

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

FINAL REPORT

(Adopted at the March 21, 2014 plenary session)

SUMMARY

This report contains a comprehensive review of the implementation in Nicaragua 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 Chile in the First Round.

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

The review was carried out taking into account the information provided by the State in its response to the questionnaire, which, among other things, could not be refined, clarified, or complemented since the Republic of Nicaragua did not grant its consent for an on-site visit to be conducted pursuant to the terms and conditions established in the *Methodology* for such visits. In its review, the Committee also considered the information provided by the civil society organization “Civic Group for Ethics and Transparency” as well as that collected by the Committee’s Technical Secretariat.

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 following oversight bodies in Nicaragua are reviewed in this report: the Public Prosecution Service (*Ministerio Público* - MP), the Office of the Attorney General of the Republic (*Procuraduría General de la República* – PGR), the National Police (*Policía Nacional* – PN), the Office of the Comptroller General (*Contraloría General de la República* - CGR), and the Supreme Court of Justice (*Corte Suprema de Justicia* – CSJ) of the Judicial Branch.

Some of the recommendations formulated to Nicaragua for its consideration in connection with the aforementioned bodies are aimed toward objectives, such as the following:

With respect to the MP, establish objective criteria for defining and determining the special reasons for which a matter warrants the appointment of a special prosecutor; strengthen the Specialized Anti-Corruption Unit and provide it with personnel; establish ongoing training programs primarily for auxiliary prosecutors and prosecutor assistants on substantive matters; establish additional mechanisms to enable the Prosecutor General to present the annual report on the work of the MP publicly; examine the reasons that might be affecting the reduction in the number of charges brought by the MP before the courts for crimes against public administration; and strengthen the preparation, maintenance, and posting on the institution’s website of MP statistical data on the performance of its functions, among other recommendations.

As regards the PGR, continue to promote effective implementation of the PGR's 2011-2014 Strategic Plan; establish additional public accountability mechanisms on the performance of its functions; and develop statistical data on the investigations it conducts for all offenses that affect the interests and/or property of the State.

As concerns the PN, adopt appropriate measures to complement the provisions of the National Police Law and its Regulations in the area of human resources; continue strengthening the skills of PN personnel in investigation procedures for acts of corruption; and prepare statistical data on the investigations initiated by the PN into all acts of corruption, among other recommendations.

With regard to the CGR, complement the training programs it offers internally with courses and/or modules in ethics, integrity, and transparency; continue to promote implementation of its 2011-2015 Strategic Institutional Development Plan; strengthen its technological platform; enable individuals to report corrupt practices online; complement its accountability mechanisms with procedures that would allow public scrutiny; and prepare statistical data on efforts to detect acts of corruption, among other recommendations.

With respect to the CSJ and the judiciary, guarantee the principle of due process in the procedure and grounds for separating or removing CSJ justices from office; conclude the process of updating the Judicial Career Service job descriptions; adopt additional accountability mechanisms regarding performance of the judiciary's substantive functions; and prepare statistical data on judicial proceedings instituted for all corrupt practices as well as for proceedings before the Full Court and its Criminal Chamber, among other recommendations.

The best practices on which the Republic of Nicaragua provided information refer, in brief, to the "Anti-Corruption Workshops," monitoring of cases of crimes against public administration, and the "Interagency Anticorruption System," which the MP is carrying out; international collaboration in the area of mutual legal assistance through the creation of specialized units, for both international criminal matters and the fight against corruption; ongoing processes of dialogue between the PN and international cooperation in the framework of the so-called "*Instancia de Diálogo*"; the "Judicial Office Management Model," promoted by the CSJ to provide users of the justice system effective and efficient service; the Strategy for Advancement, Training, and Implementation of Executive Decree 35-2009 "Code of Ethical Conduct for Executive Branch Personnel," of the Office of Public Ethics; promotion and dissemination of the Procurement Portal; use of public procurement training tools available on the OAS electronic portal; the establishment of "help desks"; organization by the General Directorate for State Procurement of in-service training for personnel from other States; and implementation of a "Quality Management System in the Directorate for the Civil Service" by the General Directorate for State Procurement of the Ministry of the Treasury and Public Credit.

With regard to follow-up on the recommendations formulated to Nicaragua 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 Nicaragua in its response to the questionnaire, a determination was made as to which of those recommendations had been satisfactorily implemented, which required additional attention, which should be reframed, and which were no longer valid. A list of those still pending was also prepared, and has been included as an Annex to this report.

Noteworthy among the advances made in the implementation of such recommendations are the actions being taken by the CGR pursuant to article 4 of the Civil Service Probity Law; the relatively recent adoption of the Public Sector Administrative Procurement Law; the adoption and publication of the “Manual of Administrative Procedures and Management Indicators of the General Directorate for Legal Affairs” by the CGR; the establishment of the PN working group charged with implementing, monitoring, and evaluating anti-corruption recommendations; the conclusion of the coordination agreement between the MP, PN, and PGR on investigation, prosecution, and recovery of assets derived from acts of corruption and related crimes; and the Regional Security Strategy of the PN; as well as the launching of the SIGRUN, the proposed updating of the Plan of Action on implementation of the recommendations made to the Republic of Nicaragua by the Committee of Experts of the MESICIC, and the adoption of the Program to Strengthen Sound Public Management along with the establishment of its National Committee.

Some of the recommendations made to the Republic of Nicaragua in the First Round that remain pending are targeted, inter alia, at strengthening the implementation of laws and regulatory systems with respect to conflicts of interest to ensure the practical and effective application of the public ethics system, strengthening mechanisms requiring civil servants to report any acts of corruption they may be aware of, improving systems for verification and use of the contents of asset declarations, and continuing to implement mechanisms to encourage the participation of civil society and nongovernmental organizations, among other recommendations

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

**REPORT ON IMPLEMENTATION IN THE REPUBLIC OF NICARAGUA OF THE
CONVENTION PROVISION SELECTED FOR REVIEW IN THE FOURTH ROUND, AND
ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY
IN THE FIRST ROUND^{1/}**

INTRODUCTION

1. Contents of the report

[1] This report presents, first, a comprehensive review of the implementation in the Republic of Nicaragua of the provision of the Inter-American Convention against Corruption (hereinafter “the Convention”) selected by the MESICIC Committee of Experts 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 the Republic of Nicaragua 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 MESICIC Committee of Experts formulated to the Republic of Nicaragua in the First Round and that were deemed to require additional attention in the Second and Third Round reports, which may be consulted at the following web page: <http://www.oas.org/juridico/english/nic.htm>

2. Ratification of the Convention and adherence to the Mechanism

[4] According to the official records of the OAS General Secretariat, the Republic of Nicaragua ratified the Inter-American Convention against Corruption on March 17, 1999, and deposited the instrument of ratification on May 6 of that year.

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

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of the Republic of Nicaragua

[6] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Nicaragua, in particular, from the Office of the Attorney General of the Republic, which was evidenced, inter alia, in its response to the questionnaire and in its constant willingness to clarify or complete the contents of its response. Together with the response, the

1. This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on March 21, 2014, at its Twenty-third Meeting, held at OAS Headquarters, March 18-21, 2014.

Republic of Nicaragua sent the provisions and documents it considered pertinent, which are available at: www.oas.org/juridico/spanish/mesicic4_nic.htm.

[7] Likewise, the Committee notes that the Republic of Nicaragua did not grant its consent for an on-site visit to be conducted in accordance with provision 5 of the *Methodology for Conducting On-site Visits*.^{2/}

[8] Regarding this point, the Committee underscores the importance of conducting on-site visits as a stage in and integral part of the review process it carries out, which enables it, in the framework thereof and according to provisions 3, 26, and 27 of the aforesaid Methodology:

[9] – Refine, clarify, or complement the information provided by the States in their responses to the questionnaire regarding the implementation of the Convention provisions under review in the Round in question and the recommendations formulated in earlier Rounds.

[10] – Have access to objective and complete information, in addition to that provided by the States in their responses to the questionnaire, for the consideration and adoption of the corresponding reports.

[11] – Reveal potential difficulties in the implementation of the Convention provision under review and of the recommendations formulated in earlier Rounds.

[12] – Obtain information, in addition to that provided by the States in their responses to the questionnaire, on best practices in the topics under analysis, the awareness of which is useful to other States Parties.

[13] – Provide the States with the opportunity to benefit from or to request technical assistance, according to its needs, from the OAS or other international agencies.

[14] – Hold meetings with civil society organizations, private sector organizations, professional associations, researchers, and/or academics, to address topics related to implementation of the Convention provision under review and of the recommendations that formulated in earlier Rounds.

[15] The Committee, bearing this in mind, and in consideration of the proven benefits offered by the organization of on-site visits as a stage in and integral part of the review process it carries out, will continue to invite all the States Parties to consider the possibility of granting or maintaining, as applicable, their consent for the conduction of on-site visits during a Round.

[16] Based on the foregoing, in its review the Committee took exclusively into account the information furnished in Nicaragua's response to the questionnaire of June 20, 2013, and the information requested by the Technical Secretariat and the members of the Review Subgroup for them to perform their functions, in accordance with the *Rules of Procedure and Other Provisions* and the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round*, available at: http://www.oas.org/juridico/english/mesicic_docs_en.htm.

2. Document SG/MESICIC/doc.276/11 rev. 2, available at: http://www.oas.org/juridico/english/met_on-site.pdf.

2. Documents received from civil society organizations

[17] The Committee also received, within the time period established in the schedule for the Fourth Round, a document from the civil society organization “Civic Group for Ethics and Transparency”, transmitted by that organization electronically in accordance with Article 34(b) of the Rules of Procedure of the Committee.^{3/}

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)

[18] The Republic of Nicaragua has a set of oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts, among which the following are highlighted: the Public Prosecution Service, the Office of the Comptroller General of the Republic, the Supreme Court of Justice, the Office of the Attorney General of the Republic, the National Police, the Office of Public Ethics, and the General Directorates for State Procurement and for the Civil Service, both of which fall under the Ministry of the Treasury and Public Credit.

[19] The following is a brief description of the purposes and functions of the five bodies selected by the Republic of Nicaragua that are to be examined in this report.

[20]– The Public Prosecution Service (hereinafter “MP”) is the independent public entity, with organizational, operational, and administrative autonomy, that is responsible for prosecuting offenses and for representing the interests of society and of crime victims in criminal proceedings. It is also the body charged with promoting, ex officio or on the application of a party, the investigation and prosecution of crimes against public order.

[21]– The Office of the Attorney General of the Republic (hereinafter “PGR”) is a functionally independent organ of the executive branch responsible, inter alia, for acting as legal representative of the State in any matter, dealings, or processes with national and international administrative and jurisdictional bodies, protecting the interests of the Public Treasury, and ensuring that the conduct of civil servants in the performance of their duties is in compliance with the law.

[22]– The National Police (hereinafter “PN”) is the State’s only police force—a civil, professional, apolitical, non-partisan, and non-deliberative body—whose functions include, inter alia, crime prevention, detection, and investigation; maintenance of public order and internal social harmony; respect for, and the protection of, State and individually owned assets; and provision of necessary assistance to the judiciary and to other officials authorized by law to request it.

[23]– The Office of the Comptroller General of the Republic (hereinafter “CGR”) is the governing body of the Monitoring System for Public Administration and Supervision of State Assets and Resources, which is charged with establishing the Monitoring System that acts preventively to ensure the proper use of government funds, exercising ongoing oversight over the General Budget of the

3. This document was received by email on June 20, 2013, and is available at:
http://www.oas.org/juridico/PDFs/mesicic4_nic_sc.pdf.

Republic, and assessing the administrative and financial management of public entities, State-subsidized entities, and public firms or private firms with public capital funding.

[24]– The Supreme Court of Justice (hereinafter “CSJ”) is the highest-level organ of the country’s judiciary and of the courts of justice that make it up.

1. PUBLIC PROSECUTION SERVICE

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

[25] The Public Prosecution Service (MP) has a set of provisions in its legal framework and other measures concerning, among other matters, the following:

[26] As established in Chapter I of the Organic Law of the Public Prosecution Service^{4/} (Law No. 346, hereinafter “LOMP”), the MP—an independent, indivisible entity with organizational, operational, and administrative autonomy—is the only such entity for the Republic as a whole. Its essential role is to bring criminal proceedings in cases of public order, in accordance with Article 10 of the LOMP; Article 3 of the Regulations of the Organic Law of the Public Prosecution Service^{5/} (Decree N° 133-2000, hereinafter “RLOMP”); and Articles 51, 88, 89, 248, and 252, and other pertinent articles of the Code of Criminal Procedure^{6/} (Law N° 406, hereinafter “CPP”).

[27] With regard to the exercise of functions in conjunction or concert with other agencies or authorities, Chapters VI of the LOMP and VII of the RLOMP govern relations between the MP and the National Police (PN), establishing that the latter will conduct the investigation of crimes against public order that it takes cognizance of or observes in flagrante delicto, as well as those that are the subject of complaints or that the MP orders them to investigate, and that it must, in every case, inform the MP prosecutors of the results of its investigations. The prosecutors, for their part, may actively participate in the investigations and in securing evidence, which does not mean that they must perform acts that by their nature fall within the purview of the PN. Article 33 of the LOMP establishes that direct, ongoing coordination must be maintained between prosecutors and the PN regarding the investigation of offenses and the institution of criminal action, indicating that to that end, modern mechanisms for ongoing communication must be developed and dynamic operational methods designed. It further provides that relations between prosecutors and the PN officials must be governed by mutual respect and a constant readiness to fulfill effectively the public role entrusted to them.

[28] As concerns the scope of their duties, in keeping with Article 4 of the LOMP, there is a single MP for the entire country, and its representatives must discharge the duties entrusted to them by law in accordance with the principles of unity of operation and hierarchical subordination in the matter and in the territory to which they have been assigned, unless decided otherwise by the hierarchically superior body^{7/} in special cases and situations through a reasoned decision. Similarly, in accordance with Articles 5 and 6 of the same law, the MP shall act in accordance with the Constitution and law, without subordination to any State body or any authority.

4. Available at: <http://goo.gl/69djJt>

5. Available at: <http://goo.gl/d6BX5S>

6. Available at: <http://goo.gl/D5Dmqr>

7. This is a hierarchy that involves both subject matter and territory. At the territorial level there are assistant prosecutors and departmental prosecutors, with the latter being higher in the hierarchy than the assistant prosecutors (see LOMP, Article 18). In terms of the subject matter, there are specialized units with competence at the national level that, by reason of the matter at hand, are hierarchically superior to the departmental prosecutors and their assistants (see RLOMP, Article 4).

[29] As concerns its structure, Article 2 of the LOMP establishes that the MP shall consist of specialized units to carry out its prosecutorial function. In this regard, in 2007 the MP created the Specialized Unit against Corruption and Organized Crime (hereinafter “UEACCO”), which merged the Specialized Unit against Organized Crime, established by Agreement No. 430, of August 13, 2004, and the Specialized Unit against Corruption, established by Agreement No. 712, of May 22, 2006. The UEACCO reports directly to the Prosecutor General and its jurisdiction extends to the country as a whole. Its primary objective is to carry out a more efficient and effective criminal prosecution of serious cases and specific forms of offenses for organized crime, as well as the most important acts of corruption (see paragraph 60). In addition, the UEACCO advises, monitors, trains, and guides its liaison units at the prosecutors' offices in the country's departments and regions.

[30] To discharge its substantive responsibilities and pursuant to Articles 11 and 12 of the LOMP and Article 15 of the RLOMP, the MP is made up of the Offices of the Prosecutor General and the Assistant Prosecutor General, the Inspectorate General, Departmental Prosecutors, Prosecutors of the Autonomous Regions of the Atlantic Coast, Auxiliary Prosecutors, and Special Prosecutors, as well as the Executive Assistance Service and Secretariat. Likewise, in the administrative area, the MP has an Administrative and Financial Unit, a Training and Planning Unit, and an Internal Auditing area.

[31] As far as substantive decision making is concerned, it is clear from the response^{8/} of the country under review to the questionnaire as well as from the provisions of Chapter I of Section III of the CPP that the MP takes such decisions by means of accusations or complaints, and they should be taken with the greatest possible respect for the constitutional and legal system of the Republic. In this connection, it should be noted that Article 14, paragraph 4, of the LOMP authorizes the Prosecutor General to give general or specific instructions concerning the service and exercise of the functions of the MP to the officials and personnel under him/her, which are mandatory and must be complied with immediately.

[32] As for any appeals brought against the decisions adopted by the MP in its substantive area, Article 225 of the CPP provides that the victim or the complainant is entitled to challenge a decision concerning dismissal of a complaint or lack of evidence to initiate the criminal proceedings ordered by a prosecutor, before the next highest level of jurisdiction, which must resolve the matter at the final administrative level.

[33] The MP is a hierarchical entity headed by the Prosecutor General, who is the legal representative of the entity and its administration. Said official's authority extends to the nation as a whole. He/she brings criminal proceedings and discharges the duties assigned to that office by law, on his/her own or through the entity's bodies, as provided in Article 13 of the LOMP. For his/her part, the Assistant Prosecutor General is directly subordinate to the Prosecutor General and acts for him/her during absences and during temporary or definitive incapacity pending the appointment of a replacement, as well as in the event of excuse or challenge, as referred to in Article 15 of the LOMP.

[34] Articles 161 of the Constitution and 23 of the LOMP^{9/} establish the qualifications required to serve as Prosecutor General and Assistant Prosecutor General. Both incumbents are elected by the

8. See Nicaragua's response to the questionnaire for the Fourth Round, pp. 26 and 27, available at: http://www.oas.org/juridico/PDFs/mesicic4_nic_resp.pdf.

9. Article 23 of the la LOMP states that the Prosecutor General of the Republic and Assistant Prosecutor General must meet the following requirements: (1) Be a Nicaraguan national, with those who have acquired another nationality renouncing it at least four years before the date of the election; (2) Be an attorney of outstanding morals, having exercised the profession for ten years or having served as a Magistrate of the Courts of Appeal for five years. (3) Be in full enjoyment of his/her political

National Assembly from separate slates proposed by the President of the Republic and by Assembly deputies for five-year terms beginning with their assumption of office. In keeping with Article 138, paragraph 9, of the Constitution and Article 24 of the LOMP, they must be elected by a favorable vote of at least 60 percent of the total number of deputies. Article 26 of the LOMP, for its part, establishes the grounds for their removal from office, including influence peddling and acts of corruption of any kind, which thereof, in accordance with Article 37 of the LOMP, must be debated and proven in a fair manner and due process respected. On the basis of the grounds invoked and pursuant to Article 27 of the LOMP, the National Assembly shall decide by a vote of 60 percent of the total number of deputies whether or not removal is warranted.

[35] Article 68 of the Career Law of the Public Prosecution Service¹⁰ (Law N° 586, hereinafter “LCMP”) establishes the procedure for prosecution of the Prosecutor General and the Assistant Prosecutor General, whereby, once the National Assembly has withdrawn their immunity, the Criminal Chamber of the Supreme Court is competent to hear the case in first instance. That chamber’s decision may be appealed before the Supreme Court en banc.

[36] It bears mentioning that Article 28 of the LOMP also establishes as grounds for suspension of the functions of the Prosecutor General and the Assistant Prosecutor General their clear inability or temporary incapacity to perform them, as declared by the National Assembly and approved by a favorable vote of 60 percent of the total number of Assembly deputies, following the issuance of an order against them for the initiation of proceedings for a criminal offense, as well as authorization from the National Assembly by the favorable vote of a simple majority of its members.

[37] With respect to the manner of selecting the necessary personnel for MP operations, Article 12 of the LCMP provides that entry into the substantive area of the MP shall take place through a merit-based competition governed by Articles 15 to 24 of said system, and entry into the administrative area through the review of candidates’ résumés. The final decision on appointments in the substantive and administrative areas shall be made by the Prosecutor General and, in both cases, the candidates must meet the requirements established in the LOMP, the RLOMP, and the LCMP, as well as in the manual on posts, functions, and requirements and in any corresponding rules the Prosecutor General may have issued for the position in question.

[38] For purposes of selecting and hiring MP personnel, the LCMP provides in its Articles 8 to 11, with regard to the governing entities of the MP Career System, that the Prosecutor General is the senior authority for management, administration, execution, and decision making for the system, and that a Career Committee is established to serve as executing agency for admissions, selection, promotions, and career development programs, to be approved by the Prosecutor General through agreements, resolutions, or guidelines.

[39] By the same token, Article 13 of the LCMP establishes the eligibility requirements for persons interested in applying for any positions in the substantive or administrative areas of the MP, whereas Articles 14 and 34 of the same law enumerate, respectively, the impediments to being hired and the prohibitions imposed on all of the entity’s personnel. In the latter case, the Prosecutor General must

and civil rights. (4) Be between the ages of thirty-five and seventy-five on the day of the election. (5) Never have been suspended from practicing as a lawyer or notary public under a final judicial ruling. (6) Not be a member of the armed forces on active service, unless his/her resignation was tendered at least twelve months before the election. (7) Have resided in the country continuously for four years prior to the date of the election, except for service during that period on a diplomatic mission, working in international agencies, or studying abroad.

10. Available at: <http://goo.gl/d4zOuh>

issue the necessary internal regulations to implement this system. For their part, Articles 70 and 71 establish the grounds for separation and dismissal from service.

[40] As regards the system of responsibilities for their actions, MP personnel are subject, among other provisions, to those of Chapters I and II of Section V of the LCMP. In this connection, pursuant to Article 42 of this law, the MP disciplinary system includes the set of rules that govern the actions and failures to act of prosecutors and other personnel, intended to achieve efficiency, effectiveness, and ethical conduct in the exercise of their functions, for which the Prosecutor General issues pertinent regulations.

[41] With regard to the MP Career System, it should be noted that, according to Article 77 of the LCMP, said law need not be regulated by Executive Decree, even though the Prosecutor General, within his sphere of competence, may issue necessary pertinent rules and administrative regulations to ensure that the ends pursued by the law are achieved.

[42] As mentioned above, under Articles 12, paragraphs 3 and 4, of the LOMP, and Article 20 of its Regulations, the administrative area of the MP includes the Training and Planning Unit, which consists of the planning and statistics, selection and entry, and training sections. Said unit is responsible, among other things, for developing training, refresher, and specialization programs for all MP personnel and for drawing up and updating the manual on posts, functions, and requirements, as well as organizational charts and/or graphics of any type describing the entity's overall activities.

[43] In this connection, the 2012 Annual Report of the MP,^{11/} presented to the National Assembly, provides a summary of the activities carried out that year by the Training Directorate, which focused mainly on institutional coordination to ensure that civil servants took part in the various training sessions organized by the diverse entities and agencies working with the MP. Similarly, in 2012, the MP implemented a specialized training program for UEACCO prosecutors.^{12/}

[44] As regards institutional strengthening or quality improvement actions implemented by the MP, the country under review points out in its response^{13/} that Agreement N° 271, of November 2012, updated and ratified the "Protocol of Proceedings in Crimes against Public Administration." Moreover, in conjunction with the National Strategy for the Integral Development of Sound Public Management, which the Government adopted in 2012, the MP established and updated its "Internal Strategy to Strengthen Probity, Transparency, and the Institutional System."

[45] Likewise, the MP is developing and executing a series of external cooperation projects associated directly with the enhancement of its capabilities and with institutional development and modernization at the national level, noteworthy among which are the "Project to Strengthen Sound Public Management"^{14/} in the context of Phase III of the Anti-Corruption Fund Program (FAC) to strengthen the UEACCO, as well as the "Project to Strengthen the MP,"^{15/} signed with the Inter-American Development Bank for a two-year execution period (2011 and 2012) and essentially intended to support the entity's most sensitive and urgent areas (streamlining of prosecutorial action

11. See the 2012 Annual Report of the MP, pp. 95 to 98, available at: <http://goo.gl/8e3Vq9>

12. See the report of Nicaragua in the framework of the Twenty-First Meeting of the Committee (Article 31 of the Rules of Procedure), p. 50, available at: http://www.oas.org/juridico/PDFs/XXI_nic.doc.

13. See Nicaragua's response to the questionnaire for the Fourth Round, p. 50, *supra* note 8.

14. See the 2012 Annual Report of the MP, pp. 100 to 103, *supra* note 11.

15. *Ibid.*, pp. 116 and 117.

in criminal proceedings, upgrading of the technical capacity of prosecution personnel, and improvement of the efficiency and management of institutional resources).

[46] With respect to the implementation of systems or modern technologies to facilitate its work, the 2012 Annual Report of the MP^{16/} makes reference, for example, to the creation and implementation of the Interagency Anti-Corruption System (SAI), consisting of an interagency database that contains the corruption cases brought by the National Police, the MP, and the Office of the Attorney General, shows the current processing stage and status of each case, and provides uniform, reliable, and accurate data. The report also mentions the acquisition of specialized software for digitizing prosecution files in order to show that the files are handled in a transparent fashion and to expedite their processing. Similarly, according to the information provided in the response^{17/} of the country under review, the MP acquired new computer equipment to facilitate efforts to prevent, investigate, and punish crimes against public administration.

[47] Moreover the MP has a public institutional website, www.ministeriopublico.gob.ni, which provides information, among other things, on the entity's objectives and functions as well as on its legal framework. Noteworthy on said website are links that make it possible to submit online complaints on the manner civil servants perform their duties, links for requesting public information, and links to file reports on the commission of crimes.

[48] On this last point, the country under review indicated in its response^{18/} that since 2011 the MP has had a Complaint Receipt Office, which, in 2012, expanded its coverage to include crimes committed against public administration in the 18 departmental offices of the MP, thus achieving national coverage. Likewise, in an effort to shore up citizen reporting, the "Agreement on Interagency Collaboration among Citizen Complaint or Information Offices between the CGR (Office of the Comptroller General), the MP, and the PGR (Office of the Attorney General)" was signed in March 2012 in order to establish mechanisms for information exchange and collaboration to defend the interests of the State.

