

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

FINAL REPORT

(Adopted at the March 20, 2015 Plenary Session)

SUMMARY OF THE REPORT

This report contains the comprehensive review of the implementation in the Bolivarian Republic of Venezuela of Article III, paragraph 9 of the Inter-American Convention against Corruption, corresponding to “high-level oversight bodies, with a view to developing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt practices,” which was selected by the Committee of Experts of the MESICIC for the Fourth Round; the best practices reported by those bodies; and monitoring of the implementation of the recommendations made to Venezuela in the First Round.

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

The review was carried out taking into account the Bolivarian Republic of Venezuela’s response to the questionnaire, information gathered by the Technical Secretariat, and, as a new and important source of information, the on-site visit conducted between September 30 and October 2, 2014, by the members of the review subgroup for Venezuela, comprising Haiti and Peru, with the support of the Technical Secretariat. During that visit, the information furnished by Venezuela was clarified and expanded and the opinions of civil society organizations, the private sector, and academics on issues of relevance to the review were heard. This provided the Committee with objective and complete information on those topics, assisted with the gathering of information on practices, and provided Venezuela 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 Venezuela analyzed in this report are: the Office of the Comptroller General (*Contraloría General de la República* - CGR), the Public Prosecution Service (*Ministerio Público* - MP), the Supreme Court of Justice (*Tribunal Supremo de Justicia* - TSJ), the National Superintendency of Internal Audits (*Superintendencia Nacional de Auditoría Interna* - SUNAI), and the Ombudsperson’s Office (*Defensoría del Pueblo* - DP).

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

With regard to the Office of the Comptroller General (CGR): strengthen interagency coordination; standardize fiscal control mechanisms for all entities and agencies of the public administration; evaluate the time limits for audits; implement a warning system in Online Net Worth Disclosure System to enable real-time identification of possible discrepancies; and strengthen the institution by providing it with the human, technological, and budgetary resources that it needs properly to carry out its work in the area of prevention, detection, and investigation of acts corruption.

In relation to the Public Prosecution Service (MP): update the institution's Personnel Statute; hold public competitive examinations for entry to service in the institution; create the position of Anticorruption Prosecutor in the MP; strengthen the MP by providing it with the necessary human and budgetary resources for the Anticorruption Rapid Response Prosecution Unit (FRICC) to expand its activities to the regional sphere within the country; and strengthen interagency cooperation mechanisms between the MP and the principal and auxiliary criminal investigation bodies.

As to the Supreme Court of Justice (TSJ): harmonize Article 64 of the LOTSJ with Article 270 of the Constitution concerning the nature of the Judicial Nominations Committee [*Comité de Postulaciones Judiciales*]; implement the "Consolidated Agenda" system in all states; and make public the annual performance reports of the judiciary on the TSJ website as well as through such other means as are deemed appropriate to put this information within the public's reach.

With respect to the National Superintendency of Internal Audits (SUNAI): resume the holding of merit-based competitive examinations to recruit personnel for the institution; conclude the revision of the Organizational Model and the Organization Manual of the SUNAI, as well as of all its other manuals and rules governing internal procedures that are currently undergoing this process; and issue a manual of internal control standards for the SUNAI, based on the Manual of Standards of Internal Control for a Generic Central and Functionally Decentralized Administration Model.

With respect to the Ombudsperson's Office (DP): complete the design of the staff recruitment subsystem for the DP; publish all annual reports of the DP on the institution's website; and include topics to do with prevention of corruption in training, workshops, and other outreach activities of the DP; and disseminate the principles enshrined in the Convention.

The good practices on which Venezuela supplied information are, in brief, implementation by the CGR of the online sworn statement of net worth; the training in the area of anticorruption provided by the MP under the National Plan on Crime Prevention to officials attached to various oversight and prevention bodies; implementation by the TSJ of itinerant circuit courts and the Automated Judicial Case File Control System; the training provided by the SUNAI in the area of citizen participation and societal oversight of the citizenry and public servants; and implementation by the DP of the program "*Haciendo Comunidad para los Derechos Humanos*" [Forging a Community for Human Rights] with a view to implementing public policies on human rights.

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

Some of the recommendations made to Venezuela for its consideration in the First Round that remain outstanding or were reformulated address purposes such as: the introduction of regulations on the system of prevention of conflict of interest, impediments, illegibility, and prohibitions relating to senior government posts; the use of sworn statements of net worth, income, assets and liabilities to detect and prevent conflict of interest; strengthening the guarantees envisaged for the exercise of the right to public information; consolidation and systematization of provisions

guaranteeing access to public information in a single body of laws; and repeal of so-called contempt (*desacato*) laws.

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

**DRAFT PRELIMINARY REPORT ON IMPLEMENTATION IN THE BOLIVARIAN
REPUBLIC OF VENEZUELA OF THE CONVENTION PROVISION SELECTED FOR
REVIEW IN THE FOURTH ROUND, AND ON FOLLOW-UP TO THE
RECOMMENDATIONS FORMULATED TO THAT COUNTRY IN THE FIRST ROUND ¹**

INTRODUCTION

1. Content of the Report

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

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

[3] Third, 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 Bolivarian Republic of Venezuela in the report it adopted for that country 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 are available online at: <http://www.oas.org/juridico/english/ven.htm>

2. Ratification of the Convention and adherence to the Mechanism

[4] According to the official records of the OAS General Secretariat, the Bolivarian Republic of Venezuela ratified the Inter-American Convention against Corruption on Thursday, May 22, 1997, and deposited the respective instrument of ratification on June 2 that year.

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

I. SUMMARY OF INFORMATION RECEIVED

1. Response of the Bolivarian Republic of Venezuela

¹ This report was adopted by the Committee in accordance with the provisions of Articles 3 (g) and 25 of the Committee's Rules of Procedure, at March 20, 2015 plenary session, within the framework of the Twenty – Fifth Meeting of the Committee, held at OAS headquarters in Washington, D.C., from March 16-20, 2015.

[6] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Bolivarian Republic of Venezuela, in particular, from the Office of the Comptroller General of the Republic (CGR), which was evidenced, *inter alia*, in the response to the Questionnaire, 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 Bolivarian Republic of Venezuela sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at the following web page: http://www.oas.org/juridico/spanish/mesicic4_ven.htm

[7] The Committee also notes that the country under review gave its consent for the on-site visit, in accordance with item 5 of the *Methodology for Conducting On-site Visits*. As members of the review subgroup, the representatives of Haiti and Peru conducted the on-site visit from September 30 to October 2, 2014, with the support of the MESICIC Technical Secretariat. The information obtained on that visit is included in the appropriate sections of this report, and its agenda of meetings is appended thereto, in keeping with item 34 of the *Methodology for Conducting On-Site Visits*.

[8] For its review, the Committee took into account the information provided by the Bolivarian Republic of Venezuela up to October 2, 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 its *Rules and Standards of Procedure*; the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round*, and the *Methodology for Conducting On-Site Visits*. This information may be consulted at the following webpage: http://www.oas.org/juridico/english/mesicic_rounds.htm

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

[9] The Committee did not receive within the time limit set in the schedule for the fourth round documents from civil society organizations as envisaged at Article 34(b) of the Committee's Rules.

[10] However, in the course of the on-site visit conducted in the Bolivarian Republic of Venezuela, information was collected from civil society and private sector organizations, as well as from academics invited to participate in meetings to that end, in keeping with the provisions contained in item 27 of the *Methodology for Conducting On-site Visits*. A list of those persons is included in the agenda for that visit, which is appended hereto. Pertinent parts of this information are reflected in the appropriate sections of this report.

II. REVIEW, CONCLUSIONS, AND RECOMMENDATIONS REGARDING THE STATE PARTY'S IMPLEMENTATION 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 Bolivarian Republic of Venezuela has a set of oversight bodies charged with developing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts, including, in particular: The Office of the Comptroller General of the Republic (CGR); the Public Prosecution Service (*Ministerio Público* - MP); the Supreme Court of Justice (TSJ); the

National Superintendency of Internal Audit (SUNAI); the Ombudsperson's Office (*Defensoría del Pueblo* - DP); and the Office of the Attorney General (*Procuraduría General de la República*).

[12] Following is a brief description of the purposes and functions of the five bodies selected by the Bolivarian Republic of Venezuela to be analyzed in this report.

[13] The Office of the Comptroller General of the Republic (CGR) is the Citizen Power body responsible for oversight, monitoring, and supervision of income, expenditure, public goods, and national property, and related operations.

[14] The Public Prosecution Service (MP) is the Citizen Power body charged with defending the public interest and ensuring observance of constitutional rights and guarantees so as to preserve the democratic and social State founded on the rule of law and justice. Its powers include ordering, directing, and supervising everything relating to criminal investigations and prosecutions, as well as bringing criminal action on behalf of the State in cases in which a petition by a party is not needed to institute or continue the action, with the exceptions established in the Organic Code of Criminal Proceedings and other laws.

[15] The Supreme Court (TSJ) is the highest body in the Judiciary. It is responsible for directing, managing, and administering the Judiciary, including preparation and execution of its own and the Judiciary's budget, and well as inspecting and monitoring all courts and Ombudsperson's offices in Venezuela.

[16] The National Superintendency of Internal Audit (SUNAI) is the policy-making body for the public sector internal controls system responsible for supervising, guiding, and coordinating internal audit. It oversees internal audits in central government and functionally decentralized agencies.

[17] The Ombudsperson's Office (DP) is the Citizen Power watchdog body responsible for the promotion and defense of the rights and guarantees established in Articles 19 to 31 of the Constitution and in international human rights treaties, as well as the legitimate, common and collective interests of citizens within the territory of Venezuela and, when they are subject to the jurisdiction of the Republic, abroad as well.

1. OFFICE OF THE COMPTROLLER GENERAL OF THE REPUBLIC (CGR)

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

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

[19] With respect to the nature, objectives, and functions of the CGR, Article 287 of the Constitution of the Bolivarian Republic of Venezuela establishes that "*The Office of the Comptroller General of the Republic is the body responsible for oversight, monitoring, and supervision of income, expenditure, public goods, and national property, and related operations. It is functionally, administratively, and organizationally autonomous and devotes itself to inspecting the agencies and entities subject to its control.*"

[20] In Addition, Article 289 of that Constitution stipulates that the functions of the CGR are to: *“1. Oversee, monitor, and supervise income, expenditure, public goods, and national property, and related operations, without prejudice to the powers assigned to other bodies, in the case of states and municipalities, in accordance with law; 2. Oversee the public debt, without prejudice to the powers assigned to other bodies, in the case of states and municipalities, in accordance with law; 3. Inspect and oversee the public sector organs, entities, and juristic persons subject to its control; carry out audits, order the start of investigations into irregularities committed against public property, and issue measures, order reparations, and impose administrative sanctions applicable in accordance with the law; 4. Urge the public prosecutor or Attorney General to exercise applicable judicial functions in respect of any breaches of law and crimes against public property of which it becomes cognizant in the exercise of its powers; 5. Oversee the administration and evaluate compliance with, and the outcome of, the decisions and public policies of the public sector organs, entities, and juristic persons subject to its oversight, in relation to their revenue, expenditure, and property; and 6. Any other functions established by the Constitution and the law.”*

[21] Regarding its functions, Article 9 of the Organic Law of the Office of the Comptroller General of the Republic and the National Fiscal Oversight System (LOCGRSNCF) establishes that the following are subject to the control, monitoring, and supervision of the CGR: *“1. The organs and entities responsible for exercising National Public Authority (Poder Público Nacional); 2. The organs and entities responsible for exercising State Public Authority (Poder Público Estatal); 3. The organs and entities responsible for exercising Public Authority in districts and metropolitan districts. 4. The organs and entities responsible for exercising Municipal Public Authority and authority in the other local entities contemplated in the Organic Law of the Municipal Public Authority; 5. The organs and entities responsible for exercising Public Authority in federal territories and federal dependencies; 6. National, state, district, and municipal autonomous institutes; 7. The Central Bank of Venezuela; 8. Public universities; 9. Other national, state, district, and municipal artificial persons or public law institutions; 10. Associations of any kind in which the persons referred to in the foregoing numbered sub-paragraphs have a share of their capital stock, as well as those constituted with the participation of those associations; 11. Foundations and civil associations and other institutions established with public funds or directed by the persons referred to in the foregoing numbered sub-paragraphs, or in which such persons appoint their authorities, or in which the budgetary contributions made by one or several of the persons mentioned in the aforementioned numbered sub-paragraphs in the course of one budget period account for fifty percent (50%) or more of their budget; 12. Individuals or juristic persons that pay taxes or are liable to do so under the Organic Tax Code, or that in any manner conclude contracts, do business, or conduct operations with any of the bodies or entities mentioned in the foregoing numbered sub-paragraphs, or that receive contributions, subsidies, other transfers, or tax incentives, or in any intervene in the administration, management, or custody of public funds.”*

[22] Pursuant to Article 85 of the LOCGRSNCF, the CGR may raise objections *“when, in the course of audits, supervision, inspections, examinations of accounts or investigations it conducts in the exercise of its oversight duties, it detects circumstantial evidence of impairment of the property of an entity or agency mentioned in numbered sub-paragraphs 1 through 11 of Article 9 of this Law, as a result of acts, deeds, or omissions contravening a legal or regulatory (sublegal) provision, the organizational plan, policies, in-house rules, or systems and procedures manuals making up the internal audit system, and as a result of conduct involving omission or negligence in the handling of funds.”*

[23] Likewise, Article 94 determines that the CGR may impose fines and Article 105 stipulates that, based on administrative responsibility, “(...) *in accordance with the gravity of the offense and amount of harm done, it shall be incumbent upon the Comptroller General of the Republic, solely and exclusively, without the need for any other procedure, to agree with the entity in which the offense was committed to suspend the person declared responsible for that offense from his or her post, without pay, for a period not to exceed twenty-four months or to dismiss said person and to charge the highest authority with executing that penalty; and to order, in view of the gravity of the irregularity committed, his or her disqualification from the exercise of public office for up to a maximum of fifteen years, in which case the Comptroller shall remit the pertinent information to the human resources department of the entity or agency in which the offense took place for that department to make the necessary arrangements.*”

[24] Concerning the way decisions are taken by the CGR, these shall be taken by the Comptroller General in person, pursuant to Chapter II, Article 10 of the LOCGRSNCF: “*The Office of the Comptroller General of the Republic shall be run by and under the sole responsibility of the Comptroller General (...).*” Likewise, Article 12 establishes that the Comptroller General may delegate some tasks to his or her Deputy.

[25] Decisions of the CGR that involve sanctions may be appealed through an application for review or reconsideration, or through the administrative or judicial channels, as the case may be (Articles 79, 107, 108, 109, and 110 of the LOCGRSNCF).

[26] Regarding inter-agency coordination, Article 136 of the Venezuelan Constitution establishes that: “(...) *Each of the branches of government has its own functions, but the bodies responsible for exercising such public authority shall cooperate with one another in the pursuit of the State’s purposes.*”

[27] Likewise, Article 4 of the LOCGRSNCF provides that the organs comprising the National Fiscal Oversight System come under the direction of the CGR² and interact in a coordinated manner in order to achieve uniform management of oversight systems and procedures designed to attain the overall objectives of the various entities and agencies subject to this Law, as well as a well-run public administration.

[28] As for mechanisms for eliciting citizen support for the performance of its functions, Article 75 of the LOCGRSNCF provides that the Comptroller General shall issue provisions aimed at fostering citizen participation.

[29] With regard to the way in which its highest authorities are elected, it is worth noting that, along with the Ombudsperson and the Attorney General (*Fiscal General*), the Comptroller General of the Republic sits on the Republican Ethics Council (*Consejo Moral Republicano*), which is the body exercising Citizen Power (*Poder Ciudadano*) (Article 273 of the CRBV). Thus, the appointment of Citizen Power members and hence that of the Comptroller General of the Republic is governed by the provisions of Article 279 of the CRBV. The Article provides that the Republican Ethics Council shall “*convene a Citizen Power Nomination Evaluating Committee,*

² Article 26 of the LOCGRSNCF provides that the following organs for part of the National Fiscal Oversight System:

The Office of the Comptroller General of the Republic; the Office of the Comptroller of States, Districts, Metropolitan Districts, and Municipalities; the Office of the Comptroller General of the Bolivarian National Armed Forces; and the internal audit units of the entities referred to in subparagraphs 1 to 11 of Article 9 of the LOCGRSNCF.

which shall be made up of representatives from various sectors of society, and shall conduct public proceedings resulting in the provision of a list of three candidates for consideration by the National Assembly. By a two-thirds vote of its members, the National Assembly shall select within 30 calendar days the member of the Citizen Power organ under consideration. If the National Assembly has not reached an agreement by the end of that period, the Electoral Authority shall submit the list of three candidates to a public referendum.”

[30] The aforementioned article 279 also states that *“If the Citizen Power Nomination Evaluating Committee has not been convoked, the National Assembly shall proceed, within such time limit as may be determined by law, to designate the member of the pertinent Citizen Power organ.”*

[31] In this regard, Article 23 of the Organic Law of Citizen Power (LOPC) provides that *“The Nomination Evaluation Committee shall comprise representatives of different sectors of society, who shall be Venezuelans by birth and in full enjoyment and exercise of their civil and political rights, numbering no more than twenty-five (25) members, and the requirements for which shall be set down in the internal regulations of the Republican Ethics Council, which shall convene it sixty days prior to the expiry of the period for which the heads of the organs of the Citizen’s Branch of Government were appointed, in order to select them by means of a public process, in compliance with the provisions of Article 276 of the Constitution of the Bolivarian Republic of Venezuela.”*

[32] In the following paragraph, the aforesaid Article 23 of the LOPC adds that: *“Should the Citizen Power Nomination Evaluation Committee not be convened within the stipulated deadline, the National Assembly shall proceed to appoint the heads of the organs of the Citizen’s Branch of Government within a period of no more than thirty (30) calendar days.”*

[33] The body responsible for holding the Comptroller General of the Republic liable for his or her actions and for deciding whether or not she or he should remain in office shall be the National Assembly following a pronouncement by the Supreme Court of Justice (Articles 276 and 279 of the CRBV). The Comptroller General of the Republic must be Venezuelan by birth and hold no other nationality. He or she must be at least 30 years old and have proven skills and experience for the position. She or he shall be appointed for a seven-year term (Article 288 of the CRBV).

[34] With respect to the procedures for selecting CGR personnel, Article 5 of the CGR’s Staff Rules³ (EPCGR) stipulates that *“Staff members of the Office of the Comptroller General are those who are appointed to serve in that body, satisfactorily complete the probationary period established in Article 15 of these Rules, and perform full-time functions.”*

[35] Article 6 of the same EPCGR establishes that *“Positions in the Office of the Comptroller General of the Republic, with the exception of that of the internal auditor, are positions of trust and, consequently the holders of such positions are freely appointed and removed..”* On the other hand, workers and contract staff are governed by the provisions of the Organic Labor Law (LOT).

³ Official Gazette No. 383.326 of Monday, February 7, 2011. Resolution No. 01-00-000033 of February 4, 2011.

[36] The selection process for candidates to positions in the Office of the Comptroller General is described in Section Two of the EPCGR (Articles 10-11), while the probationary period is referred to in Section Six of the EPCGR (Articles 15-18).

[37] The rules governing prohibitions, incompatibilities, self-disqualification, and responsibilities of CGR personnel are set out in Articles 87-99 of the EPCGR.

[38] The State under review points out, in its response, that it has a Post Classification System, as required under Article 9 of the EPCGR. In addition, there is a resolution showing the positions in the CGR and the corresponding grade in the Pay Scale for the technical-oversight, administrative, and supporting groups.⁴

[39] As regards training, the CGR has the “Gumersindo Torres” Foundation’s Advanced Studies in Fiscal Oversight and State Audit Institute (COFAE), which is the CGR’s Advanced Studies Center. Each quarter, the Institute announces its Schedule of Training Activities conducted at its various sites around the country to meet academic development needs in the regions, and open to staff working in bodies pertaining to the National Fiscal Oversight System. The training activities are divided into different subject areas, with each staff member able to choose among the following specialties, depending on his or her sphere of competence: fiscal oversight, state audit, state management, citizen participation, and legal oversight⁵ The CGR also enters into training agreements with international organizations. One such training course is the online course on the “Inter-American Convention against Corruption.”

