

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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UNITED STATES OF AMERICA

FINAL REPORT

(Adopted at the March 20, 2015 plenary session)

SUMMARY

This report contains the comprehensive review of the implementation in the United States 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 United States 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 United States’ response to the questionnaire, information provided by civil society organizations, information gathered by the Technical Secretariat, and, as a new and important source of information, the on-site visit conducted between October 7 and 9, 2014, by the members of the review subgroup for the United States, comprising Argentina and Belize, with the support of the Technical Secretariat. During that visit, the information furnished by the United States was clarified and expanded and the opinions of civil society organizations, the private sector and professional associations on issues of relevance to the review were heard. This provided the Committee with objective and complete information on those topics, assisting with the gathering of information on practices, and providing the United States with the opportunity to offer and/or request technical assistance for the purposes of the Convention.

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

The oversight bodies in the United States reviewed in this report are: The Disclosure Unit of the Office of Special Counsel (OSC); The Council of the Inspectors General on Integrity and Efficiency (CIGIE); The Public Integrity Section (PIN) of the Criminal Division of the Department of Justice; and the Office of Government Ethics (OGE).

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

Provide the oversight bodies with the financial and human resources necessary for the adequate fulfillment of their functions and responsibilities and maintain results on the execution of their functions, in order to identify challenges and recommend corrective measures.

With regard to the Disclosure Unit of the OSC, consider defining the phrase “substantial likelihood” used in 5 U.S.C., § 1214; examine the need to provide the Disclosure Unit with additional authority to resolve disclosures that it receives; and make greater use of the authority

granted to the OSC by 5 U.S.C. § 1213(g)(1) in order for the Disclosure Unit to receive disclosures from those who are neither employees, former employees, nor applicants for employment meeting the conditions of 5 U.S.C. § 1213(c)(2)(A) or (B), as well as from contractors.

With regard to the CIGIE, consider defining or providing more guidance on the term “general supervision” as used in the Inspector General Act of 1978; take steps to ensure prompt action in appointments to vacant IG positions; and consider clarifying when and in what instances attorney-client privilege or other Federal laws may be used to refuse to provide an Inspector General with requested information.

With regard to the PIN, ensure that there is adequate coordination between the PIN and the United States Attorneys Offices, and consider maintaining statistics on the results of investigations and prosecutions broken down in such a way so as to identify the types of criminal conduct or offenses that led to prosecutions and convictions

With regard to the OGE, consider steps to ensure that ethics officials receive adequate training to promote uniform application of ethics principles in the agencies of the executive branch; promote periodic meetings between Designated Agency Ethics Officials and Alternate Designated Agency Ethics Officials; review OGE regulations to identify any rules that could be made more effective; and consider making any necessary changes to the Ethics in Government Act in order to ensure its continued effectiveness.

The best practices regarding which the United States provided information refer, in summary, to the MOU between OSC and the National Science Foundation; the promotion of “Suspension and Debarment” by the CIGIE; the indictment review procedure used by the Public Integrity Section, and the assistance provided to the President and the Senate by OGE as part of the Presidential appointment process.

With regard to follow-up on the recommendations formulated to the United States 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 United States in its response to the questionnaire and during the on-site visit, a determination was made that those two remaining recommendations had been satisfactorily implemented.

Among the progress related to the implementation of those recommendations, the selection and development of procedures and indicators that enable the follow-up to the recommendations formulated to the United States, as well as the development of procedures to analyze existing mechanisms.

All of the recommendations formulated to the United States in the First Round have been satisfactorily considered.

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

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

INTRODUCTION

1. Contents of the Report

[1] This report presents, first, a comprehensive review of the United States' 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 United States 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 United States in the First Round and that it deemed to require additional attention in the reports it adopted for that country in the Second and Third Rounds, which may be consulted at the following: <http://www.oas.org/juridico/english/usa.htm>

2. Ratification of the Convention and adherence to the Mechanism

[4] According to the official records of the OAS General Secretariat, the United States deposited the instrument of ratification of the Inter-American Convention against Corruption on September 29, 2000.

[5] In addition, the United States 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 United States

[6] The Committee wishes to acknowledge the cooperation that it received from the United States throughout the review process, and in particular from the Bureau of International Narcotics and Law Enforcement Affairs of the United States Department of State, which was evidenced, *inter-alia*, in

¹ This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on March 20, 2015, at its Twenty-Fifth Meeting, held at OAS Headquarters, March 16-20, 2015.

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 response, the United States sent the provisions and documents it considered pertinent. That response and the provisions and documents may be consulted at the following webpage: http://www.oas.org/juridico/english/mesicic4_usa.htm

[7] The Committee also notes that the country under review gave its consent for the on-site visit, in accordance with provision 5 of the *Methodology for Conducting On-Site Visits*.² As members of the preliminary review subgroup, the representatives of Argentina and Belize conducted the on-site visit from October 7 to 9, 2014, with the support of the MESICIC Technical Secretariat. The information obtained during that visit is included in the appropriate sections of this report, and the agenda of meetings is attached thereto, in keeping with provision 34 of the *Methodology for Conducting On-Site Visits*.

[8] For its review, the Committee took into account the information provided by the United States up to October 9, 2014, as well as that furnished and requested by the Secretariat and the members of the review subgroup to carry out its functions, in keeping with the *Rules of Procedure and Other Provisions*; the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round*; and the *Methodology for Conducting On-Site Visits*. This information may be consulted at the following webpage: http://www.oas.org/juridico/english/mesicic_rounds.htm

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

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

[10] However, during the on site visit to the country under review from October 7 to 9, 2014, information was gathered from civil society and private sector organizations; and professional associations, who were invited to participate in the meetings held for that purpose, pursuant to provision 27 of the *Methodology for Conducting On-Site Visits*. A list of invitees is included in the agenda of the on site visit, which has been annexed to this report. This information is reflected in the appropriate sections of this report, as appropriate.

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

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

[11] The United States 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 Disclosure Unit of the Office of the Special Counsel (OSC); the Council of Inspectors General on Integrity and Efficiency (CIGIE); the Public Integrity Section

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

(PIN) of the United States Department of Justice (USDOJ); and the Office of Government Ethics (OGE).

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

[13] The Disclosure Unit of the Office of the Special Counsel (OSC), which administers the whistleblower disclosure program, and which serves as a safe conduit for the receipt and evaluation of whistleblower disclosures from Federal employees, former employees, and applicants for Federal employment.

[14] The Council of the Inspectors General on Integrity and Efficiency (CIGIE), which addresses integrity, economy and effectiveness issues that transcend individual Government agencies; and increases the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the offices of the Inspectors General.

[15] The Public Integrity Section (PIN) of the United States Department of Justice (USDOJ), which is responsible for combating corruption through the prosecution of elected and appointed public officials.

[16] The Office of Government Ethics (OGE), which promulgates and maintains the Standards of Ethical Conduct for Employees in the executive branch; oversees the executive branch financial disclosure system; and provides ethics education and training.

1. THE DISCLOSURE UNIT OF THE OFFICE OF THE SPECIAL COUNSEL (OSC)

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

[17] The Disclosure Unit of the Office of the Special Counsel (DU-OSC) has a set of provisions in its legal framework, as well as other measures that refer, *inter-alia*, to the following:

[18] The Whistleblower Disclosure Act of 1989, 5 U.S.C., § 1201 *et seq.*, establishes the OSC as an independent federal investigative and prosecutorial agency within the executive branch.³

[19] With respect to the objectives and functions of the OSC, according to the response of the country under review, *“Its primary mission is to safeguard the merit system by protecting federal employee and applicants from prohibited personnel practices, including reprisals for whistleblowing. The agency also provides employees a secure channel for disclosing wrongdoing in Government agencies, enforces and provides advice on Hatch Act⁴ restrictions on political activity by Government employees, and enforces employment rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA)⁵ for federal employees who served in the uniformed services.”*⁶

³ The OSC was established in 1979, by the Civil Service Reform Act. Prior to the Whistleblower Protection Act of 1989, OSC operated as an autonomous investigative and prosecutorial arm of the Merit System Protection Board. See also the response of the United States to the Questionnaire for the Fourth Round, at pp. 51-52, available at: http://www.oas.org/juridico/PDFs/mesicic4_usa_reply.pdf

⁴ The Hatch Act of 1939 prohibits employees in the Executive Branch from engaging in certain partisan political activity.

⁵ USERRA provides certain specific rights to federal employees who served in the uniformed services, which are enforced by OSC. Also see the response of the United States to the Questionnaire for the Fourth Round, at p. 51, *supra* note 3. More information is also available here:

[20] 5 U.S.C. § 1212(a)(3) provides that OSC is responsible for receiving, reviewing, and, where appropriate, forwarding to the Attorney General or an agency head under section 1213, disclosures of violations of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.⁷

[21] 5 U.S.C. § 1213(b) provides that within 15 days of receiving a disclosure as provided for above, OSC shall review the information provided in order to make a determination of whether there is a substantial likelihood that one of the situations in section 1212 has occurred. If the OSC makes such a determination, section 1213(c) requires the relevant information to be provided to the appropriate agency, along with a requirement that the agency head (A) conduct an investigation related to the matter; and (B) submit a written report to the OSC within 60 days, setting forth the findings of the agency head. Similarly, section 1213(d) specifies the information that must be included in the report provided by the agency head.⁸

[22] Section 1213(e)(1) requires any report submitted to the OSC to be transmitted to the complainant, while section 1213(e)(2) requires the agency report, together with any comments from the complainant and comments or recommendations from the Special Counsel, to be transmitted to the President and the congressional committees with jurisdiction over the agency to which the disclosure pertains.

[23] Section 1213(f) provides that in any case in which evidence of a criminal violation obtained by an agency during the course of an investigation is referred to the Attorney General, the report shall not be transmitted to the whistleblower. During the on-site visit, representatives of the OSC explained with regard to section 1213(f), that the existence of or status of ongoing criminal investigations carried out by the Department of Justice (Attorney General) are not public in nature.

[24] During the on-site visit, OSC representatives provided further clarification on the operation of the disclosure, referral and agency reporting process, explaining that OSC is in communication with whistleblowers throughout the process from the time the disclosure is received until the report is transmitted to the President and the Congress. OSC also coordinates with the agency involved, examining the report, and when necessary, sending it back to the agency head if the findings therein do not appear reasonable or if OSC determines that the corrective actions proposed by the agency head are insufficient.

[25] With respect to exceptions to the scope of functions of the OSC, the response to the questionnaire notes that the Disclosure Unit has jurisdiction over disclosures made by Federal

<http://www.dol.gov/vets/programs/userra/>.

⁶ See the response of the United States to the Questionnaire for the Fourth Round, at p. 51, supra note 3.

⁷ Other functions of the OSC, but which are not the competence of the Disclosure Unit include “(1) *receiv[ing] and investigat[ing] complaints from Federal employees alleging prohibited personnel practices; [and] (2) receiv[ing] and investigat[ing] complaints regarding the political activity of Federal employees and covered state and local employees and provid[gin] advice on restrictions imposed by the Hatch Act on political activity by covered government employees...OSC, when appropriate, file[s] petitions for corrective and/or disciplinary action with the Board in prohibited personnel practices and Hatch Act cases.*” See the response of the United States to the Questionnaire for the Fourth Round, at p. 51, supra note 3.

⁸ 5 U.S.C. Section 1213(d) requires agency reports to include: (1) a summary of the information with respect to which the investigation was initiated; (2) a description of the conduct of the investigation; (3) a summary of any evidence obtained from the investigation; (4) a listing of any violation or apparent violation of any law, rule, or regulation; and (5) a description of any action taken or planned as a result of the investigation, such as — (A) changes in agency rules, regulations, or practices; (B) the restoration of any aggrieved employee; (C) disciplinary action against any employee; and (D) referral to the Attorney General of any evidence of a criminal violation.

employees, former employees and applicants for Federal employment, but has no jurisdiction over the U.S. Postal Service and the Postal Regulatory Commission, and members of the armed forces of the United States (i.e., non-civilian military employees, and other employees exempt by statute).⁹ The response further notes that when the Disclosure Unit receives a disclosure from an individual not within OSC's jurisdiction, "...it will notify the individual by letter and close the matter. If possible, the letter will refer the individual to an alternate reporting channel such as the Inspector General of the involved agency."¹⁰

[26] In addition, pursuant to 5 U.S.C. § 1213(c)(2), OSC can only require an agency head to conduct an investigation and prepare the corresponding report when the source of the disclosure is an employee, former employee, or applicant for employment in the agency which the information concerns (section 1213(c)(2)(A)); or an employee who obtained the information in connection with the performance of the employee's duties and responsibilities (section 1213(c)(2)(B)). With respect to disclosures received from persons who do not fall into the three foregoing categories, 5 U.S.C. § 1213(g)(1) provides that OSC may transmit the information to the head of the agency, who in turn, within a reasonable time, shall inform OSC in writing of what action has been or is being taken, as well as when the action will be completed.

[27] With respect to disclosures of classified information, 5 U.S.C. § 1213(j) provides the Special Counsel is to transmit any disclosures that involve foreign intelligence or counterintelligence information to the national Security Advisor, the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate, if those disclosures are prohibited by law or Executive Order. With respect to these types of disclosures, the response to questionnaire notes that there is no investigative or reporting requirement.¹¹

[28] With regard to the possibility of processing anonymous disclosures, during the on-site visit, OSC representatives explained that anonymous disclosures are unable to meet the "substantial likelihood" standard established in the Whistleblower Protection Act, and accordingly, anonymous disclosures are generally transmitted to the respective agency Inspector General's Office.

[29] With regard to the manner in which OSC adopts its decisions, during the on-site visit, OSC representatives noted there is no definition of "substantial likelihood" – the standard that disclosures must meet in order to be referred to agencies for investigation and reporting. The agency has, however, developed a working definition, as described in the response to the questionnaire: "*The DU will find a substantial likelihood when it appears from the evidence provided by the whistleblower that it is more likely than not that at the conclusion of the investigation, the allegations will be substantiated.*"¹²

⁹ See the response of the United States to the Questionnaire for the Fourth Round, at p. 54, supra note 3. In addition, according to the online complaint form available at <https://osc.gov/pages/file-complaint.aspx>, the Disclosure Unit does not have jurisdiction over the following institutions: the Commodity Credit Corporation, the Community Development Financial Institutions Fund, the Corporation for National and Community Service, the Export-Import Bank of the United States, the Federal Crop Insurance Corporation, the Federal Prison Industries, Incorporated, the Government National Mortgage Association, the International Clean Energy Foundation, the Millennium Challenge Corporation, the Overseas Private Investment Corporation, the Panama Canal Commission, the Pennsylvania Avenue Development Corporation, the Pension Benefit Guaranty Corporation, the Saint Lawrence Seaway Development Corporation, the Tennessee Valley Authority, state or local governments operating under a federal grant, federal contractors, the Legislative or Judicial branch of the federal government, or a federal component paid through non-appropriated funds.

¹⁰ Ibid.

¹¹ See the response of the United States to the Questionnaire for the Fourth Round, at p. 53, supra note 3.

¹² See the response of the United States to the Questionnaire for the Fourth Round, at p. 55, supra note 3.

[30] Regarding the existence of appeal or challenge mechanisms regarding a decision by the OSC not to refer a disclosure to the respective agency, during the course of the on-site visit, OSC representatives noted that the OSC has established an internal, non-statutory “Request for Reconsideration” procedure, wherein following a determination by OSC that a disclosure fails to meet the “substantial likelihood” test, OSC will nonetheless allow a whistleblower to provide additional information or point out that certain relevant information was not taken into account by OSC in making its determination. OSC representatives noted that they allow whistleblowers to make use of two Requests for Reconsideration.

[31] The OSC is headed by the Special Counsel, who, according to 5 U.S.C. § 1211(a), is appointed by the President, by and with the advice and consent of the Senate, to a 5 year term, and who may serve for at most one additional year beyond the 5 year appointment until a successor is appointed. 5 U.S.C. § 1211(b) provides that “*The Special Counsel shall be an attorney who, by demonstrated ability, background, training, or experience, is especially suited to carry out the functions of the position.*” Section 1211(b) also provides that the Special Counsel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

[32] With regard to other OSC personnel, the response notes that “*The Special Counsel uses a variety of appointing authorities to hire staff. Attorneys are appointed into the Excepted Service, under 5 CFR § 213. Other employees, unless otherwise excepted, are appointed into the Competitive Service. Newly appointed Federal employees serve a probationary period, which can be a highly effective tool to evaluate a candidate’s potential to be an asset to the Government before an appointment becomes final. Once an appointment becomes final, the probationer becomes an employee with a considerable level of protection under the Federal government’s merit system. Selection, appointment and removal of an OSC employee is subject to a system of laws and regulations governing employment in the executive branch...This system of laws and regulations also sets forth the requirements executive branch employees must meet to hold their positions.*”¹³ All employees of OSC are subject to the executive branch standards of conduct; applicable supplemental agency regulations; the criminal conflict of interest laws; and, depending upon the type and level of their positions, the civil ethics statutes and financial disclosure requirements.”¹⁴

[33] Additionally, with respect to the number of personnel at the OSC, the response notes that OSC employs approximately 125 employees, and that “*The Disclosure Unit is made up of 11 attorneys, including the Disclosure Unit Chief and Deputy Chief, as well as one paralegal specialist and two investigators.*”¹⁵

[34] With regard to the existence of manuals describing functions of OSC personnel, the response notes that each employee has a job description, an annual performance plan and an annual performance review, and that employees in each unit receive training, both internal and external to OSC.¹⁶

[35] In addition, the response to the questionnaire also provides information on training provided by OSC, including “*...training provided to Federal agencies and non-Federal organizations in the various areas within OSC’s jurisdiction, as well as a certification program*

¹³ For additional information on the system of laws and regulation applicable to employees in the Executive Branch, and which are applicable to OSC employees, see Chapter II, Section 1 of the Report on the United States for the Second Round of Review, at http://www.oas.org/juridico/english/mesicic2_usa.htm

¹⁴ See the response of the United States to the Questionnaire for the Fourth Round, at pp. 56-57.

¹⁵ Ibid, at p. 56.

¹⁶ Ibid, at p. 57.

for agencies...In addition, OSC seeks feedback on the quality of our published information, and what information users identify as priorities for future publication."¹⁷

[36] Also related to training provided by the OSC, 5 U.S.C. § 2302(c) makes the head of each executive branch agency responsible for, *inter-alia*, the prevention of prohibited personnel practices, compliance with and enforcement of applicable civil service laws, rules, and regulations, and for ensuring (in consultation with OSC), that agency employees are informed of their rights and the remedies available to them, including how to make a disclosure. Pursuant to this, in 2002, OSC created a "2302(c) Certification Program", in order to provide agencies with a process for meeting this requirement.¹⁸

[37] During the on-site visit, OSC representatives explained that prior to 2014, compliance with the Certification Program was largely voluntary, but that following a February 24, 2014 Memorandum from the White House,¹⁹ as well as the Second Open Government National Action Plan for the United States of America,²⁰ agencies have been directed to participate in the Program.