[49] As regards control mechanisms, it should first be mentioned that Article 8 of the LOMP establishes that MP personnel have criminal and civil liability for their actions.

[50] However, with regard specifically to mechanisms for internal control, both the LOMP and its Regulations establish a set of provisions to govern the ethical conduct of prosecutors, including the Prosecutor General and the Assistant Prosecutor General, as well as administrative personnel. To exercise these controls and conduct investigations, should there be grounds for doing so, the MP is equipped with the offices of the Inspectorate General.

[51] In this connection, pursuant to Article 43 of the LCMP, the Inspectorate General is the body responsible for receiving, transmitting, and resolving complaints or reports of a disciplinary nature submitted by individuals and/or authorities, on the performance of the entity's personnel in the exercise of their functions, in keeping with the procedure set out in Chapter II of Section V of said law. Articles 45, 46, and 47 of the law, for their part, determine respectively which disciplinary infractions are minor, serious, and very serious, whereas Article 48 establishes a system of penalties for such infractions. Likewise, in keeping with the last paragraph of Article 42 of the LCMP, which establishes that the Prosecutor General shall issue pertinent regulations on the disciplinary system and

16. Ibid pp. 95 to 98.

17. See Nicaragua's response to the questionnaire for the Fourth Round, p. 50, *supra* note 8.

18. Ibid, p. 62.

procedure, the Disciplinary Regulations of the MP,^{19/} applicable to and mandatory for all officials and personnel, were issued in 2002.

[52] As concerns the criminal liability of prosecutors in the exercise of their functions, Article 69 of the LCMP provides that the Criminal Chamber of the Courts of Appeals will hear in first instance cases against prosecutors and officials with prosecutorial powers and that the decisions thereof may be appealed before the Supreme Court en banc. In these cases, a special prosecutor shall be appointed to institute the criminal proceedings.

[53] With regard to how the budgetary resources needed for their operations are ensured, Article 34 of the LOMP provides that the preliminary proposed budget of the MP is drawn up by the entity itself and transmitted officially on the date set by the Ministry of the Treasury and Public Credit. Execution of the budget shall be subject to controls and oversight by the corresponding public administration bodies, pursuant to the law on the matter.

[54] In this regard, the country under review noted in its response^{20/} that “*given the low budget allocation, the main strategy of the Prosecutor General of the Republic is to complement the Public Prosecution Service budget allotted by the National Assembly through the General Budget of the Republic; Management of External Cooperation Projects linked directly to capacity building and institutional development and modernization.*” To this end, Article 35, paragraph 9, of the LOMP assigns the Executive Secretariat the role of “*coordinating national and international cooperation and ensuring that said cooperation extends to the institution’s various projects.*”

[55] As concerns the mechanisms for coordination with other oversight agencies or public authorities and for securing the support of other authorities and the public, Article 7 of the LOMP provides that the MP, in performing its functions, may request assistance from any civil servant or administrative authority of State bodies and their independent, decentralized, and autonomous entities, which are obliged to provide it without delay and to supply any requested documents and reports. In addition, as indicated in the response by the country under review,^{21/} the MP has also signed a series of conventions or agreements on collaboration and cooperation with other public entities, noteworthy among them the “Agreement between the MP, PN (National Police), and PGR (Office of the Attorney General) on Investigation, Prosecution, and Recovery of Assets Derived from Acts of Corruption and Related Crimes,” signed by the heads of those entities in March 2009, and the “Agreement between the CGR (Office of the Comptroller General), the MP, and the PGR (Office of the Attorney General) on Interagency Collaboration among Citizen Complaint or Information Offices,”^{22/} signed in March 2012. In addition, the 2012 Annual Report of the MP^{23/} makes reference to specific efforts at national coordination with State institutions undertaken by the MP that year.

[56] Lastly, with regard to accountability mechanisms, Article 14, paragraph 9, of the LOMP establishes that the Prosecutor General must submit an annual written report on its work to the National Assembly. If the National Assembly so requests, he/she must appear before it to provide explanations on said report.

19. Available at: <http://goo.gl/aEQr7w>

20. See Nicaragua’s response to the questionnaire for the Fourth Round, p. 76, *supra* note 8.

21. *Ibid.*, p. 81

22. See: <http://www.pgr.gob.ni/images/stories/2012/PDF/ConvenioMP-PGR-CGR.pdf>.

23. See the 2012 Annual Report of the MP, pp. 64 to 68, *supra* note 11.

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

[57] The MP has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were described in brief in section 1.1 of this report. However, the Committee considers it timely to make a number of observations in relation thereto:

[58] First, as indicated in the preceding section, the substantive area of the MP is made up of the entities described in Article 11 of the LOMP and Article 15 of its Regulations, which include the “special prosecutors,” who, pursuant to Article 19 of the LOMP, are appointed by the Prosecutor General to address matters that for special reasons require such treatment and whose powers are limited to those assigned to them by the Prosecutor General for each specific case. In turn, Article 33 of the RLOMP provides that a special prosecutor shall, prior to performing his/her task, sign a “special services contract,” whose provisions essentially lay out the scope of the task, the limits thereof, the conditions for carrying it out, and the specific powers assigned by the Prosecutor General. Said article also establishes that the contracted professional must be an expert in the matter related to the case and must possess recognized appropriate personal and professional qualifications.

[59] Accordingly and given the importance of ensuring that the investigation of punishable acts is objective and of high quality and that any criminal action brought is effective and proper, especially in criminal proceedings related to the very offenses of civil servants brought against prosecutors and officials empowered to serve as prosecutors for which, in accordance with Article 69 of the LCMP, a special prosecutor is appointed, the Committee deems it advisable for the country under review to establish, through the means it deems most appropriate, objective criteria for clearly defining and determining the “special reasons” for a matter to warrant the appointment of a special prosecutor. It should also provide objective criteria for clearly defining and determining the “expertise” and “appropriate personal and professional qualifications” that the person to be contracted as a special prosecutor must possess and give evidence of. In the Committee’s view, this will ensure the proper exercise of both the criminal proceedings and the authority granted to the Prosecutor General by Article 19 of the LOMP, thus avoiding a possible discretionary use of that power (see recommendation 1.4.1. in Chapter II of this report).

[60] Second, the Committee acknowledges the existence of the UEACCO as one of the Specialized Units of the MP for the exercise of its prosecutorial function. In the case of acts of corruption, the UEACCO hears only the “most important” cases where the individual concerned is an official of public institutions and autonomous and decentralized entities independent of any other public institution; the leader of a national or local political party; a diplomat or head of an international cooperation agency or national nongovernmental organization; a recognized figure in national public life, whether in the private, social, civic, academic, or media-related sector; or a politically exposed person.

[61] In this regard, the Committee, on the basis of the information at its disposal, deems it advisable for the country under review to consider establishing criteria that, in view of the amount involved, the complexity of the investigation, and/or the nature or position of those concerned, among other parameters, will make it possible to identify and define objectively the relevance, gravity, or importance of the cases of corruption requiring UEACCO intervention, so that the corresponding criminal proceedings may be initiated. This would help to define the competence of this unit and make use of its resources to address effectively the most important acts of corruption and channel

those involving lesser amounts, sophistication, impact, and/or gravity to other organs of the MP for prosecution^{24/} (see recommendation 1.4.2. in Chapter II of this report).

[62] Third, the Committee acknowledges the existence of the Career Service within the MP, which is based on the provisions of the LCMP described in the preceding section. In this regard, inasmuch as the systems for hiring public officials referred to in Article III, paragraph 5, of the Convention were subject of review during the Second Round, the Committee will not make recommendations thereon and will simply reiterate the observations contained in the report on that round.^{25/} However, the Committee would like to take this opportunity to insist that the country under review continue its efforts to strengthen, on the basis of merit and the principles of equity, openness, and efficiency embodied in the Convention, the systems and procedures for selecting civil servants for the MP, taking into account that, on the basis of the information available to it, the Committee was unable to determine, among other things, the existence of the norms referred to in Article 18, paragraph 2, of the LCMP intended to regulate the content and time periods for public vacancy announcements when the needs of the service in the substantive area of the MP so require, as well as the internal rules addressed in Articles 14 and 34 of the LCMP for implementing the system of prohibitions for all MP personnel.^{26/}

[63] Fourth, as concerns training, although the 2012 Annual Report of the MP presented to the National Assembly, referred to in the preceding section, provides a summary of the activities and programs carried out that year by the Training Directorate, the Committee deems it advisable for the country under review to continue strengthening the work being carried out by the Training Directorate of the MP in order to provide additional training, for example, to auxiliary prosecutors and prosecutor assistants in the substantive area, bearing in mind what the Prosecutor General stated in the aforementioned Annual Report,^{27/} and adopting the measures it deems pertinent to ensure that said directorate's training programs possess the aforementioned features^{28/} (see recommendations 1.4.3. and 1.4.4 in Chapter II of this report).

[64] Similarly, the Committee will make a recommendation to the Republic of Nicaragua on the advisability of adopting manuals or other documents that describe the functions of the MP personnel,

24. On this point, the Republic of Nicaragua notes that the UEACCO has been following guidelines set by the Prosecutor General that establish the extent of its competence. Thus, the UEACCO handles the most complex cases, those causing most harm to the State, and those involving the most senior officials, and those in which the level of complexity requires its intervention. In this way, the UEACCO's organization and personnel is not overwhelmed with less significant – but no less important cases. Consequently, the UEACCO handles an average of only forty cases a year, to which it devotes specialized attention, in that the same prosecutor is apprised of a case at the start of the investigation and plays an active part in it, right through to enforcement of judgment. Less high-profile cases are referred to a liaison unit and to a liaison prosecutor in each prosecutors' office in the country's departments and regions, which are advised, monitored, trained, and counseled by the UEACCO. The level-of-profile criteria set for the UEACCO by the Prosecutor General are in line with those applied by the specialized unit of the National Police dealing with these cases.

25. See the Final Report on Implementation in the Republic of Nicaragua of the Convention Provisions Selected for Review in the Second Round, and on Follow-up to the Recommendations Formulated to that Country in the First Round, pp. 7, 23, and 24, available at: http://www.oas.org/juridico/spanish/mesicic_II_inf_nic.pdf.

26. On this point, the Republic of Nicaragua notes that the principles of equity, disclosure, efficiency, etc. are contained in the provisions governing calls for public competitions for admission into the prosecutorial career; it also enclosed the regulations governing the LCMP as regards the selection system (FGR-LCMP-01-2008; FGR-LCMP-02-2008; and FGR-LCMP-03-2008), available at: http://www.oas.org/juridico/spanish/mesicic4_nic.htm

27. See the 2012 Annual Report of the MP, p. 91, *supra* note 11.

28. On this point, the Republic of Nicaragua offers information on the coordination and training actions being undertaken by the MP's Training Directorate in the area of interinstitutional training on different topics including ethics, probity, and transparency, together with courses on the topic of crimes against the public administration at the postgraduate level, and other subjects, available at: http://www.oas.org/juridico/spanish/mesicic4_nic.htm

bearing in mind that the country under review indicates in its response^{29/} that the entity is drawing up both its Manual on Posts and Functions and its Manual on Rules for Post Evaluation (see recommendation 1.4.5. in Chapter II of this report).

[65] Fifth, with respect to the existence of documented procedures for performing tasks or of related manuals or guides, in accordance with Article 14, paragraph 4, of the LOMP and Article 26, paragraph 4, of its Regulations, it is incumbent on the Prosecutor General to give general or specific written instructions concerning the service and exercise of the functions of the MP to the officials and personnel under him/her, which are mandatory and must be complied with immediately. In this connection, the country under review points out in its response^{30/} that the Prosecutor General has given instructions concerning the prosecutors' functions in the form of a set of circulars and directives. Likewise, the 2012 Annual Report of the MP^{31/} makes reference to the achievements made in implementing decisions, guidelines, and rulings issued by the Prosecutor General. In this regard and bearing in mind that these internal norms "*are a useful tool for consultation that may help ensure that the law is complied with correctly and appropriately, make it possible to establish a set of criteria and actions that will necessarily lead to consolidation of the rule of law by providing the general public with legal certainty concerning the performance of civil servants,*"^{32/} the Committee will make a recommendation on the advisability of making all of these norms available to the general public on the MP website (see recommendation 1.4.6. in Chapter II of this report).

[66] Along the same lines, the Committee deems it advisable for the country under review to consider including on the MP website information whereby the general public would be informed of the procedures established for the performance of its functions and would be given guidance about how to carry out proceedings before the MP (see recommendation 1.4.7. in Chapter II of this report).

[67] Sixth, the Committee notes that the 2012 Annual Report of the MP^{33/} states, with respect to administrative management and budget execution, that the budget approved by the MP for 2012 totaled C\$179.5 million (179.5 million córdobas),^{34/} 100 percent of which was executed and broken down as follows: 86 percent for personnel services, 10 percent for non-personnel services, 3 percent for materials and supplies, and 1 percent for equipment. Nonetheless, the Committee will make a recommendation to the effect that the MP should be provided with sufficient human and financial resources for its proper functioning, since the same report establishes that "*it bears emphasizing that, in view of the inadequate budget allocation, municipal headquarters have been installed in only 40 percent of the country; there is also an urgent need to hire auxiliary prosecutors, prosecutor assistants, and process servers, as well as to replace most of the vehicle fleet, which has an average lifespan of 10 years, and to upgrade facilities that are considerably run down at the national level*"^{35/} (see recommendation 1.4.8. in Chapter II of this report).

[68] Seventh, as regards accountability mechanisms applicable to the performance of the duties of the MP, the Committee takes note of the contents of Article 14, paragraph 9, of the LOMP, described in the preceding section.

29. See Nicaragua's response to the questionnaire for the Fourth Round, p. 45, *supra* note 8.

30. *Ibidem*.

31. See the 2012 Annual Report of the MP, p. 82, *supra* note 11.

32. *Ibidem*.

33. *Ibid*, p. 119.

34. Approximately US\$1 (one United States dollar) = C\$24.4800 córdobas (exchange rate as of November 2013).

35. See the 2012 Annual Report of the MP, p. 119, *supra* note 11.

[69] In this regard, the Committee observes that the aforementioned Article 14, paragraph 9, of the LOMP stipulates that the Prosecutor General must appear before that body to explain the report presented only if he/she is requested to do so by the National Assembly. However, for the sake of greater transparency and to promote citizen participation in the work of the MP, the Committee deems it advisable for the country under review to consider the possibility of establishing, without prejudice to the possible appearance of the Prosecutor General before the National Assembly, additional accountability mechanisms with procedures that allow public scrutiny (see recommendation 1.4.9. in Chapter II of this report).

[70] Lastly, the Committee was unable to determine either the ways or means by which the MP publishes the annual report presented by the Prosecutor General on the work carried out by the entity and make it accessible to the general public. It will therefore formulate a recommendation in this regard (see recommendation 1.4.10. in Chapter II of this report).

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

[71] As concerns results in the performance of its functions, in its response^{36/} the country under review provided the following information concerning charges brought by the MP for crimes against public administration during the 2008-2012 period:

Crimes	2008	2009	2010	2011	2012	Total
Embezzlement	62	00	00	00	00	62
Misappropriation of public funds	05	00	02	04	00	11
Fraud	03	04	03	04	01	15
Bribery	00	01	00	03	01	05
Influence peddling	00	00	01	01	00	02
Illicit enrichment	00	01	00	00	00	01
Abuse of authority or powers	00	00	01	00	01	02
Usurpation of powers	00	00	01	01	01	03
Exactions	00	00	01	00	00	01
Total	70	06	09	13	04	102

[72] Taking the foregoing into account, the Committee notes that the MP has filed charges for crimes against public administration. However, based on the information available to it, the Committee considers it timely to make the following considerations:

[73] In the first place, as may be seen, in the past five years the MP filed 102 cases related to such crimes. These figures draw the attention of the Committee since, as indicated in the 2012 Annual Report of the MP,^{37/} during the same year (2012) the MP received a total of 48,661 cases, of which 19,097 (39.2%) met the legal requirements for criminal action to be brought and only four (0.02%) involved crimes against public administration. In this regard, the Committee will make a recommendation to the country under review to the effect that it should consider reviewing the possible reasons for this, with a view to adopting appropriate corrective measures (see recommendation 1.4.11. in Chapter II of this report).

36. See Nicaragua's response to the questionnaire for the Fourth Round, p. 92, *supra* note 8.

37. See the 2012 Annual Report of the MP, pp. 12 and 13, *supra* note 11.

[74] In the second place, notwithstanding the information submitted by the country under review on the charges brought by the MP exclusively for crimes against public administration in the years mentioned, the Committee is unable to identify the total number of investigations begun in each of these years for all acts of corruption established as offenses in the Nicaraguan criminal justice system, with an indication of how many investigations remain ongoing, how many have been suspended for any reason whatsoever, how many have been shelved due to statute of limitations, how many have been shelved without any decision reached on the merits of the case under investigation, how many are at a stage that allows a decision to be reached on the merits of the case under investigation, and how many have been referred to the competent body in order for such a decision to be taken. The Committee will therefore formulate a recommendation in this regard (see recommendation 1.4.12. in Chapter II of this report).

[75] In the third place, the Committee notes that the institutional website of the MP contains links that supposedly refer to national, departmental, and specialized unit statistics. However, the information posted on these links is not identified. Accordingly, the Committee will make a recommendation intended to strengthen the preparation, maintenance, and posting of MP statistical data on the performance of its functions (see recommendation 1.4.13. in Chapter II of this report).

[76] Lastly, as concerns the results obtained by the MP with respect to the discipline of its personnel, the 2012 Annual Report of the MP^{38/} points out that in 2012, the Inspectorate General handled 187 complaints with respect to the personnel of the MP at the national level, with 75 of them (40%) resolved and the other 112 (60%) currently being processed in accordance with the legally established terms for the procedure. According to said report, the cases were decided as follows: 15 were dismissed, 17 not admitted, three referred to the Departmental Prosecutor's jurisdiction, eight declared without merit, 16 rejected as the charges did not constitute infractions, 10 archived, penalties were imposed in one case, and five were resolved in other ways. In this regard, based on the information available to it, the Committee notes that only one (1.3%) of the 75 disciplinary cases settled resulted in a sanction. Accordingly, the Committee will formulate a recommendation to the country under review to the effect that it consider examining the possible reasons for this, with a view to adopting appropriate corrective measures (see recommendation 1.4.14. in Chapter II of this report).

1.4. Conclusions and recommendations

[77] Based on the comprehensive review conducted with respect to the Public Prosecution Service in the foregoing sections, the Committee offers the following conclusions and recommendations:

[78] The Republic of Nicaragua has considered and adopted measures intended to maintain and strengthen the MP as an oversight body, as described in Chapter II, section 1, of this report.

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

- 1.4.1. Establish, via such mechanisms as it considers pertinent, objective criteria for defining and determining the "special reasons" for a matter to warrant the appointment of a special prosecutor, as well as the "expertise" and "appropriate

38. Ibid, p. 90.

personal and professional qualifications” that the person to be contracted as a special prosecutor must possess and show evidence of, in accordance with Article 19 of the LOMP and Article 33 of the RLOMP (see Chapter II, section 1.2, of this report).

- 1.4.2. Establish criteria that, in view of the amount involved, the complexity of the investigation, and/or the nature or position of the persons concerned, among other parameters, will make it possible to identify and define objectively the relevance, gravity, or importance of the cases of corruption requiring UEACCO intervention to initiate criminal proceedings (see Chapter II, section 1.2, of this report).
- 1.4.3. Continue to carry out the periodic training programs primarily for auxiliary prosecutors and prosecutor assistants on the substantive aspects of the functions they perform (see Chapter II, section 1.2, of this report).
- 1.4.4. Continue to adopt appropriate measures to complement the training activities conducted by the Training Directorate, so as to include courses and/or modules on ethics, integrity, and transparency that, inter alia, impart information on the rules of conduct governing the MP and offer training in due compliance with them (see Chapter II, section 1.2, of this report).
- 1.4.5. Adopt and publish manuals or other documents describing the duties of MP personnel (see Chapter II, section 1.2, of this report).
- 1.4.6. Adopt appropriate measures to enable citizens to have access to and consult, through the website of the MP, the circulars, decisions, guidelines, and/or rulings issued by the Prosecutor General regarding the service and exercise of the functions of MP personnel (see Chapter II, section 1.2, of this report).
- 1.4.7. Adopt appropriate measures to enable citizens to be informed, through the website of the MP, of the procedures established for the performance of its functions and to be given guidance about how to carry out proceedings before the MP (see Chapter II, section 1.2, of this report).
- 1.4.8. Provide the MP with the necessary human and financial resources to adequately perform its functions, principally those related to criminal prosecution for crimes of corruption, within available resources (see Chapter II, section 1.2, of this report).
- 1.4.9. Adopt appropriate provisions aimed at establishing, within the MP, additional public accountability mechanisms on the performance of its functions, which contain, among other things, procedures for allowing public scrutiny (see Chapter II, section 1.2, of this report).
- 1.4.10. Publish, through the MP website, the annual report to be presented to the National Assembly by the Prosecutor General on the work carried out by the MP, pursuant to Article 14, paragraph 9, of the LOMP (see Chapter II, section 1.2, of this report).
- 1.4.11. Conduct a review of the reasons that might be affecting the reduction in the number of charges brought by the MP before the courts for crimes against public

administration, in order to identify challenges and recommend corrective measures (see Chapter II, section 1.3, of this report).

- 1.4.12. Prepare statistical data on the investigations begun by the MP on all corrupt practices to show how many investigations remain ongoing, how many have been suspended for any reason whatsoever, how many have been shelved due to statute of limitations, how many have been shelved without any decision reached on the merits of the case under investigation, how many are at a stage that allows a decision to be reached on the merits of the case under investigation, and how many have been referred to the competent body in order for such a decision to be taken, in order to identify challenges and recommend corrective measures (see Chapter II, section 1.3, of this report).
- 1.4.13. Strengthen the preparation, maintenance, and posting on the institution's website of MP statistical data on the performance of its functions (see Chapter II, section 1.3, of this report).
- 1.4.14. Conduct an analysis of the causes that might be affecting the fact that the majority of complaints received and processed by the Inspectorate General of the MP on disciplinary proceedings against MP personnel in the performance of their duties are settled by means other than sanctions, in order to identify challenges and recommend corrective measures (see Chapter II, section 1.3, of this report).

2. OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC

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

[80] The Office of the Attorney General of the Republic (PGR) has a set of provisions in its legal framework and other measures concerning, among other matters, the following:

[81] As indicated in Article 1 of the Organic Law of the Office of the Attorney General of the Republic^{39/} (Law No. 411, hereinafter "LOPGR"), the PGR is an entity of the executive branch of government which carries out its mandate with operational autonomy and which acts as the legal representative of the State with regard to the interests and matters specified in the LOPGR. It also has the specific functions of serving as an advisory and consultative body for organs and entities within the executive. In the area of investigation and prosecution of criminal acts, the PGR, in accordance with Article 109.3 of the CPP, is considered the victim or injured party when representing the State or its institutions.

[82] In this respect, in keeping with the authority granted to the PGR to be a party to criminal proceedings, as established in Article 2 of the LOPGR, its functions include in particular: legal representation of the State in transactions of any kind heard or to be heard in the courts of justice; representation of the State as a private person in criminal, civil, and other types of cases as either a plaintiff or defendant; monitoring the Treasury's interests; overseeing that the conduct of State officials and staff in the performance of their duties is lawful; requesting reports from public offices on illustrative data that the PGR requests for full compliance with its terms of reference; and taking part in proceedings in which the courts are to hear the MP on relevant laws.

39. Available at: <http://goo.gl/yhJ6Am>

[83] Similarly and given the nature of the matters that warrant its action in defense of the State and its institutions, the PGR is made up, among other offices, of the National Criminal Attorney's Office (hereinafter "PNP"), which, as stipulated in Article 25 of the Regulations of the Organic Law of the Office of the Attorney General of the Republic^{40/} (Decree No. 19-2009, hereinafter "RLOPGR"), is the entity that represents "*the State; the public administration; its institutions, organs, offices; independent, decentralized, and autonomous entities; and enterprises of the State, municipality, and autonomous regions or organs dependent on any of them, in whatever criminal proceedings, matters, processes, or trials in which it considers itself a victim or an injured or interested party.*"

[84] Along these lines, Article 27 of the RLOMP establishes, among the functions of the PNP, the preliminary investigation of acts of a criminal nature and, as appropriate, the filing of complaints, issuance of summons, and participation as a victim or injured party in criminal investigation bodies for offenses within its jurisdiction, as well as representation of the State as provided by law when it is a victim or injured party in criminal proceedings. To perform these and the other tasks assigned to it by law, the PNP is made up of four specialized units, namely: the Anti-Corruption Unit (hereinafter "UAC"), the Unit against Economic Crime, the Unit against Organized Crime, and the Unit on International Criminal Matters and Human and Humanitarian Rights. The content, scope, and functions of the first three are governed by Agreement PGR-No. 05-2008.^{41/}

[85] As concerns the exercise of their functions in conjunction or concert with other agencies or authorities, the country under review indicates in its response^{42/} that the PGR "*in its capacity as the victim party when the State as a whole, or some of its institutions, have been affected by the commission of a criminal act ... may—in its capacity as a private person, without relinquishing its public nature—prosecute and therefore institute public criminal proceedings as does the Public Prosecution Service, either by adopting the MP charges or by bringing its own charges, as would any other victim.*^{43/} On this point it should be clarified that, as indicated in Article 564 of the Criminal Code currently in effect,^{44/} in the case of less serious offenses^{45/} the victim of the offense ... may bring a criminal action directly before the competent court, without having to exhaust administrative channels with the Public Prosecution Service; whereas in the case of offenses with serious penalties, the right of the victim of the crime to bring a criminal action depends on the ruling issued by the Public Prosecution Service within the time limits established by Articles 225 and 226 of the CPP ... (the prosecutorial body par excellence), which will make it possible to determine whether the victim will have to act personally as a direct individual accuser following the withdrawal of the Public Prosecution Service for the reasons set out in Articles 224 and 225 of the CPP." Similarly, as concerns investigations in which the Office of the Comptroller General (CGR) determines by means of audits the presumption of criminal liability for the commission of a criminal offense against public administration, by law the CGR must bring to the attention of the PGR and the Public Prosecution Service (MP), indiscriminately, the results, evidence, and conclusions of its audit, so that the prosecution bodies make take appropriate legal action in conformity with the current criminal system.