[40] In its reply, the State under review points out that the CGR has a series of manuals outlining the organizational structure of the institution and the functions to be performed by each of the units in it. The Oversight Systems Directorate is the office responsible for coordinating with the various units the preparation of individual documents describing how each unit conducts its activities.⁶

[41] With respect to implementation of modern systems or technologies to facilitate its work, the CGR has an I.T. Directorate, responsible, inter alia, for planning the development, implementation, and operation of information systems, evaluating existing systems, and making any changes it deems appropriate. Technological advances at the CGR include an Intranet platform to manage in-house relations and an on-line system for Sworn Statements of Net Worth.⁷

[42] The CGR has various channels for informing citizens about its objectives and functions, the procedures established for fulfilling those functions, and guidelines regarding applications and formalities. They include the Corporate Communication Directorate, the Citizen Assistance Office, and the CGR’s Internet Portal.⁸

[43] As for mechanisms for internal control and addressing claims, complaints, or denunciations connected with the fulfillment of its objectives and the performance of its staff, in the course of the on-site visit representatives of the CGR mentioned that they have a set

⁴ Response of Venezuela to the questionnaire for the fourth round, p. 54.

⁵ *Idem*, pp. 55-56.

⁶ *Idem*, pp. 56-57. See also Annex 9 to the Response of Venezuela to the questionnaire for the fourth round, “List of Manuals.”

⁷ *Idem*, p. 57

⁸ *Idem*, pp. 57-58.

instructions on how to process complaints, in addition to the services provided by the Citizen Assistance Office.

[44] In its response, the State under review also reported that the CGR also has its General Standards for Internal Audit and an internal audit unit.⁹

[45] As for guarantees that the CGR has the budgetary resources it needs to do its job, Article 17 of the LOCCGRSNCF provides that the Office of the Comptroller General shall each year prepare its draft expenditure budget and remit it to the Citizen Power for presentation to the National Executive Branch and incorporation without changes in the corresponding draft Annual Budget for the Fiscal Year that will be presented for consideration to the National Assembly; and that only the National Assembly may amend the draft presented by the Office of the Comptroller General.

[46] That notwithstanding, Article 18 of the LOCCGRSNCF stipulates that the provisions of aforementioned Article 17 shall not preclude the Office of the Comptroller General from making use of the mechanisms established by law to cover any contingent costs that may arise in the course of budget execution, or to increase budgetary appropriations that may turn out to be insufficient, to which end it shall follow the procedure indicated in the Organic Law of Public Sector Financial Administration.

[47] Concerning accountability mechanisms for ascertaining that the CGR does its job and citizen access to a published rendering of its accounts, Article 276 of the CRBV provides that the heads of the organs comprising Citizen Power (which includes the CGR) shall submit an annual report before a plenary session of the National Assembly, in addition to submitting reports whenever they are asked to do so by the National Assembly.

[48] In its reply, the State under review further reports that the CGR, as the highest fiscal oversight body, presents an annual activities report, as required by Article 14.13 of the LOCCGRSNCF; that the whole process of preparing that report is set out in the Instructions for Preparing the Activities Report; that the end-product of that process will serve as an accountability instrument that can be evaluated by citizens and accessed on the CGR website¹⁰; and that annual management and activities reports, special reports, circulars, legal opinions, and so on, are all posted on the same website.¹¹

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

[49] The Office of the Comptroller General (CGR) has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were described in brief in section 1.1 of this report. Nevertheless, the Committee deems it appropriate to make a number of observations in relation thereto:

[50] First, as regards the appointment of the Comptroller General, the Committee notes that, as indicated in the foregoing section on the existence of the legal framework, Article 279 of the Constitution of the Bolivarian Republic of Venezuela (CRBV) provides for his selection through a Citizen Power Nomination Evaluating Committee made up of representatives of various sectors

⁹ *Idem*, pp. 58-59.

¹⁰ www.cgr.gob.ve

¹¹ Response of Venezuela to the questionnaire for the fourth round, p. 61.

in society which shall conduct public proceedings resulting in the provision of a list of three candidates to be submitted for consideration by the National Assembly.

[51] At the same time, the Committee notes that the same Article of the CRBV also provides for the possibility that “*If the Nomination Evaluation Committee is not convened, the National Assembly shall proceed to appoint the head of the corresponding body of the Citizen Power directly [including the Comptroller General], within the deadline determined by law.*”

[52] There the Committee also observes that Article 23 of the Organic Law of Citizen Power (LOPC) stipulates that the Republican Ethics Council, which is responsible for convening the Nomination Evaluation Committee, has a deadline of 60 days prior to the expiry of the period for which the heads of the agencies of the Citizen’s Branch of Government – including the Comptroller General – were appointed to convene that Committee and, if it is not convened within that timeframe, the National Assembly shall proceed to appoint the heads of the Citizen’s Branch agencies within no longer than 30 calendar days.

[53] In connection with this, during the meeting between the State under review and the members of the review subgroup, Venezuela’s representatives reported that in practice it has occurred that the Republican Ethics Council has failed to convene the Nominations Committee within the stipulated deadline and that the National Assembly has proceeded to appoint the Comptroller General and other agency heads within the Citizen’s Branch of Government.

[54] They added that in such cases, the National Assembly has proceeded to create *ad hoc* selection procedures on a case-by-case basis in order to ensure the transparency of the process, and that it has also followed the Assembly’s debate regulations.

[55] Accordingly, the Committee believes it would be useful for the State under review to consider the creation of a selection procedure for the agency heads of the Citizen’s Branch of Government, based on the principles of disclosure, equity, and efficiency, to be used by the National Assembly in all cases in which the Republican Ethics Council fails to convene the Nominations Committee within the legally stipulated deadline, thereby avoiding the need to design and follow *ad hoc* procedures whenever that eventuality arises. The Committee will formulate a recommendation (see recommendation 1.1.4 in Chapter II of this report).

[56] Second, in connection with the selection of human resources for the CGR, the Committee notes that Article 6 of the CGR’s Staff Rules, issued in 2011, provides that “*Positions in the Office of the Comptroller General of the Republic, except that of the internal auditor, are trust positions and the holders of those positions are therefore be freely appointed and removed by the Comptroller General...*”

[57] On this matter, the Committee points out that Article 4 of the CGR Staff Rules, issued in 2000 and in effect in 2007, the year in which the Venezuela Report corresponding to the Second Round of Review, provided that “*Positions in the Office of the Comptroller General of the Republic are career service positions, with the exception of positions whose holders may be freely appointed and removed. The positions whose holders may be freely appointed and dismissed are high-level positions and positions of trust...*”

[58] Here, the Committee notes that the current Staff Rules of the CGR exclude all positions in the Office of the Comptroller General from access to the career service. However, since this is a second round issue and since implementation of the recommendations put to the State under review in connection with the hiring of CGR personnel will be reviewed in the fifth round, the Committee will refrain from pronouncing on the subject on this occasion.

[59] Third, the Committee notes that the CGR has a Position Classification System and a Pay Scale for technical-oversight, administrative, and support groups. In this regard, during the *on-site* visit, the CGR representatives said that they were currently reforming the Position Classification System in light of changes in the kinds of positions found in the institution and of the need to make significant adjustments to staff remunerations in order to stem the outflow of skilled staff to other fiscal oversight bodies.

[60] Indeed, one of the difficulties singled out by the CGR in its 2014 Annual Operating Plan is that *“The original budgetary appropriation approved for the CGR and the mechanism in place for covering the institution’s resource requirements during the year mean that there is no way to program staff incomes appropriately and consistently maintain an attractive salary policy. This means that qualified staff are migrating to other fiscal oversight bodies and cannot be replaced by either new personnel or by appropriate training for personnel remaining in the institution”*.¹²

[61] In this connection, the Committee observes that the issue of equitable compensation for public officials is envisaged in Article III (12) of the Convention, which will be analyzed in the fifth round. Therefore, it will not venture an opinion on this point at this time. However, the Committee will make a recommendation regarding the need to strengthen the CGR by providing it with the necessary human and financial resources to perform its functions properly and shortly conclude the review of the Position Classification System. The Committee will make recommendations (see recommendations 1.4.2 and 1.4.3 in chapter II of this report).

[62] Along these same lines, the Committee notes that one of the shortcomings detected in the CGR 2014 Annual Plan is the lack of a continuous personnel evaluation system in order to assess the effectiveness of their work after the initial period. During the plenary session of the Committee of Experts, the State under review added that this would also serve as a basis for applying the salary scale to the grades and steps established in the internal regulations and, subsequently, for calls to public competitions. On this matter, the Committee considers that it would be beneficial for the State under review to implement a continuous personnel evaluation system, with a view to boosting the CGR’s human resources. To that end, it will make a recommendation (see recommendation 1.4.4 in chapter II of this report).

[63] Fourth, as regards the implementation of modern systems or technologies to facilitate the CGR’s work, the Committee notes that, although the institution has a modular network of I.T. systems and an online Sworn Statement of Net Worth system, during the *on-site* visit, CGR representatives indicated that one of their needs was budgetary support for technological resources that would allow for interconnection throughout the system and enable them to post, and allow tracking of, the whole audit process on line, as well as make it available to the most remote municipalities that can only be accessed by ship.

[64] Indeed, the CGR’s 2014 Operating Plan Matrix refers, with concern, to possible threats¹³, such as *“...the possibility of technological backwardness, either for lack of the financial resources needed to purchase appropriate technological equipment or to hire and retain the specialists needed”* and weaknesses: *“Information management systems are needed for timely updating of the status of each case in litigation. The institution also needs to complete the development and application of I.T. systems for managing its core processes, such as*

¹² 2014 Operating Plan– DOFA Matrix

http://www.oas.org/juridico/PDFs/mesicic4_ven_dofa_poa_cgr_2014.pdf

¹³ The DOFA Matrix in the 2014 Operating Plan is a table with four columns: Opportunities, Threats, Strengths, and Weaknesses.

*interventions, ability to investigate and establish responsibilities, and a personnel evaluation system.”*¹⁴

[65] Here, the Committee deems it appropriate that the State under review consider strengthening the CGR by endowing it with the budgetary and technological resources it needs to fulfill its above-mentioned purposes. To that end, it will make a recommendation (see recommendation 1.4.5 in chapter II of this report).

[66] Fifth, the Committee notes that, in its response, the State under review includes, among the difficulties it encounters: late replies by national public administration agencies to the CGR’s requests for information; restrictions in eliciting the information needed to support audits; and delays in the provision of that information by the audited entity or agency.¹⁵

[67] During the on-site, visit, the CGR representatives said that part of the problem of delays in receiving the information requested had to do with the high turnover of personnel in public administration agencies. The CGR’s 2014 Annual Operating Plan also points to the *“Dearth of an oversight culture in the organizations subject to CGR oversight, which is manifested in restrictions on obtaining the information needed to support audits, delays in the provision of the information requested, poor quality of the information that is provided, and scant openness to suggestions for improving oversight mechanisms, and so on.”*

[68] In this regard, the Committee notes that although, both in its reply and in the *on-site* visit, the State under review pointed out that it had inter-agency coordination mechanisms, and that the Constitution itself establishes that *“the organs charged with exercising public authority shall cooperate with one another in attaining the ends of the State,”* and that Article 4 of the LOCGRSNCF establishes that the organs comprising the National Fiscal Oversight System interact in a coordinated fashion under the direction of the CGR, the Committee considers that it would be beneficial if the State under review were to consider strengthening inter-agency coordination mechanisms wherever appropriate, with a view to optimizing the smooth flow and quality of information between the CGR and national public administration agencies. The Committee will make a recommendation (see recommendation 1.4.6 in chapter II of this report).

[69] Along those same lines, the Committee deems that it would be appropriate for the State under review to consider strengthening and standardizing oversight mechanisms for all public administration entities and agencies, and will make a recommendation to that effect (see recommendation 1.4.7 in chapter II of this report).

[70] Furthermore, the Committee notes that the DOFA Matrix in the CGR’s 2014 Operating Plan lists, as one of the institution’s weaknesses, the need to correct some provisions that, out of habit or custom, have become part of the institutional culture, such as time restrictions for conducting audits. Here, the Committee considers that it would be beneficial for the State under review to establish reasonable time frames needed for audits (see recommendation 1.4.8 in chapter II of this report).

[71] Sixth, with respect to the mechanisms for attending to claims, complaints, or denunciations relating to compliance with CGR objectives and the performance of its personnel, the Committee notes that, although the institution’s Internet portal includes information for the public in its “frequently asked questions” section such as the information that *“citizens may file*

¹⁴ 2014 Operating Plan– DOFA Matrix

http://www.oas.org/juridico/PDFs/mesicic4_ven_dofa_poa_cgr_2014.pdf

¹⁵ Response of Venezuela to the questionnaire for the fourth round, p. 68.

denunciations, complaints, claims, and petition with any Organ or Entity, that is to say, the Office of the Comptroller General; State, District, or Municipal Comptrollers' Offices; Internal Audit Units, or any Citizen Assistance Office in public sector agencies and entities,” the website does not have a mailbox specifically designed for complaints, denunciations and suggestions.

[72] The CGR website does have a contact mailbox for communicating with the institution, but it requires a user name and password, which may hamper communication by a regular citizen wishing to file a complaint or denunciation or make a suggestion on-line. Here, the Committee deems that it would be useful for the State under review to consider posting a more user-friendly mailbox for complaints and denunciations by ordinary citizens and including information on how to use it in its “frequently asked questions” section, and establishing a free telephone line so that people without internet access can report acts of corruption of which they are aware or lodge complaints against the alleged perpetrators of acts of corruption of which they are victims. The Committee will make a recommendation (see recommendations 1.4.9 and 1.4.10 in chapter II of this report.

[73] Finally, in its response, the State under review indicates that most of the CGR’s cooperation needs revolve around “*guaranteeing it, as the policy-making body in the National Fiscal Oversight System, efficiency and effectiveness on the part of the entities making up the system.*” In this connection, the Committee takes note of the needs mentioned by the CGR and of the need for the State under review to provide the necessary support. It also invites the states parties (in particular, their internal audit institutions) and other cooperation organizations to assist the institution in these areas. The Committee will make a recommendation (see recommendation 1.4.11 in chapter II of this report)

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

[74] The response to the questionnaire of the State under review and the on-site visit yielded information on results achieved by the Office of the Comptroller General of the Republic, notably in respect of the following:

[75] Both in its reply to the questionnaire and during the on-site visit, the State under review provided information regarding its corruption prevention functions, including, notably, the following:¹⁶

[76] “*In the area of prevention of corruption, the Office of the Comptroller General of the Republic has attached great importance to training as a preventive measure and has conducted innumerable training activities within the institution itself, in the National Fiscal Oversight System, and in the public administration as a whole.*”

[77] *By way of example, in 2009, as part of its ongoing work of advising on the establishment of Citizen Assistance Offices in all agencies in the public administration, as contemplated in Article 9 of the Law against Corruption, the Office of the Comptroller General, with the support of the “Gumersindo Torres” Foundation’s Advanced Studies in Fiscal Oversight and State Audit Institute (COFAE), taught courses aimed at fostering citizen participation and the establishment of said offices. Taking part in those courses were officials from 17 government entities and agencies...*

[78] *For the sake of brevity, Annex No. 10 includes a Table listing the training activities conducted by the CGR in 2010-2013.”*

¹⁶ Response of Venezuela to the questionnaire for the fourth round, p. 62.

[79] In addition, during the on-site visit, the CGR representatives provided further information regarding the courses on corruption organized through COFAE. This information and Annex No. 10 to the reply to the questionnaire, referred to in the foregoing paragraph, can be accessed via the following Internet links: http://www.oas.org/juridico/spanish/mesicic4_ven.htm http://www.oas.org/juridico/PDFs/mesicic4_ven_pres_cgr_mar_jau.pdf.

[80] The Committee finds that the above information serves to demonstrate that measures for the prevention of acts of corruption have been carried out at the CGR, in keeping with its functions in that regard.

[81] At the same time, the State under review also provided statistical information in both its reply to the questionnaire and in the on-site visit on the results of its efforts to detect, investigate, and punish acts of corruption, including, in particular, the following:¹⁷

Table 1

Quantitative Summary of Oversight Activities by the CGR, 2009-2014										
Year/Activity	Oversight actions ¹⁸	Found responsible	Fines imposed on those found responsible ¹⁹ (Bs)	Claims for damages filed ²⁰ (Bs)	Sanctions in addition to finding of responsibility ²¹	Cases & reports referred to the Public Prosecution Service	Sworn Statements of Net Worth received	Net worth audits carried out	Preventive measures adopted	Fines associated with Sworn Statements of Net Worth
2009	164	60	174,195.40	78,992,419.44	166	55	136,513	14	-	182,372.38
2010	158	58	218,289.10	8,822,824.79	150	26	283,089	10	12	587,437.50
2011	115	41	385,584.30	2,951,504.02	199	18	302,772	7	8	1,481,525.00
2012	98	77	1,153,352.40	8,545,390.11	22	25	302,638	12	-	753,750.00
2013	75	65	1,158,919.55	43,911,323.00	107	38	386,934	6	-	20,585,462.50
2014	-	-	-	-		6	317,230	7	-	-
Total	610	301	3,090,340.75	143,223,461.36	644	168	1,729,176	56	20	23,590,547.38
Amounts in US\$ (at US\$1= Bs.6.30)²²			490,530.28	22,733,882.76						3,744,531.33

¹⁷ Response of Venezuela to the questionnaire for the fourth round, pp. 62-67.

The statistics provided during the on-site visit are posted at:

http://www.oas.org/juridico/spanish/mesicic4_ven.htm

¹⁸ This column refers to compliance, management, I.T. and communication, operational, and financial audits, examinations of accounts, and follow-up on the adoption of corrective measures.

¹⁹ Fines resulting from findings of administrative responsibility pursuant to Article 94 of the LOGRSNCF.

²⁰ Claims filed by the CGR when it detects, during its audits, monitoring, inspections, examinations of accounts, or investigations in the exercise of its oversight functions, circumstantial evidence of harm to an entity's or an agency's property or assets pursuant to Article 85 of the LOGRSNCF.

²¹ Sanctions resulting in disqualification or dismissal from posts on account of administrative responsibility, pursuant to Article 105 of the LOGRSNCF.

²² The official exchange rate at September 30, 2014.

[82] It is also worth noting that the State under review also presented disaggregated statistics for each of the items shown in the foregoing Table. They are posted at:
http://www.oas.org/juridico/PDFs/mesicic4_ven_pres_cgr_arm_gue.pdf
http://www.oas.org/juridico/PDFs/mesicic4_ven_pres_cgr_may_riol_mal.pdf
http://www.oas.org/juridico/PDFs/mesicic4_ven_pres_cgr_mor_mill_loy.pdf

[83] The Committee notes, first, that the information on outcomes provided by the State under review does not show the number of findings of administrative responsibility that ended in acquittals or dismissals of proceedings, which would facilitate a more in-depth analysis. Here, the Committee thinks that the State under review could consider the possibility of supplementing its statistical information so as to show how many decisions resulted in acquittals or dismissal of proceedings. The Committee will make a recommendation to that effect (see recommendation 1.4.12. in chapter II of this report).

[84] Second, the Committee notes that, according to the information shown in the foregoing statistical table, the number of oversight actions declined from 164 in 2009 to 75 in 2013. On this matter, the Committee considers that it would be useful for the State under review to conduct a study on the volume of the CGR's interventions, so as to determine the reasons for this decline, identify challenges, and, if necessary, take corrective steps. The Committee will make a recommendation (see recommendation 1.4.13. in chapter II of this report).

[85] At the same time, the Committee observes that, while the Table shows the amount for pecuniary sanctions imposed by the CGR in the form of fines and claims for damages, it does not show how much money was actually received by the Treasury as a result of those fines and claims. Here, the Committee considers that it would be useful if the State under review kept statistics that make it possible to compare fines and claims with the amount actually reaching the Treasury as a result of them, so as to identify challenges and, if necessary, take corrective steps (see recommendation 1.4.14. in chapter II of this report).

[86] Regarding the information on the foregoing table on cases and reports referred to the Public Prosecution Service, the Committee notes that the State under review presented additional, disaggregated statistics during the on-site visit. These are transcribed below:

Table 2:

Cases referred to the Public Prosecution Service							
Organ/year	2009	2010	2011	2012	2013	2014	Total
CGR Derived from the SSNW*	22	11	5	9	5	6	58
SNCF Audit Reports.	34	36	38	35	68	52	263
Total	56	47	43	44	73	58	321

* Alleged falsification or concealment of the sworn statement of net worth or information required for verification (Article 76 LCC) / Alleged illicit

enrichment (Article 73 LCC).

[87] On this, the Committee points out that the totals in foregoing Table 2 for “Cases referred to the Public Prosecution Service” because they contain circumstantial evidence of punishable offenses do not match the totals in the column for “Cases and reports referred to the Public Prosecution Service” for the same reasons in Table No.1, where it is not clear whether Table 1 takes other reports or cases into account in addition to those considered in Table 2.

[88] Without prejudice to that observation, the Committee notes that the number of case files referred to the Public Prosecution Service registered in Table 2 and derived from findings related to sworn statements of net worth (SSNW), specifically in respect of alleged falsification or concealment of the SSNW or of information requested or in respect of alleged illicit enrichment fell between 2009 (22) and 2013 (5), even though the number of sworn statements received went up, from 136,513 in 2009 to 386,934 in 2013.

