

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

FINAL REPORT

(Adopted at the September 14, 2012 Plenary Session)

SUMMARY OF THE REPORT

This report contains a comprehensive review of the implementation in the Republic of Paraguay 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 Paraguay 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 Paraguay’s response to the questionnaire, information provided by civil society organizations, information gathered by the Technical Secretariat, and, as a new and important source of information, the on-site visit conducted between April 16 and el 19, 2012, by the members of the review subgroup for Paraguay, comprising Nicaragua and Belize, with the support of the Technical Secretariat. During that visit, the information furnished by Paraguay was clarified and expanded and the opinions of civil society organizations, the private sector, professional associations, academics, and researchers on issues of relevance to the review were heard. This provided the Committee with objective and complete information on those topics, assisted with the gathering of information on practices, and provided Paraguay with the opportunity to offer and/or request technical assistance for the purposes of the Convention.

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

The oversight bodies in Paraguay reviewed in this report were: the Public Prosecution Service (*Ministerio Público* - MP), Office of the Comptroller General (*Contraloría General de la República* - CGR), Office of the Auditor General of the Executive Branch (*Auditoría General del Poder Ejecutivo* - AGPE), Supreme Court of Justice, and Public Service Secretariat (*Secretaría de la Función Pública* - SFP).

Some of the recommendations formulated to the Republic of Paraguay’s consideration in connection with the aforementioned oversight bodies, address purposes such as the following:

With respect to the Public Prosecution Service, strengthening inter-agency coordination, introduction of regulations on merit-based competitions for entry to service in the institution, implementation of the administrative and prosecutorial career systems, and establishment of and training for a police unit specializing in corruption crimes to act in coordination with the Public Prosecution Service in investigating such crimes.

Regarding the Office of the Comptroller General, implementation of mandatory merit-based competitions and a career system, strengthening the administrative disciplinary system, strengthening interagency coordination, and resolution of conflicts of jurisdiction with other entities.

As to the Office of the Auditor General of the Executive Branch, strengthening the autonomy of institutional internal auditors, statutory amendments to ensure that internal auditors' reports that disclose evidence of wrongdoing are sent simultaneously to the Public Prosecution Service and to the President of the Republic, and strengthening the new Forensic Audit Department.

In relation to the Public Service Secretariat, development and implementation of codes of ethics, strengthening the administrative disciplinary system, introduction of regulations for and implementation of merit-based competitions in all the institutions under its authority, institutional strengthening through provision of human and budgetary resources.

In connection with the Supreme Court, strengthening its jurisdictional function; resolution of conflicts of jurisdiction of the Court of Auditors with other entities, implementation of the judicial and technical-administrative career systems, adoption of measures to solve the problem of the judicial delay; and settlement of the constitutionality issues in relation, *inter alia*, to the Public Service Law and the Judicial Impeachment Board Law.

In brief, the best practices on which Paraguay has provided information are the interagency cooperation process involving the Public Prosecution Service, Office of the Comptroller General, National Police, Tax Authority (*Subsecretaría de Estado de Tributación - SEP*), Customs, and Secretariat for Prevention of Money-Laundering (SEPRELAD); the Office of the Comptroller General's citizen participation programs carried out with international cooperation; and the cooperation agreements between the Public Service Secretariat and various government agencies and entities, including those that have filed suit challenging the constitutionality of the Civil Service Law.

With regard to follow-up on the recommendations formulated to Paraguay 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 Paraguay in its response to the questionnaire and during the on-site visit, a determination was made as to which of those recommendations had been satisfactorily implemented, which required additional attention, and which required reformulation. A list of those still pending was also prepared, and has been included in Annex 1 of the report.

Some of the recommendations made to Paraguay in the First Round that remain outstanding or were reformulated, address purposes such as the adoption of legal standards to support access to public information, adoption of legal standards to encourage the participation of civil society and nongovernmental organizations in anti-corruption efforts, and adoption of a technological platform by which to analyze information contained in financial disclosures, in order to produce indicators for investigating potential irregularities.

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

**REPORT ON IMPLEMENTATION IN THE REPUBLIC OF PARAGUAY OF THE
CONVENTION PROVISION SELECTED FOR REVIEW IN THE FOURTH ROUND, AND
ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY
IN THE FIRST ROUND¹**

INTRODUCTION

1. Contents of the Report

[1] This report presents, first, a comprehensive review of the implementation in the Republic of Paraguay of the provision of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for analysis in the fourth round. That provision is contained in Article III (9) of the Convention and refers to “oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts.

[2] In second place, it refers to the best practices in connection with the oversight bodies analyzed in this report that the state under review has wished voluntarily to share.

[3] Third, in accordance with the decisions adopted by the MESICIC Committee of Experts at its nineteenth meeting, pursuant to recommendation 9(a) of the Third Meeting of the Conference of States Parties to the MESICIC, this report follows up on implementation of the recommendations made to the Republic of Paraguay by the MESICIC Committee of Experts in the report adopted for that country in the first round for which the Committee deemed that additional attention was required in the country reports that it adopted in the second and third rounds, which have been posted on the following web page: <http://www.oas.org/juridico/english/pry.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 Paraguay ratified the Inter-American Convention against Corruption on November 29, 1996, and deposited the respective instrument of ratification on January 28, 1997.

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

I. SUMMARY OF INFORMATION RECEIVED

1. Response of the Republic of Paraguay

[6] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Paraguay, in particular, from the Transparency Unit of the Public Prosecution Service, which was evidenced, *inter alia*, in the response to the Questionnaire, in the

1. This report was adopted by the Committee in accordance with the provisions of Articles 3 (g) and 25 of the Committee's Rules of Procedure, at the September 14, 2010 plenary session, within the framework of the Twentieth Meeting of the Committee, held at OAS headquarters in Washington, D.C., from September 10 to 14, 2012.

constant willingness to clarify or complete its contents, and in the support for the on-site visit, to which the following paragraph of this report refers. Together with its response, the Republic of Paraguay sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at the following web page: http://www.oas.org/juridico/spanish/mesicic4_pry_sp.htm

[7] The Committee also notes that the country under review gave its consent for the on-site visit, in accordance with provision 5 of the Methodology for Conducting On-site Visits. As members of the preliminary review subgroup, the representatives of Belize and Nicaragua conducted the on-site visit from April 16 to 19, 2012, with the support of the MESICIC Technical Secretariat. The information obtained during that visit is included in the appropriate sections of this report, and the agenda of meetings is attached thereto, in keeping with provision 34 of the Methodology for Conducting On-site Visits.

[8] For its review, the Committee took into account the information provided by the Republic of Paraguay up to April 19, 2012, the date on which the on-site visit ended, as well as that furnished and requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its *Rules of Procedure*; the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round*, and the *Methodology for Conducting On-Site Visits*. http://www.oas.org/juridico/spanish/mesicic4_pry_sp.htm.

2. Information received from civil society organizations and/or, inter alia, private sector organizations, professional associations, academics, and researchers

[9] The Committee also received, within the time limit set in the schedule for the fourth round, a number of documents jointly prepared by the civil society organizations (CSOs) *Gestión Ambiental* (GEAM), *Semillas para la Democracia* (SPD), *Centro de Estudios Judiciales* (CEJ), and *Centro de Políticas Públicas de la Universidad Católica* (CPP-UC) and presented by them in accordance with Article 34(b) of the Committee's Rules.²

[10] Furthermore, in the course of the on-site visit conducted in the state under review from April 16 to 19, 2012, information was collected from other civil society and private sector organizations, professional associations, academics, and researchers invited to participate in meetings to that end, in keeping with the provisions contained in provision 27 of the *Methodology for Conducting On-site Visits*. A list of those persons is included in the agenda for that visit, which is appended hereto. Where relevant to the purposes of this report, that information is reflected in the appropriate sections hereof.

2. These documents were received by e-mail on January 16, 2012 and are available at http://www.oas.org/juridico/spanish/mesicic4_pry_sp.htm.

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

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

[11] The Republic of Paraguay has oversight bodies for the purpose of implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts. In particular, these include the following: The Public Prosecution Service, Office of the Auditor General of the Executive Branch, Supreme Court of Justice, Public Service Secretariat, Ministry of Finance, and Department of Government Contracting.

[12] The following paragraphs offer a brief description of the purposes and functions of the four agencies selected by Mexico that are to be examined in this report:

[13] - The Public Prosecution Service (MP) is an agency established by the Constitution, with functional and administrative autonomy, which represents society before the courts, safeguards the observance of constitutional guarantees and rights, institutes criminal proceedings to protect public and community property, the environment, other broad interests, and the rights of indigenous peoples, and takes criminal action in cases where the request of a party is not necessary for it to be brought or continued.

[14] - The Office of the Comptroller General of the Republic (CGR) is the oversight body for all the economic and financial activities of the state, the departments, and the municipalities, as determined in the Constitution and by law; it enjoys functional and administrative autonomy; it audits budget spending by all the entities and agencies of the state, and it prepares correlation studies to detect irregularities and acts of corruption.

[15] - The Office of the Auditor General of the Executive Branch (AGPE) is an internal oversight agency within the executive branch and is part of the state finance administration oversight system. Its main function is to conduct audits and to regulate and oversee the operations of internal auditor's offices within state institutions.

[16] The Public Service Secretariat (SFP) is a central regulatory agency for the civil service and the institutional development of state entities. Its main functions include formulating policy for the management and development of public sector employees. Personnel (or human resource) management and development areas, or other similar offices within state organs and entities, are the decentralized operating units.

[17] The Supreme Court of Justice (CSJ) is the judicial branch of government; it is responsible for resolving all disputes placed before it, and its jurisdiction covers the entire nation and includes cases involving acts of corruption. It issues its judgments in the form of final resolutions. It is also responsible for overseeing and judging public spending by entities and agencies of the state, through the Court of Auditors (TC), which hears and rules on contentious-administrative disputes.

1. PUBLIC PROSECUTION SERVICE (*MINISTERIO PÚBLICO*) (MP)

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

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

[19] The MP represents society before the state's jurisdictional organs and enjoys operational and administrative autonomy in the performance of its duties and functions. Those duties and powers are exercised by the Prosecutor General and prosecutors in accordance with the law. (Art. 266 of the Constitution)

[20] The duties and functions of the Public Prosecution Service are to safeguard observance of constitutional guarantees and rights; to institute criminal proceedings in behalf of the state to protect public and community property, the environment, and other broad interests, as well as the rights of indigenous peoples; to take criminal action in cases where the request of a party is not necessary to initiate or prosecute it, notwithstanding that the judge or court might proceed *sua sponte*, when the law requires; to collect information from public servants for the better performance of their activities, and such other duties and functions as the law may determine. (Constitution, Article 268)

[21] In keeping with the Constitution, articles 52 to 57 of the Code of Criminal Procedure (CPP for the Spanish) govern the functions of the Public Prosecution Service, while the Organic Law of the Public Prosecution Service (*Ley Orgánica del Ministerio Público* - LOMP) sets out those functions: Article 13, criminal action; Article 14, auxiliary functions; Article 15, collaboration in prison oversight; Article 16, juvenile offenders; Article 41, defense of the Constitution and the rule of law. It also protects collective or broad interests, as follows: Article 42, collective interests; Article 43, auditing of accounts; Article 44, corruption; Article 46, functions before the electoral authorities.³ Neither the Constitution nor the LOMP envisages exceptions with regard to the functions of the MP.

[22] With respect to corruption, Article 44 of the LOMP provides that the MP has the function of ensuring, in particular, control and prevention of corruption among public officials and, to that end, of establishing teams of specialized prosecutors with the capacity to coordinate the necessary preventive, administrative, and judicial measures, as well as carrying out criminal investigations. The same provision establishes that the MP shall implement a permanent program of societal participation in controlling corruption.

[23] In that regard, the MP has a Specialized Unit against Crimes of Corruption created in 2005 (Resolution 988/05). Pursuant to resolution No. 2248, this unit was merged with the Unit on Financial Crime (UDEA) in August 2007, and has a staff of prosecutors specialized in both areas.

[24] Insofar as information requests, cooperation, and dispute settlement are concerned, the LOMP states that the MP may collect information and request the cooperation of public servants and that the latter shall do everything within their powers and authority to cooperate and furnish such documents, information, or measures as may be requested of them (Article 11); and that subject to the limits of the law, the MP shall seek the settlement of disputes and the reconciliation of different interests, while seeking to ensure social peace (Article 12).

3. For more information, visit http://www.buscoley.com/pdfs/1_1562_2000.pdf

[25] As regards the relationship between the police and the MP in prosecuting crime, the operating standards are contained in chapter II of the LOMP (articles 17-40) and the provisions of the Code of Criminal Procedure (articles 52-61). There is also an agreement in place between the National Police and the MP, which gave rise to a coordination plan for improving the results of investigations of punishable acts.

[26] As regards institutional coordination mechanisms, the MP has the Interagency Cooperation Group (GCI), which is under the coordination of UDEA, and is composed of the MP, the Tax Authority (*Subsecretaría de Estado de Tributación*), the Customs (*Dirección Nacional de Aduanas - DNA*), the Secretariat for Prevention of Money-Laundering (SEPRELAD), and the Office of the Comptroller General (CGR). The purpose of the GIC is to pool the resources of its member agencies and use them in a rational manner to wage an effective and efficient fight against the highly complex crimes handled by the MP's specialized units and against public corruption. There are also coordination agreements in place with all of these agencies.

[27] With respect to mechanisms for securing the support of the citizenry in carrying out its functions, the MP has implemented several initiatives, including a campaign with the civil society organization *Centro de Información y Recursos para el Desarrollo* (CIRD), which encourages members of the public to report acts of corruption or irregularities committed by public servants in the performance of their duties;⁴ as well as *Expo-Fiscalía* (an event to raise public awareness about the Office of the Prosecutor General) program which includes an accountability mechanism, as described below.⁵

[28] Regarding decision-making, the LOMP provides that the Prosecutor General shall meet periodically with deputy prosecutors general and other officials of the MP to examine matters of particular importance or complexity, and that in cases whose difficulty, far-reaching impact, or importance, might impair the MP's unity of criteria, the Prosecutor General shall issue general instructions and may request opinions from specific advisors or the Advisory Council (Article 52)⁶.

[29] The rules governing the disciplinary procedure are contained in articles 82 to 87 of the LOMP and in the Internal Regulations of the Public Prosecution Service (RIMP).⁷ As regards appeals, the only admissible administrative remedy is a motion for reversal, which can only be presented against a final decision issued by the Prosecutor General (RIMP, Article 75). Once the administrative remedy

4. For more information, see

http://www.aquieneselegimos.org.py/fiscalia.php?sec=fisc_msgbox%2Cdenuncia%2Cfullscreen

5. For more information, see http://www.oas.org/juridico/ppt/mesicic4_pry_MP_part.ppt

6. In that regard, the country under review, stated on its document of comments to the draft preliminary report that: "*A situation has now been created with the issuance of a General Instruction to All Prosecutors Nationwide, necessitated by the enactment of Law 4669/2012 under which the statute of limitations for criminal prosecution was reduced from 4 to 3 years.* -

"The MP takes issue with enforcement of this legal provision as it is at variance with such fundamental principles of the National Constitution as legal certainty and equal access to justice for all. The Attorney General of the State therefore instructed all members of the MP to challenge the constitutionality of this legal provision with a view to having the Supreme Court declare it unenforceable and thereby prevent numerous cases from becoming time barred by the statute of limitations, among them complicated corruption cases. This would prevent such cases from going unpunished.

"Given this circumstance and in light of past experience, efforts have also been undertaken to promote implementation of suitable mechanisms to enable the MP to serve as an advisory body and thereby have a voice in crafting laws that concern the administration of justice."

7. The Internal Regulations of the Public Prosecution Service are found at:

http://www.oas.org/juridico/PDFs/mesicic4_pry_regla.pdf

has been exhausted, a contentious-administrative action can be filed with the Court of Auditors (*Tribunal de Cuentas*).

[30] In that connection, Article 85 of the RIMP provides that, where an administrative fault also constitutes a punishable act and criminal proceedings are opened, presentation of the Inspector General's conclusions will be suspended, as will any ensuing proceedings, until a judicial decision has been returned and until a decision is issued by the Judicial Impeachment Board (*Jurado de Enjuiciamiento de Magistrados*) (in the case of prosecutors), should the latter body also investigate the act. In the interim, all time limits provided in the regulations will be suspended; however, the Inspector General will request periodic reports in order to be informed about the status of proceedings in the preliminary inquiry. Furthermore, despite the fact that Article 85 above provides that disciplinary liability is separate from criminal liability, in the disciplinary proceeding it is not possible to refute the existence of facts declared proven by a final criminal court ruling. However, when the finding is that there was no punishable criminal offense, the facts can still be regarded as an administrative fault and the civil servant may be punished accordingly.

[31] As regards the appointment of its maximum authorities, the Constitution of Paraguay provides that the Prosecutor General is unremovable, holds office for a five-year term, and may stand for reelection. The Prosecutor General is appointed by the executive branch, with the concurrence of the Senate, from a shortlist of three proposed by the Council of the Magistracy, and takes the oath of office before the Senate (articles 269 and 271). The Prosecutor General is subject to the same provisions on conflict of interests and immunity as judicial branch judges.

[32] For their part, prosecutors are appointed in the same way as the Constitution provides for judges; in other words, by the Supreme Court of Justice from a shortlist of three proposed by the Council of the Magistracy (articles 270 and 251), enjoy tenure in office and may be removed according to the same procedures as for judges, and are governed by the same rules on conflict of interests and immunity as those established for members of the judicial branch (Article 270). Furthermore, they take an oath of office before the Supreme Court of Justice (Article 271).

[33] In that regard, under Law 879 (Judicial Organization Code), judges (and, therefore, prosecutors) are appointed "*for terms of five years that coincide with the presidential term and they may be confirmed in office*"⁸ (Article 190).

[34] As for all other personnel in the Public Prosecution Service, human resources are recruited in accordance with the LOMP and RIMP. In that connection, the LOMP stipulates that staff are appointed by the Prosecutor General on the basis of a competition, except where that law expressly envisages a direct appointment (Article 89).

[35] It should be noted that the Public Service Law (*Ley de la Función Pública* - LFP) would be applicable to the Public Prosecution Service had its application thereto not been suspended pending a decision by the Supreme Court of Justice on an action challenging the constitutionality of that applicability.⁹

8. The country under review has reported that in practice, the terms of office of prosecutors do not coincide with presidential terms of office in view of the interpretation of Article 7 of the Civil Code, along with Article 252 of the National Constitution.

9. See sections on the Office of the Comptroller General, Public Service Secretariat, and Supreme Court of Justice. See also the reports on Paraguay from the first and second rounds.

[36] Article 250 of the Constitution states that prosecutors shall be removed through the same procedures as judges. Thus, Article 253 of the Constitution states that magistrates of the judiciary may only be brought to trial and removed from office for the commission of crimes, or for poor performance of duties as defined in the law, at the decision of a judicial impeachment board. The definition of poor performance of duties is contained in Articles 14 and 15 of Law 3759/2000, the Judicial Impeachment Law.

[37] The MP has manuals, such as the Manual on Structures and Functions;¹⁰ Manual of Internal Procedure of the UDEA, the Operating Manual of the Bureau of Financial Crime, and the Operating Manual of the UDEA Complaints Office, among others. There is also a prosecutorial performance system, which was developed in collaboration with the civil society organization *Instituto para la Consolidación del Estado de Derecho* (ICED).¹¹

[38] In that connection, there is also a case management system (*Sistema Informático de Gestión de Causas*)¹² and other technological tools¹³ to allow efficiency in the performance of duties.

[39] The MP has a Training Center for all MP personnel, starting with those at the entry level, and continuing through the various positions up to the management level. It has a course curriculum that covers the various stages of the process and is targeted at staff members in the core area, and is mandatory; it also offers refresher courses and entry and re-entry courses. The Training Center has obtained an ISO 9001:2008 certification. Furthermore, in its response, the state under review mentioned that MP staff receive training at the MP Training Center (Centro de Entrenamiento - CEMP).¹⁴

[40] The MP provides the citizenry with information about its aims and functions on its website as well as publishing the procedures established for carrying out its functions and for the members of the public to engage in dealings with it.¹⁵

[41] The institution's budget is guaranteed by Law 1535/99 (State Finance Administration Law), its respective amendments, and regulatory provisions.¹⁶

[42] The Public Prosecution Service's internal control organs are the Advisory Council, Disciplinary Tribunal, and Office of the Inspector General.