[86] In view of the foregoing, the country under review specifies in its response^{46/} that "*the Nicaraguan Criminal Justice System ... consists of a phase of preliminary investigation Said*

40. Available at: <http://goo.gl/1W4VNF>

41. Available at: <http://goo.gl/H2i1wh>

42. See Nicaragua's response to the questionnaire for the Fourth Round, pp. 13 and 14, *supra* note 8.

43. See Article 78 of the CPP.

44. Available at: <http://goo.gl/uekQUI>

45. See Article 24 of the Criminal Code.

46. See Nicaragua's response to the questionnaire for the Fourth Round, pp. 13 and 14, *supra* note 8.

investigation becomes the first step for the public prosecution bodies (Public Prosecution Service and Office of the Attorney General of the Republic) to take appropriate decisions on instituting criminal proceedings. In this connection, it must be borne in mind that, pursuant to the legal provisions contained in Articles 227 and 228 of the CPP, the preliminary investigation is incumbent on National Police officials, who are guided in their action by the criteria of lawfulness, scientific rigor, and logic in detecting and proving allegedly criminal acts ...”

[87] In this connection, in addition to the functions and powers that the Criminal Procedural System assigns to criminal justice system operators in the prevention, investigation, prosecution, and punishment of any criminal act, the country under review points out in its response that “*in light of the guidelines established by the Government of Reconciliation and National Unity (GRUN) in the ‘National Human Development Plan,’ it is wise to promote, as a strategic approach for fighting corruption, strengthening of the process of harmonization and coordination among the diverse State organs charged with eradicating the various criminal manifestations,*” and adds that “*within these parameters of the Nicaraguan State’s Criminal Policy, the Office of the Attorney General of the Republic, together with the senior officials of the National Police, the Public Prosecution Service, and the Office of the Comptroller General have been promoting the conclusion of Interagency Agreements that, through better coordination, call for lines of action to ensure a more efficient and effective approach to fighting public corruption, placing emphasis on interagency cooperation for the prevention, investigation, and prosecution of crimes against public administration.*”^{47/}

[88] As regards the manner in which they adopt their decisions, with an indication of whether there are various agencies with jurisdiction to do so and whether they are collegiate or single-person agencies, the PGR is an entity with operational autonomy. Its supreme authority is the Superior Directorate, consisting of the Attorney General and the Deputy Attorney General, in keeping with Article 4 of the LOPGR. Said Superior Directorate receives assistance from three consultative bodies that support the entity’s smooth operations and functioning, which, as established in Article 66 of the RLOPGR, are the Superior Council, the National Council, and the National Assembly of the PGR.

[89] The Superior Council is the highest-level consultative body for all matters considered important for the entity’s proper development and operations. It consists of National Attorneys whose functions and powers are granted by Article 68 of the RLOPGR. For its part, the National Council, pursuant to Article 69 of the same regulations, is the consultative and advisory body of the PGR and is made up of the Superior Directorate, which chairs it, the National Attorneys, Directors of Support Agencies, Attorneys of the Departments and Autonomous Regions, National Itinerant Attorneys, and Municipal Attorneys.

[90] As far as any appeals against the decisions adopted by the PGR are concerned, considering that this body comes under the Sectoral Steering Organ of the Presidency of the Republic, in keeping with the Law on Organization, Competence, and Procedures of the Executive Branch^{48/} (Law No. 290), the administrative remedies for review and appeal described in its Articles 48 to 54 are applicable, except that anything not provided for in that law on administrative procedure is governed instead by the provisions of the Law Governing Administrative Litigation^{49/} (Law No. 350).

[91] On the manner in which their senior officers are selected, pursuant to Article 4 of the LOPGR, the Attorney General and the Deputy Attorney General make up the Superior Directorate of the PGR,

47. Ibid. p.15.

48. Available at: <http://goo.gl/F9GyJQ>

49. Available at: <http://goo.gl/B5xpwg>

the highest-level managing body of the entity. The Attorney General is the senior executive official of the PGR. He has the rank of Minister of State and, in addition to the functions described in Article 12 of the LOPGR, is responsible for legal, judicial, and extra-judicial representation, as well as for administration of the entity. For his/her part, the Deputy Attorney General performs those functions assigned to him/her directly by the Attorney General and acts for him/her during absences and during temporary or definitive incapacity pending the appointment of a new Attorney General. In keeping with Articles 7 and 8 of the LOPGR, both positions require the same qualifications as those established by Article 161 of the Constitution for judges on the courts of justice. Candidates are appointed by the President of the Republic in accordance with Article 150.6 of the Constitution and must be ratified by a favorable vote of 60 percent of the total number of deputies in the National Assembly, in accordance with Article 138, paragraph 30, of the Constitution.

[92] Incumbents in the positions of Attorney General and Deputy Attorney General are subject to removal by the President of the Republic in accordance with Article 150.6 of the Constitution, or by dismissal by the National Assembly in accordance with Articles 138.4 of the Constitution and other applicable provisions of the Organic Law of the National Assembly (Law No. 606).

[93] With respect to the manner in which the human resources needed for the operations of the PGR are identified and how its personnel are selected, the PGR is governed by the provisions of the Civil Service and Administrative Career Law^{50/} (Law No. 476, hereinafter “LSCCA”), which *“in Articles 28, 78, 79, and 80 enshrines the principles of equality, merit, ability, and equity for entry to the Administrative Career and ensures the participation of officials, internal employees, and external candidates in the allocation of positions by means of a single process; in Articles 81, 82, and 83, respectively, establishes the general eligibility requirements for admission to the Administrative Career, the publication of vacancy announcements, and the content required in such announcements; and in Articles 15, 16, 17, 18, 19, 20, and 21 establishes the governing bodies of the Civil Service and defines the powers of each; and in Article 90 specifies mechanisms for appealing the results of the selection process.”*^{51/}

[94] For its part, the Regulations of the Civil Service and Administrative Career Law^{52/} (Executive Decree No. 87-2004) likewise establishes in Articles 52, 80, 81, and 84 the principles of merit, equality, ability, and equity for position allocation processes and *“in Articles 4, 87, 88, and 89, respectively, sets the eligibility requirements for entry into the Civil Service and for participation in the position allocation process, and regulates the publication and content of vacancy announcements; in Articles 9, 10, 11, 12, 23, 24, 25, 26, 27, 28, 29, 34, 35, 38, and 85 regulates the composition of the governing bodies of the Civil Service, their structure and organization, and the specific functions of some of their members; and in Articles 14, 15, 16, 17, 18, 19, 20, 21, 22, and 96 regulates the various appeals mechanisms and procedures available.”*^{53/}

[95] Without prejudice to the foregoing, the RLOPGR establishes in its Article 70 the qualifications to become a National, Municipal, Itinerant, Auxiliary, or Departmental or Autonomous Region Attorney. For their part, Articles 71 and 72 of the same law provide, respectively, for the procedure to

50. Available at: <http://goo.gl/RGT4MY>

51. See the Final Report on Implementation in the Republic of Nicaragua of the Convention Provisions Selected for Review in the Second Round, and on Follow-up to the Recommendations Formulated to that Country in the First Round, p. 3, *supra* note 25.

52. Available at: <http://goo.gl/KqqhdE>

53. See the Final Report on Implementation in the Republic of Nicaragua of the Convention Provisions Selected for Review in the Second Round, and on Follow-up to the Recommendations Formulated to that Country in the First Round, p. 3, *supra* note 25.

select and appoint them. In addition, Article 74 establishes the grounds for removal of all PGR personnel, the procedure for which is governed by the LSCCA and its Regulations.

[96] As concerns the existence of documents that describe the functions of PGR personnel, the country under review mentions in its response^{54/} that the entity has job manuals that describe the activities and responsibilities of each civil servant.

[97] With regard to training, according to the same response, “*the PGR has implemented the First Diploma Course in Legal Techniques of the State*”^{55/} and “*there are weekly or bimonthly training programs for staff in the different areas of the PGR, which include participation in specific modules of interest to the civil servants that, because of their posts or responsibilities, are in one way or other linked to the topic to be considered ...*,” specifying, in addition, the training courses and topics offered to PGR staff over the period December 2010 to March 2013.^{56/}

[98] For its part, the civil society organization “Civic Group for Ethics and Transparency” points out in its report that “*the institution’s website gives data for 2011. Four training courses were planned for the year; of those nine job training sessions were held for the Auxiliary Labor and Social Attorneys and Departmental Attorneys and departmental prosecutors, four of them in the first half of the year and five in the second half. Three more training courses were offered in 2011 than in 2010.*”^{57/}

[99] As concerns the existence of documented procedures for the performance of PGR tasks, or of manuals or guides dealing with those duties, it is apparent from the response of the country under review that the PGR, through the PNP, has been issuing by means of circulars approved by the Attorney General “*a large number of legal directives and guidelines to enable the Criminal Attorneys providing legal representation for the State to improve and strengthen their performance in situations that might arise in the course of investigations and judicial proceedings,*”^{58/} citing, for example, Agreement No. 70-2008, which approved the criminal prosecution policies of the PGR, and Agreement No. 05-2008, on the creation of Specialized Units against Organized Crime, Economic Crimes, and Corruption.

[100] On the implementation of modern systems or technologies for carrying out work, the country under review notes in its response, among other developments, the Computer-based System for Monitoring Criminal Cases (SISCAP), consisting of computerized management, control, and follow-

54. See Nicaragua’s response to the questionnaire for the Fourth Round, p. 44, *supra* note 8.

55. On this point, the Republic of Nicaragua states that in 2012-2013, the PGR conducted the First Postgraduate Course in Procedural Law and Juridical Techniques for the Defense of the State, which was passed by 34 Auxiliary Prosecutors and 3 members of the Nicaraguan Army. Under the Professionalization Plan for 2013-2014, a Second Postgraduate Course in Procedural Law and Juridical Techniques for the Defense of the State and Sound Public Administration is currently being conducted for 67 Auxiliary Prosecutors. Both the First and the Second Postgraduate Course include a module entitled Criminal Law, Law of Criminal Procedure, and International Cooperation. The Criminal Law module of the course involves study of two major chapters: offenses against the public administration (which include the criminal offenses characterized as such by the Inter-American Convention against Corruption) and organized crime offenses, which include drug trafficking and money laundering offenses. The Law of Criminal Procedure section includes the procedural tools and investigation techniques used for these kinds of offenses. The international cooperation module includes study of the Inter-American Convention against Corruption, the Inter-American Convention on Mutual Assistance in Criminal Matters, the United Nations Convention against Transnational Organized Crime and its Protocols, the United Nations Convention against Corruption, and other instruments.

56. See: Response of Nicaragua to the Fourth Round questionnaire, pp. 44, 93, and 94, *supra* note 8.

57. See the report presented by the organization “Civic Group for Ethics and Transparency,” p. 16, *supra* note 3.

58. See Nicaragua’s response to the questionnaire for the Fourth Round, p. 49, *supra* note 8.

up of the criminal cases processed by the PNP units, which is being implemented in the various departmental offices of the PGR.^{59/}

[101] As concerns actions taken in connection with institutional strengthening and quality improvement, the PGR adopted a Strategic Plan 2011-2014,^{60/} which sets forth, among other things, the main challenges posed in the interrelationship of the PGR and other actors involved in the judicial system and public administration and in the fulfillment of its role within that system, as well as a set of strategic guidelines to address said challenges.

[102] As regards the manner in which the PGR provides the general public with information about its objectives and functions and informs it of the procedures established for the performance of its functions, the entity has a Citizen Information Office^{61/} at its various sites which, according to the response of the country under review, “*provides citizens with the information and/or guidance they need concerning their requests irrespective of the matter to be addressed.*”^{62/}

[103] Likewise, the PGR has an official website, www.pgr.gob.ni, which, in addition to containing information on the legal framework governing the institution, structure, points of contact, etc., provides, inter alia, a link on the “perception of corruption,”^{63/} with information on the measurement cycles used for monitoring corrupt practices in the public service on the basis of the direct, everyday experiences of citizens in the country under review, as well as a link to information on the Program to Strengthen Sound Public Management and its Strategy,^{64/} intended to develop specific capacities and strengthen strategic partnerships for the prevention, detection, investigation, and prosecution of acts of corruption. This website also has a link for the online presentation of “pre-complaints”; however, the complainant must subsequently confirm said submission and present the complaint in person to the PN or the MP.

[104] It should be mentioned that the PGR also has a Facebook account and, since 2012, has been airing a weekly interactive radio program, “*La PGR Al Día*,” which, in addition to providing information on the functions, objectives, mission, and vision of the entity, its officials, and the heads of the different areas, offers help in responding to the complaints, claims, or concerns put forward by citizens through that program.

[105] With regard to mechanisms for internal control, as mentioned above, the disciplinary system in effect for PGR personnel is established in Articles 4 and 14 of the LOCPPE, as well as in Articles 47 to 66 of the LSCCA and Articles 14 to 22 of its Regulations, in addition to the legal provisions established in both the Code of Ethical Conduct for Executive Branch Personnel^{65/} (Executive Decree No. 35-2009) and the Code of Conduct for PGR Personnel. Moreover, the PGR has an Internal Auditing Unit,^{66/} which, among other responsibilities, is charged with implementation and enforcement of the legal, regulatory, and technical provisions for government auditing with a view to the sound administration and execution of the entity’s financial resources.

59. Ibid, p. 50.

60. Available at: <http://goo.gl/1hf6ts>

61. See: <http://www.pgr.gob.ni/index.php/areas-de-la-pgr/oficina-de-atencion-ciudadana>.

62. See Nicaragua’s response to the questionnaire for the Fourth Round, p. 60, *supra* nota 8.

63. See: <http://www.pgr.gob.ni/index.php/institucional/48-informe-integro-de-ciet>.

64. See: <http://www.pgr.gob.ni/index.php/pbgp>.

65. Available at: <http://goo.gl/ZETfZs>

66. See: <http://www.pgr.gob.ni/index.php/areas-de-la-pgr/auditoria>.

[106] In this connection, in its response the country under review indicates that, “*as part of the mechanisms for internal control adopted by the Attorney General of the Republic through Provisions 13 and 14 of the ‘Information System’ and the ‘PGR Management and Control Mechanisms,’ concrete processes and activities are being carried out that place emphasis on implementation of the rules of conduct and values of civil servants working in the institution.*”^{67/}

[107] As concerns the mechanisms for dealing with claims or allegations related to the pursuit of the objectives of the PGR and to the performance of its personnel, the country under review indicates in its response that the PGR provides boxes at its various sites around the country for complaints and suggestions, “*which are then reviewed and addressed directly by the Attorney General of the Republic, who, depending on the nature of the matter, decides on appropriate measures to resolve the concern the citizen expressed through the complaint and suggestion box.*”^{68/} Likewise, the PGR has a tool^{69/} on its website that enables the general public to make complaints or make suggestions online about the services provided by the PGR.

[108] With regard to the manner in which the budgetary resources needed for the operations of the PGR are ensured, Article 5 of the LOPGR provides that one of the Attorney General’s responsibilities is to draw up and approve the entity’s preliminary proposed budget and to present it to the President of the Republic for inclusion in the draft Annual General Budget Law of the Republic, to be adopted by the Assembly in accordance with the Financial Administration and Budgetary Regime Law^{70/} (Law No. 550, hereinafter “LAFRP”). In this connection, according to the information provided by the country under review in its response, the PGR budget has been increasing since 2008 “*as a reflection of the importance the Government of Reconciliation and National Unity (GRUN) has attached to the mission of the PGR and the contributions it has been making to the diverse matters it handles in favor of the population,*” which “*has made it possible to maximize institutional coverage and, as a corollary, citizen services at the national level, thus making a qualitative and quantitative leap in the quality and accessibility of services to the Nicaraguan people.*”^{71/}

[109] In addition, the PGR, as the body responsible for leading the “Anti-Corruption Fund,” now called the “Program to Strengthen Sound Public Management,” has also made important financial contributions aimed at strengthening its institutional capabilities in the fight against corruption.^{72/}

[110] With respect to coordination mechanisms for harmonizing its functions with those of other oversight agencies or public authorities, the PGR has signed interagency collaboration and coordination agreements to shore up and strengthen the interagency capacities of criminal justice system operators, such as the coordination agreement with the MP and the PN on investigation, prosecution, and recovery of assets derived from acts of corruption and related crimes and the agreement between the CGR, the MP, and the PGR on interagency collaboration among Citizen Complaint or Information Offices.

[111] Similarly, the country under review points out in its response^{73/} that, without prejudice to the coordination mechanisms the PGR has been implementing, the National Commission for Interagency

67. See Nicaragua’s response to the questionnaire for the Fourth Round, p. 85, *supra* note 8.

68. See Nicaragua’s response to the questionnaire for the Fourth Round, p. 65, *supra* note 8.

69. See: <http://www.pgr.gob.ni/index.php/quejas-o-sugerencias>.

70. Available at: <http://goo.gl/LzuNKi>

71. See Nicaragua’s response to the questionnaire for the Fourth Round, pp. 72 and 73, *supra* note 8.

72. *Ibid.*, pp. 74 to 76.

73. *Ibid.*, pp. 79 and 80.

Coordination of the Criminal Justice System of the Republic^{74/} was established in accordance with Articles 415, 416, and 417 of the CPP. Said commission is made up of the PGR, the MP, the CSJ, the PN, the National Assembly, and the Office of the Public Defender, among other institutions, for the purpose of fostering institutional interaction and the coherent and coordinated involvement of all criminal justice system operators and of coordinating and facilitating implementation of the criminal procedural reform system, effective training of the system's operators, and effective and efficient implementation of the State's criminal policies. Another aspect of interagency coordination highlighted by the State in its response^{75/} is related to the formalization of the National Anti-Corruption Policy through the "National Strategy for the Integral Development of Sound Public Management,"^{76/} whose implementation brings together diverse sectors of the public administration and civil society, including the PGR, in a National Commission.

[112] Finally, as regards accountability mechanisms applicable to the performance of the duties of the PGR, the country under review indicates in its response^{77/} that the PGR Press Office collects information from each area on results of cases, trials, judgments, amparo proceedings, State debtors, and lawsuits, among other things, for subsequent publication on the institution's website. The Planning and Follow-up Area of the PGR, for its part, consolidates the information that it compiles each month from the substantive areas, specialties, departmental delegations, and support bodies of the PGR, for consideration by the Attorney General and for input and information on implementation and achievement by PGR personnel of the objectives set in the Annual Operating Plan (POA). This consolidated monthly report is also sent to the President of the Republic for incorporation into the "Information System of the Government of Reconciliation and National Unity" (SIGRUN), so as to measure at national level the implementation of the goals and indicators of the State entities, among them the PGR.

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

[113] The PGR has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were described in brief in section 2.1 of this report. However, the Committee considers it timely to make a number of observations in relation thereto:

[114] First, although the PGR has been promoting interagency coordination and cooperation measures and mechanisms aimed at the effective functioning of the Nicaraguan criminal justice system, as described in the preceding section, the Committee deems it advisable for the country under review to continue promoting, developing, and strengthening, as appropriate, ties of collaboration and synergies between the PGR and the other bodies and actors involved in said system, in the investigation and prosecution of criminal matters in which the State is a victim or injured party (see recommendation 2.4.1. in Chapter II of this report).

[115] Second, as concerns the system described in the preceding section regarding how human resources are identified and selected, the Committee, on the basis of the information at its disposal and that provided by the country under review in its response, will not make any recommendations in

74. See: <http://www.poderjudicial.gob.ni/comipe2013/default.asp>

75. Nicaragua's response to the questionnaire for the Fourth Round, pp. 79 and 80, *supra* note 8.

76. Available at: <http://goo.gl/t1rLmQ>

77. See Nicaragua's response to the questionnaire for the Fourth Round, p. 85, *supra* note 8.

this respect but will reiterate those contained in the Second Round report,^{78/} bearing in mind that, in relation to these matters, the PGR is subject to the system established in the LSCCA and its Regulations, which came under detailed review by the Committee in that round.

[116] Third, as regards the existence of documents that describe the functions of PGR personnel, the Committee takes note of the comments made by the country under review in its response^{79/} to the effect that the PGR has job manuals that describe the activities and responsibilities of each civil servant. Nonetheless, based on the information available to it, the Committee deems it advisable for the country under review to consider taking appropriate measures to make those manuals accessible for public consultation and information, for example, by including a link on the institution's website to this end (see recommendation 2.4.2. in Chapter II of this report).

[117] Fourth, with regard to training, the Committee takes note of the information provided by both the country under review and the civil society organization "Civic Group for Ethics and Transparency," described in the preceding section. However, on the basis of that information, it is deemed advisable that the plan that the PGR is carrying out also provide for training, awareness building, and dissemination regarding standards of conduct and ethical values that govern the agency's personnel (see recommendation 2.4.3. in Chapter II of this report).

[118] Fifth, the Committee recognizes the work carried out by the Citizen Information Office. However, it also deems it advisable for the country under review to consider including on the PGR website information to apprise the general public of the procedures established for the performance of its functions, and to give them guidance about how to carry out proceedings before the PGR^{80/} (see recommendation 2.4.4. in Chapter II of this report).

[119] Sixth, the Committee acknowledges the set of measures taken by the PGR to achieve the objectives set in its Strategic Plan for the Four-Year Period 2007-2010,^{81/} primarily those related to the fight against corruption waged by the PNP. In this regard, taking into account the scope of the strategic guidelines the PGR establishes in said document, many of which refer to its sphere of competence and specialization with regard to transparency and the fight against corruption, the Committee will make a recommendation that necessary measures be adopted to continue promoting the effective implementation of this Strategic Plan (see recommendation 2.4.5. in Chapter II of this report).

[120] In addition to the foregoing, from the information provided by the country under review in its response, the Committee acknowledges the existence of the Computer-based System for Criminal Case Follow-up (SISCAP) as a technological tool to facilitate the work of the PGR, as well as the project currently being executed by the entity on implementation of a modern technology for interconnecting with its departmental sites through a single expanded network. In this regard, the Committee emphasizes the importance of having the PGR continue to develop and promote computer-based projects to complement existing ones, taking into account the importance of technology in facilitating, *inter alia*, its efforts at interagency coordination and cooperation and at the

78. See the Final Report on Implementation in the Republic of Nicaragua of the Convention Provisions Selected for Review in the Second Round, and on Follow-up to the Recommendations Formulated to that Country in the First Round, pp. 5 to 7 and 22 to 24, *supra* note 25.

79. See Nicaragua's response to the questionnaire for the Fourth Round, p. 44, *supra* note 8.

80. On this point, the Republic of Nicaragua states that visitors to the PGR's official web site may find links with information on the procedures and requirements for certain formalities that have to be conducted with the PGR.

81. See the Strategic Plan 2011-2014 of the PGR, pp. 4 to 8, *supra* note 60.

prevention and detection of corrupt practices. The Committee will make a recommendation in this regard (see recommendation 2.4.6. in Chapter II of this report).

[121] Seventh, as concerns the accountability mechanisms applicable to the institution's performance of its duties, the information provided by the country under review in its response is noted. However, on the basis of that information, the Committee notes that the information compiled by the Planning and Follow-up Area of the different services of the PGR, which is later incorporated into the "Information System of the Government of Reconciliation and National Unity" (SIGRUN), is restricted. In this connection, the Committee deems it advisable for the country under review to consider adopting the provisions it considers pertinent aimed at establishing, within the PGR, additional public accountability mechanisms on the performance of its functions, which contain, among other things, procedures for ensuring citizen participation (see recommendation 2.4.7. in Chapter II of this report).

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

[122] The response to the questionnaire of the country under review yielded information on the PGR, notably the following:

[123] In the first place, the response^{82/} to the questionnaire by the country under review describes the actions being taken by the PGR to prevent corrupt practices, such as training courses, seminars, workshops, and conferences on the prevention and prosecution of illicit acts of corruption during the period from December 2010 to March 2013, including the campaign "*With Citizen Participation, Zero Corruption,*" waged in 2007, and the "*Certificate Program on Legal Procedures for Defense of the State,*" now being offered to attorneys charged with representing the State.

[124] In this regard, the Committee considers that the foregoing information demonstrates that the PGR has taken measures to prevent acts of corruption, in fulfillment of its functions in this regard. However, given the responsibility entrusted to it by the LOPGR to monitor that the actions of civil servants in the performance of their functions are lawful, the Committee, with a view to helping the PGR discharge this responsibility, deems it advisable for consideration to be given to continuing to update and implement new policies and/or campaigns and to implementing new ones that enable not only civil servants but the public at large to develop a mindset focused on prevention, so as to ensure transparency and deter acts of corruption (see recommendation 2.4.8. in Chapter II of this report).