[89] During the on-site visit, the representatives of the CGR mentioned, in this regard, that while the on-line sworn statement of net worth system is a significant step forward reflected in a much higher rate of compliance by government officials subject to it (as can be seen in the eighth column in Table 1), it does not come with a set of alarms for immediately identifying any discrepancies there may be between one statement and another. They added that the sworn statements are verified by random sampling. They also reported that not all officials required to file such statements have yet been included in the on-line sworn statements of net worth system. The number of statements is expected to increase as they are progressively included.

[90] Accordingly, the Committee considers that it would be useful for the State under review to consider strengthening the on-line sworn statements of net worth system by introducing alarms signals alerting in real time to discrepancies between sworn statements of net worth. The Committee will make a recommendation in this regard (see recommendation 1.4.15 in chapter II of this report).

[91] Along the same lines, with respect to the seventh column in Table 1 on the total number of reports and case files referred to the MP, the Committee notes that the total falls from 55 cases files in 2009 to 38 in 2013. Here, the Committee considers that it would be useful for the State to conduct a study aimed at discovering the causes for that decline, with a view to identifying challenges and adopting corrective measures, if necessary (see recommendation 1.4.16 in chapter II of this report).

[92] At the same time, the Committee notes that no information is provided as to outcomes after cases are referred to the Public Prosecution Service (PM) because they point to the existence of punishable offenses. Indeed, during the on-site visit, the representatives of the CGR pointed out that, while it is possible to request and obtain information from the MP, there is no inter-agency mechanism between the CGR, the MP, and the Judiciary for follow-up on such cases. The Committee considers that it would be highly useful for the State under review to ponder the possibility of implementing a mechanism of that nature between the aforementioned oversight bodies, to facilitate follow-up in such cases. The Committee will make a recommendation in that regard (see recommendation 1.4.17 in Chapter II of this report).

[93] Regarding the information shown in Table 1 on secondary sanctions imposed on citizens, in addition to the finding of administrative responsibility, pursuant to Article 105 of the LOCGRSNCF, the Committee notes that the data points to a sharp decline in such sanctions from 199 in 2011 to 22 in 2012 and that while the number increased to 107 in 2013, that figure is still

below the 2011 level. Here, the Committee deems it useful for the State under review to consider conducting a study to determine the reasons for these variations, so as to identify challenges and adopt corrective measures, if necessary. The Committee will make a recommendation (see recommendation 1.4.18 in chapter II of this report).

[94] Likewise, the Committee notes that, during the on-site visit, the State under review provided the following breakdown of secondary sanctions additional to the finding of administrative responsibility:

Table 3:

Citizens with secondary sanctions in addition to the declaration of administrative responsibility (Article 105 of the LOGRSNCF), 2009-2013						
Sanction/year	2009	2010	2011	2012	2013	TOTAL
Citizens suspended from public office	18	36	51	15	6	126
Citizens dismissed from public office	-	2	6	-	-	8
Citizens disqualified from holding public office	148	112	142	7	101	510
TOTAL	166	150	199	22	107	644
Source: Activities Report of the CGR						

[95] Regarding the foregoing statistical Table, the Committee notes that, pursuant to Article 105 of the LOGRSNCF, while it shall be incumbent upon the Comptroller General of the Republic to agree with the entity in which the offense was committed to suspend the person declared responsible for that offense from his or her post, without pay, for a period not to exceed twenty-four months or to dismiss said person, it shall be incumbent upon the highest authority to execute that penalty; and to order, in view of the gravity of the irregularity committed, his or her disqualification from the exercise of public office for up to a maximum of fifteen years, in which case the Comptroller shall remit the pertinent information to the human resources department of the entity or agency in which the offense took place for that department to make the necessary arrangements.

[96] Here, the Committee notes that the CGR has been imposing the sanctions referred to in the aforementioned Article 105 of the LOGRSNCF. Nevertheless, it is not possible to ascertain the extent to which those sanctions were actually applied by the authorities of the entities in which the offenses were committed. For that reason, the Committee considers that it would be useful for the State under review to consider compiling statistics on the extent to which those sanctions are implemented by State entities and agencies, and if it finds cases in which they might not have been applied, to ascertain the reason they were not applied, with a view to identifying challenges and adopting corrective measures, if necessary. The Committee will make a recommendation in this regard (see recommendation 1.4.19 in chapter II of this report).

[97] Finally, with respect to preventive measures, the Committee notices that the information in the tenth column in Table 1 shows that 12 measures of that nature were adopted in 2010, 8 in 2011, and none at all in 2009, 2012, and 2013. Here, the Committee considers that it would be useful for the State under review to conduct a study to determine the reasons for these variations, so as to identify challenges and adopt corrective measures, if necessary. The Committee will make a recommendation in this regard (see recommendation 1.4.20 in chapter II of this report).

1.4. Conclusions and recommendations

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

[99] The Bolivarian Republic of Venezuela has considered and adopted measures intended to maintain and strengthen the Office of the Comptroller General of the Republic (CGR), as an oversight body, as indicated in Chapter II, Section 1 of this report.

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

- 1.4.1. Consider the creation of a selection procedure for the agency heads of the Citizen's Branch of Government, based on the principles of disclosure, equity, and efficiency, to be used by the National Assembly in all cases in which the Republican Ethics Council fails to convene the Nominations Committee within the legally stipulated deadline, thereby avoiding the need to design and follow *ad hoc* procedures whenever that eventuality arises (see chapter II, section 1.2 of this report).
- 1.4.2. Strengthen the CGR by providing it, within the resources available, with the necessary human and budgetary resources to perform its functions properly (see chapter II, section 1.2 of this report).
- 1.4.3. Complete as promptly as possible the reformation of the Post Classification System in the CGR, so as to proceed to its implementation (see chapter II, section 1.2 of this report).
- 1.4.4. Implement a continuous staff evaluation system, in order to assess work effectiveness after the initial period (see chapter II, section 1.2 of this report).
- 1.4.5. Strengthen the CGR by endowing it, within the resources available, the budgetary resources needed to acquire appropriate technological equipment and information management systems that will enable it to complete the development of I.T. systems for managing its core processes; as well as to develop any others that it considers necessary to the proper performance of its functions, and hire and retain staff who have specialized in this field (see chapter II, section 1.2 of this report).
- 1.4.6. Strengthen inter-agency coordination mechanisms, where appropriate, so as to optimize the flow and quality of information between the CGR and national public administration agencies (see chapter II, section 1.2 of this report).

- 1.4.7. Take appropriate measures to strengthen and standardize fiscal oversight mechanisms for all public administration entities and agencies (see chapter II, section 1.2 of this report).
- 1.4.8. Establish reasonable time frames for carrying out audits (see chapter II, section 1.2 of this report).
- 1.4.9. Include a user-friendly mailbox on the CGR's Internet Portal mailbox for complaints, denunciations and suggestions by ordinary citizens and include information on how to use it (see chapter II, section 1.2 of this report).
- 1.4.10. Provide the CGR with a cost-free telephone line so that people without access to the Internet can report acts of corruption they become aware of or file claims against the alleged perpetrators of acts of corruption of which they are the victims (see chapter II, section 1.2 of this report).
- 1.4.11. Make the necessary arrangements with other States and cooperation agencies to provide the CGR, as the policy-making body for the National Fiscal Oversight System (SNCF), with the technical cooperation needed to ensure efficient and effective performance by the entities making up that System (see chapter II, section 1.2 of this report).
- 1.4.12. Supplement the statistical data on CGR findings of administrative responsibilities, so as to show how many of them resulted in acquittals or dismissal of proceedings, with a view to identifying challenges and adopting corrective measures, if necessary (see chapter II, section 1.2 of this report).
- 1.4.13. Conduct a study on the reason for the decline in the volume of CGR oversight interventions in the past five years, with a view to identifying challenges and adopting corrective measures, if necessary (see chapter II, section 1.3 of this report).
- 1.4.14. Keep statistics that make it possible to compare the amounts of the fines imposed by the CGR and the amounts that the Treasury actually receives as a result of the, with a view to identifying challenges and adopting corrective measures, if necessary (see chapter II, section 1.3 of this report).
- 1.4.15. Take whatever steps are needed to endow the online sworn statements of net worth system with alarm signals to alert operators in real time to possible discrepancies between statements, in order to optimize the verification process (see chapter II, section 1.3 of this report).
- 1.4.16. Conduct a study on the reasons for the decline in the number of case reports containing circumstantial evidence of punishable offenses that are referred to the Public Prosecution Service (MP), with a view to identifying challenges and adopting corrective measures, if necessary (see chapter II, section 1.3 of this report).
- 1.4.17. Implement an inter-agency coordination mechanism between the CGR, the MP, and the Judiciary, for following up on case files referred to the competent authority because they contain circumstantial evidence of punishable offenses and ascertaining outcomes (see chapter II, section 1.3 of this report).

- 1.4.18. Conduct a study on the reason for the decline, since 2011, of secondary sanctions additional to the finding of administrative responsibility, with a view to identifying challenges and adopting corrective measures, if necessary (see chapter II, section 1.3 of this report).
- 1.4.19. Compile statistics on the extent to which government entities and agencies apply secondary sanctions additional to the finding of administrative responsibility, and if cases are discovered in which they might not have been applied, ascertain the reason why not, with a view to identifying challenges and adopting corrective measures, if necessary (see chapter II, section 1.3 of this report).
- 1.4.20. Conduct a study on the reason why, since 2012, preventive measures have not been adopted, with a view to identifying challenges and adopting corrective measures, if necessary (see chapter II, section 1.3 of this report).

2. PUBLIC PROSECUTION SERVICE (*MINISTERIO PÚBLICO* - MP)

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

[101] The Public Prosecution Service has a set of provisions in its legal framework, as well as other measures that refer, inter alia, to the following:

[102] Regarding the nature of the Public Prosecution Service (MP), Article 253 of the Constitution of the Bolivarian Republic of Venezuela (CRBV) states that the justice system consists of the Supreme Tribunal of Justice, such other courts as may be determined by law, the Office of Public Prosecutions [Public Prosecution Service - MP], the Public Defender's Office [Ombudsperson's Office], criminal investigation organs, judicial assistants and officials, the penitentiary system, alternative means of justice, citizens participating in the administration of justice in accordance with law and attorneys at law admitted to practice.

[103] Likewise, Article 273 of the CBRV establishes that the MP is an organ of Citizen Power, along with the Ombudsperson's Office and the Office of the Comptroller General of the Republic, and that Citizen Power is exercised by the Republican Ethics Council, made up of the Ombudsperson, the Attorney General, and the Comptroller General of the Republic.

[104] Pursuant to Article 284 [Tr. 285] of the CBRV, the following are functions of the Office of Public Prosecutions [Public Prosecution Service]: *"1. In judicial proceedings, to guarantee respect for constitutional rights and guarantees, as well as those deriving from international treaties, agreements and conventions signed by the Republic; 2. To guarantee the speedy trial of the judicial process [Tr. sic: should read "swift and proper administration of justice"], the right to previous [Tr. sic: prior] trial and [a] due process; 3. To order and direct criminal investigation of the perpetration of punishable acts, with a view to establishing that the same were committed, with all circumstances that may be relevant to stating the offense and establishing the responsibility of the perpetrators and other participants, as well as to secure custody of the objects actively and passively concerned with [Tr. sic: related to] the perpetration of the offense; 4. To conduct on behalf of the State criminal prosecutions in those cases in which no initiative on the part of a party is required in order to initiate or continue such prosecution, with the exceptions established by law; 5. To file any appropriate actions to hold liable public officials who have incurred civil, labor, military, criminal, administrative or disciplinary liability*

the course of their official duties; and 6. Any other functions that may be assigned to this office [Service] by the Constitution and by law.”²³

[105] At the same time, the Anti-Corruption Law (LCC) provides that, with respect to crimes against public property, the Public Prosecution Service shall act ex officio to determine the civil liability of any accomplices to the crime (Article 87 of the LCC).

[106] With respect to the MP’s autonomy, Article 273 of the CRBV provides that Citizen Power is independent and its organs enjoy operating, financial and administrative autonomy. Likewise, Article 4 of the Organic Law of the Public Prosecution Service (LOMP) provides that *“The Public Prosecution Service (MP) is independent of all the branches of government and enjoys functional, organizational, budgetary, financial, and administrative autonomy. Consequently, it may not be impeded or hindered in the exercise of its powers by any authority whatsoever.”*

[107] As regards inter-agency coordination, Article 136 of the CRBV provides that *“Each of the branches of Public Power has its own functions, but the organs charged with exercising the same shall cooperate with one another in attaining the ends of the State.”*; while Article 5 of the LOMP establishes that *“the Authorities, public and private entities and citizens must collaborate with the Public Prosecution Service when they are asked to do so.”*

[108] As for the manner in which decisions are taken, Article 6 of the LOMP provides that *“The Public Prosecution Service is a single, indivisible entity. It shall be run and directed by the Attorney General of the Republic or whoever is standing in for him or her, who shall exercise his or her powers either directly or through officials duly empowered to act as delegates.”*

[109] In-house decisions may be appealed using the remedies established in the Organic Law of Administrative Procedures (LOPA), which are the appeal of reconsideration, appeal to a superior, appeal for review, and judicial complaint against an administrative decision (Articles 85-89 of the LOPA).

[110] With respect to the way in which MP’s most senior authorities are appointed, as indicated earlier, the Attorney General sits on the Republic Ethics Council, which exercises Citizen Power (Article 273 of the CRBV) and is, at the same time, part of the judicial system (Article 253 of the CRBV).

[111] Accordingly, Article 284 of the CRBV provides that: *“To be General Prosecutor [Tr. Attorney General] of the Republic, a person must meet the same eligibility requirements that apply to justices of the Supreme Tribunal of Justice [Tr. Supreme Court]. The General Prosecutor of the Republic [Tr. Attorney General] shall be designated for a seven year term.”*

[112] That means that to become Attorney General, a person must: *“1. Have Venezuelan nationality by birth and possess no other nationality. 2. Be recognized as an honorable citizen. 3. Be a jurist of recognized competence; enjoy a good reputation; have a minimum of 15 years’ experience practicing law and have a post graduate degree in law, or have at least 15 years’ experience as a university professor of law, having obtained the rank of full professor; or be or have been a superior court judge in the specialty of the division for which he/she is a candidate,*

²³ Tr. The published English translation used (and corrected) in this document is posted at: <http://www.venezuelaemb.or.kr/english/ConstitutionoftheBolivarianingles.pdf>

having been a sitting judge for at least 15 years and gained recognized prestige in the performance of her/his duties. 4. Any other requirements established by law. (Article 263 of the CRBV).

[113] At the same time, the appointment of Citizen Power members and hence that of the Attorney General of the Republic is governed by the provisions of Article 279 of the CRBV. This Article provides that the Republican Ethics Council shall convene a Citizen Power Nomination Evaluating Committee, which shall be made up of representatives from various sectors of society, and shall conduct public proceedings resulting in the provision of a list of three candidates for consideration by the National Assembly. By a two-thirds vote of its members, the National Assembly shall select within 30 calendar days the member of the Citizen Power organ under consideration. If the National Assembly has not reached an agreement by the end of that period, the Electoral Authority shall submit the list of three candidates to a public referendum.

[114] If the Citizen Power Nomination Evaluating Committee has not been convoked, the National Assembly shall proceed, within such time limit as may be determined by law, to designate the member of the pertinent Citizen Power organ.

[115] The body responsible for holding the Attorney General liable for his or her actions and for deciding whether or not she or he should remain in office shall be the National Assembly, following a pronouncement by the Supreme Court of Justice (Articles 276 and 279 of the CRBV).

[116] Regarding the way the MP's human resources are selected, Article 93 of the Organic Law of the Public Prosecution Service (LOMP) provides that: "*A career service shall be established in the Public Prosecution Service, whose rules with respect to entry, promotion, transfer, suspension, job stability, and retirement from service shall be governed by the provisions of this Law and the Staff Rules of the Public Prosecution Service.*"

[117] In addition, Article 94 of the same LOMP provides that: "*To enter the career service, a candidate must show credentials and pass a competitive, public exam*" for which "*the Attorney General shall establish the terms, conditions, and requirements, through a resolution in accordance with the provisions of this Law.*"

[118] Along the same lines, Article 99 of the LOMP provides that: "*The Attorney General shall organize a public competitive process for the examination of credentials and merits to fill the positions of prosecutors in the Public Prosecution Service and their alternates...*"

[119] The Staff Rules of the Public Prosecution Service (EPMP) regulate all matters pertaining to the working conditions for prosecutors, prosecuting attorneys for cases involving minors, staff members and other personnel of the Public Prosecution Service, except its workers, whose conditions of work shall be governed by the corresponding collective contract under which they were hired (Article 1 of the EPMP).

[120] At the same time, Article 3 of the EPMP establishes that: "*Those who join the Public Prosecution Service through appointment, satisfactorily complete the probation period established in Article 8, and perform full-time functions shall be career staff members or career employees,*" and "*Positions shall be considered subject to free appointment and dismissal if they are determined to be such when the staff member or employee is appointed, or pursuant to a resolution to that effect issued by the Attorney General. Positions considered subject to free appointment and dismissal by the Attorney General and excluded from career service terms and conditions include, inter alia: Directors of the Office of the Attorney General, Deputy Directors, Coordinators, Heads of Division, Heads of Department, Unit Chiefs, Auditors, Registrars of*

Assets and Materials, Storage Managers, General Services Supervisors, Photocopying and Printing Service Supervisors, Photocopy Machine Operators, Media Personnel (comunicadores sociales), staff and employees providing services relating to the security of the Attorney General and of the various units in the Public Prosecution Service.”

[121] Likewise, Article 4 of the EPMP establishes that the purpose of the MP career service is to ensure job stability for the Institution’s prosecutors, staff, and employees; regulate the terms and conditions governing entry, retention, and severance; and establish sanctions and the procedure for imposing them.

[122] Article 7 of the EPMP provides that when the Attorney General deems it fit to do so, professional positions may be filled through competitive examination of credentials. However, appointments for the positions of Senior Prosecutor (*Fiscal Superior*) in the Public Prosecution Service (MP), MP Prosecutor, and Prosecutor for Juvenile Cases (*Procuradores de Menores*) must be filled through competitive proceedings, in accordance with the regulations contained in the LOMP and in the EPMP itself.

[123] Thus, during the on-site visit, the representatives of the MP reported that in order to be a candidate for competitions for the position of public prosecutor candidates had to have completed the two-year training program for entry into the public prosecution service taught by the MP’s National Public Prosecutors Academy (*Escuela Nacional de Fiscales*).

[124] The eligibility requirements for public prosecutors are set out in Articles 9 to 16 of the EPMP. while Article 87 of the LOMP provides that: “*Staff Positions in the Public Prosecution Service are incompatible with the performance of any other position, profession, or public or private activity, except academic, incidental (accidentales), welfare, or teaching...activities.*”

[125] Provisions regarding the liability of MP staff are to be found in Title VIII of the LOMP, entitled “Administrative and Disciplinary Sanctions.” Article 117 therein lists the grounds on which staff in the Public Prosecution Service may be disciplined by the Attorney General, without prejudice to their liability for any crimes or misdemeanors they commit.

[126] Chapter II of the EPMP, “Disciplinary Rules,” also addresses sanctions imposed by the MP (Articles 108-132). In addition, during the on-site visit, the representatives of the MP reported that the body responsible for establishing disciplinary liability of Public Prosecutors, Attorneys and other MP professional staff who have been denounced and for triggering the corresponding sanctions is the Inspection and Discipline Directorate. In the case of disciplinary liability of administrative staff in the MP, the body responsible for determining it is the Office of the Coordinator for Labor and Staff Affairs.

[127] As regards the existence of manuals or other documents with job descriptions for MP personnel, during the on-site visit, the representatives of the MP reported that the Institution has a Job Classification and Description Manual, with its corresponding pay scale. Furthermore, both in its reply to the questionnaire and during the on-site visit, the State under review reported that MP personnel receive periodic training through the National Public Prosecutors Academy, in the form of courses, workshops, day seminars, and forums tailored to the various areas dealt with by the Institution.²⁴

²⁴ Response of Venezuela to the questionnaire for the Fourth Round, p. 34.

[128] The MP also has documented procedures for the tasks it performs, such as the Organization Manual of the MP Public Prosecutor's Office, the Manual on the Role of the MP Public Prosecutor in Criminal Proceedings, and the Single Handbook on Procedures to be followed in the Physical Evidence Custody Chain,²⁵ as well as other documents.