[43] The Prosecutor General chairs the Advisory Council, which is also composed of the deputy prosecutors general, four prosecutors elected by their peers, and the Administrator of the Public Prosecution Service. This organ acts as a disciplinary tribunal whenever the need arises to try an employee or staff member of the Public Prosecution Service whose prosecution or trial is not incumbent upon another authority (LOMP, articles 66-68).

[44] The Inspector General is in charge, *inter alia*, of administrative investigations into any irregularities in the performance of official functions; bringing charges before the Disciplinary

10. The Manual on Structures and Functions may be found at

http://www.ministeriopublico.gov.py/content/c2/inst/comu_prensa/public/materiales/otras/manual_funcion_ultimo.pdf

11. See ICED presentation offered during the on-site visit: http://www.oas.org/juridico/ppt/mesicic4_pry_sc_control.ppt

12. Response of Paraguay to the questionnaire, pp. 16-17.

13. *Idem*. pp. 17-19.

14. *Idem*, p. 17. See also <http://www.ministeriopublico.gov.py/centro/index.php>

15. See <http://www.ministeriopublico.gov.py/index.php>

16. Response of Paraguay to the questionnaire, p. 25 and <http://www.hacienda.gov.py/web-presupuesto/index.php?c=30>.

Tribunal; filing complaints with the Prosecutor General; organizing an office for receiving complaints of poor performance of functions or of abuse of power or corruption; and implementing ongoing programs for prevention of corruption in the MP (LOMP, Article 69).

[45] The MP also has its Auditor General's Office, Legal Department, Prosecutorial Performance Control Unit,¹⁷ and Transparency Unit,¹⁸ which is tasked with strengthening the MP in organizational and legal terms, making its management more transparent, and interacting with other public-sector institutions, civil society organizations, and the general public.

[46] Accountability is carried out by means of annual reports prepared for the general public and civil society organizations, which are published on the MP website;¹⁹ as well as through public hearings and events such as *Expo-Fiscalia*²⁰ and through presentation of the budgetary execution to the Court of Auditors, First Chamber

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

[47] The Public Prosecution Service 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 believes it timely to make a number of observations in relation thereto:

[48] To begin with the Committee notes that Article 44 of the Organic Law of the Public Prosecution Service (LOMP) establishes that this oversight body shall implement a permanent program of societal participation in controlling corruption. In this regard, the Committee finds that although the Public Prosecution Service has made progress in promoting a culture of ethics through its Transparency Unit, the functions of which include interaction with civil society organizations and the general public, a permanent program of societal participation in controlling corruption, as alluded to in Article 44 of the LOMP, has not been developed and institutionalized. Bearing in mind also that the MP has said that it is essential to have awareness-raising and training programs for civil society organizations and the public in general,²¹ the Committee will make a recommendation (see recommendation 1.4.1 in chapter II of this report).

In this regard, the document presented by four civil society organizations in the framework of the fourth review round states, *"It should be noted that despite the difficulties caused by not having these laws [on access to information and citizen participation], in the period under review several initiatives were identified concerning mechanisms designed to contribute to the prevention of corruption in the public sector, among including transparency and citizen participation units as well as communication offices that disseminate information on institutional activities.*

[49] *However, these were not found to be in response to a coordinated effort on the part of each branch of government but, rather, to have stemmed from the particular interests of the authorities of the day, with the resulting risk of the initiatives disappearing when they are changed."*

[50] In second place, in the course of the on-site visit the MP explained that one of the difficulties that it faces is that the term of functions of its staff expires every five years, at which time they may

17. Response of Paraguay to the questionnaire, pp. 22-24.

18. See <http://www.ministeriopublico.gov.py/content/c3/trans/index.php>

19. See Public Prosecution Service website at <http://www.ministeriopublico.gov.py/>

20. See http://www.oas.org/juridico/ppt/mesicic4_pry_MP_part.ppt

21. Response of Paraguay to the questionnaire, p. 29.

or may not be confirmed. But as there is no prosecutorial career service system, the various changes undermine the retention of trained personnel and contributes to the erosion of the institutional memory.

[51] In this connection, the Committee notes, with respect to prosecutors, that the Constitution provides that they are to be appointed in the same way as judges, that the latter are designated by the Supreme Court of Justice from a shortlist of three presented by the Council of the Magistracy, and that they take the oath of office before the Supreme Court Justice. The Constitution also states that prosecutors hold office according to the same procedures as for judges but does not establish the length of those terms, which are governed by the provisions of the Judicial Organization Code (*Código de Organización Judicial* - COJ), which provides that judges (and, therefore, prosecutors) are appointed for terms of five years and they may be confirmed in office.

[52] On this point, the Committee notes the need to create a prosecutorial career and a judicial career that would provide prosecutors and judges with job security in order to strengthen the Public Prosecution Service and the judiciary and thereby contribute to the retention of qualified personnel and to preventing the loss of institutional memory. In addition, the Committee notes that although the Constitution states that the Supreme Court of Justice (CSJ) is to appoint prosecutors and judges from a shortlist of three names put forward by the Magistrature Council (CM), it does not establish the terms of their functions, nor does it prohibit the creation of a prosecutorial career; the Committee will therefore formulate a recommendation (see recommendation 1.4.2 in chapter II of this report).

[53] The Committee notes that the country under review observed²² that the Council of the Magistracy is one of the most decisive bodies in determining whether qualified persons will be selected for positions in the administration of justice: judges, prosecutors, the Attorney General of the State, and members of the Supreme Court of Justice. It also observed that “while progress has been made, the proposed reform of the prosecutorial or judicial career service system must necessarily involve changes to this body. Although the Council of the Magistracy was created under the Constitution, a re-examination of its functions is an important undertaking in order to reduce, as much as possible, any outside influence on a merit- and competence-based competition.”

[54] The country under review also reported that the Council of the Magistracy “is just now putting together the 2010 shortlists of candidates. The delay in assembling the shortlists of candidates is a factor encumbering the performance of the Public Prosecution Service and the Judicial Branch, and discourages those who apply and then have to wait so long just to be nominated for a position.”

[55] The Committee notes the need to ensure that the shortlists (*ternas*) for the selection of prosecutors and judges drawn up by the CM and submitted for consideration by the CSJ are composed of the best qualified candidates who obtained the highest scores, in order to ensure that the selection is carried out with optimal effectiveness and transparency. The Committee will formulate recommendations (see recommendation 1.4.3 in Chapter II of this report).

[56] Furthermore, the Committee notes that Article 88 of the LOMP provides that the regulations governing the administrative career system shall be issued by the Prosecutor General. However, despite the fact that the Public Prosecution Service’s internal regulations mention their existence, no regulations have been issued for the administrative career system. Bearing in mind the importance of the Public Prosecution Service having trained staff, avoiding staff turnover, and retaining its

22. The country under review formulated these comments in the document containing its observations on the Preliminary Draft Report, sent August 9, 2012.

institutional memory, the Committee believes that the state under review should implement Article 88 of its own Organic Law and will offer a recommendation to that end in (see recommendation 1.4.4 in chapter II of this report)

[57] In addition, the Committee notes that although the LOMP and the Internal Regulations of the Public Prosecution Service (RIMP) provide that hiring by the Public Prosecution Service shall be by public competition between candidates, it is not established that these competitions must necessarily be merit-based. Furthermore, there are no rules governing these competitions and their implementation is not institutionalized. Without offering a detailed analysis of the issue and without prejudice to the recommendations that were made to the Republic of Paraguay in the first and second review rounds, with the latter including a specific examination of government hiring systems, the Committee stresses the need to regulate how such competitions are held, that they be merit-based, that their practice be institutionalized, and that they observe the principles of disclosure, equity, and efficiency. The Committee will make a recommendation (see recommendation 1.4.5 in chapter II of this report).

[58] In third place, in relation to disciplinary procedure, in the course of the on-site visit it was explained that the RIMP provides that, where an administrative fault also constitutes a punishable act and criminal proceedings are opened, presentation of the Inspector General's conclusions will be suspended, as will any ensuing proceedings, until a judicial decision has been returned and until a decision is issued by the Judicial Impeachment Board, should the latter body also investigate the act (see RIMP, Article 85) Bearing in mind that it typically takes four years or more for a case to be resolved in the Paraguayan judicial system, the outcome is often a dismissal or expiration of the statutory time limit, which results in the administrative disciplinary proceeding being declared groundless. To compound the foregoing, it was explained that under this system, when the official simply resigns, the administrative disciplinary proceeding becomes unfounded. The Committee will make a recommendation (see recommendations 1.4.7. in chapter II of this report).

[59] Regarding the removal of prosecutors and judges for poor performance of duties as described in Article 253 of the Constitution and regulated by Articles 14 and 15 of the Judicial Impeachment Law (LEM), the State under review noted that the definition contained in the LEM is so ambiguous that it offers judicial impeachment boards great subjectivity and discretion in removal proceedings. This has led to a series of unconstitutionality suits being brought against this law, which have not yet been resolved by the Supreme Court of Justice. The Committee takes note of the need for the State under review to consider reviewing the definition of "poor performance of duties" and will formulate a recommendation on that point. Regarding the resolution of the unconstitutionality suits brought against the LEM, the Committee will address that point and formulate a recommendation in the section on the Supreme Court of Justice (see recommendations 1.4.8 and 5.4.15).

[60] In fourth place, regarding interagency coordination mechanisms, the Committee notes that the MP has an Interagency Cooperation Group (GCI), which is under the coordination of UDEA and in which the Office of the Comptroller General (CGR), the Office of the Under Secretary of State for Taxation (*Subsecretaría de Estado de Tributación* - SEP), the National Bureau of Customs (*Dirección Nacional de Aduanas* - DNA) and the Secretariat for Prevention of Laundering of Money and Assets (SEPRELAD) participate. However, during the on-site visit it became clear that a number of difficulties were preventing the GCI from functioning effectively, due to leadership changes in the institutions. While the lack of appropriate physical facilities for the Group to carry out its work is a problem that has already been solved, significant investments in technology, in furnishing and outfitting the space and in training are still needed. While a memorandum of understanding among

the institutions has already been approved, the protocol that has already been submitted to the parties has not been approved;²³ interagency coordination must be strengthened in order to harmonize criteria on criminal prosecution and punishment of acts of corruption, so as to avert impunity. The Committee will make recommendations in this regard (see recommendations 1.4.9 and 1.4.10 in chapter II of this report).

[61] In addition, during the on-site visit the Prosecutorial Performance Control Unit (UCFG) said that a coordination and mutual assistance protocol was needed with the Judicial Control Department (*Dirección General de Control Judicial*) of the Supreme Court of Justice, which would contribute to interagency cooperation and to an improvement in detection and investigation of acts of corruption. The Committee notes the need for inter-institutional coordination between the two entities and will offer a recommendation (see recommendation 1.4.11 in chapter II of this report).

[62] In fifth place, with regard to the chapter on difficulties in the investigation and prosecution of acts of corruption, during the on-site visit, the UDEA mentioned that one obstacle is the delay in the law courts, which in Paraguay is typically around four years. As this was a recurring theme encountered in all areas during the on-site visit, the Committee makes a comprehensive analysis in the section on the Supreme Court of Justice and offers recommendations therein.

[63] During the on-site visit the UDEA also mentioned other obstacles, including a lack of connectivity with databases, criminal and property records, and other critical databases, resulting in delays, added cost, and information leaks. The Committee will make a recommendation (see recommendation 1.4.12 in chapter II of this report)

[64] It was also mentioned that special equipment had been donated under the *Umbral* Program to the MP for the investigation of corruption offenses; however, the technical knowhow in its use is lacking. The Committee believes that in order to enable this institution to carry out its functions in full, the state under review could strengthen it by arranging training for the officials in charge of the investigation of financial and corruption crimes in the correct use of technical equipment and it will make a recommendation to that end (see recommendation 1.4.13 in chapter II of this report).

[65] During the on-site visit it was also mentioned that the UDEA did not have a unit of trusted and specialized police officers for investigating financial and corruption offenses, which makes it difficult for prosecutors to carry out field investigations. The Committee believes that the state under review could consider strengthening coordination between the MP and the National Police by providing instruction and training for the latter with a view to creating a police unit dedicated to the investigation of such crimes that would act in coordination with the MP. The Committee will make a recommendation in that regard (see recommendation 1.4.14 in chapter II of this report).

[66] In this connection, the Committee notes that in the course of the interviews held with the civil society organizations *Centro de Información y Recursos para el Desarrollo* (CIRD) and *Instituto de Estudios para la Consolidación del Estado de Derecho* (ICED) during the on-site visit, it was explained that the National Police required training in the investigation and prosecution of financial crimes, so as to have the capability to deal with these matters.

[67] As regards technical cooperation needs, the MP identified the following: cooperation in the development of special investigation techniques against organized crime; technical and ethics training for auditors and forensic experts; training for UDEA officials in modern investigation

23. See http://www.oas.org/juridico/ppt/mesicic4_pry_MP_udea.ppt

techniques using information technologies; on the part of the Prosecutorial Performance Control Unit (UCGF),²⁴ to share experiences and familiarize itself with the prosecutorial performance control systems of public prosecution services in other countries, in order to improve the system adopted in Paraguay, and advisory services on prosecutorial performance control techniques and training in risk analysis and assessment with a view to devising institutional policies. In this connection, the Committee takes note of the needs mentioned by the MP and of the need for the country under review to provide the necessary support. It also invites the states parties (in particular, their public prosecution services) and other cooperation organizations to assist the institution in these areas. The Committee will make a recommendation (see recommendation 1.4.15 in chapter II of this report).

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

[68] The response to the questionnaire of the country under review and the on-site visit yielded information on results in the Public Prosecution Service (*Ministerio Público* - MP), notably the following:

[69] In first place, with respect to the MP's function of prevention of unlawful conduct, the response of the state under review²⁵ mentioned the “*Conociendo al Ministerio Público*” [‘Knowing the Public Prosecution Service’] campaign, the aim of which was to encourage members of the public to report corrupt practices committed by public officials,” which was jointly implemented with the civil society organization *Centro de Información y Recursos para el Desarrollo* (CIRD).²⁶

[70] Furthermore, during the interview with civil society organizations in the course of the on-site visit, the CIRD reported that since the launch of the online component of the program in June 2011, which included a “complaints box,”²⁷ the website had received 5229 registered visits; however, it was impossible to determine how many complaints had been posted or how the MP had dealt with them. For its part, the MP said that complaints were received via the CIRD website and accusations of corruption, through the MP website; however, at that time it did not have statistics available to show what results had been obtained. The Committee will make a recommendation (see recommendation 1.4.16 in chapter II of this report).

[71] Secondly, regarding the function of detecting acts of corruption over which it has jurisdiction, both in its reply and during the on-site visit the MP offered a series of statistical charts; these contained a large amount of information but did not cover beyond 2009.²⁸ The Committee considers that with the information available to it, it cannot make a thorough analysis of the matter and will make a recommendation (see recommendation 1.4.17 of chapter II of this report).

1.4. Conclusions and of recommendations

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

24. Under Resolution F.G.E. 1843, of May 24, 2012, this institution is now called the Prosecutorial Performance Control Office (*Dirección de Control de la Gestión Fiscal*).

25. Response of Paraguay to the questionnaire, p. 27, and presentations given during the on-site visit: http://www.oas.org/juridico/spanish/mesicic4_pry_sp.htm

26. See the CIRD website at <http://www.aquieneselegimos.org.py/fiscalia.php>

27. See the CIRD presentation at http://www.oas.org/juridico/ppt/mesicic4_pry_sc_CIRD.ppt

28. Response of Paraguay to the questionnaire, p. 28, and presentations given during the on-site visit: http://www.oas.org/juridico/spanish/mesicic4_pry_sp.htm

[73] The Republic of Paraguay has considered and adopted measures designed to maintain and strengthen oversight bodies for the purpose of implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts. These include the Public Prosecution Service (MP).

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

- 1.4.1 Take the necessary measures to implement and institutionalize a permanent program of societal participation in controlling corruption as provided in Article 44 of the Organic Law of the Public Prosecution Service (LOMP) (see chapter II, section 1.2 of this report).
- 1.4.2 Take the regulatory measures it deems necessary to create the prosecutorial career and the judicial career, ensuring that once those officials are selected, they are incorporated into the prosecutorial and judicial careers, respectively (see chapter II, section 1.2 of this report).
- 1.4.3 Take the steps it deems appropriate to ensure that the shortlists (*ternas*) for the selection of prosecutors and judges drawn up by the CM and submitted for consideration by the CSJ are composed of the best qualified candidates who obtained the highest scores, in order to ensure that the selection is carried out with optimal effectiveness and transparency (see section 1.2 of Chapter II of this report).
- 1.4.4 Introduce regulations for and implement the administrative career system in the MP, in accordance with Article 88 of the LOMP, taking into consideration the principles of disclosure, equity, and efficiency (see chapter II, section 1.2 of this report).
- 1.4.5 Without prejudice to the recommendations made in the first and second review rounds, introduce regulations on how public competitions for entry into the MP are conducted so that they are a merit-based, institutionalized practice that observes the principles of disclosure, equity, and efficiency (see section 1.2 of chapter II of this report).
- 1.4.6 Take the necessary measures to ensure that administrative disciplinary proceedings for acts that might also give rise to liability to criminal prosecution are not subordinate to the criminal proceeding, so that both processes can continue simultaneously without one depending on the outcome of the other (see chapter II, section 1.2 of this report).
- 1.4.7 Take the necessary measures to ensure that liability to administrative disciplinary proceedings continues even after the official resigns or leaves public service for any reason, within the framework of summary administrative proceedings (see chapter II, section 1.2 of this report).
- 1.4.8 Consider reviewing the definition of “poor performance of duties” contained in the Judicial Impeachment Law, to clarify its scope and to prevent discretion and

subjectivity in proceedings to remove judges and prosecutors (see section 1.2 of Chapter II of this report).

- 1.4.9 Strengthen the Interagency Cooperation Group (GCI), coordinated by the Specialized Unit against Financial Crime and Corruption (UDEA), in which four other institutions participate, providing it with the resources that it needs to carry out its work properly, such as technological tools and training, in addition to facilitating the necessary coordination for it to function effectively (see chapter II, section 1.2 of this report).
- 1.4.10 Take appropriate steps to harmonize criteria on criminal prosecution and punishment among the different entities concerned, so as to avert impunity (see chapter II, section 1.2 of this report)
- 1.4.11 Promote mechanisms for coordination and mutual assistance in detection and investigation of acts of corruption between the MP's Prosecutorial Performance Control Unit (UCFG) and the Supreme Court's General Judicial Control Department (DGCJ) (see chapter II, section 1.2 of this report).
- 1.4.12 Take appropriate steps to furnish the MP with the necessary resources, facilitating the appropriate arrangements to establish computer connectivity between the MP and the most critical databases, such as criminal and property records, in order to avoid procedural delays, added cost, and information leaks (see chapter II, section 1.2 of this report).
- 1.4.13 Take appropriate measures to provide training for officials in charge of the investigation of financial and corruption crimes in the correct use of technical equipment, including that donated to the MP under the *Umbral* Program (see chapter II, section 1.2 of this report).
- 1.4.14 Institutionalize and train a special police unit for financial and corruption crimes that would act in coordination with the MP in the investigation of such offenses (see chapter II, section 1.2 of this report).
- 1.4.15 Promote the necessary arrangements with other states and cooperation organizations to provide the MP with the necessary technical cooperation to develop special investigation techniques against organized crime; technical and ethics training for auditors and forensic experts; training for UDEA officials in modern investigation techniques using information technologies; and on the part of the Prosecutorial Performance Control Unit (UCGF) to share experiences and familiarize itself with the prosecutorial performance control systems of public prosecution services in other countries, in order to improve the system adopted in Paraguay, in addition to advisory services on fiscal management control techniques, so that they can perform their functions more effectively (see chapter II, section 1.2 of this report).
- 1.4.16 Develop statistics from the on-line complaints box of the CIRD's *Conociendo al Ministerio Público* ["Getting to Know the Public Prosecution Service"] campaign and from the complaints box on the MP website, in order to determine the results

of follow-up on complaints presented by the citizenry in this way, in order to identify challenges and recommend corrective measures (see chapter II, section 1.3. of this report).