[38] In relation to the existence of documented procedures for the performance of tasks, the response to the questionnaire notes the existence of training manuals and standard operating procedures that describe the functions of OSC personnel.²¹ Similarly, Title 5 of the Code of Federal Regulations (C.F.R) 1800 *et seq.*, contains detailed provisions applicable to the work of the OSC, such as 5 C.F.R. 1800.2, which contains specific procedures for the filing of disclosures. In addition, the response to the questionnaire also notes that in order "*To ensure continuing quality improvement, OSC conducts annual surveys and has participated in external reviews of program operations, including by the Harvard Negotiation and Mediation Clinical Program and private contractors.*"²²

[39] With respect to institutional strengthening at the OSC, the OSC has adopted a Strategic Plan for Fiscal Years 2012-2016, which contains five strategic goals of the OSC; objectives which allow accomplishment of the strategic goals to be measured; and an assessment of the challenges faced by the OSC.²³

[40] With regard to internal control mechanisms as well as mechanisms for dealing with complaints or allegations related to the pursuit of the objectives of the OSC and the performance of its personnel, the response to the questionnaire notes that "*OSC has agency directives addressing claims, complaints, or allegations related to the pursuit of its objectives and to the performance of its personnel. Complaints involving the Special Counsel or the Principal Deputy Special Counsel are handled outside OSC by the Integrity Committee of CIGIE; those involving OSC political appointees, members of the Senior Executive Service and other Senior Level employees are handled pursuant to a Memorandum of Understanding with an Inspector General from another agency. Complaints against other officials are handled following standard Government personnel procedures.*"²⁴

¹⁷ See the response of the United States to the Questionnaire for the Fourth Round, at p. 59, *supra* note 3.

¹⁸ More information on the OSC 2302(c) Certification Program is available here: <https://osc.gov/Pages/Outreach-2302Cert.aspx>

¹⁹ See: http://www.whitehouse.gov/sites/default/files/microsites/ostp/open_gov_plan_guidance_memo_final.pdf

²⁰ See: http://www.whitehouse.gov/sites/default/files/docs/us_national_action_plan_6p.pdf

²¹ See the response of the United States to the Questionnaire for the Fourth Round, at p. 57, *supra* note 3.

²² *Ibid.*, at pp. 57-58

²³ See the OSC Strategic Plan for Fiscal Years 2012-2016, available at:

<https://osc.gov/Resources/Strategic%20Plan%20for%20posting%20to%20website%205%2010%2012.pdf>

²⁴ See the response of the United States to the Questionnaire for the Fourth Round, at p. 59, *supra* note 3.

[41] With regard to the foregoing, during the on-site visit, OSC representatives explained that in the past, whistleblower disclosures regarding OSC or its staff had to be submitted to and processed by the OSC. In addition, they explained that unlike the majority of federal agencies, OSC does not have its own Inspector General, and accordingly, there was no clearly established mechanism for processing such complaints. To remedy this situation, the Memorandum of Understanding between the OSC and the Office of the Inspector General of the National Science Foundation (NSF) allows disclosures regarding OSC to be processed by the NSF Inspector General's Office. In addition, OSC staff has elected one of their colleagues to be the conduit for such disclosures or complaints.

[42] With regard to the existence of shared functions as well as the existence of any mechanisms for harmonizing the functions of the OSC with those of other oversight bodies, both in the response to the questionnaire²⁵ as well as during the on-site visit, it was explained that the Disclosure Unit of the OSC does not itself have investigatory authority with regard to disclosures that it receives, and that accordingly, investigations related to disclosures, which are the responsibility of the agency heads, are usually delegated to the respective Office of the Inspector General.

[43] With regard to mechanisms for accountability and for providing information to the public, 5 U.S.C. § 1218 provides that the Special Counsel shall submit an Annual Report to Congress on its activities, including in pertinent part, a description of the recommendations and reports made by it to other agencies, as well as the actions taken by the agencies as a result of the reports or recommendations. This section also provides that the Annual Report shall also include whatever recommendations for legislation or other action by Congress the Special Counsel may consider appropriate.

[44] 5 U.S.C. § 1219 requires the OSC to maintain and make available to the public: (1) a list of non-criminal matters referred to agency heads under section 1213(c) as well as the corresponding agency reports; (2) any disciplinary matters referred to agency heads; (3) any investigations pertaining to prohibited personnel practices; and (4) agency reports resulting from disclosures referred under 1213(g)(1).

[45] In addition, the OSC has its own institutional Internet website, www.osc.gov, which contains, *inter-alia*, information on the background of the institution; its areas of operation; press releases; and various types of reports and letters, including, among others, OSC's letters to the President and Congress; investigative reports submitted by agency heads to OSC; the Annual Reports submitted by OSC to Congress, Performance and Accountability Reports, and Budget Justification Reports. This portal also allows members of the public to submit complaints online regarding the various areas over which the OSC has jurisdiction, including disclosures of wrongdoing.²⁶

[46] With respect to the manner in which budgetary resources of the OSC are ensured, the response notes that "*OSC, like other Federal executive branch agencies, formulates an annual budget request and submits it to the Office of Management and Budget for review. The budget request then becomes a part of the President's budget request submitted annually to the Congress. The appropriations committees of the U.S. House and Senate ultimately have to agree on a level of appropriations that will be given to OSC. That amount is part of a larger appropriations bill passed by the Congress and agreed to by the President. OSC's level of request and ultimate appropriation appear under its name in the President's budget request and the subsequently passed appropriations bill, respectively. During Fiscal Year (FY) 2014, OSC is operating with budget authority of \$21,085,000, of which \$20,639,000 is from appropriated funds, and \$446,000 from reimbursement*

²⁵ Ibid, at p. 60.

²⁶ See: <https://osc.gov/pages/file-complaint.aspx>

*agreements. OSC's President's Budget Level for FY 2015 is \$21,452,000, which would be a 4% increase over the current appropriation. This funding level will sustain 128 total full-time employees (FTE), and help OSC with its increasing levels of prohibited personnel practices and whistleblower disclosures.*²⁷

[47] With regard to difficulties encountered by the OSC related to the performance of its functions, the response notes that *"The challenges faced by OSC within the past several years are discussed in the OSC's Fiscal Year 2015 Congressional Budget Justification and Performance Budget Goals. OSC's successes during FY 2013 were achieved despite the difficult fiscal environment and sequestration. Due to reduced resources, OSC lost over 12 FTE, and remaining staff members were required to take furlough days. Furloughs were necessary despite trimming virtually all non-essential expenditures, such as agency travel and various employee benefits. OSC was able to further reduce its operating costs by awarding mandatory contracts on a competitive basis."*²⁸

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

[48] The Disclosure Unit of the Office of the Special Counsel has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were briefly described in section 1.1 of this report. Nonetheless, the Committee considers it appropriate to formulate certain observations in relation thereto:

[49] First, and with respect to exceptions to the scope of competence of the OSC, the Committee observes that while OSC can accept disclosures from a wide range of Federal employees, former employees, as well as applicants for employment, pursuant to 5. U.S.C. § 1213(c)(2), the OSC cannot require an agency to investigate and report on disclosures received from non-employees.

[50] By way of example, during the on-site visit, OSC representatives noted that pursuant to law, OSC cannot generally process disclosures that they receive from government contractors, despite the fact that contractors make up a large segment of the Federal "work-force". In this regard, the OSC representatives noted that on limited occasions, disclosures from government contractors were able to be processed only because the contractors were themselves former government employees.

[51] Notwithstanding the foregoing, and as noted in section 1.1, above, the Committee observes that 5. U.S.C. § 1213(g)(1) appears to create a parallel mechanism, under which disclosures received from individuals not meeting the conditions of section 1213(c)(2)(A) and (B) can nonetheless be submitted to agency heads by OSC. This section also requires agency heads to inform OSC in writing of the action that has been taken or will be taken, and for OSC to inform the complainant of the report of the agency head. Tied to the foregoing, 5 U.S.C. § 1219(a) requires these reports, together with reports resulting from disclosures from employees, former employees or applicant from employment, to be published on the OSC website.

[52] While the Committee notes that the process contemplated in section 1213(g)(1) is not as detailed or subject to the same eventual oversight as the disclosure process in section 1213(c), because reports under section 1213(g)(1) are not submitted to the President and Congressional oversight committees, it nonetheless allows for certain concrete actions to be taken with respect to substantiated disclosures from individuals not meeting the conditions of section 1213(c)(2)(A) or (B). This could include contractors and/or other third parties.

²⁷ See the response of the United States to the Questionnaire for the Fourth Round, at p. 60, *supra* note 3.

²⁸ *Ibid*, at p. 64.

[53] Taking into account that during the on-site visit, OSC representatives noted that it is not infrequent for them to receive disclosures from contractors and other non-employee whistleblowers, the absence of any published reports originating under section 1213(g)(1) tends to indicate that very little use is being made by OSC of the authority granted to it by section 1213(g)(1). In this regard, OSC has explained that in 1981, the U.S. Department of Justice, Office of Legal Counsel, issued an opinion under a prior version of the disclosure statute, which restricted OSC's authority to transmit information to an agency head that was not submitted by a federal employee whistleblower, and that accordingly, no use was made of that apparent authority and no such disclosures were processed.

[54] Notwithstanding, OSC informed that on January 22, 2015, the agency published a Notice of Proposed Rulemaking which would revise OSC's regulations to permit government contractors, subcontractors and grantees to file disclosures with OSC.²⁹ OSC has further informed that its website does not yet contain reports of cases referred to agency heads under section 1213(g)(1), but expects that such cases will begin to be published after the revised regulations have been adopted.

[55] The Committee will formulate a recommendation bearing in mind the importance of OSC making use of its authority under Section 1213(g)(1), to accept complaints from government contractors, as well as from those who are neither Federal employees, former employees, nor applicants for employment. (See recommendation 1.4.1 in Chapter II of this report.)

[56] Tied to the foregoing, during the on-site visit, civil society and professional associations noted that considering the large number of government contracts as well as the large percentage of public resources that are managed by such contractors, that it would be important for the OSC to be in a position to accept and process disclosures from contractors.

[57] Second, and with regard to resources at the OSC, the response to the questionnaire notes as a difficulty facing OSC, the fact that in Fiscal Year 2013, OSC lost over 12 full-time employees, while remaining staff members were required to take furlough days.³⁰ In a similar sense, OSC's Strategic Plan for 2012-2016, notes in relation to funding challenges at the OSC, that *"By identifying and preventing waste, fraud, abuse, and health and safety challenges, OSC is an agency that turns many times its budget in direct and indirect financial benefits to the Federal government. But OSC can only do so if its resources are adequate to its mission. While OSC is putting in place long-term plans to work more efficiently, absent needed resources, there is a point at which a diminished OSC will result in less accountability in government."*³¹

[58] Related to the issue of human resources, during the on-site visit, OSC representatives noted that due to the large number of disclosures that have to be processed by a relatively small number of staff, they prioritize the review process so that those disclosures that appear particularly serious, such as those related to health and safety issues, can be examined within a few days after receipt.

²⁹ See: this Notice of Proposed Rulemaking is available here: <http://www.gpo.gov/fdsys/pkg/FR-2015-01-22/pdf/2015-00753.pdf>. In addition, the rulemaking process provides for a 60-day public comment period before the proposed rule becomes final.

³⁰ See the response of the United States to the Questionnaire for the Fourth Round, at p. 64, supra note 3.

³¹ See: <https://osc.gov/Resources/Strategic%20Plan%20for%20posting%20to%20website%205%2010%2012.pdf>, at pp. 14-15.

[59] The Committee believes it important, given the key role played by the OSC and its Disclosure Unit in the fight against corruption, for it to have the human and financial resources necessary to adequately carry out its assigned functions and responsibilities. The Committee will formulate a recommendation in this regard. (See recommendation 1.4.2 in Chapter II of this report.)

[60] In connection with the above, in meetings held with representatives of civil society and professional organizations, a representative of the Senior Executive Association (SEA) opined that OSC was under-funded and that it could achieve more if it were provided with additional human and financial resources.

[61] Third, and with regard to the disclosure review process, during the on-site visit, OSC representatives explained that some matters that are disclosed were trivial in nature and could be resolved with a telephone call to the head of an agency, and explaining the situation. Nonetheless, the representatives explained that pursuant to the Whistleblower Protection Act, when the Disclosure Unit concludes that a substantial likelihood exists that the events disclosed occurred, they have no choice but to begin the lengthy formal referral, investigation and reporting process. In this regard, the representatives considered that if OSC had the ability to mediate matters between the whistleblower and the agency concerned, some matters could be resolved expeditiously. The Committee will formulate a recommendation on this point. (See recommendation 1.4.3 in Chapter II of this report.)

[62] Fourth, and on a related note, during the on-site visit, OSC representatives noted that an alternate mechanism to the formal referral, investigation and reporting process may need to be considered for smaller agencies, particularly in cases where the agency has no OIG, or in cases where the complaint is against the head of the respective agency. The Committee will formulate a recommendation in this regard. (See recommendation 1.4.4 in Chapter II of this report.)

[63] Fifth, with respect to the “substantial likelihood” standard contained in 5 U.S.C. § 1213(b), as set out in section 1.1, above, during the on-site visit, OSC representatives explained the manner in which, internally, they go about determining when information that is disclosed meets this threshold. Nonetheless, during the visit, the representatives noted that there is neither a statutory definition of the term, nor any jurisprudence providing a bright-line rule for making this determination. Accordingly, the representatives agreed that it might be useful for the term to either be defined, or for objective guidelines to be established in order to guide OSC personnel in making this determination. In this regard, the Committee considers that the existence of such a definition or guidelines of this nature would provide additional transparency with respect to the process. (See recommendation 1.4.5 in Chapter II of this report.)

[64] In meetings held with civil society organizations and professional organizations during the framework of the on-site visit, the representatives of the Government Accountability Project (GAP) and the Project on Government Oversight (POGO) noted that an adequate definition of “substantial likelihood” would be useful.

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

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

[66] First, with respect to results related to the prevention of acts of corruption, the response to the questionnaire³² notes that OSC provides training to Federal agencies and non-federal organizations in each of those areas in which OSC has jurisdiction, including training related to (1) prohibited personnel practices, including reprisals for whistleblowing, (2) disclosures made to the Disclosure Unit, (3) the Hatch Act and its application to Federal, State and local employees, and (4) the Uniform Services Employment and Reemployment Rights Act (USERRA). The response also notes that OSC publishes a variety of material related to prohibited personnel practices, whistleblower disclosures and the Hatch Act, and which may be ordered from the Government Publishing Office and/or printed from the OSC website.³³

[67] Also related to the prevention of acts of corruption, the response to the questionnaire provides information on the “OSC 2302(c) Certification Program”, described above in section 1.1., and with respect to which agencies were required to have final plans for completing the program posted on their respective websites by June 1, 2014.³⁴

[68] In this regard, the Committee notes that the OSC Internet website provides information on the Program, including a description of agency obligations pursuant thereto; as well as a list of those “Agencies Currently Certified under OSC’s 2302(c) Certification Program”; and a list of “Agencies Currently Registered to Complete the 2302(c) Certification Program”.³⁵ However, because a list of all of the agencies covered by the OSC and therefore subject to compliance with its Certification Program is not readily available, it is difficult to determine which agencies have failed to comply with the June 1 deadline, as well as which agencies have yet to complete the Certification Program. In light of this circumstance, the Committee will formulate a recommendation. (See recommendation 1.4.6 in Chapter II of this report.)

[69] Second, with regard to the detection of acts of corruption, the response to the questionnaire notes that between Fiscal Year 2009 and Fiscal Year 2013, the Disclosure Unit received an average of 975 annual disclosures, and that during that time period, a total of 209 matters were referred to the respective agency head for investigation and reporting pursuant 5 U.S.C. § 1213(c).³⁶ The remaining disclosures did not meet the substantial likelihood standard for referral to the agency head for investigation and were therefore closed with no further action by OSC. Nonetheless, OSC informed those individuals in writing of the reasons why the disclosure could not be acted upon and were given information on other offices available for receiving disclosures, pursuant to 5 U.S.C. § 1213(g)(3)(A) and (B). In that same time period (FY2009-FY2013), 206 agency reports and whistleblower comments, where such comments were provided, were transmitted to the President and congressional oversight committees and also filed in OSC’s public file. Of these 206 that were transmitted, the response notes that the corresponding agency investigation and report led to changes in agency rules, regulations, policy or practices in 64 cases.

[70] The response also notes that of cases referred to agencies by the OSC in Fiscal Year 2012 and 2013, 50 cases remain pending, meaning that OSC has provided the agencies with extensions of time to respond, because the agency report is being reviewed by OSC, or because the report is being reviewed by the whistleblower.

³² See the response of the United States to the Questionnaire for the Fourth Round, at p. 62, *supra* note 3.

³³ See the response of the United States to the Questionnaire for the Fourth Round, at p. 51, *supra* note 3.

³⁴ *Ibid.*, at pp. 62-63.

³⁵ See <https://osc.gov/Pages/Outreach-2302Cert.aspx>

³⁶ See the response of the United States to the Questionnaire for the Fourth Round, at p. 63, *supra* note 3.

[71] The Committee also notes that the tables included in the various OSC Annual Reports to Congress include statistics on the number of “Referrals to agency IGs”, as follows: 2013 – 2; 2012 – 6; 2011 – 5; 2010 – 2; 2009 – 10; 2008 – 9; and 2007 – 11. Additionally, the 2010 Fiscal Year Report notes that “Disclosures not referred to an agency head under §1213(c) are either referred informally to the IG for the agency involved, or are closed.”³⁷

[72] Third, with respect to referrals of potential criminal matters as contemplated by 5 U.S.C. § 1213, during the on-site visit, OSC representatives informed that no aggregate data was available with respect to the number of disclosures that are referred to the Attorney General for possible criminal investigation and eventual prosecution. The representatives could not recall any recent instances where the OSC had referred cases in this manner, and they explained this was at least in part due to the fact that agency Inspector’s General are obliged to inform the Attorney General of potential criminal violations, and because the Inspectors General Offices are usually responsible for disclosure investigations, those Offices provide the information to the Attorney General via agency reports or other means. Similarly, OSC representatives explained that OSC does not maintain information on the number of cases that are referred to the Attorney General, either by OSC or by an agency OIG pursuant to an OSC referral, although it does follow the substance of each case.

[73] The Committee believes that in order to identify challenges and implement corrective measures, the country under review should maintain results on the number of cases referred to the Attorney General as a result of disclosures initially made to the OSC’s Disclosure Unit, as well as results on the eventual outcome of those cases, be they acquittals, dismissals, convictions, a decisions not to prosecute, etc. The Committee will formulate a recommendation in this regard. (See recommendation 1.4.7 in Chapter II of this report.)