[125] In the second place, concerning the work carried out by the PGR, through the PNP, on the prosecution of those forms of criminal conduct perpetrated by current or former public officials, as well as cases in which the statute of limitations for criminal action was declared to have run its course, the country under review^{83/} provides the following data in its report:

Type of Offense	COMPLAINTS Filed		CHARGES Filed	
	Year	Total	Year	Total

82. See Nicaragua's response to the questionnaire for the Fourth Round, pp. 92 and 93^{supra} note 8.

83. Ibid, pp. 98, 99, and 102.

	08	09	10	11	12		08	09	10	11	12	
Embezzlement	1	9	7	3	4	24	1	12	7	14	9	43
Misappropriation of public funds	2	3	2	1	2	10	1	3	-	1	-	5
Breach of trust in relation to document custody	-	1	1	2	-	4	-	-	-	-	-	-
Fraud	3	3	10	2	7	28	-	2	2	2	-	6
Bribery of a public official	-	-	2	2	-	4	-	1	1	2	2	6
Bribery of an individual	-	-	1	4	1	6	-	1	2	3	-	6
Usurpation of public powers	-	-	1	2	-	3	-	-	-	-	-	-
Abuse of authority	-	2	-	2	1	5	-	-	-	-	-	-
Total	6	18	24	21	15	84	2	19	12	22	11	66

Type of Offense	STATUTE OF LIMITATIONS for Criminal Proceedings ^{84/}				
	Year				Total
	09	10	11	12	
Embezzlement	-	1	-	-	1
Misappropriation of public funds	2	-	-	1	3
Fraud	-	1	3	-	4
Total	2	2	3	1	8

[126] Based on the foregoing, the Committee notes that the PGR has processed and filed charges for the offenses indicated. However, the Committee deems it timely to make the following considerations:

[127] – Bearing in mind that the information supplied by the country under review provides figures on the complaints and charges processed by the PGR for offenses committed exclusively by current or former public officials in the years cited, the Committee does not identify the total number of investigations begun in each of these years for all acts of corruption established as offenses in the criminal justice system that affect the interests and/or property of the State, with an indication of how many investigations remain ongoing, how many are at a stage that allows a decision to be reached on the merits of the case under investigation, how many have been referred to the competent body in order for such a decision to be taken, and whether those decisions led to convictions or acquittals. The Committee will therefore formulate a recommendation in this regard (see recommendation 2.4.9. in Chapter II of this report).

84. On this point, the Republic of Nicaragua states that this information refers to cases that had taken place when the previous Criminal Code was in force, under which the right to bring criminal proceedings in cases of publicly actionable offenses prescribed in five years. However, under the new Criminal Code in force since January 2008 (Article 131), “criminal action for the offenses referred to in Article 16 of this Code shall in no case prescribe.” Article 16 of the Criminal Code lists offenses to which the universality principle applies and which, pursuant to Article 131 are not subject to statute of limitations. They include, in subparagraph (n), “any other offenses that may be prosecuted in Nicaragua under international instruments that the country has ratified.” According to that provision, all criminal offenses established not only in the Inter-American Convention against Corruption, but also in the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime, cannot prescribe.

[128] – It is likewise noted that the PGR website publishes in its “news archive” section diverse news items with data on the achievements and results of the various areas of the PGR in the performance of its functions. In this respect, the Committee will formulate a recommendation that is aimed at strengthening the preparation, maintenance, and posting of PGR statistical data on the performance of its functions (see recommendation 2.4.10. in Chapter II of this report).

[129] Third, in its response^{85/} to the questionnaire, the country under review mentions the claims brought by the PGR as a result of the decisions issued by the CGR that establish the civil liability of current and former civil servants during the period between January 2008 and the first quarter of 2013, in which 102 claims for payment are ongoing.

[130] The table below shows, in a succinct, descriptive format, the claims brought by the PGR as a result of the civil liability established by the CGR through fines against current and former public officials:

Court Cases	Year						Total
	2008	2009	2010	2011	2012	2013	
Claims brought pending resolution	3	14	39	0	10	4	70
With rulings in favor of the State approving the claims for payment brought by the PGR	1	5	12	1	0	0	19
With rulings against the State rejecting the claims for payment brought by the PGR	0	1	1	0	0	0	2
Settled by means of Payment Agreements between the officials and the PGR	2	1	4	0	1	1	9
Closed because the fines were paid before the PGR instituted proceedings	0	0	2	0	0	0	2
Total	6	21	58	1	11	5	102

[131] Likewise, according to the information the State provided in its response, during the period 2008-2013, the PGR obtained 19 final rulings requiring payment of fines levied by the CGR, for the following amounts payable to the State: C\$3,837,748.95 and \$US\$1,445,239.72; according to the State, “*the judgment for collection of these amounts and their deposit into the public treasury of the nation is currently being executed,*” and “*notwithstanding the foregoing, with regard to the period from 2008 to May 13, 2013, as a result of court proceedings and agreements on the payment of the fines levied by the CGR, the PGR has recorded the following amounts^{86/} as credits paid and deposited in the Treasury of the Nation:*”

Year	Amount	
	Córdobas (\$C)	Dollars (\$US)

85. See Nicaragua’s response to the questionnaire for the Fourth Round, pp. 96 and 97, *supra* note 8.

86. *Ibid.*, pp. 105 and 106.

2008	144,323.54	392.35
2009	100,902.05	480.93
2010	164,443.90	4,048.41
2011	142,115.32	21,641.29
2012	300,805.92	8,496.01
2013*	74,923.35	3,081.53
Total	927,514.08	38,140.52
<i>* As of May 13, 2013.</i>		

[132] The Committee considers that this information shows that the PGR has carried out its duties to punish corrupt practices that trigger financial liability, in fulfillment of the power specifically granted to it under Article 16 of the RLOPGR.

[133] Last, the Committee considers it advisable to prepare statistical data on disciplinary proceedings within the PGR in keeping with the applicable provisions of the LSCCA and its Regulations, among other norms, that include, among other things, the total number of cases investigated, the number of decisions adopted in connection with them, the number of those decisions in which responsibilities were established or penalties imposed, the number of those decisions in which no responsibilities were found or acquittals given, and the number of those decisions involving the extinction of the punishment or responsibility because of the triggering of the statute of limitations (see recommendation 2.4.11. in Chapter II of this report).

2.4. Conclusions and recommendations

[134] Based on the comprehensive review conducted with respect to the PGR in the foregoing sections, the Committee offers the following conclusions and recommendations:

[135] The Republic of Nicaragua has considered and adopted measures intended to maintain and strengthen the PGR as an oversight body, as described in Chapter II, section 2, of this report.

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

- 2.4.1. Continue to promote, develop, and strengthen, as appropriate, ties of collaboration and synergies between the PGR and the other entities and actors involved in the Nicaraguan criminal justice system (see Chapter II, section 2.2, of this report).
- 2.4.2. Adopt measures deemed appropriate to make documents that describe the functions of the PGR personnel accessible for public consultation and information, for example, by including a link on the institution's website to this end (see Chapter II, section 2.2, of this report).
- 2.4.3. Implement training, awareness building, and dissemination activities regarding the standards of conduct and ethical values that govern PGR personnel (see Chapter II, section 2.2, of this report).
- 2.4.4. Complement the publication, through the website of the PGR, of information to apprise the public of the procedures established for the performance of its functions

and to be given guidance about how to carry out proceedings before it (see Chapter II, section 2.2, of this report).

- 2.4.5. Adopt measures deemed necessary to continue promoting the effective implementation of the Strategic Plan 2011-2014 of the PGR (see Chapter II, section 2.2, of this report).
- 2.4.6. Develop and promote computer-based projects to complement existing ones in order to facilitate, inter alia, the efforts of the PGR at interagency coordination and cooperation as well as at the prevention and detection of corrupt practices (see Chapter II, section 2.2, of this report).
- 2.4.7. Adopt appropriate provisions aimed at establishing, within the PGR, additional public accountability mechanisms on the performance of its functions, which contain, among other things, procedures for allowing public scrutiny (see Chapter II, section 2.2, of this report).
- 2.4.8. Promote, within the PGR, policies and/or campaigns, in addition to those that already exist, to enable civil servants and the public at large to develop a mindset focused on prevention, so as to ensure transparency and deter acts of corruption (see Chapter II, section 2.3, of this report).
- 2.4.9. Develop statistical data on investigations conducted by the PGR for all offenses that affect the interests and/or property of the State in order to know how many investigations remain ongoing, how many are at a stage that allows a decision to be reached on the merits of the case under investigation, how many have been referred to the competent body in order for such a decision to be taken, and whether those decisions led to convictions or acquittals. in order to identify challenges and recommend corrective measures (see Chapter II, section 2.3, of this report).
- 2.4.10. Strengthen the preparation, maintenance, and posting on the institution's website of PGR statistical data on the performance of its functions (see Chapter II, section 2.3, of this report).
- 2.4.11. Prepare statistical data on the disciplinary procedures followed within the PGR in keeping with the applicable provisions of the LSCCA and its Regulations that include, among other things, the total number of cases investigated, the number of decisions adopted in connection with them, the number of those decisions in which responsibilities were established or penalties imposed, the number of those decisions in which no responsibilities were found or acquittals given, and the number of those decisions involving the extinction of the punishment or responsibility because of the triggering of the statute of limitations, in order to identify challenges and recommend corrective measures (see Chapter II, section 2.3, of this report).

3. NATIONAL POLICE

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

[137]The National Police (PN) has a set of provisions in its legal framework and other measures concerning, among other matters, the following:

[138]As established in Article 97 of the Constitution and Article 1 of the National Police Law and the Amendments thereto^{87/} (Law No. 228, hereinafter “LPN”), the PN is a civil, professional, apolitical, non-partisan, subordinate, and non-deliberative body. The State’s only police force, its mission is to protect the lives of people and ensure their safety and security and the free exercise of citizens’ rights and freedoms. The PN is also responsible for preventing and prosecuting crime; maintaining public order and internal social harmony; ensuring respect for, and protection of, State and individually owned assets; and providing necessary assistance to the judiciary and to other officials authorized by law to request it to carry out their functions.

[139]Likewise, Article 2 of the LPN provides that the PN is responsible for all police activity, including that carried out with their chiefs, officers, and appropriate personnel, organized under a single chain of command. Article 3 of said law, for its part, establishes as functions of the PN, inter alia, implementation and enforcement of the law and of decisions of court officials; investigation of crimes against public order and, when its intervention is necessary, of privately actionable offenses; and the receipt of complaints about misdemeanors or crimes and their submission to the competent body; as well as the prevention of criminal acts through research on, and planning and execution of, crime prevention methods and procedures.

[140]According to the organizational structure described in Article 8 of the LPN as well as the information provided by the country in its response,^{88/} the PN has a Judicial Assistance Directorate to assist it in carrying out its crime prevention, detection, and investigation functions. Said Directorate comprises the Special Crimes Department, responsible for prosecuting and investigating crimes against public administration, and the Economic Investigations Directorate, whose specialty is intelligence work to identify the possible commission of economic, tax, and customs-related crimes, as well as money laundering. It bears mentioning that in December 2001, by resolution 003/02, the PN established the Anti-Corruption Department as the unit specialized in intelligence on crimes against public administration, as well as the Financial Intelligence and Analysis Department, entrusted with gathering and submitting expert evidence and with following up on and examining reports of suspicious operations involving the laundering of money or of the proceeds of any type of criminal activity, including that committed by officials and/or civil servants.

[141]As concerns the manner in which the PN adopts its decisions, Article 5 of the LPN stipulates that PN members shall, in the performance of their functions, act in compliance with the fundamental principles established in said law, professional standards, and their status as civil servants, and especially with respect for human rights. To these ends, according to the information provided by the country under review in its response,^{89/} the police units of the PN report to the General Directorate, which assigns matters to the appropriate Deputy General Directorate within its purview. Similarly, as regards rulings on appeals against decisions of the PN, brought either internally or with other external agencies or authorities, said rulings are governed by the remedy and procedure system set up by, and implemented in conformity with, Articles 39 to 46 of the LOCPPE and Articles 26 and 27 of the

87. Available at: <http://goo.gl/uxavVY>

88. See Nicaragua’s response to the questionnaire for the Fourth Round, p. 3, *supra* note 8.

89. *Ibid.*, pp. 24 and 25.

Regulations of the National Police Law and the Amendments thereto^{90/} (Executive Decree No. 26/96, hereinafter “RLPN”). Once administrative channels have been exhausted, as appropriate, the injured party may have recourse to amparo or to the remedies provided in the Law Governing Administrative Litigation (Law No. 350).

[142] Pursuant to Chapter V of the LPN, National Headquarters is the managing body of the PN. It consists of the Director General, who is in charge of command, management, and administration of the institution as well as other duties and responsibilities envisaged in Article 16 of the LPN and Article 3 of its Regulations; three Deputy Directors General, who are responsible for the investigation, prevention, and management areas; and the Inspector General. It also bears mentioning that the PN is subject to the civil authority exercised by the President of the Republic, as the Supreme Chief of the PN, through the Minister of Government, who directs, organizes, coordinates, and supervises the PN through the General Directorate, pursuant to the applicable provisions of the LPN and the LOCPPE.

[143] Along these lines, in keeping with Article 80 of the LPN and Article 229 of its Regulations, the Director General of the PN is appointed by the President of the Republic from among National Headquarters personnel holding the rank of Commissioner General or higher. Pursuant to Article 88, paragraph 1, of said law, the Director General shall serve in the post for five years, after which time he/she shall be separated from service. For their part, Article 81 of the LPN and Article 230 of its Regulations establish that the Deputy Directors General and the Inspector General are appointed by the Minister of Government, on the proposal of the Director General, from among members with the rank of Senior Commissioner or Commissioner General. They serve for renewable five-year terms.

[144] As concerns the agencies authorized to hold them responsible for their actions and decide on their continued tenure in those positions, Article 89 of the LPN establishes that the President of the Republic may dismiss the Director General for insubordination, political campaigning within or outside the institution, holding a public post of a civil nature, having been convicted by final judgment of an offense carrying more than a misdemeanor penalty, and/or physical or mental impairment declared in accordance with the law.

[145] As regards the manner in which the human resources needed for the operations of the PN are identified and how its personnel are selected, Articles 49 to 53 of the LPN establish the Police Career System, based on criteria of professionalism and effectiveness, as well as on the Government’s obligation to promote, through the Ministry of Government, the best possible conditions for the human, social, and professional advancement of PN members, in keeping with the principles of objectivity, equal opportunity, merit, and ability. Said members are subject, in work-related matters, to the LPN, its Regulations, and the general personnel policies of the Ministry of Government, as well as the special personnel policies of the PN, approved by the Director General.

[146] Similarly, pursuant to Article 70 of the LPN and Articles 149 and 237 of its Regulations, personnel are selected by means of public vacancy announcements and on the basis of the qualifications approved by the Police Academy, with candidates obliged to possess the minimum requirements set out in Article 70 of the LPN and Article 235 of its Regulations, among other applicable provisions.

[147] Regarding the system for holding its personnel responsible for their actions, Articles 54 to 56 of the LPN establish that the PN members are personally and directly responsible for their actions in the

90. Available at: <http://goo.gl/ADS6tk>

line of duty and, when they have violated fundamental rules of conduct, they are subject to the disciplinary regime or to the competent court, depending on the misdemeanor or crime committed. Said system is laid out in constitutional rules, the Code of Ethical Conduct for Executive Branch Personnel^{91/} (Executive Decree 35-2009), the National Police Ethics Regulations^{92/} (Ministerial Agreement No. 069-2000), and the new Disciplinary Regulations of the PN^{93/} (Decree 51/2012).

[148] With respect to the existence of manuals or other documents that describe the functions of PN personnel, the country under review notes in its response^{94/} that *“the PN has organizational and operational manuals, national police specialization procedural manuals, technical internal control norms issued by the Office of the Comptroller General of the Republic, and institutional policy manuals.”*

[149] In so far as training is concerned, the PN has the “Walter Mendoza Martínez” Police Academy,^{95/} which, pursuant to Article 142 of the RLPN, *“serves as the Institute of Higher Studies of the National Police, the governing body of the Police Educational System. Its role is to organize, plan, conduct, coordinate, and monitor professional training and skills development for police recruits and active-duty police officers as well as for auxiliary forces, through comprehensive, specialized, scientific, and humanistic plans and programs.”* In keeping with Articles 147 to 152 of said regulations, the Police Educational System consists of the following subsystems: training, promotion and skills development, and continuing education.

[150] With regard to the existence of documented procedures for performing its tasks, or of manuals or guides thereon, as well as to the implementation of systems or modern technologies to facilitate its work, the country under review points out in its response^{96/} that *“procedural manuals exist to help the specialized areas of Nicaragua’s PN carry out their work. At the same time, computer-based systems are used to expedite information processing, for example, SIRCOP (Personnel Registration and Monitoring System), which is administered by the Personnel Division to keep track of and follow up on police officers’ careers, and the SAIP (Automated Police Investigation System), administered by the Judicial Assistance Directorate. Moreover, the PN uses automated systems of international agencies and organizations, primarily those pertaining to efforts to combat transnational organized crime.”*

[151] With regard to the implementation of institutional strengthening or quality improvement actions, according to the information the Committee had at its disposal, the PN has a Development, Programs, and Projects Division,^{97/} which is responsible for formulating, managing, administering, and following up on programs and projects financed by external cooperation, public investments, and loans that deal with police matters related to the development and institutional strengthening of the PN. Noteworthy among them is the project “Transparency and Integrity in the National Police,”^{98/} financed by the German Agency for International Cooperation (GIZ, from its initials in German).

[152] As concerns the manner in which the general public is provided with information about the objectives and functions of the PN, is informed of the procedures established for the performance of

91. Available at: <http://goo.gl/6VzDtn>

92. Available at: <http://goo.gl/uZj8Gr>

93. Available at: <http://goo.gl/z4qTXA>

94. See Nicaragua’s response to the questionnaire for the Fourth Round, p. 44, *supra* note 8.

95. See: <http://www.edudis-policia.edu.ni>.

96. See Nicaragua’s response to the questionnaire for the Fourth Round, p. 44, *supra* note 8.

97. See: <http://pndivisiondesarrollo.wikispaces.com/home>.

98. See: <http://www.policia.gob.ni/webasuntos/proyectos.html>.

its functions, and is given guidance about how to carry out proceedings before it, the PN has, first, an official website, www.policia.gob.ni, which, in addition to providing general information about the institution, has the link www.policia.gob.ni/servi.html, whereby the public may have access to and be informed of the requirements for obtaining driver's licenses, carrying weapons, and obtaining certificates of good conduct, among other things. The PN website also provides a link to the Police Information Documentation Center^{99/} (CEDOC), which provides information on various aspects of national and international police work.

[153] Moreover, according to the information provided by the country under review in its response,^{100/} the PN also has print materials and radio and TV spots (*Visión Policial*) that give the general public access to a certain type of data on crime and violence. Further, it has Facebook and YouTube social network accounts on which it posts press notes, press releases, and management reports, among other things.

[154] In its response,^{101/} the country under review also indicates that, in the framework of the Proactive Community Police Model,^{102/} “*included among its subsystems is police planning with the active participation of the different civil society and organized community sectors, thus making it possible to identify and address the principal citizen security problems, on the basis of the principle of shared responsibility. This is a systematic self-sustaining process that allows for citizen participation in social control and sound police management.*” Likewise and in compliance with the National Strategy for the Integral Development of Sound Public Management, the PN has installed 39 complaint and suggestion boxes in some of the country's districts.^{103/}

[155] With regard to mechanisms for internal control, as mentioned earlier, the PN has an Inspector General who, pursuant to Article 19 of the LPN, reports directly to the Director General. One of the Inspector General's duties is to ensure faithful compliance with the Constitution, laws, regulations, and other legal provisions affecting the police, ensuring that any infractions committed by its members are addressed swiftly and fairly; conduct inspections of the various PN units to observe their operations and ascertain the good performance of their members; protect the institution's positive image through necessary investigations in response to complaints submitted by officials or individuals about police conduct or about violations by PN members of rights and guarantees embodied in the Constitution; and monitor compliance with the Director General's instructions and orders, among other responsibilities.

[156] The PN also has an Internal Affairs Division,^{104/} which, in accordance with Article 31 of the LPN, is charged with investigating complaints made by officials and/or individuals about the conduct of PN members. Articles 160, 161, and 162 of said law stipulate that this division is responsible for investigating said complaints, issuing conclusions, and deciding on appropriate measures within its sphere of competence, summoning citizens involved as witnesses or key players, as well as for informing the general public of the results of the investigations and the measures applied, as appropriate.

99. See: <http://www.policia.gob.ni/cedoc>.

100. See Nicaragua's response to the questionnaire for the Fourth Round, p. 60, *supra* note 8.

101. *Ibidem*.

102. See: <http://www.policia.gob.ni/cedoc/sector/revistas/sistematizacion.pdf>.

103. On this point, the Republic of Nicaragua states that effectiveness of its Police Model stems from the Citizen Security Strategy pursued by the Government of Reconciliation and National Unity, which was raised to the rank of a constitutional precept in the recent amendments to the Constitution of the Republic adopted by the National Assembly.

104. See: <http://www.policia.gob.ni/webasuntos/asuntosinternos.html>.

[157] In this connection, it should be mentioned that the PN website provides a link^{105/} that enables the general public to file complaints when they consider that their rights have been violated as a result of the excessive use of force or unacceptable conduct by the PN or when they have discovered an act of corruption.

[158] With respect to the manner in which the budgetary resources needed for the operations of the PN are ensured, pursuant to Articles 100 to 103 of the LPN, the financial resources earmarked for the PN in the General Budget of the Republic are administered by the PN through its administrative and financial support bodies, under the supervision and control of the Ministry of Government. The PN has a budget line item for its operations, as established in the LAFRP, which sets out the method of formulating, recording, executing, and subsequently accounting for each of the resources the PN has at its disposal, irrespective of the sources of financing.

[159] As regards coordination mechanisms for harmonizing the functions of the PN with those of other oversight agencies or public authorities and for securing the support of other authorities and the public for full compliance with its duties, as mentioned earlier with respect to the Public Prosecution Service (MP) and the Office of the Attorney General (PGR), the PN has signed conventions or agreements on collaboration and cooperation with other public entities for the detection, prevention, investigation, and punishment of crimes against public administration. Noteworthy among them is the “Agreement between the MP, PN, and PGR on Investigation, Prosecution, and Recovery of Assets Derived from Acts of Corruption and Related Crimes.” It also participates in the National Commission for Interagency Coordination of the Criminal Justice System of the Republic, described in section 2.1 of this report.

[160] Lastly, as concerns accountability mechanisms applicable to the performance of its duties and the way in which the information needed for this is gathered and processed, in its response^{106/} the country under review refers to an annual management report of National Headquarters to the President of the Republic and to the testimony of national Heads of Delegations and Specialized Areas. With regard to how information is gathered, it is stated in the same response^{107/} that *“this is done through the Police Information System (SIPOL) and the police emergency centers that operate at the national level under the direction of the National Executive Secretariat, the entity charged with receiving, assessing, planning, organizing, classifying, providing advice on, and processing information with a view to helping National Headquarters reach decisions, as well as with receiving and safeguarding the documentation the police receives or dispatches.”*

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

[161] The PN has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were described in brief in section 3.1 of this report. However, the Committee considers it timely to make a number of observations in relation thereto:

[162] First, based on the information it had at its disposal, the Committee also notes the existence of other bodies of rules and measures that it deems complement the provisions of the LPN and its Regulations in the area of human services, such as recruitment strategies, personnel policies of the

105. See: <http://www.policia.gob.ni/webasuntos/denuncia.html>.

106. See Nicaragua’s response to the questionnaire for the Fourth Round, p. 84, *supra* note 8.

107. *Ibidem*.

PN, and the Manual on the Police Career System, Officer Applications for Vacant Posts, and Courses (Provision No. 020/04), to cite just a few, which the Committee did not determine were available for consultation on the PN website. It will therefore make a recommendation in this regard (see recommendation 3.4.1. in Chapter II of this report).

[163]Second, although the country under review indicates in its response^{108/} that the PN has documents that describe the functions of its personnel, the Committee, from the information it had available, is unable to determine the existence of specific manuals related, inter alia, to the functions of personnel in the Anti-Corruption Department who investigate intelligence on crimes of corruption and against public administration. In this respect, the Committee will formulate a recommendation that the necessary measures be taken to ensure that the PN has such manuals (see recommendation 3.4.2. in Chapter II of this report).

[164]Third, based on the information at its disposal, the Committee is unable to determine whether documented procedures, manuals, or guides exist on the process of investigating acts of corruption and crimes against public administration. Accordingly, the Committee will make a recommendation that the necessary measures be adopted so that the PN has said documents and, as appropriate, they are posted on its website^{109/} (see recommendation 3.4.3. in Chapter II of this report).

[165] Fourth, the Committee will formulate a recommendation based on the comment made by the country under review in its response,^{110/} to the effect that “... *there is a need for technological resources and for replacement of computer, media, transportation, and software design equipment, inter alia, that are compatible with service demands, new scenarios, and complex forms of crimes faced by the police force*” (see recommendation 3.4.4. in Chapter II of this report).

[166]The Committee will make another recommendation along these lines, based on the statement made by the country under review in its response^{111/} that “*it is important to underscore the concern of the Government of Reconciliation and National Unity (GRUN) regarding the allocation of human, technical, and material resources for citizen security in the midst of the country’s financial difficulties*” (see recommendation 3.4.5. in Chapter II of this report).

