

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

FINAL REPORT

(Adopted at the September 14, 2012 plenary session)

SUMMARY OF THE REPORT

This report contains the comprehensive review of the implementation in the Republic of El Salvador 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 the Republic of El Salvador during the First Round.

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

The review was carried out taking into account the Republic of El Salvador’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 March 20 and 23, 2012, by the members of the review subgroup for the Republic of El Salvador, comprising of the Bolivarian Republic of Venezuela and Saint Vincent and the Grenadines, with the support of the Technical Secretariat. During that visit, the information furnished by the Republic of El Salvador was clarified and expanded and the opinions of civil society organizations, the private sector, professional associations, academics, and researchers on issues of relevance to the review were heard. This provided the Committee with objective and complete information on those topics, assisting with the gathering of information on practices.

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

The following oversight bodies in the Republic of El Salvador are reviewed in this report: the Office of the Attorney General (FGR), the Government Ethics Tribunal (TEG), the Supreme Court of Justice (CSJ), and the Court of Accounts of the Republic (CCR).

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

Provide to the oversight bodies (FGR, TEG, CSJ) with the financial and human resources to fully perform their attributions and functions.

With regard to the FGR, establish objective criteria for assigning corruption cases in the FGR; and breakdown statistics with respect to punishing corrupt acts that trigger disciplinary; administrative, financial or civil; or criminal responsibility.

Regarding the TEG, establish guidelines and a timeframe for the designation of the representatives to the Government Ethics Tribunal.

Pertaining to the CSJ, restore to the Integrity Section of the Supreme Court of Justice the authority to request directly from banks and financial entities the account information of public servants and establish an accountability mechanism for the CSJ.

With respect to the CCR, appoint its representative to the Government Ethics Tribunal as well as maintain statistics on the amount of money that has entered the public treasury as a result of the imposition of sanctions by the Court of Accounts; maintain statistics on the final outcome of citizens complaints received by the Court; and make all the Annual Reports of the Court of Accounts easily and readily available to the public on its website.

The best practices regarding which the Republic of El Salvador provided information dealt basically with an initiative by the Subsecretariat of Transparency and Anti-Corruption of the Presidency that ensures citizen participation in public governance, known as “Accountability Mechanisms of the Executive Branch Agencies; and the entering of cooperation agreements between universities and the Government Ethics Tribunal, known as “Multiplier Agents of the Government Ethics Law.”

With regard to follow-up on the recommendations formulated to the Republic of El Salvador 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 the Republic of El Salvador 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 I of the report.

Among the progress related to the implementation of those recommendations, the following are noted: the enactment of the Access to Public Information Law, the reformation of the Government Ethics Law, and the establishment of the Economic and Social Council.

Some of the recommendations formulated to the Republic of El Salvador in the First Round that are still pending or have been reformulated address issues such as: establishing mechanisms to detect possible conflicts of interest by public servants upon entry into the public service; creating mechanisms to protect the public interest when a conflict of interest arises; implementing a specific law that includes time frames and reasonable circumstances for demanding the periodic and updated submission of declarations of net worth; establishing a mechanism for the registration of assets, income and liabilities of public servants that are used to prevent and detect acts of corruption; eliminating from the Regulations to the Access to Public Information Law, ‘political security’ as a category of confidential information; the appointment of the Commissioners to the Institute of Access to Public Information; and the implementation of laws and mechanisms to encourage the participation of civil society and nongovernmental organizations in efforts to prevent corruption.

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

**REPORT ON IMPLEMENTATION IN THE REPUBLIC OF EL SALVADOR 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. Content of the Report

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

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

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

2. Ratification of the Convention and adherence to the Mechanism

[4] According to the official records of the OAS General Secretariat, the Republic of El Salvador ratified the Inter-American Convention against Corruption on July 9, 1998 and deposited its instrument of ratification on March 18, 1999.

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

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of the Republic of El Salvador

[6] The Committee wishes to acknowledge the cooperation that it received, throughout the review process from the Republic of El Salvador and in particular from the Subsecretariat for Transparency and Anti-Corruption of the Office of the President of the Republic, which was evidenced, inter alia, in the Response to the Questionnaire and in the constant willingness to clarify or complete its contents, and in the support for the on-site visit to which the following paragraph of this report refers. Together with its

1. This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on September 16, 2011, at its Twentieth meeting, held at OAS Headquarters, September 10 – 14, 2012.

response, the Republic of El Salvador sent the provisions and documents it considered pertinent. The Response as well as the provisions and documents may be consulted at the following webpage: www.oas.org/juridico/spanish/mesicic4_slv_sp.htm

[7] The Committee would also like the record to show that the country under review gave its consent for the on-site visit, in accordance with provision 5 of the *Methodology for Conducting On-Site Visits*.² As members of the preliminary review subgroup, the representatives of the Bolivarian Republic of Venezuela and Saint Vincent and the Grenadines conducted the on-site visit from March 20 through 23, 2012, with the support of the MESICIC Technical Secretariat. The information obtained on that visit is included in the appropriate sections of this report, and its agenda of meetings is appended thereto, in keeping with provision 34 of the *Methodology for Conducting On-Site Visits*.

[8] For its review, the Committee took into account the information provided by the Republic of El Salvador up to March 23, 2012, as well as that furnished and requested by the Secretariat and the members of the review subgroup to carry out its functions, in keeping with the *Rules of Procedure and Other Provisions*; the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round*; and the *Methodology for Conducting On-Site Visits*.

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

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

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

II. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS 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 El Salvador has a set of oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts, among which the following are highlighted: the Office of the Attorney General; the Government Ethics Tribunal; the Supreme Court of Justice; the Court of Accounts of the Republic and the Secretariat for Strategic Affairs.

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

[12] The following is a brief description of the purposes and functions of the four bodies selected by the Republic of El Salvador that are to be examined in this report:

[13] The Office of the Attorney General leads criminal investigations, with the collaboration of the National Civil Police, and also initiates criminal proceedings on its own, or upon request

[14] The Government Ethics Tribunal is the body responsible for the implementation and enforcement of the Government Ethics Law and its main objective is to promote ethical performance within the civil service through respect for and observance of the ethical standards provided for in the Law.

[15] The Supreme Court of Justice is the highest authority of the judiciary, which constitutionally has the responsibility to prosecute and enforce judgments in constitutional, civil, criminal, commercial, labor, agrarian and administrative litigation, and in others as prescribed by law. The Supreme Court has administrative and judicial powers, which are mainly provided by the Constitution and its Organic Law. It also has the responsibility for reviewing and verifying the statements of net worth of public servants.

[16] The Court of Accounts is the institution responsible for oversight of public finances in general and the national budget in particular.

1. OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC

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

[17] The Office of the Attorney General of the Republic (*Fiscalía General de la República*, FGR) has a set of provisions in its legal framework and other measures concerning, among others, the following:

[18] With respect to its objectives and functions, Article 193 of the Constitution of the Republic stipulates that it corresponds to the Attorney General³ to, inter alia, defend the interests of the State and society, direct the investigation of a crime with the collaboration of the National Civil Police in the manner determined by law, and officially or upon the petition of a party carry out a criminal proceeding. Likewise, Article 18 of the Organic Law of the Office of the Attorney General of the Republic (LOFGR) establishes, inter alia, that institutionally it is incumbent upon the Attorney General's Office and the Attorney General to defend the interests of the Treasury, natural resources, the cultural heritage and all State property; to take appropriate actions to enforce civil, criminal, or administrative liabilities incurred by public or municipal officials and employees; request collaboration from authorities of any kind, their agents, and from private individuals to improve the exercise of their public functions; and to organize and direct Special Investigation Units, among other attributions.⁴

[19] Accordingly, it created the Special Investigation Unit for Corruption Crimes (*Unidad Fiscal Especializada en Delitos de Corrupción*, hereinafter Corruption Crimes Unit), the purpose of which is to investigate and process via specific procedures cases of corruption in the public administration of national and/or international importance involving public servants, government employees, heads of

3. Article 192 of the Constitution of the Republic stipulates that the "Public Ministry" shall be exercised in El Salvador by the Attorney General (*Fiscal General*) of the Republic, the Prosecutor General (*Procurador General*) of the Republic, and the Prosecutor for the Defense of Human Rights, www.oas.org/juridico/PDFs/mesicic4_slv_constitucion.pdf

4. Organic Law of the Office of the Attorney General of the Republic (Ley Orgánica de la Fiscalía General de la República, LOFGR), www.oas.org/juridico/PDFs/mesicic4_slv_fiscalia.pdf

public services, or individuals involved in these types of crimes, in order to pursue appropriate legal action.⁵

[20] Pursuant to Article 13 of the LOFGR, the Office of the Attorney General exercises its powers independently of the other organs and its competence extends to the whole of the national territory.⁶ Moreover, State organs and individuals are required to provide the information and all the support that the FGR may request from them in the performance of its duties.⁷

[21] Decisions made by the Attorney General are made in his individual capacity as the head of the FGR and may not be appealed before any other official or authority, except in the case of specific appeals such as an action under administrative law or for protection of a right guaranteed by the Constitution (*amparo constitucional*).

[22] As for the manner in which he is selected, the Attorney General of the Republic is elected by the Legislative Assembly, by a qualified majority of two-thirds of the elected deputies, for a three-year renewable term.⁸ The Attorney General shall be dismissed by the Legislative Assembly, by a vote of two-thirds of the elected deputies on the following legal grounds: failure to fulfill his functions; for conviction in a final judgment that is not appealable; for blatantly immoral conduct; and for manifest incompetence in the exercise of his duties.⁹

[23] It is incumbent upon the Attorney General to appoint, dismiss, grant permits to and accept complaints from the Deputy Attorney General, the Auditor General, and the Secretary General, as well as other officials and employees of his Office.¹⁰

[24] Thus, Article 46 of the LOFGR establishes the career system for government prosecutors to govern service relations between the FGR and its officials and employees. The LOFGR also establishes that the regulations of the career system for government prosecutors shall essentially cover the following: preparation and periodic updating of the Post Classification Manual; the Grade and Step System for prosecutors (*escalón fiscal*); the selection and hiring of staff through open competition; ongoing performance evaluation of officials and employees; continuous mandatory training for staff; advancement and promotion of personnel, and the filling of vacancies through competition and on the basis of personal performance, skills, knowledge, capacity and experience and procedures for the imposition of the administrative sanctions stipulated by this Law.¹¹

[25] The Attorney General is also responsible for dismissing FGR personnel for committing highly serious violations, following the procedures established in Article 64 of the Law and in Articles 66 – 69 of the Regulations of the Career System for Government Prosecutors.¹²

5. See p. 40 of the Annual Report of the Office of the Attorney General of the Republic, 2009 – 2010, www.fiscalia.gob.sv/wp-content/uploads/Memorias/index.html?pageNumber=1

6. Article 22 of the LOFGR, *supra* note 4.

7. Article 16 of the LOFGR, *Ibid.*

8. Article 192 of the Constitution, *supra* note 3.

9. Article 25 of the LOFGR, *supra* note 4.

10. Article 26(b) of the LOFGR, *Ibid.*, and Article 193.8 of the Constitution, *supra* note 3.

11. Article 49 of the LOFGR, *Ibid.* See also Regulations of the Career System for Government Prosecutors, www.oas.org/juridico/PDFs/mesicic4_slv_regla_fiscal.pdf

12. Article 60 of the LOFGR contains a list of what constitutes a highly serious violation.

[26] All FGR personnel, including the Attorney General, are subject to the impediments, recusals, and incompatibility rules set forth in Articles 41– 45 of the LOFGR. Government prosecutors may recuse themselves or be recused on the same grounds as applied to judges.¹³

[27] In its Response to the Questionnaire, the country under review noted that FGR personnel are subject to LOFGR regulations, particularly the Regulations of the Career System for Government Prosecutors and the Regulations Governing the Specific Technical Internal Control Standards of the Office of the Attorney General of the Republic, and to the provisions of the Post Classification Manual.¹⁴

[28] The FGR runs continuous training programs developed by the Government Prosecutors Training School. Its programs, courses and training materials are posted at escuela.fgr.gob.sv.¹⁵

[29] The country under review further notes, regarding the manner in which the FGR informs citizens of its objectives and functions, that the FGR “*has offices in various parts of the country, which give it broad national coverage and provide unrestricted access to any citizen requiring its services. Information campaigns are also conducted in the media. In addition, the FGR has its own website: www.fgr.gob.sv, containing detailed information on the services provided by the institution.*”¹⁶

[30] Individuals wishing to file complaints regarding the conduct of the Attorney General’s staff may do so with the Audit Office of the Office of the Attorney General (*Unidad de Auditoría Fiscal*). Article 32.a of the LOFGR establishes that it is incumbent upon the Attorney General’s Auditor (*Auditor Fiscal*) “*to carry out preventive audits of judicial and administrative proceedings involving Auxiliary Staff,*¹⁷ *and to process any complaint received in order to review action taken by an official, auxiliary, or employee of the Office of the Attorney General.*”¹⁸

[31] With regard to mechanisms for internal control, the Attorney General must, pursuant to Articles 20 – 22 of the Regulations Governing the Specific Technical Internal Control Standards of the Office of the Attorney General of the Republic, guarantee the existence of standards, policies, manuals, instructions, rules of procedure, oversight procedures and other documents needed to ensure compliance with the FGR’s internal controls system.¹⁹ The FGR also has an internal audit office, which, among other oversight functions, ensures that internal controls are in place in the various organizational units and that objectives and targets are met in operations and activities relating to the administrative and financial areas. It is required to report each month on the findings of its evaluations to the Attorney General and the Audit Board (*Consejo Fiscal*).²⁰

13. See Article 41 of the LOFGR and Articles 73 and 86 of the Code of Criminal Procedure, www.oas.org/juridico/PDFs/mesicic4_slv_codigo_procesal.pdf

14. See Response of El Salvador to the Questionnaire of the Fourth Round, paragraph 49, available at www.oas.org/juridico/PDFs/mesicic4_slv_resp.pdf. See also the Regulations of the Career System for State, *supra* note 11 and the Regulations Governing the Specific Technical Internal Control Standards of the Office of the Attorney General of the Republic, www.oas.org/juridico/PDFs/mesicic4_slv_regla_FGR.pdf

15. This continuous training is governed by Articles 33ff. of the Regulations of the Career System for State Prosecutors.

16 See Response to the Questionnaire, paragraph 51, *supra* note 14.

17. LOFGR, Article 37 states, “*Auxiliary staff of the Office of the Attorney General are all those assigned by the Attorney General to perform his functions, acting on his behalf and in the name of the Office of the Attorney General, whereby they hold positions of trust and are directly, functionally, and hierarchically dependent on the Attorney General,*” *supra* note 4.

18. See also Article 14 of the Regulations Governing the Specific Technical Internal Control Standards of the Office of the Attorney General of the Republic, *supra* note 14.

19. *Ibid.*

20. See Article 22 of the Special Regulations of the Office of the Attorney General of the Republic, www.oas.org/juridico/spanish/mesicic4_slv_sp.htm.

[32] The LOFGR stipulates that the Attorney General will have his own budget that will allow it to adequately implement the institutional and organizations changes required by the Law or for technical administrative technical reasons.²¹ The Attorney General also has to approve the FGR's preliminary draft annual statement of income and expenditure and its salary system, in line with government budget policies.²²

[33] With respect to coordination mechanisms, in its Response to the Questionnaire, the country under review notes that the FGR has the Organic Law of the Coordinating Committee of the Judicial Sector and the Technical Executive Unit, which provides, at the highest level, for a Coordinating Committee comprising the President of the Judicial Branch, the Minister of Justice, the Attorney General of the Republic, the Office of the Public Prosecutor and the President of the National Judicial Council, in order to define development policies and strategies and the plans, programs, and projects to be carried out thereunder.²³

[34] In its Response to the Questionnaire, the country under review notes that, pursuant to Article 131 paragraph 36 of the Constitution, the Attorney General must submit an annual report on its work to the Legislative Assembly. Thus, "*Those reports contain specific sections in which the FGR accounts for the management of its funds and performance during the foregoing year. They can be found on the website of the Office of the Attorney General of the Republic. In addition, the Office of the Attorney General of the Republic is subject to supervision by the Court of Accounts of the Republic, to the extent provided for in the Law on the Court of Accounts of the Republic.*"²⁴

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

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

[36] In its Response to the Questionnaire, the country under review noted that the Corruption Crimes Unit, which has nationwide jurisdiction, does not have sufficient staff nor count on the technical support for financial analysis, for which it relies on the support of other institutions or other areas of the Office of the Attorney General. During the on-site visit, the members of this Unit confirmed that there was an issue with resources, and that effectively, the Unit does not count on its own financial analysts for investigations, and has to ask the Court of Accounts for assistance, which is not guaranteed that they will provide any. The representatives of this Unit also expressed to the visiting team that the Office of the Attorney General currently received 0.90% of the annual budget of El Salvador (0.75% according to the

21. Article 22 of the LOFGR, *supra* note 4.

22. Article 78 of the LOFGR, *ibid*. In its Response to the Questionnaire, the country under review notes: "There are legal provisions for obtaining revenue for institutions such as the Office of the Attorney General of the Republic. One such provision is Article 23 of the Law to Combat Money Laundering, which creates a special fund fed by resources derived from the sale of illegally acquired assets. A similar arrangement applies in the case of assets confiscated or seized from drug traffickers, pursuant to the Law Regulating Drug-Related Activities - *LERARD*-, *Articles 67, 68, and 70*," see paragraph 55 of the Response to the Questionnaire, *supra* note 14.

23. See Article 3 of the Organic Law of the Coordinating Committee of the Judicial Sector and the Technical Executive Unit www.oas.org/juridico/PDFs/mesicic4_slv_comision.pdf. The country under review also points to control mechanisms in Articles 16ff. of the Law to Combat Money-Laundering, Article 43 of the Special Law on Intervention of Telecommunications, Articles 270ff. of the Code of Criminal Procedure, and the Regulations regarding the Functional Directorate of the Attorney General in the National Civil Police, see paragraph 56 of the Response to the Questionnaire, *supra* note 14.

24. See paragraph 57 of the Response to the Questionnaire, *Idem*

last Annual Report of the Office of the Attorney General),²⁵ and proposals are being made to increase this to 2%, bearing in mind that more mandates are being attributed to the Office due to the enactment of the new Criminal Code of Procedure. The Committee noted, based on the information at its disposal, that the lack of economic and human resources has affected negatively the ability of the FGR, and in particular the Corruption Crimes Unit, in carrying out its functions and responsibilities in an efficient and effective manner, especially pertaining to the investigation of acts of corruption. The Committee will formulate a recommendation in this regard. (see Recommendation 1.4.1 in Section 1.4 of Chapter II of this Report)

[37] This concern over the budgetary and human resources in the FGR was also reflected in a document referred to by the National Association of Private Companies (*Asociación Nacional de la Empresa Privada*) during its presentation to the team of the on-site visit, with respect to proposed reforms to ensure institutional democracy in El Salvador, as well as in modernizing and strengthening its political system.²⁶

[38] Related to this issue is also one of jurisdiction of the Corruption Crimes Unit. The Committee notes that in the Annual Reports produced by the Office of the Attorney General, this Unit is described as being responsible for investigating specific cases of corruption in the public administration of national and/or international importance involving public servants, employees or individuals responsible for public services or individuals involved in these types of crimes, in order to pursue legal action. However, during the on-site visit, the team of examiners was informed by members of this Unit that it did not receive all cases involving corruption, as the Attorney General could assign cases as seen fit without taking into account the mandate of the Unit. The Committee will formulate a recommendation in this regard. The Committee will formulate a recommendation in this regard. (see Recommendation 1.4.2 in Section 1.4 of Chapter II of this Report)

[39] The country under review also noted, in its Response to the Questionnaire, that the Office of the Attorney General had not yet established an Ethics Commission as required under both the old and recently reformed Government Ethics Law.²⁷ This Commission is responsible for, among other things, referring to the Government Ethics Tribunal information obtained from internal investigations that have identified potential violations of ethical duties or prohibitions; receiving complaints when a public servant in the Office of the Attorney General contravenes the Law; following up on the final decisions issued by the Tribunal in administrative proceedings that have led to sanctions imposed on public servants; and disseminating and training public servants on ethics in the public service, on the provisions of the Law and any other legal norms aimed at preventing acts of corruption. Nevertheless, during the on-site visit, the members of the Corruption Crimes Unit did not have the reasons as to why this important Commission had not yet been established; therefore the team did not receive a satisfactory

25. See Annual Report of the Office of the Attorney General, 2010 – 2011, p. 76, www.fiscalia.gob.sv/wp-content/uploads/Memorias/MEMORIA-FGR-28-07-2011.pdf

26. Proposals include a constitutional reform to increase the budget of the Office of the Attorney General to at least 2% of the annual budget, in order to ensure that the FGR has the budgetary independence to carry out its duties and combat crime. Moreover, as noted in this report: “Since 1998, when the Criminal and Criminal Procedure Codes came into force, the FGR carries out the function of investigating crime and criminal prosecution, as set out in the Constitution. Since then, the responsibilities and obligations have been increasing, with an evolving, updated and new legal order. However, this transfer of functions, previously held by criminal judges, has not been accompanied by a respective budget increase, though responsibilities and obligations have been increasing. In other words, there has been an imbalance between the increasing work and assigned budget, resulting in work overload, limiting the investigation and prosecution of cases, thereby, as a consequence, leading to impunity and lack of justice for victims,” XII ENADE 2012, Commitment for Democracy, p. 53, www.oas.org/juridico/PDFs/mesicic4_slv_sc_ENADE.pdf

27. See Article 25(g) of the Government Ethics Law, www.oas.org/juridico/PDFs/mesicic4_slv_lev_etica.pdf

response. The Committee will formulate a recommendation in this regard. (see Recommendation 1.4.3 in Section 1.4 of Chapter II of this Report)

[40] In addition, one of the issues that the team examined during its on-site visit is the coordination undertaken by the Office of the Attorney General with other branches of the Government. As noted under section 1.1, this Office does coordinate with other important government bodies, such as the President of the Judicial Branch, the Minister of Justice, the Office of the Public Prosecutor and the President of the National Judicial Council, in order to set policies and strategies and decide jointly on plans, programs and projects, through the Organic Law of the Coordinating Committee of the Judicial Sector and the Technical Executive Unit. Moreover, both the Organic Law of the Court of Accounts and the Government Ethics Tribunal Law provide that the Office of the Attorney General is to enforce those laws by recovering the financial penalties and fines imposed under the mechanisms in place under those legal norms. The team, during its on-site visit, asked as to how the Office of the Attorney General coordinates with these bodies in enforcing payment. The team was informed that there is no effective interagency coordination with these bodies. This was also reflected in terms of assistance required by the Corruption Crimes Unit in the form of financial analysts from the Court of Accounts. This assistance is not ensured, depending on available resources. The Committee will formulate a recommendation in this regard. (see Recommendation 1.4.4 in Section 1.4 of Chapter II of this Report)

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

[41] In its Response to the Questionnaire, the country under review provided internet links to the Annual Reports issued by the Office of the Attorney General for the past five years, and noted:

[42] *“Given its powers and functions, the FGR is essentially detection-oriented. However, constitutional and legal provisions make it also responsible for pursuing legal actions to collect damages corresponding to financial or civil liabilities (responsabilidades patrimoniales o civiles) from those found to have been involved in corrupt practices. The data may be obtained from the annual reports remitted to the Legislative Assembly pursuant to the provisions of the Constitution.”*²⁸

[43] Upon review of these Annual Reports, the Committee notes that it does contain important information on the function and operation of the Office of the Attorney General, as well as highlighting important achievements in the prosecution of corruption cases. Nevertheless, specific results on the outcome of cases on corruption are not maintained, a fact that was confirmed to the team during the on-site visit. In addition, though the FGR follows up on enforcement of payment of fines imposed by the Government Ethics Tribunal, and administrative and financial penalties imposed by the Court of Accounts, there is no mechanism in place to follow-up on the outcome of those cases, nor in determining the amount of money recovered and returned to the public treasury, which the team, during its on-site visit, heard from the representatives of the Court of Accounts.