[74] Fourth, with regard to the number of disclosures received and processed, respectively, by the Disclosure Unit, the OSC Fiscal Year 2013 Annual Report to Congress contains a table summarizing whistleblower disclosure activity from 2007 to 2013.³⁸ Among other information, the table indicates that in almost every year, the number of disclosures received by the Disclosure Unit has been steadily increasing, from 482 received in 2007 to 1128 received in 2013.

[75] In addition, the table also provides data on the percentage of disclosures that are processed within the 15-day time period required by 5 U.S.C. § 1213(b). This data indicates that between 2007 and 2013, between 49% and 63% of disclosures received were processed within this time period, as follows: 2007 – 61%; 2008 – 52%; 2009 – 54%; 2010 – 55%; 2011 – 63%; 2012 – 55%; and 2013 – 49%.

[76] During the on-site visit, OSC representatives explained that since the establishment of the OSC and its Disclosure Unit, at which time the number of whistleblower disclosures were far fewer in number, the 15-day time period provided for by 5 U.S.C. § 1213(b) has been both unrealistic and impossible to achieve with the current staff of the Unit. In this sense, the Committee observes that one of the goals set out in the OSC Performance and Accountability Reports to Congress is for 55% of whistleblower disclosures to be processed within the 15-day time period.

[77] Accordingly, the Committee believes that it might be useful for the country under review to consider either: (1) promoting the legislative changes necessary to increase the 15-day time-frame

³⁷ See OSC Fiscal Year 2010 Annual Report to Congress, at p. 19, available at: <https://osc.gov/Resources/ar-2010.pdf>

³⁸ See OSC Fiscal Year 2013 Annual Report to Congress, at p. 36, available at: <https://osc.gov/Resources/6%2027%2014%20ANNUAL%20REPORT.pdf>

provided for in the Whistleblower Protection Act with a more realistic time-frame which can be met by the Disclosure Unit of the OSC; or (2) increasing the number of staff of the Disclosure Unit, so that it can process all, if not most of the disclosures it receives within the 15-day statutory timeline. (See recommendation 1.4.8 in Chapter II of this report.)

[78] In a similar sense, during the on-site visit, OSC representatives explained that the 60-day timeline given to agency heads to investigate and report back on referrals received from OSC pursuant to 5 U.S.C. § 1213(c), is also inadequate. In this regard, the representatives explained that it takes agencies an average of 180 days to investigate and prepare the corresponding report.

[79] The Committee is also cognizant of what is expressed in the OSC Strategic Plan FY2012-2016, in the sense that *“The difficult Federal fiscal environment also takes an indirect toll on OSC. Strapped agencies may be less able to devote the necessary resources to properly investigate whistleblower disclosures of waste, fraud and abuse referred by OSC. Squeezed budgets may also limit agencies’ discretion to settle monetary claims and take other corrective action. The overall effect would be to undermine the confidence of the Federal community in OSC’s ability to make a difference, resulting in renewed cynicism, employee demoralization, falling performance, and even destructive behavior.”*³⁹

[80] In light of the above situation, the Committee believes that it is important for the country under review to study the reasons why agencies are generally unable to comply with the 60-day time-limit established in 5 U.S.C. § 1213(c) and it will formulate the corresponding recommendation. (See recommendation 1.4.9 in Chapter II of this report.)

1.4. Conclusions and recommendations

[81] Based on the foregoing comprehensive analysis of the Disclosure Unit of the Office of the Special Counsel, the Committee offers the following conclusions and recommendations:

[82] The United States has considered and adopted measures intended to maintain and strengthen the Disclosure Unit of the Office of the Special Counsel as an oversight body, as indicated in Chapter II, Section 1 of this report.

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

- 1.4.1. Make greater use of the authority granted to the Office of the Special Counsel by 5 U.S.C., § 1213(g)(1), in order to accept disclosures from those who are neither Federal employees, former employees, nor applicants for employment in the Federal Government, including government contractors. (See Chapter II, Section 1.2 of this report.)
- 1.4.2. Ensure that the Disclosure Unit of the Office of the Special Counsel is provided with sufficient human and financial resources in order for it to fully execute its legally assigned responsibilities, within available resources. (See Chapter II, Section 1.2 of this report.)
- 1.4.3. Examine the need to provide the Disclosure Unit of the OSC with additional authority to resolve disclosures that it receives, in addition to or as a part of the

³⁹ See the OSC Strategic Plan FY2012 – 2016, at p. 14, available at: <https://osc.gov/Resources/Strategic%20Plan%20for%20posting%20to%20website%205%2010%2012.pdf>

referral process requiring agency investigation and reporting, such as the ability to mediate disputes for simple matters. (See Chapter II, Section 1.2 of this report.)

- 1.4.4. Explore the implementation of an alternate mechanism to address disclosures pertaining to smaller agencies that do not have their own OIG, or where the complaint is against the head of the respective small agency. (See Chapter II, Section 1.2 of this report.)
- 1.4.5. Consider providing a statutory or regulatory definition of, or internal guidelines for application by the Disclosure Unit of the OSC of the term “substantial likelihood” as used in 5 U.S.C., § 1213. (See Chapter II, Section 1.2 of this report.)
- 1.4.6. Include, on the OSC Internet website, information on those agencies who are obligated to comply with OSC’s 2302(c) Certification Program, those that have been certified, those that have been registered to complete the program, as well as those that have failed to comply with the June 1, 2014 deadline, or which fail to comply with future deadlines that may be established with respect to this Certification Program. (See Chapter II, Section 1.3 of this report.)
- 1.4.7. Maintain results on the outcome of referrals of potential criminal violations sent to the Attorney General originating from disclosures made to the OSC’s Disclosure Unit and transferred to agencies for investigation and reporting pursuant to 5 U.S.C. Section 1213(f), in order to identify challenges and recommend corrective measures. (See Chapter II, Section 1.3 of this report.)
- 1.4.8. Consider either (i) adopting and implementing the legislative changes necessary to increase the 15-day time-frame provided for in the Whistleblower Protection Act with a more realistic time-frame which can be met by the Disclosure Unit of the OSC; or (ii) increasing the number of staff of the Disclosure Unit so that it can process most, if not all of the disclosures that it receives within the 15-day statutory timeline. (See Chapter II, Section 1.3 of this report.)
- 1.4.9. Study the reasons why agencies are generally unable to comply with the 60-day time-limit established in 5 U.S.C. § 1213(c), in order to identify challenges and recommend corrective action. (See Chapter II, Section 1.3 of this report.)

2. THE COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY (CIGIE)

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

[84] The Council of the Inspectors General on Integrity and Efficiency (CIGIE) and the respective Federal Offices of Inspectors General (OIGs) have a set of provisions in their legal frameworks, as well as other measures that refer, *inter-alia*, to the following:

[85] Inspector General Act of 1978, 5 U.S.C. App. (IG Act),⁴⁰ which at section 2 establishes Offices of Inspectors General “*In order to create independent and objective units – (1) to conduct and supervise audits and investigations relating to the programs and operations of the*

⁴⁰ As Amended by the Inspector General Reform Act of 2008.

establishments listed in section 12(2);⁴¹ (2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations; and (3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective actions.”

[86] Pursuant to section 4(a) of the IG Act, each Inspector General is responsible for: (1) providing policy direction for and conducting, supervising, and coordinating audits and investigations; (2) reviewing existing and proposed legislation relating to agency programs and operations and make recommendations on the economy and efficiency in the administration of those programs and operations, or the prevention and detection of fraud and abuse in such programs or operations; (3) recommend policies for, and conduct, supervise or coordinate other activities carried out or financed by the agency in order to promote economy and efficiency, or prevent and detect fraud and abuse; (4) recommend policies for, and to conduct, supervise, or coordinate relationships between the agency and other entities, with respect to all matters related to the promotion of economy and efficiency or the prevention and detection of fraud and abuse; and (5) keeping the head of their respective agency and Congress fully informed of fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such establishment, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

[87] With respect to the different types of OIGs created by the IG Act, the response to the questionnaire notes that there are “...those in ‘establishment’ agencies (establishment IGs) [those listed in footnote 41] and those in ‘designated Federal entities’ (DFE) (DFE-IGs) [other Federal agencies]. For both types of IGs, the IG Act specifically provides for the organizational independence of the OIG. This important organizational independence helps to limit the potential for conflicts of interest that exist when an audit or investigative function is placed under the authority of the official whose particular programs are being scrutinized. This insulates IGs against reprisal and promotes independent and objective reporting.”⁴²

[88] Section 3(a) of the IG Act provides with respect to Establishment IGs, that each OIG shall be headed by an Inspector General, appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

[89] With regard to the independence of Establishment IGs, section 3(a) further provides that “Each Inspector General shall report to and be under the general supervision of the head of the

⁴¹ Section 12(2) of the Inspector General Act of 1978 provides that “(2) the term “establishment” means the Department of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, Homeland Security, or the Treasury; the Agency for International Development, the Community Development Financial Institutions Fund, the Environmental Protection Agency, the Federal Emergency Management Agency, the General Services Administration, the National Aeronautics and Space Administration, the Nuclear Regulatory Commission, the Office of Personnel Management, the Railroad Retirement Board, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Small Business Administration, the Corporation for National and Community Service, the Veterans’ Administration, the Social Security Administration, the Federal Housing Finance Agency, the Tennessee Valley Authority, the Export-Import Bank, the Commissions established under section 15301 of title 40, United States Code, the National Security Agency, or the National Reconnaissance Office, as the case may be.”

⁴² See the response of the United States to the Questionnaire for the Fourth Round, at p. 22, supra note 3.

establishment involved or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such establishment. Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.”

[90] With respect to Designated Federal Entity IGs, section 8G(c) of the IG Act provides that these Inspectors General are appointed by the head of the Federal entity in accordance with the applicable laws and regulations governing appointments within that entity. This section further provides that the DFE Inspectors General are to be appointed without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

[91] The independence of DFE IGs is addressed by section 8G(d)(1), which provides that DFE IGs shall report to and be under the general supervision of the head of the designated Federal entity, but shall not report to, or be subject to supervision by, any other officer or employee of such designated Federal entity.

[92] Section 8G(d)(1) also provides that the head of the designated Federal entity shall not prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation, subject to the exception provided for in section 8G(d)(2), which empowers the Secretary of Defense, in consultation with the Director of National Intelligence to do so, if the Secretary determines that the prohibition is necessary to protect vital national security interests.⁴³

[93] Other provisions addressing the independence of OIGs include section 3(f) of the IG Act, which prohibits Inspectors General from receiving cash bonuses or awards, and section 3(g), which requires Inspectors General to obtain independent legal advice from a counsel that reports to that OIG or to another OIG, rather than to the head of their respective agency.

[94] Removal of Establishment Inspectors General is addressed by section 3(b) of the IG Act which provides that such an IG may be removed from office or transferred to another position within the agency by the President, but that the President must communicate the reasons for the action in writing to both Houses of Congress 30 days before the removal or transfer. Similarly, with respect to DFE IG, section 8G(e) of the IG Act requires agency heads to inform both Houses of Congress in writing 30 days before removing or transferring an IG. This section further provides that in the case of a DFE agency with a board or commission, removal or transfer of the IG requires the written concurrence of two thirds of the members of the board or commission.

[95] Pursuant to section 6(a)(7) of the IG Act, each Inspector General is authorized “*to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office....*” In this sense, the response to the questionnaire notes that “*Although, OIGs have differing legal and regulatory authorities for personnel appointment, all use a competitive merit based approach for selection...*”⁴⁴ Similarly, the response notes that “*All employees of the OIGs are subject to the executive branch standards of conduct or, for those OIGs from entities in other branches, the code of conduct of their respective branch of Government; applicable supplemental agency regulations; the criminal conflict of*

⁴³ Section 8G(d)(2)(B) of the Inspectors Act of 1978 requires that the Secretary of Defense to inform Congress within 7 days of the reasons for the exercise of this authority.

⁴⁴ See the response of the United States to the Questionnaire for the Fourth Round, at p. 29, *supra* note 3.

interest laws; and, depending upon the type and level of their position, the civil ethics statutes and financial disclosure requirements.”⁴⁵

[96] Section 6(a) of the IG Act also authorizes IGs, *inter-alia*: “(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities...; (2) to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable; (3) to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Act from any Federal, State, or local governmental agency or unit thereof; (4) to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically stored information, as well as any tangible thing) and documentary evidence necessary in the performance of the functions assigned by this Act...”

[97] With respect to the existence of manuals or other documents that describe the functions of OIG personnel, the IG Act contains various provisions addressing OIG personnel, including section 3(d) regarding Assistant Inspectors General for Establishment IGs; and sections 3(g) and 8G(4), requiring IGs to obtain independent legal counsel. Similarly, the response notes that there are qualification requirements for certain OIG positions, such as auditors, criminal investigators, and attorneys.⁴⁶ Additionally, the response notes that “...*the Office of Personnel Management provides general guidance on various positions within the Federal Government including positions within the OIGs. Also, each of the OIGs develops more specific position descriptions for the positions within their office and the individuals in those positions have annual performance criteria and annual performance evaluations. OIGs may also develop further training requirements for various positions within their offices.*”⁴⁷

[98] In terms of training provided to OIG personnel with respect to their assigned functions, the response notes that each OIG is responsible for training of their employees, and that in addition, the CIGIE has developed a Training Institute that offers training to member OIG personnel.⁴⁸

[99] At section 11, the IG Act establishes the CIGIE and provides that it shall be composed of the Inspectors General offices established under section 2 or section 8G of the IG Act, as well as the Inspectors General of the Office of the Director of National Intelligence and the Central Intelligence Agency, the Controller of the Office of Federal Financial Management, a senior level official from the Federal Bureau of Investigation designated by the Director of the FBI, the Director of the Office of Government Ethics, the Special Counsel, the Deputy Director of the Office of Personnel Management, the Deputy Director for Management of the Office of Management and Budget, the Inspectors General of the Library of Congress, Capitol Police, Government Printing Office, Government Accountability Office, and the Architect of the Capitol.

⁴⁵ Ibid., at p. 30.

⁴⁶ Ibid., at p. 29.

⁴⁷ Ibid., at p. 31. The response, at pp. 30-31, also notes that CIGIE’s Quality Standards as well as the Government Accounting Standards provide information related to the functions of OIG positions and training associated with certain positions, such as: Quality Standards for Federal Offices of Inspector General, <https://www.ignet.gov/pande/standards/Silver%20Book%20Revision%20-%208-20-12r.pdf>; Quality Standards for Inspection and Evaluation, <https://www.ignet.gov/pande/standards/iestds12.pdf>; Quality Standards for Investigations, <https://www.ignet.gov/pande/standards/invstds2011.pdf>; and Quality Standards for Digital Forensics, <https://www.ignet.gov/pande/standards/quality-standards-digital-forensics-approved-20-nov-12.pdf>.

⁴⁸ Ibid., at p. 31. Also, more information on the CIGIE Training Institute is available here: <https://www.ignet.gov/node/56>

[100] According to section 11(a)(2) of the IG Act, CIGIE’s mission is to “(A) address integrity, economy, and effectiveness issues that transcend individual Government agencies; and (b) and increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the offices of the Inspectors General.”

[101] With regard to documented procedures for the performance of tasks, the response to the questionnaire notes that “*OIG investigations are conducted in accordance with the CIGIE Quality Standards for Investigations (<https://www.ignet.gov/pande/standards/invstds2011.pdf>) and Federal law.*”⁴⁹ Similarly, section 4(d) of the IG Act, IGs must report any matter in which they have reasonable grounds to believe that there has been a violation of Federal law to the Attorney General. In this regard, the response notes that this does not require prior clearance by agency officials outside of the OIG.⁵⁰ In addition, the response notes that pursuant to section 4(b)(1)(A) of the IG Act, OIG audits are conducted in accordance with Government Accounting Standards (<http://www.gao.gov/yellowbook>), established by the Comptroller General.⁵¹

[102] With regard to institutional strengthening, the response notes that “*...CIGIE’s Quality Standards and the Government Auditing Standards provide broad guidance relating the performance of duties for various positions within the OIGs. The individual OIGs also maintain internal OIG policy and directives to assist in further guiding their work.*”⁵² In addition, with regard to quality control, the response points out that OIG offices that conduct audits and investigations are reviewed every three years in accordance with guidance and policies issued by CIGIE, through the Guide for Conducting External Peer Reviews of the Audit Organizations of Federal Offices of Inspector General and the Qualitative Assessment Review Guidelines for Investigative Operations of Federal Offices of Inspector General.⁵³ Finally, the response also notes that many OIGs make use of automated systems to assist in their work, such as information management systems, audit management systems, legal research tools, and other administrative systems.⁵⁴

[103] With respect to internal control mechanisms as well as mechanisms for dealing with complaints or allegations related to the pursuit of the objectives of the CIGIE or OIGs and the performance of their respective personnel, section 11(d) of the IG Act creates the CIGIE Integrity Committee, tasked with receiving, reviewing, and referring for investigation allegations of wrongdoing made against Inspectors General and certain senior OIG staff. (section 11(d)(1)). section 11(d)(2) provides that the Integrity Committee members include the FBI official serving on the CIGIE, who serves as Chairperson, four Inspectors General appointed by the CIGIE Chairperson, to include Establishment OIGs and DFE IGs, the Special Counsel, and the Director of the Office of Government Ethics. The Integrity Committee’s policies and procedures for the receipt and processing of complaints is available at: <https://www.ignet.gov/pande/icpolicyandprocedure2009.pdf>.

[104] With regard to allegations or complaints related to other OIG personnel, the response notes that “*...the OIG will assess those complaints and determine if further inquiry or investigation into the matter is needed based on the evidentiary information provided. The process followed when it is determined that further action is necessary, is in accord with the Office of Personnel Management’s Federal regulations set out at 5 C.F.R. part 752, Adverse Actions*

⁴⁹ Ibid., at p. 26

⁵⁰ Ibid.

⁵¹ Ibid., at p. 25.

⁵² Ibid., at p. 31.

⁵³ Ibid. In addition, the CIGIE Guide and Guidelines are available at: <https://www.ignet.gov/content/manuals-guides>

⁵⁴ Ibid., at p. 32.