- 1.4.17 Complete the statistics on investigation of acts of corruption so as to include updated and disaggregated data that clearly establish how many cases are ongoing; how many have been suspended for whatever reason; how many have been closed because the statutory time limit has expired; how many have been archived without a decision adopted on the merits of the case under investigation; how many are in a position where a decision on the merits of the case under investigation could be adopted; and how many have been referred to the competent authority to adopt such a decision, in order to identify challenges and recommend corrective measures (see chapter II, section 1.3. of this report).

2. OFFICE OF THE COMPTROLLER GENERAL (CGR)

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

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

[76] The CGR is the oversight body for all the economic and financial activities of the state, departments, and municipalities, in the manner determined by the Constitution and the law, and it enjoys operational and administrative autonomy (Constitution, Article 281).

[77] The purpose of the CGR is to ensure compliance with the legal standards on the administration of state finances and to protect public property, introducing the necessary norms and procedures, and performing periodic financial, administrative, and operational audits; monitoring the normal and legal receipt of resources and the expenditure and investment of all funds in the public sector, without exception, be they multinational, national, departmental, or municipal, as well as of agencies of which the state is a partner or has a proprietary interest, as described in Article 9 of the Organic Law of the CGR (LOCGR); and to advise, in general, the entities under its supervision on their internal control standards (LOCGR, Article 2).

[78] The Office is composed of a comptroller and a deputy comptroller, who are appointed by the House of Deputies by an absolute majority of its members from respective shortlists of three candidates proposed by the Senate by the same majority (Constitution, Article 281).

[79] The Comptroller and the Deputy Controller hold office for five years, which shall not coincide with the presidential term of office. They may continue in office for one additional term only, subject to the same procedures. During that period they shall not be removable except for the commission of criminal offenses or for poor performance of their functions (Constitution, Article 281)

[80] The Comptroller and Deputy Controller are subject to the same rules on immunity and conflict of interests as judges. Their removal shall require the institution of impeachment proceedings (Constitution, Article 288)

[81] No exceptions are provided to the area of responsibility of the CGR. As an oversight organ it adopts its decisions autonomously. In cases where evidence of wrongdoing is detected, the record is referred to the MP through the Forensic Audit Department, which exists for that purpose.²⁹

[82] As regards concurrent functions with other organs and authorities, the LOCGR provides that for the purposes of audits to be carried out by the Court of Auditors (*Tribunal de Cuentas* - TC) and CGR of institutions subject to their oversight, all proof of expenditure and investment shall remain under the custody and responsibility of the latter with a view to the performance of the inspections prescribed by law in accordance with generally accepted accounting principles and auditing standards (Article 42).

[83] The CGR's human resources are appointed by the Comptroller General in accordance with the LOCGR and the CGR Internal Staff Rules (*Reglamento Interno del Personal de la CGR* - RIPCGR) (articles 21(d) and 35 of the LOCGR).³⁰

[84] Staff are selected based on the results of entrance examinations set by the Department of Administration through the Department of Human Resources. The Executive Board verifies compliance with this procedure and submits it to the Comptroller General for consideration (articles 9 and 10 of the RIPCGR).

[85] The Executive Board is composed of the directors of the Office of the Comptroller General and is in charge of staff selection, promotion, and removal (articles 28 and 29 of the LOCGR).

[86] It should be noted that the Public Service Law (*Ley de la Función Pública* - LFP) would be applicable to the CGR had its application thereto not been suspended pending a decision by the Supreme Court of Justice on an action challenging the constitutionality of that applicability.³¹

[87] As regards interagency coordination, the CTR has cooperation agreements with the Public Service Secretariat (*Secretaría de la Función Pública* - SFP) for promoting institutional strengthening projects and programs, citizen participation, personnel performance management implementation, the Paraguayan Standard Internal Control Model (*Modelo Estándar de Control Interno del Paraguay* - MECIP), transparency, and nondiscrimination policies.

[88] The CGR is also part of the Interagency Cooperation Group (GCI), which is under the coordination of UDEA, and is composed of the MP, the Tax Authority (*Subsecretaría de Estado de Tributación*), the Customs (*Dirección Nacional de Aduanas* - DNA), the Secretariat for Prevention of Money-Laundering (SEPRELAD), and CGR. The purpose of the GIC is to pool the resources of its member agencies and use them in a rational manner to wage an effective and efficient fight against the highly complex crimes handled by the MP's specialized units and against public corruption.

[89] The CGR has a good governance mechanism,³² an ethics mechanism,³³ set position profiles for executing processes, the Tesarekó Governmental Control Manual (version 3.0), and an Audit Manual,

29. Response of Paraguay to the questionnaire, pp. 9-10.

30. The RIPCGR may be consulted (in Spanish only) at http://www.oas.org/juridico/PDFs/mesicic4_pry_res627.pdf

31. See sections on the Public Prosecution Service, Public Service Secretariat, and Supreme Court of Justice. See also the reports on Paraguay from the first and second rounds.

32. CGR resolutions Nos. 2003/06 and 221/12.

33. CGR resolution No. 1694/94

among others. During the on-site visit, it mentioned that it offers permanent training for personnel at all levels.³⁴

[90] As regards institutional strengthening or quality improvement, the CGR has implemented a risk-management-associated process management system, which received an ISO 9001:2008 quality certification from the International Standards Organization (ISO).³⁵ This certification is valid until November 2012.³⁶

[91] The CGR supplies the public with information about its activities via its website.³⁷ It includes a client assistance “center” which consists of a series of forms on satisfaction with the work of members of parliament, civil servants, and control entities, among others, as well as a complaint form. During the on-site visit, the CGI explained that it carries out training programs for members of the public as well as for “public observers” (*veedores públicos*). It has a Citizen Oversight Department for that purpose.³⁸

[92] The institution’s budget is guaranteed by Law 1535/99 (State Finance Administration Law), its respective amendments, and regulatory provisions.³⁹

[93] As regards its internal control, the CGI has a Legal Affairs Department, a Quality Management Department, an Institutional Auditor’s Office, and a Standard Internal Control Model (MECIP) Coordinator’s Office.

[94] The CGE are also has an Executive Board composed of the directors of the Office of the Comptroller General, who are in charge of staff selection, grading, promotion, and removal (articles 28 and 29 of the LOCGR). Disciplinary measures are contained in chapter II of the RIGGR (articles 62-74).

[95] The CGR provides institutional reports on its performance via its website, as well as organizing public hearings and other events, such as the *Tesaká Fair*⁴⁰, which enables interaction with civil society organizations and the general public.

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

[96] The Office of the Comptroller General (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 2.1 of this report. However, the Committee believes it timely to make a number of observations in relation thereto.

[97] In first place, the Committee notes that the rules on the CGR staff recruitment process do not require that it be done by means of merit-based public competitions. Furthermore, the LOCGR empowers the Office of the Comptroller General to adopt regulations for an administrative career system (Article 37). While the existence of this system is mentioned in the RICGR, it has not been implemented or had regulations adopted for it. Without offering a detailed analysis of the issue and

34. For more information, see http://www.oas.org/juridico/ppt/mesicic4_priv_CGR_interno.ppt

35. For more information, see <http://www.esu.com.co/esu/documentos/normatividad/Norma%20ISO9001%202008.pdf>

36. Response of Paraguay to the questionnaire, pp. 15-16.

37. See <http://www.contraloria.gov.py/index.php>

38. See presentation http://www.oas.org/juridico/ppt/mesicic4_priv_CGR_control.ppt

39. Response of Paraguay to the questionnaire, p. 25 and <http://www.hacienda.gov.py/web-presupuesto/index.php?c=30>.

40. *Tesaká* is Guaraní for *transparency*.

without prejudice to the recommendations that were made to the Republic of Paraguay in the first and second review rounds, with the latter including an examination of government hiring systems overall, the Committee stresses the need to institute a system of merit-based competitions for recruitment into the CGR, to introduce regulations on how such competitions are held, that they observe the principles of disclosure, equity, and efficiency, and that their practice be institutionalized. It also notes the need for regulations on the administrative career system to be introduced and for the system itself to be implemented. The Committee will make recommendations (see recommendations 2.4.1 and 2.4.2 in chapter II of this report).

[98] In second place, in relation to disciplinary procedure, in the course of the on-site visit it became clear that the CGR has the same problem as the Public Prosecution Service (MP) to the extent that, where an administrative fault also constitutes a punishable act and criminal proceedings are opened, the administrative proceeding and liability are conditioned by the time limits for extinction of action and the outcome of the criminal proceeding. In other words, when the criminal action is extinguished or archived, or the defendant is exonerated, administrative liability also ceases. Likewise, when the official resigns, the administrative disciplinary proceeding becomes unfounded. The Committee will make recommendations (see recommendations 2.4.3 and 2.4.4 in chapter II of this report)

[99] In third place, the Committee notes that the CGR has a series of initiatives connected with citizen oversight, such as training programs for civil society organizations, public observers, and citizens in general, which it implements through its Citizen Oversight Department; however, the website offers very little information to the public about the procedures established for it to perform its functions and, in spite of including complaint forms, it provides no guidance on how to engage in dealings with the institution. In that regard, the Committee believes that it would be beneficial for the state under review to expand the information available on the CGR website by including the above information. The Committee will make a recommendation (see recommendation 2.4.5 in chapter II of this report)

[100] The CGR also mentioned that one obstacle that prevents it from carrying out its functions properly is that the Supreme Court suspended the powers of the CGR with regard to the Supreme Court and transferred them to the Court of Auditors, which is under the authority of the latter. The CGI has brought an action challenging the constitutionality of the above measure, which the Supreme Court has not yet ruled on. The Committee will refer to this issue in greater depth in its analysis of the Court of Auditors in the section on the Supreme Court, and will make a recommendation (see recommendation 5.4.3 in chapter II of this report)

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

[101] The on-site visit to the country under review yielded information on results in the Office of the Comptroller General (*Contraloría General de la República* - CGR), notably the following:

[102] To begin with, the table below shows information on the number of regular and forensic audits that were ongoing between 2006 and 2011, those that were completed, those which disclosed evidence of wrongdoing, and those that were reported to the MP.

AUDITS

REGULAR AND FORENSIC AUDITS				
YEARS	ONGOING	COMPLETED	IHP* REPORT	REPORTED TO MP
2006	135	112	7	1
2007	134	179	30	1
2008	130	240	34	10
2009	149	141	46	27
2010	118	151	36	12
2011	128	122	40	2
TOTAL	794	945	193	53

* I.H.P. *Indicio de hechos punibles* (Evidence of wrongdoing)

Source: CGR Power Point presentation during on site visit.

[103] It may be deduced from the foregoing that, as far as the function of detecting acts of corruption is concerned, the CGR has kept a record of the number of regular and forensic audits carried out in the last five years, together with information on how many of those are ongoing, how many have concluded, how many disclosed evidence of wrongdoing, and how many were reported to the Public Prosecution Service.

[104] However, the Committee notes an apparent discrepancy between the number of cases that disclosed evidence of wrongdoing and those actually reported to the Public Prosecution Service. Furthermore, no statistics were presented on liability to reparation and recovery of the relevant assets. The Committee will make recommendations (see recommendations 2.4.6 and 2.4.7 in chapter II of this report).

[105] The CGR also submitted additional information on the results of follow-up on reports of suspected crimes against property prepared by the Forensic Audit Department between 2006 and 2009, which were forwarded to the MP/UDEA.⁴¹ However, the absence of information for 2010 and 2011 precludes a comprehensive analysis of that data. The Committee will make a recommendation (see recommendation 2.4.8 in chapter II of this report).

2.4. Conclusions and of recommendations

[106] Based on the foregoing comprehensive analysis of the Office of the Comptroller General (CGR), the Committee offers the following conclusions and recommendations:

[107] **The Republic of Paraguay has considered and adopted measures designed to maintain and strengthen oversight bodies for the purpose of implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts. These include the Public Prosecution Service (MP).**

41. For more information, see presentation of the CGR at http://www.oas.org/juridico/ppt/mesicic4_pry_CGR_resul.ppt

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

- 2.4.1 Without prejudice to the recommendations made in the first and second review rounds, take such measures as it considers necessary to ensure that entry to the CGR is by public competitions based on merit, in addition to introducing regulations for them, making them mandatory, and ensuring that the principles of disclosure, equity, and efficiency are observed (see chapter II, section 2.2 of this report).
- 2.4.2 Introduce regulations for and implement the administrative career system in the CGR, taking into consideration the principles of disclosure, equity, and efficiency (see chapter II, section 1.2 of this report).
- 2.4.3 Take the necessary measures to ensure that administrative disciplinary proceedings for acts that might also give rise to liability to criminal prosecution are not subordinate to the criminal proceeding, so that both processes can continue simultaneously without one depending on the outcome of the other (see chapter II, section 2.2 of this report).
- 2.4.4 Take the necessary measures to ensure that liability to administrative disciplinary proceedings continues even after the official resigns or leaves public service for any reason, within the framework of summary administrative proceedings (see chapter II, section 2.2 of this report).
- 2.4.5 Adopt the pertinent measures for the CGR website to serve as a useful tool for spreading information, *inter alia*, about its objectives and functions, the procedures established for it to perform its functions, and how to engage in dealings with the institution (see chapter II, section 2.2 of this report).
- 2.4.6 Provide disaggregated statistics on regular and forensic audits to clarify the reasons for the difference between the number of audits that disclosed evidence of wrongdoing and those that were referred to the Public Prosecution Service, as well as to enable their analysis (see chapter II, section 2.2 of this report).
- 2.4.7 Prepare statistics on liability to reparation in order to enable a determination of the level of asset recovery in cases of crimes against public property, in order to identify challenges and recommend corrective measures (see chapter II, section 2.3 of this report).
- 2.4.8 Update the information provided on the results of follow-up on reports of suspected crimes against property prepared by the Forensic Audit Department that were forwarded to the MP, so as to have complete and current data, in order to identify challenges and recommend corrective measures (see chapter II, section 2.2 of this report).

3. OFFICE OF THE AUDITOR GENERAL OF THE EXECUTIVE BRANCH (AGPE)

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

[109] The Office of the Auditor General of the Executive Branch (*Auditoría General del Ejecutivo - AGPE*) has a set of provisions in its legal framework, as well as other measures that refer, *inter alia*, to the following:

[110] The AGPE is an internal control organ within the executive branch and is part of the state finance administration oversight system. Its principal task is to audit executive branch agencies and entities and to introduce regulations for and supervise the operations of institutional internal auditor's offices (*Auditorías Internas Institucionales - AIIs*) (Article 64 of Law 1535, State Finance Administration Law [*Ley de Administración Financiera del Estado*] - LAFE).

[111] Decree 1325/2001 created and sets out the regulations for the AGPE; its functions are contained in Decree 10883/2007, which amended the above norm. Those functions consist of designing, developing, and technically standardizing internal control and institutional internal auditor's offices (AIIs) for public-sector entities and organs in the executive branch; as well as regulating, planning, coordinating, and supervising AIIs, and conducting ex-post control on executive branch institutions, notwithstanding the ex-post control performed by AIIs (Article 4).

[112] In that regard, the AII is the specialized control organ set up in each state agency and entity to monitor the administrative activities of the respective agency. The AII is governed by executive branch Decree 1249/2003 "approving the regulations on the state finance administration control and evaluation system" and reports to the chief officer of the agency or entity (Decree 1249/2003, Article 3).

[113] The AGPE's frame of operations encompasses all executive branch agencies and entities (Decree 10883/2007, Article 6).

[114] As regards decision-making, the Minister-Auditor General adopts decisions following consultation with the President. As for recommendations arising from audits, they are referred to the President, who takes the final decision on control of public-sector audits.⁴²

[115] The Auditor General of the Executive Branch holds ministerial rank and is appointed by executive decree issued by the President in accordance with Article 238(6) of the Constitution. The position is subject to free appointment and removal and, therefore, the authority to which they answer for their actions is the President. The Minister-Auditor General may also be questioned by the legislature.⁴³

[116] The human resources of the AGPE are determined in keeping with Law No. 1626 (Civil Service Law) and its Internal Regulations (*Reglamento Interno de la Auditoría General del Ejecutivo - RIAGPE*) approved by the Public Service Secretariat (*Secretaría de la Función Pública - SFP*) by SFP resolution 460/2011. These standards also govern the internal disciplinary process.⁴⁴

42. Response of Paraguay to the questionnaire, p. 9.

43. Response of Paraguay to the questionnaire, p. 10.

44. See http://www.oas.org/juridico/PDFs/mesicic4_pry_regla_AGPE.pdf

[117] The institution has an operating manual, annual audit plans (the last of which was approved by Executive Decree 6247/2011 in March 2011),⁴⁵ a code of ethics,⁴⁶ and a code of good governance.⁴⁷ In that connection, the AGPE has an ethics committee, whose main function is to maintain and reinforce the ethical values and commitment of the institution's staff.⁴⁸

[118] As regards quality improvement measures implemented, during the on-site visit the AGPE mentioned that it had a quality management system,⁴⁹ and that in November 2011 it received an ISO 9001:2008 quality certification from the International Standards Organization (ISO).⁵⁰

[119] During the on-site visit the AGPE reported that it had a training plan. It also provided information on courses imparted on the Paraguayan Standard Internal Control Model (*Modelo Estándar de Control Interno del Paraguay - MECIP*) and on training cooperation agreements that it has with the Department of Government Contracting (*Dirección Nacional de Contrataciones Públicas - DNCP*) and the civil society organization *Instituto de Estudios para la Consolidación del Estado de Derecho* (ICED).⁵¹

[120] The AGPE relies on its website to inform the public about its objectives, functions, activities, and legal framework, among other aspects.⁵² The Communication Unit registers concerns presented to the institution and conveys them to the Minister-Auditor General for a decision.⁵³

[121] Should a conflict of authority arise, the deciding agency is the Office of the Attorney General (*Procuraduría General de la República*).⁵⁴

[122] The institution's budget is guaranteed by Law 1535/99 (State Finance Administration Law), its respective amendments, and regulatory provisions.⁵⁵

[123] As regards accountability, in its response the state under review informed that this was done through the annual report.⁵⁶ During the on-site visit, the AGPE added that the accountability procedure was done in the manner established in the Strategic Communication Manual and that different activities were carried out for that purpose, including distribution of information pamphlets to institutions; as well as the *Momarandú*⁵⁷ magazine distributed to civil servants. The Annual Report is also made available to anyone interested in the AGPE reception area.

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

[124] The Office of the Auditor General of the Executive Branch (AGPE) has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were described in

45. See <http://www.presidencia.gov.py/v1/wp-content/uploads/2011/03/decreto62471.pdf>

46. See http://201.217.12.239/agpe/v2/index.php?option=com_joomdoc&task=doc_download&gid=17&Itemid=11

47. See http://201.217.12.239/agpe/v2/index.php?option=com_joomdoc&task=doc_download&gid=16&Itemid=11

48. See <http://sdrv.ms/LaAPE4>

49. See http://www.oas.org/juridico/ppt/mesicic4_pry_AGPE_control.ppt

50. For more information, see <http://www.esu.com.co/esu/documentos/normatividad/Norma%20ISO9001%202008.pdf>

51. See http://www.oas.org/juridico/ppt/mesicic4_pry_AGPE_resul.ppt

52. See <http://www.agpe.gov.py/>

53. Response of Paraguay to the questionnaire, p. 20.

54. See http://www.oas.org/juridico/ppt/mesicic4_pry_AGPE_control.ppt

55. Response of Paraguay to the questionnaire, p. 25 and <http://www.hacienda.gov.py/web-presupuesto/index.php?c=30>.

56. Response of Paraguay to the questionnaire, p. 26.

57. *Momarandú* is a Guaraní word that means to teach, to create, internalize and convey wisdom.

brief in section 3.1 of this report. However, the Committee believes it timely to make a number of observations in relation thereto.