[167]Lastly, as concerns accountability mechanisms applicable to the performance of the duties of the PN, the Committee takes note of the related information provided by the country under review in its response. However, based on that information, the Committee deems it advisable for the country under review to consider adopting measures it deems appropriate to establish, within the PN, public accountability mechanisms applicable to the performance of its duties, consisting, inter alia, of procedures allowing for citizen participation (see recommendation 3.4.6. in Chapter II of this report).

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

108. See Nicaragua’s response to the questionnaire for the Fourth Round, p. 44, *supra* note 8.

109. On this point, the Republic of Nicaragua states that the PN adopted and, by means of Provision No. 014-2012 of the Director General of the National Police, put into effect the Manual of Procedures for Police Investigation of Criminal Offenses and Misdemeanors. This manual contains a section on the methodology for Investigation of Offenses against Public Administration, which is obligatory reading and serves as the basis for the plans and programs of the corresponding courses of the Police Academy and the Ongoing Training System. It is available at: http://www.oas.org/juridico/spanish/mesicic4_nic.htm

110. See Nicaragua’s response to the questionnaire for the Fourth Round, p. 106, *supra* note 8.

111. *Ibidem*.

[168]The response to the questionnaire of the country under review yielded information on the PN, notably the following:

[169]First, the response^{112/} to the questionnaire of the country under review describes the actions being taken by the PN to prevent corrupt practices, such as the 797 operational site visits made at national level to different state institutions, mayor’s offices, and decentralized entities, as well as the “37 special visits to different departmental units to obtain information on cases of wrongful practices, examine police treatment, ascertain the current situation of persons investigated earlier, and arrange for visits with various local justice operators to help streamline procedures for crimes committed by officials and civil servants. It was thus possible to ascertain in contacts with institutions, mayor’s offices, and decentralized entities that the areas considered to be most vulnerable to the commission of wrongful practices were those involving procurement, collections, the issuance of permits, supervision, and storage facilities.”

[170]In this regard, the Committee considers that the information above demonstrates that the PN has taken certain measures to prevent acts of corruption. Nonetheless, taking into account the powers the LPN grants to the PN regarding crime prevention, the Committee deems it advisable for the country under review, through the PN, to consider, among other measures, mounting campaigns aimed at preventing corrupt practices, disseminating the consequences of such practices, promoting integrity, and raising public awareness of the duty to respect and protect public property and general interests^{113/} (see recommendation 3.4.7 in Chapter II of this report).

[171]Second, with regard to the work carried out by the PN on the detection of corrupt acts that trigger administrative and criminal responsibility for persons involved in them, the country under review points out in its response^{114/} that the Economic Investigations Directorate, as part of its task of detecting and preventing crime and other wrongful practices in the administration, drew up, implemented, and coordinated activities such as the Police Investigative Intelligence System, with the participation of officials from State institutions and decentralized entities. This made it possible to examine and investigate 213 complaints. Of this number, it was possible to prevent 123 activities involving civil servants in the performance of their functions, on whom administrative sanctions were imposed by senior officials of the institutions as a result of the recommendations that emerged from the investigations. Similarly, operational follow-up was provided in the case of 28 complaints with negative results and 62 investigations were referred to the Judicial Assistance Directorate for recording and investigation (see the following tables).

Year	Type of Offense	Judicial Assistance Directorate	Activities Prevented	Negative
2008	Misappropriation	00	00	00
	Fraud	02	00	06
	Embezzlement	01	00	09
	Bribery	00	00	00
	Prevention of wrongful practices	00	39	00
	Subtotal	03	39	15

112. Ibid, pp. 91 and 92.

113. On this point, the Republic of Nicaragua presents additional information on the PN’s outreach activities and efforts to prevent acts of corruption over the period 2010-2011. Available at: http://www.oas.org/juridico/spanish/mesicic4_nic.htm

114. See Nicaragua’s response to the questionnaire for the Fourth Round, pp. 95 and 96, *supra* note 8.

2009	Misappropriation	01	00	00
	Fraud	03	00	02
	Embezzlement	07	00	02
	Bribery	00	00	00
	Prevention of wrongful practices	00	25	00
	Subtotal	11	25	04
2010	Misappropriation	00	00	00
	Fraud	03	00	01
	Embezzlement	10	00	03
	Bribery	01	00	00
	Prevention of wrongful practices	00	29	00
	Subtotal	14	29	04
2011	Misappropriation	00	00	00
	Fraud	02	00	01
	Embezzlement	09	00	04
	Bribery	03	00	00
	Prevention of wrongful practices	00	20	00
	Subtotal	14	20	05
2012	Misappropriation	00	00	00
	Fraud	01	00	00
	Embezzlement	18	00	00
	Bribery	01	00	00
	Prevention of wrongful practices	00	10	00
	Subtotal	20	10	00
Total		62	123	28

Year	Type of Offense	Judicial Assistance Directorate	Activities Prevented	Negative	Total
2008-2012	Misappropriation	01	00	00	01
	Fraud	11	00	10	21
	Embezzlement	45	00	18	63
	Bribery	05	00	00	05
	Prevention of wrongful practices	00	123	00	123
Total		62	123	28	213

[172]In addition, in the same response^{115/} the country under review points out that “the Judicial Assistance Directorate, in its coordination as part of the police system with the Economic Investigations Directorate, registered, investigated, and documented 62 cases of crimes against public administration. It bears noting that, during this investigation phase, responsibility was shared with other justice operators of the Interagency Commission of the Criminal Justice System and the officials of the affected institutions. Of the investigations conducted, 58 cases were referred to the competent body, the Public Prosecution Service (MP), and four cases are under investigation.”(see the table below).

Type of Offense	2008	2009	2010	2011	2012	Total	Total
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115. Ibid, p. 96.

	RMP	RMP	RMP	RMP	P	RMP	P	RMP	P	
Fraud	02	03	03	02	00	01	00	11	00	11
Embezzlement	01	07	10	08	01	15	03	41	04	45
Bribery	00	00	01	03	00	01	00	05	00	05
Misappropriation	00	01	00	00	00	00	00	01	00	01
Total	03	11	14	13	01	17	03	58	04	62

(RMP) Referred to the MP; (P) Pending (under investigation).

[173]Based on the foregoing, the Committee observes that the PN has carried out its duties to detect corrupt practices. However, the Committee deems it appropriate to make the following considerations:

[174]Bearing in mind the information supplied by the country under review on the measures taken by the PN in connection with the offenses indicated therein, the Committee is unable to identify the total number of investigations begun in each of these years for all acts of corruption established as offenses in the Nicaraguan criminal justice system, with an indication of how many investigations remain ongoing, how many have been referred to the competent body in order for a decision on the merits to be taken. A recommendation will therefore be formulated in this regard (see recommendation 3.4.8. in Chapter II of this report).

[175]In connection with the foregoing, the Committee had access to the 2012 Statistical Yearbook^{116/} of the PN, which sets forth the principal achievements of this oversight body during that period as well as general data on criminal activity in the country and its principal indicators. However, the Committee regrets that the sections of that document that compare national criminal activity do not cover data on crimes against public administration, crimes committed by current or former officials, or crimes against the interests and/or property of the State. Accordingly, the Committee deems it advisable that appropriate measures be adopted to include the statistical data recommended in the preceding paragraph in the Statistical Yearbooks drawn up by the PN (see recommendation 3.4.9. in Chapter II of this report).

[176]Third, as concerns the duties of the PN to punish corrupt practices that trigger disciplinary responsibility for persons involved in them, the country under review indicates in its response^{117/} that *“during the period from 2008 and 2012, the Internal Affairs Division received 9,904 complaints, of which 1,340, or 13.52 percent, related to wrongful practices and a lack of transparency in police work. Of that number, 737 complaints, or 55 percent, were deemed to be positive. As a result of disciplinary administrative proceedings, investigations were conducted of 2,597 police officers, 1,191 of whom were punished, which represents 2 percent of the total police force.”*

[177]In the same response,^{118/} the country under review points out that the PN receives *“a yearly average of 268 cases; an average of 147 complaints have positive results each year. The average number of police officers sanctioned each year is 238. The Inspector General issued 716 decisions within his sphere of competence, of which 562 corresponded to dismissals, 142 to demotions, and 12 to restrictions at their place of duty. The rest, totaling 475, corresponded to disciplinary measures proposed by the Division of Internal Affairs. One of the characteristics of complaints for wrongful practices, lack of transparency, or acts of corruption is that 55 percent of these complaints are*

116. Available at: <http://goo.gl/Mz1ve0>

117. See Nicaragua’s response to the questionnaire for the Fourth Round, pp. 101 and 102, *supra* note 8.

118. *Ibidem*.

submitted by police officials, which shows the impact of the training received and the level of institutional commitment to and responsibility for preventing, investigating, and rectifying the damage caused by acts that may be detrimental to the police's image and proper management. Complaints from citizens represent 42 percent and those from other sources, 2 percent (PPDH, Civil Inspectorate, and human rights bodies)."

[178] Even though the foregoing information could serve to demonstrate that the PN has conducted investigations and imposed disciplinary sanctions in fulfillment of the powers entrusted it by the LPN and its Regulations, the Committee will issue a recommendation on the advisability of publishing it (see recommendation 3.4.10. in Chapter II of this report).

3.4. Conclusions and Recommendations

[179] Based on the comprehensive review conducted with respect to the PN in the foregoing sections, the Committee offers the following conclusions and recommendations:

[180] The Republic of Nicaragua has considered and adopted measures intended to maintain and strengthen the PN as an oversight body, as described in Chapter II, section 3, of this report.

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

- 3.4.1. Adopt appropriate measures to ensure that the bodies of rules and other measures that complement the provisions of the LPN and its Regulations in the area of human resources, such as recruitment strategies, personnel policies of the PN, and the Manual on the Police Career System, Officer Applications for Vacant Posts, and Courses (Provision No. 020/04), are available for consultation on the PN website (see Chapter II, section 3.2, of this report).
- 3.4.2. Complement the documents that describe the functions of PN personnel with manuals or guides on the functions of the personnel who investigate intelligence on crimes of corruption and against public administration, mainly in the Anti-Corruption Department (see Chapter II, section 3.2, of this report).
- 3.4.3. Develop documented procedures, manuals, or guides on the process of investigating acts of corruption and crimes against public administration, crimes committed by current or former officials, or crimes against the interests and/or property of the State and, as appropriate, make them accessible for consultation on the PN website (see Chapter II, section 3.2, of this report).
- 3.4.4. Provide the PN with the technological resources and computer systems deemed necessary for, and compatible with, the demands of the service, new scenarios, and complex forms of crimes faced by the entity (see Chapter II, section 3.2, of this report).
- 3.4.5. Provide the PN with the human, material, and financial resources necessary for the effective performance of its duties, within available resources (see Chapter II, section 3.2, of this report).

- 3.4.6. Adopt measures it deems appropriate to establish, within the PN, additional public accountability mechanisms applicable to the performance of its duties, consisting, inter alia, of procedures allowing public scrutiny (see Chapter II, section 3.2, of this report).
- 3.4.7. Mount campaigns aimed at preventing corruption, disseminating its consequences, promoting integrity, and raising public awareness of the duty to respect and protect public property and general interests (see Chapter II, section 3.2, of this report).
- 3.4.8. Prepare statistical data on the investigations initiated by the PN with regard to all acts of corruption, with an indication of how many investigations remain ongoing and how many have been referred to the competent body in order for a decision on the merits of the case to be taken, in order to identify challenges and recommend corrective measures (see Chapter II, section 3.3, of this report).
- 3.4.9. Complement any Statistical Yearbooks the PN draws up in the future with statistical data on the investigations it has initiated on all corrupt practices, including crimes against public administration, crimes committed by current or former officials, and crimes against the interests and/or property of the State (see Chapter II, section 3.3, of this report).
- 3.4.10. Publish statistical data on the results of disciplinary investigation proceedings within the PN that indicate the number of investigations that remain ongoing, the number of decisions adopted in connection with them, the number of these decisions in which responsibilities were established or penalties imposed, the number of these decisions in which no responsibilities were found or acquittals given, and the number of those decisions involving the extinction of the punishment or responsibility because of the triggering of the statute of limitations, in order to identify challenges and recommend corrective measures (see Chapter II, section 3.2, of this report).

4. OFFICE OF THE COMPTROLLER GENERAL OF THE REPUBLIC

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

[182] The Office of the Comptroller General of the Republic (CGR) has a set of provisions in its legal framework and other measures concerning, among other matters, the following:

[183] In accordance with Article 154 of the Constitution and Articles 5, 6, and 7 of the Organic Law of the Office of the Comptroller General of the Republic and of the Monitoring System for Public Administration and Auditing of State Assets and Resources^{119/} (Law No. 681, hereinafter “LOCGR”), the CGR, an oversight body endowed with functional independence and autonomy and operating nationally, is responsible for managing the Monitoring System for Public Administration and Auditing of State Assets and Resources^{120/}; examining and assessing, through government audits,^{121/} administrative, accounting, operational, and information systems and their operations conducted by public entities and agencies and their personnel, with no exceptions whatsoever; and

119. Available at: <http://goo.gl/sUCbXB>

120. See Articles 28 to 33 of the LOCGR.

121. See Article 43 of the LOCGR.

issuing regulations on the operations of said monitoring system; as well as for determining administrative and civil liability and, when its investigations result in the presumption of criminal liability, to so inform the courts of justice.

[184] Likewise, pursuant to Articles 155 of the Constitution and 9 of the LOCGR, the CGR is also responsible, among its other functions and duties, for establishing the monitoring system that acts preventively to ensure the proper use of government funds, exercising ongoing oversight of the General Budget of the Republic, and monitoring, examining, and assessing the administrative and financial management of public entities, State-subsidized entities, and public firms or private firms with public capital funding.

[185] As concerns the scope of the functions of the CGR, Article 2 of the LOCGR establishes that the provisions of this law apply to all agencies and entities of the public administration and their civil servants throughout the Republic, as well as to all natural or legal persons from the private sector mentioned in the preceding paragraph.

[186] With regard to the manner in which the CGR adopts its decisions, in keeping with the aforementioned Articles 154 of the Constitution and 5 of the LOCGR, a collegiate body called the Superior Council of the Office of the Comptroller General of the Republic (hereinafter “CSCGR”), made up of five principal members, was established to direct it. As stipulated in Article 15 of the LOCGR, any decisions and/or judgments adopted by this Council require a simple majority vote of its members. However, decisions and/or judgments entailing the presumption of criminal liability must be adopted by a vote of two thirds of its members and be taken in accordance with Article 156, paragraph 2, of the Constitution.

[187] As established in Article 81 of the LOCGR, any judgment establishing administrative liability and imposing specific sanctions determined by the supreme authority may be the subject of an application for review by the same authority that issued it and, subsequently, that decision may be appealed before the CSCGR. However, when the Council itself is the body that issues the administrative ruling determining administrative liability and the corresponding sanctions, said ruling may be appealed, without affecting the right of the affected party in both cases to challenge the ruling through the courts by means of amparo or the measures envisaged in Law No. 350.

[188] As for the actions needed to implement or enforce those decisions, fines levied on public administration personnel shall be collected by the entity or agency itself through salary garnishment. However, in the event the offender no longer holds the same position when the fine is imposed, pursuant to Article 83 of the LOCCR the fine may be collected through any other public post he/she holds. If the offender is not working for any public entity, the CSCGRP shall submit to the PGR a certified copy of the judgment that establishes administrative liability for collection of the fine through any appropriate channel.

[189] Judgments establishing civil liability fall within the exclusive purview of the CGR and may, in keeping with Article 90 of the LOCGR, be the subject of review by the CSCGR. Said reviews exhaust administrative remedies, without affecting the rights of those affected to seek administrative amparo through the courts. In accordance with Article 87 of the LOCGR, final judgments issued by the CSCGR that confirm civil liability in light of the provisions of Article 1687 of the Code of Civil Procedure constitute enforceable orders, and it is incumbent on the PGR to take the appropriate measures to enforce them.

[190] As for the presumption of criminal liability, pursuant to Article 94 of the LOCGR, the decisions taken by the CSCGR in this regard may not be appealed through administrative channels, but this does not affect the rights of those concerned to have recourse to the courts through amparo or other remedies envisaged in Law No. 350. Judgments in which criminal liability is presumed, together with the conclusions drawn and evidence collected during audits, must, in keeping with Article 9, paragraph 16, of the LOCGR, be referred immediately to the courts of justice, the Office of the Attorney General (PGR), and the Public Prosecution Service (MP), to enable these bodies to perform their respective functions.

[191] As established in Article 10 of the LOCGR, the CSCG is the highest-ranking authority of the CGR; it is responsible for managing its overall structure and operations in keeping with that law, its regulations, and general and special instructions. In accordance with Articles 154 of the Constitution and 5 of the LOCGR, the CSCG consists of five principal members and three alternate members elected by the National Assembly, pursuant to Article 139, paragraph 9(a) of the Constitution, for five-year terms, during which they enjoy immunity. The appointment process begins with the submission of a shortlist sent by the President of the Republic, as established in Article 150, paragraph 14, of the Constitution, with the candidates required to meet the qualifications set forth in Article 12 of the LOCGR.

[192] The CSCG has a Chair, who acts as legal representative of the CGR and is responsible for the duties and functions set forth in Article 17 of the LOCGR, and a Vice Chair, who, among other functions, assists the Chair and replaces him in the event of temporary absences. Both are elected by the Council members by a majority vote for one-year renewable terms.

[193] In accordance with Article 138, paragraph 11, of the Constitution and Article 21 of the LOCGR, the principal and alternate members of the CSCG may only be suspended or removed from their posts by the National Assembly, for the reasons and under the terms and procedures set out in Articles 21, 22, and 23 of the LOCGR.

[194] With regard to the manner in which the human resources needed for the operations of the CGR are identified and how its personnel are selected, the CGR is governed by the LSCCA and its Regulations, legal instruments referred to in section 2.1 of this report in relation to the PGR. However, it bears noting as well that the CGR personnel are also subject to the regime of prohibitions, disqualifications, and incompatibilities established in Articles 8, 10, and, 11, inter alia, of the Civil Service Probity Law^{122/} (Law No. 438), as well as the provisions of the Civil Service Ethics Rules for the CGR, Internal Auditing Units, and Delegated Private Firms.^{123/}

[195] Regarding the existence of manuals or other documents that describe the functions of its personnel, the CGR has, among other documents, organizational and operational manuals for its General Directorates for Auditing Services, Legal Affairs, Administrative and Financial Affairs, and Institutional Planning and Development, its Divisions on Information Systems and Institutional Relations, and its Administrative Support and Procurement Units. Likewise, it has job description manuals for its General Directorate for Auditing Services and its Division on Institutional Relations. All of these documents are available on the CGR website. As concerns training for CGR personnel,

122. Available at: <http://goo.gl/D8Nxz3>

123. Available at: <http://goo.gl/vPPWL8>

the country under review points out in its response^{124/} that an “Annual Training Plan” is developed each year and approved by the CSCGR in accordance with human resource needs and requirements.

[196] Similarly, the CGR has and publishes on its website^{125/} a set of manuals, guidelines, and rules that establish documented procedures for the performance of its tasks, noteworthy among them the Procedures Manual for the General Directorate for Legal Affairs, the Procedures Manual for the General Directorate for Auditing Services, the Government Auditing Manuals, and the Auditing and Assessment Guidelines in diverse areas, as well as the Rules for government auditing, control, and oversight, to cite just a few.

[197] With respect to the institutional strengthening or implemented quality improvement actions, the CGR has a Strategic Institutional Development Plan^{126/} covering the five-year period from 2011 to 2015, which, with a view to establishing a strategic framework in conformity with the LOCGR and the international methodologies of the International Organization of Supreme Audit Institutions (INTOSAI) and the Organization of Latin American and Caribbean Supreme Audit Institutions (OLACEFS), lays out a series of specific activities aimed at achieving said plan’s objectives.

[198] Similarly, since 2010 and with support from German international cooperation, the CGR has been implementing the Information System for the Implementation of Internal Control Recommendations (SIIRCI), which provides for monitoring and follow-up of recommendations made in the audit reports approved by the CSCGR, thus ensuring the effectiveness of public sector monitoring systems.

[199] Concerning the manner in which the general public is provided with information about its objectives and functions, the CGR has an official website, www.cgr.gob.ni, which, among other things, provides general information on the institution and its legal framework and structure. The website also has a link^{127/} to the CGR documentation center, which is managed by the Information Access Office (hereinafter “OAIP”). The center provides a virtual venue for consulting and downloading files containing information on monitoring procedures carried out by the CGR in the public sector, such as approved audit reports and their corresponding administrative resolutions, executive reports on declarations of probity received, activities to monitor and follow up on State and municipal contracting, reports on citizen complaints processed, and training plans for civil servants employed by the entities subject to CGR control, among other things. The CGR also has a Citizen Complaint Office, with space on the CGR website for posting requirements for, and answers to the most frequently asked questions about, filing complaints with the CGR in keeping with the processing procedures approved by the CSCGR at its Regular Meeting N° 74 in September 2000 and the most recent amendments thereto adopted in 2012.

[200] With regard to mechanisms for internal control, as mentioned earlier, the disciplinary regime in effect for CGR personnel is established in Articles 47 to 66 of the LSCCA and Articles 14 to 22 of its Regulations, along with the legal provisions contained in both the Civil Service Probity Law (Law No. 438) and the Civil Service Ethics Rules for the CGR, Internal Auditing Units, and Delegated Private Firms. Moreover, the CGR has its own Internal Auditing Unit, which, among other responsibilities, is charged with implementing and enforcing legal, regulatory, and technical

124. See Nicaragua’s response to the questionnaire for the Fourth Round, p. 44, *supra* note 8.

125. See: http://www.cgr.gob.ni/cgr/index.php?option=com_docman&Itemid=184.

126. Available at: <http://goo.gl/NlIj6X>

127. See: http://www.cgr.gob.ni/cgr/index.php?option=com_docman&Itemid=101.

government audit provisions, to ensure sound management and execution of the institution's financial resources.

[201] As concerns the manner in which the budgetary resources needed for the operations of the CGR are ensured, Article 8 of the LOCGR establishes that the CGR budget is financed by tax revenues from the General Budget of the Republic sufficient to enable it to fully discharge the functions and duties assigned to it by law, as well as by grants and by resources provided for in other legal provisions. In this regard, in its response^{128/} the country under review provided information on the budget allocated to the CGR over the past five years:

Year	Budget	
	In Nicaraguan Córdobas (\$C)	Equivalent in United States Dollars (\$US)
2008	132,598,082	6,680,643.59
2009	135,533,979	6,503,393.82
2010	131,743,000	6,020,061.69
2011	139,820,699	6,085,325.53
2012	171,558,192	7,111,073.01

[202] With respect to coordination mechanisms with other public agencies or authorities, Article 9, paragraph 27, of the LOCGR requires the CGR to cooperate with competent bodies, as necessary, in examining acts committed against public property and in initiating and prosecuting cases. As the country under review pointed out in its response, this situation has led the CGR to sign agreements and/or conventions on coordination and cooperation with other institutions, such as the MP, the PGR, and the PN, as mentioned in the corresponding sections of this report. It also bears mentioning that Article 9, paragraph 30, of said law obliges the CGR to issue a report before the decision is taken in the process of consultation on any draft laws formulated on the operations of the Government Monitoring System or the Oversight Body, which demonstrates, as stated by the country under review in its response, *“a close relationship with the legislative branch.”*^{129/}

[203] Lastly, as concerns accountability mechanisms applicable to the performance of the duties of the CGR, according to the last paragraph of Article 156 of the Constitution, the Chair of the CSCGR or the person he/she appoints from among the Council's members, shall submit a report on the institution's management to the National Assembly every year or when the Assembly so requests. These management reports are available for consultation on the CGR website^{130/} and, according to information provided by the country under review in its response, *for purposes of assembling the contents of the annual report, the CGR has a unit called the “Planning Division,” which is responsible for compiling from all substantive and support directorates the annual operational management results of the CGR.*^{131/}

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

[204] The CGR has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were described in brief in section 4.1 of this report. However, the Committee considers it timely to make a number of observations in relation thereto:

128. See Nicaragua's response to the questionnaire for the Fourth Round, pp. 71 and 72, *supra* note 8.

129. *Ibid*, p. 78.

130. See: http://www.cgr.gob.ni/cgr/index.php?option=com_docman&task=cat_view&gid=64&Itemid=184.

131. See Nicaragua's response to the questionnaire for the Fourth Round, pp. 83 and 84, *supra* note 8.

[205] First, as concerns the manner in which the human resources needed for the operations of the CGR are identified and how its personnel are selected, the Committee will not make any recommendations thereon and will simply reiterate those contained in the Second Round report,^{132/} bearing in mind that CGR personnel are subject to the system established in the LSCCA and its Regulations, which the Committee examined in detail in that round. However, notwithstanding the foregoing and based on the information it had at its disposal, the Committee wishes to place on record in this report that it is advisable for the country under review to continue making progress toward the development and implementation of a post classification system in State institutions, mainly the CGR, so as to guarantee compliance with Article 22 et seq. of the LSCCA and contribute to the achievement of one of the strategic objectives of the CGR set forth in its five-year Strategic Institutional Development Plan, referred to in the preceding section.

[206] Second, the Committee recognizes that one of the functions of the CGR is to offer and, as appropriate, coordinate training for its personnel within their areas of competence. In this regard, the Committee notes, based on the information at its disposal, that as far as external training is concerned, for example, the CGR held more than 100 training events in 2012, offering training to more than 3,200 civil servants.^{133/} By the same token, with respect to internal training, during the same period the CGR held over 25 events in which more than 400 staff took part.^{134/} However, based on that information, the Committee is unable to determine whether the training offered, especially internally, included courses and/or modules on ethics, integrity, and transparency, containing, inter alia, information on the ethics rules governing CGR personnel and on due compliance with those rules, as laid out essentially in the Civil Service Probity Law and in the Civil Service Ethics Rules for the CGR, Internal Auditing Units, and Delegated Private Firms, both of which are mentioned in the preceding section. The Committee will make a recommendation in this regard^{135/} (see recommendation 4.4.1. in Chapter II of this report).