(<http://www.gpo.gov/fdsys/pkg/CFR-2014-title5-vol2/pdf/CFR-2014-title5-vol2-chap1.pdf>), or 5 C.F.R. part 432, Performance Based Reduction in Grade and Removal actions (<http://www.gpo.gov/fdsys/pkg/CFR-2014-title5-vol1/pdf/CFR-2014-title5-vol1-chap1.pdf>).⁵⁵

[105] With regard to complaints regarding the work of an OIG itself, the response notes that when these arise, “...depending upon the nature of the complaints or allegations, the OIG can conduct an internal review to determine if such allegations are found to have merit. In instances where an OIG deems the allegations to have merit, the OIG moves forward in taking any necessary corrective action.”⁵⁶

[106] With regard to the budgetary resources necessary for the operation of the OIGs, the response notes that section 6(f) of the IG Act requires “...each IG’s requested budget amounts be separately identified within their agency budgets when submitted to the Office of Management and Budget (OMB), and subsequently by OMB to the Congress.”⁵⁷ Similarly, section 6(f)(3) of the IG Act requires the President to include in each budget submitted to Congress, any comments by the Inspector General that the budget submitted by the President would ‘substantially inhibit the Inspector General from performing the duties of the office.’⁵⁸

[107] With regard to the existence of any mechanisms for harmonizing the functions of the OSC with those of other oversight bodies, the response notes that OIGs occasionally enter into MOUs and other Agreements with other OIGs, as well as with Federal offices, to jointly conduct audit or investigative work.⁵⁹ The response further notes that “Instances such as these may involve overlapping jurisdiction of the entities and/or convey jurisdictional authority to the other entity to assist in an audit or investigation. This mechanism is also used to address potential jurisdictional matters that could arise if such agreements were not in place. Also, OIGs often work directly with Federal and State prosecutors when conducting an investigation involving violations of law. Upon completion of the investigation OIGs will provide their reports of investigation (findings) to applicable prosecutors for potential legal action. Further, in instances where an administrative investigation is conducted by an OIG, the OIGs will share the results of the investigation with appropriate officials for consideration of any corrective or disciplinary action deemed appropriate.”⁶⁰

[108] With regard to mechanisms for providing information to the public, section 5 of the IG Act requires each OIG to prepare and submit semiannual reports to Congress summarizing its activities.⁶¹ section 5(a) requires these report to include, *inter-alia*, problems and deficiencies detected (section 5(a)(1)); recommendations for corrective action (section 5(a)(2)); corrective action that has not been completed (section 5(a)(3)); summary of prosecutions and convictions (section 5(a)(4)); and detailed statistics regarding audit reports (sections 5(a)(6), (8), (9) and (1)).

⁵⁵ Ibid., at p. 33.

⁵⁶ Ibid.

⁵⁷ Ibid., at p. 34.

⁵⁸ The response also notes, at p. 34, *supra* note 3, that “Under Federal law, agency budget requests must be submitted by the individual agency head to OMB. This includes the budgets of the respective OIGs. However, it is important to note that while each agency head is responsible for budget formulation and execution decisions affecting the entire agency (including the OIG), in practice, the OIG may also have an ongoing dialogue with the OMB budget examiner about the OIG’s operational plans, activities, and accomplishments.”

⁵⁹ Ibid., at p. 24.

⁶⁰ Ibid.

⁶¹ In addition, section 4(a)(5) of the IG Act requires IGs to keep the head of their respective agency and Congress fully informed through these reports of fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such establishment, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

[109] This Section further provides that within 60 days of the transmission of the semiannual reports to Congress, the head of each agency shall make copies of the report available to the public upon request and at a reasonable cost. Similarly, section 11(d)(9) of the IG Act requires the CIGIE to submit an Annual Report to Congress and to the President, summarizing the activities of the Integrity Committee.

[110] Additionally, section 5(d) of the IG Act requires IGs to report to the head of the establishment whenever the IG becomes “...aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment. The head of the establishment shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the establishment containing any comments such head deems appropriate.”

[111] With regard to internet websites, section 8L of the IG Act requires each agency to establish links to their respective OIG webpage on the agency internet homepage. This Section also requires each OIG to post reports and audits on the OIG webpage within 3 days after those reports or audits are made publicly available. In terms of receiving complaints, Section 8L also requires each OIG to create links for members of the public to report fraud, waste, and abuse, without the need for personal information to be provided. In this regard, the response notes that complaints are often received through OIG Hotlines, and that these Hotlines “...exist to elicit information from Federal employees, contractors, and the general public that furthers an OIG’s mission (1) to promote effectiveness, efficiency, and economy in its organization’s programs and operations, and (2) to prevent and detect fraud, waste, and abuse in such programs and operations.”⁶²

[112] Also with regard to internet websites, section 11(c)(1)(D) of the IG Act requires the CIGIE to maintain a website and other electronic systems for the benefit of all Inspectors General. With regard to this website, the response notes that it “...offers information to the general public regarding the objectives and functions of the Council and its member OIGs (www.ignet.gov). The CIGIE website houses information relating to the established procedures and various reports of the Council, and provides links to each of the individual OIG websites [<https://www.ignet.gov/content/inspectors-general-directory>].”⁶³

[113] Finally, the response to the questionnaire notes that “...some OIGs are using social media (i.e., Twitter, Facebook, LinkedIn) to convey to the public information relating to their organizations and their work. Other avenues used periodically by OIGs in conveying information to the public include testifying at Congressional hearings, issuing press releases, participating in press conferences, and speaking at professional conferences.”⁶⁴

[114] With regard to difficulties encountered by the CIGIE and the OIGs related to the performance of their functions, the response notes that “The IG Act generally provides the OIGs with the tools and flexibilities needed to work towards preventing, detecting, and punishing corrupt acts. On occasion, however, other legislation may create a difficulty in a specific area for OIGs. In such instances, the Council works with the Administration and the Congress to provide its legislative proposals that will assist in overcoming these difficulties and enhance the work of the OIGs. Examples of communicating such legislative proposals from the Council can be found on CIGIE’s website at <https://www.ignet.gov/pande/leg1.html#oi>, under the sub-heading of “Letters to the 113th Congress.” Additionally, these legislative proposals have been communicated through

⁶² See the response of the United States to the Questionnaire for the Fourth Round, at p. 33, supra note 3.

⁶³ Ibid., at p. 32.

⁶⁴ Ibid., at p. 32.

*Congressional testimony by various Council officials. Such testimony can also be found on the above webpage at the above address, under the sub-heading “Other Items of Interest.”*⁶⁵

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

[115] The Council of the Inspectors General on Integrity and Efficiency (CIGIE) and the Federal Offices of Inspectors General have a set of provisions and/or other measures that are relevant for the purposes of the Convention, some of which were briefly described in section 2.1 of this report. Nonetheless, the Committee considers it appropriate to formulate certain observations in relation thereto:

[116] First, the Committee observes that there is no definition of the term “general supervision”, as used in section 3(a) of the IG Act. In this regard, the Committee notes that the response to the questionnaire indicates that despite the absence of a statutory definition of the term, “...*the IG Act is clear that this supervision is limited and may not be exercised in a way that would inhibit an IG’s full discretion to undertake an audit or investigation, issue subpoenas, and see these matters through to conclusion.*” Similarly, the response notes that one court case, after reviewing the legislative history of the term, described the authority of an agency head with respect to Inspector General as “nominal”.⁶⁶

[117] With respect to the foregoing, CIGIE has informed that through its legislative requests, it has raised matters to Congress (e.g., authority to place an IG on Administrative Leave) to assist in better defining what authorities an agency head has with respect to “general supervision” of an IG. The Committee believes that to further safeguard the independence of OIGs, it might be useful for the country under review to continue offering further clarifications of the phrase “general supervision,” as used in section 3(a) of the IG Act, and it will formulate the corresponding recommendation. (See recommendation 2.4.1 in Chapter II of this report.)

[118] Second, the Committee observes, as discussed in meetings held with CIGIE and OIG representatives during the on-site visit, and as indicated on the CIGIE Inspectors General Directory, there were 11 vacancies out of the 72 Inspectors General included in the Directory.⁶⁷ Similarly, the Project on Government Oversight (POGO) internet portal, “Where Are All the Watchdogs”, which tracks current vacancies in Offices of Inspectors General, indicates that these posts have been vacant for between 119 and 2074 days.⁶⁸

[119] During the on-site visit, CIGIE and other OIG representatives explained in reference to the manner in which the independence of Acting Inspectors General is assured, that Acting IGs are often career civil servants who, even if never confirmed as Inspector General, nevertheless retain their typically senior-level civil servant post. Notwithstanding this, the Committee believes that a

⁶⁵ Ibid., at p. 38.

⁶⁶ Ibid, at p. 24. See also, United States Nuclear Regulatory Commission v. Federal Labor Relations Authority, 25 F.3d 229, 235 (4th Cir. 1994), available at: <http://openjurist.org/25/f3d/229/united-states-nuclear-regulatory-commission-v-federal-labor-relations-authority>

⁶⁷ The CIGIE Inspectors General Directory is available at: <https://www.ignet.gov/content/inspectors-general-directory>. According to the Directory, OIGs with Acting Inspectors General, as of October 9, 2014, included: the Agency for International Development, the Department of the Interior, the Department of Veterans Affairs, the Export-Import Bank of the United States, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Federal Trade Commission, the General Services Administration, the National Archives, the Pension Benefit Guarantee Corporation, and the Denali Commission.

⁶⁸ This portal is available at: <http://www.pogo.org/tools-and-data/ig-watchdogs/go-igi-20120208-where-are-all-the-watchdogs-inspector-general-vacancies1.html>

significant potential conflict of interest is created by the fact that an Acting Inspector General's confirmation, at least in the case of DFE IGs, is dependent on the very agency head whose actions the Acting IG may have to investigate.

[120] Similarly, with regard to Establishment IGs who must be nominated by the President, an April 24, 2014 Report by the United States Senate Subcommittee on Financial and Contracting Oversight Committee on Homeland Security and Government Affairs concluded, in pertinent part, that the Acting IG in the agency being investigated had jeopardized the independence of the OIG by openly seeking a nomination for the IG position.⁶⁹ Likewise, a February 21, 2013 report by the Majority Staff of the Office of Oversight and Investigations of the Committee on Natural Resources of the U.S. House of Representatives notes, that in Committee hearings with an Acting IG whose independence and performance was in question, members of the Committee expressed concern "*...whether someone...who had expressed interest in the permanent IG position – could ever truly be independent in investigating the Administration in general or even the President in particular when that person would be dependent on the very same President for the nomination...*"⁷⁰

[121] The Committee believes that the potential conflict described above exists both with regard to Acting IGs in Establishment OIGs and who may be nominated by the President, as well as with regard to Acting IGs in DFEs, and who may be appointed by the respective agency head. The Committee also believes that this potential conflict exists regardless of whether the Acting IG publicly expresses or acknowledges their desire to be nominated or appointed, respectively, as the IG.

[122] This potential conflict is further exacerbated by the fact that in certain cases Acting IGs have remained in their positions for extended periods of time (years in some instances). With respect to this extended duration of acting appointments, the Committee observes that one of the changes for which the CIGIE has advocated was included in Legislative Bill H.R. 5492,⁷¹ and would have required, *inter-alia*, the Government Accountability Office (GAO), to conduct a study on prolonged vacancies in OIGs during which a temporary appointee has served as the head of the office, including an evaluation of the impact that those vacancies have had on the ability of the relevant OIG to effectively carry out its functions, as well as recommendations on how to minimize the duration of such vacancies. The Committee will formulate a recommendation bearing the foregoing considerations in mind. (See recommendation 2.4.2 in Chapter II of this report.)

[123] Third, and with respect to the ability of the various OIGs to obtain the information necessary from executive branch agencies necessary for them to properly execute their audit and investigation responsibilities, the Committee observes that pursuant to section 6(a)(1) of the IG Act, OIGs are to have access to all records, reports, audits, documents, etc. of an agency. Notwithstanding this provision, during the on-site visit, OIG representatives noted as a difficulty that is encountered in carrying out their functions, the fact that agency heads sometimes refuse to provide information on the basis that either attorney-client privilege or other Federal laws trumps the statutory obligation to provide OIGs with requested information.

⁶⁹ This Report is available at: <http://www.hsgac.senate.gov/subcommittees/fco/media/letter-and-staff-report-from-chairman-mccaskill-and-ranking-member-johnson-to-council-of-the-inspectors-general-on-integrity-and-efficiency>

⁷⁰ This Report is available at: <http://naturalresources.house.gov/uploadedfiles/oversightreportdepartmentofinterior.pdf>

⁷¹ The text of H.R. 5492 is available at: <http://oversight.house.gov/wp-content/uploads/2014/09/H.R.-5492-Issa-IG-Empowerment-Act-of-2014.pdf> See also, the October 29, 2014 Letter from CIGIE to the 113th Congress, in support of these and other proposed legislative amendments contained in H.R. 5492, available at: https://www.ignet.gov/sites/default/files/files/CIGIE%20Views%20-%20H_R_%205492.pdf

[124] In this regard, the Committee observes that in an August 5, 2014, letter to the House of Representatives Committee on Oversight and Government Reform and the Senate Homeland Security and Government Affairs Committee, forty-seven Federal Inspectors General wrote that Inspectors General in three Federal agencies had “...faced restrictions on their access to certain records available to their agencies that were needed to perform their oversight work in critical areas. In each of these instances, we understand that lawyers in these agencies construed other statutes and law applicable to privilege in a manner that would override the express authorization contained in the IG Act. These restrictive readings of the IG Act represent potentially serious challenges to the authority of every Inspector General and our ability to conduct our work thoroughly, independently, and in a timely manner.”⁷²

[125] The Committee believes, bearing in mind the important functions carried out by the OIGs related to the prevention, detection and punishment of acts of corruption, that is imperative that their ability to adequately execute their assigned functions and responsibilities not be impeded, and will formulate a recommendation in this regard. (See recommendation 2.4.3 in Chapter II of this report.)

[126] Fourth, and related to the above, the Committee observes that section 5(d) of the IG Act provides Inspectors General with an additional remedy in the face of flagrant abuses or deficiencies in agency programs, in the form of a “seven-day letter” from the respective IG to the agency head, and which the agency must forward to Congress together with any pertinent comments. During the on-site visit, CIGIE representatives noted that this remedy was infrequently used. The Committee believes that given the “...potentially serious challenges to the authority of every Inspector General...”, as noted in the August 5, 2014 letter discussed above, it might be useful for OIGs to consider making greater use of this mechanism. The Committee will formulate a recommendation in this regard. (See recommendation 2.4.4 in Chapter II of this report.)

[127] Fifth, the Committee observes that pursuant to section 6(a)(4) of the IG Act, Inspectors General have the power to subpoena a wide variety of documents, records and other evidence from Federal agencies. Similarly, Federal employees are obligated to cooperate with OIGs.

[128] Nonetheless, a CIGIE October 29, 2014 Letter to the 113th Congress discussing CIGIE’s opinions regarding (Legislative Bill) H.R. 5492 – The Inspector General Empowerment Act, notes the need for Inspectors General to have the authority to subpoena former Federal employees.⁷³ In this regard, the letter notes, *inter-alia*, that “*In the absence of such authority, the resignation of Federal employees has in some instances substantially hampered an audit, investigation or other review into matters within the scope of that individual’s responsibilities.*”⁷⁴ The Committee believes that granting this power to Inspectors General would allow them to carry out more complete and thorough investigations, and would reduce the possibility of an individual avoiding responsibility for his or her actions by resigning from the position.

⁷² The August 5, 2014 letter to Congress is available at: <http://www.grassley.senate.gov/sites/default/files/issues/upload/IG%20Access%20Letter%20to%20Congress%2008-05-2014.pdf>

⁷³ The October 2, 2014 Letter is available here: https://www.ignet.gov/sites/default/files/files/CIGIE%20Views%20-%20H_R_%205492.pdf The Letter also notes that certain IGs already have subpoena power granted to them by legislation or pursuant to delegated authority.

⁷⁴ Ibid.

[129] Similarly, the letter referred to above also indicates that the subpoena power referred to therein would be more effective if it did not limit subpoena authority, but rather, simply required the subpoena to be necessary in the performance of functions assigned to IGs by the IG Act. The letter also indicates that this would allow subpoenas to be issued with regard to contractors, former contractors and contractor employees. The Committee believes that extending the subpoena power discussed above to contractors, former contractors and their employees would also strengthen the ability of OIGs to comply with their assigned functions. The Committee will formulate a recommendation taking the foregoing considerations into account. (See recommendation 2.4.5 in Chapter II of this report.)

[130] Sixth, the Committee observes that a March 19, 2013 CIGIE letter to the Deputy Director for Management of the Office of Management and Budget, notes that CIGIE sought an amendment to the Inspector General Reform Act of 2008, in terms of “*Clarification of the reports that OIGs must post on their web-sites includes audit reports, inspection reports and evaluation reports, consistent with semi-annual reporting requirements.*”⁷⁵ The Committee believes that in order, *inter-alia*, to promote transparency, it would be useful for the IG Act to specify what OIG reports and audits are to be posted on OIG websites, and it will formulate the corresponding recommendation. (See recommendation 2.4.6 in Chapter II of this report.)

[131] Seventh, during the on-site visit, representatives of CIGIE noted that generally speaking, OIG resources have been shrinking, and they expressed concern that resources assigned to OIGs and the CIGIE will not grow notwithstanding the need for increased resources. The Committee will formulate a recommendation in this regard. (See recommendation 2.4.7 in Chapter II of this report.)

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

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

[133] First, with respect to results related to the prevention of acts of corruption, the response to the questionnaire notes the semi-annual OIG reports that are sent to Congress, and which “...*summarize the activities of the OIG, specifically describing significant problems, abuses, and deficiencies relating to the administration of programs and operations of the agency disclosed by the OIGs activities during the reporting period. Further, the reports include the recommendations for corrective action made by the OIG, and a discussion of significant activities and results during the period. This includes reporting investigative activities, such as the number of cases opened; number of cases closed; number of indictments; number of convictions; monetary recoveries; number of audit inspection and evaluation reports; and total dollar value of questioned costs [IG Act § 5(a)].*”⁷⁶

[134] Also related to the prevention of corruption, the response notes that: (1) OIGs maintain websites and make use of various social media in order to disseminate information on their activities to the public.; (2) several OIGs issue press releases in order to share information on the results of

⁷⁵ This letter is available at: <https://www.ignet.gov/sites/default/files/files/committees/legislative/omb-letter-cigie-legislative-priorities-113th-congress-without-attachments.pdf>

⁷⁶ See the response of the United States to the Questionnaire for the Fourth Round, at p. 36, *supra* note 3.

their work; and (3) many OIGs speak at public conferences on their responsibilities and activities and that many IGs are called upon to provide testimony at congressional public hearings.⁷⁷

[135] With respect to the foregoing, the Committee notes that the CIGIE Inspectors General Directory, available at <https://www.ignet.gov/content/inspectors-general-directory>, lists 72 OIGs. A review of the links to the various OIG websites indicates that one very small OIG did not have a webpage, notwithstanding the requirement in this regard provided for by section 8M of the IG Act. The Committee will formulate the corresponding recommendation. (See recommendation 2.4.8 in Chapter II of this report.)

[136] In a similar sense, the Committee observes that no semi-annual reports to Congress are available on the website of another small OIG, despite the fact that section 5(a) of the IG Act requires the preparation and publication of these reports. (See recommendation 2.4.9 in Chapter II of this report.)