[125] To begin with the Committee notes that during the on-site visit the AGPE explained that it had very few auditors,⁵⁸ making it difficult for it to carry out its plans and institutional processes in full. In that regard, they explained that, to large extent, this has to do with the fact that the institution is unable to compete with the salaries offered by other government agencies. Although the salary scale is the same for all civil servants, there are bonus options and additional benefits that may be paid depending on the appropriation authorized for each institution in the Budget Law and the decree setting out its implementing regulations. Owing to the limited budget allocated to the AGPE, this institution is not in a position to pay these bonuses and additional benefits, which hampers the task of attracting and retaining qualified staff.

[126] In this connection, the Committee observes that the issue of equitable compensation for public officials is envisaged in Article III(12) of the Convention, which will be analyzed in a future round. Therefore, it will not venture an opinion on this point at this time. However, the Committee will make a recommendation regarding the need to strengthen the AGPE by providing it with the necessary human and financial resources to perform its functions properly (See recommendation 3.4.1 in chapter II of this report).

[127] In second place, in the course of the on-site visit, the AGPE explained that one of its difficulties was the lack of autonomy of internal institutional auditors (AIIs), who answered directly to the chief officers of their institution. Compounding the foregoing, the position of AII is one of free appointment and removal, which means that the chief officers can easily get rid of them. The AGPE underscored that to avoid situations of this type it was necessary to reform Decree 13245/2001, which governs both institutions. The Committee will make recommendations (see recommendations 3.4.2 and 3.4.3 in chapter II of this report).

[128] Third, during the on-site visit the AGPE reported that under the aforementioned Decree 13245/2001, when evidence of wrongdoing, including corruption, is disclosed in auditors' reports, the information is not sent *ex officio* to the Public Prosecution Service, but to the President. In that connection, that they said that they were planning to amend the rules so that auditors' reports are sent simultaneously to the President and Public Prosecution Service in cases of suspected corruption. The Committee will make a recommendation (see recommendation 3.4.4 in chapter II of this report).

[129] In fourth place, in the course of the on-site visit the AGPE also mentioned as an obstacle the need for AGPE and AII auditors to be more specialized, and that although the AGPE operations manual set out the academic requirements to be met by auditors, the other institutions did not. The Committee will make a recommendation (see recommendation 3.4.5 in chapter II of this report).

[130] In fifth place, with respect to the human resources regime, the Committee notes that the AGPE is governed by the Public Service Law (*Ley de la Función Pública* - LFP), which was analyzed in the first and second rounds and for which specific recommendations were made. The foregoing notwithstanding, in view of the fact that the system's supervising authority is the Public Service Secretariat (*Secretaría de la Función Pública* - SFP), the Committee will offer observations and recommendations in that section (see recommendations 4.4.1 to 4.4.6 and 4.4.10).

58. See http://www.oas.org/juridico/ppt/mesicic4_pry_AGPE_dificul.ppt

[131] Sixth, the AGPE explained during the on-site visit that there was a need to strengthen the new Forensic Audit Department by providing it with the necessary human and financial resources to properly carry out its functions as regards detection of acts of corruption. The Committee will make a recommendation (see recommendation 3.4.6 in chapter II of this report).

[132] Seventh, with respect to accountability, the Committee notes that while a copy of annual reports can be obtained at institutions, they are not published on the AGPE website. In that connection, the Committee believes that these annual reports could be published on the AGPE website, thereby increasing citizen access to that information. The Committee will make a recommendation in this regard. The Committee will make a recommendation (see recommendation 3.4.7 in chapter II of this report).

[133] Eighth, the Committee notes that under Article 10(g) of Decree No. 13245/02, the AGPE and AII are required to plan their activities through their annual plans. In that regard, the Committee notes that the AGPE's last annual plan was approved in March 2011 and that, to date, the plan for 2012 has not been approved. The Committee will make a recommendation (see recommendation 3.4.8 in chapter II of this report).

[134] Finally, in relation to technical cooperation needs, the AGPE identified the following: technical assistance for amending the standards in force; technical cooperation with similar entities in other countries in order to increase the specialization of AGPE and AII auditors; technical cooperation and assistance from national and international agencies for implementing a competency-based management model in the organization by which to assess the specific competencies that different positions require. In this connection, the Committee takes note of the needs mentioned by the AGPE and of the need for the state under review to provide the necessary support. It also invites the states parties (in particular, their internal audit institutions) and other cooperation organizations to assist the institution in these areas. The Committee will make a recommendation (see recommendation 3.4.9 in chapter II of this report).

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

[135] The response to the questionnaire of the country under review and the on-site visit yielded information on results in the Office of the Auditor General of the Executive Branch (*Auditoría General del Ejecutivo* - AGPE), notably the following:

[136] In first place, with respect to the AGPE's functions in terms of prevention of unlawful conduct, in the course of the on-site visit the institution provided information on measures such as training courses held on the Standard Internal Control Model (MECIP) in 2011 and 2012; workshops on ethical values, induction and refresher courses for the Institution's staff on those values, and other training courses of a similar nature held from 2009 to 2011; and the creation of the AGPE Ethics Committee.⁵⁹

[137] Second, in its response to the questionnaire the AGPE did not provide any information on its functions with respect to detection of acts of corruption. Furthermore, during the on-site visit it reported that it did not have disaggregated statistics available and that that would be one of the functions of the newly created Forensic Audit Department. Accordingly, the Committee will make a recommendation (see recommendation 3.4.9 in chapter II of this report).

59. See http://www.oas.org/juridico/ppt/mesicic4_pry_AGPE_resul.ppt

3.4. Conclusions and of recommendations

[138] Based on the foregoing comprehensive analysis of the AGPE), the Committee offers the following conclusions and recommendations:

[139] The Republic of Paraguay has considered and adopted measures designed to maintain and strengthen oversight bodies for the purpose of implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts. These include the AGPE.

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

- 3.4.1. Strengthen the AGPE by providing it with the necessary human and budgetary resources to ensure that it can perform its functions properly (see chapter II, section 3.2 of this report).
- 3.4.2. Strengthen the autonomy of institutional internal auditors by making the appropriate statutory amendments to ensure that internal auditors' reports are sent directly to the AGPE without first requiring review or approval by the chief officers of their institutions (see chapter II, section 3.2 of this report).
- 3.4.3. Make the necessary statutory amendments to ensure that recruitment of institutional internal auditors is done by means of public competitions based on merit that take into account the principles of disclosure, equity, and efficiency, and that they are not freely appointed (see chapter II, section 3.2 of this report).
- 3.4.4. Make the appropriate statutory amendments to ensure that internal auditors' reports that disclose evidence of wrongdoing are sent simultaneously to the Public Prosecution Service and the President of the Republic (see chapter II, section 3.2 of this report).
- 3.4.5. Adopt the appropriate measures to ensure that the operating manuals of all institutions under the authority of the AGPE establish the academic requirements to be met by auditors (see chapter II, section 3.2 of this report).
- 3.4.6. Strengthen the recently created Forensic Audit Department by providing it with the necessary human and budgetary resources for it to perform its detection functions properly (see chapter II, section 3.2 of this report).
- 3.4.7. Adopt the pertinent measures for the AGPE website to serve as a useful tool for spreading information about its accountability activities by posting annual reports and other relevant information on it (see chapter II, section 3.2 of this report).
- 3.4.8. Take the appropriate steps to ensure that the annual plans of the AGPE and AII are approved in the time and manner envisaged in the relevant standards (see chapter II, section 3.2 of this report).
- 3.4.9. Promote suitable arrangements with other states and cooperation agencies to furnish the AGPE with the necessary technical cooperation to amend the standards in force; technical cooperation with similar entities in other countries in order to

increase the specialization of AGPE and AII auditors; technical cooperation and assistance from national and international agencies for implementing a competency-based management model in the organization by which to assess the specific competencies that different positions require, in order to enable it to carry out its functions more effectively (see chapter II, section 3.2 of this report).

- 3.4.10. Disaggregate the statistics on detection of acts of corruption so as to include data that clearly establish the total number of audits initiated in each of the last five years, indicating in how many evidence of punishable conduct was detected and how many were referred to the Public Prosecution Service, in order to identify challenges and recommend corrective measures (see chapter II, section 3.3. of this report).

4. PUBLIC SERVICE SECRETARIAT (SFP)

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

[141] The Public Service Secretariat (*Secretaría de la Función Pública* - SFP) has a set of provisions in its legal framework, as well as other measures that refer, *inter alia*, to the following:

[142] The SFP is a central regulatory agency for the Civil Service and the institutional development of state entities that report to the Office of the President of the Republic. It oversees compliance with Law No. 1626/00 (*Ley de la Función Pública* - LFP [Civil Service Law]) and promotes, through ethical standards, the objectives of the Civil Service (LFP, Article 93).

[143] The functions of the SFP are contained in the LFP and include: to formulate policy on performance and advancement of public sector employees; to propose the classification system and duty descriptions for positions in state agencies and entities; to approve internal regulations and collective agreements on working conditions in state agencies and entities; to approve rules of procedure on selection, recruitment, classification, and promotion of public-sector personnel presented by public-sector agencies; and to appoint examining judges for administrative investigations (Article 96).

[144] The SFP was created by the LFP and its chief officer is the Secretary, who is appointed by the President of the Republic from a shortlist of three candidates selected according to a procedure set down in Article 15 of the LFP, for which purpose the Advisory Board will call a public competition upon expiration of the Secretary's term of office or when the position becomes vacant. The term of office of the Secretary of the Civil Service lasts five years (Article 94).

[145] The Advisory Board is composed of one representative of the executive branch, one representative of the Senate, one representative of the House of Deputies, and one representative of the judiciary. Its purpose is to advise the Secretary of the Civil Service. The Advisory Board has its own rules of procedure (Article 95).

[146] The exceptions to the scope of the LFP are envisaged in Article 2 thereof.⁶⁰

[147] The determination as to the necessary complement of human resources is made in the manner established in the LFP The General Regulations on Recruitment and Promotion in the Civil Service

60. See http://www.oas.org/juridico/PDFs/mesicic4_pry_lev1626.pdf

(*Reglamento General de Selección para el Ingreso y Promoción en la Función Pública*) were published in February 2012 by SFP resolution 150/2012.⁶¹

[148] In the course of the on-site visit, LFP representatives mentioned that they had manuals on organization and functions (resolution FP 357/2010),⁶² job profiles, procedure manuals, and macro- and micro-process maps. They also said that staff are trained in those functions.⁶³ It was also mentioned that the rules of procedure for administrative investigations were adopted in 2009 (resolution FP 297/2009).⁶⁴

[149] With respect to the implementation of modern technologies or systems to facilitate its work, during the on-site visit, the SFP explained that they were in the process of installing integrated computerized systems. They also have the so-called *Kuatiarape* records management system, which allows online records tracking.⁶⁵

[150] The SFP has a Transparency Unit, which is authorized to receive complaints concerning acts or omissions which violate legal provisions that apply to public servants,⁶⁶ an Administrative Investigation Department, which monitors compliance with legal and regulatory standards in administrative investigations,⁶⁷ and an internal auditor's office, which controls and evaluates, according to independent criteria, all administrative, accounting, and financial activities and operations, and verifies that they have been carried out efficiently, economically, and effectively, and in accordance with the laws, principles, standards, and procedures in force on internal control.

[151] The institution's budgetary resources are provided for in the National Budget (LFP, Article 97).

[152] As regards coordination mechanisms, in the course of the on-site visit, the SFP explained that it has agreements with several institutions, including some that have filed suit challenging the constitutionality of the LFP, as well as other mechanisms, such as the Interagency Dialogue Panel (*Mesa de Diálogo Interinstitucional*) and a training program for the State Communicators Team (Equipo de Comunicadores del Estado), among others. The SFP also provided information on various civil society participation mechanisms and activities, including regional forums, permanent consultation panels, awareness raising campaigns, and the "175" complaints hotline.⁶⁸

[153] As for accountability, during the on-site visit the SFP indicated that this was done through regular performance reports that are published on the institution's website.⁶⁹

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

[154] The Public Service Secretariat (SPF) 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 believes it timely to make a number of observations in relation thereto.

61. See <http://www.sfp.gov.py/sfp/?node=page.634>

62. *Idem*.

63. See http://www.oas.org/juridico/ppt/mesicic4_pry_SFP_regimen.ppt and http://www.oas.org/juridico/ppt/mesicic4_pry_SFP_forta.ppt

64. See <http://www.sfp.gov.py/sfp/?node=page.634>

65. See http://www.oas.org/juridico/ppt/mesicic4_pry_SFP_control.ppt and <http://www.presidencia.gov.py/v1/?p=89393>

66. See http://www.oas.org/juridico/ppt/mesicic4_pry_SFP_control.ppt

67. See <http://www.sfp.gov.py/sfp/?node=page.251>

68. See http://www.oas.org/juridico/ppt/mesicic4_pry_SFP_parti.ppt

69. See http://www.oas.org/juridico/ppt/mesicic4_pry_SFP_rendi.ppt

[155] In first place, during the on-site visit it was explained that the civil service career system has not yet been implemented and that it is expected to be implemented in the future. In that regard and without prejudice to the recommendations that were made to the Republic of Paraguay in the first and second review rounds, with the latter including a specific examination of government hiring systems, the Committee stresses the need to introduce regulations for and implement the aforesaid civil service career system and it will make a recommendation to that end (see recommendation 4.4.1 in chapter II of this report).

[156] Second, during the on-site visit, the SFP informed that the executive branch has developed a code of ethics which will serve as a model for all the institutions within its orbit and that all that was needed was the executive decree mandating its entry into force. They added that once the code of ethics comes into force, the SFP will prepare its own based on it and will encourage the adoption of similar codes by the institutions under its authority, for which purpose training workshops are already under way. The Committee underscores the importance of implementing this code of ethics and, without prejudice to the recommendations that were made to the state under review in the first round, in which standards of conduct to prevent conflicts of interests and preserve public property were examined, will offer recommendations (see recommendations 4.4.2 and 4.4.3 in chapter II of this report).

[157] In third place, during the on-site visit it was explained that the SFP disciplinary regime has the same problem as other organs, such as the Public Prosecution Service (MP) and the Office of the Comptroller General (CGR), in that where an administrative fault also constitutes a punishable act and criminal proceedings are opened, the administrative proceeding is suspended and conditional upon the outcome of the criminal proceeding. Likewise, when the official resigns, the administrative disciplinary proceeding becomes unfounded. The Committee will make recommendations (see recommendations 4.4.4 and 4.4.5 in chapter II of this report).

[158] Furthermore, the SFP informed that administrative investigations are only applicable to permanent staff and that while term (non-permanent) staff may be the subject of and administrative inquiry, there is no disciplinary procedure in place for them. In that regard and without prejudice to the recommendations that were made to the Republic of Paraguay in the first and second review rounds, with the latter including a specific examination of government hiring systems, the Committee will make a recommendation (see recommendation 4.4.6 in chapter II of this report).

[159] In fourth place, during the on-site visit the SFP mentioned that there are a number of difficulties that prevent it from carrying out its functions properly. In that regard, it mentioned the lack of political support on which the SFP has been able to rely, starting with the fact that the budget allocated to the institution is insufficient for it to perform its mandates under the Constitution. As a result it has had to depend in large measure on cooperation funds to finance its activities, which is further complicated by the fact that the programming cycles for these funds do not always coincide with the cycle for carrying out its tasks.

[160] In addition, the SFP explained that it only has a staff of 93 to service all of the organs and agencies under its authority: 38% of them are on loan from other institutions, 46% are permanent staff members of the institution, and the remaining 16% are contracted employees, several of whose positions are paid for with international cooperation funds.⁷⁰

70. See http://www.oas.org/juridico/ppt/mesicic4_pry_SFP_regimen.ppt

[161] SFP representatives explained that this situation causes a high turnover of staff with the resulting loss of institutional memory. In this connection, the Committee notes the need to provide the SFP with the necessary human and financial resources to enable it to carry out its functions properly, and it will make a recommendation to that effect (see recommendation 4.4.7 in chapter II of this report).

[162] In fifth place, the SFP also mentioned among its difficulties the fact that the Supreme Court of Justice has not yet returned a ruling on the actions challenging the constitutionality of the LFP, which complicates and hinders its work. The Committee takes note of the difficulty mentioned by the SFP, which is an issue on which recommendations were also put forward in the first and second review rounds, and it will refer to the matter in the section on the Supreme Court Justice (see recommendation 5.4.6 in chapter II of this report).

[163] Sixth, the Committee observes that although the SFP has a Transparency Unit to receive complaints, as well as various mechanisms to enable members of the public to file complaints, including the “175” hotline, the institution’s website does not have a complaints “box.” In relation to the foregoing, the Committee believes that it would be useful for the SFP to add this element to its website in order to further facilitate the lodging of complaints by members of the public. The Committee will make a recommendation (see recommendation 4.4.8 in chapter II of this report).

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

[164] The on-site visit yielded information on results in the Public Service Secretariat (*Secretaría de la Función Pública* - SFP), notably the following:⁷¹

[165] In first place, with respect to measures that the SFP has adopted in the past five years to prevent corrupt practices, during the on-site visit the institution explained that it had instituted awareness campaigns, including one entitled “*Trabajamos para servirte mejor*” (Working to serve you better), as well as media campaigns, such as a series of television spots with the message “*Concursa, entra por la puerta grande*” (Compete! Come in through the front door). In addition, the SFP has organized training modules and diploma courses on public ethics as well as drafting the preliminary draft executive branch framework code of ethics, among other activities.

[166] Furthermore, with respect to results in the treatment and follow-up of complaints through the Transparency Department, the SFP reported that 117 complaints had been received, of which 3 had been dismissed, 32 were pending, and 82 had been resolved. However, this information is not disaggregated by year, nor does the SFP indicate if any of the complaints revealed evidence of criminal wrongdoing, if they were reported to the competent authorities if they did, if administrative investigations were opened, or what their final outcome was. The Committee will make a recommendation (see recommendation 4.4.9 in chapter II of this report).

[167] During the on-site visit the SFP also reported that the proportion of positions filled through competitive processes had risen greatly in the past five years. Indeed, in 2008, only seven positions were filled through competitions, whereas by February 2012, that number had increased to 14,232. Similarly, while only 1% of institutions had implemented competitions in 2008, by February 2012 that level had risen to 50%. In this regard, the Committee underscores the importance of the continued increase in the number of positions filled by competitions and in the number of institutions

71. See http://www.oas.org/juridico/ppt/mesicic4_pry_SFP_resultados.ppt

implementing merit-based competitions, until a level of 100% is achieved, and it will make a recommendation in that regard (see recommendation 4.4.10 in chapter II of this report).

4.4. Conclusions and of recommendations

[168] Based on the foregoing comprehensive analysis of the Public Service Secretariat (SFP), the Committee offers the following conclusions and recommendations:

[169] The Republic of Paraguay has considered and adopted measures designed to maintain and strengthen oversight bodies for the purpose of implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts. These include the SFP.

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

- 4.4.1. Introduce regulations for and implement the civil service career system in the SFP and the institutions under its authority, ensuring that entry into this career service is according to the principle of merit, while taking the competence factor into account (see chapter II, section 4.2 of this report).
- 4.4.2. Encourage the speeding up of the issuing of the executive decree that would bring into force the executive branch framework code of ethics for all institutions within its orbit, and ensure that the code contains provisions for its implementation as well as effective penalties in the event of infringement (see chapter II, section 4.2 of this report).
- 4.4.3. Develop and implement the SFP code of ethics based on the executive branch framework code of ethics and ensure that all the institutions under its authority have similar codes of ethics (see chapter II, section 4.2 of this report).
- 4.4.4. Take the necessary measures to ensure that administrative disciplinary proceedings for acts that might also give rise to liability to criminal prosecution are not subordinate to the criminal proceeding, so that both processes can continue simultaneously without one depending on the outcome of the other (see chapter II, section 1.4 of this report).
- 4.4.5. Take the necessary measures to ensure that liability to administrative disciplinary proceedings continues even after the official resigns or leaves public service for any reason, within the framework of summary administrative proceedings (see chapter II, section 4.2 of this report).
- 4.4.6. Take the necessary regulatory measures to ensure that there is a disciplinary procedure for term (non-permanent) employees, whether it be the procedure that applies to permanent staff, including administrative investigations, or another equivalent procedure (see chapter II, section 1.4 of this report).
- 4.4.7. Strengthen the SFP by providing it with the necessary human and budgetary resources to ensure that it can perform its functions properly, within available resources (see chapter II, section 4.2 of this report).