[44] As such, the Committee suggests that the country under review consider, with respect to punishing corrupt acts that trigger disciplinary; administrative; financial or civil; or criminal responsibility for persons involved therein, to maintain statistics as set out in the Questionnaire for the Fourth Round of Review. In addition, the country under review may consider maintaining statistics on the amount of monetary sanctions imposed in enforcing the Government Ethics Tribunal and the Court of Accounts, as well as the amount entered into the public treasury in each of the past five years in enforcing those laws. This type of information would assist the Committee in enabling it to make a comprehensive evaluation with respect to the objective results obtained in the application of the legal framework and other

28. Response to the Questionnaire, *supra* nota 14, paragraph 131.

measures in place of the Office of the Attorney General, as it corresponds to the implementation of Article III, paragraph 9 of the Convention. The Committee will formulate a recommendation in this regard. (see Recommendation 1.4.5 in Section 1.4 of Chapter II of this Report)

1.4. Conclusions and recommendations

[45] Based on the comprehensive review conducted with respect to the Office of the Attorney General in the foregoing sections, the Committee offers the following conclusions and recommendations:

[46] The Republic of El Salvador has considered and adopted measures intended to maintain and strengthen the Office of the Attorney General of the Republic as an oversight body, as described in Chapter II, Section 1 of this Report.

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

- 1.4.1. Provide the Office of the Attorney General of the Republic, and especially the Corruption Crimes Unit, with the budgetary and human resources needed for the proper performance of its function, particularly those relating to investigation of acts of corruption, within available resources. (See section 1.2. of Chapter II of this Report)
- 1.4.2. Establish objective criteria for assigning corruption cases in the Office of the Attorney General of the Republic, making sure that the Corruption Crimes Unit fulfills its objective, which is to investigate and process via specific procedures cases of corruption in the public administration of national and/or international importance involving public servants, government employees, heads of public services, or individuals involved in these types of crimes, in order to pursue appropriate legal action. (See section 1.2. of Chapter II of this Report)
- 1.4.3. Establish the Government Ethics Committee in the Office of the Attorney General of the Republic, as required by the Government Ethics Law. (See section 1.2. of Chapter II of this Report)
- 1.4.4. Establish coordination mechanisms between the Office of the Attorney General of the Republic and other high-level supervisory institutions, not only to ensure enforcement of domestic laws but also to ensure that it provides the timely and effective support of those institutions. (See section 1.2. of Chapter II of this Report)
- 1.4.5. Breakdown statistics on the punishment of corrupt practices incurring disciplinary, administrative, financial, civil, or criminal liability, as follows: the total number of investigated cases awaiting a ruling; the number of decisions adopted in respect of those cases; the number of those decisions in which responsibilities were established or penalties imposed; the number of decisions in which no responsibilities were found or acquittals were given; the number of decisions in which punishment was barred by statute of limitation; and the amount of fines levied or of damages awarded to the State that were paid to the Treasury, in order to identify challenges and recommend remedial measures. (See section 1.3. of Chapter II of this Report)

2. GOVERNMENT ETHICS TRIBUNAL

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

[48] The Government Ethics Tribunal (*Tribunal de Ética Gubernamental*, TEG) has a set of provisions in its legal framework and other measures concerning, among others, the following:

[49] With respect to its objectives and functions, the TEG is responsible for promoting and disseminating, among all public servants and individuals subject to the Government Ethics Law,²⁹ respect for and observance of ethical standards; the principles, rights, duties, and moral prohibitions set forth in the Government Ethics Law, and a culture of ethics in the population at large, and for providing training regarding ethics in public service, aimed at preventing acts of corruption and other matters relating to the Law.³⁰ In addition, the TEG is responsible for, inter alia: initiating, as a result of a complaint or ex officio, administrative sanction proceedings and for imposing sanctions on persons subject to the Government Ethics Law who violate ethical duties or prohibitions; and for responding to queries regarding the Law; promoting mechanisms for guaranteeing transparency in public administration; approving policies, actions, plans, programs, and projects relating to the enforcement of ethics in public service, the Government Ethics Law, and the other institutional standards; and for authorizing the underwriting of partnerships and agreements with national and international, governmental and nongovernmental entities aimed at ensuring fulfillment of institutional objectives.³¹

[50] The TEG is the entity responsible for government ethics and for ensuring compliance with the Government Ethics Law. In order for it to perform effectively and without undue outside influence,³² it is not subordinated to any authority. Furthermore, in its Response to the Questionnaire, the country under review pointed out that: “*The TEG has the technical, administrative, and budgetary autonomy needed for it to exercise the functions and powers assigned to it by the Law [Law on Government Ethics]*”³³

[51] The Plenary of the TEG, the Tribunal’s highest authority, is a collegiate body consisting of five full members: one elected by the Legislative Assembly, who shall be its President; another appointed by the President of the Republic; one chosen by the Supreme Court; another designated by the Court of Accounts of the Republic; and one elected by the heads of the Public Ministry. They serve for a five-year term, may be re-elected, and shall perform their functions full time. Furthermore, the members of the Tribunal shall not be subject to any binding mandate of the authority that appointed or elected them.³⁴

[52] The decisions of the Plenary of the TEG shall be taken by a vote in favor of three of its members.³⁵ A reconsideration appeal may be filed with the same TEG, whereby the Tribunal can revoke, amend, or confirm the resolution against which an appeal was lodged.³⁶ In addition, in its Response to the

29. Article 2 of the Government Ethics Law states: “*This Law shall apply to all public servants, be they permanent or temporary, remunerated or ad honorem, who exercise their function as a result of election, appointment, or contract, who serve in the public administration within or outside the national territory. Also subject to this law, where applicable, are all other persons who, while not being public servants, administer government property or manage government funds. Also subject to this law are former public servants in respect of any transgressions of this Law that they may have committed in the performance of their public function, or on account of violations of the prohibitions referred to in Article 7 of this Law,*” *supra* note 27.

30. Article 19 of the Government Ethics Law, *Ibid.*

31. Article 20, *Ibid.*

32. Article 10, *Ibid.*

33. Response to the Questionnaire, paragraph 79, *supra* note 14.

34. Article 11 of the Government Ethics Law, *supra* note 27.

35. Article 18, *Ibid.*

36. Article 39, *Ibid.*

Questionnaire, the country under review points out that “*When the decision taken by the TEG involves a fine, it shall be executed by the Tribunal in the form of a payment order establishing the deadline and conditions of payment for the offender. Should the offender fail to comply, the Office of the Attorney General of the Republic shall be informed so that it can take steps to collect the fine through appropriate judicial proceedings, pursuant to Articles 45 and 46 LEG [Government Ethics Law].*”³⁷

[53] The members of the TEG may be removed on the following grounds: a) conviction for having intentionally committed a crime (*delito doloso*); b) punishment for violating the ethical bans or duties established in the Government Ethics Law; c) serious failure to abide by the obligations and functions inherent in the position; d) physical or mental incapacity to perform the duties of the post; e) any of the disqualification referred to in Article 15 of the Government Ethics Law; and failure to comply with the obligation to submit an annual report to the Legislative Assembly.³⁸ The disqualifying factors referred to are the following: a) holding office in the governing or representation boards of political parties; b) holding another government office, except teaching, cultural, or social work activities, provided that they do not detract from the performance of duties. Proceedings for the dismissal of the members of the Plenary of the TEG shall be initiated ex officio, or through a complaint in writing to the authority that appointed or elected the member.³⁹

[54] In addition, it is incumbent upon the Plenary of the TEG to appoint, hire, transfer, dismiss, grant leave to, and accept the resignation of government officials and employees hired by the Tribunal.⁴⁰ In its Response to the Questionnaire, the country under review states that “said personnel are subject to the Civil Service Law in respect of their selection and with regard to the system of disqualifications, incompatibilities, and accountability for their actions.”⁴¹

[55] As regards training for TEG Officers, in its Response to the Questionnaire, the country under review states that each year it prepares and executes a Training Plan, financed by the institution’s budget, and with contributions from other agencies.⁴² Furthermore, Article 58 of the Government Ethics Law stipulates that all government institutions shall ensure that all their public servants, without exception, are to devote one business day a year to reading, explaining, and discussing the contents of the Law, while Article 59 provides that the TEG shall conduct induction courses or engage in other suitable activities designed to promote government ethics for the highest-level authorities in the institutions and other elected officials or second-tier officials in public administration.⁴³

[56] There are also documented procedures in the form of manuals, guides, and administrative instruments for carrying out tasks and implementing systems and modern technologies. They can be

37. Response to the Questionnaire, paragraph 83, *supra* note 14.

38. Article 16 of the Government Ethics Law, *supra* note 27.

39. Article 17, *Ibid.*

40. Article 20(g), *Ibid.*

41. Response to the Questionnaire, paragraph 85, *supra* note 14.

42. For example, p. 80 of the Annual Report for 2010 – 2011 lists 25 training courses for TEG staff, held between June 2010 and May 2011, on such topics as General Aspects of Management Audits, Introduction to Access to Information Law, the Legality of Administrative Acts, and *amparo* proceedings for the protection of a constitutional right, etc. The TEG points out, “*For the Government Ethics Tribunal, it is very important to maintain a constant stream of apprenticeship, skills-building, and vocational training for the public servants in the institution. To that end, it draws up and executes an Annual Training Plan, financed by the Institution’s budget and by contributions from governmental and nongovernmental agencies...*” Annual Report, 2010-2011, www.teg.gob.sv/sites/default/files/2011.pdf.

43. The 2010 – 2011 Annual Report notes that the TEG conducted 50 training activities for 1,413 people, including, for instance, members of the Government Ethics Commissions, Liaison Officers, and other public servants, on government ethics, the Government Ethics Law, and other government ethics-related instruments; and on the Government Information System for Commissions, Annual Report 2010 – 2011, pp. 45 – 47, *ibid.*

found on the TEG website: www.teg.gob.sv and especially in the Annual Reports, which includes a summary table of internal regulations adopted by the Plenary TEG.⁴⁴

[57] The TEG also has an obligation to promote ample familiarity with the Government Ethics Law among citizens.⁴⁵ Accordingly, in its Response to the Questionnaire, the country under review points out that the TEG has conducted “*briefing and educational campaigns for citizens on radio and television, as well as in the written press, via cell phones and social networks, along with interviews in the media and the preparation of institutional materials, all of which is described in detail in the TEG’s Annual Reports, which are posted on its website.*”⁴⁶

[58] Related to these campaigns is the processing of queries and complaints filed by citizens regarding compliance with TEG objectives and the performance of TEG staff.⁴⁷ The TEG website posts templates for legal queries and forms for tip-offs⁴⁸ and complaints.

[59] As regards the way in which budgetary funds for the TEG are assured, Article 57 of the Government Ethics Law establishes that the State will provide the necessary funds to finance the requirements of said Law and that said funds will be included in the national budget. Likewise, it is incumbent upon the Plenary TEG to approve its proposed budget and the Tribunal’s payroll, which shall be submitted to the Executive Branch for inclusion in the government budget (*Presupuesto General del Estado*).⁴⁹ This budget and its outturn are published in the TEG’s Annual Reports.

[60] Public servants are legally required to cooperate with the TEG in the performance of its functions and the exercise of its powers. Thus, public servants must promptly provide all information, documentation, or proofs requested by the TEG in its investigation of violation of the precepts set forth in the Government Ethics Law. Failure to cooperate will render a public servant liable to the corresponding criminal and administrative sanctions.⁵⁰ In addition, Article 60 of the Government Ethics Law provides that “*when it is determined in the course of the administrative disciplinary procedure that there is circumstantial evidence of the apparent commission of an offence, the Tribunal shall certify the information obtained and remit it to the Office of the Attorney General of the Republic for the appropriate legal purposes.*” The Office of the Attorney General shall also be called upon to enforce payment when the TEG’s ruling involves imposition of a fine.⁵¹

[61] As regards accountability mechanisms in respect of compliance with its duties, in its Response to the Questionnaire, the country under review, points out that “*there is a legal obligation to account for activities on an annual basis to the Legislative Assembly...Failure to comply with this obligation*

44. See, for example, p. 79 of the Annual Report 2010 – 2011, *ibid.*, and p. 71 of the Annual Report 2009 – 2010, www.teg.gob.sv/sites/default/files/MEMORIA_ETICA_2009_2010.pdf

45. Article 55 of the Government Ethics Law, *supra* note 27.

46. Response to the Questionnaire, paragraph 88, *supra* note 14. In addition, see pp. 23 - 33 of the Annual Report, 2010 – 2011, *supra* note 42 and pp. 21 – 31 of the Annual Report, 2009 – 2010, *supra* note 44, which discuss promotion and dissemination work via information and education campaigns on the radio and television, in the press as well as the use of social networks and interviews in the media.

47. Response to the Questionnaire, paragraph 89, *supra* note 14.

48. A tip-off “*is a mechanism whereby someone whose identity is unknown or impossible to verify brings to the attention of the tribunal some act or circumstance that contravenes a duty or prohibition established in the LEG [Government Ethics Law],*” www.teg.gob.sv/content/formulario-de-avisos.

49. Article 20(h) of the Government Ethics Law, *supra* note 27.

50. Article 60 of the Government Ethics Law, *Ibid.*

51. Article 46 of the Government Ethics Law, *Ibid.*

constitutes grounds for dismissal of members of the TEG."⁵² These reports are posted on the TEG website at: www.teg.gob.sv/memorias_labores.

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

[62] The Government Ethics Tribunal has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 2.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures.

[63] In the visit conducted by the team, the TEG made it very clear that its work is paralyzed, since not all of the members of the Tribunal were yet to be named, as required under Article 11 of the Government Ethics Law. According to this Article, the five members of this Tribunal are to be designated, as follows: one elected from the Legislative Assembly, one appointed by the President of the Republic; one elected by the Supreme Court of Justice; one appointed by the Court of Accounts of the Republic, and the fifth selected by the heads of the Public Ministry, which includes the Attorney General. As of the date of the on-site visit, only the Supreme Court had elected its member. Following the visit, however, the President of the Republic, the Legislative Assembly, and the Public Ministry appointed their members; thus, to date, only the appointment to be made by the President of the Court of Accounts remains pending.⁵³ In consideration whereof, the Tribunal has been unable to carry out its duties since the enactment of the new LEG on January 1, 2012, which was reformed in order to address some of the issues raised with the effectiveness of the old Law.⁵⁴ In addition, as explained in the meeting with the TEG, the Law did not provide a mechanism or timeframe for nominating or electing the members of the TEG by the various institutions.⁵⁵ Without these designations, the Tribunal cannot operate, nor carry out the important functions that it undertakes in preventing corruption in the public service. Indeed, the team was informed that the TEG lacks basic services, budget and all processes have been paralyzed since October 2011, numbering approximately 150 and 130 investigative reports have been delayed. It has only been able to comply with its responsibility with regard to dissemination and training.⁵⁶ The Committee urges the Legislative Assembly, the Court of Accounts, the Public Ministry and the President of the Republic to designate its representatives to the Tribunal so that it may function. Similarly, the Committee suggests that the country under review should consider establishing mechanisms and a timeframes so that these appointments can be carried out in a timely manner. The Committee will formulate a recommendation in this regard. (see Recommendation 2.4.1 in Section 2.4 of Chapter II of this Report)

[64] The Committee also suggests that the country under review consider providing the appropriate budgetary and human resources for the operation of the TEG. The country under review, in its Response, noted that the reforms to the Government Ethics Law, such as widening the scope of application, and the duties of the TEG, such as allowing it to initiate proceedings leading to administrative sanctions, would

52. Response to the Questionnaire, paragraph 92, *supra* note 14. See also Articles 16(f) and 24 of the Government Ethics Law, *supra* note 27.

53. See the webpage of the TEG, www.teg.gob.sv, with respect to the designation of the members of the President of the Republic, the Legislative Assembly and the Public Ministry.

54. For example, its scope of application was expanded to include persons that manage government good or public funds, as well as applying to ex public servants.

55. In the meeting carried out by the team with Dynacorp/CASALS during the on-site visit, the representatives of this organization indicated that this was the greatest weakness of the Government Ethics Law.

56. The team, during its visit, was told that the situation was so dire in terms of resources, that the TEG did not have the funds to acquire anti-virus programs for their computer network or webpage.

require more budgetary resources.⁵⁷ In this respect, the TEG outlined the increased need in a presentation carried out to the team during its on-site visit, where it set out the reasons as to why this was needed, such as, among others, in strengthening human resources in the Training and Dissemination Unit, the need to create a Teaching Unit, and the need to strengthen the Communications Unit. In addition, the TEG identified that more resources would be needed to train personnel, and in the acquisition of adequate equipment and technological tools.⁵⁸ Given the important mandate that this oversight body has been granted in the prevention of corruption in the public service, the Committee suggests to the country under review to review the budgetary and human resources allocated to the TEG so that it may operate autonomously, as set out in Article 10 of the Government Ethics Law. The Committee will formulate a recommendation in this regard. (see Recommendation 2.4.2 in Section 2.4 of Chapter II of this Report)

[65] Moreover, the Committee believes that it would be beneficial for the country under review to establish an inter-institutional coordination body in order to better exchange experiences regarding the prevention of corruption, especially with those government agencies that designate or elect representatives to the Tribunal. Not only would this help with implementation of the Government Ethics Law throughout government, but would also help address an issue raised during the visit by the team regarding the lack of coordination between the TEG and other government institutions, for example, the Office of the Attorney General, which is responsible for enforcing the Law, which the team was informed that no such coordination exists. The Committee will formulate a recommendation in this regard. (see Recommendation 2.4.3 in Section 1.4 of Chapter II of this Report)

[66] Finally, as the Tribunal is not operating, it has not had the opportunity to issue Regulations to enforce the application of the Law. Important issues such as the operation of the Ethics Commissions in the government agencies and the manner to designate members to them, as well as the procedures for carrying out administrative sanctions, are not currently being addressed, as they were under the Regulations that were enacted for the old Government Ethics Law. The Committee will formulate a recommendation in this regard. (see Recommendation 2.4.4 in Section 1.4 of Chapter II of this Report).