[129] As regards institution-building and quality improvement actions undertaken, in its reply the State under review says that plans have been developed to address the proceedings backlog. They include establishing flagrante delicto chambers and public prosecutor's offices specializing in trial-related procedures (*fiscalías de juicio*); programs to get rid of bottlenecks by creating Immediate Screening Units for Cases up to 2011; shift duty systems in police stations and police bodies, and the establishment of Municipal Public Prosecutors' Offices.²⁶

[130] In addition, with reference to the implementation of modern systems or technologies to facilitate the MP's work, the State under review reports in its reply that: "The 2008-2014 Strategic Plan established instructions and strategic guidelines for a structural and functional revamping of the Institution, a review and automation of administrative procedures, the installation of advanced technology with a view to creating a uniform nationwide platform. It also envisaged concrete actions, such as: the provision of technological resources nationwide; interconnection of Public Prosecution Services throughout the national territory; training of staff in the scope and rules associated with the technological platform; the establishment of an Institutional Management System based on a single technological platform; and the design of multiple systems for expediting procedures."²⁷

[131] As for the way in which citizens are informed as to the MP's objectives and functions, the procedures established to enable it to do its job, and how to interact with the Institution, the State under review indicates in its reply that such information is furnished through several channels, including the Offices for Attending to Citizens, Care Unit for Victims, the Immediate Case Screening units (UDIC), the Social Management Coordination Office, the "0800- FISCA - 00" hotline, and the MP's Internet portal.²⁸

[132] Finally, regarding the way in which the MP's budgetary needs are met, Article 273 of the CRBV provides that: "*Citizen Power is independent, and its organs enjoy functional, financial, and administrative autonomy. To this end, from the general State budget it shall be allocated a variable annual budget appropriation,*" and the Public Prosecution Service is an organ of Citizen Power. The State under review also reported in its reply that "budgetary resources are requested by drawing up a preliminary draft budget, the Annual Operating Plan, and a distribution of the budgetary resources forming part of the Draft Budget for each fiscal year, based on the 2008-2014 Strategic Plan of the Public Prosecution Service."²⁹

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

[133] The Public Prosecution Service (MP) has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were described in brief in section 2.1

²⁵ *Idem*, pp. 34-35.

²⁶ *Idem*, p. 35

²⁷ *Idem*.

²⁸ *Idem*, pp.35-37.

²⁹ *Idem*, pp. 38-39.

of this report. Nevertheless, the Committee deems it appropriate to make a number of observations in relation thereto:

[134] First, as regards the appointment of the Attorney General, the Committee notes that, as indicated in the foregoing section on the existence of the legal framework, Article 279 of the Constitution of the Bolivarian Republic of Venezuela (CRBV) provides for his selection through a Citizen Power Nomination Evaluating Committee made up of representatives of various sectors in society which shall conduct public proceedings resulting in the provision of a list of three candidates to be submitted for consideration by the National Assembly.

[135] At the same time, the Committee notes that the same Article of the C RBV also provides for the possibility that the above-mentioned Nomination Evaluation Committee is not convened, in which case the National Assembly shall proceed to appoint the Attorney General directly, thereby eschewing the public proceedings for selecting the list of three candidates.

[136] There the Committee observes that the Organic Law of Citizen Power (LOPC) regulates Article 279 and that the procedure for installing the Nomination Evaluation Committee is governed by its Articles 23 to 27. Nevertheless, the Committee points out that the LOPC does not specify the circumstances under which the Committee might not be convened. Here the Committee considers that it would be beneficial for the State under review to consider adopting the appropriate regulatory measures for establishing the specific circumstances under which the Nomination Evaluation Committee might not be convened, to which end it made a recommendation in the section on the Office of the Comptroller General of the Republic (CGR) that also applies to the MP, given that the latter is in the same situation (see recommendation 1.4.1 in chapter II of this report).

[137] Second, as regards the way in which the MP is staffed, the Committee notes that the Organic Law of the Public Prosecution Service (LOMP), promulgated in 2007, establishes the career service for all staff of the Public Prosecution Service and makes competition a requirement *sine qua non* to work in the MP.

[138] However, Article 7 of the Staff Rules of the MP (EPMP), issued in 1999, provides that, although competition is required for appointment to the positions of Senior Prosecutor in the Public Prosecution Service, Public Prosecutors in the MP, and Prosecutors for Cases involving Minors, in the case of other professional positions in the MP competitions shall be held when the Attorney General deems fit. Furthermore, no mention is made of a requirement for administrative staff to compete for entry into the Public Prosecution Service.

[139] On this, the Committee notes that during the on-site visit the representatives of the MP pointed out that this inconsistency is due to the fact that the LOMP was promulgated in 2007, while the EPMP date back to 1999 and have not been updated. They said that the applicable current regulation requires open competition for all personnel, who, once they have been appointed in this way become career staff members. That takes account of the fact that the LOMP takes precedence over the EPMP.

[140] Without prejudice to the recommendations made to the State under review during the Second Round regarding the Attorney General's discretionary powers in respect of competitions for professional positions in the MP, the implementation of which will be analyzed in the Fifth Round, the Committee considers that it would be beneficial for the State under review to update the EPMP, in such a way as to bring them into line with the LOMP. The Committee will make a recommendation (see recommendation 2.4.1 in chapter II of this report).

[141] Likewise, the Committee notes that Article 8 of the EPMP establishes that “*Positions shall be considered subject to free appointment and dismissal if they are determined to be such when the staff member or employee is appointed, or pursuant to a resolution to that effect issued by the Attorney General...*” and proceeds to provide a list of positions deemed to be trust positions. On this, the Committee considers that this provision leaves a very wide margin of discretion to the Attorney General to determine which positions shall be subject to free appointment and dismissal. Without prejudice to the recommendations made to the State under review during the Second Round, which had to do with reviewing the list of trust positions and whose implementation will be analyzed in the Fifth Round, the Committee considers that it would be beneficial for the State under review to consider revising this provision in such a way as to ensure that the positions subject to free appointment and dismissal is not left entirely to the discretion of the Attorney General. The Committee will make a recommendation in this regard (see recommendation 2.4.2 in chapter II of this report).

[142] Likewise, during the on-site, visit, the MP representatives pointed out that, although the LOMP had been published since 2007, making competitive exams an indispensable requirement for entering the Public Prosecution Service, those exams were not in fact being held. They went on to say that exams did then begin, starting in 2011, as a result of which the Institution now has career service Public Prosecutors.

[143] Here, the Committee notes that, even though exams have begun for entry into the Public Prosecution Service, the representatives of the MP said that only four public prosecutors had entered the service since 2007, when the LOMP was promulgated. At the same time, the Committee notes that the MP’s 2013 Annual Report refers to the entry into the MP of 157 provisional prosecutors and ancillary staff³⁰ in that year alone, who were recruited using a method other than the aforementioned competitive exam and who did not gain access to the career service. During the on-site visit the representatives of the MP said that they intended to make much broader use of competitive exams, in order to increase the number of career service prosecutors.

[144] In this regard, the Committee considers that the State under review could consider strengthening the Public Prosecution Service by holding competitive exams for entry into the Public Prosecution Service in order to comply with the LOMP and so that this oversight organ can have the career service prosecutors and other personnel it needs to fully perform its functions. The Committee will make a recommendation in this regard (see recommendation 2.4.3 in chapter II of this report).

[145] Third, the Committee observes that, during the on-site visit, the representatives of the MP reported that one of the requirements for application to do the entry exams for public prosecutor positions is to have completed the two-year part-time training program for entry into a career as a public prosecutor, taught at the MP’s National Prosecutors’ Academy. That same statement is to be found in the reply to the questionnaire.³¹ However, the Committee notes that the LOMP nor the EPMP cite that requirement. Consequently, the Committee believes that it would be useful for the State under review to consider adopting the legislative measures necessary to include, within its laws, the completion of the training program for entry to the prosecutorial career as a requirement for competing in selection competitions for prosecutors. The Committee will make a recommendation (see recommendation 2.4.4 in chapter II of this report).

³⁰ See the MP’s 2013 Annual Report at http://www.mp.gob.ve/c/document_library/get_file?uuid=017b714e-2c2c-4f03-9de6-0e73c72840bc&groupId=10136

³¹ Response of Venezuela to the questionnaire for the Fourth Round, p. 33.

[146] Fourth, the Committee notes that the LOMP envisages specialized public prosecutors, such as MP Prosecutors specializing in judicial proceedings; MP prosecutors specializing in the System for Family and Child Protection; MP prosecutors versed in environmental protection, and so on. Nevertheless, the LOMP says nothing about MP prosecutors specializing in Anti-Corruption matters, even though the MP has an Anti-Corruption Directorate.³² Here, the Committee considers that it would be useful for the State under review to include in the LOMP prosecutors specializing in anti-Corruption cases, so as to bolster its work in this field. The Committee will make a recommendation in this regard (see recommendation 2.4.5 in chapter II of this report).

[147] Fifth, as regards mechanisms for attending to claims, complaints, or denunciations relating to compliance with the MP's objectives and the performance of its personnel, the Committee notes that the Attention to the Public section of the MP's Internet Portal contains information on how citizens can file complaints.³³ However, there is no mention of an electronic mailbox option for registering complaints, denunciations, or suggestions, nor is there such a mailbox on the website. Here, the Committee considers that it would be useful for the State under review to contemplate having a readily accessible user-friendly mailbox for complaints and denunciations on the MP website, and to include information regarding its use and purpose. The Committee will make a recommendation (see recommendation 2.4.6 in chapter II of this report).

[148] Sixth, the Committee notes that during the on-site visit the representatives of the MP pointed out that they have a proposal regarding the establishment of a Rapid Response to Corruption public prosecutors' office (FRICC)³⁴, the purpose of which will be to provide "*an immediate response to denunciations made by citizens who are induced or coerced by government officials, especially police officers, in the course of their duties, who demand or elicit promises of sums of money or other improper gifts, in return for not harming them or involving them in criminal, administrative, or any other kind of proceedings.*" They added that the idea was to establish such offices in the regions, not just in the Caracas metropolitan area.

[149] On this matter, the representatives of the MP said that, although the project had been approved, the FRICC had not yet been established. In connection with this, the Committee deems it important that the State under review consider supporting the MP, from available resources, with the human and budgetary resources required for the FRICC to start operating as soon as possible³⁵ and to enable it to expand into the regions as well. The Committee will make a recommendation in that regard (see recommendation 2.4.7 in chapter II of this report).

[150] Seventh, in its reply the State under review indicates that some of the difficulties it faces are "*poorly organized information, complicated and slow administrative procedures for providing the resources needed for the MP to perform its tasks, poor quality and relevance of the data provided to the Public Prosecution Service, the vulnerability of the anti-corruption oversight*

³² The Anti-Corruption Directorate at the Public Prosecution Service (MP) is the unit that oversees interventions by prosecutors in cases of crimes against public property, banks, insurance companies, and capitals markets. It is also responsible for bringing civil suits to recoup damages to property. <http://www.mp.gob.ve/web/guest/165>

³³ See <http://www.mp.gob.ve/web/guest/138>

³⁴ See http://www.oas.org/juridico/PDFs/mesicic4_ven_pre_con_def.pdf

³⁵ In its comments document on the draft preliminary report, the State under review indicated the following: "*Venezuela wishes to inform the Committee that per Resolution No. 1648 of October 16, 2014, published in Official Gazette of the Bolivarian Republic of Venezuela No. 40,526 of October 24, 2014, national-level Prosecutor's Office No. 93 of the Public Prosecution Service was created, with jurisdiction over anticorruption matters (immediate response), and has been fully operational since November 11, 2014.*"

*systems which means that information can be tampered with...*³⁶. The representatives of the MP said that several measures were in the process of being implemented to address these problems, including a system involving a Single Register of Cases since January 1, 2013, but it is used only in the various dependencies of the Public Prosecution Service nationwide. They added that inter-agency agreements were being drawn up to ensure that the system can cover all bodies receiving complaints.

[151] Here, the Committee thinks it would be beneficial for the State under review to consider strengthening inter-agency cooperation mechanisms between the MP and the principal and auxiliary criminal investigation bodies, in order to ensure that all of them are encompassed in the one-number-per case denunciation system. The Committee will make a recommendation in that regard (see recommendation 2.4.8 in chapter II of this report).

[152] Eighth, the Committee notes that during the *on-site* visit, the representatives of the MP said that one of the difficulties they faced was the lack of sufficient budgetary resources for establishing units with accounting and financial expertise within the MP, as well as for increasing the number of public prosecutors' offices in both the metropolitan area and in the countryside, which would decentralize services, bolster the MP's overall capacity, and expedite procedures.

[153] As a matter of fact, an example of the MP's recent efforts to strengthen the criminal investigations, including the investigation of corruption offenses, was the establishment in May 2014 of the General Directorate to Support Criminal Investigation, which recruited 7 accountants and 8 experts in appraisal, and one crime investigator and assigned them to the Financial Analysis, Accounting, and Appraisals Unit.³⁷ Nevertheless, the Committee notes that the representatives of the MP pointed out that, despite that improvement, they still largely depend on the collaboration of State criminal investigation bodies and need more experts of their own, distributed throughout the national territory, and that one of their goals was to establish a Mega Public Prosecutor's Office³⁸ with a much more robust structure and its own specialists, in order to expedite the investigation process and render it more efficient.

[154] Here, the Committee thinks it would be beneficial for the State under review to consider strengthening the MP, endowing it, within available resources, with the human and budgetary resources needed for it to fully perform its functions, as well as decentralize the system and expedite investigation processes. The Committee will make a recommendation in this regard (see recommendation 2.4.9 in chapter II of this report).

[155] Finally, as regards technical cooperation needs, during the *on-site*, visit the representatives of the MP said it would be very useful to exchange experiences with other Public Prosecution Services on common anti-corruption topics. In this connection, the Committee takes note of the needs mentioned by the MP and of the need for the State under review to provide the necessary support. It also invites the states parties (in particular, their public prosecution services)

³⁶ Response of Venezuela to the questionnaire for the Fourth Round, p. 47.

³⁷ At the time of the on-site visit, the General Directorate to Support Criminal Investigation established in May 2014 had 7 accountants, 8 experts in appraisal, and one crime investigator. 91 anti-corruption cases had been assigned to them. See http://www.oas.org/juridico/PDFs/mesicic4_ven_pre_con_def.pdf

³⁸ In its comments document on the draft preliminary report, the State under review indicated the following: "*Venezuela wishes to inform the Committee that per Resolution No. 1647 of October 16, 2014, published in Official Gazette of the Bolivarian Republic of Venezuela No. 40,526 of October 24, 2014, national-level Prosecutor's Office No. 67 was created, with jurisdiction over anticorruption matters (Mega Public Prosecutor's Office...*"

and other cooperation organizations to assist the institution in these areas. The Committee will make a recommendation in that regard (see recommendation 2.4.10 in Chapter II of this report.

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

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

[157] Both in its reply to the questionnaire³⁹ and during the on-site visit, the State under review provided information regarding its corruption prevention functions, including, notably, the following:

[158] In its reply, the State under review lists a series of preventive actions between 2007 and 2012, including the establishment of committees for liaising with various government agencies so as to ensure that committed institutions provide mutual assistance to each other (2007); the regional seminar entitled “*Fighting Corruption*” co-sponsored by the French Embassy (2008); various courses and workshops on corruption prevention for government officials, including National Guard officers, on the criminal offense categories contemplated in the Anti-Corruption Law (LCC) and academic programs on the issue for officers about to join the National Police (2009); anti-corruption training for delegates of the National Institute for Prevention, Health, and Workplace Safety (Inpsasel); training for officials in the Comptroller’s Office of the Municipality of Sucre and member of the community councils in that Municipality on offenses established in the LCC and possible irregularities on the part of members of those Community Councils; training for officers in the Bolivarian National Guard on “Crime Prevention and Corruption” (2011); and workshops for officials at the Ministry of People’s Power for Communes and Social Protection and for members of the various bodies involved in Communal Power, aimed at avoiding possible diversion of funds granted by the Venezuelan State (2012)

[159] In addition, during the on-site visit the representatives of the MP provided the following statistical information on actions undertaken by the Technical Anti-Corruption Team, by type of intervention:

Table 1:

Actions undertaken by the Technical Anti-Corruption Team by type of intervention 2013 and 2014	
Type of intervention	Quantity
Face-to face advice sessions	2405
Technical reports produced	211
Support for the Case Backlog Reduction Plan	199
Results of Analyzed Expert Appraisals	108

³⁹ Response of Venezuela to the questionnaire for the fourth round, pp. 42-43.

Interviews supported	41
Telephonic advice sessions	25
Participation in trials as technical consultants	13
Advisory sessions for experts	1

[160] The Committee finds that the above information serves to demonstrate that measures for the prevention of acts of corruption have been carried out at the MP, in keeping with its functions in that regard.

[161] Nevertheless, the Committee notes that this information is not complete and that, for instance, foregoing Table No. 1 covers only 2013 and 2014, and is not broken down by year. In addition, the information on training and awareness-raising highlighted in the previous paragraph only goes as far as 2012 and does not include information for 2010.

[162] At the same time, in its reply the State under review indicates that the Inspection and Discipline Directorate also performs guidance and prevention functions and has important tools for that purpose, such as: *“i) Observations and formal requests essentially designed to warn or draw an official’s attention to misconduct, with a view to him or her correcting that behavior and sticking to the rules in force; ii) Recommendations made to an official as the result of a routine inspection, when some minor irregularity is detected, advising that official regarding in-house rules, with a view to him or her making the necessary adjustments; iii) circulars and instructions aimed at regulating in-house procedures or issuing instructions or guidelines regarding specific matters, so as to establish uniform criteria for actions undertaken by the Institution; iv) responses to queries regarding disciplinary matters; and v) presentations, reports, and talks to disseminate the work of the Directorate.”*⁴⁰

[163] Here, the Committee notes that the State under review did not provide statistics on these prevention tasks either in its reply to the questionnaire or during the on-site visit. On this matter, the Committee deems it important that the MP consider completing its statistics, disaggregated by year, on activities undertaken to prevent corruption, including figures on the preventive activities of the Inspection and Discipline Directorate, so that said information can be used to identify challenges and, where necessary, recommend corrective measures. The Committee will therefore make a recommendation to that effect (see recommendation 2.4.11 in chapter II of this report).

[164] At the same time, the State under review also provided statistical information in both its reply to the questionnaire and in the on-site visit on the results of its efforts to detect, investigate, and punish acts of corruption, including, in particular, the following:

Table 2:

List of Conclusive Acts in Relation to Corruption						
2008 - 2013						
Conclusive Act	2008	2009	2010	2011	2012	2013

⁴⁰ Response of Venezuela to the questionnaire for the Fourth Round, p. 44.

Indictments	356	594	596	1184	1327	1115
Dismissals of Proceedings	1081	1820	2443	4103	5502	5549
Archived Cases (<i>Archivos Fiscales</i>)	203	176	171	57	156	136
Total	1640	2590	3210	5344	6985	6800

[165] The first thing that the Committee notes concerning the foregoing Statistical Table No. 2 is that it shows a large number of cases dismissed in relation to the number of indictments, which have gone up each year. On this matter, the Committee considers that it would be useful for the State under review to conduct a study on the large number of dismissals of cases handled by the MP, so as to identify challenges, and, if necessary, take corrective steps. The Committee will make a recommendation (see recommendation 2.4.12 in chapter II of this report).

Table 3:

2014 Statistics	
Anti-Corruption Directorate	
ITEMS	FROM JANUARY 1 SEPTEMBER 25, 2014
PERSONS ARRESTED	1058
PERSONS CHARGED	646
PERSONS INDICTED	926
PERSONS CONVICTED AFTER ADMITTING FACTS	547
PERSONS CONVICTED IN ORAL AND PUBLIC HEARINGS	41
NUMBER OF POLICE RAIDS	116

[166] With respect to foregoing Table 3, the Committee notes that it only contains data for 2014, so that no comprehensive analysis is possible based on those figures.

[167] Notwithstanding the comments made in the preceding paragraphs, the Committee notes that, with regard to the MP's functions of investigating acts of corruption, the information provided by the State under review does not show the total number of investigations initiated in each of the past five years; how many are on-going; how many have been suspended, for whatever reason; how many are such that a decision on the merits can be taken; or how many have been referred to the competent body for such a decision to be taken. Here, the Committee deems that it would be useful for the State under review to consider keeping statistics on this matter that include the aforementioned information, so as to identify challenges, and, if necessary, take corrective steps (see recommendation 2.4.13 in chapter II of this report).

[168] Furthermore, with respect to the case files referred to the MP by the Office of the Comptroller General of the Republic (CGR) because they include circumstantial evidence of punishable offenses, or those referred by the MP to the judicial authority as a result of its investigations, the Committee observes that there is no inter-agency coordination mechanism to keep track of these cases between the CGR, the MP, and the Judiciary, thereby enabling these oversight bodies to ascertain the end-result of those cases. The Committee considers that it would be highly useful for the State under review to ponder the possibility of implementing a mechanism of that nature between the aforementioned oversight bodies. To that end, the Committee made a recommendation in the section on the CGR that is also relevant to the MP (see recommendation 1.4.16 in chapter II of this report).