[137] Second, with regard to results related to the punishment of corrupt acts that trigger either disciplinary, administrative, financial/civil, or criminal responsibility, the response notes that the CIGIE Annual Report to the President contains cumulative results on the work of the OIGs, including, among others: potential savings from audit recommendations; investigative receivables and recoveries; number of audit, inspection and evaluation reports issued; number of investigations closed; number of hotline complaints received; number of indictments and criminal informations resulting from investigations; number of successfully prosecuted criminal and civil cases from OIG investigations; number of organizations/companies suspended or debarred from working with the Federal Government; the number of personnel actions resulting from investigations; and the monetary sanctions imposed as a results of OIG investigations.⁷⁸

[138] At the same time, with respect to results of OIG investigations, the Committee observes that the CIGIE 2013 Fiscal Year Progress Report to the President notes that *“Unlike the specific reporting categories for audit reports, the IG Act did not create a uniform system for reporting the results of investigative activities. Over the years, OIGs have developed a relatively uniform set of performance indicators for their semiannual reports that include most of the data presented...”*⁷⁹ Nonetheless, CIGIE has established uniform standards to be maintained by OIGs on the results of their investigations through its Quality Standards for Investigations, available at: <https://www.ignet.gov/sites/default/files/files/invstds2011.pdf>. In addition, during the on-site visit, CIGIE representatives explained that in addition to the reporting requirements established in the IG Act, individual OIGs may have additional specific reporting requirements depending upon the legislation that created them.

[139] Third, with regard to results related to the detection of acts of corruption, and also related to the foregoing point, the response notes that the OIGs carry out this function through their audit and investigative work, but that *“Because CIGIE acts as a coordinating body in reporting the results of the OIGs work, CIGIE does not collect certain information, such as that information outlined under this question”*⁸⁰

[140] *“Each IG is authorized to receive complaints from agency employees and the public. These complaints are often received through the OIG’s Hotline. The OIG Hotlines exist to elicit information from Federal employees, contractors, and the general public that furthers an OIG’s*

⁷⁷ Ibid.

⁷⁸ Ibid., at p. 38.

⁷⁹ See the CIGIE Fiscal Year Progress Report to the President, at p. 16, available at: <https://www.ignet.gov/sites/default/files/files/CIGIE%202013%20Progress%20Report.pdf>

⁸⁰ See the response of the United States to the Questionnaire for the Round, at p. 37, supra note 3.

mission (1) to promote effectiveness, efficiency, and economy in its organization's programs and operations, and (2) to prevent and detect fraud, waste, and abuse in such programs and operations. The OIGs are required to maintain a direct link on their website for individuals to make such reports, which may be anonymous...The OIGs semiannual reports to Congress also provide information relating to the OIG's hotline activities."

2.4. Conclusions and recommendations

[141] Based on the foregoing comprehensive analysis of the Council of Inspectors General on Integrity and Efficiency (CIGIE) and of the Offices of Inspectors General (OIGs), the Committee offers the following conclusions and recommendations:

[142] The United States has considered and adopted measures intended to maintain and strengthen CIGIE and the OIGs as oversight bodies, as indicated in Chapter II, Section 1 of this report.

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

- 2.4.1. Consider defining or providing more guidance on the term "general supervision" as used in section 3(a) of the Inspector General Act of 1978. (See Chapter II, Section 2.2 of this report.)
- 2.4.2. Take steps to ensure that appointing authorities take action to promptly appoint IGs once the position becomes vacant, and consider limiting the instances when Acting Inspectors General are appointed to fill these vacancies, establishing specific limited time-frames for these Acting Inspectors General to remain in these posts. (See Chapter II, Section 2.2 of this report.)
- 2.4.3. Take the steps necessary to clarify whether and in what instances attorney-client privilege or other Federal laws may be used by agencies to refuse to provide an Inspector General's Office with information requested in order to perform its statutorily assigned functions, in order to ensure that this privilege is not improperly invoked by agencies or does not operate to impede the execution of the functions and responsibilities of the OIGs. (See Chapter II, Section 2.2 of this report.)
- 2.4.4. Examine the reasons for the fact that little use is made of the seven-day-letter mechanism contemplated by section 5(d) of the Inspector General Act of 1978, with a view to identifying challenges and adopting corrective measures. (See Chapter II, Section 2.2 of this report.)
- 2.4.5. Consider, through the means necessary, granting Inspectors General subpoena power with regard to, among others, Federal employees, former employees, and current and former contractors and their employees, when necessary for the performance of OIG functions. (See Chapter II, Section 2.2 of this report.)
- 2.4.6. Consider specifying which reports are to be published on the respective OIG websites pursuant to section 8M of the Inspector General Act of 1978. (See Chapter II, Section 2.2 of this report.)

- 2.4.7. Ensure that the Offices of Inspectors General and the CIGIE are provided with sufficient human and financial resources in order for them to fully execute their legally assigned responsibilities, within available resources. (See Chapter II, Section 2.2 of this report.)
- 2.4.8. Ensure that there are OIG websites corresponding to all OIGs that are legally required to have them pursuant to the Inspector General Act. (See Chapter II, Section 2.3 of this report.)
- 2.4.9. Ensure that all OIGs required to prepare and submit semi-annual reports to Congress comply with that obligation, as well as with any obligation to publish those reports on their respective Internet website. (See Chapter II, Section 2.3 of this report.)

3. THE PUBLIC INTEGRITY SECTION (PIN) OF THE CRIMINAL DIVISION OF THE U.S. DEPARTMENT OF JUSTICE

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

[144] The Public Integrity Section (PIN) of the Criminal Division of the U.S. Department of Justice (USDOJ) has a set of provisions in its legal framework, as well as other measures that refer, *inter-alia*, to the following:

[145] With respect to the objectives and functions of the PIN, according to the response of the country under review, PIN was created in 1976 following the Watergate scandal, for the purpose of overseeing the USDOJ's national effort to combat public corruption.⁸¹ In this regard, the response notes that "*PIN is a collection of experienced, specialized, public corruption prosecutors who investigate and prosecute public officials for breaches of the public trust. PIN provides expertise, guidance, and training to law enforcement agents and Federal prosecutors from the 93 United States Attorneys' Offices across the United States who bring the majority of public corruption cases. PIN works to ensure that sensitive public corruption and election crime investigations and prosecutions are handled in a uniform, consistent, and appropriate manner nationwide.*"⁸²

[146] In terms of the scope of PIN functions, the response notes that only the USDOJ can prosecute Federal crimes, and that accordingly, PIN's has jurisdiction with regard to Federal criminal offenses, but that its jurisdiction does not extend to civil or administrative actions related to public misconduct.⁸³ Similarly, the response notes that "*PIN is able to handle criminal cases in which a United States Attorney's Office for a particular district (94 districts nationwide) is recused due to a potential conflict of interest. For example, based upon recusals, PIN handles investigations of Federal judges, Federal prosecutors, and law enforcement agents who work with the United States Attorneys' Office in a particular district. PIN's jurisdiction is nationwide, and PIN can handle cases that may involve more than one state or Federal district. PIN handles cases involving public officials at all levels of state, local, and Federal Government, including officials in the executive, judicial, and legislative branches of government. PIN brings cases against corrupt public officials, and against those private citizens and businesses that corrupt them.*"⁸⁴

⁸¹ See the response of the United States to the Questionnaire for the Fourth Round, at p. 42, *supra* note 3.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*, at pp. 42-43.

[147] Another function of the PIN detailed in the response to the questionnaire is the provision of “...advice, guidance, and samples of pleadings, legal research, and charging documents to Federal prosecutors from the 93 U.S. Attorneys’ Offices. This advice and guidance is provided based upon voluntary consultations, and Federal prosecutors from across the United States are required to consult with PIN on certain matters, such as the initiation of investigations regarding campaign financing crimes and election crimes, and plea agreements with Federal judges and members of Congress.”⁸⁵

[148] The response notes that decisions by all USDOJ prosecutors (including PIN prosecutors), are governed by the United States Attorneys’ Manual (USAM) which sets standards policies and procedures for all USDOJ functions, including, among others, the “Principles of Federal Prosecution”, which contain standards for bringing or declining criminal charges.⁸⁶ In addition, the response notes that the PIN Chief approves all decisions to open investigations; the Deputy Chiefs and the Chief approve all decisions to close an investigation if there will be no charges.

[149] Regarding the decision to open an investigation, during the on-site visit, PIN representatives explained that investigations often begin based on the following: (1) referrals from Congress in the context of a Congressional Hearing; (2) referrals from judges; (3) allegations from citizens; (4) information received from non-profit groups, think tanks, etc.; and (5) information reported in the media. Similarly, PIN representatives explained that investigations do not proceed when it is determined that there is insufficient evidence to move forward.

[150] The response also notes that “Consistent with the Principles of Federal Prosecution, the Chief approves all decisions to charge a defendant with a crime, whether by grand jury Indictment, Information, arrest, or complaint. Before bringing any indictment, PIN Trial Attorneys must write a detailed prosecution memorandum outlining the evidence, the law, and the potential defenses. An indictment review meeting is required, which includes the Chief, Deputy Chiefs, and experienced Trial Attorneys. The Chief and/or Deputy Chiefs approve all plea agreements with defendants. The FBI and other law enforcement agencies with whom PIN works have input into the decision whether to bring charges or close an investigation without charges.”⁸⁷

[151] The response notes that the PIN is managed by a Chief, a Principal Deputy Chief, and three Deputy Chiefs, who are all experienced Federal prosecutors and also non-political, career civil servants.⁸⁸ Additionally, the response explains that the Chief and Principal Deputy Chief are members of the Senior Executive Service (SES) and accordingly, are selected for their position by the Assistant Attorney General in charge of the USDOJ’s Criminal Division, through a procedure established for such appointments.⁸⁹ The response further notes that “The three remaining Deputy Chiefs are selected by the Chief of PIN, following a public vacancy

⁸⁵ Ibid., at p. 43.

⁸⁶ Ibid., at p. 43. In addition, the United States Attorneys’ Manual is available here: http://www.justice.gov/usao/eousa/foia_reading_room/usam/.

⁸⁷ Ibid., at pp. 43-44.

⁸⁸ Ibid., at p. 44.

⁸⁹ With respect to the filling of SES positions generally, the response notes in pertinent part at p. 44, that “The majority of SES positions in the Government are career positions. When a vacancy occurs in an SES position an individual who is already in the SES may be transferred to that position or the position is advertised and candidates must meet the qualifications established first for members of the SES (executive core qualifications) and then meet the specific technical qualifications for the specific positions. Those applicants that meet both are then ranked by a committee and their names are submitted to the selection official. These appointments are not for any fixed term (although an individual who newly enters the SES can have a one-year probationary period for the SES). Individuals who hold SES positions have the standard rights regarding such actions as performance reviews, bonuses, transfer and removal as are accorded to all members of the SES.”

announcement. The non-SES Deputy Chiefs are subject to standard Government procedures and policies applicable to Excepted Service appointments... ”⁹⁰

[152] With regard to personnel of the PIN, the response notes that the Section is made up of approximately 30 lawyers, 5 paralegals, an office manager, three secretaries, and one database specialist.⁹¹ PIN attorneys, “...are selected following the standard Government procedures for Excepted Service appointments. They are career appointments not for a fixed term. These individuals enjoy the same standard rights and benefits of all Excepted Service appointments including rights to challenge personnel actions, if necessary. As in the rest of the career service in the executive branch, decisions on performance reviews, promotions, reassignments, bonuses, discipline and other administrative actions are initially made by supervisors, following standard personnel procedures which include rights of appeal.”⁹²

[153] Regarding other PIN employees, the response notes that they are “...all career employees who have been hired following the Government-wide procedures for positions in the Competitive Service. That typically involves announcement of vacancies, an application process, rating and ranking of applicants and then selection. These are not term appointments. These positions also have written job descriptions, and individuals in them have annual performance plans and receive written annual performance reviews. They have standard rights to appeal personnel actions afforded those in Competitive Service positions.”⁹³

[154] Similarly, the response notes that “As employees of the executive branch of the U.S. Government, PIN personnel are selected, appointed, and removed according to the system of laws and regulations governing employment in the executive branch...All employees of PIN are subject to the executive branch standards of conduct; applicable supplemental agency regulations; the criminal conflict of interest laws; and, depending upon the type and level of their positions, the civil ethics statutes and financial disclosure requirements.”⁹⁴

[155] With regard to the existence of manuals describing functions of PIN personnel, the response notes that while DOJ trial attorneys share a general job description, each PIN attorney is given a written Performance Work Plan describing their general duties and responsibilities.⁹⁵ The response also notes that each attorney receives an annual written performance evaluation.⁹⁶

[156] With respect to training provided in connection with PIN personnel, the response notes that “Each year, PIN employees are required to complete one hour of ethics training, two hours of training regarding discovery practices in criminal cases, one hour of training regarding the rights of victims and witnesses, and one hour of training regarding the prevention of sexual harassment in the workplace. In addition, PIN attorneys routinely attend training sessions provided by the Department’s Office of Legal Education at the Department’s National Advocacy Center, in Columbia, South Carolina. (<http://www.justice.gov/usao/training/>) The courses include instruction on grand jury practice, trial practice, evidentiary issues, and complex financial investigations. Approximately once every one to two years, PIN also conducts training at the National Advocacy Center regarding public corruption cases for prosecutors and law enforcement agents from across

⁹⁰ Ibid.

⁹¹ Ibid., at pp. 44-45.

⁹² Ibid., at p. 45.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid., at p. 46.

⁹⁶ Ibid.

*the country. The topics include legal developments, law enforcement techniques, and trial issues in public corruption cases.*⁹⁷

[157] In terms of the existence of documented procedures for performance of tasks, the policies and procedures followed by all DOJ prosecutors are contained in the United States Attorneys' Manual (USAM).⁹⁸ In addition, during the on-site visit, PIN and FBI representatives explained that investigations are conducted pursuant to the Domestic Investigation and Operational Guidelines (DIOG), an internal USDOJ manual.

[158] With regard to institutional strengthening actions or the implementation of systems or modern technologies, the response notes that PIN uses an Automated Case Tracking System (ACTS) to, among others, record the opening and closing of investigations and prosecutions, the nature of the allegations, and the names of the attorneys assigned; as well as electronic systems to track the approval of plea agreements, the decision to decline prosecutions, and certifications signed by attorneys that they do not have a conflict of interest in handling a particular case.⁹⁹

[159] With respect to mechanisms for accountability and for providing information to the public, pursuant to a provision of the Ethics in Government Act, at 28 U.S.C. § 529, PIN prepares and submits Annual Reports to Congress. This report contains information on, *inter-alia*, PIN litigation activities, section priorities, training provided by PIN, PIN indictments and prosecutions, and a summary of nationwide federal prosecutions of corrupt public officials.

[160] In addition, PIN maintains an Internet website, available at: <http://www.justice.gov/criminal/pin/>, which provides, *inter-alia*, information about the Section, press releases, the Annual Reports to Congress noted above and PIN contact information.

[161] Tied to the foregoing, during the on-site visit, PIN noted that because it relies upon investigative agencies such as the FBI and OIGs to gather complaints, facts, and evidence, PIN, appropriately, deals directly with those offices, rather than with the public. Accordingly, PIN does not work directly with the public, and does not seek to increase PIN's profile with the public, other than the information that appears currently on their website. Rather, it is far more important that the FBI and the OIGs have clear channels for the reporting of potential crimes and that the public understands that the Department of Justice through one office or another does and will prosecute crimes.

[162] With respect to the existence of internal control mechanisms, the response notes that "*All complaints or allegation of misconduct by PIN (or other Department of Justice personnel) are handled by the Department of Justice's Office of Professional Responsibility (OPR) (<http://www.justice.gov/opr/index.html>), and the Office of the Inspector General, (<http://www.justice.gov/oig/index.html>).*"¹⁰⁰

[163] Regarding existing coordination mechanisms for harmonizing their functions with those of other oversight bodies, PIN coordinates with government agencies with overlapping responsibilities, including OIGs, the Federal Election Commission, the OSC, OGE, and the Federal Bureau of Investigation.¹⁰¹ In addition, the response notes that PIN participates in the review and approval of

⁹⁷ Ibid.

⁹⁸ Ibid. In addition, the United States Attorney's Manual is available at:

http://www.justice.gov/usao/eousa/foia_reading_room/usam/

⁹⁹ See the response of the United States to the Questionnaire for the Fourth Round, at pp. 46-47, supra note 3.

¹⁰⁰ Ibid., at p. 47.

¹⁰¹ Ibid., at p. 48.

all proposed FBI undercover operations involving public corruption and that PIN serves as counsel to the CIGIE Integrity Committee.¹⁰²

[164] With regard to difficulties related to the performance of its functions, the response to the questionnaire notes that *“One challenge that is common to PIN and other offices involved in the criminal investigation and prosecution of public corruption is the existence of parallel proceedings. It is common that the conduct that PIN is investigating is also a subject of investigation or under review by other offices, such as the Federal Election Commission, the Federal department or agency in which the public official works, the Merit Systems Protection Board, the Office of Special Counsel, or Congress. Moreover, there may be civil litigation related to the same conduct. Each of these offices and authorities has its own responsibility to investigate and handle allegations of misconduct by public officials, and PIN must attempt to ensure that the existence of the parallel proceedings does not interfere with its criminal investigation.”*¹⁰³

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

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

[166] With regard to existing coordination mechanisms, during the on-site visit, PIN representatives noted that there is no centralized database of open investigations in all United States Attorneys Offices. In this regard, the response notes *“One challenge that is common to PIN and other offices involved in the criminal investigation and prosecution of public corruption is the existence of parallel proceedings. It is common that the conduct that PIN is investigating is also a subject of [administrative] investigation or under [administrative] review by other offices, such as the Federal Election Commission, the Federal department or agency in which the public official works, the Merit Systems Protection Board, the Office of Special Counsel, or Congress...and PIN must attempt to ensure that the existence of the parallel proceedings does not interfere with its criminal investigation.”*¹⁰⁴

[167] In light of the foregoing, the Committee believes that it is important for the country under review to ensure that there is adequate coordination between the PIN and the United States Attorneys Offices, so that parallel investigations do not undermine any potential criminal proceedings, and it will formulate a recommendation in this regard. (See recommendation 3.4.1 in Chapter II of this report.)

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

[168] Based on the response of the country under review to the questionnaire and the on-site visit, information was gathered regarding the results obtained by the Public Integrity Section (PIN) with respect to the fulfillment of its functions, including the following:

[169] With respect to results achieved by the PIN related to the prevention of corruption, the response notes the deterrent effect of prosecutions, indicating that *“A criminal prosecution has a substantial deterrent impact on the particular office in which the defendant-public official was employed, and a broader deterrent effect when information regarding a prosecution and*

¹⁰² Ibid.

¹⁰³ Ibid., at p. 50.

¹⁰⁴ Ibid., at p. 50.