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

[67] In its Response to the Questionnaire, the country under review provided comprehensive results on the operation of the TEG in a summarized form, for the years 2006 - 2011.⁵⁹ For example, information is provided on the extensive publicity campaigns that were carried out through radio, television and the press as well as in billboards and advertisement on buses. Just in radio spots alone, more than 25,518 were carried out. In terms of training, the country under review reports the following: *“As well, during the five years, the Ethics Commission report that they have trained 135930 public servants. Similarly, the Tribunal has carried out 19 training sessions with 662 municipal servants belonging to 150 municipalities and has developed the modules, “Attitudinal and Cultural Change” with 503 participants, and “Systems of Public Ethics, with 372 participants in the first part, and 352 in the second part, and “Teaching Training Techniques” with 273 participants.”*⁶⁰

[68] With respect to the attention to inquiries, issuing of opinions, advisory actions or preventive auditing related to the State’s actions, the country under review reported on the advisory opinions given

57. See Response to the Questionnaire, paragraph 140, *supra* note 14.

58. Government Ethics Tribunal, Presentation on Budget, www.oas.org/juridico/spanish/mesicic4_slv_TEG_presu.ppt

59. See paragraphs 96 – 120 of the Response to the Questionnaire, *supra* note 14.

60. See paragraph 103 of the Response to the Questionnaire, *ibid*. Moreover, a footnote to this paragraph provides more numbers regarding the documents handed out during these training events: 428,000 Laws, 166,000 Regulations, 3000 Interpretation Criteria; 6000 Compilations of Laws with respect to Ethics and Anticorruption; and 25000 pamphlets.

on the application of the Law and Regulations, which under the old Law was only allowed in abstract terms.⁶¹ From 2007 – 2011, the Tribunal reports that these advisory opinions can be, generally divided, into 4 themes: i) aspects related to the Ethics Commissions; ii) general aspects with the Law and its Regulations; iii) the criteria by the Tribunal regarding ethical duties and prohibitions; and iv) other topics. Issues that were addressed within these themes, among others, include the operation of the Ethics Commission, guidance on how to report a complaint to the Tribunal, sanctions under the Law; and inquiries related to specific provisions of the Law, such as those concerning the duty to be efficient, the duty to excuse in participating in a matter where a conflict of interest arises; and prohibitions on requesting or accepting, gifts, payments or honorariums.

[69] The Tribunal also reports that since 2007, it has processed 720 administrative sanctions and 1023 tip-offs. At the moment of submission of the Response to the Questionnaire to the Fourth Round, there are 95 complaints and 383 tip-offs in progress, while 9 processes for administrative sanctions have been suspended. Moreover, for the five-year span of 2007 – 2011, 144 investigative cases were carried out, with 86 total decisions adopted. Of the 86, 31 resulted in sanctions.

[70] Moreover, the Committee notes that the information contained within the Annual Reports issued by the TEG since 2007, make evident the extensive work the TEG has undertaken in fulfilling its mandate to implement and apply the Government Ethics Law which set out in detail the aforementioned publicity campaigns the issuance of advisory opinions as well as the number of sanctions imposed and the number of cases that were dismissed. In addition, it sets out in detail the training programs carried out by the Tribunal.⁶²

2.4. Conclusions and Recommendations.

[71] Based on the comprehensive review conducted with respect to the Government Ethics Tribunal in the foregoing sections, the Committee offers the following conclusions and recommendations:

[72] The Republic of El Salvador has considered and adopted measures intended to maintain and strengthen the Government Ethics Tribunal as an oversight body, as described in Chapter II, Section 2 of this Report.

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

- 2.4.1 Establish guidelines and a timeframe for the designation of the representatives to the Government Ethics Tribunal that ensure that the Tribunal will always be fully operational. (See section 2.2. of Chapter II of this Report)
- 2.4.2 Provide the Government Ethics Tribunal with the necessary budgetary and human resources that ensure the adequate operation of the Tribunal, in particular with its responsibilities for the prevention of corruption, within available resources. (See section 2.2. of Chapter II of this Report)
- 2.4.3 Establish an inter-institutional coordination body between the Government Ethics Tribunal and those government institutions that designate representatives to the Tribunal. (See section 2.2. of Chapter II of this Report)

61. See paragraph 109, *ibid.*

62. These Annual Reports are available at the following link: www.teg.gob.sv/memorias_labores

2.4.4 Enact Regulations to the Government Ethics Law in order to fully implement the Law. (See section 2.2. of Chapter II of this Report)

3. SUPREME COURT OF JUSTICE

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

[74] The Supreme Court of Justice (*Corte Suprema de Justicia*, CSJ) has a set of provisions in its legal framework and other measures concerning, among others, the following:

[75] As regards its objectives and functions, Article 182 of the Constitution of the Republic establishes that the Supreme Court⁶³ is responsible, inter alia, for ensuring that justice is promptly and faithfully administered and to take cognizance of the responsibility of public servants in those cases indicated by the laws. In addition, Article 240 of the Constitution provides that the Court is responsible for receiving the declarations of net worth of public servants and employees designated by the Law on Illicit Enrichment of Public Officials and Employees and for verifying their content. Furthermore, in its Response to the Questionnaire, the country under review points out that “*the primary objective of the CSJ is to pass and enforce judgment. Its function is consequently to prevent, detect, and punish illicit enrichment of public servants and employees; and to try and punish, where applicable, those charged with offenses, including offenses relating to the corruption of government officials and employees or of private individuals who corrupt them.*”⁶⁴

[76] The Court comprises 15 judges, including the President of the Court. The Court has four chambers (*Salas*): the Constitutional Law Chamber, the Civil Law Chamber, the Criminal Law Chamber, and the Contentious-Administrative Law Chamber (*Contencioso Administrativo*).⁶⁵ The Criminal Law Chamber is competent to hear criminal cases, taking cognizance of offenses committed both within and outside the territory of the Republic.⁶⁶ An Integrity Section was also established as a dependency of the Court. The Head of this Section is responsible for receiving the declarations of net worth from public servants and employees; classifying and keeping the declarations as confidential documents; and notifying the Court whenever an examination of the declarations reveals signs of illicit enrichment.⁶⁷

[77] In respect of the exercise of their jurisdictional functions, magistrates and judges are independent and subject only to the Constitution and the laws. This is also provided for in Article 3 of the Code of Criminal Procedure, which establishes: “*magistrates and judges competent to hear criminal cases shall only be subject to the Constitution of the Republic and to secondary legislation, and their resolutions shall be impartial and independent.*”

[78] The only exceptions to the competence of the Court and its Criminal Chamber, in criminal matters regarding persons, are for officials benefiting from the privilege of a preliminary hearing before either

63. In addition, Article 172 of the Constitution provides that “*The Supreme Court of Justice, the Chambers of Second Instance and the other tribunals established by the secondary laws, integrate the Judicial Organ. The power to judge and execute what is judged on in constitutional, civil, penal, mercantile, labor, agrarian and administrative legal (contencioso-administrativo) matters, as well as in others determined by the law, corresponds exclusively to this Organ.*” Constitution of the Republic [Tr. Oceana translation], *supra* note 3.

64. See paragraph 14 of the Response to the Questionnaire, *supra* note 14.

65. Organic Law of the Judiciary, Article 4, www.oas.org/juridico/PDFs/mesicic4_slv_judicial.pdf

66. See Articles 48 and 50 of the Code of Criminal Procedure, *supra* note 13.

67. Organic Law of the Judiciary, Article 113, *supra* note 65.

the Legislative Assembly or the Supreme Court of Justice itself and those who also benefit from privileges and immunities under international law.⁶⁸

[79] In order to deliberate and decide, the Supreme Court sitting in banc or the full court, must comprise the President of the Court or his replacement and at least seven judges; eight votes in favor are required to hand down a resolution, and in the event of a tie the President shall have the casting vote.⁶⁹

[80] Resolutions of the Court are not appealable. However, in its Response to the Questionnaire, the country under review, states: “*the only action that can be taken against a resolution of the Criminal Law Chamber acting as a court of cassation, is an extraordinary application for amparo (protection of a constitutional right) before the Constitutional Law Chamber of the CSJ [Supreme Court of Justice]. When the Criminal Law Chamber acts as a Court of Appeals, its decision may be appealed for cassation by the Full Court.*”⁷⁰ The country under review also notes that the Court can call upon law enforcement personnel to apply or enforce its rulings.

[81] As for the manner in which its highest-ranking officers are appointed, judges of the Court are elected by the Legislative Assembly with the vote in favor of at least two-thirds of the elected representatives for a renewable nine-year term, with one-third of the judges being renewed every three years.⁷¹ Judges may only be dismissed by a two-thirds majority of elected representatives on the legal grounds established in Article 55 of the Judicial Service Law (*Ley de la Carrera Judicial*), such as having been suspended more than twice within two years; manifest ineptitude or inefficiency in the performance of duty; misuse of authority; conviction for committing a felony; or having asked for or received gifts, promises, or favor from stakeholders in proceedings, whether directly or through a go-between.⁷²

[82] The Constitution of the Republic establishes the Judicial Service career.⁷³ Accordingly, Article 182(9) provides that the Court is empowered to appoint and remove its officers and employees, recognize their resignations, and grant them leave.⁷⁴ Court personnel are selected on the basis of merit and aptitude and they are required to meet minimum legal requirements and others determined for efficiency purposes by the nature of the functions required by the post. These are set forth in the Post Classification Manual.⁷⁵

[83] Regarding the accountability of Court personnel, the Judicial Service Law establishes such penalties as oral or written warnings, suspension from work, and dismissal, depending on the type of violation which may be less serious, serious, and very serious.⁷⁶

[84] All Court personnel are subject to disqualification and incompatibility rules based on function, kinship, participation in party politics, and other ancillary justice administration activities, as regulated in Articles 24 - 27 of the Judicial Service Law.⁷⁷

68. Response to the Questionnaire, paragraph 18, *supra* note 14.

69. See Article 50 of the Organic Law of the Judiciary, *supra* note 65 and paragraph 21 of the Response to the Questionnaire, *supra* note 14.

70. See paragraph 23 of the Response to the Questionnaire and Article 50 of the Code of Criminal Procedure, *supra* note 13.

71. Articles 173 and 186 of the Constitution, *supra* note 3.

72. Article 55 of the Judicial Service Law, www.oas.org/juridico/PDFs/mesicic4_slv_carrera.pdf

73. Constitution of the Republic, Article 186, *supra* note 3.

74. See also Article 6(a) of the Judicial Service Law, *supra* note 72.

75. See Articles 1, 11 y 16 of the Judicial Service Law and Articles 13 – 16 of the General Regulations governing the Judicial Service Law, www.oas.org/juridico/PDFs/mesicic4_slv_regla_judicial.pdf

76. Articles 49 – 53 and 55 of the Judicial Service Law, *supra* note 72.

[85] In its Response to the Questionnaire, the country under review notes that Court personnel are primarily subject to the Civil Service Law. Regarding training, the country under review points out that “members of the Judicial Service have the right and duty to undergo training in disciplines related to their functions. It is incumbent upon the Judicial Academy (Escuela Judicial) to provide theoretical and practical training to career service members based on the training programs developed for that purpose. To conduct such training courses, it may avail itself of cooperation agreements with other private or public, domestic or foreign agencies. Provision is also made for a scholarships system for judicial service members.”⁷⁸ To that end, the Court has implemented the Virtual Education System of the Judiciary of El Salvador, posted at: www.aulavirtual.oj.gob.sv/.

[86] As regards institution-building and quality enhancement measures, the country under review has an ISO 9001:2008 certified administrative services quality management system.⁷⁹

[87] Concerning the way the Court informs citizens regarding its objectives and functions, the country under review also notes that the Court has its own official website (www.csj.gob.sv), “posting information on the Court’s activities, budget transparency, jurisprudence, and other subjects. An Information Access Unit was recently established pursuant to the recent Access to Public Information Law. However, its operating manual and the other human and material resources needed are still being put together.”⁸⁰

[88] With respect to internal control mechanisms, Article 45 of the Judicial Service Law establishes that the judicial activities of Judicial Service members shall be subject to ongoing performance evaluation, and that the evaluation shall cover the following aspects in particular: capacity and suitability, efficiency, orderliness, responsibility, and speed, as well as degree of compliance with the tasks inherent in the job and observation of disciplinary requirements.⁸¹

[89] For claims, complaints and denunciations relating to fulfillment of objectives and the performance of its personnel, the Court follows the disciplinary procedures set forth in Chapter XI of the Judicial Service Law. They can be triggered ex officio or in response to oral or written complaints.⁸²

[90] According to Article 32 of the Regulations Governing the Specific Technical Internal Control Standards of the Judiciary, the Supreme Court must guarantee the existence of standards, policies, manuals, instructions, control procedures, and other documents to ensure observance of the Court’s internal controls system.⁸³ The Court also has an Internal Audit Office, which is to receive all the support and guarantees it needs to perform its functions.⁸⁴

77. See also Article 28 of the Judicial Service Law, *ibid.*, which lists persons deemed unfit for appointment to or for holding positions in the Judicial Service.

78. See Response to the Questionnaire, paragraph 31, *supra* note 14 and Articles 73 – 77 of the Judicial Service Law, *ibid.*

79. See Response to the Questionnaire, paragraph 32, *supra* note 14 and www.csj.gob.sv/ISO/iso_001.htm.

80. See Response to the Questionnaire, paragraph 33, *ibid.*, and www.transparencia.oj.gob.sv/portal/.

81. Article 46 of the Judicial Service Law, *supra* note 72.

82. See Response to the Questionnaire, paragraph 35, *supra* note 14.

83. Regulations Governing the Specific Technical Internal Control Standards of the Judiciary, www.oas.org/juridico/PDFs/mesicic4_slv_regla_normas.pdf.

84. See Article 22 of the Regulations Governing the Specific Technical Internal Control Standards of the Judiciary, *Ibid.*

[91] The Constitution of the Republic establishes that the Court shall receive an annual appropriation of not less than six percent of State budget current income. How that allocation is distributed shall be decided by the Court.⁸⁵

[92] As regards coordination mechanisms, in its Response to the Questionnaire, the country under review emphasizes that the Court has the Organic Law of the Coordinating Committee of the Judicial Sector and the Technical Executive Unit, which provides, at the highest level, for a Coordinating Committee comprising the President of the Judicial Branch, the Minister of Justice, the Attorney General of the Republic, the Office of the Public Prosecutor and the President of the National Judicial Council, in order to define development policies and strategies and the plans, programs, and projects to be carried out thereunder.⁸⁶

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

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

[94] The Committee notes that in the Response to the Questionnaire, the country under review states that the ability of the Integrity Section of the Supreme Court to review and verify the statements of net worth of public servants is limited, as its legal authority that allowed it to request directly a public servant's account information from the banking and financial sector when an irregularity was detected, was assigned to the Supreme Court en banc via a Resolution issued in 2005, which was confirmed during the on-site visit by the representative from this Section. The Committee observes that a situation may arise where the Integrity Section may identify an irregularity in the statement submitted by a Magistrate of the Supreme Court, but then has to go through that same Court to request information on that statement. The Committee suggests that this potential conflict be addressed and that the power to request directly this kind of information be returned to the Integrity Section, as it is the entity responsible for ensuring the strict compliance and implementation of the Law on Illicit Enrichment of Public Officials and Employees, which is the governing legislation on the issue. Though the issue of illicit enrichment is the subject of another Round of review, the Committee observes that the problems set out relate more to the ability of the Supreme Court, and specifically that of the Integrity Section, to carry out effectively its functions as an oversight body in implementing modern mechanisms for detecting acts of corruption. The Committee will formulate a recommendation in this regard. (see Recommendation 3.4.1 in Section 3.4 of Chapter II of this Report)

[95] In addition, this representative from the Integrity Section also stated that as a general observation, obtaining banking and financial information is difficult as the Law on Illicit Enrichment of Public Officials and Employees, which dates from 1959, does not allow for the lifting of bank secrecy, unlike more current legislation, such as investigations involving money laundering for example. The Committee, taking into account that the issues of banking secrecy and illicit enrichment are subject to other Rounds of review, the Committee would like to take note in this report of the issues raised by the Integrity Section during the on-site visit, and reserves the right to make recommendations as it considers appropriate in the proper opportunity and if applicable.

85. Constitution of the Republic, Article 172 and 182(13), *supra* note 3.

86. See Article 3 of the Organic Law of the Coordinating Committee of the Judicial Sector and the Technical Executive Unit *supra* note 23.

[96] Similarly, the team was informed that a further impediment to the ability of the Integrity Section to carry out its functions is due to the limited resources that have been assigned to it. As stated in section 3.1, the Supreme Court annually receives 6 percent of the budget for its operation. This represents a robust number, which has been reflected in the operation of the Court. However, during the visit, the team was made aware that the Integrity Section currently only has 2 analysts to review annually 6000 of these statements. Given the important function of the Integrity Section in detecting acts of corruption, the Committee suggests that the Court consider assigning more resources to the Unit to better effectively carry out its work. The Committee will formulate a recommendation in this regard. (see Recommendation 3.4.2 in Section 3.4 of Chapter II of this Report)

[97] The Committee was also informed that once the Integrity Section has identified a potential unjustified increase, it certifies the record and sends it to the Office of the Attorney General for further investigation. However, the team was informed during the on-site visit that once it is sent to the Attorney General, the Supreme Court has no way of knowing the outcome of that investigation. The Committee suggests that a communication mechanism be created for the exchange of information between the Supreme Court and the Office of the Attorney General in that regard. The Committee will formulate a recommendation in this regard. (see Recommendation 3.4.3 in Section 3.4 of Chapter II of this Report)

[98] The Committee notes that in a presentation made by the Foundation for Studies in the Application of Law to the team during its on-site visit, many of these issues regarding the Integrity Section were also raised.⁸⁷ It concluded that the Law on Illicit Enrichment of Public Officials and Employees is outdated; it provides for weak sanctions; there is a lack of independence regarding investigations of cases related to illicit enrichment; and that the competence of the Integrity Section has been weakened. It also provided data taken from an Accountability Report prepared by the Constitutional Chamber for 2009 – 2010. In it, the Integrity Section provides that it had received, for the year, 3274 statements from public servants who had begun a post, and 1301 from those that have left the public service. Of new public servants, there were 7015 statements yet to be filed.

[99] Finally, the Committee notes that as a coordination mechanism, a Coordinating Committee created by the Organic Law of the Coordinating Committee of the Judicial Sector and the Technical Executive Secretariat, is in place, comprising of the President of the Judicial Branch, the Minister of Justice, the Attorney General of the Republic, the Office of the Public Prosecutor and the President of the National Judicial Council. This Committee is responsible for important functions, such as promoting coordination between the institutions of the judicial sector and with those that are in any way related to the activities of that sector, as well as planning, coordinating, executing, supervising, and assessing, at the highest level, the plans, programs, projects, and actions to be carried out by the agencies of the judicial sector to satisfy its common needs and the particular needs of its component institutions. Nevertheless, during the on-site visit, the team took note that this Committee was not cited by either the Supreme Court of Justice or the Office of the Attorney General as an operational mechanism for coordination among the institutions of the judicial sector. The Committee notes that it would be beneficial for the country under review to make use of this valuable forum, not only to ensure that these agencies provide each other with mutual support in a timely and effective fashion, but also to carry out its functions for which it was created. The Committee will formulate a recommendation in this regard. (see Recommendation 3.4.4 in Section 3.4 of Chapter II of this Report)

⁸⁷ This presentation, “Statements of Net Worth of Public Servants and Employees” (Declaraciones patrimoniales de Funcionarios y empleados publicos) is available at: www.oas.org/juridico/spanish/mesicic4_slv_sc_decla.ppt

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

[100] In its Response to the Questionnaire, the country under review provided a table that contained results on some of the information requested, which was organized by the type of crime committed against the public administration, the tribunal that oversaw the case and its outcome.⁸⁸ The team for the on-site visit also received from the Court additional statistics that provided a comprehensive overview of the Court's work, for the years 2006 – 2011, not just for crimes committed against the public administration.⁸⁹ Examples of specific crimes include acts committed arbitrarily, non-compliance with duties, disobedience, bribery, illegal negotiations, influence peddling, extortion and misappropriation of public funds. Moreover, the team was informed that since 1997, the Information and Statistics Unit has been compiling statistics on the work of the Court, and of note has been the development of the Judicial Documentation Center, which for over ten years, has been publishing on-line the final decisions of the Supreme Court and other tribunals as well as case law and current legislation.⁹⁰ Though the information provided in the Response and during the on-site visit is comprehensive, and demonstrates the commitment by the country under review in maintaining relevant statistics regarding acts of corruption committed against the public administration, it appears that information is not maintained regarding the dismissal of cases because the statutes of limitations had lapsed. The Committee will formulate a recommendation in this regard. (see Recommendation 3.4.5 in Section 3.4 of Chapter II of this Report)

[101] In addition, in the tables provided by the country under review, the Information and Statistics Unit states that the information does not represent 100% of results, as there is no institutional computerized system that keeps track of differing criminal cases. As such, the information provided only represents 60% of the totality of cases. The team was informed during the on-site visit, however, that the Court is in the process of modernizing its systems so that it will be able to keep track of all these cases. In addition, the Unit noted that cases listed as 'pending' in the tables provided are due to either incorrect entries in their books or because the courts do not update their judgments or orders. As such, they are working on establishing mechanisms to keep track of their records. The Committee will formulate recommendations in this regard. (see Recommendations 3.4.6 and 3.4.7 in Section 3.4 of Chapter II of this Report)

[102] The Committee also notes that looking over the website for the Court, these comprehensive statistics on the important work being carried out in punishing acts of corruption are not publicly available. The Committee suggests that the country under review consider making these results readily available on its website, in order to promote transparency in their work. The Committee will formulate a recommendation in this regard. (see Recommendation 3.4.8 in Section 3.4 of Chapter II of this Report)

[103] Finally, the Committee observes that in the Response to the Questionnaire, the country under review states: "As a limit on transparency in the Supreme Court of Justice, there are no accountability mechanisms available to the public."⁹¹ This is the only oversight body, one that represents a branch of the Government, which does not have accountability mechanisms in place. Though all the other oversight bodies in this report are required to present an Annual Report of its work to the Legislative Assembly, the Supreme Court is not one of them. Indeed, the Committee notes that many of the aforementioned statistics that were provided regarding the work of the Court are not available online, and that the statistics on the work of the Integrity Section were found in a presentation made by a civil

88. See Response to the Questionnaire, paragraph 93, *supra* note 14 and Supreme Court of Justice, Unit for Information and Statistics, www.oas.org/juridico/PDFs/mesicic4_slv_unidad.pdf

89. See Table of Public Administration Offences, www.oas.org/juridico/PDFs/mesicic4_slv_csj.pdf and Jurisdictional Work of Courts and Tribunals, 2006 – 2011, www.oas.org/juridico/spanish/mesicic4_slv_csj_labor.xls

90. Judicial Documentation Center, www.jurisprudencia.gob.sv/visor2012/

91. Response to the Questionnaire, paragraph 139, *supra* nota 14.

society organization, taken from a report of the Supreme Court of Justice that the Committee could not find online. The Committee does note that during the team's visit to the Court, it did receive various accountability reports, such as the 2011 Annual Report from the Constitutional Chamber; and the Accountability Report for 9 years of Work by Dr. Miguel Angel Cardoza Ayala, Magistrate of the Supreme Court of Justice. Nevertheless, these are ad hoc in nature, and do not represent the total work of the Court. An accountability mechanism, an Annual Report of all the work of the Court, would include pertinent statistics on the Court's important work in sanctioning acts of corruption and in receiving and verifying the statements of net worth would prove and invaluable tool to the public to see how the work of the Court is being carried out, how it is using its resources and budget, and to hold it accountable for its work.. The Committee will formulate a recommendation in this regard. (see Recommendation 3.4.9 in Section 3.4 of Chapter II of this Report)

3.4. Conclusions and Recommendations.

[104] Based on the comprehensive review conducted with respect to the Supreme Court of Justice in the foregoing sections, the Committee offers the following conclusions and recommendations:

[105] The Republic of El Salvador has considered and adopted measures intended to maintain and strengthen the Supreme Court of Justice as an oversight body, as described in Chapter II, Section 3 of this Report.