- 4.4.8. Adopt pertinent measures to make it easier for members of the public to lodge complaints such as adding a complaints “box” to the SFP website (see chapter II, section 4.2 of this report).
- 4.4.9. Disaggregate the statistics on complaints so as to include data that clearly establish the total number of investigations initiated in each of the last five years, stating how many cases are ongoing; how many have been suspended for whatever reason; how many have been closed because the statutory time limit has expired; how many have been archived without a decision adopted on the merits of the case under investigation; how many are in a position where a decision on the merits of the case under investigation could be adopted; and how many have been referred to the competent authority to adopt such a decision, in order to identify challenges and recommend corrective measures (see chapter II, section 4.3. of this report).
- 4.4.10. Without prejudice to the recommendations made in the first and second review rounds, take such measures as it considers necessary to ensure that all the institutions under its authority introduce regulations on and implement merit-based competitions for entry to the civil service (see chapter II, section 4.3 of this report).

5. SUPREME COURT OF JUSTICE (CSJ)

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

[171] The Supreme Court of Justice (*Corte Suprema de Justicia* - CSJ) has a set of provisions in its legal framework, as well as other measures that refer, *inter alia*, to the following:

[172] The judiciary (*Poder Judicial* - PJ) is the jurisdictional organ. It is the custodian of the Constitution. It interprets, complies with, and enforces it Justice is administered by the judiciary, through the Supreme Court of Justice, superior courts (*tribunales*) and lower courts (*juzgados*) in the manner prescribed by the Constitution and the law. The judiciary includes the Supreme Court, as the maximum authority, which is operationally independent and self-sufficient on constitutional (Constitution, Article 259) and statutory provisions (Law 609/1995, Organic Law of the Supreme Court of Justice; and Law 879/81, Judicial Organization Code).⁷²

[173] Furthermore, the judiciary is an independent organ, enjoys budgetary autonomy, and in the National Budget may not be allocated an amount less than 3% of the central administration’s budget (Constitution, Article 249).

[174] The duties and powers of the Supreme Court are established in the Constitution and include to supervise all agencies of the judiciary and to decide, at sole instance, conflicts of jurisdiction and competence; to adopt its own rules of procedure; to submit an annual report to the legislative and executive branches on its activities, as well as on the status, and needs of the judicial system; to hear and decide the appeals established by law; to hear and decide habeas corpus petitions with original jurisdiction, without detriment to the jurisdiction of other judges and courts; to hear and decide cases of unconstitutionality; to hear and decide cassation appeals; to preventively suspend judges who are standing trial until a final decision is reached on their case; to supervise detention centers and prisons; to hear cases involving conflicts of jurisdiction between the executive branch and departmental

72. Response of Paraguay to the questionnaire, p. 8.

governments, or between the latter and municipal governments; and other powers established by the Constitution and the law (Article 259).

[175] In addition to its jurisdictional functions, the Judicial Organization Code (*Código de Organización Judicial* - COJ) places the Public Records Department (*Dirección General de los Registros Públicos* - DGRP) directly under the CSJ. The DGRP includes registries for real property, ships, automotive vehicles, aircraft, trademarks and brands, liens, legal persons and associations, family property rights, intellectual property and rights, public trade, powers of attorney, industrial property, and bankruptcies (articles 261 and 262).

[176] Only the law courts may decide on acts of a contentious nature (Constitution, Article 248). Their decisions are adopted in different tribunals at various instances, from the lower courts to the chambers of the Supreme Court.⁷³

[177] The Court of Auditors (*Tribunal de Cuentas* - TC) is established by the Constitution, which states that its composition and jurisdiction will be established by law (Constitution, Article 265). The Judicial Organization Code places this organ within the structure of the Supreme Court and provides that it shall be composed of two chambers. The first chamber of the TC hears contentious-administrative cases, while the second chamber has oversight of the National Budget investment accounts (Article 30, COJ).

[178] The highest officers of the judiciary are the justices of the Supreme Court, who are appointed by the Senate, with the concurrence of the executive branch, from a shortlist of three proposed by the Council of the Magistracy; they may be removed only through impeachment (Constitution, articles 261 and 264).

[179] Members and judges of the superior and lower courts are appointed by the Supreme Court from a shortlist of three proposed by the Council of the Magistracy (Constitution, Article 264), for terms of five years that coincide with the presidential term⁷⁴ and they may be confirmed in office (COJ, Article 190).

[180] Members of courts of appeal and the Court of Auditors; lower court judges; other judges; and members of the Public Prosecution Service and the Public Defenders' Office may be removed by the Supreme Court, which has the authority to try them in accordance with the procedures set forth in the COJ, under which the commission of crimes and poor performance of official functions are grounds for bringing suit (articles 209 and 210).

[181] In addition, under Article 253 of the Constitution, magistrates of the judiciary may only be brought to trial and removed for the commission of crimes or for the poor performance of duties as defined in law, on the decision of a judicial impeachment board. The definition of poor performance of duties may be found in Articles 14 and 15 of Law 3759/00, the Judicial Impeachment Law.

73. Response of Paraguay to the questionnaire, p. 11.

74. The country under review has reported that in practice, the terms of office of prosecutors do not coincide with presidential terms of office in view of the interpretation of Article 7 of the Civil Code, along with Article 252 of the National Constitution.

[182] The rules on human resources are contained in Supreme Court orders 313/05 and 377/05: the former approves the procedures for appointment, movement, and hiring of officials in the institution; the latter, the instruments for the announcement of public competitions.⁷⁵

[183] It should be noted that the Public Service Law (*Ley de la Función Pública* - LFP) would be applicable to the CSJ had its application to the entire judiciary not been suspended as a result of an action challenging its constitutionality brought by the CSJ itself, on which the latter has not yet reached a decision.⁷⁶

[184] In the course of the on-site visit, the Human Resources Department (*Dirección General de Recursos Humanos* - DGRH) of the Supreme Court informed that they had a Civil Area Positions Manual, a Performance Evaluation Manual, and Training Rules for Supreme Court officials. It was also explained that training is carried out according to an annual plan approved by the CSJ for the jurisdictional and administrative areas, subject to the needs detected, and that a budget item is made available for training officials in the jurisdictional, administrative, and public records areas.⁷⁷ The DGRH also said that it has authority over judicial officials up to the actuary level, but not over judges

[185] The DGRH also informed during the on-site visit that they have an Organizational Procedures and Instructions Manual, a Training Plan, and a Motivation Plan for the Judicial Districts of Caaguazú and Misiones and the Civil Courts of the Capital.⁷⁸

[186] In its response, the state under review said that it has implemented operations manuals in various agencies, such as the Judicial Performance Auditor's Office (*Auditoría de Gestión Judicial*)⁷⁹ and the Courts of Auditors and contentious-administrative tribunals.⁸⁰

[187] As regards mechanisms for providing information to the public on its objectives and functions, the procedures established for carrying them out, and guidance on dealings with the institution, in its response, the state under review said that the CSJ holds "government open-days" in different judicial districts, in addition to organizing town hall meetings and publishing newsletters on its website.⁸¹

[188] In its response, the state under review mentioned that the CSJ's control mechanisms include the Council of the Superintendency (*Consejo de la Superintendencia*), which has a Superintendent General for Justice (*Superintendencia General de Justicia*), one of whose functions is to investigate acts of corruption. It also has a Judicial Performance Audit Department (*Dirección General de Auditoría de Gestión Judicial*), which answers to the CSJ through the Council of the Superintendency.⁸² This body is charged with overseeing compliance with the procedural deadlines.

[189] The Supreme Court also has an Office of Institutional Integrity, created by Agreement No. 472/2007; a Complaints Office, attached to the Superintendency Council of the Supreme Court of

75. Response of Paraguay to the questionnaire, p. 15. See also http://www.oas.org/juridico/ppt/mesicic4_pry_CSJ_recursos.ppt

76. See sections on the Public Prosecution Service, Office of the Comptroller General, and Public Service Secretariat. See also the reports on Paraguay from the first and second rounds.

77. See http://www.oas.org/juridico/ppt/mesicic4_pry_CSJ_recursos.ppt

78. *Idem*.

79. Response of Paraguay to the questionnaire, p. 19. See also <http://www.pj.gov.py/contenido/167-direccion-general-de-auditoria-de-gestion-judicial/232>

80. Response of Paraguay to the questionnaire, p. 19. See also <http://www.pj.gov.py/resultado/?q=manuales+de+funciones>

81. Response of Paraguay to the questionnaire, p. 20.

82. *Idem*, p. 24.

Justice, created by Agreement No. 475/2007; and the Judiciary Disciplinary Office, attached to the General Superintendency of Justice and responsible for the judiciary's disciplinary system.

[190] As for disciplinary procedure, during the on-site visit the CSJ explained that this was governed by Accord 709/11, which approved the rules of procedure for the Disciplinary System of the Judiciary.⁸³

[191] The CSJ also mentioned during the on-site visit that it has a Judicial Code of Ethics and a Judicial Ethics Tribunal,⁸⁴ the function of which is to hear and settle cases of ethical responsibility in accordance with the Judicial Code of Ethics.⁸⁵

[192] During the on-site visit, the CSJ also informed that it has a Complaints Office, which was created by Accord 475/07 and began operating in February 2008. It also has a complaints section on its website, which provides guidance to the citizen on how to report complaints as well as which forms to use for that purpose.⁸⁶

[193] Finally, as regards accountability, in its response the state under review noted that the CSJ does this via its website, which contains various links for accessing relevant information, including performance reports,⁸⁷ as well as citizen participation days, such as government days, public hearings, citizen brainstorming, *Expo justicia*, all of which are coordinated by the Office of International Affairs and Institutional Integrity.

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

[194] The Supreme Court of Justice (CSJ) 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 believes it timely to make a number of observations in relation thereto.

[195] In first place, the Committee notes that the Judicial Organization Code (COJ) in force places the Public Records Department directly under the Supreme Court, adding these functions to the jurisdictional ones that the Court already performs under the Constitution. In the course of the on-site visit, the Committee saw that this non-jurisdictional task occupies a high proportion of its attention and of its human and financial resources.

[196] Indeed, in interviews with Supreme Court representatives it became clear that the DGRP is a major source of revenue to the institution and ensures a larger budget than the Court would have were it to devote itself exclusively to its jurisdictional functions, such as prosecution and punishment of acts of corruption. It should be noted that the Constitution determines that the judiciary's budget shall not be less than 3% of the central administration's budget. The addition of the DGRP ensures an even larger budget as a result of dealing with non-jurisdictional activities.

[197] In that connection, the Supreme Court representatives said that ways are currently being examined to reform the judicial system and that there are various proposed drafts of a new judicial organization law, one of which was drawn up by the Supreme Court itself and is currently under

83. See <http://www.pj.gov.py/images/contenido/compendio-sistema-disciplinario.pdf>

84. See <http://www.pj.gov.py/contenido/170-etica-judicial/170>

85. See http://www.oas.org/juridico/ppt/mesicic4_pry_CSJ_oficina.ppt

86. See <http://www.pj.gov.py/contenido/169-oficina-de-quejas-y-denuncias/169>

87. Response of Paraguay to the questionnaire, p. 26. See also <http://www.pj.gov.py/>

consideration in the legislature.⁸⁸ On this point, they explained that the preliminary draft of the new COJ contained 480 articles and that eliminating the DGRP would reduce the number of articles to 270 and with it the Supreme Court's budget. In this connection, the Committee notes the importance of strengthening the jurisdictional work of the Supreme Court, particularly where prosecution and punishment of acts of corruption envisaged in the Convention are concerned, and it will make recommendations to that effect (see recommendations 5.4.1 and 5.4.2 in chapter II of this report).

[198] It is worth noting that during the meeting held with civil society organizations as part of the on-site visit, representatives of *Centro de Estudios Judiciales* (CEJ) and the Paraguayan Bar Association (*Colegio de Abogados del Paraguay - CAP*) also referred to the need to separate the specifically jurisdictional functions of the Supreme Court from its administrative ones. They also said that the preliminary draft of the new COJ prepared by the Supreme Court was based on the 1981 COJ in force and they were of the opinion that it was not in step with the latest advances and requirements of Paraguayan society. In this connection, they said that there is another preliminary draft COJ that has been prepared by the CEJ;⁸⁹ however, it is not being taken into account and they proposed the creation of a "bicameral" body in the legislature to examine both proposals with a view to producing a consensus legal text.

[199] It should also be noted that during the interview with a representative of the legislature held in the course of the on-site visit the need was also mentioned to reorganize the judiciary in order to strengthen the Supreme Court's performance of its jurisdictional function, divesting it of its non-judicial functions. It was mentioned that the Court had become one of the biggest public-sector hirers in the country and that it was responsible for appointing nearly 11,000 government officials, all of which was to the detriment of its jurisdictional labors.

[200] In second place, the Committee notes that the Court of Auditors established by the Constitution is part of the operational structure of the Supreme Court and that, in addition to its oversight functions with regard to the National Budget investment accounts, it also hears contentious-administrative cases.

[201] Regarding the foregoing, during the on-site visit, the Office of the Comptroller General (CGR) said that this had given rise to a conflict of jurisdiction between the CGR and the Court of Auditors, and that the Supreme Court had suspended several of the CGR's powers and transferred them to the Court of Auditors. The CGR said that it had filed suit challenging the constitutionality of this measure but that the Supreme Court had yet to rule on the matter.

[202] During the interview with Supreme Court representatives in the course of the on-site visit, the President of the Supreme Court confirmed the existence of the conflict of jurisdiction between the CGR and the Court of Auditors, and added that once the Court of Auditors had taken up a particular case, the CGR, while it did not, in theory, lose the possibility of conducting an audit, could no longer have possession of the necessary documents to do so because they had to be transferred to the Court of Auditors. In that connection, the President of the Court agreed that rules clearly defining the jurisdictions of the CGR and the Court of Auditors could solve the problem.

[203] In relation to the foregoing, the Committee believes that in the interests of preserving the autonomy of the Court of Auditors and of the CGR, as well as avoiding conflicts of jurisdiction, the Court of Auditors should be removed from the orbit of the Supreme Court, the former relieved of its

88. See http://www.oas.org/juridico/ppt/mesicic4_pry_CSJ_codigo.ppt

89. See http://www.oas.org/juridico/ppt/mesicic4_pry_sc_CEJ.ppt

jurisdiction over contentious-administrative matters, and the respective jurisdictions of the Court of Auditors and the Office of the Comptroller General clearly defined. The Committee will make recommendations (see recommendations 5.4.3. and 5.4.4. in chapter II of this report).

[204] It is worth mentioning that in an interview with a representative of the legislature during the on-site visit it was made evident that a clear distinction is indeed lacking between the functions of the Court of Auditors and those of the CGR, an example of which is that when the CGR opens an investigation, the official, body, or municipality being audited appeals to the Court of Auditors, which then instructs the CGR to refer the entire proceeding--including paperwork, evidence, etc.--to it, leaving the CGR with nothing to work with in its audit.

[205] In second place, the Committee notes that while the Supreme Court has internal standards regarding the appointment, movement, and hiring of officials in the institution and that it has approved instruments for announcing public competitions, some of which have been carried out, it was found during the on-site visit that merit-based competitions are not mandatory for entry to service in the judiciary. The Committee also notes that implementing regulations have not been issued for the judicial and technical-administrative career systems, nor have those systems been institutionalized.

[206] Without offering a detailed analysis of the issue and without prejudice to the recommendations that were made to the Republic of Paraguay in the first and second review rounds, with the latter including a specific examination of government hiring systems, the Committee stresses the need to institutionalize and make mandatory merit-based competitions for entry to service in the judiciary, in addition to the need to institutionalize and issue implementing regulations for the judicial and technical administrative career systems, while observing the principles of disclosure, equity, and efficiency. The Committee will make recommendations (see recommendations 5.4.5. and 5.4.6. in chapter II of this report).

[207] It should also be mentioned that during the meeting with civil society organizations in the framework of the on-site visit, *Centro de Estudios Judiciales* (CEJ) underscored the importance of the establishment of a judicial and a technical-administrative career system based on merit. The lack of a judicial career system was also mentioned in an interview with a member of the legislative branch during the on-site visit.

[208] In third place, with respect to the Civil Service Law, which would be applicable to the judiciary had its constitutionality not been challenged by the Supreme Court, the Committee notes that more than 10 years have passed without the Court ruling on the matter. The absence of a ruling affects not only the judiciary but also other oversight bodies that have filed suit challenging the constitutionality of the LFP, including the Public Prosecution Service, the Office of the Comptroller General, and the Supreme Court itself. The foregoing also hampers the work of the Public Service Secretariat, given that there is also a large number of suits claiming total or partial unconstitutionality brought by staff associations and officials at agencies under its authority, with the result that the Public Service Law applies to some officials while others are governed by the previous law, which causes juridical uncertainty that is difficult to manage. The Committee will make a recommendation (see recommendation 5.4.7. in chapter II of this report).

[209] In fourth place, in relation to disciplinary procedure, in the course of the on-site visit the problem was mentioned that the Judiciary Disciplinary Rules (Accord 709/11) provide that where a disciplinary fault also constitutes a punishable act and criminal proceedings are opened, the Council

of the Superintendency shall suspend disciplinary proceeding until a final decision is reached in the criminal proceeding (Article 55). Bearing in mind that it typically takes four years or more for a case to be resolved in the Paraguayan judicial system, the outcome is often a dismissal or expiration of the statutory time limit, which results in the administrative disciplinary proceeding being declared groundless. The Committee will make recommendations (see recommendations 5.4.8 and 5.4.9 in chapter II of this report).

[210] In fifth place, as regards the Judicial Code of Ethics and the Judicial Ethics Tribunal, during the on-site visit, representatives of the judiciary mentioned that these were intended only for judges, not other judiciary personnel⁹⁰. In that connection, without prejudice to the recommendations that were made to the state under review in the first round, in which standards of conduct to prevent conflicts of interests and preserve public property were examined, the Committee will offer a recommendation (see recommendation 5.4.10 in chapter II of this report).

[211] It is worth noting that at the meeting with civil society organizations held during the on-site visit, four civil society organizations [*Gestión Ambiental* (GEAM), *Semillas para la Democracia* (SPD), *Centro de Estudios Judiciales* (CEJ), and *Centro de Políticas Públicas UCA* (CPP-UC)] commented on the issue, suggesting that the system of ethical liability in the judiciary only applied to judges and was nonbinding; that the penalties were only reprimands of a moral nature that were included as a “black mark” in judges’ personnel to be taken into account for the score in future selection processes, assuming they put themselves forward as contestants, for which there were, however, other factors that influenced the score that would offset any adverse effect caused by the reprimand, thereby ensuring their reappointment.

[212] In sixth place, the Committee notes the problem of the judicial delay, which, as mentioned, lasts an average of around four years in Paraguay. This was a recurring theme at the meetings held with the various institutions in the course of the on-site visit. In that regard, representatives of the Supreme Court said that lawyers were always seeking to delay proceedings and that preliminary hearings were also frequently suspended. With respect to the latter, they explained that they were trying to find a solution to the problem and, to that end, were attempting to work with the Public Prosecution Service’s Specialized Unit against Financial Crime and Corruption (UDEA) and the judiciary’s Preliminary Hearings Unit (*Unidad de Audiencias Preliminares* - UAP). The Committee will make a recommendation (see recommendation 5.4.11. in chapter II of this report).

[213] Both in the response to the questionnaire⁹¹ and in the on-site visit, the Public Prosecution Service explained that litigants file motions on incidental questions in bad faith or invoke procedural or extra-procedural remedies seeking the extinction of the offense. In this regard, they said that although prosecutors request sanctions, no disciplinary penalties are imposed on those who practice the law in an abusive manner. Among their difficulties they also mentioned that failure to promptly impose disciplinary measures has allowed the statute of limitations to run, resulting in the extinction of criminal cases, which gives rise to impunity. The Committee will make a recommendation in that regard (see recommendation 5.4.12. in chapter II of this report).

