretaries responsible for human resources.”*

⁷⁷ This chart is available here: http://www.oas.org/juridico/spanish/mesicic4_gtm_sp.htm

⁷⁸ This chart is available here: http://www.oas.org/juridico/spanish/mesicic4_gtm_sp.htm

⁷⁹ On this point, the representatives of the Judicial Branch explained that Article 155 of the Political Constitution establishes a 20 year statute of limitations for civil responsibility, and that criminal responsibility is extinguished *“...by the passage of twice the time established by law for triggering the statute of limitations with respect to the sanction.”*

employees and will formulate a recommendation in this regard. (See recommendation 4.4.8 in chapter II of this report.)

[222] Third, during the on-site visit, representatives of the Judicial Branch noted that there was a lack of credible results on the criminal sanction of acts of corruption. In this regard, the representatives noted that most likely, the only reliable results were those indicating the number of cases that had entered into the system. In this regard, the representatives explained that as part of the efforts to modernize the administration of justice and related processes in the Judicial Branch, efforts are being undertaken to systematize accurate results related to all court proceedings. The Committee will formulate a recommendation in this regard. (See recommendation 4.4.9 in chapter II of this report.)

[223] Fourth, the Committee observes that the National Center for Judicial Analysis and Documentation issues a great volume of documentation, which is available via the internet portal of the Judicial Branch. This includes the text of judgments, statistical information on cases, a gazette on the tribunals, a judicial magazine, and a host of other useful and valuable information. However, the Committee also observes that in terms of aggregate results, the last statistical compilation available online corresponds to the 2007-2010 period. In this sense the Committee considers that it would be useful for the Judicial Branch to consider the publication of an Annual Report containing standardized information, summarizing the activities of the various courts and tribunals within this branch of government. The Committee considers that this would make it easier, inter-alia, for members of the public to track the progress made by the Judicial Branch in the execution of its responsibilities from year to year. The Committee will formulate a recommendation in this regard. (See recommendation 4.4.10 in chapter II of this report.)

4.4. Conclusions and recommendations

[224] Based on the comprehensive review of the Judicial Branch in the foregoing sections, the Committee formulates the following conclusions and recommendations:

[225] Guatemala has considered and adopted measures intended to maintain and strengthen the Judicial Branch as an oversight body, as indicated in Chapter II, Section 3 of this report.

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

- 4.4.1. Provide adequate training for judges and magistrates with respect to the processing of corruption crimes and white collar offenses, as implement mechanisms to increase their awareness of transparency and anticorruption issues. (See Chapter II, Section 4.2 of this report.)
- 4.4.2. Consider whether it would be useful and/or necessary to establish specialized anticorruption judges and/or courts, in order to improve the functions of the Judicial Branch related to the sanction of acts of corruption. (See Chapter II, Section 4.2 of this report.)
- 4.4.3. Complete the efforts currently underway by the Judicial Branch to draft a new version of the Civil Procedural Code to be presented to Congress. (See Chapter II, Section 4.2 of this report.)

- 4.4.4. Issue and/or publish, as appropriate, manuals or documentation that clearly describe the functions and operation of the General Supervision Unit for Tribunals of the Judicial Branch (See Chapter II, Section 4.2 of this report.)
- 4.4.5. Consider issuing and/or publishing regulations, as appropriate, that provide procedures for determining the responsibility of judges and magistrates for their actions, bearing in mind the constitutional guarantees related to judicial independence. (See Chapter II, Section 4.2 of this report.)
- 4.4.6. Issue manuals that describe the functions and responsibilities of non-judicial personnel of the Judicial Branch. (See Chapter II, Section 4.2 of this report.)
- 4.4.7. Maintain results which indicate the number of criminal cases that are ready for decision, as well as those that can no longer proceed because the statute of limitations has expired, in order to identify challenges or take corrective action. (See Chapter II, Section 4.3 of this report.)
- 4.4.8. Maintain results on the investigations performed by the General Supervision Unit for Tribunals, which indicate the number of investigations commenced, those that have been suspended, those regarding which the statute of limitations has expired, those that have been archived without a decision on the merits being taken, those that are in a condition that would allow for a decision to be taken on the matter investigated, and those that are pending decision by the competent authority, in order to identify challenges or take corrective action. (See Chapter II, Section 4.3 of this report.)
- 4.4.9. Continue and conclude the process of modernization underway at the Judicial Branch, in order for the institution to systematize the collection of results related to the administration of justice. (See Chapter II, Section 4.3 of this report.)
- 4.4.10. Consider publishing an annual report containing standardized information from year to year, and which summarizes the activities of the various courts and tribunals within the Judicial Branch, in order to increase public accountability. (See Chapter II, Section 4.3 of this report.)

III. BEST PRACTICES

[227] In keeping with section V of the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round* and the *Format* for country reports adopted by the Committee for that round, the following describes the best practices identified by the country under review that it wishes to share with the other member countries of the MESICIC in the belief that they could be of benefit to them:

[228] **In relation to the COPRET:**

[229] “Monitoring of the administrative and financial processes of the institutions of the Executive Branch”: This monitoring takes place through the electronic management systems that are in place, including the Integrated Accounting System (SICOIN), the Management System (SIGES); the

procurement systems GUATECOMPRAS, the System for Personnel Appointment and Registry (GUATENOMINAS), and the Public Investment Information System (SINIP).⁸⁰

[230] The drafting of the Proposed National Policy for Transparency and Anticorruption by the COPRET.⁸¹

[231] Indicators of compliance with the Inter-American Convention against Corruption and the United Nations Convention against Corruption.⁸²

[232] **In relation to the Office of the Attorney General:**

[233] The reorganization of the Anticorruption Prosecutor's Office, which was carried out in order to carry out a strategic plan for prosecuting corruption cases effectively and efficiently. This reorganization has allowed, inter-alia: more efficient assignment of the available human and material resources; and priority to be given to important cases.⁸³

[234] **In relation to the Judicial Branch:**

[235] "Trial Hearings" (*Juicio por Audiencias*), which has thus far been implemented for criminal cases, and which consists of hearings at which both parties to a case appear, in order to speed up and increase transparency in the administration of justice.⁸⁴ The response notes that this best practice has more cases to be addressed, for resources to be maximized, and the prevention of corruption actions.

IV. FOLLOW-UP ON NEW AND RELEVANT INFORMATION AND DEVELOPMENTS WITH REGARD TO THE IMPLEMENTATION OF RECOMMENDATIONS SUGGESTED IN THE COUNTRY REPORT IN THE FIRST REVIEW ROUND⁸⁵

[236] This section of the report refers to progress, information, and new developments in Guatemala in connection with the recommendations and measures suggested by the Committee in the reports of the First Round that were deemed to require additional attention in the reports of the Second and Third Rounds,⁸⁶ and it will proceed to take note of those that have been satisfactorily considered and those that require additional attention from the country under review. In addition, where appropriate, it will address the continued validity of those recommendations and measures and, as applicable, restate or reformulate them, in accordance with provisions contained in section VI of the methodology adopted by the Committee for the Fourth Round.