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

- 3.4.1 Restore to the Integrity Section of the Supreme Court of Justice the authority to request directly from banks and financial entities the account information of public servants, rather than to go through the Supreme Court en banc. (See section 3.2. of Chapter II of this Report)
- 3.4.2 Assign to the Integrity Section the necessary budgetary and human resources that ensure its effective operation, within available resources. (See section 3.2. of Chapter II of this Report)
- 3.4.3 Establish a communication mechanism between the Supreme Court of Justice and the Office of the Attorney General, for the exchange of information on the outcome of investigations on illicit enrichment. (See section 3.2. of Chapter II of this Report)
- 3.4.4 Urge to make use of the Coordinating Committee of the Judicial Sector and of the Technical Executive Unit, not only to ensure that these agencies provide each other with mutual support in a timely and effective fashion but also to carry out its functions for which it was created. (See section 3.2. of Chapter II of this Report)
- 3.4.5 Maintain results on the number of cases regarding acts of corruption against the public administration that were dismissed because the statute of limitations had lapsed, in order to identify challenges and recommend remedial measures. (See section 3.3. of Chapter II of this Report)
- 3.4.6 Establish an institutional computerized system to keep track of all the differing criminal cases in place. (See section 3.3. of Chapter II of this Report)

- 3.4.7 Establish a mechanism that ensures that cases listed as pending are not incorrectly noted in the records of the Supreme Court. (See section 3.3. of Chapter II of this Report)
- 3.4.8 Publish the statistics on the work of the Supreme Court so that they are easily available to the public, such as making them available on its website. (See section 3.3. of Chapter II of this Report)
- 3.4.9 Publish a detailed account of the work of the Supreme Court that is easily and publicly available, similar to the annual reports that other oversight bodies are required to present. (See section 3.3 of Chapter II of this Report)

4. COURT OF ACCOUNTS OF THE REPUBLIC

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

[107] The Court of Accounts of the Republic (*Corte de Cuentas de la República*, CCR) has a set of provisions in its legal framework and other measures concerning, among others, the following:

[108] With respect to its objectives and functions, Article 195 of the Constitution of the Republic establishes that the Court of Accounts⁹² shall be entrusted, inter alia, with auditing the Public Treasury (*Hacienda Pública*), in general, and execution of the budget, in particular. Moreover, its powers include watching over the collection, custody, commitment, and distribution of public funds; as well as the liquidation of taxes, fees, rights and other contributions; authorizing every withdrawal of funds from the Public Treasury, in conformity with the budget; supervising, inspecting, and auditing the accounts of the functionaries and employees who administer or manage public funds or property, and to try cases arising from such accounts; supervising the economical management of autonomous state institutions and businesses, and entities supported by funds or that receive subventions or subsidies from the Public Treasury; inform the President of the Republic, the Legislative Assembly, and the other respective hierarchical superiors, in writing of the proven relevant irregularities of every public official in the management of property and funds subject to audit. Article 5 of the Law of the Court of Accounts of the Republic (LCCR) assigns additional functions to the Court of Accounts.⁹³

[109] Pursuant to Article 2 of the LCCR, the CCR is independent of the Executive Branch functionally, administratively, and in respect of its budget. Its independence is based on the technical nature of its work and its activities are totally independent of any private interest. In addition, all public sector agencies and entities and their staff are, without exception, subject to the Court's supervision and control. The jurisdiction of the Court also extends to the activities of entities, agencies, and individuals receiving occasional allocations, privileges, or shares of public funds.⁹⁴

[110] Article 196 of the Constitution further establishes that, in order to carry out its jurisdictional functions, the CCR shall be divided into one Chamber of Second Instance and Chambers of First Instance. The former shall be composed of the President of the Court and two Magistrates. The latter shall each be composed of two judges.⁹⁵ The jurisdictional competence of the Chambers of First and

92. Article 195 of the Constitution of the Republic, *supra* note 3.

93. Article 5 of the Law of the Court of Accounts of the Republic (LCCR), www.oas.org/juridico/PDFs/mesicic4_slv_ley_corte.pdf

94. Article 3, *Ibid.*

95. See also Articles 13 and 14 of the LCCR, *Ibid.*

Second Instance of the CCR shall apply only in respect of the functions and powers of the Court that involve legal acts that may give rise to the establishment of administrative or financial sanctions (*responsabilidades de carácter administrativo o patrimonial*).⁹⁶

[111] According to Article 70 of the LCCR, reviews of and appeals against judgments handed down by the Chambers of First Instance shall be heard by the Chamber of Second Instance. Furthermore, in its Response to the Questionnaire, the country under review states that “the only external appeal allowed against judgments of the Chambers of the Court of Accounts of the Republic is, exceptionally, an appeal for the protection of a constitutional right (*amparo*) before the Constitutional Chamber of the Court.”⁹⁷

[112] As for the actions needed to apply or enforce the decisions of the CCR, Article 93 of the CCR Law establishes that it is incumbent upon the President of the CCR to pass final judgments in accounts proceedings and to issue settlements. Convictions are forwarded to the Attorney General, in order for him to order execution.⁹⁸

[113] As for the manner in which their powers are vested in them, the President of the Court and the Magistrates of the Chamber of Second Instance are elected by the Legislative Assembly for a three-year term and may be re-elected.⁹⁹ They may not be removed from office except for just cause by a resolution of the Legislative Assembly. Moreover, the Chamber of Second Instance shall appoint, remove, grant leave to, and accept resignations from the judges of the Chambers of First Instance.

[114] It is incumbent upon the President of the CCR to appoint and remove functionaries and employees of the Court.¹⁰⁰ In its Response to the Questionnaire, the country under review points out that the President, with the support of the CCR’s Human Resources Directorate, takes steps to ensure that the minimum requirements for each position and job at the Court are met and is responsible for conducting the process of recruitment, selection, induction, promotion, transfer, suspension, punishment, and severance of Court personnel.¹⁰¹ It is also incumbent upon the President to issue the Staff Rules, which shall establish the duties, rights, and powers, pay scale, post assessments, and a career plan for the entry, stay and promotion of the Court’s staff.¹⁰²

[115] Thus, Article 17 of the Internal Regulations for the Staff of the Court of Accounts of the Republic (RIPCCR) establishes the administrative career regulations for the entry, advancement, and development of Court functionaries and employees, based on individual merit and qualification for the job.¹⁰³ The Staff Rules stipulate entry requirements, the papers that have to be submitted, and the rules governing disqualification due to kinship.¹⁰⁴ Likewise, Article 30 of the RIPCCR also addresses the prohibitions to

96. Article 15, *Ibid.*

97. See paragraph 63 of the Response to the Questionnaire, *supra* nota 14, Article 247 of the Constitution of the Republic, *supra* note 3 and Article 12 of the Law of Constitutional Procedures, www.oas.org/juridico/PDFs/mesicic4_slv_ley_procedimientos.pdf

98. Moreover, Article 93 establishes that the Court will strictly enforce Article 5(10) of the LCCR, which stipulates that it is incumbent upon the Court to require government functionaries and employees to enforce collection of sums payable to public sector entities and agencies and that said functionaries and employees pay their own dues.

99. Article 196 of the Constitution, *supra* note 3.

100. Article 7 of the LCCR, *supra* note 3.

101. See paragraph 67 of the Response to the Questionnaire, *supra* nota 14 and Articles 26(7) and 26(8) of the Functional Organic Regulations of the Court of Accounts of the Republic.

www.oas.org/juridico/PDFs/mesicic4_slv_regla_organico_funcional.pdf

102. Article 12 of the LCCR, *supra* note 3.

103. Internal Regulations of the Court of Accounts of the Republic, RIPCCR,

www.oas.org/juridico/PDFs/mesicic4_slv_regla_interno_corte.pdf

104. Articles 5 – 9, *Ibid.*

which CCR staff are subject, such as abandoning their work during office hours without proper cause or permission; engaging in any kind of political, party-political, or religious activity in the workplace; issuing reports, legal opinions, resolutions, or decisions in which the staff member or his/her relatives up to the fourth degree of kinship or second degree of affinity have a vested interest; or altering, falsifying, destroying, or stealing any document, securities, or information pertaining to the institution. Moreover, Articles 31 – 33 of the same Rules of Procedure contain disciplinary provisions and establish punishments, their enforcement, and the units responsible for enforcing them.

[116] In its Response to the Questionnaire, the country under review notes that the CCR has adequate regulations describing the functions of its personnel, such as the Functional Organic Rules of Procedure of the Court of Accounts of the Republic, the Regulations for Complying with its Jurisdictional Function, the Internal Regulations for Personnel of the Court of Accounts of the Republic, the Regulations Governing Response to Citizens' Complaints, the Regulations Governing the Remittal of Audit Reports to the Chambers of First Instance of the Court of Accounts of the Republic, the Regulations Governing the Specific Technical Internal Control Standards of the Court of Accounts of the Republic, and the Job Description Manual and Institutional Training Plan.¹⁰⁵

[117] The RIPCCR also contains provisions regarding the drafting and execution of an Annual Training Plan by the Department of Training based on the needs of the Court and pre-established programs, with facilities for the personnel attending the courses. This Department and the Department of Human Resources are Internal Regulations establish that it is a right of the public servants and staff to receive the training that the Court deems necessary for the performance of their duties.¹⁰⁶

[118] Regarding the way in which citizens are informed of its objectives and powers, the country under review writes: *“Concerning citizen participation in the work and activities of the Court of Accounts of the Republic, there are the Regulations Governing Response to Citizens' Complaints, which recognize active participation by citizens in social oversight of the civil service. Those regulations provide for citizens' complaints with a minimum of formality, even accepting complaints via e-mail, fax, or telephone Nor are there any impediments to the complainant remaining anonymous. Complainants are assured that both their identity and the contents of the complaint will be treated confidentially. The Department of Citizen Participation in the Court of Accounts is responsible for responding to citizens' complaints.”*¹⁰⁷

[119] As regards internal control mechanisms, the CCR has an Internal Audit Department responsible, among other things, for auditing the CCR's operations, activities, and programs and evaluating the administrative management of the various units with a view to achieving efficiency, effectiveness, and cost-effectiveness and to recommending to the organizational units recommendations for strengthening the Court's internal controls system.¹⁰⁸

[120] The LCCR establishes that the CCR is independent of the Executive in a number of areas, including budget. The Court is responsible for preparing its proposed budget and submitting it to the

105. See Response to the Questionnaire, paragraph 69, *supra* note 14 and the following internet for the cited documents, www.oas.org/juridico/spanish/mesicic4_slv_sp.htm.

106. Articles 37 – 40 of the RIPCCR, *supra* note 103.

107. See Response to the Questionnaire, paragraph 75, *supra* note 14, Article 19 of the Functional Organic Regulations of the Court of Accounts of the Republic, ROFCCR, www.oas.org/juridico/PDFs/mesicic4_slv_regla_organico_funcional.pdf and the Regulations Governing Response to Citizens' Complaints, www.oas.org/juridico/PDFs/mesicic4_slv_regla_atencion.pdf. The Court also has a website that tells citizens how they can file complaints at: www.cortedecuentas.gob.sv/index.php/participacion

108. See Article 4 of the LCCR, *supra* note 93 and Article 17 of the ROFCCR, *ibid*.

Executive Branch for inclusion in the national budget (*Presupuesto General del Estado*). Furthermore, the country under review points out that “*any adjustments to said proposed budget that the Legislative Assembly deems necessary shall be made in consultation with the President of the CCR and the Ministry of Finance.*”¹⁰⁹

[121] With respect to mechanisms for coordinating with other government institutions, in its Response to the Questionnaire the country under review underscores the Court’s relations with the FGR, to which it reports whenever it considers that there are indications of crimes having been committed in audits and in opinions regarding the reliability of accounts (*juicios de cuentas*). Article 56 of the LCCR stipulates that the President of the Court shall notify the Attorney General of possible criminal acts that the Court may notice in the exercise of its functions.¹¹⁰ In addition, Article 103 of the LCCR establishes the obligation of civil servants to cooperate with the Court’s auditors. This obligation extends to private individuals who have entered into contractual relations with public sector entities and agencies. Banks and other financial system institutions are also obliged to provide information during audits.¹¹¹

[122] In its response to the Questionnaire, the country under review notes that, pursuant to Articles 131.36 and 199 of the Constitution, the [President of the] CCR is obliged to furnish the Legislative Assembly each year with a detailed and documented report on the work of the Court and that “*this duty must be carried out within three months of the end of the fiscal year. Failure to fulfill this duty shall be considered just cause for dismissal. This report is public and is posted on the official website of the Court of Accounts of the Republic.*”¹¹²

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

[123] The Court of Accounts of the Republic has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 4.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures.

[124] As noted under previous sections, the Government Ethics Tribunal is not operating, due in part because not all the members of the Tribunal have yet been named. Under Article 11 of the Government Ethics Law, the Court of Accounts is one of five government bodies that designate a representative to this Tribunal. Up to the date of the on-site visit, only the Supreme Court of the Republic had done so, though subsequently, the President of the Republic, the Legislative Assembly, and the Public Ministry have designated their members. During the on-site visit by the team to the Court of Accounts, the President of the Court noted that it was prepared to name its member to the Tribunal, but it would only do so once the member from the Legislative Assembly was elected, as this person would act as the President of the Tribunal. The Committee encourages the Court of Accounts to designate its representative as it is the only institution yet to do so. The Committee will formulate a recommendation in this regard. (see Recommendation 4.4.1 in Section 4.4 of Chapter II of this Report)

[125] Finally, the Committee received comments during the on-site visit from civil society regarding the independence of the Court of Accounts and its dual role as both investigator or auditor on the use of

109. Article 2 of the LCCR, *ibid.*, and paragraph 73 of the Response to the Questionnaire, *supra* note 14.

110. The manner in which possible criminal acts are to be notified is indicated in Articles 23 – 25 of the Regulations Governing the Determination of Liabilities, www.oas.org/juridico/PDFs/mesicic4_slv_regla_determinacion.pdf

111. See Articles 103 – 106 of the LCCR, *supra* note 93.

112. See paragraph 76 of the Response to the Questionnaire, *supra* note 14 and the Annual Reports at: www.cortedecuentas.gob.sv/index.php/publicaciones/category/5-memoria-de-labores

public funds, and that of judge for determining the financial or administrative liability for any misuse of those funds.¹¹³ The Committee notes that this is an issue that the Republic of El Salvador may consider worth reviewing.

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

[126] In its Response to the Questionnaire, the country under review provided copies of the Annual Reports issued by the Court of Accounts for the years spanning 2006 – 2010, while the Committee found online the Annual Report for 2011.¹¹⁴ In these Reports, the Court of Accounts provides information on the work plan for the year, the annual budget, as well as results on its auditing and administrative work, and the outcome of cases. It also provides information on the amount fined in a given year and the training undertaken by the Court.

[127] Specifically, these Reports provide the oversight activities undertaken by the CCR, such as the number of audits and special examinations carried out in a year, as well as the number of expert reports requested by a particular institution, and their origin, such as if they were carried out as part of the annual work plan, came from a citizen complaint, or requested by a government or municipal institution. Results are also provided on the outcome of these audits and special examinations, such as if they have been completed, a report is to be issued, a report is pending to be taken up, or an audit is in process. They also provide a breakdown on the type of audit that was carried out, if it was financial in nature, focused on internal control or with compliance of legal norms or if administrative in nature. These outcomes form the basis to determine financial or administrative sanctions. Results are also presented with respect to the amount of irregularities discovered through an audit or special examination.

[128] Since the Court of Accounts also acts as a tribunal over these audits, results are also reflected in the Annual Reports regarding the decisions reached and the total monetary amount of sanctions imposed. These sanctions imposed are broken down into type, whether it is financial, administrative or both, as well as the outcome of the case, whether there was a sanction imposed, if there was an acquittal or if another type of decision was reached. Information is also provided in the number of cases that were appealed, and their outcome.

[129] With respect to the monetary amount of the sanctions imposed, the team, during the on-site visit, requested information regarding the amounts that have entered into the public treasury in each of the past five years, as a result of the imposition of these sanctions. For example, in the 2010 Annual Report, this totaled \$12 505 677.53 US dollars and in the 2011 Annual Report, this totaled \$24 196 372.17. However, the team was informed that the Court of Accounts does not maintain this type of statistic, as it is an attribution of the Office of the Attorney General to enforce the judgments issued by the Court of Accounts, and therefore it is this body that would be able to provide this type of information. In that regard, a recommendation was formulated to the Office of the Attorney General to maintain these kinds of statistics.¹¹⁵ Nevertheless, the Committee suggests that the Court of Accounts coordinate with the Office of the Attorney General in maintaining the amount that has entered the public treasury each year, given the significant amount that is being fined. The Committee will formulate a recommendation in this regard. (see Recommendation 4.4.2 in Section 4.4 of Chapter II of this Report)

113. See the submission by the National Association of Private Business of El Salvador to the MESICIC, www.oas.org/juridico/PDFs/mesicic4_slv_sc_ANEP.pdf and www.oas.org/juridico/PDFs/mesicic4_slv_sc_ENADE.pdf

114. These Annual Reports for 2006 – 2010 are found at the following link: www.oas.org/juridico/spanish/mesicic4_slv_sp.htm, while the Annual Report for 2011 is found here: www.cortedecuentas.gob.sv/index.php/publicaciones/category/5-memoria-de-labores

115. See Recommendation 1.4.6 under Section 1.4 of Chapter II of this Report.

[130] In addition, while the Committee does note that the information provided in the Annual Reports is comprehensive, and demonstrates the commitment by the country under review in maintaining relevant statistics regarding acts of corruption committed against the public administration. However, upon review of these Reports, it appears that information is not maintained regarding the dismissal of cases because the statutes of limitations had lapsed. The Committee will formulate a recommendation in this regard. (see Recommendation 4.4.3 in Section 4.4 of Chapter II of this Report)

[131] The Committee would also like to highlight that in these Annual Reports, information is provided regarding the training undertaken by the Court of Accounts for its personnel, for example, the number of training events undertaken during the year, and the total number of hours these events involved. Training is provided with respect to the legal framework in place, on audits and investigation, on the use of computers and software, management quality, institutional strengthening and development, as well as occupational health and prevention. While these results demonstrate the commitment by the Court of Accounts to continuously train its personnel, the Committee believes it should make these training courses and materials readily available online, as one finds in the case of the Supreme Court of the Republic, the Office of the Attorney General and Government Ethics Tribunal. The Court of Accounts does have a link to training on its website, but the website contains no information. The Committee will formulate a recommendation in this regard. (see Recommendation 4.4.4 in Section 4.4 of Chapter II of this Report).