[214] The Committee also observes that, despite the existence of a constitutional rule requiring it, there are no regulations governing the legal profession or requiring membership of a professional association for its practice in the state under review, which is conducive to impunity for unethical conduct by legal professionals who engage in abusive or corrupt practices, thereby contributing to the

90. See http://www.oas.org/juridico/ppt/mesicic4_pry_CSJ_oficina.ppt

91. Response of Paraguay to the questionnaire, p. 29.

judicial delay, which often results in impunity for criminal acts, including corruption offenses. Indeed, the Article 42 of the Paraguayan Constitution provides, “*Everyone is free to join associations or unions with legal purposes. No one can be forced to join any association. The law will establish procedures for joining professional associations. Secret associations, as well as those of a paramilitary nature, are hereby prohibited.*”⁹² However, no such rules have been implemented.

[215] In this respect, the Committee believes it important for the state under review to implement Article 41 of the Constitution by passing a law that governs membership of a professional association and ethical conduct by legal professionals; provides penalties for its violation; introduces rules governing the disciplinary procedure; and envisages an independent body to implement it and monitor its compliance, so as to be able to combat such abuses and impunity for unethical conduct. The Committee will make a recommendation (see recommendation 5.4.13. in chapter II of this report).

[216] In that regard, it is worth mentioning that during the on-site visit, the Paraguayan Bar Association referred to the above problem and mentioned that there was no culture of ethics in the legal profession, nor were there legal mechanisms to promote and punish violations; it also said that a proposed law on membership of professional associations had been drafted and submitted,⁹³ but that the legislature had not yet considered it.

[217] In the course of the on-site visit the Public Prosecution Service explained that another contributing factor to the delay in the courts was Law 3759/09 (Judicial Impeachment Board Law), the constitutionality of which had been challenged by 95% of prosecutors and the Supreme Court itself. The Public Prosecution Service said that this law was conducive to interference by extralegal agents in judicial investigations; that defense attorneys used it to have prosecutors removed from cases and delay proceedings, and that the Supreme Court had not issued precautionary measures nor clarified its constitutionality. Accordingly, it suggested that the law be revised or another issued in its place. The Committee will make a recommendation (see recommendation 5.4.14. in chapter II of this report).

[218] Finally, during the on-site visit the Public Prosecution Service’s Prosecutorial Performance Control Unit (UCFG) said that a coordination and mutual assistance protocol was needed with the Judicial Control Department (*Dirección General de Control Judicial*) of the Supreme Court of Justice, which would contribute to interagency cooperation and to an improvement in detection and investigation of acts of corruption. The Committee notes the need for inter-institutional coordination between the two entities and will offer a recommendation (see recommendation 5.4.15. in chapter II of this report).

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

[219] The on-site visit yielded information on results in the judiciary, notably the following:⁹⁴

[220] In first place, the Committee finds, with respect to results in detecting acts of corruption, that the Supreme Court has had a Complaints Office since 2008. During the on-site visit, the Supreme Court reported that it had statistics on complaints received through that office; however, they were

92. Emphasis added.

93. The proposed law regulating membership of professional associations may be found at <http://www.colegiodeabogados.org.py/proyecto1.php>

94. See http://www.oas.org/juridico/spanish/mesicic4_pry_sp.htm

not made available to the Committee for analysis either in the response to the questionnaire or in the course of the on-site visit. The Committee will make a recommendation in that regard (see recommendation 5.4.16. in chapter II of this report).

[221] The Committee also notes that during the on-site visit the Supreme Court's Internal Audit Department submitted information on complaints verified by it in 2011 (60 complaints); however, those complaints concerned the Supreme Court's public records area, the automobile registry, and its financial and administrative sectors. No information was offered on results in the jurisdictional area.⁹⁵ The Committee will make recommendations (see recommendation 5.4.17. in chapter II of this report).

[222] Second, the judiciary did not provide information on results in connection with its punitive functions either in the response to the questionnaire or during the on-site visit. In this respect, the state under review reported that the newly created Statistics Department had only recently come into operation, its director had only been appointed a few days before the on-site visit, and, therefore, there were no statistics available in that regard. The Committee will make recommendations (see recommendations 5.4.18., 5.4.19. y 5.4.20. in chapter II of this report).

[223] The Committee notes in this regard that in interviews with civil society organizations [*Gestión Ambiental* (GEAM), *Semillas para la Democracia* (SPD), *Centro de Estudios Judiciales* (CEJ), and *Centro de Políticas Públicas UCA* (CPP-UC)] during the on-site visit, it was explained that there was no culture of providing information to the public or a statistics policy in order to analyze data. They also underscored the need for the Statistics Department to begin to function properly and for an electronic judicial records system to be implemented.

5.4. Conclusions and of recommendations

[224] Based on the foregoing comprehensive analysis of the Supreme Court of Justice, the Committee offers the following conclusions and recommendations:

[225] The Republic of Paraguay has considered and adopted measures designed to maintain and strengthen oversight bodies for the purpose of implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts. These include the Supreme Court.

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

- 5.4.1. Strengthen the jurisdictional function of the Supreme Court of Justice, especially with regard to the timely prosecution and punishment of acts of corruption and ensuring that it is allocated the necessary human and budgetary resources to carry out its jurisdictional functions properly (see chapter II, section 5.2 of this report).
- 5.4.2. Reassess the suitability of the CSJ retaining competence for such non-jurisdictional tasks as its responsibility for the Public Records Department (DGRP) (see chapter II, section 5.2 of this report).

95. See http://www.oas.org/juridico/ppt/mesicic4_pry_CSJ_auditoria.ppt

- 5.4.3. Consider the possibility of adopting the necessary legal measures to separate the competence of the Court of Auditors (TC) over accounts and contentious-administrative disputes, establishing chambers that are solely responsible for contentious-administrative complaints and others that are solely responsible for cases involving the independent judging of accounts (see section 5.2 of Chapter II of this report).
- 5.4.4. Consider clearly defining the competence of the TC by means of appropriate legislation that avoids all conflicts of jurisdiction with the CGR (see section 5.2 of Chapter II of this report).
- 5.4.5. Without prejudice to the recommendations made in the first and second review rounds, take such measures as it considers necessary to ensure that entry to the service of the judiciary is by mandatory public competitions based on merit, ensuring that the principles of disclosure, equity, and efficiency are observed (see chapter II, section 5.2 of this report).
- 5.4.6. Introduce regulations for and implement the judicial and technical-administrative career systems in the judiciary, ensuring that entry to the career service is according to the principle of merit (see chapter II, section 5.2 of this report).
- 5.4.7. Take the steps necessary to speed up the resolution of the various unconstitutionality suits filed against the Public Service Law(LFP), ruling on them as soon as is possible in order to ensure the enforcement of this law (see section 5.2 of Chapter II of this report).
- 5.4.8. Take the necessary measures to ensure that administrative disciplinary proceedings for acts that might also give rise to liability to criminal prosecution are not subordinate to the criminal proceeding, so that both processes can continue simultaneously without one depending on the outcome of the other (see chapter II, section 5.2 of this report).
- 5.4.9. Take such regulatory measures as it deems pertinent to ensure that liability to administrative disciplinary proceedings continues even after the official resigns or leaves public service for any reason, within the framework of summary administrative proceedings (see chapter II, section 5.2 of this report).
- 5.4.10. Issue a code of ethics that applies to all judiciary officials, not simply judges (see chapter II, section 5.2 of this report).
- 5.4.11. Finalize the interagency agreement between the Public Prosecution Service and Supreme Court of Justice aimed at expediting the judicial process and solving the problem of preliminary hearing suspensions (see chapter II, section 5.2 of this report).
- 5.4.12. Apply in a timely manner the penalties incurred by legal professionals who in bad faith file motions on incidental questions or invoke procedural or extra-procedural remedies seeking the extinction of offenses (see chapter II, section 5.2 of this report).

- 5.4.13. Consider passing a law that governs membership of a professional association and ethical conduct by legal professionals; provides penalties for its violation; introduces rules governing the disciplinary procedure; and envisages an independent body to implement it and monitor its compliance, in order to comply with Article 41 of the Constitution (see chapter II, section 5.2 of this report).
- 5.4.14. Rule on the constitutionality of Law 3759/09 (Judicial Impeachment Board Law) and issue appropriate precautionary measures (see chapter II, section 5.2 of this report).
- 5.4.15. Promote mechanisms for coordination and mutual assistance in detection and investigation of acts of corruption between the MP's Prosecutorial Performance Control Unit (UCFG) and the Supreme Court's Judicial Control Department (DCJ) (see chapter II, section 1.2 of this report).
- 5.4.16. Produce statistics from the Complaints Office, including data that clearly establish the total number of investigations initiated in each of the last five years, stating how many cases are ongoing; how many have been suspended for whatever reason; how many have been closed because the statutory time limit has expired; how many have been archived without a decision adopted on the merits of the case under investigation; how many are in a position where a decision on the merits of the case under investigation could be adopted; and how many have been referred to the competent authority to adopt such a decision, in order to identify challenges and recommend corrective measures (see chapter II, section 5.3. of this report).
- 5.4.17. Develop statistics on results of complaints verified by the Supreme Court's Internal Audit Department in the jurisdictional area, including data that clearly establish the total number of audits initiated in each of the last five years, stating how many cases are ongoing; how many have been suspended for whatever reason; how many have been closed because the statutory time limit has expired; how many have been archived without a decision adopted on the merits of the case under investigation; how many are in a position where a decision on the merits of the case under investigation could be adopted; and how many have been referred to the competent authority to adopt such a decision, in order to identify challenges and recommend corrective measures (see chapter II, section 5.3. of this report).
- 5.4.18. Develop statistics on results as regards punishment of corrupt practices that give rise to the criminal liability of those involved in them, so as to permit a determination of the total number of decisions adopted in connection with those cases as well as how many that have resulted in: an accusation or a penalty; no accusation or an acquittal; and prescription of action or extinction of liability for lack of a decision within statutory time limits, in order to identify challenges and recommend corrective measures (see chapter II, section 5.3. of this report).
- 5.4.19. Develop statistics on results as regards punishment of corrupt practices over which it has jurisdiction that give rise to the financial or civil liability of those involved in them, so as to permit a determination of the amount of the fines imposed or of the financial compensation ordered in the State's favor that have been received by the

State in each of the last five years, in order to identify challenges and recommend corrective measures (see chapter II, section 5.3. of this report).

- 5.4.20. Strengthen the judiciary's Statistics Department by providing it with the necessary human and budgetary resources to perform its functions properly, and seek international cooperation in order to share experiences (see chapter II, section 5.3 of this report).

III. BEST PRACTICES

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

- Regarding the Public Prosecution Service:

[228] The Public Prosecution Service has launched an interagency linkage process through the establishment of working groups that allow real-time exchange of information and the design of strategies on prevention, detection, investigation, and punishment of corrupt practices

[229] In that connection, joint training activities are being carried out with the Office of the Comptroller General, the tax authority (*Sub Secretaria de Tributación*), SEPRELAD, the Department of Government Contracting, and the National Police.⁹⁶

- Regarding the Office of the Comptroller General:

[230] With regard to best practices, in the course of the on-site visit, mention was made of the value and importance of the international cooperation provided to the Office of the Comptroller General under citizen participation programs being carried out with considerable success.⁹⁷

- Regarding the Public Service Secretariat:

[231] Information was collected in the course of the on-site visit on the institution's best practices, in particular its cooperation agreements with government organs and institutions that have filed lawsuits challenging the constitutionality of the Civil Service Law; its creativity in solving the problem of lack of human resources by obtaining staff on secondment from other entities; and its efficiency in executing international cooperation funds, which has won the institution the trust and support of the donors concerned.⁹⁸

96. Response of Paraguay to the questionnaire, p. 29.

97. See http://www.oas.org/juridico/ppt/mesicic4_pry_CGR_control.ppt

98. See presentations at http://www.oas.org/juridico/spanish/mesicic4_pry_sp.htm

IV. FOLLOW-UP ON NEW AND RELEVANT INFORMATION AND DEVELOPMENTS WITH REGARD TO THE IMPLEMENTATION OF RECOMMENDATIONS SUGGESTED IN THE COUNTRY REPORT IN THE FIRST REVIEW ROUND⁹⁹

[232] This section of the report refers to progress, information, and new developments in the Republic of Paraguay in connection with the recommendations and measures suggested by the Committee in the reports of the First Round that were deemed to require additional attention in the reports of the Second and Third Rounds,¹⁰⁰ and it will proceed to take note of those that have been satisfactorily considered and those that require additional attention from the country under review. In addition, where appropriate, it will address the continued validity of those recommendations and measures and, as applicable, restate or reformulate them, in accordance with provisions contained in section VI of the methodology adopted by the Committee for the Fourth Round.

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

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

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

Recommendation 1.1.1.

Ensure that the laws concerning conflicts of interest are fully in effect, implementing recommendations 7.1 when appropriate, and that they are applicable to all public officials and employees, so that they permit practical and effective application of a public ethics system.

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

Coverage for all government officials and employees, in all levels, branches, and organs of the State. (The rationale for this measure may be found in section 1.1.2 of chapter II of the report from the First Round.)

[234] In its response, the State under review presents information and new developments in connection with the above measure.¹⁰¹ In this regard, the Committee notes the following as a step that contributes to progress in implementation thereof:

[235] *“With respect to ethical standards, 25 [state bodies and entities] have a code of ethics and the rest are in the process of preparing them.”*

[236] Furthermore, during the on-site visit the Public Service Secretariat reported that a framework code of ethics for the executive branch has been prepared and that the only step needed is to issue the

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

100. Available at: <http://www.oas.org/juridico/english/prv.htm>

101. Response of Paraguay to the questionnaire, p. 33.

relevant decree.¹⁰² In that connection, they also said that once the above code is enacted, it would serve as the basis for preparing codes of ethics for all executive branch organs and entities, and that training workshops were already being given to that end.

[237] The Committee takes note of the steps taken by the state under review to advance in its implementation of measure a) of the recommendation contained in section 1.1 of Chapter IV of this report and of the need for the latter to continue to give attention thereto, bearing in mind that the 25 state bodies and entities that already have codes of ethics are not identified and that all government officials and employees in all levels, branches, and organs of the State are not yet covered by standards governing conflict of interests.

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

Coverage of all instances in which conflicts of interest could be seen or could arise: prior to assuming public functions; during the performance of public office; and after leaving public office, establishing adequate restrictions for those who leave public office. (The rationale for this measure may be found in section 1.1.2 of chapter II of the report from the First Round.)

[238] In its response, the State under review presents information and new developments in connection with the above measure.¹⁰³ In this regard, the Committee notes the following as a step that contributes to progress in implementation thereof:

[239] *“The draft Code of Ethics prepared by the SFP and the UTMAP provides coverage for conflicts of interests at all times, and its promulgation by the executive branch is still pending.”*

[240] The Committee takes note of the step taken by the state under review to advance in its implementation of measure b) of the recommendation contained in section 1.1 of Chapter IV of this report and of the need for the latter to continue to give attention thereto, bearing in mind that the above code of ethics has not yet been promulgated, and that once it is promulgated it would be necessary to devise and standardize codes of ethics based on it for all executive branch bodies and entities, as well as ensuring coverage for all government officials and employees, in all levels, branches, and organs of the State.

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

Establish mechanisms to ensure effective compliance with the regulations to prevent conflicts of interest, determining the responsible agencies or authorities for monitoring compliance, and setting forth the application of measures or sanctions in the case non-compliance. (The rationale for this measure may be found in section 1.1.2 of chapter II of the report from the First Round.)

[241] The state under review did not refer to the aforementioned measure of the foregoing recommendation. The Committee, therefore, notes the need for the Republic of Paraguay to give further attention to its implementation.

102. See <http://www.utmap.gov.py/UTMAPDownloaderServlet/UTMAPDownloader?fileName=/usr/jboss-portal/server/default/deploy/files.war/codeti.pdf&fileType=pdf>

103. Response of Paraguay to the questionnaire, p. 34.

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

Recommendation 1.2.1.

[242] This recommendation has been satisfactorily considered and, therefore, the State need provide no further information.

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

Recommendation 1.3.1.

Strengthen the mechanisms that the Republic of Paraguay 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), which requires further attention under the terms provided in the reports from the Second and Third Rounds:

Ensure that the laws requiring public officials and employees to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware are fully in effect, implementing recommendations 7.1 and 7.2 when appropriate, and that they are applicable to all public officials and employees. (The rationale for this measure may be found in section 1.3.2 of chapter II of the report from the First Round.)

[243] In its response, the State under review presents information and new developments in connection with the above measure.¹⁰⁴ In this regard, the Committee notes the following as a step that contributes to progress in implementation thereof:

[244] *“The Supreme Court of Justice and the Public Prosecution Service are already enforcing the obligation to report acts of corruption through internal regulations authorized under either body’s organic law (see <http://www.pj.gov.py/> and <http://www.ministeriopublico.gov.py/>).”*

[245] In its response the state under review also mentioned the following as an obstacle in implementing the above measure:

[246] *“The judiciary has not yet returned a decision on the lawsuits presented to it in connection with the Civil Service Law, which would enable it to be effectively implemented in all levels, branches, and organs of the State.”*¹⁰⁵

[247] The Committee takes note of the steps taken by the state under review to advance in its implementation of measure a) of the recommendation contained in section 1.3 of Chapter IV of this report and of the need for the latter to continue to give attention thereto, bearing in mind that the question of the constitutionality of the Public Service Law has not yet been settled and that the

104. Response of Paraguay to the questionnaire, p. 36.

105. *Idem*, p. 37.

recommendation refers to the fact that the obligation to report corruption applies to all government officials and employees, in all levels, branches, and organs of the State.

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

Facilitate compliance with that requirement, such as permitting that the report be made by any means of communication that are considered pertinent, regulating their use, and eliminating formalities that may inhibit reporting, and develop the protection program established in Law 1562/2000 so that whistle-blowers are protected from threats or retaliation to which they may be subject because of their compliance with this requirement. (The rationale for this measure may be found in section 1.3.2 of chapter II of the report from the First Round.)

[248] In its response, the State under review presents information and new developments in connection with the above measure.¹⁰⁶ In this regard, the Committee notes the following as a step that contributes to progress in implementation thereof:

[249] *“Thanks to Law No. 4083/2011, which “Protects witnesses and victims in criminal proceedings,” the Public Prosecution Service of Paraguay for the first time has legal provisions that refer to Article 10 of its Organic Law. Although it does not refer exclusively to witnesses of acts of corruption, it covers such situations. Pending as of this year is the provision of budgetary resources and its organization by the Office of the Prosecutor General, which would enable its implementation. The law is available in the official gazette of the Office of the President of Paraguay: <http://www.presidencia.gov.py/v1/wp-content/uploads/2011/05/gaceta23mayo.pdf>”*

[250] The state under review also identified the following technical cooperation need connected with its implementation:

[251] *“The Public Prosecution Service and the National Police will require advisory services, such as training for officials in implementing the protection system for witnesses in criminal proceedings.”¹⁰⁷*

[252] For its part, in the course of the on-site visit, the Public Prosecution Service said that there were several problems as regards enforcing the above Law on Protection of Victims and Witnesses in Criminal Proceedings, starting with the conflict that exists between that law and the Criminal Code in force, given that the latter does not permit the concealment of witnesses and only envisages confidentiality with regard to the domicile of the whistleblower, not anonymous reporting nor identity protection.

[253] In that regard, the Public Prosecution Service said that to ensure that the above law could be effectively and efficiently enforced it would be necessary also to provide funds and staff; amend the Criminal Code, given that it does not permit the concealment witnesses; introduce implementing regulations for Law 4083/2011; and amend the said Law 4083/2011 in view of its weaknesses. In spite of the foregoing, the Public Prosecution Service mentioned that at present efforts were made to protect whistleblowers and witnesses as much as possible with the jurisdictional instruments in place.