*conviction is distributed among Government agencies and publicized in the news media...*¹⁰⁵
 The response also notes that its results are publicized in the PIN Annual Report to Congress, *"...which includes district-by-district statistics regarding the nationwide effort to prosecute public corruption over the past 20 years..."*¹⁰⁶

[170] With respect to Nation-wide Federal Prosecutions, Table 1 included in the 2013 PIN Annual Report to Congress indicates that in 2013, (a) 337 Federal Officials were charged, 315 were convicted, and 113 were awaiting trial; (b) 133 State Officials were charged, 119 were convicted and 68 were awaiting trial; (c) 334 Local Officials were charged, 303 were convicted and 149 were awaiting trial; and (d) 330 Other Involved persons were charged, 300 were convicted and 169 were awaiting trial; for a total of 1134 persons charged, 1037 convicted and 499 awaiting trial.¹⁰⁷

[171] Table 2 in the 2013 Annual Report details the number of Federal, state and local officials, as well as private citizens involved in public corruption offenses who have been charged, convicted, and who were awaiting trial as of December 31, for each year between 1994 to 2013.

[172] With respect to the results of the work of the PIN related to the investigation and prosecution of acts of corruption, in the response to the questionnaire and within the framework of the on-site visit, PIN representatives provided the following statistics, *"...regarding the number of investigations handled by PIN, the number of defendants convicted, and the number of defendants acquitted, all for the past five years."*¹⁰⁸

<u>PIN Stats</u>						
2009-2013						
Years	2009	2010	2011	2012	2013	
Matters pending end	104	73	60	52	62	
Defendants charged by Indictment or information	39	79	56	48	48	
Defendants convicted By jury or plea	41	38	67	68	58	
Number of defendants acquitted	3	1	4	7	0	

¹⁰⁵ Ibid., at p. 59.

¹⁰⁶ Ibid.

¹⁰⁷ The 2013 PIN Annual Report to Congress is available at: <http://www.justice.gov/criminal/pin/docs/2013-Annual-Report.pdf>

¹⁰⁸ Ibid, at. p. 48.

Fines	\$33,088,239	\$3,503,424	\$28,606,389	\$41,626,415	\$13,120,615
Penalties					
Assessments					
& Restitution					

[173] With respect to the above statistics on nation-wide prosecutions provided during the on-site visit and contained in the PIN Annual Reports, the Committee notes that during the on-site visit, information was requested regarding the specific offenses that led to the prosecutions and convictions indicated above, in order to analyze the result of prosecutions of specific acts of corruption. In this regard, PIN representatives informed that the various US Attorneys Offices and PIN use different databases to track cases. Similarly, subsequent to the on-site visit, PIN representatives also explained that the database used by PIN to track ongoing criminal cases does not allow for an easy search by type of offense. The Committee will formulate a recommendation in this regard. (See recommendation 3.4.2 in Chapter II of this report.)

3.4. Conclusions and recommendations

[174] Based on the foregoing comprehensive analysis of the Public Integrity Section (PIN), the Committee offers the following conclusions and recommendations:

[175] The United States has considered and adopted measures intended to maintain and strengthen the Public Integrity Section (PIN) as an oversight body, as indicated in Chapter II, Section 3 of this report.

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

- 3.4.1. Ensure that there is adequate coordination between the PIN and the United States Attorneys Offices, so that parallel investigations do not undermine any potential criminal investigations. (See Chapter II, Section 3.2 of this report.)
- 3.4.2. Maintain statistics on the results of investigations and prosecutions carried out by PIN, broken down in such a way as to show the number of each type of criminal conduct or offense that led to prosecutions and convictions, in order to identify challenges and recommend corrective action. (See Chapter II, Section 3.3 of this report.)

4. OFFICE OF GOVERNMENT ETHICS (OGE)

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

[177] The Office of Government Ethics (OGE) has a set of provisions in its legal framework, as well as other measures that refer, *inter-alia*, to the following:

[178] The Ethics in Government Act of 1978 (EIGA), Title 5 United States Code App., which at section 401 establishes OGE.

[179] With respect to OGE's functions and objectives, as a supervising office for the executive branch, section 402 of the EIGA assigns the following responsibilities to OGE: (1) developing rules and regulations pertaining to conflicts of interest and ethics in the executive branch, including those related to financial disclosure statements; (2) developing rules and regulations pertaining to the

identification of and resolution of conflicts of interest; (3) monitoring and investigating compliance with the public financial disclosure statement requirements by officers and employees of the executive branch and executive agency officials responsible for receiving, reviewing, and making available financial disclosure statements filed pursuant to such title; (4) reviewing financial disclosure statements to determine whether they reveal possible violations of conflict of interest laws or regulations and recommending appropriate action; (5) monitoring and investigating compliance with any additional financial reporting and internal review requirements established by law; (6) interpreting rules and regulations issued by the President or the Director governing conflict of interest and ethical problems and the filing of financial disclosure statements; (7) consulting, when requested, with agency ethics counselors and other responsible officials regarding the resolution of conflict of interest problems in individual cases; (8) establishing a formal advisory opinion service to render opinions on matters of general applicability or on important matters and making those opinions available to agency ethics counselors and the public; (9) ordering corrective action on the part of agencies and employees; (10) requiring such reports from executive agencies as the Director of OGE deems necessary; (11) assisting the Attorney General in evaluating the effectiveness of the conflict of interest laws and in recommending appropriate amendments; (12) evaluating the need for changes in rules and regulations regarding conflict of interest and ethical problems, with a view toward making such rules and regulations consistent with and an effective supplement to the conflict of interest laws; (13) cooperating with the Attorney General in developing an effective system for reporting allegations of violations of the conflict of interest laws to the Attorney General; (14) providing information on and promoting understanding of ethical standards in executive agencies; and (15) developing and promulgating necessary or desirable rules and regulations with respect to any item required to be reported on financial disclosure statements.

[180] Additionally, the response to the questionnaire notes that OGE's three primary objectives include (1) advancing a strong, uniform executive branch ethics program by interpreting and advising on ethics laws, policies, and program management; holding executive branch agencies accountable for carrying out an effective ethics program; contributing to the professional development of ethics officials; and modernizing and implementing the ethics rules and regulations; (2) contributing to the continuity of senior leadership in the executive branch by providing assistance to the President and the Senate in the Senate confirmation process, promoting leadership support of the executive branch ethics program, and supporting succession planning in the executive branch ethics program; and (3) promoting transparency of the executive branch ethics program by raising the visibility of both the executive branch ethics program and OGE and by ensuring that ethics information is publicly available.¹⁰⁹

[181] The response also notes that "*OGE publishes its own chapter of regulations in the Code of Federal Regulations. See 5 C.F.R. Chapter XVI. These regulations are divided into two subchapters. The regulations in subchapter A concern the internal organization and operation of OGE. The regulations in subchapter B are broader in scope and are central to the executive branch ethics program; they include the standards of conduct for employees of the executive branch, rules governing the administration of the financial disclosure program, and implementation of certain criminal conflict of interest statutes. In particular, Part 2638 describes the responsibilities of OGE and executive branch agency ethics programs.*"¹¹⁰ During the on-site visit, OGE representatives provided the review team with examples of published copies of Chapter XVI of Title 5 of the C.F.R. as well as a Compilation of Federal Ethics Laws.

[182] In terms of coordination with other oversight bodies, Chapter XVI of Title 5 of the C.F.R., at Subpart B, requires executive branch agencies to have a Designated Agency Ethics Official

¹⁰⁹ See the response of the United States to the Questionnaire for the Fourth Round, at page 4, *supra* note 3.

¹¹⁰ *Ibid.*, at p. 5.

(DAEO) in order to, *inter-alia*, coordinate and manage the agency's ethics program and to serve as the liaison between the agency and OGE with regard to all aspects of the ethics program. Title 5 of the CFR, at section 2638.202 also requires the appointment of an Alternate Designated Agency Ethics Official (ADAEO). "*Depending on the size of the agency, there may be additional professional ethics staff who support the ethics program. Approximately 5,600 fulltime and part-time ethics officials work in the executive branch to provide all executive branch employees assistance in detecting and resolving potential conflicts of interest.*"¹¹¹ OGE maintains a list of appointed DAEOs and ADAEOs, available at: [http://www.oge.gov/Program-Management/Program-Management-Resources/Ethics-Community/DAEO-List-\(PDF\)/](http://www.oge.gov/Program-Management/Program-Management-Resources/Ethics-Community/DAEO-List-(PDF)/).

[183] With regard to the exercise of functions in conjunction with other oversight bodies, the response notes that although OGE is a stand-alone agency, "*OGE consults, as required by law, with the U.S. Department of Justice (DOJ) in seeking any statutory changes to the criminal conflict of interest statutes. As further required by law, OGE consults with DOJ and the U.S. Office of Personnel Management (OPM) in a variety of ways, including but not limited to the development of rules and regulations to be promulgated by the President or OGE's Director pertaining to conflicts of interest and ethics in the executive branch. See 5 U.S.C. § 402. In addition, OGE often consults with DOJ before issuing legal advisories that interpret the criminal conflict of interest statutes and U.S. Supreme Court decisions.*"¹¹² Similarly, the response explains that since 1980, OGE and DOJ have had a standing MOU giving OGE the authority to render formal written advisory opinions on matters of general applicability and important matters of first impression that involve the interpretation or application of the criminal conflict of interest laws contained in Title 18 U.S.C. § 202-209.¹¹³

[184] The response also points to other coordination that takes place between OGE and agencies, OIGs and prosecutors, including: the requirement that agencies and OIGs notify OGE of any referral of an alleged criminal conflict of interest violation for prosecution; direct support provided by OGE to IG and Federal prosecutors on the interpretation and application of the conflict of interest laws and ethics rules; publication of OGE's annual summary of conflict of interest prosecutions by DOJ;¹¹⁴ OGE participation in CIGIE, including through service on CIGIE's Integrity Committee; and training provided to the IG community through the CIGIE's IG Training Institute and the Council of Counsels to Inspectors General.¹¹⁵

[185] Regarding the existence of any exceptions to the scope of OGE's functions, the response notes that "*OGE has no role in the ethics programs of the legislative or judicial branches of the U.S. Government. Similarly, OGE has no jurisdiction over state or local government ethics programs.*"¹¹⁶

[186] Regarding the existence of any conflicts of jurisdiction or mechanisms for dealing therewith, the response notes that "*Because OGE and the other agencies and entities responsible*

¹¹¹ Ibid., at p. 4.

¹¹² Ibid., at p. 6.

¹¹³ Ibid. Also, 18 U.S.C. Sections 202-209 are available at: <http://www.gpo.gov/fdsys/pkg/USCODE-2012-title18/html/USCODE-2012-title18-partI-chap11.htm>

¹¹⁴ These summaries are available at: <http://www.oge.gov/Topics/Enforcement/Conflict-of-Interest-Prosecution-Surveys/>

¹¹⁵ More information on this training is available at: <http://www.oge.gov/DisplayTemplates/ModelSub.aspx?id=2147484391>

¹¹⁶ See the response of the United States to the Questionnaire for the Fourth Round, at p. 7, *supra* note 3.

for preventing, detecting, punishing, and eradicating corrupt acts have clearly defined and distinct functions, conflicts of jurisdiction have not arisen."¹¹⁷

[187] With respect to the adoption of decisions by OGE, the response notes that OGE does not issue legally binding decisions adjudicating allegations of misconduct, and that rather, OGE provides guidance on substantive ethics issues through formal and informal legal advisories.¹¹⁸

[188] OGE also carries out on-site reviews of agency ethics programs, in order to identify strengths and weaknesses of agency programs. During the on-site visit, the OGE representatives explained that the goal is to review all executive branch agency ethics programs at least once every four years. As OGE representatives noted, when OGE determines based on a review that an agency program does not comply with applicable requirements, OGE issues a written report to the agency which includes recommendations for specific action which would bring the agency into compliance. OGE publishes these reports online. OGE then follows-up with the agencies to ensure that they have implemented the recommendations. As noted in the response to the questionnaire, if an agency fails to adequately address its deficiencies, Part 2638, Subpart D of Title 5 of the C.F.R. authorizes OGE to issue a Notice of Deficiency to the DAEO in the respective agency. This Subpart also establishes procedures for the agency to respond and for follow up action to be taken by OGE in the form of an Order for corrective action under Title 5 of the C.F.R., section 2638.402. Similarly, section 2638.403 requires agencies to report to OGE as to the corrective action taken, while section 2638.404 requires OGE to report non-compliance to the President and Congress.

[189] Pursuant to section 401(b) of the EIGA, OGE is headed by a Director, appointed by the President to a five year term, by and with the advice and consent of the Senate. With respect to OGE's autonomy, the response notes that OGE is a stand-alone entity and is not part of any other department or entity.¹¹⁹

[190] Regarding other OGE personnel, section 401(c) of the EIGA provides that the Director may appoint officers and employees in accordance with the pay schedules and classification of posts contained in the applicable provisions of the United States Code.

[191] With respect to the selection of senior OGE personnel,¹²⁰ the response notes that "*The following positions form OGE's senior staff: General Counsel, Program Counsel, Deputy Director for Compliance, and Assistant Director for Compliance. These positions are occupied by individuals from the career Senior Executive Service (SES). The SES is designed to be a corps of executives selected for their leadership qualifications. Members of the SES serve in the key positions just below the top Presidential appointees. SES members are the major link between these appointees and the rest of the Federal work force. Initial career appointments to the SES must be based on merit competition. SES appointees are appraised on their performance annually and can be removed for poor performance or misconduct. Disciplinary removal procedures and rights are similar to those for competitive service employees, except that the standard for action*

¹¹⁷ Ibid., at p. 7.

¹¹⁸ Ibid., at pp. 7-8. OGE's legal advisories are available at: <http://www.oge.gov/OGELegalAdvisories/Legal-Advisories/>

¹¹⁹ Ibid., at p. 5.

¹²⁰ For additional information on the system of laws and regulation applicable to employees in the Executive Branch, and which are applicable to OGE employees, see Chapter II, Section 1 of the Report on the United States for the Second Round of Review, at http://www.oas.org/juridico/english/mesicic2_usa.htm

is "misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function." See 5 C.F.R. §359.403. ¹²¹

[192] Regarding the selection of other human resources at OGE, the response notes that "OGE personnel are selected, appointed, and removed according to the system of laws and regulations governing employment in the executive branch... This system of laws and regulations also sets forth the requirements executive branch employees must meet to hold their positions... All employees of OGE are subject to the executive branch standards of conduct; applicable supplemental agency regulations; the criminal conflict of interest laws; and, depending upon the type and level of their positions, the civil ethics statutes and financial disclosure requirements." ¹²²

[193] With regard to the existence of manuals describing functions of OGE personnel, the response notes that each employee has a written position description of the functions and duties applicable to that employee's position, and that each employee also has a performance plan establishing the critical elements of the employee's position and performance standards for each critical element. ¹²³

[194] Similarly, in terms of the training provided in connection with the functions of its personnel, the response explains that "OGE has an employee development program, which provides time, resources, and organizational support to enhance the professional development and expertise of OGE personnel. Each employee has a tailored employee development plan that identifies objectives for developing the employee's knowledge, skills, and abilities and establishes a training plan to achieve those objectives. OGE documents the training completed by each employee in the employee's individual training file." ¹²⁴

[195] With respect to the existence of documented procedures for the performance of tasks, or of manuals or guides dealing with those duties, the response to the questionnaire notes that OGE develops written guides to assist agency ethics officials and OGE staff in performing their duties. ¹²⁵ In addition, the response notes that OGE has developed guides to facilitate the review of financial disclosure reports and related documents including: *Nominee and New Entrant 278 Guide*, available at <http://www.oge.gov/Financial-Disclosure/Public-Financial-Disclosure-278/Nominee-and-New-Entrant-278-Guide/Nominee--New-Entrant-278-Guide/>; *Public Financial Disclosure: A Reviewer's Reference (2004)*, available at <http://www.oge.gov/Financial-Disclosure/Docs/Financial-Disclosure-Guide/>; *Guide to Reporting Selected Financial Instruments*, available at <http://www.oge.gov/Financial-Disclosure/Docs/Guide-to-Reporting-Selected-Financial-Instruments/>; *PAS [Presidentially Appointed, Senate Confirmed] Nominee Ethics Agreement Guide*, available at [http://www.oge.gov/Financial-Disclosure/Docs/PAS-Nominee-Ethics-Agreement-Guide-\(PDF\)/](http://www.oge.gov/Financial-Disclosure/Docs/PAS-Nominee-Ethics-Agreement-Guide-(PDF)/) and

¹²¹ Ibid., at p. 9. See also, 5 U.S.C. § 3132, for the legal authority for the Senior Executive System, available at: <http://www.gpo.gov/fdsys/pkg/USCODE-2012-title5/html/USCODE-2012-title5-partIII-subpartB-chap31-subchapII.htm>; the regulations governing the SES are found at 5 C.F.R. pt. 214, available at: <http://www.gpo.gov/fdsys/pkg/CFR-2014-title5-vol1/pdf/CFR-2014-title5-vol1-part214.pdf>; and summaries of the SES system are available on the Office of Personnel Management website, available at: <https://www.opm.gov/policy-data-oversight/senior-executive-service/>

¹²² See the response of the United States to the Questionnaire for the Fourth Round, at p. 10, supra note 3. The response also notes that additional information on these laws and statutes are available in the country reports on the United States corresponding to the First and Second Rounds, available at: <http://www.oas.org/juridico/english/usa.htm>

¹²³ Ibid., at p. 10. In addition, the response explains that "The regulations governing employee performance plans are found at 5 C.F.R. § 430.204, which is available at the following link: <http://www.gpo.gov/fdsys/pkg/CFR-2014-title5-vol1/xml/CFR-2014-title5-vol1-sec430-204.xml>."

¹²⁴ Ibid.

¹²⁵ Ibid., at p. 11.