[132] Another important set of results presented by the Court of Accounts is the number of citizen complaints received during a given year. These complaints are then distributed to the differing Audit Directorates, or are archived for not complying with the requirements for presenting a complaint. The complaints are also broken down as to its origin, for example, if it came from a natural or legal person, and the manner the complaint was presented, for example, if it was written, oral, or obtained through the media, such as press, radio or television. These results demonstrate the commitment by the Court of Accounts to make transparent its work, however, the Committee notes that information is not maintained on the final outcome of these complaints, such as if they led to sanctions, the amount imposed, or if it was dismissed. The Committee will formulate a recommendation in this regard. (see Recommendation 4.4.5 in Section 4.4 of Chapter II of this Report)

[133] Finally, the Committee notes that these Annual Reports are only available online for the past three years. The Committee was provided a copy of these Reports for the years 2006 – 2010, not because they were all available online. Moreover, the Committee had a difficult time accessing the 2011 Annual Report, as it is difficult to find this document in the website of the Court of Accounts.¹¹⁶ The Committee suggests that the country under review consider making all these Annual Reports easily and readily available on its website, in order to promote transparency of their work. The Committee will formulate a recommendation in this regard. (see Recommendation 4.4.6 in Section 4.4 of Chapter II of this Report)

4.4. Conclusions and recommendations

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

116. In addition, the 2011 Annual Report, which is available in pdf form, is security protected, which does not allow for printing, or document search.

[135] **The Republic of El Salvador has considered and adopted measures intended to maintain and strengthen the Court of Accounts of the Republic as an oversight body, as described in Chapter II, Section 4 of this Report.**

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

- 4.4.1 Appoint the Court of Accounts' member to the Government Ethics Tribunal. (See section 4.2. of Chapter II of this Report)
- 4.4.2 Maintain statistics on the extent to which sanctions by the Court of Accounts have been enforced, in coordination with the Office of the Attorney General. (See section 4.3. of Chapter II of this Report)
- 4.4.3 Maintain results on the number of cases that were dismissed by the Court of Accounts because the statute of limitations had lapsed, in order to identify challenges and recommend remedial measures. (See section 4.3. of Chapter II of this Report)
- 4.4.4 Make available on the website of the Court of Accounts the training programs being carried out for its personnel. (See section 4.3. of Chapter II of this Report).
- 4.4.5 Maintain statistics on the final outcome of citizens complaints, such as the number of sanctions imposed, in order to identify challenges and recommend remedial measures. (See section 4.3. of Chapter II of this Report).
- 4.4.6 Make all the Annual Reports of the Court of Accounts easily and readily available to the public on its website. (See section 4.3. of Chapter II of this Report).

III. BEST PRACTICES

[137] In accordance with Section IV of the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round* and the *Format* adopted by the Committee for the Reports of said Round, references is made to the best practices identified by the country under review, which it has expressed its wish to share with the other member States of the MESICIC, as it could be beneficial to them:

[138] **1. With respect to the Subsecretariat for Transparency and Anticorruption of the Presidency:**

[139] “Accountability Mechanisms of the Executive Branch Agencies:” This initiative ensures citizen participation in public governance and the responsibility by government bodies to be accountable to them by the current government administration. Institutions and their officials are to meet parameters on efficiency, effectiveness, and in particular transparency. These commitments are part of Five-Year Development Plan 2010-2014, which stipulates as one of its priority areas the construction of state policies and the promotion of organized social participation in the process of formulating public policy. It also, states that achieving this goal requires a system of accountability and transparency. The country under review states that this is a best practice to the extent that public institutions are open, report and report to the public, and achieve better trust and legitimacy in their actions. It also ensures the right of access to public information.

[140] More information is available in paragraphs 143 – 155 of the Response to the Questionnaire as well as the presentation made to the team during its on-site visit, Presentation on Accountability Mechanisms of the Executive Branch, (*Presentación sobre Rendición de Cuentas del Órgano Ejecutivo*).¹¹⁷

[141] **2. With respect to the Government Ethics Tribunal:**

[142] “Cooperation Agreements with Universities in El Salvador.” The objective of this initiative is to create “Multiplier Agents of the Government Ethics Law”. Under these agreements, the Tribunal trains university students on topics related to the Government Ethics Law and its Regulations, as well as effective training techniques, so that they may be able to provide lectures to other students in other university faculties and other public or private institutions. By implementing this program, the Tribunal is attempting on one hand on broadening the knowledge of its work and of the ethical norms in place in the public sector, and secondly creating in younger generations an awareness of the value of ethics in the performance of public functions. This is considered a best practice because it involved minimal investment of resources, promotes an ethical culture among the student population who will eventually become public servants and at the same time, enables them to act as trainers on the topic of ethics in the public service, above all to the rest of the student population. To that end, agreements have been entered into with the University Doctor Jose Matias Delgado, the Central American University Jose Simon Canas, the Technical University of El Salvador and the Catholic University of El Salvador.

[143] More information is available in paragraphs 156 – 165 of the Response to the Questionnaire. The Committee also notes that during the team’s on-site visit, the representatives of the Tribunal indicated that with respect to this best practice, the Tribunal has entered into seven agreements with private universities, signed two agreements with Puerto Rico and Argentina, signed an agreement with the National Institute for Institutional Development of El Salvador and that more than 10,400 students, civil servants and private citizens had been trained.

IV. FOLLOW-UP ON PROGRESS AND NEW AND RELEVANT INFORMATION AND DEVELOPMENTS WITH REGARD TO THE IMPLEMENTATION OF RECOMMENDATIONS SUGGESTED IN THE COUNTRY REPORT IN THE FIRST ROUND OF REVIEW¹¹⁸

[144] The Committee will refer below to the progress, information, and new developments made by the Republic of El Salvador in relation to the recommendations and measures suggested by the Committee for implementation in the Report of the First Round, and with respect to which the Committee deemed that additional attention was required in the Reports from the Second and Third Rounds,¹¹⁹ and shall, as appropriate, take note of those that have been satisfactorily considered and those that require additional attention from the country under review. In addition, where appropriate, it will address the continued validity of those recommendations and measures and, as applicable, restate or reformulate them pursuant to section VI of the Methodology adopted by the Committee for the Fourth Round of Review.

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

117. Available at www.oas.org/juridico/spanish/mesicic4_slv_rendi.ppt.

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

119. These Reports are available at: www.oas.org/juridico/english/slv.htm

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

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

Recommendation:

Strengthening the implementation of laws and regulatory systems related to conflicts of interest, in order to permit the effective and practical enforcement of a system of public ethics.

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

Consider the possibility of creating or strengthening preventive mechanisms in the access to public-sector positions, applicable to all public officials, in accordance with the scope determined in the law itself, and in relation to the positions it may determine, taking into account the following aspects:

- i. Supplement the standards of general applicability for entry into the public-sector, strengthening the preventive mechanisms that facilitate the detection of possible conflicts of interests.*

To this end, consideration could be given to the provisions set forth in Articles 18 and 19 of the Civil Service Law, as a point of reference for the development of such legal provisions, in order to ensure the impartiality that civil servants must observe in discharging their positions, posts or commissions and after the conclusion thereof. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

[146] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments.¹²⁰ In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following:

[147] - the Legislative Assembly, with the objective of strengthening the Government Ethics Tribunal and ensure its efficacy in preventing and sanctioning acts that violate public ethics, considered it convenient to comprehensively reform the Government Ethics Law, that was in force since 2006, by repealing it and enacting a new one, which entered into force on January 1, 2012.

[148] - the country under review also notes that with respect to the identification and prevention of causes of conflicts of interest, the new Law includes, under Article 8, a new category, "improper benefits," in which it there is a legal presumption of an improper benefit in the cases of acceptance or solicitation of any goods or service of economic value or any other additional advantages by a public servant, if they come from a person that a) develops activities regulated or overseen by the institution; b) manages or operates concessions, authorizations, privileges or franchises offered by the institution; c) is a vendor or contractor of goods or services to the institution; d) has interests that may be significantly affected by the decision, delayed action or omission of that institution.

[149] The Committee also notes that the Government Ethics Tribunal expanded its scope of application, to now apply to those persons that, although not public servants, administer or manage public funds or goods. Moreover, the Law now applies to former public servants.

120. See paragraphs 166 – 167 of the Response to the Questionnaire, *supra* note 14.

[150] In addition, the Committee notes that the Government Ethics Tribunal has done much to promote the Government Ethics Law, the duties and prohibitions applicable to public servants, and the sanctions that may arise for violation of these duties or prohibitions.

[151] The Committee takes note of the steps taken by the country under review to advance in its implementation of the measure of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that while the Government Ethics Tribunal has been reformed, it does not create a mechanism to identify possible conflicts of interest that a public servant may have upon entry into the public service. Indeed, the Committee notes that one important ethical duty in the old Law that of the requirement to present a statement of net worth to the Integrity Section of the Supreme Court of Justice, is not found in the new version of the Law. The Committee believes that the presentation of this document could assist in the possible identification of conflicts of interest, not just upon entry into the public service, but also when a public servant changes a position.

[152] Given the foregoing, the Committee considers the reformulation of measure b)(i) of the recommendation for section 1.1 of Chapter IV of this Report, to focus on that element still required to be addressed by the country under review, as follows:

[153] Establish mechanisms to detect possible conflicts of interest by public servants upon entry into the public service or when a change in position occurs. (see measure a) of section 1.1 of Annex 1 to this Report)

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

Consider the possibility of creating or strengthening preventive mechanisms in the access to public-sector positions, applicable to all public officials, in accordance with the scope determined in the law itself, and in relation to the positions it may determine, taking into account the following aspects:

- ii. Develop other mechanisms that identify those cases that may arise in the course of the performance of public functions, and which could constitute conflicts of interest. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)*

[154] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments.¹²¹ In this regard, the Committee notes the following as a step that leads it to conclude said measure has been satisfactorily considered:

[155] - the country under review notes that with respect to the identification and prevention of causes of conflicts of interest, the reformed Government Ethics Law includes a new category, “improper benefits,” in which it there is a legal presumption of an improper benefit in the cases of acceptance or solicitation of any goods or service of economic value or any other additional advantages by a public servant, if they come from a person that a) develops activities regulated or overseen by the institution; b) manages or operates concessions, authorizations, privileges or franchises offered by the institution; c) is a vendor or contractor of goods or services to the institution; d) has interests that may be significantly affected by the decision, delayed action or omission of that institution.

121. *Ibid.*, paragraphs 168 – 169.

[156] The Committee also notes that the Government Ethics law contains various provisions that identify what constitutes conflicts of interest and prohibitions on the part of public servants.¹²² In addition, public servants under Article 29 of the Law (Article 17 of the former Law), have the right to consult the Tribunal and the Ethics Commission in the agency where the public servant works, on the application of the law and with respect to situations related to government ethics. This system has been used by public servants, as noted in the Annual Reports of the Tribunal. For example, there were 18 such requests for consultations in 2009 – 2010, and this increased to 55 requests for 2010 – 2011.¹²³

[157] Given the foregoing, the Committee takes note of the satisfactory consideration of the aforementioned measure of the recommendation.

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

Consider the possibility of creating and implementing mechanisms that make it possible to determine in specific cases whether those who perform public functions have conflicts of interest, and which at the same time make it possible to take the measures needed to protect the public interest, such as separation from their functions, official repudiation of the matter, their renouncing any private interests in the conflict, or the invalidity of the decisions by those who are in such a position. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

[158] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments.¹²⁴ In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following:

[159] - with respect to necessary measures to protect the public interest in conflicts of interest, the reformed Government Ethics Law includes a new ethical duty to abstain in matters in which the public servant, his or her spouse, cohabitant, relatives of the fourth degree of consanguinity or second degree of affinity or business partner, have any conflict of interest.

[160] The Committee also notes that the Law contains sanctions against public servants that violate their duties, through the imposition of fines.

[161] The Committee takes note of the steps taken by the country under review to advance in its implementation of the measure of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that the Government Ethics Law, while making it possible to determine in specific cases whether those who perform public functions have conflicts of interest, does not contain measures to protect the public interest, such as separation of a public servant from its functions, the invalidation of decisions by those who are in a position of a conflict of interest, or allow for public servants to renounce any private interests that may lead to a conflict of interest.

[162] Given the foregoing, the Committee considers the reformulation of measure c) of the recommendation for section 1.1 of Chapter IV of this Report, to focus on those elements still required to be addressed by the country under review, as follows:

122. See for example, Articles 3(j), 5(c), 6, and 8 of the Government Ethics Law, *supra* note 27.

123. See also paragraph 110 of the Response to the Questionnaire, *supra* note 14.

124. *Ibid.*

[163] Create mechanisms to protect the public interest when a conflict of interest arises, such as the separation of a public servant from their functions when such a conflict is identified. (see measure b) of section 1.1 of Annex 1 to this Report)

[164] Create mechanisms that invalidate a decision made by a public servant who is in a conflict of interest. (see measure c) of section 1.1 of Annex 1 to this Report)

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

Consider strengthening appropriate and relevant restrictions for those who cease to hold public positions and the measures for the enforcement thereof, upholding due balance with an individuals' constitutional right to freedom of employment, for a reasonable period (see section 1.1.2 of Chapter II of this report) and considering, inter alia, the following possibilities:

- i. Establish terms and conditions on how a former employee may use information or documents to which he or she had access in public service.*
- ii. Refrain from participating in matters directly related to the formerly held position.*
- iii. Consider the possibility for the oversight body to provide former public employees with guidance and to clarify any doubts that might arise from the specific activities in which they are engaged. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)*

[165] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments.¹²⁵ In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following:

[166] - with the enactment of the new Government Ethics Law, post employment restrictions are now in place. Article 7 of this Law provides that during one year after leaving the public service, a former public servant may not a) provide, in person or through an intermediary, information, advice or represent individuals or businesses in the process, procedures, proceedings or claims that were submitted to that person while in public service or in which directly or indirectly that public servant participated in while in the public service; b) work for an individual or business with which the institution the former public service worked in had entered into contracts for works, goods or services, and to which that person was involved in the procurement process or contract award within the previous year.

[167] The Committee takes note of the steps taken by the country under review to advance in its implementation of the measure of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that while the Government Ethics Tribunal has been reformed to include post employment restrictions on public servants, it has not created mechanisms that establish the terms and conditions on how a former employee may use information or documents to which he or she had access in public service, nor mechanisms to provide these former public employees with guidance and to clarify any doubts that might arise from the specific activities in which they are engaged.

125. *Ibid.*, paragraphs 170 – 171.

[168] Given the foregoing, the Committee considers the reformulation of measure d) of the recommendation for section 1.1 of Chapter IV of this Report, to focus on those elements still required to be addressed by the country under review, as follows:

[169] Establish terms and conditions on how a former employee may use information or documents to which he or she had access in public service. (see measure d) of section 1.1 of Annex 1 to this Report)

[170] Consider the possibility for the oversight body to provide former public employees with guidance and to clarify any doubts that might arise from the specific activities in which they are engaged. (see measure e) of section 1.1 of Annex 1 to this Report)

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

The Committee encourages the Republic of El Salvador to continue supporting the work of the Court of Accounts by establishing indicators that make it possible to determine its results more precisely. (The basis for this measure is found in section 1.1.3 of Chapter II of the First Round Report)

[171] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments.¹²⁶ In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following:

[172] - the Court of Account's Annual Report for 2010 contains information regarding the strengthening of the work of this Court, such as a) the adoption of the project "Map of Government Risks in the Management of Public Resources" that was developed under the Technical and Scientific Bilateral Cooperation Program between the Government of Mexico and the Government of El Salvador. The objective of this Map is to identify the illegal acts carried out by public servants or private actors who manage state resources, such as embezzlement, influence peddling or illegal use of state assets, that would allow for the adoption of preventive and corrective measures for managing the identified risks; b) Updating of the Attention and Reception of Citizen Complaints; and; c) preparation of a proposed Prevention Plan of Risks in the Use of Public Resources.

[173] The Committee takes note of the steps taken by the country under review to advance in its implementation of the measure of the foregoing recommendation as well as the need for it to continue to give attention thereto, bearing in mind that it is unclear how these new developments make it possible for the Court of Accounts to determine its results more precisely. (see measure f) of section 1.1 of Annex 1 to this Report)

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

Compile information regarding conflict-of-interest cases, to establish mechanisms of evaluation that make it possible to verify the results in this area. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

126. *Ibid.*, paragraphs 172 – 176.

[174] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments.¹²⁷ In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following:

[175] – the country under review notes that with the adoption of the new Government Ethics Law, conflicts of interest is for the first time being expressly regulated. Seeing as this Law was enacted on January 1, 2012, there is no information yet that would allow for verification in results in this area.

[176] The Committee takes note of the steps taken by the country under review to advance in its implementation of the measure of the foregoing recommendation as well as the need for it to continue to give attention thereto. (see measure g) of section 1.1 of Annex 1 to this Report)

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

Recommendation:

Consider strengthening the implementation of statutes and regulatory systems with respect to the control of resources of the public administration.

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

Perform an evaluation of the use and effectiveness of the standards of conduct for ensuring the proper conservation and use of public resources and of the mechanisms for compliance with them in the Republic of El Salvador, and instruments for preventing corruption and, based on the results of that evaluation, consider adopting measures to promote, facilitate and consolidate or ensure the effectiveness of them, for that purpose. (the basis for this measure is found in section 1.2.3 of Chapter II of the First Round Report)

[177] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments.¹²⁸ In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following:

[178] - *“In order to evaluate the use and effectiveness of standards of conduct for ensuring the proper conservation and use of public resources, the Court of Accounts of the Republic has carried out the following actions: a) in the framework of "Coordination of the National System for Control and Audit of the Public Administration" an analysis was carried out on the interrelation, operation and regulations governing these components, having defined the Strategy and Action Plans for its operation. b) As part of efforts to strengthen and standardize the rules applicable to institutions relating to public resources, we conducted a review and updated forty-five (45) projects on the updating of the Technical Standards on Specific Internal Control (NTCIE) of an equal number of public institutions. c) The project " Map of Government Risks in the Management of Public Resources ", was approved under the Technical and Scientific Bilateral Cooperation Program between the Government of Mexico and the Government of El Salvador.”*

127. *Ibid.*, paragraph 177.

128. *Ibid.*, paragraph 178.

[179] The Committee takes note of the steps taken by the country under review to advance in its implementation of the measure of the foregoing recommendation as well as the need for it to continue to give attention thereto, bearing in mind that while it has taken steps to perform an evaluation of the use and effectiveness of the standards of conduct in place for ensuring the proper conservation and use of public resources, it is unclear if measures have been adopted to promote, facilitate and consolidate or ensure the effectiveness of these standards.

[180] Given the foregoing, the Committee considers the reformulation of measure c) of the recommendation for section 1.2 of Chapter IV of this Report, to focus on those elements still required to be addressed by the country under review, as follows:

[181] Consider adopting measures to promote, facilitate and consolidate or ensure the effectiveness of the standards of conduct for ensuring the proper conservation and use of public resources and of the mechanisms for compliance with them in the Republic of El Salvador. (see the only measure of section 1.2 of Annex 1 to this Report)

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

Recommendation:

Consider strengthening the mechanisms it has to require government officials to report to the appropriate authorities acts of corruption in the performance of public of which they are aware.

Measures suggested by the Committee that require information on their implementation or which require additional attention within the Framework of the Second and Third Rounds:

- b) Consider adopting and implementing measures of protection for public officials who report acts of corruption in good faith, including those who report corruption by their superiors, such that they find assurances in the face of the threats or reprisals to which they may be subject as a result of carrying out this obligation. (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report)*
- c) Provide that the scope of the obligation contained in Article 312 of the Criminal Code refer both to punishable acts the public servant learns of in the performance of public functions, and on occasion of them, and acts of corruption that they become aware of not in the performance of said functions. (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report)*
- e) Consider the possibility of strengthening those administrative and legal proceedings related to the effective application of the applicable sanctions to those public officials and employees who engage in acts of corruption. (the basis for this measure is found in section 1.3.3 of Chapter II of the First Round Report)*
- f) Compile information on the submission of reports of acts of corruption by public officials or employees that make it possible to verify the results in this area. (the basis for this measure is found in section 1.3.3 of Chapter II of the First Round Report)*

[182] In its Response, the country under review noted that it does not have any developments to report with respect to the measures of the foregoing recommendation.¹²⁹ The Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see measures a), b), c) and d) of section 1.3 of Annex 1 to this Report)

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

Recommendation:

Consider expanding and complementing the systems for registering the income, assets and liabilities, and regulate their publication, as appropriate, through pertinent provisions.

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

Consider the advisability of implementing a specific law that includes time frames and reasonable circumstances for demanding the periodic and updated submission of declarations of net worth by those persons obligated to do so, so as to diminish opportunities for corruption and to prevent and detect crimes against government property during the performance of public functions. (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report)

[183] In its Response, the country under review noted that it does not have any developments to report with respect to this measure of the foregoing recommendation.¹³⁰ In that regard, the country under review notes that, “[T]here is no progress to report with respect to the recommended measure. With respect to this recommendation, it is worth noting that the regime regarding the instances for submission of statements of net worth of public officials and employees, that is, upon beginning and leaving a post, is regulated by art. 240 of the Constitution of the Republic of El Salvador, the reason for which any modification at the instances for submission of a statement would require a constitutional amendment.”

[184] The Committee notes that the country under review has raised the need for a constitutional amendment to require public servants to submit a statement of net worth other than when a public servant begins or leaves a post. Indeed, in the Third Round of Review, the country under review presented a proposed Public Probity Law, which was drafted on the basis of a review of the legislation in force and of a previous draft probity law submitted by the Supreme Court of Justice, as a step that would contribute to the progress in the implementation of this measure. This proposed Law took into account the Constitution as well as international conventions and treaties on this topic ratified by the Republic of El Salvador, and the experience of the Integrity Section of the Supreme Court of Justice in the implementation of the Law on Illicit Enrichment of Public Officials and Employees that has been in force since 1959. This draft law was submitted by the interagency committee in September 2008, as Bill No. 2496-1-2006-1, and was currently under debate for approval. Based on this development, the Committee at the time noted that this constituted as a step that contributed to progress in the implementation of this measure.¹³¹

129. *Ibid.*, paragraphs 179 – 182.