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

⁸⁰ See the response of Guatemala to the questionnaire for the Fourth Round, at p. 105, *supra* note 11.

⁸¹ See the presentation on best practices of the COPRET, and the Proposed National Policy on Transparency and Anticorruption, available at: http://www.oas.org/juridico/spanish/mesicic4_gtm_sp.htm

⁸² Additional Information on the indicators prepared by the COPRET, is available at: <http://www.transparencia.gob.gt/index.php/2013-02-27-22-39-12>

⁸³ *Ibid.*, at p. 108.

⁸⁴ *Ibid.*, at pp. 103-104.

⁸⁵ The list of recommendations that still require additional attention or which have been reformulated following this analysis, have been included as Annex 1 to this report

⁸⁶ Available at: <http://www.oas.org/juridico/spanish/gtm.htm>

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

1.1. Standards of conduct to prevent conflict of interest and mechanisms to enforce them

Recommendation 1.1.1:

Strengthen the implementation of laws and systems to regulate conflicts of interest.

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

Regulate potential conflicts of interest and apply these measures to all public servants. Given their importance, these cases should be treated specifically and in greater detail.

[238] In its response to the questionnaire for the Fourth Round,⁸⁷ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that contribute to progress in its implementation, the following:

[239] *“As an alternative measure, the Comptroller General of Accounts has included a clause in the form for Sworn Statement of Net Worth that assists in the prevention of conflicts of interest; the modifications have been made based on existing law, which could be expanded in the measure that the law and/or its regulation are amended.”*⁸⁸

[240] Additionally, the response notes that through Circular A-003-2008, the CGC instructed the CGC Audit Department to excuse employees who are assigned to audits with respect to which they have any type of familial relationship or connection with officials, employees, or institutions that could lead to a situation that implies a conflict of interest.

[241] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (a) of the recommendation contained in section 1.1 of Chapter IV of this report, and of the need for it to continue to give attention thereto, bearing in mind that the steps reported do not refer to the regulation of all public servants, as suggested by the recommended measure.

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

Establish adequate restrictions for people leaving a public post, such as forbidding them to handle cases in which they were involved while performing their public functions or cases connected with entities with which they were recently linked through their former public post.

[242] In its response to the questionnaire for the Fourth Round,⁸⁹ the country under review notes that no new actions have been undertaken to create restrictions for those who vacate a public post. Nonetheless, the Committee observes that, as noted in the response to the questionnaire, the Civil Society Technical Round Table has presented the legislature with draft law that would prohibit judges, prosecutors and public defenders from working on cases against the administration leaving public office.

87. See the response of Guatemala to the Questionnaire for the Fourth Round, at p. 74, supra note 11.

88 This new form is available here: http://www.contraloria.gob.gt/i_docs/i_f_deju.pdf

89. See the response of Guatemala to the Questionnaire for the Fourth Round, at p. 77, supra note 11.

[243] In this regard, the Committee takes note of the steps taken by the country under review to advance in its implementation of measure (b) of the recommendation contained in section 1.1 of Chapter IV of this report, and of the need for it to continue to give attention thereto, bearing in mind that, as noted in the response, the measures contemplated are still not law, and target specific posts.

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

Design and implement mechanisms with verifiable indicators that serve to resolve issues raised by public servants regarding their own possible conflicts of interest, and adopt measures to enable situations involving conflicts of interest detected, such as an exemption or self-disqualification mechanism, to be settled without delay.

[244] In its response to the questionnaire for the Fourth Round,⁹⁰ the country under review notes that no new actions have been undertaken to resolve consultations made by public servants. Nonetheless, the Committee observes, as noted in the response, that the Public Finance Ministry, has issued regulations regarding conflicts of interest, including a regime of excusals, recusals, reassignment of functions and resignation.

[245] In this regard, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (c) of the recommendation contained in section 1.1 of Chapter IV of this report, and of the need for it to continue to give attention thereto, bearing in mind that, as noted in the response, there is no State policy which allows for the creation of general measures to resolve conflicts of interest, including, among other, a regime for excusals and recusals, nor a mechanism for resolving consultations from public servants in this regard.

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

Further the process to reform the Civil Service Law so that it regulates certain aspects related to conflicts of interest that have not yet been developed in the legislation in force.

[246] In its response to the questionnaire for the Fourth Round,⁹¹ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that contribute to progress in its implementation, the following:

[247] Draft law No. 4142, which, if approved by Congress, would modify the Civil Service Law.

[248] The Committee takes note of the step taken by the country under review to advance in its implementation of measure (d) of the recommendation contained in section 1.1 of Chapter IV of this report, and of the need for it to continue to give attention thereto, bearing in mind that the initiative reported is still a draft law.

1.2. Standards of conduct and mechanisms to ensure the proper conservation and use of resources entrusted to government officials

Recommendation 1.2.1:

90. Ibid.

91. Ibid., at p. 79.

Strengthen the implementation of laws and systems to regulate the conservation and proper use of public resources.

Measure (a), which requires further attention under the terms provided in the reports from the Second and Third Rounds:

Encourage the adoption of legislation that criminalizes illicit enrichment as an offense, taking into account that there are various existing legal initiatives in this regard

[249] In its response to the questionnaire for the Fourth Round,⁹² the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that lead it to the conclusion that the measure has been satisfactorily considered, the following:

[250] Approval of the Law against Corruption, Decree No. 31-2012, which modifies the Criminal Code and the Law against Organized crime, by including new criminal offenses, including: illicit enrichment, false sworn statements of wealth, peculation, use of straw men, influence trafficking and the illegal charging of commissions. Additionally, the Law against Corruption also modifies the following criminal offenses, among others: abuse of authority, failure to perform duties, disobedience, illegal appointments, usurpation of functions, active and passive bribery, embezzlement, fraud, extortion, improper charges and denial of justice.

[251] Specifically, Article 31 of the Law against Corruption provides that *“Illicit enrichment is defined as the obtaining by a public official or anyone exercising public functions, within five years from the date of ceasing to exercise said functions, for himself or any other person, of material gain, an increase in his/her level of expenditure, or the undue cancellation of debt or of obligations, which he/she would not otherwise have obtained, through of the exercise of his/her public function, or of any income whose lawful origin cannot be established. Perpetrators of such offense shall be subject to imprisonment of five to ten years, a fine of 50,000 to 500,000 Quetzales, and special disqualification.”*

[252] In light of the foregoing, the Committee takes note of the satisfactory consideration of measure (a) of the recommendation contained in section 1.2 of Chapter IV of this report, without prejudice to the recommendations of a similar nature formulated in the third round, and the implementation of which will be examined in greater detail in the follow-up to that round.