[207] Third, as concerns the institutional strengthening or implemented quality improvement actions, the Committee acknowledges the initiation, among other initiatives, of the CGR Strategic Institutional Development Plan for the five-year period from 2011 to 2015. Said plan sets six strategic objectives to strengthen the institution's capacity to discharge its duties more effectively and efficiently. In the Committee's view, this is an important initiative given the set of measures that, according to the information the Committee had at its disposal, are envisaged to meet said objectives, principally through the work the CGR proposes to strengthen the internal monitoring system in the public sector in order to promote transparency in the civil service and ensure that resources are properly administered by State institutions, which helps achieve the purposes of the Convention. Accordingly, the Committee will make a recommendation in this regard (see recommendation 4.4.2. in Chapter II of this report).

[208] Along the same lines, regarding efforts to facilitate the work of the CGR and make it more effective and efficient, the Committee recognizes the existence of initiatives that, with support primarily from international cooperation, the CGR has been taking to develop new and modern

132. See the Final Report on Implementation in the Republic of Nicaragua of the Convention Provisions Selected for Review in the Second Round, and on Follow-up to the Recommendations Formulated to that Country in the First Round," pp. 5 to 7 and 22 to 24, *supra* note 25.

133. See the 2012 Annual Management Report of the CGR to the National Assembly, p. 36, available at: <http://goo.gl/zSMJjV>

134. *Ibidem*, p. 47.

135. On this point, the Republic of Nicaragua states that training was given to public servants from various sectors of the public administration, including personnel from several areas of the CGR, on the topics of probity, ethics, and technical manuals and regulations. The courses were developed by officers of the Office of Public Ethics.

technologies and systems, such as SIIRCI, referred to in the preceding section, which allows for monitoring and follow-up of the recommendations of the audit reports approved by the CSCGR. However, based on the information it had at its disposal, the Committee underscores the utility of technology as an appropriate tool for developing modern mechanisms for preventing and detecting corrupt acts, as indicated in Article III, paragraph 9, of the Convention. Accordingly, the Committee deems it advisable for the country under review to redouble its efforts to strengthen the technological platform of the CGR, through the development and promotion of computer-based projects to complement existing ones and to facilitate, among other things, the work of the CGR related to the prevention and detection of corrupt acts (see recommendation 4.4.3. in Chapter II of this report).

[209] Fourth, as concerns the manner in which the general public is provided with information, the Committee acknowledges the efforts made by the CGR to have a modern website with an online documentation center enabling the general public to consult and download files containing information on the body's objectives and the performance of its functions. Many of these files are accessible because of a large-scale project to digitize paper documents that, as understood by the Committee, is carried out by the OIAP pursuant to the provisions of its "organizational and operational manual," approved in 2012 by the CSCGR.^{136/} In this connection, the Committee considers it advisable to adopt any measures deemed necessary to strengthen the OAIP to enable it to perform its functions, primarily those related to the ongoing maintenance and updating of the CGR website. This is consistent with the observation made by the civil society organization "Civic Group for Ethics and Transparency" in its report, to the effect that "*the heads of this entity [CGR] state that the web page has been redesigned in order to digitize physical information and thus enter it into the website; we recognize that this is a useful undertaking as it provides digital copies of the most important and most frequently consulted documents. However, the results of this new approach are not apparent as the information has not been updated and documents of public interest have not yet been posted on the site.*"^{137/} (see recommendation 4.4.4. in Chapter II of this report).

[210] Likewise, the Committee recognizes the existence within the CGR of the Citizen Complaint Office, which also has space on the CGR website for posting requirements for, and answers to the most frequently asked questions about, filing complaints with the CGR in keeping with the procedures adopted by the CSCGR. Said complaints, according to the information the Committee had at its disposal, may only be submitted, in person, in writing, or orally, with the CGR or its regional delegations. Accordingly, and to facilitate and encourage the reporting of acts of corruption, the Committee deems it advisable for the country under review to consider adopting any measures it considers necessary to create an electronic link that would make it possible for individuals to submit complaints, such as claims, grievances or suggestions, online concerning the functions carried out by the CGR or the performance of its personnel (see recommendation 4.4.5 in Chapter II of this report).

[211] Fifth, although the Committee notes that, according to the information provided by the country under review in its response to the questionnaire, the budget of the CGR increased by more than 16 percent from 2011 to 2012, the same response indicates that "*one of the main obstacles faced by the CGR is that the budget allotment it receives does not enable it to provide, in all auditable [sic] units that handle, execute, and manage public resources, actions to prevent and detect corrupt practices, since this would involve contracting for or carrying out more training in the public sector and hiring more government auditors to expand its public resource auditing and monitoring coverage. There is yet another obstacle in addition to the sparse budget allotted to the CGR. When*

136. Available at: <http://goo.gl/TfhPXo>.

137. See the report presented by the organization "Civic Group for Ethics and Transparency," p. 9, *supra* note 3.

the new Organic Law entered into force, the CGR was charged with carrying out other types of audits, e.g. environmental, forensic, and information technology audits. However, the institution does not have staff trained to conduct these types of audits, and technical support in these areas is therefore essential to enable the Office of the Comptroller General of the Republic to fulfill its obligations.^{138/}

[212] For its part, the civil society organization “Civic Group for Ethics and Transparency” states in its report that *“in general and from a simple external glance at the oversight bodies, we can say that the main impediment they face is the inadequate budget allotted by the Government. The financial shortfall is the number one problem that prevents the oversight bodies from expanding their coverage of the very functions they are mandated to perform under the Constitution. The approach that has allowed them to move forward in their pursuit of their institutional purposes has been cooperation with some EFS in the framework of the OLACEFS or with other international organizations, which have met their monetary and financial needs. Another factor standing in the way of the performance of their functions has been the lack of technical capacity to provide training, support, and technical know-how in new types of audits.”*^{139/}

[213] The Committee will formulate a recommendation that takes the preceding issues into account (see recommendation 4.4.6. in Chapter II of this report).

[214] Last, as regards accountability mechanisms applicable to the performance of the duties of the CGR, the Committee deems it advisable for the country under review to consider the possibility of complementing them with mechanisms that would allow for public scrutiny of the reports presented, thereby bolstering citizen participation in following up on CGR management (see recommendation 4.4.7. in Chapter II of this report).

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

[215] The response to the questionnaire of the country under review yielded information on the CGR, notably the following:

[216] First, in its response^{140/} to the questionnaire, the country under review describes the measures being taken by the CGR to perform the task entrusted to it in Article 155 of the Constitution to establish a monitoring system that acts preventively to ensure the proper use of government funds. Over the past five years, these measures, according to the response, have focused on ongoing training in the implementation of internal oversight rules and on reinforcement of the public sector’s internal monitoring system.

[217] Likewise, between 2009 and 2012, the CGR, with the support of international cooperation, has *“disseminated various reports called ‘Administrative Proceedings of the CGR,’ which contain the rulings of the CSCGR on the audits conducted, as well as answers to the questions that civil servants ask most frequently to avoid making errors. Some 1,300 copies of these publications have been distributed to civil society. Moreover, adjustments made to administrative systems of public sector entities in keeping with the NTCI have been posted on the website, along with information on progress made in the 2009-2012 External Training Plan of the CGR.*

138. See Nicaragua’s response to the questionnaire for the Fourth Round, p. 106, *supra* note 8.

139. See the report presented by the organization “Civic Group for Ethics and Transparency,” p. 14, *supra* note 3.

140. See Nicaragua’s response to the questionnaire for the Fourth Round, pp. 90 and 91, *supra* note 8.

[218] The same response indicates that, in addition to implementation of the SIIRCI, described in section 4.1 of this report, in the framework of an Agreement on Scientific-Technical Cooperation with the Office of the Comptroller General of the Republic of Ecuador, “*the Internal Monitoring System was strengthened through the introduction of three specialized guidelines for technical assistance in internal monitoring. The corresponding orientation process in their application will begin in central government institutions and the branches of government. This work will continue in 2013 and 2014 until it covers 100 percent of the entities.*”

[219] The Committee considers that this information serves to demonstrate that the CGR has taken measures to prevent acts of corruption, in accordance with the functions entrusted to it in this area. However, the Committee deems it advisable, with a view to strengthening the relationship between the CGR and the general public, for the country under review to consider mounting campaigns or programs aimed at promoting integrity and raising public awareness of the duty to respect and protect public property, which would focus, inter alia, on the right of society to file complaints about acts of corruption in the public entities under CGR control (see recommendation 4.4.8. in Chapter II of this report).

[220] Second, with regard to the work carried out by the CGR to detect corrupt acts committed by civil servants through various types of audits (financial, performance, operational, comprehensive, special, information technology, environmental, management, and any other) in the entities and organizations under its control, in keeping with the Government Auditing Rules of Nicaragua, in its response^{141/} to the questionnaire, the country under review said that “*in the past five years (2008-2012), the CGR completed a total of 2,377 audits*” (see the following table^{142/}).

Audits Completed 2008-2012					
2008	2009	2010	2011	2012	Total
226	354	291	766	740	2,377

[221] With respect to the work of the CGR to determine administrative and civil liability and the presumption of criminal liability from the audits it conducts and in keeping with the powers entrusted to it by section V of the LOCGR, both the response^{143/} to the questionnaire of the country under review and the documents^{144/} the Committee had at its disposal yielded the following information:

141. Ibid, pp. 94 and 95.

142. This information was obtained from the Annual Management Reports of the CGR published on the institution’s website, available at: http://www.cgr.gob.ni/cgr/index.php?option=com_docman&task=cat_view&gid=64&Itemid=184.

143. See Nicaragua’s response to the questionnaire for the Fourth Round, pp. 100 and 101, *supra* note 8.

144. This information was obtained from the Annual Management Reports of the CGR published on the institution’s website, *supra* note 130.

Year	Audits Completed	Type of liability established					
		Administrative		Civil		Presumption of Criminal Liability	
		Civil Servants	Entities	Civil Servants	Amount (\$C)	Civil Servants	Amount (\$C)
2008	226	105	19	36	53,147,491.79	23	34,082,866.67
2009	354	99	20	39	9,660,122.06	31	10,841,053.44
2010	291	23	7	10	776,463.21	1	124,494.01
2011	766	89	24	35	1,553,181.12	65	9,519,17.74
2012	740	53	23	16	1,471,398.85	27	2,832,983.15

[222] The information above demonstrates that the CGR has determined administrative and civil liability and the presumption of criminal liability on the basis of the audits it conducts.

[223] Likewise, the Committee notes that the CGR, as part of its duties, must order the supreme authority of the corresponding institution to implement administrative sanctions, or to enforce them as appropriate, and to follow up on implementation of the recommendations in audit reports and the execution of duties and administrative sanctions. The Committee does not have information on the results of the performance of these functions and will therefore make a recommendation in this regard (see recommendation 4.4.9. in Chapter II of this report).

[224] Further, as concerns the obligation of the CGR, established in Article 9, paragraph 16, of the LOCGR, to bring immediately to the attention of the courts of justice, the PGR, and the MP the conclusions of audit investigations and all evidence collected, when the results of said investigations point to the presumption of criminal liability, the Committee does not have any information on the results of these procedures, which would enable it to know the number of investigations sent to the courts of justice, the PGR, and/or the MP for the institution of criminal proceedings. The Committee will therefore make a recommendation in this regard (see recommendation 4.4.10. in Chapter II of this report).

[225] Third, regarding the amounts the CGR has determined are owed the public treasury as a consequence of the civil liability of public servants,^{145/} the country under review provides the following data:

Year	Amount (\$C)
2008	53,147,491.79
2009	9,660,122.09
2010	776,463.21
2011	1,553,181.12
2012	1,471,398.85
Total	66,608,657.06

[226] This information demonstrates that the CGR has determined civil liability for those involved in corrupt practices, as well as the amount of monetary compensation due the State.

145. See Nicaragua's response to the questionnaire for the Fourth Round, p. 105, *supra* note 8.

[227] Last, based on the information available to it, the Committee is also unable to identify statistical data on disciplinary procedures followed within the CGR in accordance with the applicable provisions of the LSCCA and its Regulations. It will therefore make a recommendation thereon (see recommendation 4.4.11. in Chapter II of this report).

4.4. Conclusions and recommendations

[228]Based on the comprehensive review conducted with respect to the CGR in the foregoing sections, the Committee offers the following conclusions and recommendations:

[229]The Republic of Nicaragua has considered and adopted measures intended to maintain and strengthen the CGR as an oversight body, as described in Chapter II, section 4, of this report.

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

- 4.4.1. Complement the training programs offered internally by the CGR with courses and/or modules in ethics, integrity, and transparency that include, among other things, the promotion of, information on, and due compliance with the ethical regulations that govern its personnel (see Chapter II, section 4.2, of this report).
- 4.4.2. Adopt appropriate measures to continue promoting implementation of the Strategic Institutional Development Plan for the five-year period from 2011 to 2015, primarily with respect to strengthening the internal monitoring system in the public sector in order to promote transparency in the civil service and ensure that resources are properly administered by State institutions (see Chapter II, section 4.2, of this report).
- 4.4.3. Strengthen the technological platform of the CGR, through the development and promotion of computer-based projects to complement existing ones and to facilitate, among other things, the work of the CGR related to the prevention and detection of corrupt acts (see Chapter II, section 4.2, of this report).
- 4.4.4. Strengthen the OAIP to enable it to perform its functions, primarily those related to the ongoing maintenance and updating of the CGR website (see Chapter II, section 4.2, of this report).
- 4.4.5. Adopt the necessary measures for creating an electronic link making it possible for individuals to submit complaints, such as claims, grievances, or suggestions, online concerning the functions carried out by the CGR and the performance of its personnel (see Chapter II, section 4.2, of this report).
- 4.4.6. Strengthen the CGR by ensuring that it has the necessary human and financial resources to perform its duties effectively and to fully discharge its external oversight and auditing functions, taking into account the availability of resources (see Chapter II, section 4.2, of this report).

- 4.4.7. Adopt appropriate measures to complement the accountability mechanism of the CGR with procedures that would allow public scrutiny (see Chapter II, section 4.2, of this report).
- 4.4.8. Mount campaigns or programs aimed at promoting integrity or raising public awareness of the duty to respect and protect public property, which would focus, among other matters, on the right of society to file complaints about acts of corruption in the public entities under CGR control (see Chapter II, section 4.3, of this report).
- 4.4.9. Prepare statistical data on the functions carried out by the CGR to follow up on fulfillment by the CSCGR or the supreme authorities of the organs subject to its control, as appropriate, of execution of the administrative responsibilities and sanctions determined through audits conducted by the CGR, which may provide information on the enforcement of sanctions and the collection of fines, so as to identify challenges and adopt corrective measures, as appropriate (see Chapter II, section 4.3, of this report).
- 4.4.10. Prepare statistical data indicating, based on the results of audits conducted by the CGR that point to the presumption of criminal liability, the number of investigations referred to the Courts of Justice, the PGR, and/or the MP, and the number of criminal cases begun based on them, in order to identify challenges and adopt corrective measures, as appropriate (see Chapter II, section 4.3, of this report).
- 4.4.11. Prepare statistical data on disciplinary procedures within the CGR pursuant to the applicable provisions of the LSCCA and its Regulations that indicate, inter alia, the total number of cases investigated, the number of decisions adopted in connection with them, the number of these decisions in which liability was established or penalties imposed, the number of these decisions in which no liability was found or acquittals given, and the number of these decisions involving the extinction of the punishment or liability because of the triggering of the statute of limitations, so as to identify challenges and adopt corrective measures, as appropriate (see Chapter II, section 4.3, of this report).

5. SUPREME COURT OF JUSTICE

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

[231] The Supreme Court of Justice (CSJ) has a set of provisions in its legal framework and other measures concerning, among other matters, the following:

[232] Pursuant to Article 159 of the Constitution, the CSJ is the judiciary's highest court. Together with the State's other courts of justice (courts of appeals, district courts, and local courts), it comprises a single system, the structure and operations of which are governed by the provisions of the Organic Law of the Judiciary of the Republic of Nicaragua^{146/} (Law No. 260, hereinafter "LOPJUD").

146. Available at: <http://goo.gl/2F6vUC>

[233] In this connection, according to Article 3 of the LOPJUD, it falls exclusively to the judiciary to render and execute judgments and to hear all non-contentious cases it is authorized to hear by law, with military courts hearing only those matters that strictly involve military crimes and misdemeanors, without prejudice to petitions and appeals before the CSJ in accordance with the Constitution and law.

[234] In keeping with Articles 6 and 8 of the LOPJUD, the judiciary is an independent body subject exclusively to the highest interests of the nation, as established in the Constitution. Its justices, judges, and courts, within their spheres of jurisdiction, are also independent in all actions they take and are subject solely to the Constitution and the law. However, they may not, either individually or collectively, issue instructions or make recommendations to their subordinates regarding the application or interpretation of the legal system in matters brought before these subordinates, but, to ensure the prompt and effective administration of justice, they may issue general instructions of a procedural nature. The LOPJUD further provides that when judges and justices consider that their independence is being undermined or disrupted, they may bring this to the attention to the authorities referred to in the LOPJUD.

[235] The CSJ, as the judiciary's highest court, exercises the jurisdictional, governmental, and regulatory powers conferred on it by Article 164 of the Constitution, as well as those functions set forth in Articles 27, 32, 33, 34, 35, and other applicable articles of the LOPJUD. To these ends, Article 163 of the Constitution, in conjunction with Article 138, paragraph 7, thereof, establishes that the CSJ consists of 16 justices elected by the National Assembly for five-year terms by a 60 percent vote of the total number of deputies. The candidates' names are put forward, in separate lists for each seat, by the President of the Republic and deputies, in consultation with pertinent civil associations. The aforementioned Article 163 establishes that the CSJ is made up of chambers. There are currently chambers for civil, criminal, constitutional, and jurisdictional matters, in addition to the Full Court.

[236] Pursuant to Articles 25 and 26 of the LOPJUD, the Full Court comprises all CSJ magistrates and meets regularly the first and third weeks of every month. It meets in special session when convened to do so by the President of the CSJ or when so requested, in writing, by a third of its total members. A quorum of the Full Court is constituted by three quarters of its total members, and any resolution or agreement it adopts requires the favorable vote of at least two thirds of all its members. Likewise, in keeping with Article 27 of the LOPJUD, it is the Full Court's responsibility to resolve the matters before it in a timely, prompt, and reasoned manner, as well as to hear and rule on appeals challenging the unconstitutionality of laws and on any jurisdictional or constitutional conflicts between the branches of government; appeals against rulings in special proceedings involving crimes of public officials instituted against CSJ justices and appeals court judges; criminal cases against civil servants referenced in the Constitution, after they have been stripped of their immunity; and organization and management of the administration of justice, among other things.

[237] For its part, the Criminal Chamber is the highest-level court of the criminal chambers of the appeals courts as well as of the district and local criminal courts. Its jurisdiction extends to the country as a whole. In this connection, it falls to the Full Court to appoint, from its justices, six members to make up the Criminal Chamber and to hear, process, and rule on cases involving criminal matters within the scope of its established functions. Accordingly, in keeping with Article 33 of the LOPJUD, the Criminal Chamber of the CSJ hears and rules, inter alia, on appeals in criminal matters, including those from the military jurisdiction; appeals for review of facts and law against decisions declaring appeals in criminal cases inadmissible; requests for extradition and for international judicial assistance in criminal matters; and conflicts of jurisdiction between criminal judges and tribunals, as

well as between ordinary criminal courts of justice and military courts. Likewise, it hears in first instance, ex officio or as a result of charges brought, special proceedings involving crimes against public officials instituted against CSJ justices, after they have been stripped of their immunity, and of appeals court judges, and, in second instance, proceedings for the crimes mentioned above when committed by district judges, lawyers and notaries, mayors, and Chairs of the Councils of the Autonomous Regions of the Atlantic Coast.

[238] It bears noting that the Criminal Chamber, like the other chambers, has a President who is elected by the other members for a one-year term. He/she is responsible, in addition to the tasks assigned in Article 37 of the LOPJUD, for distribution to the Chamber's members of the case files, for due consideration, preparation of draft judgments, and subsequent discussion.

[239] As regards the manner in which the CSJ adopts its decisions and the actions needed to enforce them, Articles 13 and 14 of the LOPJUD establish that, under pain of invalidity, any judicial decision, with the exception of merely procedural ones, must clearly express the grounds on which it is based, in accordance with the factual and legal suppositions in each specific case, with careful consideration given to the arguments expressed by the parties in defense of their rights. The judges and magistrates must rule in accordance with judicial precedents and may only alter such precedents by giving detailed explanations of the reasons behind their change of interpretation, and must respect due process in all judicial actions, irrespective of the nature of the proceedings, providing the parties with necessary guarantees for the effective defense of their rights.

[240] For its part, Article 12 of the LOPJUD, in conjunction with Article 167 of the Constitution, provides that court rulings are binding for State officials, organizations, and natural or legal persons. In no case may the effects of the judgment be restricted or its scope limited; failure to comply will entail disciplinary, civil, or criminal consequences as established by law. Similarly, judicial authorities may request assistance from security forces during trials and for the execution of judgments or rulings. Such assistance must be provided immediately, by the authority from whom it is sought, under the threat of legal sanctions.

[241] With regard to review appeals that can be brought against court decisions, both internally and with external agencies or authorities, Article 20 of the LOPJUD provides that all first-instance judgments, rendered by judges, may be appealed by parties, without prejudice to other remedies established by law. Further it provides that there will be only two instances in any proceeding, irrespective of its subject matter.

[242] As indicated above with regard to the manner in which its senior officials are selected, the CSJ, the highest court of Nicaragua's judiciary, is made up of 16 justices elected by the National Assembly for five-year terms, who are obliged to meet the requirements established in Article 161 of the Constitution. In this connection, the National Assembly is also responsible, in keeping with Article 138, paragraph 11, of the Constitution, for hearing, admitting, and ruling on matters involving the resignations or removals from office of CSJ justices, who, pursuant to Article 162 of the Constitution, enjoy immunity and may only be removed from their posts for reasons set forth in the Constitution and law.

[243] Similarly, it should be mentioned that the CSJ also has, among its members, a President, a Vice President, and 10 special members. In keeping with Article 28 of the LOPJUD, the President, who represents the judiciary and discharges the functions set out in Article 29 of the LOPJUD, is elected from among the members of the CSJ by a majority of votes for a one-year term. The Vice President,

elected in the same manner as the President, performs the tasks assigned to him by the President and replaces him/her in the event of temporary absences. The terms of both officials are renewable. For their part, the 10 special members are classified in descending rank from first to 10th depending on the order in which the National Assembly elected them.

[244] As regards the manner in which the human resources needed for the operations of the CSJ are identified and how its personnel are selected, the judiciary is governed by the provisions of the Judicial Career Law^{147/} (Law No. 501, hereinafter “LCJUD”), whose purpose, according to its Article 1, is to ensure administrative and financial management of the judiciary and govern the Judicial Career Service established by Article 159 of the Constitution, with a view to the prompt, sound administration of justice, as well as the disciplinary regime, entry, transfer, leave, and other statutory matters pertaining to said service. As far as the CSJ justices are concerned, pursuant to Article 3 of said law, they are also part of the Judicial Career Service, but as a “special category” governed by provisions of the Constitution and, where applicable and not contradictory to the Constitution, by said law’s provisions.

[245] Article 2 of the LCJUD establishes that the Career Service System is governed by principles of merit, responsibility, equality, openness, stability, impartiality, independence, and specialty area. Its Articles 8 to 15 and 18 lay out the requirements for participation in merit-based competitions and the official requirements for joining the Judicial Career Service, as well as publication and contents of vacancy announcements and competition rules, and define the criteria for evaluating candidates’ qualifications. Articles 4 to 7 established the National Judicial Administration and Career Service Council^{148/} (hereinafter “CNACJUD”) as the governing body of the Judicial Career Service and specifies its terms of reference; Articles 16 and 17 establish the procedure whereby citizens objecting to the suitability of any of the Judicial Career Service candidates may file a duly motivated appeal with the Examining Board; and Article 23 addresses both the possibility of requesting a review of the score obtained and of filing an appeal challenging the decision rejecting said request.

[246] As regards a regime of disqualifications, incompatibilities, and impediments, this has been provided for each of these categories, respectively, in Articles 42, 43, and 44 of the LCJUD. For their part, Chapters XIII and XIV of this law establish, respectively, the disciplinary regime and disciplinary procedures governing Judicial Career Service members. In this connection, it should be pointed out that the provisions of the LOPJUD on infractions that may be committed by judiciary officials and personnel shall be applicable along with those of the Judicial Career Service, with the CNACJUD and the Full Court the only bodies empowered to impose sanctions.

[247] Similarly, it bears mentioning that the judiciary has an Ethics Code for Officials and Personnel working for it, adopted by the CSJ through Agreement No. 193 of September 2011,^{149/} for the purpose of promoting the transparency, integrity, and efficiency of the judiciary’s personnel through adherence to ethical principles, values, and norms in their jurisdictional and administrative roles. Article 55 of said agreement establishes the National Ethics Commission of the Judiciary, which is entrusted with hearing, and issuing decisions on, “proceedings involving ethical responsibility,” in accordance with the norms of this code pertaining to both judicial and administrative career officials and personnel throughout the State.