Guidance for Reviewers of the OGE Form 450, Part I, available at <http://www.oge.gov/Financial-Disclosure/Docs/Guidance-for-Reviewers-of-the-OGE-Form-450,-Part-I>.¹²⁶

[196] With regard to institutional strengthening or the implementation of quality improvement actions at OGE, Management Objective 4.2 in OGE’s Strategic Plan for Fiscal Year 2014 – Fiscal Year 2018, calls upon OGE to transform the way that it does business through process improvement.¹²⁷ Pursuant to this, the response notes that “*OGE has developed new standard operating procedures for its on-site reviews of agency ethics programs...to improve efficiency and effectiveness of both the reviews and the review selection process.*”¹²⁸

[197] The response also explains that OGE continually implements new technological solutions, including the development and launch in 2013 of two new information management systems: the Agency Information Management System (AIMS) and the Financial Disclosure Tracking System (FDTS).¹²⁹

[198] With regard to internal control mechanisms, the response to the questionnaire notes that “*...OGE is subject to myriad internal controls that focus on the prevention of fraud, waste, and mismanagement at the individual level as well as the systemic, agency level...In addition, OGE maintains an administrative manual, which covers rules and procedures related to internal control matters such as financial management, procurement, property management, records management, and travel. Further, OGE’s five-year strategic plan serves as a mechanism for internal control by describing the strategies OGE will use to achieve its mission and documenting how OGE will measure whether those strategies are successful ...*”¹³⁰

[199] With respect to the existence of mechanisms for dealing with complaints or allegations related to the pursuit of OGE’s objectives and the performance of its personnel, the response notes that “*...all executive branch employees have a responsibility to report fraud, waste, abuse, and corruption to appropriate authorities...With regard to OGE, such complaints or allegations can be made to OGE managers, the U.S. Office of Special Counsel at <https://osc.gov/>, the U.S. Government Accountability Office’s FraudNet at <http://www.gao.gov/fraudnet/fraudnet.htm>, and OGE’s congressional oversight committees.*”¹³¹

[200] In addition, the response notes that OGE is subject to oversight by the U.S. House of Representatives Committee on Oversight and Government Reform, the U.S. House of Representatives Judiciary Committee’s Subcommittee on the Constitution and Civil Justice., the U.S. Senate Committee on Homeland Security and Government Affairs, the U.S. House Appropriations Subcommittee on Financial Services and General Government, and the U.S. Senate Appropriations Subcommittee on Financial Services and General Government.¹³²

[201] With respect to the manner in which OGE provides information to the public, OGE has its own institutional website, available at: <http://www.oge.gov/>. The response notes that this portal,¹³³

¹²⁶ Ibid.

¹²⁷ OGE’s Strategic Plan for Fiscal Year 2014 – Fiscal Year 2018 is available at: [http://www.oge.gov/About/Management-Reports-and-Policies/Performance-and-Strategic-Docs/OGE-Strategic-Plans-\(FY-2014-2018\)/](http://www.oge.gov/About/Management-Reports-and-Policies/Performance-and-Strategic-Docs/OGE-Strategic-Plans-(FY-2014-2018)/)

¹²⁸ See the response of the United States to the Questionnaire for the Fourth Round, at p. 11, supra note 3.

¹²⁹ Ibid., at p. 12.

¹³⁰ Ibid., at p. 9. In addition, the response notes that The U.S. Government’s network of laws and regulations designed to minimize the potential for fraud, waste, and mismanagement are described further in the response to the First Round questionnaire in Chapter One. This report is available at: http://www.oas.org/juridico/english/mec_rep_usa.pdf.

¹³¹ Ibid., at p. 14.

¹³² Ibid., at pp. 14 to 15.

¹³³ Ibid., at pp. 12 to 13.

which was completely redesigned three years ago, contains, *inter-alia*, the following information: records, including public financial disclosure reports and ethics pledge waivers, relating to individuals who have been nominated or appointed by the President with the advice and consent of the Senate; legal advisories prepared by OGE; education resources for Federal employees and executive branch agency ethics officials;¹³⁴ reports issued pursuant to reviews of agency ethics programs;¹³⁵ and semiannual reports of payments for travel or other expenses received by agencies from non-federal sources.¹³⁶

[202] In addition, the response notes that in an effort to reach audiences outside of the Federal Government, including the general public, state and local governments, private sector organizations, professional associations, government oversight groups, the media and foreign delegations, OGE launched an official Twitter account, available at: <https://twitter.com/OfficeGovEthics>.

[203] With regard to mechanisms for accountability, the response notes that this is achieved in large part through fulfillment of annual reporting requirements, including OGE's Annual Performance Reports.¹³⁷ To prepare these reports, OGE gathers and reviews information from agency ethics officials and other audiences.¹³⁸ Examples of data collection and review include the annual surveys of ethics officials to assess their satisfaction with OGE's guidance, training and overall efforts; evaluation of agency ethics program compliance; collection and review of evaluations from participants in OGE's training events; use of agency ethics program reviews to evaluate those programs; and analysis of information collected through OGE's Agency Information Management System to identify areas on which to focus additional training or other guidance.¹³⁹

[204] With respect to the manner in which budgetary resources of OGE are ensured, the response notes that *"As part of this [budget] process, OGE first submits a request and justification for its yearly appropriation to OMB. OMB then reviews OGE's request and modifies as necessary to balance all executive agency requests into one target spending goal. OGE's budget request then becomes part of the President's annual budget recommendation to Congress. OGE concurrently submits a budget justification explaining how the requested appropriation will be spent in support of the agency's mission."*¹⁴⁰

[205] With regard to difficulties encountered by OGE related to the performance of its functions, the response notes that *"Like many other agencies in the U.S. Federal government, OGE faces challenges created by the current austere budget environment. A recent revision of the Ethics in Government Act, which has increased the agency's workload, has compounded these challenges. In fiscal year 2013, Federal agencies experienced an across-the-board reduction in budgetary resources in all budget accounts not exempted by statute. To minimize operational risks and the impact on OGE's core mission, OGE significantly curtailed all discretionary spending in fiscal year 2013. These actions enabled OGE to avoid furloughing its employees, unlike many other agencies in the executive branch. Despite this achievement in fiscal year 2013, all Federal government employees not exempted by law were furloughed at the beginning of fiscal year 2014 until Congress*

¹³⁴ These education resources are available at: <http://www.oge.gov/Education/Education/>

¹³⁵ These reports are available at: <http://www.oge.gov/Program-Management/Program-Review/Program-Review-Reports/Program-Review-Reports/>

¹³⁶ These reports are available at: <http://www.oge.gov/Open-Government/Travel-Reports/Travel-Reports/>

¹³⁷ See the response of the United States to the Questionnaire for the Fourth Round, at p. 16, *supra* note 3. Also, OGE's performance reports are available at: <http://www.oge.gov/About/Management-Reports-and-Policies/Performance-and-Strategic-Docs/Performance---Strategic-Documents/>

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ OGE submits the concurrent budget justification to Congress. OGE's most recent Congressional Budget Justifications are available at: <http://www.oge.gov/About/Management-Reports-and-Policies/Performance-and-Strategic-Docs/Performance---Strategic-Documents/>.

enacted legislation providing appropriations for agency operations. Despite these recent challenges and ongoing budget constraints, OGE continues to carry out its leadership and oversight responsibilities and advance its strategic goals... ”¹⁴¹

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

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

[207] First, both in the response to the questionnaire and during the on-site visit, the review team observed that OGE promotes and provides a tremendous amount of training activities. During the on-site visit, OGE representatives also explained that OGE has a robust training program for ethics officials, which includes the Designated Agency Ethics Officials (DAEOs), Alternate Designated Agency Ethics Officials (ADAEOs), and the other ethics practitioners in the agencies. In addition, OGE provides support and guidance to these officers through legal advisories, written guides, memoranda, and other resources.

[208] Nonetheless, the Committee observes, as was confirmed by OGE representatives during the on-site visit, that while certain government officials, such as those required to file public and confidential financial declarations, are subject to some form of mandatory training, there is no mandatory professional training for ethics officials. Additionally, while OGE highlighted in its response to the questionnaire the myriad specialized and on-going training provided by OGE to ethics officials, OGE representatives could not be certain that all ethics officials in the executive branch had received some form of ethics-related training provided by OGE.

[209] The Committee believes, given the important role played by ethics officials including, inter-alia, detecting and resolving potential conflicts of interest on the part of executive branch employees, that it is important for the country under review to consider ways to ensure that all ethics officials are adequately trained. Such a requirement will also assist OGE in promoting uniformity in the application of the ethics system in executive branch agencies. The Committee will formulate the corresponding recommendation. (See recommendation 4.4.1 in Chapter II of this report.)

[210] Second, the Committee observes that the OGE website indicates that OGE holds quarterly meetings with the executive branch DAEOs to share information relevant to managing an effective ethics program, discuss current ethics issues facing the executive branch, and receive agency input. The Committee believes that it is important for OGE to continue to promote periodic meetings with DAEOs and that these meetings, when feasible, should also include ADAEOs, who perform similar roles as their respective principals. The Committee will formulate the appropriate recommendation. (See recommendation 4.4.2 in Chapter II of this report.)

[211] Third, the Committee observes that OGE maintains a list of DAEOs and ADAEOs on its Internet website. A comparison between the version of the list corresponding to December 5, 2014 and archived versions of the list indicates that there are various departments and agencies that appear to have vacant DAEO positions. Based on information provided by OGE, several of the DAEO positions were incorrectly listed as “vacant.” The Committee believes that it is important for the country under review to take the steps necessary to keep the online DAEO list up-to-date, given the importance of demonstrating to the public that agencies are appropriately staffed to manage conflicts of interest. The Committee will formulate the corresponding recommendation. The Committee will

¹⁴¹ See the response of the United States to the Questionnaire for the Fourth Round, at p. 20, supra note 3.

formulate the corresponding recommendation. (See recommendation 4.4.3 in Chapter II of this report.)

[212] Fourth, within the framework of the on-site visit, OGE representatives explained that they considered that a review of OGE regulations would be useful, in order to determine whether there are any rules, such as those related standards of conduct, or ethics program requirements, such as agency training requirements, that could be made more effective. On this point, OGE representatives further noted that making targeted revisions to existing ethics regulations would ensure their continued effectiveness and applicability. The Committee agrees that such a revision would assist in ensuring the effectiveness of existing regulations, and that in addition, it might also contribute to further strengthening of the executive branch ethics system. The Committee will formulate a recommendation on this point. (See recommendation 4.4.4 in Chapter II of this report.)

[213] With regard to the foregoing, during the on-site visit, representatives of civil society and professional associations noted the need for OGE regulations to be reviewed, and where possible, simplified.

[214] Fifth, during the framework of the on-site visit, OGE representatives also noted that it might be useful for OGE to assess whether there are other documents and data sets that OGE could potentially make publicly available, in order to, *inter-alia*, promote confidence in government decision-making, increase understanding of the ethics requirements, promote transparency, and reinforce OGE's accountability to the public. The Committee considers that this would be a useful exercise and will formulate the corresponding recommendation. (See recommendation 4.4.5 in Chapter II of this report.)

[215] Sixth, OGE has noted that "*The Ethics in Government Act (EIGA) has been in effect for over 30n years. It has worked well, but as with any statute it needs to evolve to ensure its continued effectiveness in light of practical experiences and application.*"¹⁴² During the framework of the on-site visit, a link was provided to OGE legislative proposals corresponding to the Proposed Ethics in Government Act Amendments of 2003 and 2008, respectively.¹⁴³

[216] The Committee believes that it would be useful for the country under review to give due consideration to making any necessary changes to the Ethics in Government Act in order to ensure its continued effectiveness in light of OGE and other oversight bodies' practical experience in its application. The Committee will formulate a recommendation bearing this consideration in mind. (See recommendation 4.4.6 in Chapter II of this report.)

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

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

[218] With respect to results related to the prevention of acts of corruption in the executive branch, the response to the questionnaire notes,¹⁴⁴ *inter-alia*, the following actions taken by OGE: (1) the issuance of more than 50 legal advisories between 2009 and 2013, available at: <http://www.oge.gov/OGE-Advisories/Legal-Advisories/Legal-Advisories>; (2) the provision of advice

¹⁴² Ibid.

¹⁴³ The OGE Legislative Proposal page is available at: <http://www.oge.gov/About/Legislative-Affairs-and-Budget/OGE-Legislative-Proposals/>

¹⁴⁴ See the response of the United States to the Questionnaire for the Fourth Round, at p. 17, *supra* note 3.

to agency ethics officials, through responses to approximately 2,700 requests for guidance in 2013; (3) the provision of substantive training to agency ethics officials, including the delivery of 41 instructor-led classroom and web-based training courses to 3,059 ethics officials in 2013; and (4) the issuance of more than 130 ethics program review reports, as well as 52 follow-up reports between 2009 and 2013, available at: <http://www.oge.gov/Program-Management/Program-Review/Program-Review-Reports/Program-Review-Reports/>.

[219] In addition, the response notes actions taken by OGE during fiscal year 2012 in relation to the prevention of conflicts of interest among officials nominated to positions by the President that require senate confirmation, including:¹⁴⁵ (1) the provision of increased training to help agency ethics officials deal with legal and programmatic issues related to appointees leaving Government, including rules on seeking employment and post-employment restrictions; (2) the provision of training to selected agencies, focused on the unique role that leadership plays in establishing and maintaining an ethical organizational culture and in promoting professional integrity among employees; (3) the provision of intensive election-year focused nominee financial disclosure training to nearly 300 ethics officials; (4) carrying out focused ethics program reviews of agencies to ensure their readiness for the post-election period; and (5) the creation of a web-based resource to guide new entrants and nominees through the financial disclosure process, available at: <http://www.oge.gov/Financial-Disclosure/Public-Financial-Disclosure-278/Nominee-and-New-Entrant-278-Guide/Nominee---New-Entrant-278-Guide/>

[220] The response also notes actions taken by OGE related to its facilitation of the 2009 Presidential transition, including: *“Hosting in-person meetings with representatives of both major Presidential candidates’ campaign teams prior to the election, and providing those representatives with training on the legal requirements imposed by the executive branch ethics program and on the development of effective ethics programs...Producing and posting guidance on OGE’s website directed at Senate-confirmed, Presidential appointees, including a video message from OGE’s Director stressing the importance of ethics and financial disclosure and a Presidential Transition Guide...Producing posters that creatively and succinctly conveyed key ethics concepts, which the Transition Team displayed in its headquarters...Issuing substantive policy memoranda that implement the Ethics Pledge contained in Executive Order 13490...Providing training to ethics officials on financial disclosure and providing specific agency guidance regarding new lobbyist rules...Providing guidance to departing Administration personnel on issues such as seeking employment and post-Government employment.”*¹⁴⁶

[221] Other results achieved by OGE and referred to in the response include,¹⁴⁷ OGE review of 68 percent more public financial disclosure reports of individuals in Presidentially appointed, Senate-confirmed positions in fiscal year 2013 than it reviewed in 2012;¹⁴⁸ ethics agreements entered into by 45 Presidentially appointed, Senate-confirmed officials in fiscal year 2013 and compliance by 96% of those individuals with those agreements;¹⁴⁹ the annual public reports on administration of the Ethics Pledge contained in Executive Order 13490;¹⁵⁰ and in fiscal year 2013 the OGE review of

¹⁴⁵ Ibid., at p. 18.

¹⁴⁶ Ibid., at pp. 18-19.

¹⁴⁷ Ibid., at pp. 19-20.

¹⁴⁸ These records are available at: <http://www.oge.gov/Open-Government/Access-Records/Current-Executive-Branch-Nominations-and-Appointments/>

¹⁴⁹ See the response of the United States to the Questionnaire for the Fourth Round, at pp. 19-20, supra note 3.

¹⁵⁰ <http://www.oge.gov/Open-Government/Presidential-Appointee---Nominee-Records/>

1383 new entrant, annual and termination public financial disclosure reports required to be submitted to OGE, as well as 392 periodic transaction reports.¹⁵¹

[222] Additionally, during the on-site visit, OGE representatives presented a summary of its First National Government Ethics Summit, held in September, 2014.¹⁵² This summary indicates that the Summit included 108 in-person sessions, of which 16 were broadcast via live-streaming video, 10 virtual-only sessions, and 125 hours of in-person professional development. In addition, the Summit was attended by hundreds of in-person participants and viewed online by thousands of individuals. Finally, the Summit brought together representatives from all three branches of government, as well as academics, nonprofits and associations, and representatives of the media, among others.

[223] The Committee considers that the foregoing information is demonstrative of the large variety of activities related to the prevention of corruption carried out by OGE.

4.4. Conclusions and recommendations

[224] Based on the foregoing comprehensive analysis of the Office of Government Ethics (OGE), the Committee offers the following conclusions and recommendations:

[225] The United States has considered and adopted measures intended to maintain and strengthen the Office of Government Ethics (OGE) as an oversight body, as indicated in Chapter II, Section 4 of this report.

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

- 4.4.1. Take the steps necessary to ensure that ethics officials receive adequate training to promote uniform application of ethics principles in the agencies of the executive branch. (See Chapter II, Section 4.2 of this report.)
- 4.4.2. Promote periodic meetings between OGE and Designated Agency Ethics Officials, and, when feasible, include Alternate Designated Agency Ethics Officials in those periodic meetings, in the event that they are not already included, given that they perform similar functions as the Designated Agency Ethics Official. (See Chapter II, Section 4.2 of this report.)
- 4.4.3. Take steps necessary to keep the online list of Designated Agency Ethics Officials and Alternate Designated Agency Ethics Officials up-to-date. (See Chapter II, Section 4.2 of this report.)
- 4.4.4. Conduct a review of OGE regulations in order to identify any rules, such as those related to standards of conduct, or ethics program requirements, such as agency ethics training requirements, that could be made more effective. (See Chapter II, Section 4.2 of this report.)
- 4.4.5. Review OGE records in order to determine whether there are additional documents and/or data that might be of value to the public and which could be made publicly available by OGE. (See Chapter II, Section 4.2 of this report.)

¹⁵¹ These records are available at: <http://www.oge.gov/Open-Government/Access-Records/Current-Executive-Branch-Nominations-and-Appointments/>

¹⁵² The Summary of OGE's First National Government Ethics Summit is available at: http://www.oas.org/juridico/english/mesicic4_usa.htm

- 4.4.6. Consider making any necessary changes to the Ethics in Government Act in order to ensure its continued effectiveness in light of OGE and other oversight bodies' practical experience in its application. (See Chapter II, Section 4.2 of this report.)

III. BEST PRACTICES

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

[228] In relation to the Office of the Special Counsel:

[229] The signing of a revised internal Directive implementing OSC's Memorandum of Understanding with the Office of the Inspector General of the National Science Foundation in 2014. The response notes that this MOU together with its implementing directive allow for an independent and external review of allegations of wrongdoing made by OSC employees, taking into consideration that the OSC does not have an Office of Inspector General. The response further notes that pursuant to this MOU, disclosures and complaints filed by OSC employees, former employees, or applicants for employment will be received, investigated, and resolved in such a way as to guard against actual or apparent bias.¹⁵³

[230] In relation to the Council of Inspectors General on Integrity and Efficiency:

[231] "Don't Let the Toolbox Rust: Observations on Suspension and Debarment, Debunking Myths, and Suggested Practices for Offices of Inspectors General". This practice actively promotes the use of "Suspension and Debarment" (S&D) in an effort to protect taxpayer funds by ensuring that the Government only does business with responsible parties. In addition, with respect to the term "S & D", the response notes that these "...are administrative remedies that Federal agencies may take in order to protect Government programs from potential or identified fraud, waste, abuse, poor performance, and noncompliance with contract provisions or applicable law. government-wide debarment ensures that for a defined period of time (often three years), the entire Federal Government will not conduct additional business with individuals and organizations that are not "presently responsible" -- i.e., those that have engaged in criminal or other improper conduct of such a compelling and serious nature that it would lead one to question the parties' honesty, ethics, or competence. Suspension is an interim action taken where there is an immediate need to act to protect the integrity of a Federal procurement or nonprocurement process before there is enough evidence to support a debarment proceeding. The evidentiary standard for a suspension is "adequate evidence", and the standard for a debarment is "preponderance of the evidence"¹⁵⁴

[232] In relation to the Public Integrity Section:

[233] The "Indictment review procedure" established and maintained by PIN over the past several decades. This procedure ensures that PIN maintains the highest standards in all of its cases. According to the response to the questionnaire, "*The first step in the indictment review process is the drafting of a detailed and thorough "Prosecution Memorandum" by the Trial Attorneys who are assigned to a case...The Prosecution Memorandum is accompanied by a draft indictment setting forth the proposed criminal charges. Once the Prosecution Memorandum and draft indictment have*

¹⁵³ See the response of the United States to the Questionnaire for the Fourth Round, at p. 64, supra note 3.