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

Recommendation 1.3.1:

Strengthen the mechanisms the Republic of Guatemala has to require public officials to report to the appropriate authorities acts of corruption of which they are aware.

Measure a), which requires further attention under the terms provided in the reports from the Second and Third Rounds:

92. Ibid, at p. 80.

Adopt and implement additional protective measures to encourage government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

[253] In its response to the questionnaire for the Fourth Round,⁹³ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that contribute to progress in its implementation, the following:

[254] – The Complaints Management Center of the Comptroller General of Accounts, which the response notes was created in 2008, and which allows complaints related to acts of corruption to be presented by telephone, fax, email, via internet, or in person at any of the 21 locations of the CGC throughout the State.

[255] – The free telephone line created by the SECYT (now the COPRET), for receiving complaints regarding corruption of public officials and employees of the Executive Branch, as well as for providing information on how to present complaints to entities that are not within the Executive Branch. In addition, the COPRET complaint system allows complaints to be presented online and anonymously.

[256] With respect to the foregoing information, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (a) of the recommendation in section 1.3 of Chapter IV of this report, through the implementation of the COPRET complaint system. The Committee also takes note of the need for the country under review to continue to give attention to the implementation of this measure, bearing in mind that in spite of the creation of the CGC Complaints Management Center in 2008, and as noted in section 4.2 of this report, complaints can only be presented to the CGC in person and cannot be submitted anonymously.

Measure b), which requires further attention under the terms provided in the reports from the Second and Third Rounds:

Implement training programs for public servants in relation to standards on the responsibility of public officials to report acts of corruption of which they are aware; and to disseminate the means available to them in order for them to comply with that obligation

[257] In its response to the questionnaire for the Fourth Round,⁹⁴ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that contribute to progress in its implementation, the following:

[258] – The training carried out by the CGC and the Office of the Attorney General in 2011m, with respect to ethics and improvements in corruption cases.

[259] – The inclusion in the curriculum of the Guatemalan National Institute for Public Administration, of a Diploma course on electronic Government, as well as courses on Fundamentals of Transparency and Combating Corruption, Actions against Corruption in Guatemala, and Transparency in Public Administration.

[260] – The training provided by the COPRET for institutions of the Executive Branch.

93. Ibid., at p. 82.

94. Ibid., at p. 83.

[261] With respect to the foregoing information, the Committee takes note of the steps taken by the country under review to advance in its implementation of measure (b) of the recommendation in section 1.3 of Chapter IV of this report. The Committee also observes that the response notes that the progress made by the oversight bodies vis-à-vis training, are not part of a comprehensive training program, reflect minimal efforts and lack continuity. In this regard, the response further notes that “*The main difficulty in implementing this measure is that no State policy is in place for the ongoing training of public officials. Therefore, this action is incumbent upon on each institution’s specific units with responsibility for this area.*”⁹⁵

[262] Additionally, the Committee notes that during the on-site visit, representatives of

[263] In light of the above information, the Committee also considers it appropriate to reformulate measure (b) of this recommendation as follows:

[264] b) Implement a comprehensive and periodic training program for public servants in relation to the standards on the responsibility of public servants to reports acts of corruption of which they are aware; and to disseminate the means available to them in order for them to comply with that obligation.

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

Recommendation 2:

Strengthen systems for filing declarations of income, assets and liabilities.

Measure (a), which requires further attention under the terms provided in the reports from the Second and Third Rounds:

Regulate the conditions, procedures and other aspects under which sworn statements of net worth could be made public, in accordance with the fundamental principles of Guatemalan legislation.

[265] In its response to the questionnaire for the Fourth Round,⁹⁶ the country under review notes as follows with respect to the above measure:

[266] – The Law on Probity, Decree No. 89-2002 establishes that the contents of the sworn statements are confidential and can only be verified pursuant to a judicial order. Thus, the only institution that has access to the information is the Comptroller General of Accounts.

[267] In light of the foregoing information, the Committee considers it appropriate to reformulate measure (a) of the recommendation in section 2 of Chapter IV of this report, as follows:

[268] (a) Consider adopting the legislative amendments necessary to allow for the regulation of the procedures and other aspects under which sworn statements of net worth can be made public, in accordance with the fundamental principles of Guatemalan legislation.

Measure (b), which requires further attention under the terms provided in the reports from the Second and Third Rounds:

95 Ibid., at p. 84.

96. Ibid., at p. 85.

Optimize the analysis systems contained in the sworn declarations of net worth, in order for them to also serve as a useful tool to detect and prevent conflicts of interest, as appropriate, in addition to serving as an adequate instrument for detecting possible cases of illicit enrichment.

[269] In its response to the questionnaire for the Fourth Round,⁹⁷ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that contribute to progress in its implementation, the following:

[270] – The Electronic Government system (IPROB), created by the Probity Unit of the CGC, and which allows for the online submission of sworn statements of net worth, as well as the subsequent verification of the data contained therein. The response also notes that if the information presented is false, a criminal complaint is submitted to the Office of the Attorney General for prosecution.

[271] – The cooperation agreements signed with other institutions, in order for the CGC to obtain direct access to information necessary to improve the verification process, including the Superintendent of Tax Administration, with 3 Municipalities, and the Land Registry.

[272] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (b) of the recommendation in section 2 of Chapter IV of this report, as well as the need for it to continue to give attention thereto, considering that during the on-site visit, the CGC was not in a position to provide results on the verification that takes place with respect to sworn statements. Similarly, while the information provided above indicates that the submission of false information in sworn statements is being identified and presented to the Office of the Attorney General for prosecution, no information has been presented indicating that the statements are being used to prevent conflicts of interest, or as an instrument to detect possible cases of illicit enrichment.

[273] Additionally, the Committee notes what is expressed in the response of the country under review, in the sense that *“The main difficulty in implementing this recommendation is the lack of an institutionalized system to provide technical criteria and methods for information analysis. The lack of CGC institutional policy ... generates uncertainty regarding the use of a harmonized criterion that would provide guidance to those responsible for its implementation and prevent margins for discretion.”*⁹⁸

Measure (c), which requires further attention under the terms provided in the reports from the Second and Third Rounds:

Strengthen provisions on verification by the Office of the Comptroller General of Accounts, of the content of the declarations presented upon entry and established in Article 24 of the Law on Probity and Responsibilities of Public Officials and Employees, and bring them in line with the provisions of Article 21 of that law, to provide that entity with systems that enable it to promote and carry out the appropriate verification.