130. *Ibid.*, paragraph 183.

131. See paragraph 121 of the Report of the Third Round of Review for El Salvador, www.oas.org/juridico/english/mesicic_III_rep_slv.pdf

[185] A copy of this draft law, which has yet to be enacted, was also provided to the team during the on-site visit to the country under review by the representative from the Integrity Section. This representative further stated that in accordance with current legislation, a statement is also required not only when a public servant begins or leaves a post, but also when a change in position occurs.

[186] The Committee notes that this draft law provides that a public servant is to not only provide a statement upon assuming or leaving a post, but also when requested by the Integrity Section. Moreover, the draft law also requires public servants to present an extension of its statement within two months of each calendar year in the following cases, a) if during the year, the public servant acquires real estate of any value; if the net worth varies by more than 25000 US dollars, or its equivalent in colones, in comparison to the previous submitted statement; and c) when the family status changes because of divorce, marriage or other similar case.

[187] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see measure a) of section 2 of Annex 1 to this Report)

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

Consider the possibility of developing Article 8, section 1 of the Law on Illicit Enrichment of Public Officials and Employees, such that the Supreme Court, through its Probity Section, may have systems that make it possible to promote and timely verify the declarations, setting time frames and occasions for doing so, and providing for those decisions that make it possible to collaborate with this and other entities of the State, such as the financial or tax authorities, so as to facilitate this task. (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report)

[188] In its Response, the country under review provided information with respect to the aforementioned measure of the foregoing recommendation that highlighted that magistrates, judges, secretaries and superior officials of the Supreme Court are now required to submit their statement of net worth.¹³²

[189] While the Committee takes note of the widened scope of application of the Law on Illicit Enrichment of Public Officials and Employees, this measure does not address the issues that necessitated the formulation of this measure in the First Round of Review.¹³³ As noted under section 3.2 of this Report, the ability of the Integrity Section of the Supreme Court to review and verify the statements of net worth of public servants is limited, as it no longer has the legal authority to request directly from the banking and financial sector their account information if any irregularities are noted, as this power of request has been assigned to the Supreme Court en banc via a Resolution issued in 2005, which was confirmed during the on-site visit by the representative from this Section. Moreover, during the visit, the team was made aware that the Integrity Section currently only has 2 analysts to review annually 6000 of these statements. Finally, the team was informed during the on-site visit that once an unjustified increase is identified and the file sent to the Attorney General for investigation, the Supreme Court has no way of knowing the outcome of this investigation.

132. See paragraphs 184 – 185 of the Response to the Questionnaire, *supra* note 14.

133. In a meeting with the civil society organization, the Foundation for Studies in the Application of Law presented statistics on the compliance by these magistrates, judges and secretaries in complying with this requirement to provide their statement of net worth. This organization also highlighted the deficiencies in the regime in place, suggestions for its improvement, and its estimation that the country under review has not complied with the recommendations and measures formulated to it in this regard, see Declaraciones patrimoniales de funcionarios y empleados publicos, available at www.oas.org/juridico/spanish/mesicic4_slv_sp.htm.

[190] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see measure b) of section 2 of Annex 1 to this Report)

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

Take into consideration that the systems for registering the income, assets and liabilities of those who hold public office may constitute an effective instrument not only for determining their illicit enrichment, but also for preventing and detecting other acts of corruption.

[191] In its Response, the country under review noted that it does not have any developments to report with respect to this measure of the foregoing recommendation.¹³⁴ In that regard, the country under review notes that, “[T]here is no progress to report with respect to the recommended measure. With respect to this recommendation, it is worth noting that the purpose for which these statements of net worth can be used is regulated by Article 240 of the Constitution of the Republic of El Salvador, which is intended to be limited to determining the existence of illicit enrichment by public servants...For that reason, a change aimed at broadening the purpose of the statements, such as preventing and detecting acts of corruption, would require constitutional reform.”

[192] Given the foregoing, the Committee suggests that measure c) of the recommendation for section 2.2 of Chapter IV of this Report should be reformulated, to establish a mechanism whereby statements of net worth are used to prevent and detect other acts of corruption, rather than the limited use of illicit enrichment as is currently the case. Using statements for these purposes would also assist the Government Ethics Tribunal in its work in identifying conflicts of interest as they may arise when a public servant enters or changes position in the public service, as discussed in section 1.1 of Chapter IV of this Report.

[193] Given the foregoing, the Committee considers the reformulation of measure c) of the recommendation for section 2.2 of Chapter IV of this Report, as follows:

[194] Establish a mechanism for the registration of assets, income and liabilities of public servants that are used to prevent and detect acts of corruption, and where appropriate, to make those registrations public. (see measure c) of section 2 of Annex 1 to this Report)

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

Regulate the conditions, procedures and other aspects relating to the public disclosure, as appropriate, of the declarations of income, assets and liabilities, subject to the Constitution and the fundamental principles of the legal system of El Salvador. (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report)

[195] In its Response, the country under review noted that it does not have any developments to report with respect to this measure of the foregoing recommendation.¹³⁵ In that regard, the country under review notes that, “[T]here is no progress to report with respect to the recommended measure. With respect to this recommendation, it is worth noting Article 240 of the Constitution of the Republic of El

134. See paragraph 186 of the Response to the Questionnaire, *supra* note 14.

135. *Ibid.*, paragraph 187.

Salvador establishes that the declarations of net worth are to remain confidential. For that reason, a modification requiring that these statements be made public would require a constitutional amendment.”

[196] The Committee notes that the country under review has raised the need for a constitutional amendment for making public the declarations of net worth. The Committee, however, is cognizant of the constitutional provision in place, and noted in the First Round of Review that this provision protects the confidentiality of these statements. Nevertheless, though the country under review may consider that they cannot make the information public because of its Constitution, it can, however, consider implementing other measures, such as providing a summary of the information.

[197] Given the foregoing, the Committee considers the reformulation of measure d) of the recommendation for section 2.2 of Chapter IV of this Report, as follows:

[198] Consider implementing measures that publicize declarations of net worth, where appropriate. (see measure d) of section 2 of Annex 1 to this Report)

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

Consider the possibility of expanding the regime of sanctions, so as to cover other types of conduct, such as the failure to disclose information when making the declaration, including, among other measures, imposing sanctions additional to those that exist. (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report)

[199] In its Response, the country under review noted that it does not have any developments to report with respect to this measure of the foregoing recommendation.¹³⁶ Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see measure e) of section 2 of Annex 1 to this Report)

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

Implement training programs for public servants on the regulations applicable to the system for registering income, assets, and liabilities, and design mechanisms for disseminating that system among the public servants obligated to comply with it, to assure that the current regulations are known. (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report)

[200] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments.¹³⁷ In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following:

[201] *“With respect to disseminating the statements of net worth, the website of the Supreme Court of Justice includes a special section www.csj.gob.sv/probidad/probidad_02.htm, in which information is provided regarding the purpose of these statements, its legal basis, the persons required to submit a statement, the content of these statements, the obligations of public institutions, the procedural regime and sanctions.*

136. *Ibid.*, paragraph 188.

137. *Ibid.*, paragraphs 189 – 190.

[202] *It also includes, model statements, instructions for filling them out, as well as instructions to public institutions for reporting when a person begins and leaves a post.”*

[203] The Committee takes note of the steps taken by the country under review to advance in its implementation of the measure of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that while steps have been taken to disseminate the system among public servants, training programs have not been implemented. Use can be made of the Virtual Education System of the Judicial Branch of El Salvador for this purpose.

[204] Given the foregoing, the Committee considers the reformulation of measure f) of the recommendation for section 2 of Chapter IV of this Report, as follows:

[205] Implement training programs for public servants on the regulations applicable to the system for registering income, assets, and liabilities, to assure that the current regulations are known. (see measure f) of section 2 of Annex 1 to this Report)

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

Implement the procedures needed to perform effective control of compliance with the obligation to submit these declarations, so as to make it possible to verify the results in this area. (the basis for this measure is found in section 2.3 of Chapter II of the First Round Report)

[206] In its Response, the country under review noted that it does not have any developments to report with respect to this measure of the foregoing recommendation.¹³⁸ Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see measure g) of section 2 of Annex 1 to this Report)

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

Recommendation 3.1 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Strengthen the oversight bodies, especially the Supreme Court of Justice and the Court of Accounts, in terms of the functions they perform in relation to monitoring effective compliance with the provisions set forth at paragraphs 1, 2, 4, and 11 of Article III of the Convention, for the purpose of ensuring the effectiveness of such monitoring, providing them with the resources they need to fully perform their functions and establishing mechanisms that make possible the institutional coordination of their actions, and an ongoing evaluation and monitoring of them. (the basis for this recommendation is found in section 3.2 of Chapter II of the First Round Report)

[207] In its Response, the country under review noted that it does not have any developments to report with respect to this recommendation.¹³⁹ Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation 3.1 of section 3 of Annex 1 to this Report)

138. *Ibid.*, paragraph 191.

139. *Ibid.*, paragraph 192.

Recommendation 3.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Implement the mechanisms needed to gather the information related to the functions performed by the oversight bodies aimed at establishing elements for evaluating this area. (the basis for this recommendation is found in section 3.3 of Chapter II of the First Round Report)

[208] In its Response, the country under review noted that it does not have any developments to report with respect to this recommendation.¹⁴⁰ Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation 3.2 of section 3 of Annex 1 to this Report)

Recommendation 3.3 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Establish a body, or provide additional authority to an existing body, in order to ensure appropriate monitoring of the mechanisms recommended in section 4 below (Article III, paragraph 11).

[209] With respect to the aforementioned recommendation, in its Response, the country under review presents information and new developments.¹⁴¹ In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following:

[210] – the Legislative Assembly of the Republic of El Salvador enacted the Access to Public Information Law in April, 2011, the objective being to ensure the right to access to public information, and thereby contributing to transparency of the actions of State institutions.¹⁴² Under Article 51 of this Law, the Institute of Access to Public Information is established, which is responsible for the enforcement of the Law. Article 58 of this Law states the following as functions of this Institute, which include, among others, ensure the correct interpretation and application of the Law; ensure the proper exercise of the right of access to public information and protection of personal information; promote a culture of transparency in society and with public servants; hear and resolve appeals; hear and resolve the procedure of sanctions and issue administrative sanctions; resolve disputes with respect to the classification and declassification of confidential information; establish guidelines for the use, maintenance, security and protection of personal data and public, confidential and reserved information in possession of government agencies; as well as prepare a procedural guide for access to public information.

[211] The Committee also notes that in its Response to the Questionnaire, the country under review cited the Economic and Social Council, as a mechanism for consultation, which the team visited during its on-site visit, and will be discussed further under section 4.3 of follow-up.¹⁴³

[212] The Committee takes note of the steps taken by the country under review to advance in its implementation of the measure of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that while the Committee takes note of this positive development in establishing a body to monitor access to information, nevertheless it only addresses mechanisms for access to information, and mechanisms for consultation, without citing any

140. *Ibid.*, paragraph 193.

141. *Ibid.*, paragraphs 194 – 196.

142. Access to Public Information Law, www.oas.org/juridico/PDFs/mesicic4_slv_acceso.pdf.

143. See paragraph 221, Response to the Questionnaire, *supra* note 14.

further information or developments with respect to mechanisms to encourage participation in public administration or for participation in the follow-up of public administration.

[213] Given the foregoing, the Committee considers the reformulation of recommendation 3.3 for section 3 of Chapter IV of this Report, as follows:

[214] Establish a body, or provide additional authority to an existing body, in order to ensure appropriate monitoring of the mechanisms to encourage participation in public administration or for participation in the follow-up of public administration, as recommended in section 4 below (Article III, paragraph 11). (see recommendation 3.3 of section 3 of Annex 1 to this Report)

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

4.1. General participation mechanisms

[215] The Committee did not offer any recommendations in this section.

4.2 Mechanisms for access to information

Recommendation:

Institute legal provisions and measures to support access to government information.

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

Consider the advisability of issuing law or laws, the provisions of which specifically ensure access to government information. (the basis for this measure is found in section 4.2.2 of Chapter II of the First Round Report)

[216] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments.¹⁴⁴ In this regard, the Committee notes the following as a step that leads it to conclude said measure has been satisfactorily considered:

[217] - *“The Legislative Assembly of the Republic of El Salvador, by virtue of Legislative Decree no. 534 of December 2, 2010, published in Official Journal No. 70, Volume 391 of April 8, 2011, decreed the Access to Public Information Law, whose objective is to ensure the right to access to public information, and thereby contributing to transparency of the actions of State institutions.”*

[218] The Committee takes note of the satisfactory consideration by the country under review of the measure of the foregoing recommendation.

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

Strengthen the provisions and mechanisms that ensure the right of access to government information, by creating and regulating a procedure designed to protect this right, that could include provisions

¹⁴⁴ *Ibid.*, paragraphs 199 – 200.

such as: (i) the procedures for accepting requests and responding to them on a timely basis; (ii) the admissibility requirements and consequences when such requirements are not met; (iii) the reasons why a request may be denied; (iv) the method for communicating the decision to the applicant; (v) prompt and specialized administrative remedies for appealing a decision made by a public servant who improperly denies access to the information requested; (vi) the implementation of a regime of sanctions – administrative and criminal – for public servants who may hamper, delay, or prevent the exercise of this right; and (vii) exceptions to the right of access to government information. (the basis for this measure is found in section 4.2.2 of Chapter II of the First Round Report)

[219] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments.¹⁴⁵ In this regard, the Committee notes the following as a step that leads it to conclude said measure has been satisfactorily considered:

[220] *“The Access to Public Information law regulates the procedure for access to information from the government agencies, Article 61 and following; timeframes for responding, Article 71; the consequences for not responding, Article 75; the reasons for denial of information, Article 76; infractions; sanctions, Article 77, which may include fines, suspension of duties and dismissal, and appeal procedure for individuals when a request is denied by public entities to provide public information as applicable under the law, Articles 82 and 83.”*

[221] The Committee takes note of the satisfactory consideration by the country under review of the measure of the foregoing recommendation.

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

Expressly define the limitations for access to information provided for in the Legal System of El Salvador. (the basis for this measure is found in section 4.2.2 of Chapter II of the First Round Report)

[222] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments.¹⁴⁶ In this regard, the Committee notes the following as a step that leads it to conclude said measure has been satisfactorily considered:

[223] The Access to Public Information Law has expressly defined the limitations for access to public information, limitations that are limited to classified and confidential information. Under Article 6 of the Law, classified information is defined as information whose access is expressly restricted under the Law because of the public interest, for a specific time period for justifiable reasons. Article 19 sets out what is classified information, a) secret military plans and political negotiations; b) information which would impair or jeopardize national defense and public security; c) information which would undermine international relations or the conduct of the country's diplomatic negotiations; d) information that would threaten the life, safety or health of anyone; e) information containing the opinions or recommendations that are part of the deliberative process of public servants, s long as a final decision has not been adopted; f) information which would seriously harm the prevention, investigation or prosecution of illegal acts in the administration of justice or in enforcement; g) information which jeopardizes the strategies and state functions in judicial or administrative proceedings; h) information which can generate an undue advantage to the detriment of a person to a third party.

145. *Ibid.*, paragraph 198.

146. *Ibid.*, paragraphs 201 – 205.

[224] With respect to confidential information, Article 6 provides that this is private information held by the State which public access is prohibited by constitutional or statutory mandate. Article 24 further sets out what is confidential information: a) concerning the right to personal and family privacy, honor and reputations, as well as disclosure of medical records would constitute an invasion of personal privacy; b) the information provided by individuals to the required entities, so long as the nature of the information has the right to restrict disclosure; c) personal data that requires the consent of the individual for its dissemination; d) professional, commercial, industrial, tax, banking and fiduciary secrets, considered as such by a statutory provision.

[225] The Committee takes note of the satisfactory consideration by the country under review of the measure of the foregoing recommendation by expressly defining the limitations for access to information in the legal system of El Salvador.

[226] However, the Committee notes that regulations have also been enacted for the Access to Public Information Law.¹⁴⁷ These regulations represent an important norm in implementing the provisions of the Law. Nevertheless, the Committee notes that it appears that the regulations go beyond the scope of the Law by including another category of confidential information, under Article 29(2) of the regulations, which provides that another reason for confidentiality is when the publicity, communication or knowledge of information would affect ‘political security.’ This term is defined as “any action or activity, directly or indirectly, carried out by Senior Officials, intended to defend the public order, the political organization of the government and its institutions, as well as any activity intended to govern or direct the State or for the proper conduct of government policy, including activities to protect against threats to the legitimacy, recognition and authority of the government that trigger circumstances of political instability, corruption and lawlessness, among others.” The Committee observes that not only is this a new category of confidential information that is *ultra vires* of the Law, but also its wording makes it difficult to determine its parameters for being too vague.

[227] The Committee also notes that during the team’s on-site visit, various representatives from the private sector, civil society, as well as the a body established by the Government of El Salvador to encourage civil society consultation, the Economic and Social Council, were critical of this provision, stating that unlike the Law, these regulations were enacted without any prior consultation with civil society as a whole, and that this new category of confidential information is so vague as to undermine the objective of the Law, that is, to ensure the right to access to public information.¹⁴⁸ Nevertheless, the country under review noted that in accordance with its legal order, there is no legal obligation to consult with respect to the formulation of regulations.

[228] Given the foregoing, the Committee considers the reformulation of this measure, as follows:

[229] Eliminate from the Regulations to the Access to Public Information Law, ‘political security’ as a category of confidential information. (see measure a) of section 4.2 of Annex 1 to this Report)

147. Regulations of the Access to Public Information Law, www.oas.org/juridico/PDFs/mesicic4_slv_regla.pdf.

148. See for example, see the submissions by the National Association of Private Business, the Chamber of Industry and Construction of El Salvador, and the Social Initiative for Democracy, available at: http://www.oas.org/juridico/spanish/mesicic4_slv_sp.htm. This concern was also raised in the team’s meeting with CASALS and Associates.

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

Continue strengthening and expanding the information systems that operate through the different web pages created by the public institutions, as an effective means of disseminating the everyday management of the State. In this respect, the Committee recognizes the considerable collection of computerized resources fostered by the Republic of El Salvador, allowing access to ample government information. (the basis for this measure is found in section 4.2.2 of Chapter II of the First Round Report)

[230] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments.¹⁴⁹ In this regard, the Committee notes the following as a step that leads it to conclude said measure has been satisfactorily considered:

[231] - *“With respect to strengthening and expanding the systems that operate throughout the different web pages created by the public institutions, Article 18 establishes that information is to be made available to the public through any medium, including electronic pages. This same provision establishes that the Institute of Access to Public Information shall encourage that the agencies required to provide information use information technologies and that within a reasonable time period, this information be made available to the public through these means. In addition, the Secretariat for Technology and Computer Innovation of the Private Secretariat of the Presidency has begun a process of standardization through all the websites of all the entities of the Executive. This is a marked improvement with respect to the availability and access to public information. The Secretariat has carried out various training programs to these entities on the standards and navigation structure, to give them the tools to provide a better product to the public through websites more complete, interactive, and friendly. To date, 24 institutions have been standardized, asuntosestrategicos.presidencia.gob.sv/temas/transparencia-yanticorrupcion/iniciativas-de-transparencia-en-el-organo-ejecutivo-.html.”¹⁵⁰*

[232] The country under review also provides information on the work of other Ministries, such as that of Finance and the Environment, that have also carried out other initiatives.

[233] The Committee takes note of the satisfactory consideration by the country under review of the measure of the foregoing recommendation.

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

Ensure, through training and updating programs, that public officials are knowledgeable of and can apply, properly and in timely fashion, the laws and regulations that protect access to government information. (The basis for this measure is found in section 4.2.2 of Chapter II of the First Round Report)

149. See paragraphs 206 – 212 of the Response to the Questionnaire, *supra* note 14.

150. The country under review notes that currently 69 government institutions have web sites with a ‘Transparent Government’ button, where they publish all the official information that is to be available to the public. The web page www.gobiernotransparente.gob.sv is also available, the purpose of which is to make available to the public, in a consolidated and transparent form, the official information of the institutions of the Salvadoran government, as is the digital newspaper ‘Active Transparency,’ www.transparenciaactiva.gob.sv, which is intended to expand access to the information and accountability reports of the Salvadoran government. In addition, the country under review clarifies that the that the correct name of the ‘Secretariat for Technology and Computer Innovation of the Private Secretariat of the Presidency’ is the Directorate of Technological Innovation and Data Processing (ITIGES) of the Private Secretariat of the Presidency.

[234] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments.¹⁵¹ In this regard, the Committee notes the following as a step that leads it to conclude said measure has been satisfactorily considered:

[235] *“With respect to training and updating of public servants on the rules and regulations that protect access to public information, the Act provides, in Article 45, that in order to promote a culture of access to information in the public administration, the government institutions are required to train all public servants in matters of right to access to public information and the right to protection of personal information, through courses, seminars, workshops and all other forms of teaching and training considered relevant. In addition, Article 58 of the Act establishes as a function of the Institute for Access to Public Information is the development of training courses for public servants on transparency, access to information, protection of personal information and file management. Article 50 also provides that information officers for each public entity shall have as one of its duties, is instructing the public servants on the reception and processing requests for access to information.”*

[236] In addition, the country under review notes that the Subsecretariat for Transparency and Anticorruption has organized training sessions, workshops, diploma courses, on-line courses, and seminars for information officers, public servants, and the general public since February 24, 2011 (before the date on which the law was enacted), providing training to more than 1,500 public officials on the content of the law, accountability, transparency, document handling, establishing of Information and Response Offices, etc. These were then followed by the replication exercises conducted by each of the Information Officers within their own institutions.