¹⁵⁴ Ibid., at pp. 39-41.

been reviewed by a Deputy Chief, they are distributed to an Indictment Review Committee, which consists of the Chief, Principal Deputy Chief, Deputy Chiefs, and experienced Trial Attorneys in PIN. The Indictment Review Committee meets to go over the factual and legal issues presented by the case in detail. The prosecutors who participate in the Indictment Review Committee provide their input to the Chief, who makes the decision regarding whether charges are brought.”¹⁵⁵

[234] In relation to the Office of Government Ethics:

[235] The assistance provided to the President and the Senate in the Presidential appointment process. This assistance involves reviewing the financial disclosure reports and interests of Presidentially-appointed, Senate-confirmed nominees for possible conflicts of interest with respect to their prospective duties. In addition, OGE works with agency ethics officials to prepare individualized ethics agreements to avoid and/or resolve potential conflicts of interest prior to entry into government service. The response also notes that “This process ensures that the future, most senior officials in the executive branch have a personal and direct understanding of how the conflict of interest requirements affect them.”¹⁵⁶

IV. FOLLOW-UP ON NEW AND RELEVANT INFORMATION AND DEVELOPMENTS WITH REGARD TO THE IMPLEMENTATION OF RECOMMENDATIONS SUGGESTED IN THE COUNTRY REPORT IN THE FIRST REVIEW ROUND¹⁵⁷

[236] This section of the report refers to progress, information, and new developments in the United States in connection with the recommendations and measures suggested by the Committee in the report of the First Round that were deemed to require additional attention in the reports of the Second and Third Rounds,¹⁵⁸ and it will proceed to take note of those that have been satisfactorily considered and those that require additional attention from the country under review. In addition, where appropriate, it will address the continued validity of those recommendations and measures and, as applicable, reformulate them, in accordance with provisions contained in section VI of the methodology adopted by the Committee for the Fourth Round.

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

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

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

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

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

¹⁵⁵ Ibid., at p. 50.

¹⁵⁶ Ibid., at pp. 20-21.

¹⁵⁷ The recommendations that, following this review, still require additional attention or have been reframed are listed in Annex I to this report.

¹⁵⁸ Available at: <http://www.oas.org/juridico/english/usa.htm>

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

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

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

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

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

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

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

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

4.2. Mechanisms for access to information

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

4.3. Mechanisms for consultation

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

4.4. Mechanisms to encourage participation in public administration

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

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

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

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

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

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

[248] No recommendations were formulated by the Committee in this section.

7. GENERAL RECOMMENDATIONS

[249] Recommendation 7.1 was satisfactorily considered, and accordingly, no further attention is required.

Recommendation 7.2

Select and develop procedures and indicators, as appropriate, that enable verification of the follow-up to 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, it may take 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 below.

Recommendation 7.3

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.

[250] In its response to the questionnaire for the Fourth Round,¹⁵⁹ the country under review presents information and new developments with respect to recommendations 7.2 and 7.3 above, of which the Committee notes, as steps that lead it to the conclusion that the recommendations have been satisfactorily considered, the following:

[251] – The Performance Reports that are prepared by Federal agencies as well as the legal requirement that Federal agencies have “...to develop and set performance goals, to establish systems of measurement for meeting those goals and then to report annually on how effective they have been in meeting those goals. Each agency is required to make these annual performance reports public...”

[252] – The detailed guidance provided to Federal agencies by the Office of Management and Budget (OMB).¹⁶⁰ An excerpt from that guidance included in the response reads as follows, “As important as it is to sustain a strong performance culture through the practices described in the guidance, it is equally important to have reliable and effective processes which support continuous improvements and opportunities for capacity building. The description below gives an overview of the Federal Performance Management Cycle. □ Starting with the strategic goals and objectives in the Strategic Plan, agencies establish an annual process to set and monitor performance goals and Agency Priority Goals. □ Agencies use quarterly data-driven reviews to focus on targeted, short-term progress, and use strategic reviews to assess progress toward longer-term objectives. □ Finally, agencies summarize the full years’ past performance in their Annual Performance Reports. These communicate publicly to external stakeholders about progress and help inform the development of the next Strategic Plan or Annual Performance Plan.”¹⁶¹

¹⁵⁹ See the response of the United States to the Questionnaire for the Fourth Round, at pp. 65-68, supra note 3.

¹⁶⁰ The guidance provided by OMB to Federal agencies is available at: http://www.whitehouse.gov/sites/default/files/omb/assets/a11_current_year/part6_executive_summary.pdf

¹⁶¹ See the response of the United States to the Questionnaire for the Fourth Round, at p. 66, supra note 3.

[253] In addition to the foregoing, during the on-site visit, the review team had the opportunity to meet with a representative from the Office of Management and Budget, Executive Office of the President, who provided a presentation titled, “Improving Government Performance in the U.S”. This presentation outlined, *inter-alia*, OMB’s function of leading the Federal government’s efforts to improve productivity; an explanation of the Performance Management Cycle, including planning, evaluation/review and reporting; as well as the relevant provisions of the Government Performance and Results Modernization Act of 2010, which includes 15 “Cross Agency Priority Goals”, 96 Agency Priority Goals, and 303 “Strategic Objectives”.¹⁶²

[254] Tied to the foregoing, the Committee observes, as is also noted in the response, that while responsibility for the various subjects addressed in the First Round of review rests with various Federal entities, each of these entities has legal performance-related requirements in common. By way of example, the response notes that the Office of Government Ethics, which is responsible for, *inter-alia*, preventing conflicts of interest and overseeing the financial disclosure system for the executive branch, addresses both of the considerations of recommendations 7.2 and 7.3 in its strategic plan, its annual performance plans and its annual performance plans.

[255] In light of the foregoing, the Committee takes note of the satisfactory consideration of recommendations 7.2 and 7.3 section 1.2 of Chapter IV of this report, without prejudice to the recommendations of a similar nature formulated in the Third Round, and the implementation of which will be examined in greater detail in the follow-up to that Round.

¹⁶² This presentation is available here: http://www.oas.org/juridico/english/mesicic4_usa.htm

ANNEX 1

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

The recommendations formulated to the United States in the First Round have all been satisfactorily considered.

ANNEX II

AGENDA FOR THE ON-SITE VISIT TO THE UNITED STATES

<u>Tuesday, October 7, 2014</u>	
08:45 hrs. – 09:15 hrs. <i>OAS Conference Room 1889 F. Street, N.W., Room 604</i>	Coordination meeting between the representatives of the Member States of the Subgroup and the Technical Secretariat.
09:30 hrs. – 10:00 hrs. <i>INL, 1800 G St. N.W., Room 2107</i>	Coordination meeting between the representatives of the country under review, the Member States of the Subgroup and the Technical Secretariat
10:00 hrs. – 13:30 hrs. <i>INL, 1800 G St. N.W., Room 2107</i>	Meetings with civil society organizations and/or, <i>inter-alia</i>, private sector organizations, professional organizations, academics or researchers.
10:00 hrs. – 11:30 hrs.	<u>Topics:</u>
	<ul style="list-style-type: none"> • <i>Cooperation between oversight bodies and civil society/the private sector in the fight against corruption.</i> • <i>Challenges to whistleblower disclosure in the United States.</i> • <i>Challenges to the Offices of the Inspectors General.</i> • <i>Challenges to the investigation and prosecution of public corruption.</i> • <i>Challenges to the Office of Government Ethics.</i>
	<u>Participants:</u>
	<ul style="list-style-type: none"> • Government Accountability Project (GAP). <ul style="list-style-type: none"> - <i>Representative: Tom Devine, Legal Director</i> • Project on Government Oversight (POGO). <ul style="list-style-type: none"> - <i>Representative: Scott Amey, General Counsel</i> • Association of Government Auditors (AGA). <ul style="list-style-type: none"> - <i>Representative: Steven Sossei, Director of Education</i> • American Bar Association – Committee on Public Corruption. <ul style="list-style-type: none"> - <i>Representative: Justin Shur, Co-Chair on Public Corruption and Extortion Subcommittee of the ABA’s White Collar Crime Committee</i> • American Federation of Government Employees (AFGE). <ul style="list-style-type: none"> - <i>Representative: Ward Morrow, Attorney</i> • Senior Executive Association.

	- <i>Representative: Debra Roth, General Counsel</i>
11:30 hrs. – 11:45 hrs.	Break
11:45 hrs. – 13:15 hrs. <i>INL, 1800 G St. N.W., Room 2107</i>	Meetings with civil society organizations and/or, <i>inter-alia</i>, private sector organizations, professional organizations, academics or researchers. (continued)
11:45 hrs. – 13:15 hrs.	<p><u>Topics:</u></p> <ul style="list-style-type: none"> • <i>Cooperation between oversight bodies and civil society/the private sector in the fight against corruption.</i> • <i>Challenges to whistleblower disclosure in the United States.</i> • <i>Challenges to the Offices of the Inspectors General.</i> • <i>Challenges to the investigation and prosecution of public corruption.</i> • <i>Challenges to the Office of Government Ethics.</i> <p><u>Participants:</u></p> <ul style="list-style-type: none"> • Government Accountability Project (GAP). - <i>Representative: Tom Devine, Legal Director</i> • Project on Government Oversight (POGO). - <i>Representative: Scott Amey, General Counsel</i> • Association of Government Auditors (AGA). - <i>Representative: Steven Sossei, Director of Education</i> • American Bar Association – Committee on Public Corruption. - <i>Representative: Justin Shur, Co-Chair on Public Corruption and Extortion Subcommittee of the ABA’s White Collar Crime Committee</i> • American Federation of Government Employees (AFGE). - <i>Representative: Ward Morrow, Attorney</i> • Senior Executive Association. - <i>Representative: Debra Roth, General Counsel</i>
13:15 hrs. – 14:30 hrs.	Lunch
14:30 hrs. – 17:00 hrs. <i>INL, 1800 G St. N.W., Room 2107</i>	The Public Integrity Section of the Criminal Division, U.S. Department of Justice (PIN)
14:30 hrs. – 15:45 hrs.	<p>Panel 1:</p> <ul style="list-style-type: none"> • Institutional introduction (10 minutes). • Scope of Functions and any exceptions thereto.

	<ul style="list-style-type: none"> • Institutional coordination mechanisms. • Best practice related to the fulfillment of its responsibilities.
	<p><u>Participants:</u></p> <p>- Ray Hulser, Principal Deputy Chief, Public Integrity Section, Criminal Division, U.S. Department of Justice</p> <p>- Thomas Chadwick, Supervisory Special Agent, Washington Field Office, Federal Bureau of Investigation</p>
16:00 hrs. – 17:00 hrs	<p>Panel 2:</p> <ul style="list-style-type: none"> • Accountability Mechanisms. • Results in relation to the fulfillment of its responsibilities. • Difficulties related to the fulfillment of its responsibilities.
	<p><u>Participants:</u></p> <p>- Ray Hulser, Principal Deputy Chief, Public Integrity Section, Criminal Division, U.S. Department of Justice</p> <p>- Thomas Chadwick, Supervisory Special Agent, Washington Field Office, Federal Bureau of Investigation</p>
17:00 hrs. – 17:30 hrs. TBD	Informal meeting between the representatives of the Member States of the Subgroup and the Technical Secretariat.
<u>Wednesday, October 8, 2014</u>	
09:00 hrs. – 11:30 hrs. <i>INL, 1800 G St. N.W., Room 2107</i>	The Office of Special Counsel (OSC)
09:00 hrs. – 10:00 hrs.	<p>Panel 3:</p> <ul style="list-style-type: none"> • Institutional introduction (10 minutes). • Adoption of Decisions and Review Mechanisms.
	<p><u>Participants:</u></p> <p>- Mark Cohen, Principal Deputy Special Counsel</p> <p>- Catherine McMullen, Chief, Disclosure Unit</p> <p>- Karen Gorman, Deputy Chief, Disclosure Unit</p>
10:00 hrs. – 11:30 hrs.	Panel 4:

	<ul style="list-style-type: none"> • Results in relation to the fulfillment of its responsibilities. • Difficulties related to the fulfillment of its responsibilities. • Best practice related to the fulfillment of its responsibilities. <p><u>Participants:</u></p> <ul style="list-style-type: none"> - <i>Mark Cohen, Principal Deputy Special Counsel</i> - <i>Catherine McMullen, Chief, Disclosure Unit</i> - <i>Karen Gorman, Deputy Chief, Disclosure Unit</i>
<p>11:45 hrs. – 12:30 hrs <i>INL, 1800 G St. N.W., Room 2107</i></p>	<p>Follow-Up to Recommendations from the First Round of Review</p>
<p>11:45 hrs. – 12:30 hrs.</p>	<p>Panel 5: Recommendations 7.2 & 7.3 from the Report from the First Round.</p> <p><u>Participants:</u></p> <ul style="list-style-type: none"> - <i>Betsy Newcomer, Performance Manager, Office of Performance and personnel management, Office of Management and Budget (OMB)</i>
<p>12:30 hrs. – 13:45 hrs.</p>	<p>Lunch</p>
<p>14:00 hrs. – 17:00 hrs. <i>INL, 1800 G St. N.W., Room 2107</i></p>	<p>The Council of the Inspectors General on Integrity and Efficiency (CIGIE)</p>
<p>14:00 hrs. – 15:30 hrs.</p>	<p>Panel 6:</p> <ul style="list-style-type: none"> • Institutional introduction (10 minutes). • Scope of Functions and Exceptions. • Institutional coordination mechanisms. • Internal rules/norms for the fulfillment of its responsibilities.
	<p><u>Participants:</u></p> <ul style="list-style-type: none"> - <i>Phyllis Fong, CIGIE Chairperson, and U.S. Department of Agriculture Inspector General</i> - <i>Carl Hoecker, CIGIE’s Investigations Committee Chair, and Securities and Exchange Commission Inspector General</i> - <i>Mary Mitchelson, CIGIE’s Audit Committee Vice Chair, and Corporation for Public Broadcasting Inspector General</i>

	<p>- <i>Tim Camus, Chair of the Assistant Inspectors General for Investigation Council, and Treasury Inspector General for Tax Administration's Deputy Inspector General for Investigations</i></p> <p>- <i>Brett Baker, Chair of the Federal Audit Executive Council, and National Science Foundation's Assistant Inspector General for Audit</i></p> <p>- <i>Mark Jones, CIGIE Executive Director</i></p>
15:45 hrs. – 17:00 hrs.	<p>Panel 7:</p> <ul style="list-style-type: none"> • Accountability Mechanisms. • Results in relation to the fulfillment of its responsibilities. <p><u>Participants:</u></p> <p>- <i>Phyllis Fong, CIGIE Chairperson, and U.S. Department of Agriculture Inspector General</i></p> <p>- <i>Carl Hoecker, CIGIE's Investigations Committee Chair, and Securities and Exchange Commission Inspector General</i></p> <p>- <i>Mary Mitchelson, CIGIE's Audit Committee Vice Chair, and Corporation for Public Broadcasting Inspector General</i></p> <p>- <i>Tim Camus, Chair of the Assistant Inspectors General for Investigation Council, and Treasury Inspector General for Tax Administration's Deputy Inspector General for Investigations</i></p> <p>- <i>Brett Baker, Chair of the Federal Audit Executive Council, and National Science Foundation's Assistant Inspector General for Audit</i></p> <p>- <i>Mark Jones, CIGIE Executive Director</i></p>
17:15 hrs. – 17:45 hrs. <i>INL, 1800 G St. N.W., Room 2107</i>	<p>Informal meeting between the representatives of the Member States of the Subgroup and the Technical Secretariat.</p>
<u>Thursday, October 9, 2014</u>	
09:00 hrs. – 11:30 hrs. <i>Office of Government Ethics, 1201 New York Ave. N.W., Suite 500</i>	The Office of Government Ethics (OGE)
09:00 hrs. – 10:30 hrs.	<p>Panel 8:</p> <ul style="list-style-type: none"> • Institutional introduction (10 minutes). • Scope of Functions and Exceptions. • Institutional coordination mechanisms. • Internal rules/norms for the fulfillment of its responsibilities.

	<hr/> <p><u>Participants:</u></p> <ul style="list-style-type: none"> - Wendy Pond, Ethics Specialist and International Programs Analyst - David Apol, General Counsel - Shelley Finlayson, Chief of Staff and Program Counsel - Diana Veilleux, Chief, Legal, External Affairs and Performance Branch - Barb Mullen-Roth, Deputy Director for Financial Disclosure - Dale “Chip” Christopher, Chief, Agency Assistance Branch - Monica Ashar, Assistant Counsel - Jennifer Matis, Assistant Counsel - Doug Chapman, Chief Professional Staff Group 2, Program Review Branch
10:30 hrs. – 11:30 hrs.	<p>Panel 9:</p> <ul style="list-style-type: none"> • Results in relation to the fulfillment of its responsibilities. • Difficulties related to the Federal furlough of employees. • Best practice related to the provision of assistance for the Presidential appointment process.
	<p><u>Participants:</u></p> <ul style="list-style-type: none"> - Wendy Pond, Ethics Specialist and International Programs Analyst - David Apol, General Counsel - Shelley Finlayson, Chief of Staff and Program Counsel - Diana Veilleux, Chief, Legal, External Affairs and Performance Branch - Barb Mullen-Roth, Deputy Director for Financial Disclosure - Dale “Chip” Christopher, Chief, Agency Assistance Branch - Monica Ashar, Assistant Counsel - Jennifer Matis, Assistant Counsel - Doug Chapman, Chief Professional Staff Group 2, Program Review Branch
12:15 hrs. – 12:45 hrs. <i>INL, 1800 G St. N.W., Room 2107</i>	<p>Informal meeting between the representatives of the Member States of the Subgroup and the Technical Secretariat.</p>
12:45 hrs. – 13:30 hrs. <i>INL, 1800 G St. N.W., Room 2107</i>	<p>Final meeting between the representatives of the country under review, the Member States of the Subgroup and the Technical Secretariat.</p>

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