[274] In its response to the questionnaire for the Fourth Round,⁹⁹ the country under review notes as follows with respect to the above measure:

97. Ibid., at pp. 86-87.

98 Ibid., at p. 87.

99. Ibid., at p. 85.

[275] – “As an alternative measure, the entry into force of the Law on Asset Forfeiture could be deemed an advance in verification. That Law constitutes a useful tool that should be supplemented with rules that would generate the conditions necessary for effective investigation, which will be strengthened with the recently enacted Law against Corruption, which establishes sanctions for activities such as the use of front men.”¹⁰⁰

[276] – The response also notes, as a second alternative measure, the implementation of the new online probity system IPROB, allowing for the online submission of sworn statements of net worth, and the cooperation agreements entered into by the CGC and other entities.

[277] With respect to the foregoing information, the Committee takes note of the step taken by the country under review to advance in its implementation of measure (c) of the recommendation in section 2 of Chapter IV of this report, through the entry into force of the Law on Asset Forfeiture (*Ley de Extincion del Dominio*), and the implementation of the IPROB system. Nonetheless, the Committee also takes note of the need for the country under review to continue to give attention to the implementation of this measure, considering that, as noted in the response, “No specific action is being taken by the State of Guatemala to strengthen measures to verify the contents of statements made upon assumption of a public function. Verifications made by the Office of the Comptroller General remain of an optional and discretionary nature and no developments are under way to enable that body to have systems to duly promote and conduct the respective verification.”¹⁰¹

Measure (d), which requires further attention under the terms provided in the reports from the Second and Third Rounds:

Adapt the forms on which sworn statements of net worth are presented, to require declarers to comply with the minimum requisites on supplying information under Article 23 of the Law on Probity and Responsibilities of Public Officials and Employees, and the information required under the last paragraph of this law, whereby declarers must state that the assets and income declared are the only ones they possess

[278] In its response to the questionnaire for the Fourth Round,¹⁰² the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that contribute to progress in its implementation, the following:

[279] – The inclusion in the form for submission of sworn statements of information which may assist in the identification of conflicts of interest.

[280] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (d) of the recommendation in section 2 of Chapter IV of this report, as well as the need for it to continue to give attention thereto, bearing in mind that, as noted by the response, “The format has yet to be adjusted in specific areas, such as participation by the declarant in any type of governing bodies or boards of directors, associations, partnerships of fact, or joint ownership of assets by permanent partners.”¹⁰³

100 Ibid., at p. 88.

101 Ibid.

102 Ibid., at pp. 86-87.

103 Ibid., at p. 90.

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

Recommendation 3.

Strengthening the work of the oversight bodies regarding the functions exercised in relation to compliance with the provisions contained in Article III (1), (2), (4) and (11) of the Convention, as appropriate, in order to ensure the efficacy of the oversight, providing them with the resources necessary for performing their functions; striving to give them the greatest political and social support; and strengthening the mechanisms that ensure the institutional coordination and ongoing evaluation and follow-up of their actions, as well as promoting new mechanisms for that purpose, as appropriate.

[281] In its response to the questionnaire for the Fourth Round,¹⁰⁴ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that contribute to progress in its implementation, the following:

[282] – Actions taken within the CGC Policy for Institutional Strengthening, including: the improvements in the level of efficiency of the departments of the CGC, as measured by a study performed by KMPG, from 61% in 2006 to 75% in 2008; the issuance of Governmental Agreement No. 235-2008, regulating the Plan for Reclassification of Posts and the Administration of Salaries; actions within the framework of the Agreement between the CGC and the Forum for Discussion, Proposals and Follow-Up, with the Coalition for Transparency,¹⁰⁵ the implementation of new procedures to increase the efficiency in administrative processes (ex: sworn statements of net worth and registration of titles); the creation of new technical units, including the Unit for Audits of Trusts, the Unit for Monitoring and Early Warning, the Department of Joint Audits, the Citizen Complaints Management Center, and the Unit of Public Information; the signing of a cooperation agreement with the Puerto Rican Government Ethics Office, pursuant to which technical cooperation has been obtained; the implementation of a new and modern Documents Management System; the international financing obtained in 2009 to support the strengthening of the CGC.

[283] The Committee also takes note of the difficulty regarding strengthening of the oversight bodies expressed in the response, in the sense that “...*there is no State policy aimed at strengthening the oversight bodies in relation to aspects contained in the Convention. As a result, strengthening of State institutions takes place in an isolated and non-harmonic way, which creates dysfunction and results in impunity and corrupt practices.*”

[284] In light of the above situation, as well as the fact that there is now an inter-institutional agreement in place between several oversight bodies, the Committee considers it appropriate to reformulate recommendation 3, as follows:

[285] 3. Within the framework of the inter-institutional agreement signed between, among others, the COPRET on behalf of the Executive Branch, the CGC, the MP, and the Judicial Branch, consider the drafting and implementation of a comprehensive state policy regarding the strengthening of the work of

104. Ibid., at pp. 91-92.

105 The response to the questionnaire notes that this Coalition is made up of the National Center for Economic Investigations (CIEN), the Guatemalan Chamber of Commerce, Accion Ciudadana, the Congressional Special commission on Transparency, and the COPRET.

the oversight bodies in relation to their functions related to compliance with the provisions of Article III (1), (2), (4) and (11) of the Convention.

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

4.1. Mechanisms for access to information

The recommendation formulated in relation to this section has been satisfactorily considered, and accordingly, no further attention is required.

4.2. Mechanisms for consultation

The recommendation formulated in relation to this section has been satisfactorily considered, and accordingly, no further attention is required.

4.3. Mechanisms to encourage participation in public administration

The recommendation formulated in relation to this section has been satisfactorily considered, and accordingly, no further attention is required.

4.4. Mechanisms for participation in the follow-up of public administration

Recommendation:

Strengthen and continue implementing mechanisms that encourage civil and nongovernmental organizations to participate in the monitoring of public management.

Measure (b), which requires further attention under the terms provided in the reports from the Second and Third Rounds:

Design and implement programs directed at civil society to disseminate mechanisms for monitoring public management and provide civil society and nongovernmental organizations with the training and necessary tools to apply those mechanisms.

[286] In its response to the questionnaire for the Fourth Round,¹⁰⁶ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that contribute to progress in its implementation, the following:

[287] – Guatemala’s membership in the Open Government Partnership (OGP), which allows the country under review to strengthen different initiative undertaken related to transparency, social oversight, access to information and the fight against corruption; as well as the creation of a Plan of Action and an OGP Strategy in Guatemala.

[288] – The creation of the COPRET and its internet portal, which serves, among others, as a focal point for access to information requests and for presenting complaints.

106. Ibid., at pp. 94-98.

[289] – The actions undertaken by the COPRET and previously by the SECYT to promote access to public information, pursuant to the Law on Access to Public Information.