[237] The Committee takes note of the satisfactory consideration by the country under review of the measure of the foregoing recommendation.

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

Consider the usefulness of having the applicable law ensure access to information held by the Branches of the Government, municipalities, and by the autonomous institutions.

[238] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments.¹⁵² In this regard, the Committee notes the following as a step that leads it to conclude said measure has been satisfactorily considered:

[239] - Under the Access to Public Information Law, *“regarding the obligation to provide information, pursuant to Article 7 of the Act, all branches of the government, their agencies, autonomous institutions, municipalities or any other entity or body that administers public funds, goods of the State or carry out acts of public administration in general are obligated to provide information are required to do so. Companies of a mixed economy and natural and legal persons that manage public resources or information or carry out state, national and local acts, such as public procurement, and concessions of public works or services are also required to provide information. Consequently, all public servants, within or outside the territory of the Republic and persons who work in the aforementioned entities are required to comply with the Law.”*

151. *Ibid.*, paragraphs 214 – 215.

152. *Ibid.*, paragraphs 216 – 217.

[240] The Committee takes note of the satisfactory consideration by the country under review of the measure of the foregoing recommendation.

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

Consider establishing a mechanism with autonomy in its operations, charged with promoting and disseminating the right to and access to government information, resolving denials to furnish access to information, and protecting personal data held by the government offices and agencies.

[241] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments.¹⁵³ In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following:

[242] – the country under review notes that under Article 51 of the Access to Public Information Law, the Institute of Access to Public Information is established, which is responsible for the enforcement of the Law. Article 58 of this Law provides that attributes of this Institute, which include, among others, ensuring the correct interpretation and application of the Law; ensuring the proper exercise of the right of access to public information and protection of personal information; promoting a culture of transparency in society and with public servants; hearing and resolving appeals; hearing and resolving the procedure of sanctions and issue administrative sanctions; resolving disputes with respect to the classification and declassification of confidential information; establishing guidelines for the use, maintenance, security and protection of personal data and public, confidential and reserved information in possession of government agencies; as well as preparing a procedural guide for access to public information.

[243] The Committee takes note of the steps taken by the country under review to advance in its implementation of the measure of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that while the Committee takes note of the establishment, under Law, of this Institute, it has not begun operating. Under Article 105 of the Law, the President of the Republic was to have already appointed the Commissioners that are to make up the Institute, by November 4, 2011, that is, 180 days after the Law came into force. Unfortunately, this date passed and the Commissioners were not appointed. Without this appointment, the Institute cannot operate. The Committee notes that during the team's on-site visit, which took place approximately 4 months after the Commissioners were to be appointed, rather than meeting with the Institute, it met with the Subsecretariat for Transparency and Anticorruption of the Presidency to discuss the Law, as it has yet to be established. The Committee would like to avoid the difficulties that are currently taking place with the Government Ethics Tribunal, because its members have not been appointed either, and thus is not operating as well.

[244] Moreover, the Committee takes note that the regulations to the Law creates an appointment process that gives the President of the Republic a veto on who can be appointed as a Commissioner to the Institute. The Law itself provides, under Article 52, that the Institute is to be made up of five Commissioners, which are to be appointed by the President. The five Commissioners, under Article 53, are to come from a proposed list from a) business associations; b) professional associations; c) the University of El Salvador and private universities; d) journalist associations; and e) from unions authorized by the Ministry of Labor and Social Welfare. The election of these lists is to be carried out by sectorial general assemblies, convoked specifically for this purpose. However, the regulations

153. *Ibid.*, paragraphs 218 – 220.

grant the President of the Republic an additional attribute, not found in the Law. Under Article 73, if the President deems that none of the candidates of a proposed list are appropriate to be a Commissioner, the President can reject that list and the election of a list is to be carried out again. The Committee notes that this affects the autonomy of the Institute to carry out its functions. Given the fundamental importance of transparency in an access to information regime, Presidential control on who makes up this Institute may undermine the credibility of its important work because of a perception of dependence on the Executive branch.

[245] The Committee also notes that during the team's on-site visit, various representatives from the private sector, civil society, as well as the a body established by the Government of El Salvador to encourage civil society consultation, the Economic and Social Council, were critical of this Presidential veto.¹⁵⁴

[246] Given the foregoing, the Committee considers the reformulation of measure g) of the recommendation for section 4.2 of Chapter IV of this Report, as follows:

[247] Ensure that the Institute of Access to Public Information Law is provided with the resources they need to fully perform their functions autonomously. (see measure c) of section 4.2 of Annex 1 to this Report)¹⁵⁵

[248] Ensure that the appointment process for Commissioners to the Institute of Access to Public Information as set out in the Access to Public Information Law. (see measure d) of section 4.2 of Annex 1 to this Report)

[249] Appoint the Commissioners to the Institute of Access to Public Information. (see measure e) of section 4.2 of Annex 1 to this Report)

4.3. Mechanisms for consultation

Recommendation:

Supplement the existing consultative mechanisms, establishing, as appropriate, procedures that will offer greater opportunities to hold consultations between society in general prior to designing public policies and approving legal provisions.

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

Consider applying national-level consultation instruments that are similar to those considered in the municipal realm, to provide an appropriate role to civil society in its consultative activity. (the basis for this measure is found in section 4.3.2 of Chapter II of the First Round Report)

154. See for example, see the submissions by the National Association of Private Business, the Chamber of Industry and Construction of El Salvador, and the Social Initiative for Democracy, available at: http://www.oas.org/juridico/spanish/mesicic4_slv_sp.htm. This concern was also raised in the team's meeting with CASALS and Associates.

155. The country under review notes that the Ministry of the Treasury has included a budget allocation for the operations of the Institute of Access to Public Information Law in the draft General Budget law of the Nation for the year 2013, which is to be presented to the Legislative Assembly for approval this year.

[250] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments.¹⁵⁶ In this regard, the Committee notes the following as a step that leads it to conclude said measure has been satisfactorily considered:

[251] *“In regard to the implementation of national-level consultation instruments, on September 3, 2009 the President established the Economic and Social Council as a permanent tool for systematic dialogue between sectors, for a safer and more democratic governance commensurate with the demands of present reality. In the Council are present social, business, academic and research sectors as well as the technical and strategic area of the Government.”*

[252] The Committee also notes that during the team’s on-site visit, it met with this Council for more information, which reiterated the aim of facilitating dialogue and consensus on public policies related to economic and social agenda of El Salvador, and heard from various representatives from the social, labor, business and academic sector. These representatives highlighted that this was the first mechanism of this kind established for those sectors that have been traditionally excluded in the formation of public policy and also highlighted the importance of having this mechanism to exchange ideas and experiences. The representatives of this Council also informed the team that it issues resolutions on proposed policies or laws that the Government submits for advice or due to its relevance, the Council considers it appropriate to issue a resolution on its own, such as the Access to Public Information Law.

[253] The Committee takes note of the satisfactory consideration by the country under review of the measure of the foregoing recommendation.

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

Consider the possibility of applying consultation instruments with characteristics similar to those already in place in specific areas, such as the environment, to other areas, or develop other suitable mechanisms that make it possible to engage in those consultations in other settings, additional to those in which they are already contemplated. (the basis for this measure is found in section 4.3.2 of Chapter II of the First Round Report)

[254] In its Response, the country under review noted that it does not have any developments to report with respect to this measure.¹⁵⁷ Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see measure a) of section 4.3 of Annex 1 to this Report)

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

Continue implementing the system of sectoral roundtables, considering the possibility of expanding their use to encompass a larger number of areas of interest to civil society. (the basis for this measure is found in section 4.3.2 of Chapter II of the First Round Report)

[255] In its Response, the country under review noted that it does not have any developments to report with respect to this measure.¹⁵⁸ Nevertheless, the Committee notes that the establishment of the

156 See paragraph 221 of the Response to the Questionnaire, *supra* note 14.

157 *Ibid.*, paragraph 222.

158 *Ibid.*, paragraph 223.

Economic and Social Council as a step that leads it to conclude said measure has been satisfactorily considered. As stated earlier, this Council brings together various sectors of society for the purpose of exchanging ideas, facilitating dialogue and arriving at consensus on public policies related to the economic and social agenda of El Salvador.

[256] Given the foregoing, the Committee takes note of the satisfactory consideration by the country under review of the measure of the foregoing recommendation.

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

Consider the advisability of designing and implementing programs for dissemination on the consultative mechanisms, training and facilitating civil society and nongovernmental organizations, as well as public officials and employees, on their use. (the basis for this measure is found in section 4.3.2 of Chapter II of the First Round Report)

[257] In its Response, the country under review noted that it does not have any developments to report with respect to this measure.¹⁵⁹ Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see measure b) of section 4.2 of Annex 1 to this Report)

4.4. Mechanisms to encourage participation in public administration

Recommendation:

Implement mechanisms that encourage civil society and nongovernmental organizations to participate in the conduct of public affairs.

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

Consider the possibility of adopting, through the respective mechanisms and procedures, measures such as those provided for in the Draft Executive Decree for the establishment of the Ethics Commission for the Public Function. (the basis for this measure is found in section 4.4.2 of Chapter II of the First Round Report)

[258] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments.¹⁶⁰ In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following:

[259] – the Legislative Assembly enacted a reformed Government Ethics Law in order to strengthen the Government Ethics Tribunal and ensure its efficacy in the prevention and sanction of actions against the public ethics. This new Law has a chapter to encourage civil society participation in overseeing public ethics, including the right and duty to report, Article 53, facilitation for filing complaints, Article 54, promotion of ethics in the public, Article 55, and promoting public ethics in education, Article 56.

¹⁵⁹ *Ibid.*, paragraph 224.

¹⁶⁰ *Ibid.*, paragraphs 225 – 226.

[260] The Committee takes note of the steps taken by the country under review to advance in its implementation of the measure of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that the Government Ethics Tribunal is still not operational, despite the enactment of the Government Ethics Law, since its members have yet to be appointed. Without its operation, these important mechanisms and procedures are not being carried out. (see measure a) of section 4.4 of Annex 1 to this Report)

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

Consider the advisability of creating and implementing laws and mechanisms to encourage the participation of civil society and nongovernmental organizations in efforts to prevent corruption, including aspects of participation in addition to those that already exist. (The basis for this measure is found in section 4.4.2 of Chapter II of the First Round Report)

[261] In its Response, the country under review noted that it does not have any developments to report with respect to this measure.¹⁶¹ Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see measure b) of section 4.4 of Annex 1 to this Report)

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

Take actions which encourage the prevention and reporting of acts of corruption, and which allow the Government to identify those areas in which such acts are likely to arise more frequently. (the basis for this measure is found in section 4.4.2 of Chapter II of the First Round Report)

[262] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments.¹⁶² In this regard, the Committee notes the following as a step that leads it to conclude said measure has been satisfactorily considered:

[263] *“The Government Ethics Tribunal developed in 2009-2010, the campaign “Only with your Participation can we stop Corruption, “which consisted of two stages: the first called “Speak out” and second “Unmask Them”. This campaign was carried out in order to continue with the dissemination of the Government Ethics Law, to raise awareness in the public on the importance of citizen complaints and publicize the minimum requirements of a complaint. The campaign was carried out through radio spots, print ads, TV spots and advertisements on the back of buses. As a result of the campaign, 2223 consultations were received on the implementation of the Law, while 431 anonymous complaints and 144 complaints were received. In addition, the Tribunal, with the aim of informing the public, distributed 18086 copies of the law, 8558 copies of the regulations, 83432 posters, 3.326 brochures on the law, and 9332 summaries of conventions, treaties and declarations relating to ethics, transparency and corruption.”*

[264] The Committee takes note of the satisfactory consideration by the country under review of the measure of the foregoing recommendation.

161 *Ibid.*, paragraph 227.

162 *Ibid.*, paragraphs 228 – 229.

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

Recommendation:

Strengthen and continue implementing mechanisms that encourage civil society and nongovernmental organizations to participate in monitoring public administration.

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

Consider applying mechanisms of participation in monitoring public administration at the national level, similar to those contemplated in the municipal regime, in those areas where the State considers they may be useful, including the possibility of such mechanisms being convoked by civic initiative at the local and national levels. (The basis for this measure is found in section 4.5.2 of Chapter II of the First Round Report)

[265] In its Response, the country under review noted that it does not have any developments to report with respect to this measure.¹⁶³ Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see measure a) of section 4.5 of Annex 1 to this Report)

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

Consider the implementation of awareness and training programs directed at civil society and nongovernmental organizations on the aspects dealt with in sections 4.1 to 4.5 of this report. (the basis for this measure is found in section 4.5.2 of Chapter II of the First Round Report)

[266] In its Response, the country under review noted that it does not have any developments to report with respect to this measure.¹⁶⁴ Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see measure b) of section 4.5 of Annex 1 to this Report)

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

Recommendation 5.1 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Determine those specific areas in which the Republic of El Salvador sees the need for technical cooperation with other States Parties in order to strengthen its capacities to prevent, detect, investigate and punish acts of corruption. As well, the Republic of El Salvador should determine and prioritize requests for mutual assistance that are received in investigating or prosecuting cases of corruption. (The basis for this recommendation is found in section 5.2.2 of Chapter II of the First Round Report)

[267] In its Response, the country under review noted that it does not have any developments to report with respect to this recommendation.¹⁶⁵ Given the foregoing, the Committee takes note of the

163. *Ibid.*, paragraph 230.

164. *Ibid.*, paragraph 231.

165. *Ibid.*, paragraph 232.

need for the country under review to give additional attention to implementation thereto. (see recommendation 5.1 of section 5 of Annex 1 to this Report)

Recommendation 5.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Continue efforts to exchange technical cooperation with other State Parties on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption. (the basis for this recommendation is found in section 5.2.3 of Chapter II of the First Round Report)

[268] In its Response, the country under review noted that it does not have any developments to report with respect to this recommendation.¹⁶⁶ Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation 5.2 of section 5 of Annex 1 to this Report)

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

Design and implement a comprehensive information and training program for responsible authorities and officials, with the objective of ensuring that they are aware of and can apply mutual assistance provisions for the investigation or prosecution of acts of corruption provided for in the Convention and in other treaties signed by El Salvador. (the basis for this recommendation is found in section 5.1.2 of Chapter II of the First Round Report)

[269] In its Response, the country under review noted that it does not have any developments to report with respect to this recommendation.¹⁶⁷ Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation 5.3 of section 5 of Annex 1 to this Report)

Recommendation 5.4 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Design and implement an information program with which the authorities of El Salvador can ensure follow-up to requests for mutual assistance relating to acts of corruption and, in particular, those covered by the Inter-American Convention against Corruption.

[270] With respect to the aforementioned recommendation, in its Response, the country under review presents information and new developments.¹⁶⁸ In this regard, the Committee notes the following as a step that leads it to conclude said measure has been satisfactorily considered:

[271] The country under review notes that it is important to mention that as of the date of the submission of its Response to the Questionnaire, External Affairs has not received one single request for reciprocal assistance with respect to acts of corruption, based on the Inter-American Convention against Corruption. It sets out the system for processing and requesting mutual assistance, the authorities involved, and the legal basis. It also mentions the use of electronic systems for the exchange of information among the member States of the OAS, in particular, the OAS Secure Electronic

166. *Ibid.*, paragraph 233.

167. *Ibid.*, paragraph 234.

168. *Ibid.*, paragraph 235.

Communication System (Groove). It also submitted information on treaties in force related to mutual assistance, and the issue of corruption.

[272] The Committee takes note of the satisfactory consideration by the country under review of the measure of the foregoing recommendation.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation 6.3 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Ensure that once that authority is designated, it has the resources needed to adequately carry out its functions. (The basis for this recommendation is found in section 6.2 of Chapter II of the First Round Report)

[273] With respect to the aforementioned recommendation, in its Response, the country under review presents information and new developments.¹⁶⁹ In this regard, the Committee notes the following as a step that leads it to conclude said measure has been satisfactorily considered:

[274] *“The Directorate for Internal Legal Studies, of the General Directorate for Legal Affairs of the Ministry of Foreign Affairs, is the office that has the human resources needed to adequately carry out its functions, being the authority responsible for following-up on the requests carried out by our authorities to the exterior or by foreign authorities that require some action by El Salvador, be it through a request, legal assistance or letters rogatory.”*

[275] The Committee takes note of the satisfactory consideration by the country under review of the measure of the foregoing recommendation.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Design and implement, when appropriate, training programs for public servants in charge of applying the systems, standards, measures and mechanisms considered in this report, with the objective of guaranteeing adequate knowledge, handling and implementation of the above.

[276] In its Response, the country under review noted that it does not have any developments to report with respect to this recommendation.¹⁷⁰ Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation 7.1 of section 7 of Annex 1 to this Report)

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

Select and develop procedures and indicators, as appropriate, which enable verification of the monitoring of the recommendations contained in this report, and communicate the results of this follow-up to the Committee through the Technical Secretariat. With this in mind, consider taking into

¹⁶⁹ *Ibid.*, paragraph 236.

¹⁷⁰ *Ibid.*, paragraph 237.

account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee; as well, consider information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.

[277] In its Response, the country under review noted that it does not have any developments to report with respect to this recommendation.¹⁷¹ Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see recommendation 7.2 of section 7 of Annex 1 to this Report)

Recommendation 7.3 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, and the recommendations contained in it.

[278] With respect to the aforementioned recommendation, the country under review presents information. In this regard, the Committee notes the following as a step that leads it to conclude said measure has been satisfactorily considered:

[279] Since 2002 there has been an Interinstitutional Working Group to follow up on the Inter-American Convention against Corruption, which was later also given responsibility for the 2006 Declaration of Guatemala (Central America as a Corruption-Free Region) and the 2008 United Nations Convention against Corruption. That group was originally set up by the Vice President of the Republic through the National Council for Sustainable Development and included the Presidency's Technical and Legal Secretariats and the Ministry of Foreign Affairs. Since 2009 the group has been strengthened by the Coordinating Office of the Subsecretariat for Transparency and Anticorruption. This Group is in charge of monitoring and compliance with the terms of the aforesaid international instruments, both within the country and the different institutions of the State and with respect to the relevant international and regional agencies.

[280] The Committee takes note of the satisfactory consideration by the country under review of the foregoing recommendation.

171. *Ibid.*, paragraph 238.

ANNEX I

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

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

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

Recommendation:

Strengthening the implementation of laws and regulatory systems related to conflicts of interest, in order to permit the effective and practical enforcement of a system of public ethics.

Suggested Measures:

- a) Establish mechanisms to detect possible conflicts of interest by public servants upon entry into the public service or when a change in position occurs.
- b) Create mechanisms to protect the public interest when a conflict of interest arises, such as the separation of a public servant from their functions when such a conflict is identified.
- c) Create mechanisms that invalidate a decision made by a public servant who is in a conflict of interest.
- d) Establish terms and conditions on how a former employee may use information or documents to which he or she had access in public service.
- e) Consider the possibility for the oversight body to provide former public employees with guidance and to clarify any doubts that might arise from the specific activities in which they are engaged.
- f) The Committee encourages the Republic of El Salvador to continue supporting the work of the Court of Accounts by establishing indicators that make it possible to determine its results more precisely.
- g) Compile information regarding conflict-of-interest cases, to establish mechanisms of evaluation that make it possible to verify the results in this area.

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

Recommendation:

Consider strengthening the implementation of statutes and regulatory systems with respect to the control of resources of the public administration.

Suggested Measure:

- Consider adopting measures to promote, facilitate and consolidate or ensure the effectiveness of the standards of conduct for ensuring the proper conservation and use of public resources and of the mechanisms for compliance with them in the Republic of El Salvador.

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

Recommendation:

Consider strengthening the mechanisms it has to require government officials to report to the appropriate authorities acts of corruption in the performance of public of which they are aware.

Suggested Measures:

- a) Consider adopting and implementing measures of protection for public officials who report acts of corruption in good faith, including those who report corruption by their superiors, such that they find assurances in the face of the threats or reprisals to which they may be subject as a result of carrying out this obligation.
- b) Provide that the scope of the obligation contained in Article 312 of the Criminal Code refer both to punishable acts the public servant learns of in the performance of public functions, and on occasion of them, and acts of corruption that they become aware of not in the performance of said functions.
- c) Consider the possibility of strengthening those administrative and legal proceedings related to the effective application of the applicable sanctions to those public officials and employees who engage in acts of corruption.
- d) Compile information on the submission of reports of acts of corruption by public officials or employees that make it possible to verify the results in this area.

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

Recommendation:

Consider expanding and complementing the systems for registering the income, assets and liabilities, and regulate their publication, as appropriate, through pertinent provisions.

Suggested Measures:

- a) Consider the advisability of implementing a specific law that includes time frames and reasonable circumstances for demanding the periodic and updated submission of declarations of net worth by those persons obligated to do so, so as to diminish opportunities for corruption and to prevent and detect crimes against government property during the performance of public functions.