147. Available at: <http://goo.gl/Sw6nGQ>

148. See: <http://www.poderjudicial.gob.ni/carrerajudicial/default.asp>.

149. Available at: <http://goo.gl/nV96Df>

[248] As regards the existence of manuals or other documents that describe the functions of the CSJ personnel, the country under review has pointed out in its response^{150/} that *“in 2008 the judiciary initiated a job classification exercise, which was developed in three phases: First Phase: Post analysis and description; Second Phase: Analysis and assessment by the Ministry of the Treasury, as the governing body; and Third Phase: Job classification in coordination with the governing body. As a result of this exercise, the judiciary has a Job Manual certified by the Ministry of the Treasury.”*

[249] With regard to training, the judiciary has the Institute of Advanced Judicial Studies,^{151/} the governing body for judicial teaching in Nicaragua. This institute, formerly known as the “Judicial School,” offers various educational programs in initial, continuing, graduate-level, and external training; a gender program, and a legal research program. Its training is directed, inter alia, not only at judicial officials but also at personnel of the National Police (PN), Public Prosecution Service (MP), and the Office of the Attorney General (PGR), as well as academics and attorneys. In this connection, the country under review notes in its response *“during the period from 2008 to 2012, the judiciary held 359 training events to improve performance and to orient new staff, in which 11,705 people took part.”*^{152/} It should also be mentioned that in the framework of the Program to Strengthen Sound Public Management, which is being implemented with the support of international cooperation, the Institute offers a graduate degree specifically in “Crimes against Public Administration and the Administration of Justice.”

[250] The judiciary, as part of its institutional strengthening actions, has a Directorate for International Relations and External Cooperation, which, among other duties, manages cooperation with donor agencies to secure project funding, in keeping with the priorities set by the CSJ. Along these lines, in its response^{153/} the country under review mentions some of the institutional strengthening projects the judiciary is carrying out, noteworthy among them the National Judicial Facilitators Program, which is being implemented with the support of the OAS General Secretariat. Further, attention should be drawn to the adoption in August 2011 of the “Strategic Plan of the Judiciary,”^{154/} covering the decade from 2011 to 2021, which, with the support of Spanish cooperation, is aimed, among other objectives, at reducing judicial delays, facilitating non-discriminatory access to justice for Nicaraguan citizens, improving the administrative management of the judiciary, and developing channels for interagency coordination with the judicial sector and other branches of government.

[251] Likewise, reference should be made to the recent completion of the “Program to Strengthen the Judiciary and Improve Access to Justice,” financed with resources from the Inter-American Development Bank, whose objectives were to expand access to justice, meet the needs of the country’s at-risk groups, improve the structure and operations of judicial offices, strengthen and streamline the judiciary’s administrative functions, and increase confidence in and improve the quality of service, through the establishment and consolidation of judicial and administrative careers and the development of mechanisms for communication with users.

150. See Nicaragua’s response to the questionnaire for the Fourth Round, p. 45, *supra* note 8.

151. See: <http://www.poderjudicial.gob.ni/ej/default.asp>.

152. See Nicaragua’s response to the questionnaire for the Fourth Round, p. 45, *supra* note 8.

153. *Ibid.*, pp. 50 to 55.

154. Available at: <http://goo.gl/xqOs6Q>

[252] In reference to the implementation of modern technologies to facilitate the work of the CSJ, the country under review points out in its response^{155/} that this “*has been a strategic priority in the development of the judiciary ... to improve performance in the jurisdictional and administrative spheres.*” Along these lines, the judiciary has a General Directorate for Information Technology and Communications,^{156/} which is responsible for designing and implementing information systems and networks to support and facilitate procedures and decision making for all jurisdictional bodies. These systems include the judicial information, management, and documentation system, created for the purpose of maintaining an updated register of laws, judgments, and jurisprudence; the Automated Planning and Statistics System (SAPE), which is intended to provide statistical data on civil, family, labor, juvenile justice, and criminal matters; and the NICARO System, which enables the general public to have online access to judicial matters and cases.

[253] In connection with the foregoing, as regards the manner in which the general public is informed of the objectives and functions of the CSJ, the judiciary has an official website, www.poderjudicial.gob.ni, with over 40 principal pages corresponding to the different entities of the judiciary, including the CSJ, with information on their structure, functions, and legal framework. Likewise, the website provides a number of links that give the general public guidance about how to carry out proceedings before the various entities of this branch of government. In addition, the judiciary also has Public Information Offices, established by the new “Judicial Office Management Office,”^{157/} which operate in Managua and in five districts of the country; a radio program titled “*Una hora con la Justicia* [One Hour with Justice],” and a series of weekly, quarterly, and annual publications with information on judicial services and other justice-related issues.

[254] With respect to mechanisms for internal control, the judiciary has a Judicial Inspectorate,^{158/} a support organ of the CNACJUD responsible, pursuant to Article 77 of the LOPJUD, for investigating all complaints lodged against appeals court judges, other judges, secretaries, public registrars, and other judicial officials who are part of the Judicial Career Service. It also processes complaints lodged against attorneys and notaries, provided that their actions do not constitute crimes. Also included among its functions is to hear complaints lodged against jurisdictional and administrative officials of the judiciary because their assets are disproportionately large, with an investigation conducted based on the Declaration of Integrity that each public official is legally obliged to submit and the current assets of the person against whom the complaint is filed, as well as the source of said assets and the reason for their disproportionate growth in relation to the salary received; and, as appropriate, to transmit a report to the CGR or the PGR.

[255] On the manner in which the budgetary resources needed for the operations of the CSJ are ensured, Article 159 of the Constitution stipulates that the judiciary shall receive not less than four percent of the General Budget of the Republic. In this respect, Article 84 of the LOPJUD indicates that the Administration Committee shall prepare a preliminary proposed budget each year and submit it to the Full Court for approval. Once approved, it is transmitted to the Ministry of Finance for inclusion in the corresponding draft Annual Budget Law of the Republic.

[256] With regard to coordination mechanisms for harmonizing the functions of the CSJ with those of other oversight agencies or public authorities and for securing the support of other officials, the judiciary, through the President of the CSJ, is a member of the National Commission for Interagency

155. See Nicaragua’s response to the questionnaire for the Fourth Round, p. 45, *supra* note 8.

156. See: <http://www.poderjudicial.gob.ni/dgtic13/default.asp> .

157. See: http://www.poderjudicial.gob.ni/despa_1/default.asp.

158. See: <http://www.poderjudicial.gob.ni/inspect/default.asp>.

Coordination of the Criminal Justice System of the Republic^{159/}, created by Article 415 of the Code of Criminal Procedure to coordinate and facilitate implementation of the criminal procedural reform process and ensure effective training for the system's operators as well as the performance of their respective functions, promote modernization of procedural and substantive criminal legislation, and enable the general public to have access to justice under the new legal framework. In addition to the President of the CSJ, the Commission is made up of the President of the Criminal Chamber of the CSJ, the Prosecutor General of the Republic, the Chair of the Justice Committee of the National Assembly, the Human Rights Ombudsman, the Director of Public Defense Services, the National Director of the PN, the Director of Military Auditing, the Director of the Forensic Medicine Institute, the Director of the National Penitentiary System, the Attorney General of the Republic, the Vice Minister of Government, and the Director of the Financial Analysis Unit.

[257] Lastly, as concerns accountability mechanisms applicable to the performance of the duties of the CSJ, the country under review points out in its response that *“any expenditures made by the judiciary must be authorized by the competent authority and, at the end of each month, the Ministry of the Treasury and Public Credit is informed, through the Integrated Financial and Administrative Management System (SIGFA), of all transactions. These data are subsequently verified by the Internal Auditing Unit of the CSJ and by the Office of the Comptroller General of the Republic and later published on the web page of the Ministry of the Treasury and Public Credit. Moreover, the CSJ provides budget execution data every quarter to the Office of the Comptroller General of the Republic, the entity that conducts annual audits.”*^{160/}

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

[258] The CSJ, as the judiciary's highest court, has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were described in brief in section 5.1 of this report. However, the Committee considers it timely to make a number of observations in relation thereto:

[259] First, the Committee takes note of the provisions of Article 138, paragraph 11, and Article 162 of the Constitution, which establish that CSJ justices may only be removed from office for reasons established in the Constitution and law, with the National Assembly responsible for hearing, admitting, and settling cases on resignations and removals from office of these officials. However, from the information available on the judiciary's website, the Committee observes that *“to date no law exists to govern the procedure of removing a Supreme Court justice from office.”*^{161/} Accordingly, the Committee will make a recommendation to the country under review on the advisability of adopting, in view of the importance of guaranteeing the principle of due process at all times, the provisions it deems necessary to make an objective determination of the procedure and the grounds for removing CSJ justices from office (see recommendation 5.4.1. in Chapter II of this report).

[260] Second, the Committee notes the existence of the Judicial Career Service based on the provisions of the LCJUD described in the preceding section. In this regard, given that the systems for government hiring, referred to in Article III, paragraph 5, of the Convention, were examined in the

159. See *supra* note 74.

160. See Nicaragua's response to the questionnaire for the Fourth Round, p. 86, *supra* note 8.

161. See: <http://www.poderjudicial.gob.ni/paginas/cplena.asp>.

Second Round, the Committee will not make any recommendations on this matter but rather reiterate those still in effect contained in the report on that round.^{162/}

[261] Third, with regard to the existence of manuals or other documents that describe the functions of the judiciary's personnel, the Committee acknowledges the phases being executed by this branch of government since 2008 to develop a Job Manual certified by the Ministry of the Treasury. In this connection, the Committee also takes note of the information provided by the Republic of Nicaragua in its progress report submitted in March 2013 pursuant to Article 31 of the Rules of Procedure of the Committee, to the effect that "[t]he Judicial Career Service Classification and Management Division has a manual of positions and functions of Judicial Career Service personnel, in which the positions are regularly updated and the job profiles and entry requirements defined. In 2012, job descriptions were drawn up for the units of the Public Defender's Office and the Judicial Support and Procedural Support Offices in Managua, and the list of national Judicial Career Service personnel was updated in coordination with departmental delegations. We are continuing the laborious task this year (2013) in order to finalize the updating of the job descriptions of at least 50 percent of Judicial Career Service personnel working in the judiciary."^{163/} Based on the foregoing, the committee will make a recommendation that the country under review take the measures it deems necessary to complete the process of updating the Judicial Career Service job descriptions, making them available, if appropriate, for public consultation on the judiciary's website (see recommendation 5.4.2. in Chapter II of this report).

[262] Fourth, based on the information it had at its disposal, the Committee was unable to identify the existence of documented procedures for performance of the judiciary's tasks, or of manuals or guides dealing with those duties. It will therefore formulate a recommendation in this regard^{164/} (see recommendation 5.4.3. in Chapter II of this report).

[263] Fifth, the Committee acknowledges the priority the judiciary attaches to the development of new and modern information technologies to facilitate its work and make the public service it provides more effective and efficient in view of the set of systems, networks, and computer-based registers it has been developing through its General Directorate for Information Technology and Communications. In this connection, the Committee, based on the information it had at its disposal, notes that a series of systems are pending implementation and development that would provide new tools and expand existing ones so as to continue strengthening the judiciary's technological platform. It will therefore make a recommendation that computer-based projects that complement existing ones continue to be developed and promoted, thus helping to make the administration of justice more transparent and expeditious (see recommendation 5.4.4. in Chapter II of this report).

[264] Sixth, with a view to strengthening the mechanism for internal control and for dealing with complaints related to the performance of Judicial Career Service personnel, the Committee considers it would be beneficial for the country under review to provide, on the judiciary's website, a link enabling individuals to file said complaints (see recommendation 5.4.5. in Chapter II of this report).

162. See the Final Report on Implementation in the Republic of Nicaragua of the Convention Provisions Selected for Review in the Second Round, and on Follow-up to the Recommendations Formulated to that Country in the First Round, p. 23, *supra* note 25.

163. See the report of Nicaragua in the framework of the Twenty-first Meeting of the Committee (Article 31 of the Rules of Procedure), p. 60, *supra* note 12.

164. On this point, the Republic of Nicaragua states that each of the areas has technical standards and circulars issued by the Court that regulate their functioning. That information is public and may be found on the web site, where there are the relevant links for each area.

[265] Lastly, based on the information available to it, the Committee was unable to determine the existence of accountability mechanisms applicable to the performance of the functions of the judiciary, including, for example, its activities and the results attained, as well as the internal performance of the institution and its goals and achievements. The foregoing is without prejudice to the reports submitted by both the Ministry of the Treasury and the CGR on budget execution that were referred to by the country under review in its response, and the Statistical Yearbooks prepared and published by its Information and Statistics Directorate. The Committee will formulate a recommendation in this regard (see recommendation 5.4.6. in Chapter II of this report).

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

[266] In its response^{165/} to the questionnaire, the country under review provided the following data on the number of judicial decisions that resulted in the determination of liability, sanctions, or acquittals for the types of criminal offenses indicated below:

Year	Criminal Offense	Cases Handled	Type of sentence			Default Judgments	Total No. of Judgments
			Dismissals	Convictions	Acquittals		
2008	Abuse of authority	2	1	0	0	1	1
	Bribery	6	0	0	1	0	1
	Concealment	1	0	0	0	0	0
	Fraud and extortion	2	0	0	0	0	0
	Obstruction of functions	9	0	0	2	4	2
	Misappropriation	4	0	0	0	1	0
	Embezzlement	1	0	0	3	1	3
	Influence peddling	1	0	0	0	0	0
	Subtotal 2008	26	1	0	6	7	7
2009	Abuse of authority	3	0	2	0	0	2
	Bribery	13	2	0	3	2	5
	Concealment	3	0	0	0	0	0
	Fraud	2	0	0	1	0	1
	Fraud and extortion	4	0	0	0	0	0
	Misappropriation	1	0	0	0	0	0
	Embezzlement	37	3	5	3	17	11
	Obstruction of functions	14	1	0	0	8	1
	Influence peddling	3	0	0	0	0	0
Subtotal 2009	80	6	7	7	27	20	
2010	Abuse of authority	3	0	1	2	0	3
	Insubordination or contempt	2	0	0	0	0	0
	Fraud	1	1	0	0	0	1
	Concealment	2	0	0	0	0	0
	Bribery	25	1	0	3	2	4
	Misappropriation	1	0	0	0	0	0
	Embezzlement	14	2	3	4	1	9
	Obstruction of functions	22	0	0	1	9	1

165. See Nicaragua's response to the questionnaire for the Fourth Round, pp. 102 to 105, *supra* note 8.

	Influence peddling	2	0	0	0	0	0
	Subtotal 2010	72	4	4	10	12	18
2011	Abuse of authority	8	0	2	2	1	4
	Fraudulent management	4	1	0	0	0	1
	Insubordination or contempt	2	0	0	0	0	0
	Concealment	4	0	1	0	0	1
	Fraud	1	0	0	0	0	0
	Bribery	16	0	6	8	1	14
	Obstruction of functions	20	7	2	4	2	13
	Embezzlement	4	4	2	0	1	6
	Subtotal 2011	59	12	13	14	5	39
2012	Abuse of authority	1	0	1	0	0	1
	Fraudulent management	4	4	0	0	0	0
	Insubordination or contempt	4	4	0	0	0	0
	Concealment	5	0	1	2	0	3
	Fraud	9	10	0	0	0	10
	Bribery	3	0	0	2	1	2
	Misappropriation	9	9	0	0	0	9
	Obstruction of functions	29	1	5	21	1	27
	Embezzlement	1	0	0	0	0	0
	Subtotal 2012	65	28	7	25	2	60
Total		302	51	31	62	53	144

[267] With regard to this table, the country under review adds in its response that “*of the total number of cases registered during the 2008-2012 period, no final judgment was rendered in 48 percent (144) of them; a default judgment with an arrest warrant was rendered in 37 percent (53) of them; and the rest are still being processed owing to various procedural situations; one request was made to the National Assembly for the official to be stripped of immunity; there were three cases in which officials who submitted applications for amparo to the CSJ were summoned for hearings; four other officials were summoned for hearings, etc.*”

[268] The Committee considers that this information demonstrates that the country under review has initiated judicial proceedings on specific crimes committed by civil servants in the performance of their functions. However, the Committee considers it timely to make the following considerations:

[269] First, as may be seen, of the total number of cases in which judgments were rendered during the period for which the State provided information, slightly more than 35 percent were dismissed. However, the Committee does not have disaggregated data that would enable it to identify and examine the grounds mentioned in Article 155 of the CPP that were invoked for dismissal of the cases referred to in the table above. Accordingly, the Committee will make a recommendation to the country under review that it consider preparing statistical data to identify said grounds, including statutes of limitations, for dismissal of the aforementioned judicial proceedings, in order to identify challenges and adopt, as appropriate, corrective measures (see recommendations 5.4.7. and 5.4.8. in Chapter II of this report).

[270] Second, bearing in mind that no information was provided on cases of corruption referred to the Full Court in the past five years in relation to the functions conferred on said court under Article 27, paragraphs 3 and 4 of the LOPJUD, among other provisions, to sanction corrupt practices, the Committee will offer a recommendation to the country under review in this regard (see recommendation 5.4.9. of this report).

[271] Third, the Committee, bearing in mind that no information was provided on cases of corruption referred to the Criminal Chamber of the CSJ in the past five years in relation to the functions conferred on said chamber by Article 3, paragraphs 1, 8, and 9 of the LOPJUD, among other provisions, to sanction corrupt practices, the Committee will offer a recommendation to the country under review in this regard^{166/} (see recommendation 5.4.10. in Chapter II of this report).

[272] Last, as concerns the results achieved in connection with compliance with the disciplinary regime and procedures established, respectively, in Chapters XIII and XIV of the LCJUD, the country under review supplies the following data in its response:

Sanctions Imposed	Year					Total
	2008	2009	2010	2011	2012	
Provisional suspension	0	5	5	3	6	19
Private admonition	1	0	1	2	1	5
Private admonition and fine	0	0	0	1	1	2
Removal from office	1	4	1	6	11	23
One-month suspension from office	0	1	0	0	0	1
Three-month suspension from office	0	0	0	0	1	1

[273] Notwithstanding the fact that the data could serve to demonstrate that investigations are being conducted and disciplinary sanctions imposed within the judiciary in compliance with the duties incumbent on it under the LCJUD, the Committee considers that, based on the data, it is impossible to make a thorough assessment of the results in this area. It will therefore make a recommendation on the advisability of preparing and publishing statistical data on these results (see recommendation 5.4.11. in Chapter II of this report).

5.4. Conclusions and recommendations

[274] Based on the comprehensive review conducted with respect to the CSJ in the foregoing sections, the Committee offers the following conclusions and recommendations:

[275] The Republic of Nicaragua has considered and adopted measures intended to maintain and strengthen the CSJ as an oversight body, as described in Chapter II, section 5, of this report.

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

166. On this point, the Republic of Nicaragua provides additional information to that presented in its reply to the questionnaire on the statistics of the corruption cases that have been brought before the Criminal Chamber of the CSJ. It is available at: http://www.oas.org/juridico/spanish/mesicic4_nic.htm

- 5.4.1. Consider adopting, in view of the importance of guaranteeing the principle of due process, the provisions it deems necessary to make an objective determination of the procedure and the grounds for removing CSJ justices from office (see Chapter II, section 5.2, of this report).
- 5.4.2. Adopt appropriate measures to complete the process of updating the Judicial Career Service job descriptions, making them available for public consultation on the judiciary's website (see Chapter II, section 5.2, of this report).
- 5.4.3. Adopt documented procedures, manuals, or guides, in addition to those that already exist, on the performance of the judiciary's tasks (see Chapter II, section 5.2, of this report).
- 5.4.4. Develop and promote computer-based projects, in addition to those that already exist, to facilitate, among other matters, the judiciary's efforts to sanction corrupt practices (see Chapter II, section 5.2, of this report).
- 5.4.5. Adopt appropriate measures that make it possible for individuals to submit online complaints about the performance of Judicial Career Service and administrative personnel, by means of a link on the judiciary's website (see Chapter II, section 5.2, of this report).
- 5.4.6. Adopt necessary measures to establish additional accountability mechanisms applicable to the performance of the judiciary's substantive functions and its activities and results, including procedures on the way in which the information needed to do so would be gathered and processed and how it would be made public and made accessible to the general public (see Chapter II, section 5.2, of this report).
- 5.4.7. Prepare statistical data on judicial proceedings initiated with regard to all corrupt practices, with an indication of how many are ongoing, have been suspended, have been shelved due to statute of limitations, have been shelved without any decision reached, or are at a stage at which a decision may be reached, or in which decisions have already been made on the merits, with reference to whether said decisions constituted acquittals or convictions, in order to identify challenges and adopt corrective measures, as appropriate (see Chapter II, section 5.3, of this report).
- 5.4.8. Prepare statistical data identifying the grounds, including statute of limitations, for the dismissal of judicial proceedings for crimes committed by civil servants in the performance of their functions, in order to identify challenges and adopt corrective measures, as appropriate (see Chapter II, section 5.3, of this report).
- 5.4.9. Prepare statistical data on the appeals processed by the CSJ with respect to acts of corruption, pursuant to the function entrusted to it, inter alia, by Article 27, paragraphs 3 and 4 of the LOPJUD, with an indication of how many are ongoing, have been suspended, have been shelved due to statute of limitations, have been shelved without any decision reached, or are at a stage at which a decision may be reached, or in which decisions have already been made on the merits and the nature

of said decisions, in order to identify challenges and adopt corrective measures, as appropriate (see Chapter II, section 5.3, of this report).

- 5.4.10. Prepare statistical data on the appeals processed by the Criminal Chamber of the CSJ with respect to acts of corruption, pursuant to the function entrusted to it, inter alia, by Article 33, paragraphs 1, 8, and 9 of the LOPJUD, with an indication of how many are ongoing, have been suspended, have been shelved due to statute of limitations, have been shelved without any decision reached, or are at a stage at which a decision may be reached, or in which decisions have already been made on the merits and the nature of said decisions, in order to identify challenges and adopt corrective measures, as appropriate (see Chapter II, section 5.3, of this report).
- 5.4.11. Prepare statistical data on the disciplinary procedures followed in accordance with Chapters XIII and XIV of the LCJUD, with an indication of how many are ongoing, have been suspended, have been shelved due to statute of limitations, have been shelved without any decision reached, or are at a stage at which a decision may be reached, or in which decisions have already been made on the merits and the nature of said decisions, in order to identify challenges and adopt corrective measures, as appropriate (see Chapter II, section 5.3, of this report).

III. BEST PRACTICES

[277] In accordance 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* adopted by the Committee for the Reports of said round, reference is made below to the best practices identified by the country under review in its response to the questionnaire in the section corresponding to “Information on Best Practices” that the State has expressed its wish to share with the other MESICIC States Parties as it considers that said practices could be beneficial to them:

[278] **With respect to the MP:**

[279] – The “Anti-Corruption Workshops” consist of two or three days of work sessions during which the Specialized Prosecutors of the UACCO get together to study cases and reach decisions on such matters as intensifying investigations or bringing criminal proceedings.

[280] – “Monitoring of cases of crimes against public administration,” which entails periodic follow-up to each case of corruption in the country, whether under investigation by the PN or in the process of criminal prosecution by judicial bodies. The objective of the MP under this approach is to keep track of the measures taken by prosecutors in public corruption cases, to urge them to comply with judicial procedures established by the corresponding laws, and to seek to obtain specific information on each case, for strategic decision making and the achievement of operational goals.

[281] – The “Interagency Anticorruption System,” which, by means of monitoring cases of corruption, yields a considerable amount of information on each specific case. Said information is used to expand the interagency database of crimes against public administration, a database managed by the MP that displays, from an IT platform, the investigations and criminal proceedings initiated for each and every case of corruption in the country.

[282] For additional information, see the response^{167/} of the country under review under “Information on Best Practices.”

[283] **With respect to the PGR:**

[284] – “International Collaboration in the Area of Mutual Legal Assistance,” which consists of the creation of specialized units, both for international criminal matters and for the fight against corruption, the establishment of direct contacts via the Internet with international units of centralized authorities of other countries, such as Mexico, Guatemala, El Salvador, Costa Rica, Honduras, and Panama, among others, to facilitate the smooth processing of active and passive requests for mutual assistance, and the strengthening of interagency coordination between the PGR, as the central authority, and other national authorities responsible for taking various measures and actions in response to requests for information, and among the national bodies charged with prosecuting crime (judiciary, MP, PN) and, in the particular case of crimes of corruption, coordination between the PGR and the CGR. For additional information, see the response^{168/} of the country under review under “Information on Best Practices.”

[285] **With respect to the PN:**

[286] – Implementation of the “*Instancia de Diálogo* [Dialogue Forum],” which consists of an ongoing process of coordination between the PN and international cooperation in order to lend support to the PN in the implementation of its Strategic Plan by establishing both strategic goals and impact and process indicators in thematic areas, including the development and institutional strengthening of the PN. For additional information, see the response^{169/} of the country under review under “Information on Best Practices.”

[287] **With respect to the CSJ:**

[288] – The “Judicial Office Management Model,” which consists of providing users of the justice system an effective and efficient means of improving the quality of service and separating administrative and jurisdictional processes. It is supported by an IT system that expedites the processing of court cases and makes it possible to keep abreast of new technologies. For additional information, see the response^{170/} of the country under review under “Information on Best Practices.”