[290] – The inter-institutional round tables held with different social sectors in order to, among others carry out focalized follow-up and encourage the use of best practices.

[291] – The draft laws promoted by the Office of the President, regarding the strengthening of institutional transparency and the quality of public expenditure.

[292] The Committee takes note of the steps taken by the country under review to advance in its implementation of the remaining measure of the recommendation in section 4.4 of Chapter IV of this report, as well as the need for it to continue to give attention thereto, bearing in mind that the analysis contained in the report from the First Round, and on which the measure is based, calls for the CGC to promote measures for citizen participation, pursuant to Article 3(b) of its Organic Law.

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

Recommendation 5.1:

Design and implement a comprehensive dissemination and training program for authorities and officials, so they become familiar with and can apply the mutual assistance provisions to enable them to investigate and prosecute the acts of corruption provided for in the Convention and in other treaties signed by the Republic of Guatemala.

[293] In its response to the questionnaire for the Fourth Round,¹⁰⁷ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that contribute to progress in its implementation, the following:

[294] – The inclusion in the curriculum of the Guatemalan National Institute for Public Administration, of a Diploma course on electronic Government, as well as courses on Fundamentals of Transparency and Combating Corruption, Actions against Corruption in Guatemala, and Transparency in Public Administration.

[295] – Training provided by the CGC in 2011, to 742 employees of the entities that it supervises, with regard to ethics and morals.

[296] – Training provided by the Office of the Attorney General for its employees with regard to improvements in corruption cases.

[297] – Training provided by the SECYT (now the COPRET) for governmental entities in the Executive Branch.

[298] The Committee takes note of the steps taken by the country under review to advance in its implementation of recommendation 5.1 above. In this regard, the Committee further notes, as described in the response, that “*There is no information of a comprehensive dissemination and training program aimed at competent employees and officials, for the application of the mutual assistance provisions between States party to the Inter-American Convention against Corruption.*”

107. See the response of Guatemala to the Questionnaire for the Fourth Round, at pp. 98-99, supra note 11.

[299] In a similar sense, the Committee takes note of the difficulty expressed in the response, regarding the absence of a policy that includes the promotion of dissemination and training programs, nor inter-institutional coordination that would allow the development of comprehensive training program for all public servants.

[300] In light of the above situation, as well as the fact that there is now an inter-institutional agreement in place between several oversight bodies, the Committee considers it appropriate to reformulate recommendation 5.1, as follows:

[301] 5.1. Within the framework of the inter-institutional agreement signed between, among others, the COPRET on behalf of the Executive Branch, the CGC, the MP, and the Judicial Branch, consider the drafting and implementation of a comprehensive state policy regarding dissemination and training for public officials and employees, so that they become familiar with and can apply the mutual assistance provisions to enable them to investigate and prosecute the acts of corruption provided for in the Convention and in other treaties signed by the Republic of Guatemala.

Recommendation 5.2:

Identify and prioritize specific areas in which the Republic of Guatemala considers that it needs the technical cooperation of other States Parties in order to strengthen its capacity to prevent, detect, investigate and punish acts of corruption.

[302] In its response to the questionnaire for the Fourth Round,¹⁰⁸ the country under review presents information and new developments with respect to the above measure, of which the Committee notes, as steps that contribute to progress in its implementation, the following:

[303] – The technical cooperation projects that have been signed between Guatemalan oversight bodies, respectively, and USAID, as part of its Transparency and Integrity Project, in order to fight corruption and promote a system of institutional integrity.

[304] – The inter-institutional coordination between international coordination bodies and the oversight bodies, for the signing of technical cooperation agreements.

[305] The Committee takes note of the steps taken by the country under review to advance in its implementation of recommendation 5.2 above. In this regard, the Committee further notes, as described in the response, that *“The principal difficulty is the lack of a comprehensive policy for coordination to determine the areas where State bodies need cooperation; there is an absence permanent tables for inter-institutional dialogue to determine actions for strengthening in development of their anticorruption functions.*

[306] In light of the above circumstance, as well as the fact that there is now an inter-institutional agreement in place between several oversight bodies, the Committee considers it appropriate to reformulate recommendation 5.2, as follows:

[307] 5.2. Within the framework of the inter-institutional agreement signed between, among others, the COPRET on behalf of the Executive Branch, the CGC, the MP, and the Judicial Branch, consider the drafting and implementation of a comprehensive state policy which will allow the country under review

108. Ibid., at pp. 99-100.

to determine areas where it considers that it needs the technical cooperation of other States Parties in order to strengthen its capacity to prevent, detect, investigate and punish acts of corruption.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

The Committee did not formulate recommendations to the country under review in relation to this provision of the Convention.

7. GENERAL RECOMMENDATIONS

Recommendation 7.2:

Select and develop procedures and indicators, when appropriate, that make it possible to verify follow-up on the recommendations made in this report, and report back to the Committee, through the Technical Secretariat, in this regard. For the purposes indicated, Guatemala could consider taking into account the list of the most widely used indicators, applicable in the inter-American system, that were available for the selection indicated by the country under analysis, which has been published on the OAS website by the Technical Secretariat of the Committee, as well as information derived from the analysis of the mechanisms developed in accordance with recommendation 7.3 which follows.

[308] In its response to the questionnaire for the Fourth Round,¹⁰⁹ the country under review notes that there is no information available with respect to the implementation of the above recommendation. Accordingly, the Committee takes note of the need for the country under review to pay additional attention to the implementation of this recommendation, which will be renumbered as recommendation 7.1.

Recommendation 7.3:

Develop, when appropriate and where they do not yet exist, procedures for analyzing the mechanisms mentioned in this report, as well as the recommendations contained herein.

[309] In its response to the questionnaire for the Fourth Round,¹¹⁰ the country under review notes that there is no information available with respect to the implementation of the above recommendation. Accordingly, the Committee takes note of the need for the country under review to pay additional attention to of this recommendation, which will be renumbered as recommendation 7.2.

109. Ibid., at p. 101.

110. Ibid., at p. 102.

ANNEX 1

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

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

1.1. Standards of conduct to prevent conflicts of interests and enforcement mechanisms

Recommendation:

Strengthen the implementation of laws and systems to regulate conflicts of interest.

Suggested measures:

- a) Regulate potential conflicts of interest and apply these measures to all public servants. Given their importance, these cases should be treated specifically and in greater detail.
- b) Establish adequate restrictions for people leaving a public post, such as forbidding them to handle cases in which they were involved while performing their public functions or cases connected with entities with which they were recently linked through their former public post.
- c) Design and implement mechanisms with verifiable indicators that serve to resolve issues raised by public servants regarding their own possible conflicts of interest, and adopt measures to enable situations involving conflicts of interest detected, such as an exemption or self-disqualification mechanism, to be settled without delay.
- d) Further the process to reform the Civil Service Law so that it regulates certain aspects related to conflicts of interest that have not yet been developed in the legislation in force.