106. Response of Paraguay to the questionnaire, pp. 37 and 38.

107. *Idem*, p. 38.

[254] The Committee takes note of the step taken by the state under review to advance in its implementation of measure b) of the recommendation contained in section 1.3 of Chapter IV of this report, the obstacles mentioned in its implementation, and of the need for the latter to continue to give attention thereto.

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

Train public officials concerning the existence and purpose of their responsibility to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware. (The rationale for this measure may be found in section 1.3.2 of chapter II of the report from the First Round..

[255] The state under review did not refer to the aforementioned measure of the foregoing recommendation. The Committee, therefore, notes the need for the Republic of Paraguay to give further attention to its implementation.

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

Recommendation 2.1.

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

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

Implement the provisions of Articles 104 and 283, paragraph 6 of the National Constitution in regard to sworn declaration of assets and income; ensuring that there are regulations governing such aspects as their minimum contents; mechanisms, where necessary, for evaluating and verifying, as well as updating the data ; the use and disclosure of those declarations and penalties for noncompliance. (The rationale for this measure may be found in section 2.1.2 of chapter II of the report from the First Round.)

[256] In its response, the State under review presents information and new developments in connection with the above measure.¹⁰⁸ In this regard, the Committee notes the following as steps that contributes to progress in implementation thereof:

[257] “In 2010, the Office of the Comptroller General introduced a new sworn declaration of assets form, which includes information necessary for ex post detection of discrepancies,”¹⁰⁹ and that “in addition to institutions such as the Public Prosecution Service and the Supreme Court of Justice, nine institutions envisage penalties in their internal regulations for omission to present sworn declarations of assets “.

[258] In the course of the on-site visit, representatives of the Office of the Comptroller General (CGR) said that one difficulty that hindered them in carrying out their functions properly was the fact that there were no penalties that they could impose for failure to file sworn declarations of assets, and

108. Response of Paraguay to the questionnaire, p. 40.

109. See http://www.oas.org/juridico/ppt/mesicic4_pry_CGR_declara.ppt

that, although the Public Service Law envisaged penalties, its constitutionality had been challenged and it was not applicable either to the CGR, or to other institutions in the same circumstances.

[259] During the on-site visit, the Office of the Comptroller General also reported that a proposed law had been presented to the legislature for consideration, which, if approved, would make it mandatory for public officials to present sworn declarations of assets and grant the CGR the power to impose penalties in the event of noncompliance. However, the Committee notes that the same information on the above proposed law was furnished in 2003 in the framework of the first review round.

[260] The Committee takes note of the steps taken by the state under review to advance in its implementation of measure a) of the recommendation contained in section 2.1 of Chapter IV of this report and of the need for the latter to continue to give attention thereto, bearing in mind that it had yet to implement the provisions of Articles 104 and 283, paragraph 6 of the National Constitution in regard to sworn declaration of assets and income.

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

Establish systems to ensure compliance with the requirement by all public officials and employees, including high-level civil servants; determine the minimum content, expressly requiring data needed to comply with the purpose, including the detection and prevention of conflicts of interest; establish systems, where necessary, for evaluating and verifying, as well as updating the data contained in the declaration; and regulate the use of the contents of the declaration and its disclosure. (The rationale for this measure may be found in section 2.1.2 of chapter II of the report from the First Round.)

[261] In its response the State under review did not refer to aforementioned measure of the foregoing recommendation. However, during the on-site visit, one of the difficulties mentioned by the CGR was that for a time lists of officials that failed to comply with the obligation to present declarations were published; however, those officials protested and, as a result, those lists ceased to be published. In light of the foregoing, the Committee takes note of the problems described by the state under review and the need for it to continue to give attention to the implementation of measure b) of the recommendation contained in section 2.1 of Chapter IV of this report,

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

Use the financial disclosure reports for detecting and punishing illicit acts (The rationale for this measure may be found in section 2.1.2 of chapter II of the report from the First Round.)

[262] During the on-site visit, the state under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[263] The CGR reported that in 2009 financial disclosures began to be compared and some statistics were presented in that regard.¹¹⁰ However, they said that they are not yet computerized, making it difficult to use those comparisons for detecting acts of corruption. In that connection, they mentioned

110. See http://www.oas.org/juridico/ppt/mesicic4_pry_CGR_declara.ppt

their intention to consolidate automatic control matrices and organize an interagency cooperation group to facilitate data comparison, which would help to detect and punish acts of corruption.

[264] The Committee takes note of the steps taken by the state under review to advance in its implementation of measure c) of the recommendation contained in section 2.1 of Chapter IV of this report and of the need for the latter to continue to give attention thereto, bearing in mind that the fact that the information is not computerized, together with the need for interagency cooperation to compare information, makes it difficult to use comparisons of financial disclosures in detecting acts of corruption.

[265] Considering the importance of overcoming the problem mentioned by the state under review, the Committee believes it appropriate to reframe measure c) of recommendation 2.1 in section 2 of chapter IV of this report in order to include in it the implementation of a technological platform by which to analyze the information contained in financial disclosures, so as to produce indicators that might serve to investigate potential irregularities, as well as interagency cooperation to facilitate data comparison.

[266] Consequently, with regard to disclosures of income, assets, and liabilities, measure a) suggested by the Committee to the state under review in connection with the recommendation in section 2 of chapter IV of this report is hereby reworded as follows

[267] Use financial disclosure reports for detecting and punishing illicit acts, coordinating with other bodies and entities of the state in order to facilitate data comparison, and adopting a technological platform by which to analyze the information contained in financial disclosures, so as to produce indicators that might serve to investigate potential irregularities. (See measure c) in section 2 of Annex I to this report.)

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

Recommendation 3.1.

Strengthen the system for monitoring implementation of the aforementioned selected provisions and its oversight bodies.

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

Strengthen oversight bodies through harmonization of their functions for control of effective compliance with the provisions in Article III, paragraphs 1, 2, 4, and 11 of the Convention, providing them with necessary legal instruments and resources for the complete development of its functions; making sure that they have greater political and social support. (The rationale for this measure may be found in section 3.1.2 of chapter II of the report from the First Round..

[268] The state under review did not refer to the aforementioned measure of the foregoing recommendation. The Committee, therefore, notes the need for the Republic of Paraguay to give further attention to its implementation.

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

Ensure that the laws governing oversight bodies are fully in effect, implementing, where appropriate, recommendations 7.1 and 7.2 and that they are applicable to all public officials and employees. (The rationale for this measure may be found in section 3.1.2 of chapter II of the report from the First Round.

[269] The state under review did not refer to the aforementioned measure of the foregoing recommendation. The Committee, therefore, notes the need for the Republic of Paraguay to give further attention to its implementation.

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

Recommendation 4.1.1.

Institute legal norms supporting public access to government information.

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

Develop procedures for acceptance of requests, for response to requests in a timely fashion, for appeal procedures in the case of denials, and for penalties concerning failure to comply with obligations to provide information. (The rationale for this measure may be found in section 4.1.2 of chapter II of the report from the First Round.)

[270] In its response the State under review did not refer to aforementioned measure of the foregoing recommendation. The Committee, therefore, notes the need for the Republic of Paraguay to give further attention to its implementation.

[271] Furthermore, the civil society organizations *Semillas Para la Democracia* (SED), *Centro de Estudios Judiciales* (CEJ), *Gestión Ambiental* (GEAM), and the *Catholic University Public Policy Center* (CPP-UC), offered the following comments in the document submitted by them for the Paraguay review:

[272] “(...) *it should be mentioned that there has been no progress where legislation is concerned. The proposed laws on access to information and citizen participation have not been accorded priority in the National Congress and their consideration remains pending.*”¹¹¹

[273] Furthermore, during the meetings with civil society organizations in the course of the on-site visit, they mentioned strong resistance on the part of some print media outlets to the approval by the Paraguayan Senate of the proposed law on access to public information.

[274] It is also worth mentioning that at an interview with a representative of the legislative branch during the on-site visit, similar information was provided with respect to the delay in the approval of the draft law on access to information as well as the public opposition of certain mass media outlets

111. Document presented by civil society organizations, p. 23.

to its approval because they considered that the text of the aforesaid proposed law would entail a curb on their freedom of expression.

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

Strengthen systems to ensure that the public has access, when appropriate, to information on governmental organizations and their financial and program activities, particularly with respect to oversight bodies that concern themselves with the subjects covered in this report. (The rationale for this measure may be found in section 4.1.2 of chapter II of the report from the First Round.)

[275] In its response the State under review did not refer to aforementioned measure of the foregoing recommendation. The Committee, therefore, notes the need for the Republic of Paraguay to give further attention to its implementation.

[276] The observations made in connection with measure a) also apply to measure b).

4.2. Mechanisms for consultation

Recommendation 4.2.1, which requires further attention under the terms provided in the reports from the Second and Third Rounds:

Develop standards and procedures to support consultation mechanisms to enable civil society organizations and citizens to generate opinions and proposals to be taken into account in preventing, investigating, and punishing corruption. (The rationale for this recommendation may be found in section 4.1.2 of chapter II of the report from the First Round.)

[277] In its response the state under review did not refer to the above recommendation. The Committee, therefore, notes the need for the Republic of Paraguay to give further attention to its implementation.

[278] Furthermore, the civil society organizations *Semillas Para la Democracia* (SED), *Centro de Estudios Judiciales* (CEJ), *Gestión Ambiental* (GEAM), and the *Catholic University Public Policy Center* (CPP-UC), offered the following comments in the document submitted by them for the Paraguay review:

[279] “(...) *it should be mentioned that there has been no progress where legislation is concerned. The proposed laws on access to information and citizen participation have not been accorded priority in the National Congress and their consideration remains pending.*”¹¹²

[280] In this regard, it should be noted that during the on-site visit these organizations referred to the adoption of the Municipal Organic Law (Law 3966/2010) which envisages mechanisms for citizen participation, including at meetings of the advisory committees of the Municipal Board. However, they mentioned that the necessary forums were not being promoted and, therefore, its applicability had not been rendered viable.¹¹³

112. Document presented by civil society organizations, p. 23.

113. See http://www.oas.org/juridico/ppt/mesicic4_pry_sc_informe.ppt

[281] It should also be mentioned that during an interview with a representative of the legislative branch in the course of the on-site visit, it was reported that the proposed citizen participation law is the most recent draft presented, that it had been approved up to article 4, and that no progress had been made in the approval process since 2008. It was mentioned in this connection that the hope was that progress would be made with its approval in the new future.

Recommendation 4.2.1, which requires further attention under the terms provided in the reports from the Second and Third Rounds:

Design and implement programs to publicize the consultation mechanisms and, when appropriate, to train and provide the necessary tools to civil society, nongovernmental organizations, as well as to public officials and employees so that they can use such mechanisms. (The rationale for this recommendation may be found in section 4.1.2 of chapter II of the report from the First Round.)

[282] In its response the state under review did not refer to the above recommendation. The Committee, therefore, notes the need for the Republic of Paraguay to give further attention to its implementation.

4.3. Mechanisms to encourage participation in public administration

Recommendation 4.3.1, which requires further attention under the terms provided in the reports from the Second and Third Rounds:

Develop standards and procedures to support mechanisms to encourage civil society and nongovernmental organizations to participate in public administration and to generate opinions and proposals to be taken into account in preventing, investigating, and punishing corruption. (The rationale for this recommendation may be found in section 4.1.2 of chapter II of the report from the First Round.)

[283] In its response the state under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:¹¹⁴

[284] *“The measures undertaken by the Public Prosecution Service include implementation with the civil society organization Centro de Información y Recursos para el Desarrollo (CIRD) of a program that encourages members of the public to report acts of corruption or irregularities committed by public servants in the performance of their duties. More information at http://www.aquieneselegimos.org.py/fiscalia.php?sec=fisc_msgbox%2Cdenuncia%2Cfullscreen and the so-called ‘expo-fiscalía.’”*

[285] During the on-site visit the Public Prosecution Service provided more information about the nature of the program, which includes awareness campaigns and education on citizen rights and duties.¹¹⁵

[286] During the on-site visit, the Office of the Comptroller General (CGR) also provided information on its citizen oversight programs, which include, *inter alia*, citizen observation

114. Response of Paraguay to the questionnaire, p. 48.

115. See http://www.oas.org/juridico/ppt/mesicic4_pry_MP_part.ppt

mechanisms enabling civil society organizations to monitor the public administration, particularly through audits conducted by the CGR; training for public observers, and public hearings.

[287] The Committee takes note of the steps taken by the state under review to implement the foregoing recommendation, and the need for it to continue giving it attention, bearing that the standards and procedures to which this recommendation refers have yet to be developed.

[288] It is worth pointing out that in the interviews with civil society organizations held during the on-site visit, the CIRJ referred to the joint program with the Public Prosecution Service, whose specific purpose is to promote the use of the Public Prosecution Service's internal control and disciplinary mechanisms as a means to link the judicial system to the general public, presenting it as a step forward in terms of mechanisms to encourage civil society participation in the public administration and in prevention, investigation, and punishment of acts of corruption, particularly bearing in mind that the rules governing civil society participation in the public administration have not yet been issued.¹¹⁶

[289] By the same token, the civil society organizations *Semillas Para la Democracia* (SED), *Centro de Estudios Judiciales* (CEJ), *Gestión Ambiental* (GEAM), and the *Catholic University Public Policy Center* (CPP-UC), offered the following comments about the CGR's Citizen Oversight Program in the document submitted by them for the Paraguay review:

[290] *"The supervisory nature of this institution [CGR] affords citizens an opportunity get involved in the protection and oversight of public interests through the citizen observation mechanisms (veedurías ciudadanas).*

[291] *This mechanism is not purely consultative but encompasses several dimensions of participation. The aim is to form a group of citizens who can assist in the control and monitoring of state property and assets and then report, offer recommendations, and publish the results. As we can see, it is an activity that is not merely confined to control and reporting irregularities, but one in which the citizen has a greater stake, given that there is a Citizen Participation and Societal Oversight Council, which works with observers, advises and monitors them, and receives their recommendations. Accordingly, it is a direct participation mechanism in which the citizen involved plays an important proactive role.*"¹¹⁷

[292] The Committee also notes that in the same document, the above civil society organizations have observed, with respect to the lack of regulations governing civil society participation in the public administration, that:

[293] *"(...) Several initiatives have been identified with regard to mechanisms that contribute to the prevention of public corruption, including Transparency and Citizen Participation Units, as well as Communication Offices which disseminate information about institutional management.*

[294] *However, these were not found to be in response to a coordinated effort on the part of each branch of government but, rather, to have stemmed from the particular interests of the authorities of the day, with the resulting risk of the initiatives disappearing when they are changed.*

116. See http://www.oas.org/juridico/ppt/mesicic4_pry_sc_CIRJ.ppt

117. Document presented by civil society organizations, p. 21.

[295] (...) *In sum, the absence of an Access to Public Information Law on one hand, and of a Citizen Participation Law, on the other, generates vacuums that contribute to lack of transparency and hinders exercise of the right to be informed and participate in public affairs. No standardized procedures have been identified for receiving and responding to requests by members of the public, which would broadly encourage a collaborative system of management among governmental and nongovernmental entities.*"¹¹⁸

Recommendation 4.3.2, which requires further attention under the terms provided in the reports from the Second and Third Rounds

Design and implement programs to publicize the mechanisms for encouraging participation in public administration and, when appropriate, to train and provide the necessary tools to civil society and nongovernmental organizations, as well as to public officials and employees so that they can use such mechanisms. (The rationale for this recommendation may be found in section 4.1.2 of chapter II of the report from the First Round.)

[296] In its response, the State under review presented the following information on the foregoing recommendation:

[297] *"The Supreme Court of justice has implemented the "Citizen Dialogue" (Conversatorio Ciudadano) which allows civil society participation in the public administration, as noted in previous responses.*"¹¹⁹

[298] The Committee notes the need for the Republic of Paraguay to give further attention to its implementation, bearing in mind that the information furnished by the State under review has been presented and considered in previous rounds.

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

Recommendation 4.4.1, which requires further attention under the terms provided in the reports from the Second and Third Rounds:

Develop standards and procedures to support mechanisms to encourage civil society and nongovernmental organizations to participate in monitoring public administration and to generate opinions and proposals to be taken into account in preventing, investigating, and punishing corruption. (The rationale for this recommendation may be found in section 4.1.2 of chapter II of the report from the First Round.)

[299] In its response the state under review did not refer to the above recommendation. The Committee, therefore, notes the need for the Republic of Paraguay to give further attention to its implementation.

Recommendation 4.4.2, which requires further attention under the terms provided in the reports from the Second and Third Rounds

Design and implement programs to publicize the mechanisms for encouraging participation in monitoring public administration and, when appropriate, to train and provide the necessary tools to

118. *Idem.* pp. 23-24.

119. Response of Paraguay to the questionnaire, p. 49.

civil society and non-governmental organizations, as well as to public officials and employees so that they can use such mechanisms. (The rationale for this recommendation may be found in section 4.1.2 of chapter II of the report from the First Round.)

[300] In its response the state under review did not refer to the above recommendation. The Committee, therefore, notes the need for the Republic of Paraguay to give further attention to its implementation.

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

Recommendation 5.1, which requires further attention under the terms provided in the reports from the Second and Third Rounds:

Review comprehensively the specific areas in which the Republic of Paraguay might need or could usefully receive mutual technical cooperation to prevent, detect, investigate, and punish acts of corruption; and that based on this review, a comprehensive strategy be designed and implemented that would permit the Republic of Paraguay to approach other States Parties and non-parties to the Convention and institutions or financial agencies engaged in international cooperation to seek the technical cooperation it needs. (The rationale for this recommendation may be found in section 5.1.2 of chapter II of the report from the First Round.)

[301] In its response, the state under review presented the following information with regard to the foregoing recommendation, which the Committee considers a step that contributes to progress in its implementation:¹²⁰

[302] *“The Republic of Paraguay requires legislative assistance in order to draft laws governing conflict of interests, access to information, and citizen participation, among others.*

[303] *The Public Prosecution Service requires advisory services for developing a witness protection program.*

[304] *“The Office of the Auditor General of the executive branch requires technical assistance and cooperation in the forensic audit area, with a view to preventing, detecting, and investigating corrupt practices and, therefore, providing elements on which to base decisions to impose penalties by the relevant body. Cooperation is also needed for amending the standards in force.*

[305] *Public-sector institutions require technical assistance and cooperation for:*

[306] *Promoting education and awareness campaigns targeting civil servants, the general public, and civil society organizations on conflict of interests, the obligation to report irregularities, right of access to information, citizen participation, and accountability.”*

[307] The Committee takes note of the step taken by the State under review to advance in its implementation of the above recommendation through the identification of its technical cooperation needs as regards prevention, detection, investigation, and punishment of acts of corruption, as well as of the need for it to continue to give attention thereto through the design and implementation, based on this review, of a comprehensive strategy that would permit it to approach other states parties and

120. *Idem.* pp. 52-53.

non-parties to the Convention and institutions or financial agencies engaged in international cooperation to seek the technical cooperation it needs.

Recommendation 5.2, which requires further attention under the terms provided in the reports from the Second and Third Rounds:

Promote the efforts of technical cooperation exchange with other State Parties on the effective ways and methods to prevent, detect, investigate and sanction acts of corruption. (The rationale for this recommendation may be found in section 5.2.2 of chapter II of the report from the First Round.)

[308] In its response the state under review did not refer to the above recommendation. The Committee, therefore, notes the need for the Republic of Paraguay to give further attention to its implementation.

Recommendation 5.3, which requires further attention under the terms provided in the reports from 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 Paraguay, and may apply them to concrete cases. (The rationale for this recommendation may be found in section 5.2.2 of chapter II of the report from the First Round.)

[309] In its response the state under review did not refer to the above recommendation. The Committee, therefore, notes the need for the Republic of Paraguay to give further attention to its implementation.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation 6.1.

[310] This recommendation has been satisfactorily considered and, therefore, the State need provide no further information.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1, which requires further attention under the terms provided in the reports from the Second and Third Rounds:

Develop and implement new standards and systems for the appropriate treatment of the topics analyzed throughout this report if the standards and systems, as regulated in the current Civil Service Law, are declared unconstitutional. (The rationale for this recommendation may be found in sections 1.2, 1.3, and 3.1 of chapter II of the report from the First Round.)