[169] Finally, regarding the MP's functions of imposing sanctions on corrupt practices involving disciplinary liability, the Committee notes that the MP has its Inspection and Discipline Directorate, one of whose functions is to institute appropriate proceedings and assert the disciplinary powers vested in the Attorney General over the public prosecutors and other staff of the MP, pursuant to Article 25.16 and Article 117 of the LOMP. However, the Committee notes that the State under review did not provide statistical information, either in its reply to the questionnaire or during the *on-site* visit, showing the total number of cases investigated that were ready for a decision to be taken in each of the past five years; the number of decisions actually taken with respect to those cases; the number of those decisions that resulted in conviction or punishment; the number of those decisions that found no liability or resulted in acquittal; the number of those decisions in which the punishment or liability prescribed because the decision was not taken within the time frame allowed; or the amount of fines imposed; or the compensation ordered to be paid to the State for damages that actually reached the Treasury in each of the past five years. The Committee will make a recommendation (see recommendation 2.4.17 in chapter II of this report).

2.4. Conclusions and recommendations

[170] Based on the comprehensive analysis conducted in the foregoing sections with respect to the Public Prosecution Service (*Ministerio Público* - MP), the Committee arrives at the following conclusions and recommendations:

[171] The Bolivarian Republic of Venezuela has considered and adopted measures designed to maintain and strengthen the Public Prosecution Service (MP) as an oversight body, pursuant to Chapter II, Section 1 of this report.

[172] 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 updating the Staff Rules of the Public Prosecution Service (EPMP), issued in 1999, in such a way as to align them with the provision of the Organic Law of the Public Prosecution Service (LOMP), promulgated in 2007, above all with respect to the competitive exam requirement for entry into the Public Prosecution Service (MP) (see chapter II, section 2.2 of this report).
- 2.4.2. Consider revising Article 8 of the EPMP in such a way that the determination of which positions shall be subject to free appointment is not left entirely to the discretion of the Attorney General (see chapter II, section 2.2 of this report).
- 2.4.3. Strengthen the MP by holding competitive examinations for entry into the Service, so as to comply with the LOMP and let this oversight body have the

public prosecutors and other career service staff it needs to fully perform its functions (see chapter II, section 2.2 of this report).

- 2.4.4. Consider taking appropriate legislative steps to incorporate into the corresponding law the requirement that candidates for the position of public prosecutor complete the training program (see chapter II, section 2.2 of this report).
- 2.4.5. Consider taking the required legislative steps to include in the LOMP the category of MP Prosecutors Specializing in Anti-Corruption cases (see chapter II, section 2.2 of this report).
- 2.4.6. Include an easily accessible and user-friendly mailbox in the MP's Internet Portal for complaints, denunciations, and suggestions, and add information about how to use it (see chapter II, section 1.2 of this report).
- 2.4.7. Provide the MP, within available resources, with the human and budgetary resources needed to strengthen the Public Prosecutors' Rapid Response to Corruption Office (FRICC) and to enable it to expand into regions other than the capital (see chapter II, section 1.2 of this report).
- 2.4.8. Strengthen inter-agency cooperation mechanisms between the MP and the principal and auxiliary investigation bodies, making sure that all of them are included in the MP's single case oversight system (see chapter II, section 1.2 of this report).
- 2.4.9. Strengthen the MP by providing it, within available resources, with the human and budgetary resources needed for it to perform its functions fully, and for the system to become decentralized, with more expeditious investigation processes (see chapter II, section 1.2 of this report).
- 2.4.10. Make the necessary arrangements with other States and cooperation agencies to provide the MP with the technical cooperation needed to facilitate the exchange of experiences between this oversight body and the Public Prosecution Services in other States Parties to the MESICIC, on shared anti-corruption concerns (see chapter II, section 1.2 of this report).
- 2.4.11. Complete the country's statistics, broken down by year, on the corruption prevention activities of the MP, including the preventive activities of the Inspection and Discipline Directorate, in such a way that this information can be used to identify challenges and recommend corrective measures, where appropriate (see chapter II, section 1.3 of this report).
- 2.4.12. Conduct a study of the reasons for the large number of dismissals of cases handled by the MP, with a view to identifying challenges and, if necessary, adopting corrective measures (see chapter II, section 1.3 of this report).
- 2.4.13. Compile statistics relating to the MP's functions of investigating acts of corruption that show the total number of investigations initiated; how many are on-going; how many have been suspended, for whatever reason; how many are such that a decision on the merits can be taken; or how many have been referred to the competent body for such a decision to be taken, with a view to identifying

challenges and, if necessary, adopting corrective measures (see chapter II, section 1.3 of this report).

- 2.4.14. Compile statistics relating to the MP's disciplinary and administrative sanction functions, showing the total number of investigated cases ready for a decision; the number of decisions actually taken in those cases; the number of those decisions that resulted in conviction or punishment; the number of those decision that found no liability or resulted in acquittal; the number of those decisions in which the punishment or liability prescribed because the decision was not taken within the time frame allowed; or the amount of fines imposed; or the compensation ordered to be paid to the State for damages that actually reached the Treasury, with a view to identifying challenges and, if necessary, adopting corrective measures (see chapter II, section 1.3 of this report).

3. SUPREME COURT OF JUSTICE (TSJ)

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

[173] The Supreme Court of Justice is subject to a set of provisions making up its legal framework as well as other measures that refer, inter-alia, to the following:

[174] Regarding the nature, objectives, and functions of the TSJ, Article 253 of the Constitution of the Bolivarian Republic of Venezuela (CRBV) establishes that “...*The organs comprising the Judicial Power are charged with dealing with all cases and matters within their competence, through such procedures as may be determined by the laws, and with carrying out or causing the execution of their judgments*” and that “*The justice system consists of the Supreme Tribunal of Justice, such other courts as may be determined by law, the Office of Public Prosecutions [Tr. Ministerio Público or Public Prosecution Service], the Public Defender's Office [Tr. Ombudsperson's Office], criminal investigation organs, judicial assistants and officials, the penitentiary system, alternative means of justice, citizens participating in the administration of justice in accordance with law and attorneys at law admitted to practice.*”

[175] In addition, Article 4 of the Justice System Law provides that “*Through the Justice System, the State shall guarantee cost-free, accessible, impartial, appropriate, transparent, autonomous, independent, responsible, equitable, and expeditious justice, without undue delays, unnecessary procedural requirements, and useless reconsiderations (reposiciones inútiles), upholding it as a State goal and value which will not be thwarted, because unnecessary formalities are avoided.*”

[176] Article 254 of the CRRV likewise establishes that “*The Judiciary is independent and the Supreme Court of Justice shall enjoy operational, financial, and administrative autonomy. To this end, in the national general budget a variable annual amount at least equivalent to 2% of the ordinary national budget shall be allocated to the justice system in order to enable it to function effectively; such amount shall not be reduced or modified without prior authorization by the National Assembly.*”

[177] At the same time, Article 1 of the Organic Law of the TSJ (LOTSJ) establishes that “...*The Supreme Court of Justice is part of the Justice System, it is the highest governing body in the Judiciary and it enjoys functional, financial, and administrative autonomy. As the governing and highest representative organ in the Judiciary, it is responsible for directing, governing, and administering the Judiciary, including the preparation and execution of its budget, as well as inspecting and supervising all courts in the Republic and Ombudspersons' Offices, in accordance*

with the Organic Law of the Judiciary, the Code of Ethics for Venezuelan Judges, and this Law, which powers shall be exercised through the Executive Directorate of the Judiciary (Dirección Ejecutiva de la Magistratura)... ”

[178] As for the way the TSJ is structured, Article 2 of the LOTSJ establishes that “The Supreme Court of Justice comprises and operates through the following divisions (*Salas*): *Constitutional, Political-Administrative, Civil Law Annulment (Casación), Criminal Law Annulment (Casación), and Social Law Annulment (Casación); and through the full court sitting en banc, which shall comprise the judges of all the aforementioned divisions...*”

[179] The TSJ’s powers are set forth in Article 266 of the CRBV, as follows: “*1. To exercise constitutional jurisdiction in accordance with title VIII of this Constitution. 2. To rule as to whether or not there are grounds for impeaching the President of the Republic or whomever may be acting in that capacity, and if so, to remain cognizant of the case, subject to the approval of the National Assembly, until the final judgment. 3. To rule as to whether or not there are grounds for impeaching the [Executive]Vice President [of the Republic]; members of the National Assembly or the Supreme Tribunal of Justice itself, Ministers; the Attorney General; the Prosecutor General; the Comptroller General of the Republic; the Ombudsperson; Governors; officers, generals and admirals of the National Armed Forces; or the heads of Venezuelan diplomatic missions; and, if so, to refer the record to the Prosecutor General of the Republic or whomever is acting in his capacity, where appropriate, and if the offense charged is a common crime, the Supreme Tribunal of Justice shall remain cognizant of the case until a final judgment is handed down. 4. To resolve any administrative controversies that may arise between the Republic, any State, Municipality or other public entity, when the other party is also one of these same organs, except in the case of a controversy between Municipalities belonging to the same State, in which case competence may be vested by law in another court. 5. To declare null and void, in whole or in part, regulations and other general or individual administrative actions of the National Executive Branch, wherever admissible. 6. To hear appeals regarding interpretation of the content and scope of legal instruments, as contemplated in law. 7. To decide competence conflicts between courts, whether ordinary or special, when there is no higher or common court shared by both in the hierarchical order. 8. To hear appeals for annulment. 9. Such others as may be vested in it by law. The powers indicated under (1) shall be exercised by the Constitutional Division; those indicated under (2) and (3), in Plenary Session; and those indicated under (4) and (5), by the Political/Administrative Division. The remaining powers shall be exercised by the various divisions as provided for under this Constitution and by law.*

[180] As regards mechanisms for resolving possible jurisdictional conflicts, Article 24.3 of the LOTSJ provides that it is incumbent upon the full court of the TSJ “*to resolve non-cognizance conflicts between courts with different subject matter jurisdictions, when there is no division with a jurisdiction similar to that of the two courts.*”

[181] On this matter, the State under review reports, in its reply to the questionnaire, that, pursuant to the aforementioned provision, “*Resolution of the Full Court of the Supreme Court of Justice N° 2013-0010 , of June 13, 2013, published in Official Gazette N° 29 of July 4, 2013, established two (2) Special Divisions to hear and decide on cases referred for a ruling as to jurisdiction or resolution of jurisdictional conflicts that may have arisen between courts that do not share the same higher court and have different spheres of competence.*”⁴¹

[182] Regarding the way in which the TSJ adopts decisions, in its response the State under review points out that “*The Supreme Court of Justice adopts its decisions through its ordinary*

⁴¹ Response of Venezuela to the questionnaire for the Fourth Round, p. 5.

*courts. It is only after a series of procedures and requirements have been followed or met that this highest court intervenes through one or other of its divisions, depending in the subject matter in question.*⁴²

[183] At the same time, Article 3 of the LOTSJ establishes that “*The Supreme Court of Justice is the highest court in the Republic; except as provided in this Law, no action or appeal shall be heard or admitted against its decisions in any of its Divisions.*”

[184] One should add that decisions relating to judicial disciplinary proceedings may, however, be appealed, through remedies of appeal, actions for enforcement of rights (*amparo*), and appeals for review, as the case may be.

[185] As for the way in which the highest positions within the TSJ are filled, Article 264 of the CRBV provides that: “*The justices of the Supreme Tribunal of Justice shall be elected for a single term of 12 years. The election procedure shall be determined by law. In all cases, candidates may be proposed to the Judicial Nominations Committee either on their own initiative or by organizations involved in the field of law. After hearing the opinion of the community, the Committee shall carry out a pre-selection to be submitted to the Citizen Power, which shall carry out a second pre-selection to be submitted to the National Assembly, which shall make the final selection. Citizens may file objections to any of the candidates, for cause, with the Judicial Nominations Committee or the National Assembly.*”

[186] For its part, Article 270 of the CRBV establishes that “*The Committee on Judicial Nominations is a body charged with advising the Judicial Power on the selection of candidates for designation as justices of the Supreme Tribunal of Justice. In addition, it shall advise the judicial electoral colleges on the election of judge of disciplinary jurisdiction*”.

[187] On this, Article 64 of the CRBV establishes that “*The Committee on Judicial Nominations is a body charged with advising the National Assembly on the selection of candidates for designation as justices of the Supreme Tribunal of Justice. In addition, it shall advise the judicial electoral colleges on the election of judge of disciplinary jurisdiction. It shall sit in the National Assembly, which shall defray its expenses. The Committee on Judicial Nominations shall issue its own internal organizational and operational rules of procedure.*”⁴³

[188] Thus, to be a TSJ judge, the requirements are: “*1. Have Venezuelan nationality by birth, and possess no other nationality. 2. Be recognized as an honorable citizen. 3. Be a jurist of recognized competence; enjoy a good reputation; have a minimum of 15 years experience practicing law and have a post graduate degree in law, or have at least 15 years’ experience as a university professor of law, having obtained the rank of full professor; or be or have been a superior court judge in the specialty of the division for which he/she is a candidate, having been a sitting judge for at least 15 years and gained recognized prestige in the performance of her/his duties. 4. Any other requirements established by law.* (Article 263 of the CRBV)

[189] As regards the competent authority for ensuring that TSJ judges are accountable for their actions and deciding whether they should remain in the position, Article 265 of the CRBV provides that “*Justices of the Supreme Tribunal of Justice may be removed by the National Assembly by a qualified two-thirds majority of the members, after granting the interested party a*

⁴² *Idem*, p. 7

⁴³ The Rules of Procedure of the Committee on Judicial Nominations were published in Official Gazette No. 40.535 on November 6, 2014 and remitted to the Technical Secretariat on November 7, 2014.

hearing; in cases involving serious misconduct already characterized as such by the Citizen Power, on such terms as may be established by law.”

[190] With respect to the way in which TSJ staff are selected, Article 255 of the CRBV establishes that *“Appointment to a judicial position and the promotion of judges shall be carried out by means of public competitions to ensure the capability and excellence of the participants, with selection by the juries of the judicial circuits, in such manner and on such terms as may be established by law. The appointment and swearing in of judges shall be the responsibility of the Supreme Tribunal of Justice. Citizen participation in the process of selecting and designating judges shall be guaranteed by law. Judges shall be removed or suspended from office only through the procedures expressly provided for by law...”*

[191] At the same time, Article 36 of the LOTSJ provides that the powers vested in the TSJ include appointing and swearing in judicial officers and employees whose designation and swearing in are assigned to it by law; to issue rules governing the rights and duties of its staff; and to organize the administrative system for said staff (Articles 36.6 and 36.10).

[192] Likewise, in its response to the questionnaire, the State under review pointed out that *“The Supreme Court of Justice is responsible for appointing or swearing in judges who enter the judicial career service through open competition, pursuant to Article 255 of the CRBV and Article 36.6 of the LOTSJ or who are appointed on a temporary basis.”*⁴⁴

[193] The purpose of the Judicial Career Service Law (LCJ) is *“to ensure the suitability, stability, and independence of judges and to regulate the terms and conditions of their entry, duration of office, and separation from office, and to determine any disciplinary liability incurred by judges in the performance of their duties”* (Article 1).

[194] In addition, Article 3 of the LCJ provides that *“Judges shall enjoy stability in the performance of office. Consequently, they may only be removed or suspended in the exercise of their function in the instances and via the procedures established in this Law...”*

[195] At the same time, during the on-site visit, the representatives of the TSJ reported that there are also Evaluation and Competition Rules governing both the entry into and promotion within the judicial career service.

[196] As regards the requirements for accessing positions in the TSJ, Articles 13 and 36.19 of the LOTSJ provide that clerks of the court (*Secretarios*) must be attorneys, over 30 years of age, who have practiced law or worked in the Judiciary for at least ten (10) years. They also provide that it is incumbent upon the TSJ to appoint alternates to court clerks or bailiffs in the event of a serious violation (*falta absoluta*).⁴⁵

[197] Article 39 of the LOTSJ addresses the subject of incompatibilities/conflicts of interest and establishes that judges may hold academic or teaching positions provided they are not full-time and do not conflict with the performance of their duties. They may also sit on committees codifying, drafting, or amending laws, ordinances, and regulations that, according to the provisions governing them, do not constitute remunerated public office. Judges who are united by marriage, a common law marriage, adoption or kinship, whether direct or collateral, up to the fourth degree of consanguinity or second degree of affinity may not be appointed to serve

⁴⁴ Response of Venezuela to the questionnaire for the Fourth Round, p. 8.

⁴⁵ Response of Venezuela to the questionnaire for the Fourth Round, p. 9.

simultaneously on the TSJ. Should that circumstance occur, the National Assembly shall revoke the later appointment and proceed to select another judge.⁴⁶

[198] The disciplinary rules governing judges are set out in several legal and constitutional provisions, to wit:

[199] Article 265 of the CRBV provides that *“The justices of the Supreme Court of Justice may be removed by the National Assembly by means of a qualified majority of two-thirds of its members, following a hearing extended to the interested party, for serious failings previously assessed by the Citizen’s Branch of Government, in the terms established by law..”*

[200] Similarly, the third paragraph of Article 267 of the CRBV stipulates: *“The discipline system for magistrates and judges shall be based on the Venezuelan Judge’s Code of Ethics to be promulgated by the National Assembly. Disciplinary proceedings shall be public, oral and expeditious, in accordance with due process, subject to such terms and conditions as may be established by law.”*

[201] In addition, Article 273 of the CRBV establishes the Republican Ethics Council, and Article 275 provides that *“The representatives of the Republican Ethics Council shall issue the authorities or officials of the public administration with warnings on their failures to meet their legal obligations. If those warnings are not observed, the Republican Ethics Council may impose the sanctions provided for in law. In the event of recidivism, the President of the Republican Ethics Council will submit a report to the office or agency to which the civil servant or public is attached, for that office or agency to take the appropriate corrective measures, regardless to any other sanctions that may apply in accordance with law”*

[202] Accordingly, Article 62 of the LOTSJ establishes the grounds for removing TSJ judges. Article 63 thereof states that it is incumbent upon the Republican Ethics Council to characterize the offense and up to the National Assembly to rule on removal of judges, pursuant to Articles 273 and 275 of the CRBV.

[203] Similarly, Article 11 of the Organic Law of Citizen Power (LOPC) lists, in its six subsections, the offenses that constitute serious failings on the part of justices.

[204] The disciplinary rules applicable to TSJ employees and workers are regulated by the Civil Service Statutes Law (*Ley del Estatuto de la Función Pública*) and the enabling regulations for the Administrative Career Service law, in the case of TSJ employees, and by the Organic Labor and Workers Law.

[205] With respect to the existence of handbooks or other documents containing job descriptions for TSJ personnel, in its response to the questionnaire the State under review reported that there is a Job Descriptions Manual for the Supreme Court of Justice and other organizational handbooks supplementing the description, functions, and profile for each official.⁴⁷

[206] As for periodic training sessions for staff, in its reply the State under review points out that training is provided through the National Judges Academy (*Escuela Nacional de la*

⁴⁶ *Idem*, p. 9

⁴⁷ *Idem*, p. 9

Magistratura), which is the training center for Venezuelan judges and other members of the judiciary. It follows policies issued by the full court of the Supreme Court of Justice.⁴⁸

[207] At the same time, the TSJ has a number of documented procedures for its day-to-day work, including a series of handbooks and regulations, which are listed in Annex No. 1 to the response to the questionnaire⁴⁹, as well as the automated “Single Agenda” management system “created by the Judiciary in order to form ties between the justice system operators active in criminal proceedings, with a view to centralizing and exchanging information on those proceedings and thereby generating legal certainty and familiarity with the functions performed in the various different spheres of competence assigned to them, *as well as strengthening controls over the possible commission of acts of corruption and expediting proceedings.*”⁵⁰

[208] With respect to institution-building and quality enhancement measures implemented, in both its response to the questionnaire and statements made during the on-site visit, the State under review pointed out that, inter alia, “*the full court of the TSJ had established new courts in the Republic, with various spheres, levels, and geographical areas of competence.*”⁵¹

[209] Regarding the implementation of modern systems and technologies to facilitate its work, the TSJ is using a series of tools, including, in particular: the Judiciary’s Statistical Information System, the aforementioned “Single Agenda” management system; and the technological platform for videoconferencing as a means of expediting proceedings, among others.