1.2. Standards of conduct to prevent conflicts of interests and enforcement mechanisms

The recommendation formulated in relation to this section has been satisfactorily considered, and accordingly, no further attention is required.

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

Recommendation:

Strengthen the mechanisms the Republic of Guatemala has to require public officials to report to the appropriate authorities acts of corruption of which they are aware.

Suggested measures:

- a) Adopt and implement additional protective measures to encourage government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.
- b) Implement a comprehensive and periodic training program for public servants in relation to the standards on the responsibility of public servants to reports acts of corruption of which they are aware; and to disseminate the means available to them in order for them to comply with that obligation.

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

Recommendation:

Strengthen systems for filing declarations of income, assets and liabilities.

To comply with this recommendation, Guatemala could take the following measures into account:

- b) Consider adopting the legislative amendments necessary to allow for the regulation of the procedures and other aspects under which sworn statements of net worth can be made public, in accordance with the fundamental principles of Guatemalan legislation.
- c) Optimize the analysis systems contained in the sworn declarations of net worth, in order for them to also serve as a useful tool to detect and prevent conflicts of interest, as appropriate, in addition to serving as an adequate instrument for detecting possible cases of illicit enrichment.
- d) Strengthen provisions on verification by the Office of the Comptroller General of Accounts, of the content of the declarations presented upon entry and established in Article 24 of the Law on Probity and Responsibilities of Public Officials and Employees, and bring them in line with the provisions of Article 21 of that law, to provide that entity with systems that enable it to promote and carry out the appropriate verification.
- e) Adapt the forms on which sworn statements of net worth are presented, to require declarers to comply with the minimum requisites on supplying information under Article 23 of the Law on Probity and Responsibilities of Public Officials and Employees, and the information required under the last paragraph of this law, whereby declarers must state that the assets and income declared are the only ones they possess

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

Recommendation 3.

Within the framework of the inter-institutional agreement signed between, among others, the COPRET on behalf of the Executive Branch, the CGC, the MP, and the Judicial Branch, consider the drafting and implementation of a comprehensive state policy regarding the strengthening of the work of the oversight bodies in relation to their functions related to compliance with the provisions of Article III (1), (2), (4) and (11) of the Convention

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

4.1. Mechanisms for access to information

The recommendation formulated in relation to this section has been satisfactorily considered, and accordingly, no further attention is required.

4.2. Mechanisms for consultation

The recommendation formulated in relation to this section has been satisfactorily considered, and accordingly, no further attention is required.

4.3. Mechanisms to encourage participation in public administration

The recommendation formulated in relation to this section has been satisfactorily considered, and accordingly, no further attention is required.

4.4. Participation mechanisms for follow-up of public administration

Recommendation:

Strengthen and continue implementing mechanisms that encourage civil and nongovernmental organizations to participate in the monitoring of public management.

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

Recommendation 5.1:

Within the framework of the inter-institutional agreement signed between, among others, the COPRET on behalf of the Executive Branch, the CGC, the MP, and the Judicial Branch, consider the drafting and implementation of a comprehensive state policy regarding dissemination and training for public officials and employees, so that they become familiar with and can apply the mutual assistance provisions to enable them to investigate and prosecute the acts of corruption provided for in the Convention and in other treaties signed by the Republic of Guatemala.

Recommendation 5.2:

Within the framework of the inter-institutional agreement signed between, among others, the COPRET on behalf of the Executive Branch, the CGC, the MP, and the Judicial Branch, consider the drafting and implementation of a comprehensive state policy which will allow the country under review to determine areas where it considers that it needs the technical cooperation of other States Parties in order to strengthen its capacity to prevent, detect, investigate and punish acts of corruption.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

No recommendations were formulated in relation to this section.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1:

Select and develop procedures and indicators, when appropriate, that make it possible to verify follow-up on the recommendations made in this report, and report back to the Committee, through the Technical Secretariat, in this regard. For the purposes indicated, Guatemala could consider taking into account the list of the most widely used indicators, applicable in the inter-American system, that were available for the selection indicated by the country under analysis, which has been published on the OAS website by the Technical Secretariat of the Committee, as well as information derived from the analysis of the mechanisms developed in accordance with recommendation 7.2 which follows.

Recommendation 7.2:

Develop, when appropriate and where they do not yet exist, procedures for analyzing the mechanisms mentioned in this report, as well as the recommendations contained herein.

ANNEX II

AGENDA FOR THE ON-SITE VISIT TO GUATEMALA*

Monday, April 16, 2013	
16:00 hrs. – 16:45 hrs. <i>Hotel Barcelo Guatemala City</i>	Coordination meeting between the representatives of the Member States of the Subgroup and the Technical Secretariat..
16:45 hrs. – 17:30 hrs. <i>Hotel Barcelo Guatemala City</i>	Coordination meeting between the representatives of the country under review, the Member States of the Subgroup and the Technical Secretariat
Tuesday, April 16, 2013	
8:30 hrs. – 09:50 hrs. <i>Hotel Barcelo Guatemala City</i>	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers.^{111/}
	Topic: <ul style="list-style-type: none">• Cooperation between civil society and oversight bodies in efforts aimed at preventing and combating corruption.• Challenges in the fight against corruption in Guatemala.• Law against Corruption
	Participants: <i>Acción Ciudadana Guatemala, National Chapter of Transparency International</i> Mr. Manfredo Marroquín, President of the Board of Directors Mr. Marvin Flores

* This initial proposal of the agenda has been prepared by the Technical Secretariat of the MESICIC, in accordance with provision 13 of the *Methodology for Conducting On-Site Visits* (document SG/MESICIC/doc.276/11 rev. 2), available at: www.oas.org/juridico/english/met_onsite.pdf

¹¹¹ The civil society organization “Accion Ciudadana Guatemala – National Chapter of Transparency International” participates in these meetings pursuant to provision 26 of the *Methodology for Conducting On-Site Visits*, as they submitted a document in accordance with article 34(b) of the *Rules of the Committee of Experts*. It is suggested that the remaining organizations and individuals be invited to participate in accordance with provision 27 of the above referenced Methodology, which allows for the participation in these meetings of “civil society organizations and/or, inter alia, private sector organizations, professional associations, academics, or researchers.”