- b) Consider the possibility of developing Article 8, section 1 of the Law on Illicit Enrichment of Public Officials and Employees, such that the Supreme Court, through its Probity Section, may have systems that make it possible to promote and timely verify the declarations, setting time frames and occasions for doing so, and providing for those decisions that make it possible to collaborate with this and other entities of the State, such as the financial or tax authorities, so as to facilitate this task.
- c) Establish a mechanism for the registration of assets, income and liabilities of public servants that are used to prevent and detect acts of corruption, and where appropriate, to make those registrations public.
- d) Consider implementing measures that publicize declarations of net worth, where appropriate.
- e) Consider the possibility of expanding the regime of sanctions, so as to cover other types of conduct, such as the failure to disclose information when making the declaration, including, among other measures, imposing sanctions additional to those that exist.
- f) Implement training programs for public servants on the regulations applicable to the system for registering income, assets, and liabilities, to assure that the current regulations are known.
- g) Implement the procedures needed to perform effective control of compliance with the obligation to submit these declarations, so as to make it possible to verify the results in this area.

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

Recommendations:

- 3.1 Strengthen the oversight bodies, especially the Supreme Court of Justice and the Court of Accounts, in terms of the functions they perform in relation to monitoring effective compliance with the provisions set forth at paragraphs 1, 2, 4, and 11 of Article III of the Convention, for the purpose of ensuring the effectiveness of such monitoring, providing them with the resources they need to fully perform their functions and establishing mechanisms that make possible the institutional coordination of their actions, and an ongoing evaluation and monitoring of them.
- 3.2 Implement the mechanisms needed to gather the information related to the functions performed by the oversight bodies aimed at establishing elements for evaluating this area.
- 3.3 Establish a body, or provide additional authority to an existing body, in order to ensure appropriate monitoring of the mechanisms to encourage participation in public administration or for participation in the follow-up of public administration, as recommended in section 4 below (Article III, paragraph 11).

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

4.1. General participation mechanisms

The Committee did not offer any recommendations in this section.

4.2 Mechanisms for access to information

Recommendation:

Institute legal provisions and measures to support access to government information.

Suggested Measures:

- a) Eliminate from the Regulations to the Access to Public Information Law, 'political security' as a category of confidential information.
- b) Ensure that the Institute of Access to Public Information Law is provided with the resources they need to fully perform their functions autonomously.
- c) Ensure that the appointment process for Commissioners to the Institute of Access to Public Information as set out in the Access to Public Information Law.
- d) Appoint the Commissioners to the Institute of Access to Public Information.

4.3. Mechanisms for consultation

Recommendation:

Supplement the existing consultative mechanisms, establishing, as appropriate, procedures that will offer greater opportunities to hold consultations between society in general prior to designing public policies and approving legal provisions.

Suggested Measures:

- a) Consider the possibility of applying consultation instruments with characteristics similar to those already in place in specific areas, such as the environment, to other areas, or develop other suitable mechanisms that make it possible to engage in those consultations in other settings, additional to those in which they are already contemplated.
- b) Consider the advisability of designing and implementing programs for dissemination on the consultative mechanisms, training and facilitating civil society and nongovernmental organizations, as well as public officials and employees, on their use.

4.4. Mechanisms to encourage participation in public administration

Recommendation:

Implement mechanisms that encourage civil society and nongovernmental organizations to participate in the conduct of public affairs.

Suggested Measures:

- a) Consider the possibility of adopting, through the respective mechanisms and procedures, measures such as those provided for in the Draft Executive Decree for the establishment of the Ethics Commission for the Public Function.
- b) Consider the advisability of creating and implementing laws and mechanisms to encourage the participation of civil society and nongovernmental organizations in efforts to prevent corruption, including aspects of participation in addition to those that already exist.

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

Recommendation:

Strengthen and continue implementing mechanisms that encourage civil society and nongovernmental organizations to participate in monitoring public administration.

Suggested Measures:

- a) Consider applying mechanisms of participation in monitoring public administration at the national level, similar to those contemplated in the municipal regime, in those areas where the State considers they may be useful, including the possibility of such mechanisms being convoked by civic initiative at the local and national levels.
- b) Consider the implementation of awareness and training programs directed at civil society and nongovernmental organizations on the aspects dealt with in sections 4.1 to 4.5 of this report.

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

Recommendations:

- 5.1 Determine those specific areas in which the Republic of El Salvador sees the need for technical cooperation with other States Parties in order to strengthen its capacities to prevent, detect, investigate and punish acts of corruption. As well, the Republic of El Salvador should determine and prioritize requests for mutual assistance that are received in investigating or prosecuting cases of corruption.
- 5.2 Continue efforts to exchange technical cooperation with other State Parties on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption.

- 5.3 Design and implement a comprehensive information and training program for responsible authorities and officials, with the objective of ensuring that they are aware of and can apply mutual assistance provisions for the investigation or prosecution of acts of corruption provided for in the Convention and in other treaties signed by El Salvador.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

The Committee took note of the satisfactory consideration by the country under review of the recommendations formulated in this section.

7. GENERAL RECOMMENDATIONS

Recommendations:

- 7.1 Design and implement, when appropriate, training programs for public servants in charge of applying the systems, standards, measures and mechanisms considered in this report, with the objective of guaranteeing adequate knowledge, handling and implementation of the above.
- 7.2 Select and develop procedures and indicators, as appropriate, which enable verification of the monitoring of the recommendations contained in this report, and communicate the results of this follow-up to the Committee through the Technical Secretariat. With this in mind, consider taking into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee; as well, consider information derived from the review of the mechanisms developed in accordance with recommendation 7.3 from the First Round of Review.

ANNEX II

**AGENDA OF THE ON-SITE VISIT TO THE
REPUBLIC OF EL SALVADOR**

<u>Monday, March 19, 2012</u>	
14:00 hrs. – 15:30 hrs. <i>Hotel Sheraton Presidente</i>	Coordination meeting between the representatives of the member states of the subgroup and the Technical Secretariat.
15:30 hrs. – 17:30 hrs. <i>Offices of the Subsecretariat for Transparency and Anti-Corruption of the Office of the President of the Republic</i>	Coordination meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat (and the Office or representative of the General Secretariat). <u>Participants:</u> Ms. Aurora Cubías (SSTA) Mr. Aquiles Parada (SSTA) Mr. Álvaro Magaña (CNDS) Ms. Pilar Escobar (Foreign Affairs) Ms. Gabriela Ibarra (SSTA) Mr. Miguel Girón (Inter-Institutional Group)
<u>Tuesday, March 20, 2012</u>	
08:00 hrs. – 10:00 hrs. <i>Hotel Sheraton Presidente</i>	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers.
	Topic: <ul style="list-style-type: none">• Private sector participation in initiatives to combat corruption.

	<p><u>Participants:</u></p> <p><i>Chamber of Commerce and Industry of El Salvador</i> Mr. Federico Hernandez, Executive Director</p> <p><i>National Association of Private Companies</i> Mr. Arnoldo Jimenez, Executive Director</p> <p><i>Chamber of Industry and Construction of El Salvador</i> Mr. Ismael Nolasco, Executive Director</p> <p><i>Business Council for Sustainable Development</i> Ms. Karen Fernandez, Executive Director</p> <p><i>Salvadoran Association of Industrialists</i> Mr. Jorge Arriaza, Executive Director</p>
<p>10:00 hrs. – 12:30 hrs. <i>Hotel</i></p>	<p>Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers. (continuation)</p>
	<p>Topics:</p> <ul style="list-style-type: none"> • The Government Ethics Law. • The Access to Public Information Law. • Statements of Net Worth of Public Servants and Employees <hr/> <p><u>Participants:</u></p> <p><i>National Foundation for Development</i> Mr. Jaime Lopez, Coordinator for Transparency Matters</p> <p><i>Foundation for Economic and Social Development of El Salvador</i> Mr. Rene Armando Abrego Labbe, Coordinator for Matters of Democratic Institutionalism</p> <p><i>Social Initiative for Democracy</i> Ms. Ana María Méndez Dardón, Coordinator of Transparency and Public Advocacy</p> <p><i>Foundation for Studies in the Application of Law</i> Mr. Abraham Atilio Abrego Hasbun, Subdirector</p>
<p>12:30 hrs. – 13:30 hrs.</p>	<p>Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers. (continuation) – Working Lunch</p>

	<p>Topic:</p> <ul style="list-style-type: none"> • Outcome of the study “Development of Public Administration Transparency Mechanisms, Openness of Administrative Acts and Policies regarding Rational Use of Government Resources.” <p><u>Participants:</u> Ms. Dafne Sanchez, Independent Consultant Ms. Carla Fratti de Vega, Independent Consultant</p>
14:00 hrs. – 18:30 hrs.	Government Ethics Tribunal
14:00 hrs. – 15:00 hrs.	<p>Panel 1:</p> <ul style="list-style-type: none"> • Outcome of the study “Development of Public Administration Transparency Mechanisms, Openness of Administrative Acts and Policies regarding Rational Use of Government Resources.” <p><u>Participants:</u> Ms. Jennyffer Giovanna Vega Hercules, Member of the Committee of the Tribunal Ms. Adda Mercedes Serarols, Secretariat of the Tribunal</p>
15:00 hrs. – 16:00 hrs.	<p>Panel 2:</p> <ul style="list-style-type: none"> • Coordination and Implementation of the new Government Ethics Law with other Government agencies. • Drafting of Regulations for the Governmental Ethics Law. <p><u>Participants:</u> Ms. Jennyffer Giovanna Vega Hercules, Member of the Committee of the Tribunal Ms. Adda Mercedes Serarols, Secretariat of the Tribunal</p>
16:30 hrs. – 17:30 hrs.	<p>Panel 3:</p> <ul style="list-style-type: none"> • Budgetary and human resources implications • Follow-Up to the Recommendations of the First Round <ul style="list-style-type: none"> - Conflicts of Interest - Mechanisms to encourage participation in the public administration

	<p><u>Participants:</u> Ms. Jennyffer Giovanna Vega Hercules, Member of the Committee of the Tribunal Ms. Adda Mercedes Serarols, Secretariat of the Tribunal</p>
17:30 hrs. – 18:30 hrs.	<p>Panel 4:</p> <ul style="list-style-type: none"> • Best practices on the signing of cooperation agreements with universities in El Salvador.
	<p><u>Participants:</u> Ms. Jennyffer Giovanna Vega Hercules, Member of the Committee of the Tribunal Ms. Adda Mercedes Serarols, Secretariat of the Tribunal</p>
18:30 hrs.	<p>Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.</p>
<p><u>Wednesday, March 21, 2012</u></p>	
08:30 hrs. – 13:00 hrs.	<p>Supreme Court of Justice</p>
08:30 hrs. – 09:30 hrs.	<p>Panel 5:</p> <ul style="list-style-type: none"> • Difficulties in compiling results.
	<p><u>Participants:</u> Mr. Luis Fernando Avelar Bermudez, Head of the Unit for Access to Public Information Mr. Camilo Guevara Moran, Director of Planning Mr. Pedro Francisco Venegas Cabañas, Head of the Integrity Section Ms. Ile Maria Guadalupe Calderon de Carpio, Delegate of the Government Ethics Commission Mr. Miguel Zamora, Interim Chief, UIE Mr. Juan Montejo, Interim Chief, UIDJ Mr. Juan Carlos Girón , Chief, Technical Assistance, Legal Administration</p>
09:30 hrs. – 11:30 hrs.	<p>Panel 6:</p> <ul style="list-style-type: none"> • Difficulties in reviewing and verifying statements of net worth. • Follow-Up to the Recommendations of the First Round. <ul style="list-style-type: none"> - Systems for registering income, assets and liabilities.

	<p><u>Participants:</u></p> <p>Mr. Luis Fernando Avelar Bermudez, Head of the Unit for Access to Public Information</p> <p>Mr. Camilo Guevara Moran, Director of Planning</p> <p>Mr. Pedro Francisco Venegas Cabañas, Head of the Integrity Section</p> <p>Ms. Ile Maria Guadalupe Calderon de Carpio, Delegate of the Government Ethics Commission</p> <p>Mr. Miguel Zamora, Interim Chief, UIE</p> <p>Mr. Juan Montejo, Interim Chief, UIDJ</p> <p>Mr. Juan Carlos Girón , Chief, Technical Assistance, Legal Administration</p>
11:30 hrs. – 13:00 hrs.	<p>Panel 7:</p> <ul style="list-style-type: none">• Accountability mechanisms accessible to the population. <p><u>Participants:</u></p> <p>Mr. Luis Fernando Avelar Bermudez, Head of the Unit for Access to Public Information</p> <p>Mr. Camilo Guevara Moran, Director of Planning</p> <p>Mr. Pedro Francisco Venegas Cabañas, Head of the Integrity Section</p> <p>Ms. Ile Maria Guadalupe Calderon de Carpio, Delegate of the Government Ethics Commission</p> <p>Mr. Miguel Zamora, Interim Chief, UIE</p> <p>Mr. Juan Montejo, Interim Chief, UIDJ</p> <p>Mr. Juan Carlos Girón , Chief, Technical Assistance, Legal Administration</p>
13:00 hrs. – 14:30 hrs.	Lunch
14:30 hrs. – 18:00 hrs.	Office of the Attorney General
14:30 hrs. – 15:30 hrs.	<p>Panel 8:</p> <ul style="list-style-type: none">• Difficulty in presenting results. <p><u>Participants:</u></p> <p>Mr. Higinio Osmin Marroquin Merino, Auditor Attorney</p> <p>Mr. Andres Amaya, Head of the Corruption Crimes Unit</p>

15:30 hrs. – 17:00 hrs.	<p>Panel 9:</p> <ul style="list-style-type: none"> • Application of the Government Ethics Law. <ul style="list-style-type: none"> - Government Ethics Commission in the Office of the Attorney General. • Coordination with other Government agencies in compliance with its mandates.
	<p><u>Participants:</u> Mr. Higinio Osmin Marroquin Merino, Auditor Attorney Mr. Andres Amaya, Head of the Corruption Crimes Unit</p>
17:00 hrs. – 18:00 hrs.	<p>Panel 10:</p> <ul style="list-style-type: none"> • Problems with resources in the Corruption Crimes Unit.
	<p><u>Participants:</u> Mr. Higinio Osmin Marroquin Merino, Auditor Attorney Mr. Andres Amaya, Head of the Corruption Crimes Unit</p>
18:00 hrs.	<p>Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.</p>
<p><u>Thursday, March 22, 2012</u></p>	
08:30 hrs. – 13:00 hrs.	<p>Court of Accounts¹⁷²</p>
08:30 hrs. – 09:30 hrs.	<p>Panel 11:</p> <ul style="list-style-type: none"> • Clarification on the results presented with regard to the amount of administrative and financial penalties recovered.
	<p><u>Participants:</u> Mr. Alfonso Bonilla, General Coordinator of the Office for Audits Mr. Marco Antonio Grande, General Coordinator for Jurisdiction Mr. José Napoleon Dominguez, Legal Director Ms. Ana Imelda Marquez de del Cid, Head of the Department for Citizen Participation Mr. Jorge Rodriguez, Financial Director Mr. Elmer Enrique Arias, Administrative Director Ms. Gladys Celina Gálvez, Assistant Director for Training</p>

¹⁷² An informal meeting was also held with the President of the Court of Accounts, Dr. Marcos Gregorio Sánchez Trejo.

09:30 hrs. – 11:00 hrs.	<p>Panel 12:</p> <ul style="list-style-type: none">• Coordination with other Government agencies.• Possible resource problems in ensuring that individuals who run for public office do not owe the State any administrative or financial penalties. <p><u>Participants:</u></p> <p>Mr. Alfonso Bonilla, General Coordinator of the Office for Audits Mr. Marco Antonio Grande, General Coordinator for Jurisdiction Mr. José Napoleon Dominguez, Legal Director Ms. Ana Imelda Marquez de del Cid, Head of the Department for Citizen Participation Mr. Jorge Rodriguez, Financial Director Mr. Elmer Enrique Arias, Administrative Director Ms. Gladys Celina Gálvez, Assistant Director for Training</p>
11:00 hrs. – 13:00 hrs.	<p>Panel 13:</p> <ul style="list-style-type: none">• Follow-Up to the Recommendations of the First Round.<ul style="list-style-type: none">- Conflicts of Interests: strengthening the Court of Accounts, by establishing indicators that make it possible to determine its results more precisely.- Standards of conduct and mechanisms to ensure the proper conservation and use of resources entrusted to government officials. <p><u>Participants:</u></p> <p>Mr. Alfonso Bonilla, General Coordinator of the Office for Audits Mr. Marco Antonio Grande, General Coordinator for Jurisdiction Mr. José Napoleon Dominguez, Legal Director Ms. Ana Imelda Marquez de del Cid, Head of the Department for Citizen Participation Mr. Jorge Rodriguez, Financial Director Mr. Elmer Enrique Arias, Administrative Director Ms. Gladys Celina Gálvez, Assistant Director for Training</p>
13:00 hrs. – 14:30 hrs.	Lunch
14:30 hrs. – 18:00 hrs.	Subsecretariat for Transparency and Anti-Corruption of the Office of

	the President of the Republic
14:30 – 16:30 hrs.	<p>Panel 14:</p> <ul style="list-style-type: none">• Implementation of the Access to Public Information Law.• Follow-Up to the Recommendations of the First Round.<ul style="list-style-type: none">- Mechanisms for access to information.- Mechanisms for consultation.
	<p><u>Participants:</u></p> <p>Mr. Marcos Rodriguez, Undersecretary</p> <p>Ms. Aurora Cubías, Coordinator for Institutional Transparency Matters</p> <p>Ms. Kimberling Hernandez, Specialist in Transparency and Accountability Mechanisms</p> <p>Ms. Varinia Arevalo, Specialist in Access to Public Information</p> <p>Mr. Luis Cruz, Legal Adviser</p> <p>Ms. Miriam Chavez, Specialist, Access to Public Information</p> <p>Mr. Juan Escalante, Specialist in Following-Up on International Transparency</p> <p>Ms. Gabriela Ibarra, Specialist in International Conventions, Cooperation and Planning</p> <p>Ms. Sara Flores, Responsible for the Government Transparency Portal</p>
16:30 hrs. – 18:00 hrs.	<p>Panel 15:</p> <ul style="list-style-type: none">• Best Practice: Accountability Mechanisms of the Executive Branch Agencies.

	<p><u>Participants:</u></p> <p>Mr. Marcos Rodriguez, Undersecretary</p> <p>Ms. Aurora Cubías, Coordinator for Institutional Transparency Matters</p> <p>Ms. Kimberling Hernandez, Specialist in Transparency and Accountability Mechanisms</p> <p>Ms. Varinia Arevalo, Specialist in Access to Public Information</p> <p>Mr. Luis Cruz, Legal Adviser</p> <p>Ms. Miriam Chavez, Specialist, Access to Public Information</p> <p>Mr. Juan Escalante, Specialist in Following-Up on International Transparency</p> <p>Ms. Gabriela Ibarra, Specialist in International Conventions, Cooperation and Planning</p> <p>Ms. Sara Flores, Responsible for the Government Transparency Portal</p>
18:00 hrs.	Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.
<u>Friday, March 23, 2012</u>	
09:00 hrs. – 10:15 hrs.	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers
	<p>Topic:</p> <ul style="list-style-type: none"> • The Government Ethics Law.
	<p><u>Participants:</u></p> <p><i>DynCorp/Casals</i></p> <p>Mr. Carlos Guerrero, Director of Anticorruption Program</p> <p>Mr. Hiram Morales, Consultant</p> <p>Mr. Otto Vidaurre</p> <p>Mr. Vicente Hernández</p> <p>Mr. Edward Wollants</p>
10:30 hrs. – 12:30 hrs.	Economic and Social Council
	<p>Panel 16:</p> <ul style="list-style-type: none"> • Follow-Up to the Recommendations of the First Round. • Mechanisms for consultation.

	<p><u>Participants:</u></p> <p>Ms. Sarahi Molina, General Secretary (MUSYGES)</p> <p>Ms. Guadalupe Erazo, Coordinator (FSNP)</p> <p>Ms. Ana Isabel Lopez, Coordinator (CPC)</p> <p>Mr. Arnoldo Jimenez, Executive Director (ANEP)</p> <p>Ms. Claudia Dueñas, Coordinator (CES)</p> <p>Ms. Carolina Quinteros, Dialogue Specialist (CES)</p> <p>Mr. René A. Zelaya, Advisor to the Rector (UCA)</p> <p>Mr. Nelson R. González, Assistant Coordinator (FSNP)</p> <p>Ms. Laura Rivera, Program Official (PNUD)</p> <p>Mr. Javier Argueta, Legal Director (ANEP)</p>
12:30 hrs. – 14:00 hrs.	Lunch
14:00 hrs. – 15:00 hrs.	Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.
15:00 hrs. <i>Offices of the Subsecretariat for Transparency and Anti-Corruption of the Office of the President of the Republic</i>	<p>Final meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat.</p> <p><u>Participants:</u></p> <p>Mr. Marcos Rodriguez, Undersecretary (SSTA)</p> <p>Ms. Gabriela Ibarra, Specialist in International Conventions, Cooperation and Planning (SSTA)</p>

**CONTACT AUTHORITY FROM THE COUNTRY UNDER REVIEW FOR
COORDINATION OF THE ON-SITE VISIT, AND REPRESENTATIVES OF THE
MEMBER STATES OF THE PRELIMINARY REVIEW SUBGROUP AND THE
TECHNICAL SECRETARIAT OF THE MESICIC**

COUNTRY UNDER REVIEW:

REPUBLIC OF EL SALVADOR

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