[210] As for the dissemination of the TSJ’s objectives and functions and guidelines for citizens on how to interact with the Court, the TSJ has, in addition to its Internet website, a Documentary Information Center that enables interested parties to access cases electronically and read the Judiciary’s Gazette. It also has a Citizens Guidance Office and, inter alia, holds “Meetings of the Justice System with Communal Councils, Communes, and Social Movements.”

[211] With respect to internal control mechanisms, in its response to the questionnaire, the State under review pointed out that “*The Internal Audit Unit of the Supreme Court of Justice undertakes an ex-post review of the administrative and financial activities of the organs and units making up Venezuela’s judiciary, without prejudice to the obligation of each of those organs and units to conduct their own internal audit of their functions, organization, staff administration, and administrative management.*” The TSJ’s Internal Audit Unit (UAI) is governed by the Rules of Procedure of the Internal Audit Unit of the Supreme Court of Justice, issued in April 2013.⁵²

[212] In its reply to the questionnaire, the State under review also points out that the Code of Ethics for Venezuelan Judges entered into force in August 2010, establishing disciplinary rules and sanctions for judges and magistrates. At the same time, the Judicial Disciplinary Jurisdiction was established as part of the judiciary, charged with enforcing that Code, Articles 52 and 53 of which provide that the Substantiation Office shall be the body responsible for starting disciplinary proceedings, initiating investigations against judges either ex officio or as a result of complaints, and referring them, whenever it deems them admissible, to the Judicial Disciplinary Tribunal.⁵³

⁴⁸ *Idem*, pp. 10-11.

⁴⁹ See http://www.oas.org/juridico/PDFs/mesicic4_ven_anexo_1-8.pdf

⁵⁰ See the TSJ’s presentation in connection with the on-site visit, pp. 11 http://www.oas.org/juridico/PDFs/mesicic4_ven_org_sup_jus.pdf

⁵¹ *Idem*, p. 33

⁵² Response of Venezuela to the questionnaire for the Fourth Round, p. 18.

⁵³ *Idem*, pp. 18-19.

[213] At the same time, with respect to disciplinary proceedings against officers in the Judiciary, the representatives of the TSJ said, during the on-site visit, that Article 100 of the Organic Law of the Judiciary establishes that “*Misconduct by clerks of the court, bailiffs, and other court staff shall be punished by the Judicial Circuit Presiding Judge or the judge*” as the case may be” (LOPJ); that the grounds for punishment are set forth in Articles 40-43 of the Judicial Staff Statutes; and that the Code of Ethics for Civil Servants had been published in December 2013.

[214] As for mechanisms for dealing with claims, complaints, or denunciations, the State under review reported in its response that the UAT has a mechanism that “*enables interested parties to file complaints related to either their own functions or those exercised by bodies under their control, by submitting them in writing and/or via the form developed to that end, the link for which is posted on the website of the Supreme Court of Justice.*”⁵⁴

[215] In this regard, during the on-site visit, the representatives of the TSJ explained that the aforementioned mechanism is in line with “the guidelines established in the Organic Law of the Office of the Comptroller General of the Republic and the National Government Oversight System and is to be found in the Organization Manual, which established a special unit, called the Special Audits Department, whose functions include handling complaints received from private persons, officials, or civil servants both inside and outside the Institution regarding acts, deeds, or omissions contravening a legal or regulatory (*sublegal*) provision relating to the administration, handling, or custody of public assets or funds...”⁵⁵

[216] They also reported, along the same lines, that in the “INFOSERVICIOS” section of the TSJ website there is a link to the “Internal Audit” section, where the “Complaints Form” can be accessed.⁵⁶

[217] At the same time, in its response, the State under review pointed out that “*In addition to the aforementioned legal instruments, Articles 22.14 and 22.15 of the Organic Law of the Supreme Court of Justice provide that one of the powers vested in its President is to decide on complaints regarding delays or other shortcomings in proceedings and to inform the full court thereof when the seriousness of those failings so warrants and to decide on parties’ complaints against officers or employees, or vice-versa.*”⁵⁷

[218] On this matter, the TSJ representatives said, during the on-site visit, that “*The complaints and denunciations received by the President of the Supreme Court of Justice are examined and referred mainly to three bodies: the Judicial Commission, the Office of the Inspector General of the Court, and the Office of the Manager for Social and Institutional Participation.*” They added that “*A complaint or denunciation referred by the President of this high court is examined directly by the Manager for Social and Institutional Participation, who then assigns it to an analyst specializing in the particular characteristics of the case.*” They went on to say that from thereon, a three-step procedure was followed and that if the petition triggers a disciplinary investigation the case is referred to the supervisor of the officer against whom the complaint was

⁵⁴ *Idem*, p. 18

⁵⁵ See the TSJ’s presentation during the on-site visit, pp.35-36.
http://www.oas.org/juridico/PDFs/mesicic4_ven_org_sup_jus.pdf

⁵⁶ *Idem*, p. 36

⁵⁷ Response of Venezuela to the questionnaire for the Fourth Round, p. 18.

lodged, or, in the case of judges, to the Office of the Inspector General of Courts, in order for investigations to begin.⁵⁸

[219] In addition, citizens may file complaints and denunciations through the Citizens Assistance Office, pursuant to the “Rules and Procedures of the Citizens Assistance office” and those complaints and denunciations are handled by the Court Inspector (IGT) or Analyst.⁵⁹

[220] Finally, as regards accountability mechanisms and how findings as to the performance of judicial officers are made public and citizens’ access to them, Article 10.8 of the Judicial System Law provides that one of the functions assigned to the National Justice System Commission is to “*Present each year a report on justice system management to the National Assembly in the presence of all its members, as established by law and regulations.*”

[221] Likewise, the State under review indicates in its reply that “Undoubtedly, the Judiciary is obliged, through its competent units, to collect statistics, establish management indicators, and prepare an annual management report, not just in respect of the Supreme Court but for all the institutions making up the Judiciary...”

[222] It goes on to say: “Said information must be disclosed every year to the National Assembly and be summarized in an annual management report, presented by the Highest Authority of the Supreme Court of Justice. That report is generally made public at the ceremony marking the start of judicial activities, pursuant to Article 26⁶⁰ of the Organic Law of the Judiciary...”⁶¹

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

[223] The Supreme Court of Justice (TSJ) has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were described in brief in section 3.1 of this report. Nevertheless, the Committee deems it appropriate to make a number of observations in relation thereto:

[224] First, regarding the nature of the Judicial Nominations Committee, the Committee points out that while Article 270 of the CRBV provides that “*The Committee on Judicial Nominations is a body charged with advising the Judicial Power [Tr. Judiciary]⁶² on the selection of candidates for designation as justices of the Supreme Tribunal of Justice...*”, Article 64 of the Organic Law of the TSJ (LOTSJ) states that “The Judicial Nominations Committee is an advisory organ of the National Assembly⁶³ for the selection of candidates to the position of justice of the Supreme Court of Justice...”

⁵⁸ See the Power Point presentations http://www.oas.org/juridico/PDFs/mesicic4_ven_lam_pan_10.pdf and http://www.oas.org/juridico/PDFs/mesicic4_ven_org_sup_jus.pdf, p. 39.

⁵⁹ See the Power Point presentation http://www.oas.org/juridico/PDFs/mesicic4_ven_lam_pan_10.pdf

⁶⁰ Article 26 of the LOPJ reads as follows: “*On January 7 of each year, or as near to that date as possible, a ceremony shall be held in the capital of the Republic to mark the commencement of judicial activities. That ceremony shall be led by the President of the Supreme Court of Justice. On that same day, ceremonies shall be held to mark the start of activities at the headquarters of each of the judicial districts, headed by the Presiding Judge of the Judicial District, or, in his or her absence, the longest-serving judge. Except for good cause, judges are duty-bound to attend those ceremonies.*”

⁶¹ Response of Venezuela to the questionnaire for the Fourth Round, p. 34.

⁶² Emphasis added.

⁶³ Emphasis added.

[225] Here, the Committee deems it advisable that the State under review consider taking legislative steps to harmonize Article 64 of the LOTSJ and Article 270 of the Constitution, and it will make a recommendation in that regard (see recommendation 3.4.2 in chapter II of this report).

[226] Second, with respect to staffing of the Judiciary, the Committee notes that, although the State under review has passed the Judicial Career Service law (LCJ), Article 3 of which provides that “*Judges shall enjoy stability in the performance of their office. Therefore they may only be removed or suspended from the exercise of their functions in cases and using the procedures established in this Law...*”, during the on-site visit the representatives of the TSJ said that the Judicial Career Service Law was applicable to regular, but not temporary, judges.

[227] However, given that this is an issue addressed in the second round, when recommendations were made to the State under review whose implementation will be reviewed in the fifth round, the Committee will not comment at the present time.

[228] Third, the Committee notes that the State under review has established the “Single Agenda” computerized management system, which automatically centralizes data on court hearings, court appearances, and actual completion of the jurisdictional formalities for scheduling hearings -- a process involving the prison system, the Public Prosecution Service, the Ombudsperson’s Office, and judges -- thereby helping to reduce the judicial backlog. However, the Committee notes that, during the on-site visit, the representatives of the TSJ reported that this system has not yet been implemented in all Venezuelan states. Here, the Committee deems it useful for the State under review to consider taking steps aimed at implementing the “Single Agenda” system in all states. The Committee will make a recommendation in that regard (see recommendation 3.4.2 in chapter II of this report).

[229] Fourth, the Committee notes that the State under review points out in its reply that the TSJ’s Internal Audit Unit (UAI) has posted a form for electronic submission of complaints on the TSJ website.⁶⁴ The form is specially designed for the denunciation of acts of corruption and may be used by anyone wishing to file a complaint through this medium.

[230] On this, the representatives of the TSJ had the following to say during the on-site visit: “*It is important to stress that after more than five years in which this tool has been available, we have ascertained that the general public does not use the Internet to file corruption complaints with the oversight organs. There has yet to be a complaint in this area that has used the I.T. facility set up by the Internal Audit Unit...*”⁶⁵

[231] On this, the Committee believes it would be useful for the State under review to consider conducting a study to identify the possible reasons why citizens do not use this complaint mechanism, so as to identify challenges and adopt corrective measures, if necessary. The Committee will make recommendations (see recommendation 3.4.3 in chapter II of this report).

[232] In addition, the Committee notes that during the on-site visit the representatives of the oversight organs stressed, at every meeting, that complainants have to identify themselves and that protection of the whistle-blower’s identity is very limited, or not even contemplated. However, given that this is an issue addressed in the second round, when recommendations were made to the State under review whose implementation will be reviewed in the fifth round, the Committee will not comment at the present time.

⁶⁴ See <http://www.tsj.gov.ve/infoservicios/controlfiscal/denuncia.asp>

⁶⁵ See the PowerPoint presentation http://www.oas.org/juridico/PDFs/mesicic4_ven_org_sup_jus.pdf pp.36.

[233] Fifth, the Committee notes that, during the on-site visit, the representatives of the TSJ explained that, with respect to procedures for the Internal Audit Unit's handling of claims, complaints, or denunciations, there is an Organization Manual, which established a special unit, called the Special Audits Department, whose functions include "*handling complaints received from private persons, officials, or civil servants both inside and outside the Institution regarding acts, deeds, or omissions contravening a legal or regulatory (sublegal) provision relating to the administration, handling, or custody of public assets or funds...*"⁶⁶

[234] However, the Committee notes that, although the aforementioned Organization Manual is still in the process of being adopted by the Highest Authority at the time of the on site visit.⁶⁷ Here, the Committee thinks it would be beneficial for the State under review to consider adopting the UAI's Organization Manual as soon as possible and it will make a recommendation in that regard (see recommendation 3.4.4 in chapter II of this report).

[235] Along those same lines, during the on-site visit the representatives of the TSJ reported that citizens can file complaints and denunciations relating to compliance with this oversight organ's objectives and to the performance of its personnel through the Office of the Manager of Social and Implementation Participation, whose powers are established in the draft Manual currently in the process of being adopted by the Highest Authority, and that there was a specific procedure for processing those cases.⁶⁸

[236] Here, the Committee notes that the draft Organization Manual of the Office of the Manager of Social and Implementation Participation is also in the process of being adopted and is therefore not yet in effect. In light of the above, the Committee thinks it would be beneficial for the State under review to consider promptly adopting the Organization Manual of the Office of the Manager of Social and Implementation Participation as soon as possible and it will make a recommendation in that regard (see recommendation 3.4.5 in chapter II of this report).

[237] Sixth, the Committee notes that, in the Strengths, Weaknesses, Opportunities, Threats (SWOT) Matrix of its 2014 Annual Operating Plan, the TSJ designates as one of the "Threats": "*Lack of user familiarity with the justice services provided as part of the workings of the Supreme Court of Justice.*"⁶⁹

[238] On this matter, the Committee considers that it would be beneficial for the State under review to take appropriate steps to make justice system users more familiar with ways to use the services offered by the TSJ, either through its website or any other means it deems useful. The Committee will make a recommendation in this regard (see recommendation 3.4.6 in chapter II of this report).

[239] Seventh, regarding mechanisms to ensure accountability for the performance of its functions; the manner in which accountability information is made public, so that citizens have access to it, the Committee notes that, in its reply, the State under review indicates that annual management reports are generally published in the ceremony to mark the start of judicial

⁶⁶ See the TSJ's presentation during the on-site visit, pp.35-36.

http://www.oas.org/juridico/PDFs/mesicic4_ven_org_sup_jus.pdf

⁶⁷ See the TSJ's presentation during the on-site visit, p.35, footnote 63.

http://www.oas.org/juridico/PDFs/mesicic4_ven_org_sup_jus.pdf

⁶⁸ See the TSJ's presentation during the on-site visit, p.35, footnote 65.

http://www.oas.org/juridico/PDFs/mesicic4_ven_org_sup_jus.pdf

⁶⁹ See the TSJ's *Matriz FODA* [SWOT TABLE]-2014 at

http://www.oas.org/juridico/PDFs/mesicic4_ven_mat_foda_tsj_2014.pdf

activities, held each year pursuant to Article 36 of the LOPJ. However, the Committee has found no evidence that these reports are published in any other way and notes that they are not posted on the TSJ website either. In addition, the Committee notes that in the SWOT Matrix in its annual operating plan, the TSJ lists under “Opportunities”: “*The growing demand by Popular Power to optimize the accountability and transparency in the administration of justice.*”⁷⁰

[240] In light of the above, the Committee considers that the State under review could post the Judiciary’s management reports on the TSJ website and through any other channels it deems appropriate, so that citizens can have access to that information. The Committee will make a recommendation in this regard (see recommendation 3.4.7 in chapter II of this report).

[241] Eighth, the Committee notes that not all the legislation on the Judiciary is easily available on the TSJ website (take, for instance, the Judicial Staff Statutes) and thinks that it would be beneficial for the State under review to post that legislation on its website so that citizens can have easy access to it. Accordingly, the Committee will make a recommendation (see recommendation 3.4.8 in Chapter II of this report).

[242] Finally, as regards technical cooperation needs, during the on site visit, the representatives of the TSJ said they would like to take part in the efforts to observe successful formulas deployed by the states parties to combat corruption, with a view to adopting them. In this connection, the Committee takes note of the needs mentioned by the TSJ and of the need for the State under review to provide the necessary support. It also invites the judiciaries of the states parties and cooperation agencies to assist the institution in these areas. The Committee will make a recommendation in this regard (see recommendation 3.4.9 in chapter II of this report).

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

[243] The response to the questionnaire of the country under review and the on-site visit yielded information on results in the Supreme Court of Justice (TSJ)), notably the following:

[244] In its reply, the State under review provided, in particular, the following information regarding activities designed to prevent corrupt practices:

[245] Presentations by the TSJ’s Internal Audit Unit in 2012 and 2013 “*for civil servants in this Institution and especially its senior staff, that is to say: management and supervisory staff assigned to the Regional Administrative Directorate of the states of Trujillo, Carabobo, Mérida, Zulia, Falcón, Nueva Esparta, and Monagas, decentralized administrative units, as well as the Executive Directorate of the Judiciary (Dirección Ejecutiva de la Magistratura -DEM), within the internal control system, given that the lack of effective controls and/or monitoring has been identified as one of the factors leaving room for corruption, along with the factors triggering administrative liability stemming from acts, deeds, or omission committed by government officials in the performance of their duties that contravene explicit rules and regulations and involve the [in]correct or inappropriate handling or custody of public funds or assets and are classified as offenses under Article 91 of the Organic Law of the Office of the Comptroller General of the Republic and the National Government Oversight System.*”

[246] Also notable are the talks given to civil servants acting as directors or managers in other organs and entities of the Public Administration representing the Supreme Court of Justice, such as the Ministry of People’s Power for Tourism (MINTUR) and the National Land Institute (INTI);

⁷⁰ See the TSJ’s *Matríz FODA* [SWOT TABLE]-2014 at http://www.oas.org/juridico/PDFs/mesicic4_ven_mat_foda_tsj_2014.pdf

*as well as talks on internal controls and factors triggering administrative liability, pursuant to the principle of cooperation among the different institutions making up the Venezuelan State.*⁷¹

[247] Here, the Committee deems it important that the State under review consider strengthening internal controls and/or monitoring of the judicial system, in order to preclude opportunities for corruption. The Committee will make a recommendation in that regard (see recommendation 3.4.10 in chapter II of this report).

[248] The Committee further notes that the State under review only provides disaggregated information as of 2011. In that connection, the Committee thinks it would be useful for the State under review to consider keeping detailed statistics disaggregated by year on the corruption prevention activities of the TSJ, so that the information may be used to identify challenges and recommend corrective measures, if necessary (see recommendation 3.4.11 in chapter II of this report).

[249] As regards the Judiciary's jurisdictional functions related to punishing acts of corruption, in both its reply and in the on-site visit, the State under review provided statistics, which may be summarized as follows:

Table 1:

ORDINARY CRIMINAL COURT CONVICTIONS AND CONVICTIONS FOR OFFENSES AGAINST THE ANTI-CORRUPTION LAW⁷²

Year	Convictions	Anti-Corruption Law	% of offenses against the Anti-Corruption Law
2009	101,961	306	0.59%
2010	77,724	692	1.89%
2011	47,733	536	1.13%
2012	30,457	406	1.33%
2013	28,860	357	1.24%
2014 ⁷³	13,836	284	2.05%
Total	300,371	2,878	0.96%

Table 2:

ORDINARY CRIMINAL COURT CONVICTIONS AND CONVICTIONS FOR OFFENSES AGAINST THE ANTI-CORRUPTION LAW⁷⁴

⁷¹ Venezuela's response to the questionnaire, pp. 23-25.

⁷² See PowerPoint presentation, pp. 60-65.

http://www.oas.org/juridico/PDFs/mesicic4_ven_org_sup_jus.pdf

⁷³ January to August 2014

Year	Convictions	Anti-Corruption Law	% of offenses against the Anti-Corruption Law
2009	12,972	106	0.82%
2010	11,749	151	1.29%
2011	9,719	109	1.12%
2012	11,667	128	1.10%
2013	12,135	141	1.16%
2014 ⁷⁵	8,547	125	1.46%
Total	66,789	760	1.14%

[250] Regarding Table 1, the Committee notes that the number of convictions for offenses in general declines between 2009 and 2013. In the case of convictions for offenses against the Anti-Corruption Law, that decline began in 2010 and, although the percentage of convictions for corruptions offenses increases, that is proportional to the lower number of convictions in both columns. On this, the Committee considers that the State under review would benefit from a study designed to determine the cause(s) of this decline, so as to identify challenges and adopt corrective measures. The Committee will make a recommendation in this regard (see recommendation 3.4.12 in chapter II of this report).

[251] The Committee further points out that the foregoing data do not show how many cases investigated were ready for a decision in the past five years; the number of those decisions that resulted in conviction or acquittal; and the number of cases in which the punishment or liability prescribed because the decision was not taken within the time frame allowed.

[252] In view of the above, the Committee considers that it would be beneficial for the State under review to keep statistics showing how many cases investigated are ready for a decision; and the number of the decisions taken by judicial authorities in connection with corrupt acts that resulted in conviction or acquittal, so as to identify challenges and adopt corrective measures, if necessary. It will make a recommendation in that regard (see recommendation 3.4.13 in chapter II of this report).

[253] As regards functions related to investigating and punishing practices triggering disciplinary liability, in both its reply and in the on-site visit, the State under review provided statistics, which may be summarized as follows:

[254] First, it is worth recalling that under the Code of Ethics for Venezuelan Judges, the organ responsible for disciplinary proceedings is the Substantiation Office, whose functions include preliminary investigation proceedings, either ex officio or following a complaint; the Judicial Disciplinary Tribunal, whose functions include investigation, presiding over disciplinary

⁷⁴ See PowerPoint presentation, pp. 60-65.

http://www.oas.org/juridico/PDFs/mesicic4_ven_org_sup_jus.pdf

⁷⁵ January to August 2014

proceedings, determining liability, and imposing sanctions⁷⁶; and the Judicial Court, which hears appeals.⁷⁷

[255] It is to be noted that these organs were assigned these functions as of 2011; before then, disciplinary proceedings were handled by the Committee for Judicial System Restructuring and Operations.