	<p>Mr. David Gaitán Myrna Mack Foundation Mr. José Pablo Rivera Guatemala Visible Mr. Jorge Eskenasy, Vice-President of the Executive Board. Mr. Marielos Fuentes, Director Mutual Support Group (GAM) Ms. Karla Campos, Coordinator of the Transparency Unit:</p>
10:00 hrs. – 11:20 hrs. <i>Hotel Barcelo Guatemala City</i>	<p>Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers. (Continued).</p>
	<p>Topic:</p> <ul style="list-style-type: none"> • Cooperation between the private sector and oversight bodies in efforts aimed at preventing and combating corruption. • Challenges in the fight against corruption in Guatemala.
	<p><u>Participants:</u> Guatemala Chamber of Industry Mr. Rudolf Jacobs, Director of the Board of Directors Guatemala Chamber of Commerce Mr. Rodolfo Sierra López, Director of the Board of Directors Ms. Shirley Aguilar, Economic Advisor Mr. Renato Marroquin, Legal Advisor Foundation for the Development of Guatemala (FUNDESA) Mr. Felipe Bosch, President Mr. Juan Zapata, General Manager</p>
11:30 hrs. – 13:00 hrs. <i>Hotel Barcelo Guatemala City</i>	<p>Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers. (Continued)</p>
	<p>Topic:</p> <ul style="list-style-type: none"> • Cooperation between civil society and oversight bodies in efforts

	<p>aimed at preventing and combating corruption.</p> <ul style="list-style-type: none"> • Challenges in the fight against corruption in Guatemala. <p><u>Participants:</u></p> <p>Rafael Landivar University Professor David Martinez Amador</p> <p>Andrea Morales, Researcher</p> <p>Astrid Perdomo, Researcher</p> <p>San Carlos de Guatemala University Professor Werner Castillo Regalado, School of Political Science</p> <p>National Integrity Network Mrs. Alma Aguilar Salguero, Co-Executive Director</p> <p>Guatemala Studies Center Mr. Sandino Asturias:</p>
13:00 hrs. – 15:00 hrs.	Lunch
15:00 hrs. – 18:00 hrs. <i>Headquarters of the Public Ministry</i>	Public Ministry (<i>Ministerio Público</i>)
15:00 hrs. – 16:30 hrs.	<p>Panel 1:</p> <ul style="list-style-type: none"> • Institutional introduction (10 minutes). • Regime of competencies and inter-institutional coordination. • Adoption of Decisions. <p><u>Participants:</u></p> <p>Ms. Ana Gabriela Contreras, Secretary for International Affairs and Cooperation</p> <p>Ms. Gabriela Mundo, Deputy-Secretary for International Affairs and Cooperation</p> <p>Javier Monterroso, Advisor</p> <p>Bryan García, Chief of the Performance Evaluation Unit</p>

	Zulma Rodríguez, General Supervisor of the Public Ministry
16:30 hrs. – 18:00 hrs.	<p>Panel 2:</p> <ul style="list-style-type: none"> • Results in relation to the fulfillment its responsibilities. • Difficulties related to the fulfillment of its responsibilities. • Information on best practice related to its functions. <hr/> <p><u>Participants:</u></p> <p>Ms. Ana Gabriela Contreras, Secretary for International Affairs and Cooperation</p> <p>Ms. Gabriela Mundo, Deputy-Secretary for International Affairs and Cooperation</p> <p>Javier Monterroso, Advisor</p> <p>Bryan García, Chief of the Performance Evaluation Unit</p> <p>Zulma Rodríguez, General Supervisor of the Public Ministry</p>
18:30 hrs. – 19:00 hrs. <i>Hotel Barcelo Guatemala City</i>	Informal meeting ^{112/} between the representatives of the Member States of the Subgroup and the Technical Secretariat
Wednesday, April 17, 2013	
09:00 hrs. – 12:30 hrs. <i>COPRET Heaquarters</i>	Presidential Commission on Transparency and Electronic Government (COPRET)
09:00 hrs. – 10:30 hrs.	<p>Panel 3:</p> <ul style="list-style-type: none"> • Institutional introduction (10 minutes) • Regime of competencies and inter-institutional coordination. • Legal and administrative human resources regime. • Adoption of decisions.

¹¹². The second paragraphs of the provision 20 of the *Methodology for Conducting On-Site Visits* states: “At the conclusion of the meetings on each day of the on-site visit, the Technical Secretariat shall organize an informal meeting with the members of the Subgroup, to exchange preliminary points of view on the topics addressed at those meetings.”

	<ul style="list-style-type: none"> • Accountability mechanisms. • Institutional strengthening and implementation of technological tools. <p><u>Participants:</u> Mrs. Verónica Taracena, COPRET Coordinator</p> <p>Mrs. Venettia Fernández, COPRET Deputy Director</p> <p>Mr. Rodolfo Valenzuela, Advisor to the Directorate of Transparency Indicators and Initiatives and the Fight against Corruption</p> <p>Mr. Sebastián Herrera, Advisor to the Directorate of Transparency Indicators and Initiatives and the Fight against Corruption</p> <p>Mr. Carlos Juárez, Advisor to the Directorate of Coordination and Strengthening of Electronic Government</p>
<p>10:40 hrs. – 12:30 hrs.</p>	<p>Panel 4:</p> <ul style="list-style-type: none"> • Results in relation to the fulfillment its responsibilities. • Follow-up to the Recommendations from the First Round • Information on best practice related to its functions. <p><u>Participants:</u> Mrs. Verónica Taracena, COPRET Coordinator</p> <p>Mrs. Venettia Fernández, COPRET Deputy Director</p> <p>Mr. Rodolfo Valenzuela, Advisor to the Directorate of Transparency Indicators and Initiatives and the Fight against Corruption</p> <p>Mrs. Cinthia Villatoro, Advisor to the Directorate for Promotion of Citizen Participation for Transparency</p>
<p>12:30 hrs. – 13:45 hrs.</p>	<p>Meeting with her Excellency, the Vice-President of the Republic, Mrs. Roxana Baldetti, Responsible for Transparency Initiatives in Guatemala</p>
<p>13:45 hrs. – 14:30 hrs.</p>	<p>Travel to the Comptroller General of Accounts</p>
<p>14:30 hrs. – 18:00 hrs. <i>Headquarters of the CGC</i></p>	<p>Comptroller General of Accounts (<i>Contraloría General de Cuentas</i>) (CGC)</p>