[311] In its response the state under review did not refer to the above recommendation. The Committee, therefore, notes the need for the Republic of Paraguay to give further attention to its implementation.

Recommendation 7.2, which requires further attention under the terms provided in the reports from the Second and Third Rounds:

Encourage review and adaptation, as appropriate, of the current provisions regulating civil service, to prevent and punish improper conduct of public officials and employees, at all levels, as well as to establish their obligations in the performance of their duties (The rationale for this recommendation may be found in sections 1.2, 1.3, and 3.1 of chapter II of the report from the First Round.)

[312] In its response the state under review did not refer to the above recommendation. The Committee, therefore, notes the need for the Republic of Paraguay to give further attention to its implementation.

Recommendation 7.3.

[313] This recommendation has been satisfactorily considered and, therefore, the State need provide no further information.

Recommendation 7.4, which requires further attention under the terms provided in the reports from the Second and Third Rounds:

Select, develop, and report to the Technical Secretariat of the Committee, procedures and indicators, when appropriate, that make it possible to monitor 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 the aforementioned selection by the State under review.

[314] In its response the state under review did not refer to the above recommendation. The Committee, therefore, notes the need for the Republic of Paraguay to give further attention to its implementation.

ANNEX I

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

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

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

Recommendation:

Ensure that the laws concerning conflicts of interest are fully in effect, implementing recommendations 7.1 when appropriate, and that they are applicable to all public officials and employees, so that they permit practical and effective application of a public ethics system.

Suggested measures:

- a) Coverage for all government officials and employees, in all levels, branches, and organs of the State
- b) Coverage of all instances in which conflicts of interest could be seen or could arise: prior to assuming public functions; during the performance of public office; and after leaving public office, establishing adequate restrictions for those who leave public office.
- c) Establish mechanisms to ensure effective compliance with the regulations to prevent conflicts of interest, determining the responsible agencies or authorities for monitoring compliance, and setting forth the application of measures or sanctions in the case non-compliance

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

Recommendation:

This recommendation was considered satisfactory and therefore it is not necessary to report on it.

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

Recommendation:

Strengthen the mechanisms that Republic of Paraguay 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) Ensure that the laws requiring public officials and employees to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware are fully in effect, implementing recommendations 7.1 and 7.2 when appropriate, and that they are applicable to all public officials and employees.
- b) Facilitate compliance with that requirement, such as permitting that the report be made by any means of communication that are considered pertinent, regulating their use, and eliminating formalities that may inhibit reporting, and develop the protection program established in Law 1562/2000 so that whistle-blowers are protected from threats or retaliation to which they may be subject because of their compliance with this requirement.
- c) Training public officials concerning the existence and purpose of their responsibility to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

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

Recommendation:

Strengthen the systems for registration of income, assets, and liabilities

Suggested measures:

- a) Implement the provisions of Articles 104 and 283, paragraph 6 of the National Constitution in regard to sworn declaration of assets and income; ensuring that there are regulations governing such aspects as their minimum contents; mechanisms, where necessary, for evaluating and verifying, as well as updating the data; the use and disclosure of those declarations and penalties for noncompliance.
- b) Establish systems to ensure compliance with the requirement by all public officials and employees, including high-level civil servants; determine the minimum content, expressly requiring data needed to comply with the purpose, including the detection and prevention of conflicts of interest; establish systems, where necessary, for evaluating and verifying, as well as updating the data contained in the declaration; and regulate the use of the contents of the declaration and its disclosure.
- c) Use the financial disclosure reports for detecting and punishing illicit acts, coordinating with other organs and entities of the State in order to facilitate the exchange of information, and adopt a technological platform for the analysis of the data contained in said reports in a way that provide indicators that can be used to start investigations for possible irregularities.

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

Recommendation:

Strengthen the system for monitoring implementation of the aforementioned selected provisions and its oversight bodies.

Suggested measures:

- a) Strengthening oversight bodies through harmonization of their functions for control of effective compliance with the provisions in Article III, paragraphs 1, 2, 4, and 11 of the Convention, providing them with necessary legal instruments and resources for the complete development of its functions; making sure that they have greater political and social support.
- b) Ensuring that the laws governing oversight bodies are fully in effect, implementing, where appropriate, recommendations 7.1 and 7.2 and that they are applicable to all public officials and employees.

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

4.1. Mechanisms for access to information

Recommendation

Institute legal norms supporting public access to government information.

Suggested measures:

- a) Developing procedures for acceptance of requests, for response to requests in a timely fashion, for appeal procedures in the case of denials, and for penalties concerning failure to comply with obligations to provide information.
- b) Strengthening systems to ensure that the public has access, when appropriate, to information on governmental organizations and their financial and program activities, particularly with respect to oversight bodies that concern themselves with the subjects covered in this report.

4.2. Consultation mechanisms

Recommendation 4.2.1.

Develop standards and procedures to support consultation mechanisms to enable civil society organizations and citizens to generate opinions and proposals to be taken into account in preventing, investigating, and punishing corruption.

Recommendation 4.2.1.

Design and implement programs to publicize the consultation mechanisms and, when appropriate, to train and provide the necessary tools to civil society, nongovernmental organizations, as well as to public officials and employees so that they can use such mechanisms.

4.3. Mechanisms to encourage active participation in public administration

Recommendation 4.3.1.

Develop standards and procedures to support mechanisms to encourage civil society and nongovernmental organizations to participate in public administration and to generate opinions and proposals to be taken into account in preventing, investigating, and punishing corruption.

Recommendation 4.3.2.

Design and implement programs to publicize the mechanisms for encouraging participation in public administration and, when appropriate, to train and provide the necessary tools to civil society and nongovernmental organizations, as well as to public officials and employees so that they can use such mechanisms.

4.4. Mechanisms for participation in monitoring public administration

Recommendation 4.4.1.

Develop standards and procedures to support mechanisms to encourage civil society and nongovernmental organizations to participate in monitoring public administration and to generate opinions and proposals to be taken into account in preventing, investigating, and punishing corruption.

Recommendation 4.4.2.

Design and implement programs to publicize the mechanisms for encouraging participation in monitoring public administration and, when appropriate, to train and provide the necessary tools to civil society and non-governmental organizations, as well as to public officials and employees so that they can use such mechanisms.

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

Recommendation 5.1.

Review comprehensively the specific areas in which the Republic of Paraguay might need or could usefully receive mutual technical cooperation to prevent, detect, investigate, and punish acts of corruption; and that based on this review, a comprehensive strategy be designed and implemented that would permit the Republic of Paraguay to approach other States Parties and non-parties to the Convention and institutions or financial agencies engaged in international cooperation to seek the technical cooperation it needs.

Recommendation 5.2.

Promote the efforts of technical cooperation exchange with other State Parties on the effective ways and methods to prevent, detect, investigate and sanction acts of corruption .

Recommendation 5.3.

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 Paraguay, and may apply them to concrete cases.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

This recommendation was considered satisfactory and therefore it is not necessary to report on it.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1.

Develop and implement new standards and systems for the appropriate treatment of the topics analyzed throughout this report if the standards and systems, as regulated in the current Civil Service Law, are declared unconstitutional

Recommendation 7.2.

Encourage review and adaptation, as appropriate, of the current provisions regulating civil service, to prevent and punish improper conduct of public officials and employees, at all levels, as well as to establish their obligations in the performance of their duties.

Recommendation 7.3.

Select, develop, and report to the Technical Secretariat of the Committee, procedures and indicators, when appropriate, that make it possible to monitor 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 the aforementioned selection by the State under review.

ANNEX II

**AGENDA FOR THE ON-SITE VISIT TO THE
REPUBLIC OF PARAGUAY**

Sunday, April 15, 2012	
2:30 – 3:30 p.m. <i>Venue hotel</i>	Coordination meeting between representatives of the member states of the subgroup and the Technical Secretariat.
3:45 – 5:30 p.m. <i>Venue hotel</i>	Coordination meeting of representatives of the state under review, the member states of the subgroup, and the Technical Secretariat
Monday, April 16, 2012	
8:00 – 8:30 a.m. <i>Ministry of Foreign Affairs</i>	Meeting with the representative of the Minister of Foreign Affairs
9:00 – 10:15 a.m. <i>Venue hotel</i>	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional associations, academics, or researchers.
	Topics: <ul style="list-style-type: none"> • Legal aspects of access to information • Mechanisms for civil society participation in public administration
	<p><i>Gestión Ambiental (GEAM)</i> Mercedes Argaña, Coordinator of the Civil Service Promotion Project Carmen Romero, Coordinator General of the Democracy Program “Quality in Public Administration”</p> <p><i>Semillas para la Democracia (SPD)</i> Marta Ferrara, Executive Director</p> <p><i>Centro de Estudios Judiciales (CEJ)</i> Maria Victoria Rivas, Executive Director Oscar Morel</p> <p><i>Catholic University Public Policy Center (CPP-UC)</i> Camilo J. Filartiga Callizo, Executive Director</p>

10:15 – 11:15 a.m.	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional associations, academics, or researchers. (continued)
	Topics: • Preliminary draft Judicial Organization Codes
	<i>Centro de Estudios Judiciales (CEJ)</i> Maria Victoria Rivas, Executive Director Oscar Morel <i>Paraguayan Bar Association (Colegio de Abogados del Paraguay)</i> Oscar Paciello, President
11:15 – 12:15 a.m.	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional associations, academics, or researchers. (continued)
	Topics: • Joint strategies between civil society and the public administration: – Results of awareness campaigns from the point of view of civil society organizations – The case management system under the <i>Umbral</i> Program
	<u>Participants:</u> <i>Centro de Información y Recursos para el Desarrollo (CIRD)</i> Agustín Carrizosa, Executive President <i>Instituto de Estudios para la Consolidación del Estado de Derecho (ICED)</i> Claudio Lovera Velázquez, Vice President
12:15 – 2:00 p.m.	Lunch
2:00 – 3:00 p.m.	Panel 1: Legislative Branch
	Topics: • The proposed access to information law and civil society participation in public administration • Preliminary draft Judicial Organization Code
	Legislative Branch 1. Sebastián Acha National Deputy

<p>3:30 – 4:30 p.m. <i>Institution</i></p>	<p>Panel 2: Public Prosecution Service</p>
	<p>Topic:</p> <ul style="list-style-type: none"> • Results in the performance of its duties
	<p>Public Prosecution Service</p> <ol style="list-style-type: none"> 1. René Fernández Prosecutor from the Specialized Units against Financial Crime and Corruption (UDEA) 2. Juan Recalde Prosecution Rapporteur
<p>4:30 – 5:30 p.m. <i>Institution</i></p>	<p>Panel 3: Public Prosecution Service</p>
	<p>Topic:</p> <ul style="list-style-type: none"> • Follow-up on the recommendations from the first round <ul style="list-style-type: none"> – Criminal prosecution witness and victim protection law (<i>Ley de protección a testigos y víctimas en procesos penales</i>) (Law 4083/2011) and its implementation status – Mechanisms for participation by civil society
	<p>Public Prosecution Service</p> <ol style="list-style-type: none"> 1. María Eusebia Segovia Assistant Prosecutor, Planning Department 2. María José Irrazabal, Planning Adviser 3. José Dos Santos Director, Curricular Analysis and Evaluation 4. Marta Garcete Chief, Research and Publication Department
<p>5:30 – 6:30 p.m.</p>	<p>Panel 4: Public Prosecution Service</p>
	<p>Topic:</p> <ul style="list-style-type: none"> • Internal control mechanisms • Coordination mechanisms, conflicts of jurisdiction, and their solutions

	<p>Public Prosecution Service</p> <ol style="list-style-type: none"> 1. Jorge Lebedich Coordinator General of the Prosecutorial Performance Control Unit 2. Alan Contero Complaints Director 3. Otilia Meza Internal Auditor’s Office 4. Julio Paredes Benitez Internal Auditor’s Office 5. Laut Guerrero Office of the Inspector General 6. Rubén Mal Office of the Inspector General
6:30 p.m.	Informal Meeting ^{121/} of representatives of the member states of the subgroup and the Technical Secretariat.
Tuesday, April 17, 2012	
9:00 – 10:00 a.m. <i>Institution</i>	Panel 5: Office of the Comptroller General
	<p>Topic:</p> <ul style="list-style-type: none"> • Results in the performance of its duties
	<p>Office of the Comptroller General</p> <ol style="list-style-type: none"> 1. Juan Carlos Cano Auditor of the Planning and Reporting Department
10:00 – 11:30 a.m.	Panel 6: Office of the Comptroller General
	<p>Topics:</p> <ul style="list-style-type: none"> • Internal control mechanisms • Institutional strengthening and coordination mechanisms

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

	<ul style="list-style-type: none">• Accountability mechanisms
	Office of the Comptroller General <ol style="list-style-type: none">1. Roberto Careaga Coordinator of the Standard Internal Control Model (MECIP)2. Irene Bellasai Director, Institutional Audit Area3. Roy Rodgers Area Director, Forensic Audit Department4. Roberto García Director of Human Resources Management5. David Barda M. S.G6. Jasmin Vergara IR and Cooperation Department
11:30 a.m. – 1:00 p.m.	Panel 7: Office of the Comptroller General
	Topics: <ul style="list-style-type: none">• Follow-up on the recommendations from the first round<ul style="list-style-type: none">– Sworn declarations of assets of civil servants and conflicts of interests– Mechanisms for participation by civil society
	Office of the Comptroller General <ol style="list-style-type: none">1. Lourdes Araújo Director of Legal Affairs2. Fabián Forestieri Chief of the Citizen Oversight Department
1:00 – 3:00 p.m.	Lunch
3:00 – 4:00 p.m. <i>Institution</i>	Panel 8: Office of the Auditor General of the Executive Branch

	Topic: <ul style="list-style-type: none">• Results in the performance of its duties
	Office of the Auditor General of the Executive Branch <ol style="list-style-type: none">1. Sergio Noguera Director General of IA
4:00 – 5:00 p.m.	Panel 9: Office of the Auditor General of the Executive Branch
	Topic: <ul style="list-style-type: none">• Problems encountered and technical cooperation needs
	Office of the Auditor General of the Executive Branch <ol style="list-style-type: none">1. Alicia Fanego Chief of the Auditing Team2. Luiz Cardozo Olmedo Chief of the Auditing Team3. María de Fátima Acosta Chief of Human Resources
5:00 – 6:30 p.m.	Panel 10: Office of the Auditor General of the Executive Branch
	Topic: <ul style="list-style-type: none">• Internal control mechanisms• Institutional strengthening and coordination mechanisms• Human resources regime• Accountability mechanisms
	Office of the Auditor General of the Executive Branch <ol style="list-style-type: none">1. Sergio Noguera Director General of IA2. María de Fátima Acosta Chief of Human Resources

6:30 p.m.	Informal Meeting ^{122/} of representatives of the member states of the subgroup and the Technical Secretariat.
Wednesday, April 18, 2012	
9:00 – 10:15 a.m. <i>Institution</i>	Panel 11: Supreme Court of Justice
	Topic: • Results in the performance of its duties
	<p>Judicial Branch</p> <ol style="list-style-type: none"> 1. Miguel Angel Basualdo Director General of the Internal Audit Office 2. Carmen Godoy Director of Internal Control 3. Mario Elizeche Director General of the Judicial Performance Audit Office 4. Rafael Monzón Sosa General Superintendent of Justice 5. Gonzalo Sosa Nicoli Acting Director of the Judicial Ethics Office 6. Geraldine Cases Secretary of the Superintendency Council
10:15 – 11:45 a.m.	Panel 12: Supreme Court of Justice
	<p>Topic:</p> <ul style="list-style-type: none"> • Follow-up on the recommendations from the first round – The Public Service Law and Constitution of Paraguay • Accountability • Preliminary draft Judicial Organization Code and its differences with the current code

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

	<p>Judicial Branch</p> <ol style="list-style-type: none">1. Alejandrino Cuevas Secretary General, General Secretariat of the Supreme Court of Justice2. Mónica Paredes Director, Department of International Affairs and Institutional Integrity3. Lina Matto Director General, Department of Planning4. Ramón Romero Jara Adviser, Department of Planning
11:45 a.m. – 12:30 p.m.	Panel 13: Supreme Court of Justice
	<p>Topic:</p> <ul style="list-style-type: none">• Human resources regime
	<p>Judicial Branch</p> <ol style="list-style-type: none">1. Juana Orszuza Director General, Human Resources Department
12:30 – 2:00 p.m.	Lunch
2:00 – 3:00 p.m. <i>Institution</i>	Panel 14: Public Service Secretariat
	<p>Topic:</p> <ul style="list-style-type: none">• Results in the performance of its duties
	<p>Public Service Secretariat</p> <ol style="list-style-type: none">1. Valeria Franco Director General of Institutional Change Development and Management
3:00 – 4:00 p.m.	Panel 15: Public Service Secretariat

	Topics: <ul style="list-style-type: none">• Difficulties and technical cooperation needs• Best practices
	Public Service Secretariat <ol style="list-style-type: none">1. José Sánchez Minister2. Verónica Heilborn Director General of the Cabinet3. Valeria Franco Director General of Institutional Change Development and Management
4:00 – 5:30 p.m.	Panel 16: Public Service Secretariat
	Topic: <ul style="list-style-type: none">• Internal control mechanisms• Institutional strengthening and coordination mechanisms• Human resources regime• Accountability
	Public Service Secretariat <ol style="list-style-type: none">1. Rosa Gamarra Director of the Internal Audit Office2. Carlos López Portillo Coordinator of the Projects Executive Unit3. María Eugenia Frers Director of Personnel Performance and Development4. Gabriela Flores Department of Personnel Performance and Development5. Verónica Heilborn Director General of the Cabinet6. Pilar Abente Director of Preliminary Investigations7. Sully Cabrera Department of Audit and Finance

5:30 – 6:30 p.m.	Panel 17: Public Service Secretariat
	Topic: <ul style="list-style-type: none">• Follow-up on the recommendations from the first round<ul style="list-style-type: none">– The Public Service Law and its applicability– Mechanisms for participation by civil society
	Public Service Secretariat <ol style="list-style-type: none">1. Analía Antola Director of Legal Proceedings2. Ana María Ferreira Director General of Human Rights, Equality and Inclusion
6:30 p.m.	Informal meeting with representatives of the member states of the subgroup and the Technical Secretariat
Thursday, April 19, 2012	
9:00 a.m. – 10:30 a.m.	Panel 18: Public Prosecution Service
	Topics: <ul style="list-style-type: none">• Problems encountered and technical cooperation needs• Best practices
	Public Prosecution Service <ol style="list-style-type: none">1. Juan Emilio Oviedo Prosecutor for International Affairs2. María Magdalena Quiñonez Prosecution Rapporteur for International Affairs3. José Félix Fernández Prosecution Rapporteur for International Affairs4. Patricia Martínez Prosecution Rapporteur5. Juan Francisco Recalde Prosecution Rapporteur6. José Grussi Prosecution Rapporteur

	<p>7. Jorge Salinas Auditing Prosecutor</p> <p>8. Aldor Cantero Director</p> <p>9. María Soledad Machuca Assistant Prosecutor</p> <p>10. Rene M. Fernández Delegated Prosecutor</p>
11:00 – 11:30 a.m.	Meeting with the Minister-Secretary General of the Office of the President of the Republic
11:30 a.m. – 12:00 noon	Informal meeting with representatives of the member states of the subgroup and the Technical Secretariat
12:30 p.m.	Final meeting with representatives of the state under review, the member states of the subgroup, and the Technical Secretariat.

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

STATE UNDER REVIEW:

PARAGUAY

María Soledad Machuca Vidal

Lead Expert on the Committee of Experts of the MESICIC
Assistant Prosecutor General
Transparency Unit
Public Prosecution Service

Julio Duarte Van Humbeck

Director General of Special Affairs
Ministry of Foreign Affairs

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Director
Probity Department of the
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Coordinator of the Anticorruption Unit
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Laura Martínez

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Enrique Martínez

Principal Legal Officer of the Department of Legal Cooperation
OAS Secretariat for Legal Affairs.