[256] In its reply to the questionnaire⁷⁸ and during the on-site visit,⁷⁹ the State under review produced the following statistics relating to the Committee for Judicial System Restructuring and Operations:

Table 1:
Committee for Judicial System Restructuring and Operations⁸⁰

Year	Cases admitted	Acquittals	Warnings	Suspensions	Finding of Disciplinary Liability	Warning and Suspension	Dismissals	Total number of sanctions imposed
2009	149	6	13	13	12		46	84
2010	125	9	23	13	31		40	97
Total	274	15	36	26	33		86	181

Source: Report of the Committee for Judicial System Restructuring and Operations

[257] On this matter, the State under review furnished additional statistical information relating to the disciplinary function of the Committee for Judicial System Restructuring and Operations, with a breakdown by type of decision and specifying the corrupt practices involved, as follows:⁸¹

Table 2:
Committee for Judicial System Restructuring and Operations

YEAR	DISCIPLINARY OFFENSE	PUNISHMENT	TOTAL 9
2009	Reprehensible conduct, Article 39.5 LCJ	Warned	2
	Reprehensible conduct,	Dismissed	

⁷⁶ In its comments document on the draft preliminary report, the State under review indicated the following: “Venezuela wishes to report that pursuant to the terms of judgment No. 516 of May 7, 2013, and its clarifying note No. 1088, issued by the Constitutional Chamber of TSJ, in the exercise of centralized constitutional oversight, it was decided to suspend certain provisions of the Code of Ethics of Venezuelan Judges. Therefore, as provided for in Article 267 of the CRBV, the General Inspectorate of Courts (IGT) is assuming the powers of the Substantiation Office and responsibility for investigating and substantiating accusations and submitting its conclusions (indictment) before the Judicial Disciplinary Jurisdiction (JDJ) made up of the Judicial Disciplinary Tribunal and the Judicial Disciplinary Court.”

⁷⁷ See the Power Point presentation at http://www.oas.org/juridico/PDFs/mesicic4_ven_lam_pan_10.pdf

⁷⁸ See http://www.oas.org/juridico/PDFs/mesicic4_ven_anexo_1-8.pdf

⁷⁹ See http://www.oas.org/juridico/PDFs/mesicic4_ven_org_sup_jus.pdf

⁸⁰ See Annex 6 http://www.oas.org/juridico/PDFs/mesicic4_ven_anexo_1-8.pdf

⁸¹ See the PowerPoint presentation http://www.oas.org/juridico/PDFs/mesicic4_ven_org_sup_jus.pdf pp.52.

	Article 39.5 LCJ		
2010	Acts bringing the State into disrepute, Article 40.2 LCJ	Dismissed	7
	Dishonesty, Article 33.12 CEJVJV	Dismissed	
	Reprehensible conduct, Article 39.5 LCJ	Acquitted	
	Dishonesty, Article 33.12 CEJVJV	Dismissed	
	Reprehensible conduct, Article 39.5 LCJ	Dismissed	
	Reprehensible conduct, Article 39.5 LCJ	Warned	
	Bringing the Judiciary into disrepute (Article 40.2 LCJ) for having being convicted of influence peddling (Article 33.10 CEJVJV)	Findings of disciplinary liability	
			TOTAL CFRSJ (9)

[258] Here, the Committee points out that while the figures shown in Table 2 provide more detailed information regarding the type of conduct investigated and the results of the proceedings, they do not match those in Table 1. For instance, Table 1 indicates that in 2009 there 13 warnings were issued, while Table 2 points to only one.⁸² In addition, this information does not show how many cases were shelved or dismissed, how many of them pointed to circumstantial evidence of criminal liability, and, if there were some, how many were referred to the Public Prosecution Service.

Table 3:

YEAR	BODY	SUBSTANTIATION OFFICE	DISCIPLINARY TRIBUNAL	DISCIPLINARY COURT
2011	JUDGMENTS			
	Cases admitted	386	244	1
	Substantiated (Reports)	122		
	Judgments		110	
	Writs of admission and Incidences (<i>Autos de Admisión e Incidencias</i>)		104	
	Nonadmissions (rejections)		3	
	Lawsuit pending judicial decision		1	
	Precautionary suspension		1	
	Admission of Case		1	
a.-76% are denunciations. Of them, 98% are against judges and the remaining 2% are against prosecutors in the Public Prosecution Service (MP)				

⁸² In its comments document on the draft preliminary report, the State under review indicated the following: “Venezuela stresses that with the formulas used in the Draft Report it is not possible for the figures to match because, in the set of data reported (Table No. 1), only the sanctions identified in Table No. 2) have a bearing on the items in the Convention under review, as indicated therein. Likewise, that Table specifies the criminal conducts established.”

b.-Includes 118 of the CFRSJ. Source: Report of the Judicial Disciplinary Tribunal				
YEAR	BODY	SUBSTANTIATION OFFICE	DISCIPLINARY TRIBUNAL	DISCIPLINARY COURT
2012	JUDGMENTS			
	Cases admitted	718	718	34
	Substantiated (Reports)	725		
	Final judgments		148	34
	Interlocutory decisions		271	
	Interlocutory decisions with final effect		15	
YEAR	BODY	SUBSTANTIATION OFFICE	DISCIPLINARY TRIBUNAL	DISCIPLINARY COURT
2013	JUDGMENTS			
	Files admitted	390	273	43
	Substantiating Reports produced	273		
	Judgments			40
	Final judgments		129	
	Interlocutory decisions		46	
	Interlocutory decisions with final effect		8	
***Since May 7, 2013, when judgment 516 of the Constitutional Division of the Supreme Court of Justice was handed down, only 10 cases have been submitted. ⁸³				
YEAR	BODY		DISCIPLINARY TRIBUNAL	DISCIPLINARY COURT
2014 (July to September)	JUDGMENTS			
	Complaints filed by private individuals and referred to the Office of the Inspector General of Courts (IGT)	94	4	25
	Cases admitted at the behest of the IGT	4	2	
	Case files remitted by the TSJ for execution of judgment	2		
	Judgments			14
	Final judgments		14	
	Interlocutory decisions		11	

⁸³ See Judgment 516 of May 7, 2013 of the Constitutional Division of the Supreme Court of Justice, which ordered as a precautionary measure: “1) Suspension of the sole subparagraph in Article 1 of the Code of Ethics for Venezuelan Judges. 2) That the Inspector General of Courts shall be competent, ex officio or following a complaint, to initiate investigations against judges, admit the complaint, and pursue proceedings needed to throw light on the facts of the case; 3) suspend the second paragraph of Article 35 and Article 37.2, 3, 5, 7, and 8 (regarding the competent of the Substantiation Office to conduct the “preliminary investigation”) of the Organic and Functional Rules of Procedure of the Judicial Disciplinary Tribunal, published in the Official Gazette of the Bolivarian Republic of Venezuela N° 39.750 of September 5, 2011, as well as the Standards and Procedures Manual for the Substantiation Office, published in the Official Gazette of the Bolivarian Republic of Venezuela N° 39.797 of November 10, 2011. 4) The suspension of the reference in Article 2 of the Code of Ethics for Venezuelan Judges to temporary, occasional, acting, or interim judges, which allows the disciplinary procedure contemplated in Articles 51ff of that Code to be extended to judges in those categories, thereby making the Judicial Commission competent to punish them and remove them from judicial office; and 5) Suspension of the sole subparagraph in Article 16 of the same Code.” See <http://www.tsj.gov.ve/decisiones/scon/mayo/516-7513-2013-09-1038.html>

	Interlocutory decisions with final effect		2	
<p>a. - As instructed in Judgment 516 of the Constitutional Division of the Supreme Court of Justice: a) the 94 cases filed by private individuals were sent to the Office of the Inspector General of Courts for examination.</p> <p>b. - 512 cases being examined by the Substantiation Office were referred to the Office of the Inspector General of Courts.</p> <p>c. - 433 cases being examined by the Judicial Disciplinary Tribunal were referred to the Office of the Inspector General of Courts.</p>				

[259] Regarding the information provided in foregoing Table 3, the Committee notes that it does not indicate how many cases were shelved, how many dismissed, how many contained circumstantial evidence of criminal liability, and, of them, how many were referred to the Public Prosecution Service.

[260] In addition, the Committee points out that Judgment 516 of May 2013 suspended several articles of the Code of Ethics for Venezuelan Judges (CEJVJV), whereby several responsibilities of the Substantiation Office, including the responsibility to conduct initial inquiries, were transferred to the Office of the Inspector General of Courts, as can be seen in the section on 2014.

[261] Accordingly, the Committee observes that that transfer of powers was ordered as a precautionary measure until a final judgment is rendered. However, at the time of the on-site visit, that matter had still not been settled and the Office of the Inspector General of Courts continues to exercise those powers. Bearing in mind that the CEJVJV is an instrument promulgated by the National Assembly and that the suspension of the aforementioned articles thereof was a precautionary measure, the Committee deems it necessary that the State under review consider settling these issues definitively and decide whether responsibility for preliminary inquiries is to rest permanently with the IGT or the Substantiation Office. The Committee will make a recommendation in that regard (see recommendation 3.4.14 in chapter II of this report).

[262] On the other hand, the Committee notes that the end of Table 3 includes a note that reads: *“a. - As instructed by Judgment 516 of the Constitutional Division of the Supreme Court of Justice: a) the 94 cases filed by private individuals were sent to the Office of the Inspector General of Courts for examination. b. - 512 cases being examined by the Substantiation Office were referred to the Office of the Inspector General of Courts. c. - 433 cases being examined by the Judicial Disciplinary Tribunal were referred to the Office of the Inspector General of Courts.”* However, no information is provided regarding the current status of those cases, whether they are still pending or whether they have concluded, and, if they have concluded, what decisions have been taken.

[263] Taking the foregoing into consideration, the Committee believes it important for the State under review to consider following-up on the matter and to maintain statistics on the process and final decisions of these cases, and it will formulate a recommendation in this regard (see recommendation 3.4.15 of Chapter II of this report).

[264] In addition, during the on-site visit, the State under review furnished additional statistical information relating to the functions of the Judicial Disciplinary Tribunal and the Judicial Disciplinary [Appeals] Court, with a breakdown by type of decision and specifying the corrupt practices involved, as follows:⁸⁴

Table 4:

JUDICIAL DISCIPLINARY TRIBUNAL			
YEAR	DISCIPLINARY OFFENSE	PUNISHMENT	TOTAL TDJ (10)

⁸⁴ See the PowerPoint presentation http://www.oas.org/juridico/PDFs/mesicic4_ven_org_sup_jus.pdf pp.52.

2011	THERE WERE NO DECISIONS ON THE AFOREMENTIONED DISCIPLINARY OFFENSES		0
2012	Misuse of authority, Article 40.16 LCJ	Acquitted	4
	Reprehensible conduct, Article 39.5 LCJ	Acquitted	
	Improper conduct, Article 33.13 CEJVJV	Acquitted	
	Dishonesty, Article 33.12 CEJVJV	Dismissed	
2013	Reprehensible conduct, Article 39.5 LCJ	Finding of liability (outside the judiciary)	6
	Reprehensible conduct, Article 39.5 LCJ	Warned	
	Improper conduct, Article 33.13 CEJVJV	Acquitted	
	Misuse of authority, Article 40.16 LCJ and 33.14 CEJV	Dismissed	
	Dishonesty, Article 33.12 CEJVJV	Dismissed	
	Reprehensible conduct, Article 39.5 LCJ	Acquitted	
2014	THERE WERE NO DECISIONS ON THE AFOREMENTIONED DISCIPLINARY OFFENSES		0
TOTAL			10

Table 5:

JUDICIAL DISCIPLINARY COURT		
YEAR	PUNISHMENT	TOTAL CDJ (6)
2011	THERE WERE NO DECISIONS ON THE AFOREMENTIONED DISCIPLINARY OFFENSES (SEE TABLE 1)	0
2012	Quashed the judgment of the TDJ: Dismissed under Article 0.16 LCJ. Cope of proceedings to be referred to the Public Prosecution Service for the start of investigations into alleged criminal offense	1
2013	Confirmed acquittal (reprehensible conduct , Article 33.12 CEJVJV)	2
	Confirmed dismissal (dishonesty, Article 33.12 CEJVJV)	
2014	Confirmed dismissal (dishonesty, Article 33.12 CEJVJV)	3
	Confirmed dismissal (Misuse of authority, Article 40.16 LCJ)	
	Case suspended, Judgment 516 of 5/7/2013	
TOTAL		6

[265] Here, the Committee points out that while the figures shown in Tables 4 and 5 provide more detailed information regarding the type of conduct investigated and the results of the proceedings, they do not match those in Table 3. For instance, in the section of Table 3 concerning the judgments of the Disciplinary Tribunal in 2012, the State under review indicates that the Tribunal handed down 148 final judgments, 271 interlocutory decisions, and 15 interlocutory orders with the force and effect of a final judicial decision (*con fuerza de definitiva*), whereas the same section in Table 4 indicates that only four judgments were rendered (3 acquittals and one dismissal); which makes it difficult to perform a comprehensive analysis of the information.

[266] That being so, the Committee thinks that it would be beneficial for the State under review to consider keeping comprehensive and disaggregated statistics with respect to its disciplinary

proceedings, in such a way that it is possible to discern how many corruption-related cases were set aside, how many were finally dismissed, how many are still pending for whatever reason, how many decisions resulted in convictions, how many ended in acquittals, how many pointed to circumstantial evidence of criminal liability, how many decisions were affected by the running of the statute of limitations in respect of the punishment or criminal liability because the decision was not handed down on time; and how many were forwarded to the Public Prosecution Service. The Committee will make a recommendation (see recommendation 3.4.16 in Chapter II of this report).

[267] Finally, the Committee notes that Table 5 shows that in 2012 a copy of the proceedings was remitted to the Public Prosecution Service for the start of investigations into an alleged criminal offense. Here, the Committee notes that, during the on-site visit, the representatives of the TSJ pointed out that no mechanism is in place for keeping track of the final outcome of cases remitted to the Public Prosecution Service for investigation into alleged criminal responsibility. On this matter, the Committee deems that it would be beneficial for the State under review to consider implementing an interagency coordination mechanism that would make it possible to know the final outcomes of such cases. To that end, it will make a recommendation (see recommendation 3.4.17 in Chapter II of this report).

3.4. Conclusions and recommendations

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

[269] The Bolivarian Republic of Venezuela has considered and adopted measures intended to maintain and strengthen the Supreme Court of Justice (TSJ), as an oversight body, as indicated in Chapter II, Section 3 of this report.

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

- 3.4.1. Consider bringing Article 64 of the LOTSJ into line with Article 270 of the Constitution, which refers to the nature of the Judicial Nominations Committee (see Section 3.2 of Chapter II of this Report).
- 3.4.2. Take the necessary steps to implement the “Single Agenda” system in all the states (see section 3.2 in chapter II of this report).
- 3.4.3. Conduct a study to ascertain the reasons why citizens are not using the I.T. form on the TSJ’s website to denounce acts of corruption, with a view to identifying challenges and adopting corrective measures, if necessary (see Chapter II, Section 3.2 of this report).
- 3.4.4. Adopt the Organization Manual of the Internal Audit Unit as soon as possible (see section 3.2 in chapter II of this report)
- 3.4.5. Adopt the Organization Manual of the Office of the Manager of Social and Implementation Participation as soon as possible (see section 3.2 in chapter II of this report).
- 3.4.6. Take appropriate steps to make justice system users more familiar with the services offered by the TSJ and how to use them, either through its website or any other means it deems useful (see Chapter II, Section 3.2 of this report).

- 3.4.7. Post the Judiciary's annual management reports on the TSJ website and through any other channels it deems appropriate, so that citizens can have access to that information. (See section 3.2 in chapter II of this report).
- 3.4.8. Supplement the regulations pertaining to the Judiciary that are posted on the TSJ website, so that citizens can have easy access to it (See section 3.2 in chapter II of this report).
- 3.4.9. Foster arrangements with other States and cooperation agencies to furnish the TSJ with the technical cooperation needed to facilitate the sharing of experiences between this oversight body and the judiciaries in other states parties to the MESICIC, on anti-corruption matters of mutual interest (See section 3.2 in chapter II of this report).
- 3.4.10. Strengthen internal controls and/or monitoring of the judicial system in order to preclude opportunities for corruption (See section 3.2 in chapter II of this report).
- 3.4.11. Keep detailed statistics disaggregated by year on the corruption prevention activities of the TSJ, so that the information may be used to identify challenges and recommend corrective measures, if necessary (see Chapter II, Section 3.3 of this report).
- 3.4.12. Conduct a study to determine the reasons for the downward trend in the number of convictions by the ordinary criminal courts, especially with respect to offenses under the Anti-Corruption Law, so as to identify challenges and recommend corrective measures (see Chapter II, Section 3.3 of this report).
- 3.4.13. Keep statistics regarding its jurisdictional function of punishing acts of corruption that show how many of the cases under investigation are ready for a decision to be handed down, how many of the decisions taken by the judicial bodies in corruption cases resulted in conviction or acquittal, and how many cases resulted in prescription of the punishment or extinguishment of criminal responsibility due to the running of the statute of limitations because the decision was not handed down on time; with a view to identifying challenge and adopting corrective measures, if necessary (see Chapter II, Section 3.3 of this report).
- 3.4.14. Reach a final resolution on the suspension of the articles in the Code of Ethics for Venezuelan Judges (CCJVJV) as a precautionary measure derived from Judgment 516 of the Constitutional Division of the Supreme Court of Justice on May 7, 2013, so that a final decision can be taken on whether the functions referred to in the suspended articles in the aforementioned Code are to be performed by the Proceedings Office or the Office of the Inspector General of Courts, and consider revising the CCJVJV accordingly, to reflect that decision (see Chapter II, Section 3.3 of this report).
- 3.4.15. Compile statistics on the cases remitted to the Office of the Inspector General of Courts as a result of judgment 516 of the Constitutional Division of the TSJ, showing how many of these cases were shelved, how many were dismissed, how many pointed to circumstantial evidence of responsibility, and how many were forwarded to the competent authority (see Chapter II, Section 3.3 of this report).

- 3.4.16. Compile statistics relating to the duties to investigate and punish corrupt practices that give rise to disciplinary liability of the TSJ, showing the total number of cases admitted; the number of cases that were shelved or dismissed; the number of cases currently suspended for whatever reason; the number of cases investigated that are ready for a decision to be handed down; the number of such cases in which a decision was handed down; the number of those decisions that resulted in indictment or punishment; the number of such cases that resulted in no charges being filed or acquittal; the number of such decisions in which the punishment prescribed or responsibility was extinguished because the decision was not handed down within the time allowed; the number of cases in which circumstantial evidence of criminal liability was found; and the number of cases transmitted to the Public Prosecution Service for criminal investigation; all this with a view to identifying challenged and adopting corrective measures (see Chapter II, Section 3.3 of this report).
- 3.4.17. Implement an inter-agency coordination mechanism with the Public Prosecution Service that will make it possible to ascertain the final outcome of disciplinary proceedings cases remitted to that oversight body for investigation and processing due to the detection of circumstantial evidence of criminal responsibility (see Chapter II, Section 3.3 of this report).