14:30 hrs. – 16:00 hrs.	<p>Panel 5:</p> <ul style="list-style-type: none">• Institutional introduction (10 minutes)• Regime of competencies and inter-institutional coordination.• Adoption of decisions.• Legal and administrative human resources regime.• Internal rules/norms for the fulfillment of its responsibilities.• Budgetary regime <p><u>Participants:</u></p> <p>Mrs. Nora Segura, Comptroller General of Accounts</p> <p>Mr. Cergio Noel Bojorquez Medina, Deputy Comptroller of Probity</p> <p>Mr. Selvin Manolo Galindo Lopez, Inspector General</p> <p>Mr. Carlos Enrique Lopez Gutierrez, Director of Ethics and Morals</p> <p>Mr. Ramon de Jesus Saenz Morales, Advisor to the Area of Probity</p>
16:10 hrs. – 18:30 hrs.	<p>Panel 6:</p> <ul style="list-style-type: none">• Accountability mechanisms.• Results in relation to the fulfillment its responsibilities.• Difficulties related to the fulfillment of its responsibilities.• Follow-up to the Recommendations from the First Round. <p><u>Participants:</u></p> <p>Mr. Cergio Noel Bojorquez Medina, Deputy Comptroller of Probity</p> <p>Mr. Selvin Manolo Galindo Lopez, Inspector General</p> <p>Mr. Carlos Enrique Lopez Gutierrez, Director of Ethics and Morals</p> <p>Mr. Ramon de Jesus Saenz Morales, Advisor to the Area of Probity</p>
18:45 hrs. – 19:00 hrs. <i>Hotel Barcelo Guatemala City</i>	Informal meeting between the representatives of the Member States of the Subgroup and the Technical Secretariat
Thursday, April 18, 2013	

<p>09:00 hrs. – 12:30 hrs. & 14:05 hrs. – 14:45 hrs. <i>Headquarters of the Judicial Branch</i></p>	<p>Judicial Branch</p>
<p>09:00 hrs. – 9:50 hrs.</p>	<p>Panel 7: <u>Criminal Case Management Model</u></p> <ul style="list-style-type: none">• Institutional introduction (10 minutes)• Results in relation to the fulfillment of its functions• Difficulties for the fulfillment of its functions• Technical cooperation needs• Information on best practices related to its functions. <p><u>Participants:</u></p> <p>Dr. Gabriel Antonio Medrano, President of the Judicial Branch and of the Supreme Court of Justice</p> <p>Dr. Wendy Maldonado Urbina, Administrative Coordinator of the Criminal Court</p> <p>Dr. Virginia Pineda, Criminal Court Advisor</p> <p>Mr. Juan Carlos Oxom, Criminal Court Advisor</p>
<p>09:55 hrs. – 10:45 hrs.</p>	<p>Panel 7 (cont.): <u>Civil, Child and Family Management Model</u></p> <ul style="list-style-type: none">• Institutional introduction (10 minutes)• Results in relation to the fulfillment of its functions• Difficulties for the fulfillment of its functions• Technical cooperation needs• Information on best practices related to its functions. <p><u>Participants:</u></p> <p>Dr. Gloria Biassini, Civil Court Advisor</p> <p>Mrs. Jeannie Balcarcel, Civil Court Advisor</p>

10:50 hrs. – 11:40 hrs.	<p>Panel 7 (cont.):</p> <p><u>Labor Law Management Model</u></p> <ul style="list-style-type: none">• Institutional introduction (10 minutes)• Results in relation to the fulfillment of its functions• Difficulties for the fulfillment of its functions• Technical cooperation needs• Information on best practices related to its functions <p><u>Participantes:</u></p> <p>Dr. Juan Luis De La Roca, Director of Labor Justice</p> <p>Dr. Mario Román Coto, Director of the Center of Auxiliary Services of the Labor Justice Administration</p>
11:40 hrs. – 12:30 hrs.	<p>Panel 7 (cont.):</p> <p><u>Criminal Management Model for Murder against Women (<i>Femicidio</i>)</u></p> <ul style="list-style-type: none">• Institutional introduction (10 minutes)• Results in relation to the fulfillment of its functions• Difficulties for the fulfillment of its functions• Technical cooperation needs• Information on best practices related to its functions <p><u>Participants:</u></p> <p>Dr. Myrna Ponce, Coordinator of the Oversight, Follow-up and Evaluation of Specialized Bodies</p> <p>Dr. Cecilia Navas González, Legal Area of the Oversight, Follow-up and Evaluation of Oversight Bodies</p> <p>Dr. Mayra Veliz, Legal Area of the Oversight, Follow-up and Evaluation of Oversight Bodies</p>
12:30 hrs. – 14:00 hrs.	<p>Lunch with Justices of the Supreme Court</p>
14:05 hrs. – 15:45 hrs.	<p>Panel 8:</p> <ul style="list-style-type: none">• Institutional coordination mechanisms and regime of competencies.• Adoption of decisions.• Legal and administrative human resources regime.

	<ul style="list-style-type: none"> • Internal rules/norms for the fulfillment of its responsibilities. • Accountability Mechanisms
	<p><u>Participantes:</u></p> <p>Mr. Yuri Búcaro Chicas, Executive Secretary of the Judicial Careers Council</p> <p>Mr. Manuel Ismael García Montúfar, Human Resources Chief</p> <p>Dr. Gloria Biassini, Civil Court Advisor</p> <p>Mr. Flavio Giordano, Criminal Court Advisor</p> <p>Mr. Juan Carlos Oxom, Criminal Court Advisor</p>
16:00 hrs. – 16:30 hrs. <i>Hotel Barceló Guatemala City</i>	Informal meeting between the representatives of the Member States of the Subgroup and the Technical Secretariat
13:30 hrs. <i>Hotel Barceló Guatemala City</i>	Final meeting ^{113/} between the representatives of the country under review, the Member States of the Subgroup and the Technical Secretariat.

OFFICIALS WHO ACTED AS CONTACT IN THE STATE UNDER REVIEW IN COORDINATING THE ON-SITE VISIT, AS WELL AS REPRESENTATIVES OF THE MEMBER STATES OF THE SUBGROUP AND OF THE MESICIC TECHNICAL SECRETARIAT

STATE UNDER REVIEW:

GUATEMALA

Veronica Taracena

Lead Expert on the Committee of Experts of the MESICIC
Coordinator, Presidential Commission on Transparency and Electronic Government (COPRET)

Ninette Lopez de Barillas

Advisor on National and International Cooperation, COPRET

¹¹³. The third paragraph of provision 20 of the *Methodology for Conducting On-Site Visits* states: “At the end of the on-site visit, a meeting shall be held, to be attended by the Subgroup experts, the Technical Secretariat, and the Lead Expert of the country under review and/or the official appointed in his place in accordance with provision 10, second paragraph, of this Methodology. That meeting shall identify, if necessary, the information that, exceptionally, the country under review is still to submit through the Technical Secretariat and the deadline within which it is to do so, and it shall also coordinate any other pending matters arising from the on-site visit.”

Mr. Rodolfo Valenzuela

Advisor to the Directorate of Transparency Indicators and Initiatives
and the Fight against Corruption, COPRET

Mr. Sebastián Herrera

Advisor to the Directorate of Transparency Indicators and Initiatives
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