[289] **With respect to the Office of Public Ethics:**

[290] – The “Strategy for Advancement, Training, and Implementation of Executive Decree 35-2009 ‘Code of Ethical Conduct for Executive Branch Personnel,’” which consists of the promotion of best practices in public management, by training all personnel of executive branch institutions to manage the contents of the Code of Ethical Conduct, in order to instill ethical principles and values in executive branch personnel, in the face of behavioral changes among persons working in the public sphere. For additional information, see the response^{171/} of the country under review under “Information on Best Practices.”

167. See Nicaragua’s response to the questionnaire for the Fourth Round, pp. 160 and 162, *supra* note 8.

168. *Ibid.*, pp. 168 and 171.

169. *Ibid.*, pp. 153 to 157.

170. *Ibid.*, pp. 163 and 167.

171. *Ibid.*, pp. 144 to 148.

[291] **With respect to the General Directorate for State Procurement:**

[292] – The promotion and dissemination of the Procurement Portal; use of public procurement training tools available on the OAS electronic portal; organization of in-service training for personnel of the General Directorate for State Procurement in other States Parties to the Convention; establishment of “help desks” of the General Directorate for State Procurement to provide personalized assistance and advice to local procurement offices; submission to evaluation by the OECD-DCD; and advance publication of procurement plans. For additional information, see the response^{172/} of the country under review under “Information on Best Practices.”

[293] **With respect to the General Directorate for the Civil Service of the Ministry of the Treasury and Public Credit:**

[294] – Implementation of a “Quality Management System in the Directorate for the Civil Service,” which consists of strategic reorientation (mission, vision, objectives, and quality policy) based on laws governing the institution’s activities, beginning with the establishment of a process map (strategic, mission-related, and support) and the determination and definition of mandatory processes and procedures set out in ISO Standard 9001, with a view to enhancing processes and making them more transparent and to providing better service to users, interested parties, and the general public. For additional information, see the response^{173/} of the country under review under “Information on Best Practices.”

IV. FOLLOW-UP ON PROGRESS AND NEW AND RELEVANT INFORMATION AND DEVELOPMENTS WITH REGARD TO THE IMPLEMENTATION OF RECOMMENDATIONS SUGGESTED IN THE COUNTRY REPORT IN THE FIRST ROUND OF REVIEW^{174/}

[295] The Committee will refer below to the progress, information, and new developments made by Nicaragua in relation to the recommendations and measures^{175/} suggested by the Committee for implementation in the Report of the First Round, and with respect to which the Committee deemed that additional attention was required in the framework of the Second and Third Rounds,^{176/} and shall, as appropriate, 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 pursuant to section VI of the *Methodology* adopted by the Committee for the Fourth Round of Review.

[296] The Committee will also take note in this section of the Report of the difficulties in implementing the aforementioned recommendations and the measures to which the country under review has drawn attention, as well as of its technical cooperation needs to that end.

172. Ibid, pp. 149 to 152.

173. Ibid, pp. 158 and 159.

174. The list of recommendations that still require additional attention or have been reformulated are included in the annex to this report.

175. In the First Round report on Nicaragua, the measures did not have a specific nomenclature and were simply referred to by bullets. The same format was used for various countries. Subsequently, however, the Committee adopted a nomenclature for the measures, referring to them as paragraphs (a), (b), (c), etc. For the sake of clarity, this nomenclature has been used in this section.

176. Available at: <http://www.oas.org/juridico/english/nic.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:

Strengthen the implementation of laws and regulatory systems concerning conflicts of interest so that they permit practical and effective application of the public ethics system.

Measure a):

[297] This measure was satisfactorily considered and, therefore, does not require additional attention.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Ensure the applicability of sanctions to public servants who violate the norms that govern conflicts of interests, in accordance with the aims of the Civil Service Probity Law.

[298] In its response to the questionnaire,^{177/} the country under review presents information and new developments with respect to the foregoing measure. In this regard, the Committee notes, as steps that contribute to progress in its implementation, the actions being taken by the CGR pursuant to Article 4 of the Civil Service Probity Law. However, the same country under review mentions in its response, as a difficulty in implementing said measure and taking into account that the responsibilities assigned for imposing sanctions on civil servants who violate rules on conflicts of interest are clearly established in the LOCGR, “*the capacity to monitor and audit a larger amount of public administration processes and actions; this entails expanding the economic and operational capacity of the CGR as well as of the internal auditing units in each of the public sector entities.*”

[299] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (b) in section Chapter IV, section 1.1, of this report, which are reflected in the actions being taken by the CGR pursuant to Article 4 of the Civil Service Probity Law. It also deems it advisable for the country under review to continue giving attention to this measure, bearing in mind the need identified by the Committee in Chapter II, section 3.2, of this report to strengthen the CGR, ensuring that it has the necessary human and financial resources to perform its duties effectively and to discharge its external oversight and auditing functions. (See measure (a) of section 1.1 in the annex to this report).

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Establish adequate restrictions for those public servants who have recently left their public positions.

[300] In its response to the questionnaire,^{178/} the country under review presents information and new developments with respect to the foregoing measure. In this regard, the Committee notes, as steps that

177. See Nicaragua's response to the questionnaire for the Fourth Round, pp. 108 to 112, *supra* note 8.

178. *Ibid*, pp. 112 to 117.

contribute to progress in its implementation, the adoption, in October 2010, of the Public Sector Administrative Procurement Law^{179/} (Law No. 737), Article 18 of which stipulates that directly or indirectly elected public officials referred to in the Constitution and the LSCCA may not, within a year of their retirement, become government suppliers or enter into contracts with public sector agencies and entities.

[301] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (c) in Chapter IV, section 1.1, of this report, which are reflected primarily in certain provisions of the Public Sector Administrative Procurement Law. It also notes that the country under review needs to continue to give attention said measure, bearing in mind that these provisions refer exclusively to the prohibition on becoming a government supplier or contractor. However, the Committee suggested this measure because it considers that the country under review needs to consider the adoption of provisions to prevent conflicts of interest in the case of individuals who have left public service, for example, a measure prohibiting former civil servants from becoming involved in any official matters they had prior knowledge of or from having dealings with entities with which they were recently associated and, in general, all situations that could result in their taking undue advantage of their status as former civil servants.

[302] In view of the foregoing, the Committee believes it would be appropriate to reformulate measure (c) of the recommendation in Chapter IV, section 1.1 as follows, in order to focus on the considerations made above. Further, it suggests that the country under review might take into account, for purposes of its implementation, the “Legislative Guidelines” on basic elements on conflicts of interest, drawn up by the Technical Secretariat of the MESICIC and available on the Anti-Corruption Portal of the Americas.^{180/}

[303] – Consider adopting provisions to prevent persons who have held public posts from unduly benefiting from their status as former civil servants by obtaining benefits, privileges, or preferential treatment in the offices in which they worked (see measure (b) in section 1.1 of the annex to this report).

[304] – Consider adopting provisions to prohibit persons who have performed public functions from dealing, in favor of their own or third-party interests, with the public entities with they were associated with and in official matters of which they had prior knowledge, for a reasonable period of time (see measure (c) in section 1.1 of the annex to this report).

Measure d):

[305] This measure was satisfactorily considered and, therefore, does not require additional attention.

1.2. Standards of conduct to ensure the proper conservation and use of resources entrusted to public officials in the performance of their functions and mechanisms to enforce compliance

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

179. Available at: <http://goo.gl/oV73Qj>

180. Available at: http://www.oas.org/juridico/english/gl_conflict_int.doc .

1.3. Standards of conduct and mechanisms relating to measures and systems that require public officials to report to appropriate authorities regarding acts of corruption in public office of which they are aware

Recommendation:

Strengthen the mechanisms that Republic of Nicaragua has for requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Apply effectively to those who violate this obligation, the sanctions provided in the corresponding punishment regimes.

[307] In its response to the questionnaire,^{181/} the country under review presents information with respect to the foregoing measure related to the functions of the CGR as the body competent to implement the provisions of the Civil Service Probity Law, of which Article 7, paragraph h, refers to the obligation of civil servants as a whole to “report to their respective superiors or authorities any acts that might be detrimental to the State and that they are aware of by virtue of the functions they perform.”

[308] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (a) of the recommendation in Chapter IV, section 1.3, of this report, which are reflected in the actions being taken by the CGR to implement the Civil Service Probity Law and other laws related to the determination of the liability of civil servants when they fail to comply with their duties and obligations under the law. It also notes that the country under review needs to continue giving attention to this measure, bearing in mind, as established in the Report on the First Round, that failure to comply with the obligation established in Article 7, paragraph h, of the Civil Service Probity Law is not considered a violation in Article 12 thereof and, consequently, that this infraction could not be sanctioned under Article 17 of the same law.

[309] In view of the foregoing, the Committee believes that it would be appropriate to reformulate measure (a) of the recommendation in Chapter IV, section 1.3, of this report to focus on the considerations made above. Moreover, it suggests that the country under review might take into account, for purposes of its implementation, the “Legislative Guidelines” on basic elements on conflicts of interest, drawn up by the Technical Secretariat of the MESICIC and available on the Anti-Corruption Portal of the Americas,^{182/} which require civil servants to report to competent authorities any information about acts of corruption in the civil service that they may be aware of:

[310] – Consider adopting provisions that assign to a specific civil servant or entity the task of monitoring compliance with the obligation of persons performing public functions to inform competent authorities about any acts of corruption they may be aware of (see measure (a) in section 1.3 of the annex to this report).

181. See Nicaragua’s response to the questionnaire for the Fourth Round, pp. 112 to 117, *supra* note 8.

182. Available at: http://www.oas.org/juridico/english/gl_report_acts_corr.doc

[311] – Consider adopting provisions that establish administrative and criminal sanctions for the failure of persons performing public functions to report on any acts of corruption they may be aware of (see measure (b) in section 1.1 of the annex to this report).

Measure b):

[312] This measure was satisfactorily considered and, therefore, does not require additional attention.

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

Recommendation:

Improve the systems for verification and use of the content of sworn financial declarations.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Establish systems for verifying the content of the sworn declaration by the competent authority.

[313] As concerns the implementation of measure (a) of the recommendation in Chapter IV, section 2, of this report, in its response,^{183/} the country under review reiterates the information it provided in its response to the Third Round questionnaire^{184/} regarding the adoption, by the CSCGR at its regular meeting No. 524 in 2007, of the “Manual of Administrative Procedures and Management Indicators of the General Directorate for Legal Affairs.”^{185/} On this occasion, however, the Committee did have access to said document as it is available on the CGR website. It was therefore able to ascertain that said manual establishes procedures for the receipt, custody, verification, and revision of asset declarations, as well as for checking the veracity and accuracy of the information provided by civil servants in their declarations in keeping with Article 23 of the Civil Service Probity Law.

[314] In view of the foregoing, the Committee takes note of the satisfactory consideration by the country under review of measure (a) of the recommendation in Chapter IV, section 2, of this report.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Design systems that facilitate access to the information contained in the sworn declarations by those who are authorized to do so.

[315] In its response to the questionnaire,^{186/} the country under review does not present any information other than that examined by the Committee in the Second and Third Rounds.

[316] Accordingly, the Committee reiterates that the country under review needs to give additional attention to the implementation of measure (b) in Chapter IV, section 2, of this report. Likewise, to

183. See Nicaragua’s response to the questionnaire for the Fourth Round, pp. 121 to 123, *supra* note 8.

184. *Ibid*, pp. 27 and 38.

185. Available at: <http://goo.gl/myo9XK>

186. See Nicaragua’s response to the questionnaire for the Fourth Round, pp. 123 and 124, available *supra* note 8.

these ends, the Committee deems it advisable for the country under review to consider the criteria established in the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions,” which is available on the Anti-Corruption Portal of the Americas,^{187/} and therefore considers that this measure should be reformulated as follows:

[317] – Design systems to facilitate access to the information contained in asset declarations by persons legally authorized to have such access, bearing in mind the criteria established in the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions.” (See the single measure in section 2 of the annex to this report).

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Optimize the systems for analyzing the content of asset declarations for the purpose of detecting and preventing conflicts of interest as well as for detecting possible cases of illicit enrichment.

[318] As regards the implementation of measure (c) of the recommendation in Chapter IV, section 2, of this report, in its response,^{188/} the country under review reiterates the information it presented in its Third Round response with respect to the adoption of the “Manual of Administrative Procedures and Management Indicators of the General Directorate for Legal Affairs,” which has already been referred to in connection with the satisfactory implementation of measure (a) of the same recommendations.

[319] Similarly, the Committee takes note of the comment made by the country under review in its response^{189/} to the effect that “*the CGR has initiated a process of procurement of audiovisual and information technologies to support verification of the civil servants’ asset declarations,*” and that “*it is currently working on a New Asset Declaration System,*” which will enable persons entering and leaving the civil service to fill out the forms online, with the use of a password.” Bearing these factors in mind and considering that an updated, detailed review was made in Chapter II, section 3, of this report on the functions of the CGR as an oversight body under Article III, paragraph 9, of the Convention, the Committee adheres to the contents of said section and therefore considers that this measure duplicates recommendation 4.4.3. in Chapter II of this report.

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

Recommendation

Strengthening the Comptroller General, as the oversight body that undertakes the functions related to the effective compliance with paragraphs (1), (2), (4) and (11) of Article III of the Convention.

187. Available at: http://www.oas.org/juridico/english/law_declaration.htm

188. See Nicaragua’s response to the questionnaire for the Fourth Round, p. 125, *supra* note 8.

189. *Ibid*, p. 122.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Strengthen the Office of the Comptroller General, giving the office the necessary legal instruments and resources needed for compliance with the new responsibilities that have been assigned to it, in relation with the oversight provisions of the Convention.

Measure b):

[320] This measure was satisfactorily considered and, therefore, does not require additional attention.

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Make sure that the Comptroller General of the Republic has greater political and social support; and establish mechanisms that will allow coordination and continued evaluation and monitoring of its actions.

[321] In its response to the questionnaire,^{190/} the country under review presents information and new developments with respect to the implementation of measures (a) and (c) of the foregoing recommendation. In this regard, the Committee, taking into account Chapter II, section 3, of this report, undertook an updated, detailed analysis of the CGR as an oversight body under Article III, paragraph 9, of the Convention. On the basis of this and other information at its disposal, it adheres to the contents of that section and therefore considers that these measures are redundant.

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

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

4.2. Mechanisms for consultation

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

4.3. Mechanisms to encourage participation in public administration

Recommendation:

Strengthen and further implement mechanisms that encourage civil society and nongovernmental organizations to participate in public administration.

190. Ibid, pp. 125 to 131.

Measure suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Establish mechanisms to encourage civil society and nongovernmental organizations to participate in efforts to prevent corruption and to develop public awareness of the problem; and promote awareness of the mechanisms established for participation and explaining their use.

[324] In its response to the questionnaire,^{191/} the country under review presents information and new developments with respect to the foregoing measure. In this regard, the Committee notes, as steps that contribute to progress in its implementation:

[325] – The training events held by the Office of Public Ethics from December 2010 to December 2012, directed at civil society, to promote social control of public management and raise awareness of the importance of exercising this right, which is rooted in the Constitution and in the Laws on Citizen Participation and Access to Public Information.

[326] – The installation, management, follow-up, and monitoring of the more than 200 “Complaint and Suggestion Boxes” in the executive branch institutions, in keeping with the mechanisms established in Executive Decree No. 35-2009, as well as the Manual on Use of the Complaint and Suggestion Boxes for Sound Public Management.

[327] – The Social Auditing processes carried out in five State entities.

[328] The Committee takes note of the steps taken by the country under review to advance in its implementation of the measure in the recommendation in Chapter IV, section 4.3 of this report, which are reflected in the functions being carried out by the Office of Public Ethics. The Committee also considers that the country under review needs to continue giving attention to this measure, bearing in mind that said functions are directed at ensuring follow-up of public management and not at establishing and promoting mechanisms to encourage civil society organizations and the general public to participate in efforts to prevent corruption and to develop public awareness of its effects, as indicated in the suggested measure (see the single measure in section 4.3 of the annex to this report).

4.4. Participation mechanisms for follow-up of public administration

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

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

Recommendation 5.1.

[330] This recommendation was satisfactorily considered and, therefore, does not require additional attention.

Recommendation 5.2.

[331] This recommendation was satisfactorily considered and, therefore, does not require additional attention.

191. Ibid, pp. 132 to 136.

Recommendation 5.3 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Design and implement an integral program for dissemination and training directed specifically to competent authorities (in particular to, judges, magistrates, state attorneys and other authorities with judicial investigative functions), in order to ensure that they are knowledgeable of the provisions on mutual legal assistance and other related treaties signed by Nicaragua, and may apply them to concrete cases.

[332] In its response to the questionnaire,^{192/} the country under review presents information and new developments with respect to the foregoing measure. In this regard, the Committee notes, as steps that contribute to progress in its implementation:

[333] – The working group set up within the PN, coordinated by its General Inspectorate, with the participation of the Directorates for Economic Investigation, Judicial Assistance, Police Academy, the Divisions of Legal Consultancy, Internal Affairs, National Executive Secretariat, and International Relations, which is charged with implementing, monitoring, and evaluating recommendations originating in the country report.

[334] – The conclusion of the coordination agreement between the MP, PN, and PGR on investigation, prosecution, and recovery of assets derived from acts of corruption and related crimes, which endeavors to implement the recommendations on preventive and investigatory aspects of the crimes against public administration and criminal offenses under the Convention.

[335] –The Regional Security Strategy of the PN, which involves activities to strengthen intelligence and investigation capabilities in operations related to organized crime that may lead to the types of crimes considered in the Convention, including international cooperation activities with the American Police Community (AMERIPOL) and the Commission of Central American, Mexican, Caribbean and Colombian Chiefs of Police (CJPCAMCC), among other groups.

[336] – The courses on international instruments and mutual assistance in the specialized training sessions on the investigation of crimes against public administration, offered by the “Walter Mendoza Martínez” Police Academy.

[337] – The design of the Instructional and Theoretical Manual on Ethics and Doctrine for Sound Public Management of the PN, which includes a study module on international anti-corruption instruments.

[338] – The seminars held by the PGR and the MP on the scope and application under domestic law of the international conventions against corruption.

[339] The Committee, takes note of the steps taken by the country under review to advance in its implementation of recommendation 5.3 in Chapter IV, section 5, of this report, which are reflected in the actions described above. The Committee also considers that the country under review needs to continue giving attention to said recommendation, bearing in mind that, from the information it had available, it was unable to identify a comprehensive dissemination and training program targeted, in particular, at judges, magistrates, prosecutors, and other authorities with judicial investigation responsibilities, on the provisions on mutual legal assistance set forth in the Convention and other

192. Ibid, pp. 136 to 139.

treaties signed by the Republic of Nicaragua, in order to ensure that said authorities are familiar with them and are able to apply them in the specific cases they are aware of.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation 6.1.:

[340] This recommendation was satisfactorily considered and, therefore, does not require additional attention.

Recommendation 6.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Give the central authority sufficient resources to properly perform its duties.

[341] In its response,^{193/} the country under review does not present any information on the steps it has been taking to implement the foregoing recommendation. In this regard, the Committee considers that the country under review needs to continue giving attention to said recommendation and, further, that the recommendation should be reformulated to ensure that recommendations in this regard are consistent with one another.

[342] – Provide the Central Authority designated for the purposes set out in Article XVIII of the Convention with the necessary human and financial resources to perform its functions effectively and for the purposes of international assistance and cooperation contemplated in the Convention (see the recommendation in section 6 of the annex to this report).

7. GENERAL RECOMMENDATIONS

Recommendation 7.1:

[343] This recommendation was satisfactorily considered and, therefore, does not require additional attention.

Recommendation 7.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Select, develop and report to the Technical Secretariat of the Committee procedures and indicators, where appropriate, that allow for verifying follow-up of the recommendations established in this report. For this purpose, the Technical Secretariat of the Committee will publish on the OAS website a list of more generalized indicators applicable within the Inter-American system that may be available for selection by the State under review.

[344] In its response to the questionnaire,^{194/} the country under review presents information and new developments with respect to the foregoing measure. In this regard, the Committee notes, as steps that contribute to progress in its implementation:

[345] – The launching of the government's public management Information System (SIGRUN), as an IT platform for integral strategic follow-up and planning, in which data on the activities under the

193. Ibid, pp. 139 and 140.

194. Ibid, pp. 141 to 143.

institutional operating plans of 52 public entities are entered and processed. In this connection, as expressed by the country under review, the Nicaraguan institutions “*have made considerable headway in implementing the recommendations of the Committee of Experts on implementation of the Inter-American Convention against Corruption (IACC), inasmuch as activities are included in the respective strategic and operational plans to help implement the recommendations, measures, or activities that emerge from the MESICIC evaluation process.*”

[346] – The proposal made in the framework of the Program to Strengthen Sound Public Management to update the Plan of Action on implementation of the recommendations made to the Republic of Nicaragua by the Committee of Experts of the MESICIC.^{195/} To perform this task, as pointed out by the country under review, the Technical Secretariat of the National Committee for the Integral Development of Sound Public Management “*has drawn up a matrix that shows the advances made by institutions as well as a progress report on the general and specific indicators in the Plan of Action on which progress has been made. These instruments are currently being reviewed, after which the process will begin to approve the proposed updated Plan of Action, which will cover the First, Second, and Third Rounds of review, with a view to modernizing this instrument on the basis of new state policies and pursuant to the new good governance model, so as to provide State institutions with a dynamic, streamlined, everyday tool for implementing the recommendations and clearly identifying institutional responsibility in keeping with their functions and powers in the recommendations made to the State of Nicaragua in the review rounds.*”

[347] – The establishment, which is planned to be the final result of the program referred to in the preceding paragraph, of a National System of Transparency and Sound Public Management Indicators, whose purpose is to create “*a national mechanism for measurement of the achievements made in sound public management, quality, good governance, social control, and the implementation of international recommendations, by means of a critical, objective assessment of sound public management in government, so as to gauge the program’s contribution to improved public administration.*”

[348] – The establishment through Presidential Agreement No. 227-201^{196/} of the National Committee for the Integral Development of Sound Public Management, one of the functions of which is: “*(1) To provide support in following up on implementation of the recommendations made under the international conventions against corruption.*”^{197/}

[349] The Committee takes note of the steps taken by the country under review to advance in its implementation of recommendation 7.2 in Chapter IV, section 7, of this report. The Committee also considers that the State needs to continue giving attention to said recommendation, bearing in mind, first, that SIGRUN is a restricted access system which requires a user name and password for accessing information and, second, that the matrix developed by the National Committee for the Integral Development of Sound Public Management was not available. Neither was the information on the procedures and indicators making it possible to verify follow-up by the National Committee for the Integral Development of Sound Public Management of the recommendations made to the Republic of Nicaragua in the First Round report (see the single recommendation in section 7 of the annex to this report).

195. See: http://www.oas.org/juridico/spanish/mesicic_cida_project_nic_sp.htm.

196. Available at: <http://goo.gl/9GfZoN>

197. See the Strategy for Sound Public Management, p. 11, *supra* note 64.

ANNEX

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 interest and mechanisms to enforce them

Recommendation:

Strengthen the implementation of laws and regulatory systems concerning conflicts of interest so that they permit practical and effective application of the public ethics system.

Suggested Measures:

- a) Ensure the applicability of sanctions to public servants who violate the norms that govern conflicts of interests, in accordance with the aims of the Civil Service Probity Law.
- b) Consider adopting provisions to prevent persons who have held public posts from unduly benefiting from their status as former civil servants by obtaining benefits, privileges, or preferential treatment in the offices in which they worked.
- c) Consider adopting provisions to prohibit persons who have performed public functions from dealing, in favor of their own or third-party interests, with the public entities with they were associated with and in official matters of which they had prior knowledge, for a reasonable period of time.

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

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

1.3. Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

Recommendation:

Strengthen the mechanisms that Republic of Nicaragua has for requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

Suggested Measures:

- a) Consider adopting provisions that assign to a specific civil servant or entity the task of monitoring compliance with the obligation of persons performing public functions to inform competent authorities about any acts of corruption they may be aware of.

b) Consider adopting provisions that establish administrative and criminal sanctions for the failure of persons performing public functions to report on any acts of corruption they may be aware of.

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

Recommendation:

Improve the systems for verification and use of the content of sworn financial declarations.

Suggested Measure:

- Design systems to facilitate access to the information contained in asset declarations by persons legally authorized to have such access, bearing in mind the criteria established in the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions.”

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

The Committee takes note that the recommendation formulated in this section that required additional attention is no longer valid.

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

4.1. Mechanisms for access to information

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

4.2. Mechanisms for consultation

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

4.3. Mechanisms to encourage participation in public administration

Recommendation:

Strengthen and further implement mechanisms that encourage civil society and nongovernmental organizations to participate in public administration.

Suggested Measure:

- Establish mechanisms to encourage civil society and nongovernmental organizations to participate in efforts to prevent corruption and to develop public awareness of the problem; and promote awareness of the mechanisms established for participation and explaining their use.

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

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

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

Recommendation:

Design and implement an integral program for dissemination and training directed specifically to competent authorities (in particular to, judges, magistrates, state attorneys and other authorities with judicial investigative functions), in order to ensure that they are knowledgeable of the provisions on mutual legal assistance and other related treaties signed by Nicaragua, and may apply then to concrete cases.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation:

Provide the Central Authority designated for the purposes set out in Article XVIII of the Convention with the necessary human and financial resources to perform its functions effectively and for the purposes of international assistance and cooperation contemplated in the Convention.

7. GENERAL RECOMMENDATIONS

Recommendation:

Select, develop and report to the Technical Secretariat of the Committee procedures and indicators, where appropriate, that allow for verifying follow-up of the recommendations established in this report. For this purpose, the Technical Secretariat of the Committee will publish on the OAS website a list of more generalized indicators applicable within the Inter-American system that may be available for selection by the State under review.