4. NATIONAL SUPERINTENDENCY OF INTERNAL AUDIT (SUNAI)

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

[271] The National Superintendency of Internal Audit (SUNAI) has a set of provisions that constitute its legal framework and other measures, as follows:

[272] Regarding the nature of the SUNAI, Article 137 of the Public Sector Financial Administration Law (LOAFSP) provides that: *“The National Superintendency of Internal Audit is established as the Internal Control System’s policy-making body, attached to the Office of the Executive Vice President of the Republic. It enjoys functional and administrative autonomy and its organizational structure shall be determined by rules of procedure to that effect.”*

[273] At the same time, Article 138 of the LOAFSP establishes that *“The National Superintendency of Internal Audit is the body responsible for supervising, directing, and coordinating internal controls, and for directing internal audits in the agencies that form part of the central and functionally decentralized administration, listed in Article 6 of this Law, with the exception of the Central Bank of Venezuela.”*⁸⁵

⁸⁵ Article 6 of the LOAFSP establishes that “The following entities or agencies making up the public sector shall be subject to the provisions of this Law, as specified therein: 1. *The Republic.* 2. *The states.* 3. *The Metropolitan District of Caracas and the Alto Apure District.* 4. *The districts.* 5. *The municipalities.* 6. *The autonomous institutes.* 7. *State juristic persons governed by public law (public corporations)* 8. *Commercial corporations in which the Republic or other persons referred to in this Article own fifty percent or more of the equity. Also included are fully state-owned enterprises whose function, through the possession of shares in other enterprises, is to coordinate public entrepreneurial management of a sector of the national economy.* 9. *Commercial corporations in which the persons referred to in the foregoing numbered paragraph own fifty percent or more of the equity.* 10. *Foundations, civil associations, and other institutions constituted with public funds or directed by any of the persons referred to in this Article, whenever the total amount of budgetary or other contributions made by one or more of the persons referred to in this Article in a given fiscal year is equal to or greater than fifty percent of its budget.”*

[274] According to Article 139 of the LOAFSP, the SUNAI has the following powers and duties (*atribuciones*): “1. To direct internal control and facilitate external control, pursuant to coordination provisions issued by the Office of the Comptroller General of the Republic. 2. To issue internal control guidelines and verify their implementation. 3. To set internal audit rules and direct their implementation by the internal audit units. 4. To conduct and coordinate such audits as it deems necessary, in order to evaluate the internal control system in the entities and bodies referred to in Article 138, and to direct the evaluation of projects, programs, and operations. If need be, it may conduct financial, legal, and management audits in the agencies included within its sphere of competence. 5. To monitor enforcement of the provisions issued by the policy-making bodies for national public sector financial administration systems and notify them of any cases of non-compliance detected. 6. To perform technical oversight of internal audit units, approve their work plans, and direct and monitor their execution, without prejudice to the powers of the Office of the Comptroller General of the Republic. 7. To ascertain implementation of the recommendations of the internal audit units adopted by the competent authorities. 8. To propose the measures needed to constantly improve the organization, structure, and operational procedures of the internal audit units, taking the special characteristics of each body into account. 9. To issue recommendations directly to the agencies or entities within its sphere of competence, as needed, in order to ensure compliance with internal audit rules and cost-effectiveness, effectiveness, and efficiency criteria. 10. To establish technical quality requirements for audit personnel in public sector financial administration, as well as for consultants specializing in related subjects and to keep a roster of auditors and consultants. 11. To promote prompt rendering of accounts by officials responsible for safeguarding or handling public funds, in accordance with rules issued by the Office of the Comptroller General of the Republic. 12. To provide and promote skills-building and training activities for personnel on oversight and audit-related matters. 13. To answer queries put to it within its sphere of competence.”

[275] As regards functions that might replicate or compete with those of other bodies or authorities, Article 5 of the Public Sector Financial Administration Law (LOAFSP) establishes that: “... *The internal control system will act in coordination with the external control system for which the Office of the Comptroller General of the Republic is responsible. Its purpose is to promote efficiency in the collection and use of government resources, the observance of legal provisions in government operations, and the reliability of the information generated and disseminated regarding them. In addition, its purpose is to improve administrative capacity for evaluating the handling of government resources and to take reasonable steps to guarantee compliance with officials’ accountability obligations.*”

[276] Likewise, the enabling regulations of the Organic Law of the Office of the Comptroller General of the Republic and the National Fiscal Oversight System⁸⁶ (LOCGRSNCF) indicates in Article 9 that “the National Superintendency of Internal Audit will coordinate, supervise and direct internal controls in respect of bodies making up the National Executive Branch through the national, central, and functionally decentralized public administration, whereby that should not be construed as actually exercising the functions proper to the fiscal oversight bodies, and as part of the National Fiscal Oversight System, [the Superintendency] is subject to any directives, guidelines, and instructions issued by the Office of the Comptroller General of the Republic, as the policy-making body in charge of that System.”⁸⁷

⁸⁶ Enabling Regulations of the Organic Law of the Office of the Comptroller General of the Republic and the National Fiscal Oversight System, published in the Official Gazette No.39.240, dated 08/12/2009.

Information posted at: <http://www.cgr.gob.ve/contenido.php?Cod=052>

⁸⁷ Response of Venezuela to the questionnaire for the Fourth Round, p. 88.

[277] Regarding mechanisms to resolve possible jurisdictional conflicts, Article 13 of the Organic Law of Public Administration (LOAP) provides that “When a body taking cognizance of a case considers that it is not competent to do so, it should remit the records of the proceedings to the body it regards as competent; if the latter considers that it is not competent, or if both consider themselves competent, the case shall be settled by the body that is hierarchically higher than both of them. *The conflicts referred to in this Article may only arise among administrative units in respect of which no final administrative decision has been taken, or no administrative procedure has been finalized.*”⁸⁸

[278] With regard to inter-agency coordination mechanisms, the State under review points out in its response that “The SUNAI maintains close ties to the CGR and other fiscal oversight bodies in the National Fiscal Oversight System, as well as with the highest-level authorities of the organs and entities of the National Executive and other branches of Government. These mechanisms sometimes involve requests for support and information, in others the signing of inter-agency agreements and round-table discussions and working groups on particular cases aimed at resolving some of the tasks assigned to us.”⁸⁹

[279] As for the way decisions are taken, the State under review indicates in its response that: “*The decisions taken by the SUNAI are one-person decisions taken by its highest authority, the National Superintendent of Internal Audit, who shall be accountable to the President of the Republic, the Executive Vice President of the Republic, or to the Office of the Comptroller General of the Republic, regarding matters within its sphere of competence.*”⁹⁰

[280] Furthermore, during the on-site visit, the representatives of the SUNAI said that those decisions may be appealed under self-protection powers (*potestad de autotutela*) and via appeals for reversal of the decision, a motion to reopen a case, an appeal before a higher administrative authority, and via a judicial complaint against an administrative decision.⁹¹

[281] As for the way in which the highest positions within the SUNAI are filled, the State under review reported in its response that Article 142 of the Public Sector Financial Administration organic Law (LOAFSP) establishes that the “*National Superintendency of Internal Audit shall be headed by a civil servant called the National Superintendent of Internal Audit, who shall be appointed by the President of the Republic and shall be answerable to him or her and to the Executive Vice President. The holder of this office may be freely appointed and dismissed by the President of the Republic.*”⁹²

[282] Regarding the way in which its human resource requirements are determined and how those positions are filled, the State under review reports in its response that “*the Civil Service Statute Law regulates government employment relations between government officials and national, state, and municipal public administrations, so that it applies to the SUNAI.*”

[283] *Accordingly, SUNAI’s personnel management system includes, inter alia, human resource planning, recruitment, selection, entry, introduction, training and disciplinary procedures, and is governed by the legal provisions of said Law.*”⁹³

⁸⁸ LOAP <http://www.inapymi.gob.ve/documentos/5890E%20Supresion%20FONCREI.pdf>

⁸⁹ Response of Venezuela to the Fourth Round questionnaire, p. 94.

⁹⁰ *Idem*, p. 89

⁹¹ See the Power Point presentation http://www.oas.org/juridico/PDFs/mesicic4_ven_ana_sun.pdf

⁹² *Idem*.

⁹³ *Idem*, p. 89

[284] In addition, responsibility-related and disciplinary rules for SUNAI personnel are governed by the Civil Service Statute Law and the Administrative Career Regulations.

[285] At the same time, Article 22 of the Organic Law of National Public Administration (LOAPN) provides that “*Each entity or organ of the National Public Administration shall have an internal audit unit...*”

[286] Furthermore, Article 25 of the same LOAPN establishes that the heads of the internal audit bodies shall be appointed through a competitive process organized and conducted in accordance with the terms of reference issued to that end by the Comptroller General of the Republic, whereby one of the jurors shall be a representative of the National Superintendency of Internal Audit. The same Article establishes that the head of the internal audit unit shall serve for a five-year term, after which they may compete, once more only, in a new competitive process.

[287] According to the Article cited in the foregoing paragraph, the nomination or appointment shall be made by the highest authority in the respective organ or entity, and incumbents appointed in this way may not be dismissed without the authorization of the Comptroller General of the Republic, to whom, to that end, the highest-level authority in the agency shall remit the corresponding file.

[288] With respect to the existence of handbooks or other documents containing job descriptions for personnel and of periodic courses for training personnel to perform those functions, in its response to the questionnaire the State under review reported that there is a Job Descriptions and Organizational Manual and that it does conduct training courses for its staff on the various different areas involved in auditing and internal control.⁹⁴

[289] The State also reported that it does have documented procedures for conducting its tasks, such as handbooks and procedural guidelines; notably SUNAI’s Organizational Chart and Organization Manual, along with other handbooks and guidelines listed in the response to the Fourth Round questionnaire.⁹⁵

[290] With respect to institution-building measures, the State under review points out in its reply that sensitization and training seminars have been conducted for Internal Audit Units (UAI) in the Work Plan Registration and Monitoring System, as well as pilot tests of the Management information System for Strengthening the UAI (SIGEFUAI). The idea of these courses was to provide technological tools for improving management of internal control, internal audits, and social accounting in the National Public Administration (NPA). Likewise, the system for evaluating the Internal Control System was updated and validated and I.T. was used to boost the SUNAI’s Audit, Internal Control and Support Units Area.⁹⁶

[291] Regarding the implementation of modern systems or technologies to facilitate the institution’s work, both in its response to the questionnaire and during the on-site visit, the State under review pointed out that the SUNAI had, inter alia, signed agreements through the Legal Advice Office with the National Information Technologies Center (CNTI), the Superintendency of Electronic Certification Services (SUSCERTE), and the National Telematic Incident

⁹⁴ *Idem*, p. 92

⁹⁵ *Idem*, pp. 89-90.

⁹⁶ *Idem*, p. 93

Management System of the Bolivarian Republic of Venezuela (VENCERT), with a view to facilitating the development of the institution's technological activities.⁹⁷

[292] With regard to the dissemination of its objectives and functions, in its response the State under review points out that the SUNAI has a website, which posts information regarding all aspects of its organizational structure, the laws establishing it, its management philosophy, budget execution, and the activities carried out in the course of its duties. It also indicated that the institution has a Citizens Advice and Assistance Bureau (*Oficina de Atención al Ciudadano*), where counseling is provided for the general public, as well as a series of leaflets and relevant information material which are distributed to both citizens and public servants.⁹⁸

[293] As regards internal control mechanisms, SUNAI's organizational chart includes an Internal Audit Unit (UAI)⁹⁹. Thus, during the on-site visit, the representatives of the SUNAI pointed out that it was up to the Office of the Vice President of the Republic and the CGR to exercise internal oversight of the SUNAI. In addition, internal oversight of the SUNAI is governed by the Organic Law of the Office of the Comptroller General of the Republic and of the National Fiscal Oversight System and their enabling Regulations; the Organic Law on Financial Administration of the Public Sector; the Regulations governing the Organization of Internal Controls in the National Public Administration; the General Standards governing Internal Controls. There is also an Internal Control Standards Handbook for a Generic Model of the Central and Functionally Decentralized Administration.¹⁰⁰

[294] Regarding mechanisms for attending to claims, complaints, or denunciations relating to the fulfillment of the Department's objectives and the performance of its staff, the State under review pointed out in its response that citizens were able to file complaints through the Citizens Advice and Assistance Bureau.¹⁰¹ In addition, as transpired during the on-site visit, the representatives of the SUNAI said that claims, complaints, and denunciations could also be submitted to an electronic mailbox on the SUNAI website, in the Citizens Advice and Assistance Bureau section. They said there were also Standards for Fostering Citizen Participation and that Resolution No. 01-00-55 contains Instructions regarding Complaints.¹⁰²

[295] Concerning the way in which the budgetary resources needed for SUNAI's operations are assured, the State under review commented as follows in its response: "*Budgetary resources for SUNAI's activities are requested through the budget formulation process, the guidelines for which are issued by the President of the Republic in the Council of Ministers and regulated by instructions of the National Budget Office...*"¹⁰³

[296] As for accountability, Article 145 of the Organic Financial Administration Law (LOAF) establishes that "The National Superintendency of Internal Audit shall inform: 1. the President of the Republic, the Executive Vice President, and the Minister of People's Power for Planning and

⁹⁷ *Idem*, p. 93 See also the Power Point presentation at http://www.oas.org/juridico/PDFs/mesicic4_ven_sunai_pres_pan_14.pdf

⁹⁸ *Idem*, p. 93

⁹⁹ See <http://www.sunai.gob.ve/index.php/estrategia-institucional/estructura-organizativa>

¹⁰⁰ See http://www.oas.org/juridico/PDFs/mesicic4_ven_ana_sun.pdf

¹⁰¹ Response of Venezuela to the Fourth Round questionnaire, p. 94.

¹⁰² See the PowerPoint presentation

http://www.oas.org/juridico/PDFs/mesicic4_ven_sunai_pres_pan_15.pdf and Resolution No. 01-00-055 "Instructions regarding Complaints"

<http://www.cgr.gob.ve/pdf/leyes/CGRINSTRUCTIVODENUNCIAS.pdf>

¹⁰³ Response of Venezuela to the Fourth Round questionnaire, p. 94.

Finance regarding the financial and operational management of the agencies in its sphere of competence...”

[297] Accordingly, the State under review indicates in its response that the information needed for annual reports is garnered “*from the Office of the Manager for Strategic Planning, which monitors all SUNAI projects, and the Budget and Financial Execution reports issued by the Public Finance Management and Administration System. That information then serves to prepare the quarterly physical-financial execution report.*”¹⁰⁴

[298] Likewise, regarding the manner in which accountability information is made public, so that citizens have access to it, the State under review points out, in that same response, that “*After they have been approved by the competent authorities and presented to the National Assembly, the Report and Accounts are posted for citizens to access on the institution’s website and can be consulted in hard copy at the Superintendency’s facilities.*”¹⁰⁵

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

[299] The National Superintendency of Internal Audit (SUNAI) has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were described in brief in section 4.1 of this report. Nevertheless, the Committee deems it appropriate to make a number of observations in relation thereto:

[300] First, on the matter of human resources, the Committee notes that the State under review indicates in its reply that the Job Descriptions and Organizational Manual is currently being revised to take organizations adjustments in the SUNAI into account.¹⁰⁶

[301] On this subject, during the *on-site* visit, the representatives of the SUNAI explained that this was because the institution was in the middle of a restructuring and therefore the Planning Ministry was revising the Job Description Manual, aimed at achieving greater uniformity in respect of work and wage scales across the national administration, above all bearing in mind that some public servants were earning less than they should be, based on the pay scale.

[302] They explained that until the revision was completed the Planning Ministry could not authorize recruitment competitions because the job descriptions for the vacant positions had to match the new organizational structure and the Job Description Manual.

[303] Here, the Committee thinks it would be advisable for the State under review to consider promptly concluding the revision of the SUNAI’s organizational structure and Job Description Manual and resuming competitions to recruit the personnel it needed, particularly since the representatives of the SUNAI had reported, at the time of the visit, that there are 72 positions vacant which needed to be filled and the last competition dated back to 2005. Along similar lines, the Committee also notes that the State under review reported in its response that one of the difficulties it faced was “*The absence of legal and regulatory provisions regarding the recruitment and selection of Human Talent.*”¹⁰⁷ The Committee will make recommendations (see recommendations 4.4.1 and 4.4.2 in Chapter II of this report).

¹⁰⁴ Response of Venezuela to the Fourth Round questionnaire, p. 95.

¹⁰⁵ *Idem.*

¹⁰⁶ *Idem*, p. 90

¹⁰⁷ Response of Venezuela to the Fourth Round questionnaire, p. 96.

[304] In the same vein, the Committee notes that the State under review also points out in its response that the SUNAI's organizational chart and manual, like most of its handbooks and rules of procedure, are being revised to take into account changes in the structure of the institution. Here, the Committee deems it advisable that the State under review promptly complete its revision of these manuals and of the structure of the institution, so that it can fully perform its functions.¹⁰⁸ The Committee will make a recommendation (see recommendation 4.4.3 in Chapter II of this report).

[305] At the same time, the Committee notes that each institution or organ in public administration has its internal audit unit (UAI) and that the Organic Law of National Public Administration (LOAPN) establishes that the heads of those units should be appointed following the competitive process envisaged in the regulations issued to that end by the Comptroller General of the Republic, with one SUNAI representative sitting on the Selection Board¹⁰⁹.

[306] The above notwithstanding, during the *on-site* visit, the representatives of the SUNAI made it clear that currently not all internal auditors are being appointed through a competitive process and that the SUNAI was currently campaigning for all recruitment being done through competition, as this would help avoid conflicts of interest, above all in cases in which an internal auditor's job is entirely dependent on the supervisor who appoints and dismisses him at his own discretion. The Committee deems it advisable that the State under review consider taking appropriate measures to ensure that all appointments of internal auditors are the result of a competitive process that respects the principles of disclosure, equity, and efficiency. The Committee will make a recommendation (see recommendation 4.4.4 in chapter II of this report).

[307] Second, during the *on-site* visit, the representatives of the SUNAI reported that one of the difficulties they faced was failure on the part of the UIA, to promptly remit to the competent authorities the case files containing circumstantial evidence of criminal liability, since very often that information was being given to the media before, or instead of, being forwarded to the CGR or the Public Prosecution Service: a breach of regulatory procedures. On this, the Committee deems it advisable that the State under review consider taking the necessary measures to ensure that all the UAI promptly pass on to the competent authorities any case files in which, as a result of their engagements, circumstantial evidence has been found of criminal liability, in accordance with the procedures established under applicable law. The Committee will make a recommendation (see recommendation 4.4.5 in Chapter II of this report).

[308] Third, in relation to the SUNAI's internal control mechanisms, the Committee notes that although the Internal Control Standards Handbook for a Generic Model of the Central and Functionally Decentralized Administration has been issued, which states in the Section entitled "1. Presentation," that it "*contains the minimum internal control standards to be adopted by staff responsible for handling and overseeing resources and property of the central and functionally decentralized administration,*" and that its principal purpose is "*to provide guidelines for establishing internal control systems in government entities.*"¹¹⁰

[309] The SUNAI has not issued an Internal Control Standards Handbook specifically for itself, based on the aforementioned generic model. The State under review further points out in its response that one of the difficulties it faces is the "dearth of policies, standards, and procedures within the

¹⁰⁸ *Idem*, pp. 90-91.

¹⁰⁹ Article 25 of the LOAPN.

¹¹⁰ See the Internal Control Standards Handbook for a Generic Model of the Central and Functionally Decentralized Administration, 1. Presentation, p. 3

http://www.oas.org/juridico/PDFs/mesicic4_ven_man_con_int_sun.pdf

institution, especially in the areas of Administration and Finance.”¹¹¹ Accordingly, the Committee considers that it would be very useful for the State under review to issue an Internal Control Standards Handbook specifically for the SUNAI based on the model published by the institution and containing appropriate policies, standards, and procedures, along with mechanisms for their effective implementation. The Committee will make a recommendation to that effect (see recommendation 4.4.6 in Chapter II of this report.)

[310] Fourth, regarding mechanisms for attending to claims, complaints, or denunciations relating to the fulfillment of the institution’s objectives and the performance of its staff, the Committee notes that the SUNAI does have several mechanisms for receiving complaints, such as the Citizens Advice and Assistance Bureau and its UAI. It also has Standards for Fostering Citizen Participation and Instructions regarding Complaints, both issued by the CGR.

[311] However, the Committee notes that although the Standards for Fostering Citizen Participation regulated the receipt of complaints through Citizen Participation Offices, they do not regulate internal procedures for attending to them once they are remitted to the SUNAI¹¹². Likewise, although the Instructions regarding Complaints refer to the receipt of complaints and their admissibility, the consequences of false or groundless complaints or complaints that have to do with matters that are not worth investigating or which it is not up to the CGR [Tr. sic] to investigate, the return of original documents submitted, and the inadmissibility of anonymous complaints, they do not indicate what steps are to be taken once they have been admitted by the SUNAI. For all those reasons, the Committee deems it appropriate that the State under review consider issuing a complaints and denunciations procedures manual specifically for the SUNAI, and will make a recommendation to that effect (see recommendation 4.4.7 in Chapter II of this report).

[312] Similarly, the Committee notes that during the on-site visit, the representatives of the SUNAI said that one way citizens can file complaints and denunciations is by using the electronic mailbox shown on the Citizens Advice and Assistance Bureau link on the SUNAI website. Here, the Committee notes that users have to go through several screens to get to the electronic mailbox. Indeed, they first have to click on “*Directorio*” and then on the “*Ofic. de Preven., Atención a la Ciudad y Aud Social*” link, after which they can see this Office’s e-mail. However, no indication is given that this Internet address is specifically earmarked for receiving complaints and denunciations, nor are there any instructions. At the same time, the first page of the SUNAI website does show a link for communicating directly with the Institution, but to do so the user needs to have an account and a password.

[313] Here, the Committee deems it useful that the State under review consider placing an electronic mailbox for complaints and denunciations right up front on the first page of the SUNAI’s Internet portal, to facilitate citizens’ use of this tool and to provide them with a free telephone line so those without internet access can report acts of corruption of which they are aware or lodge complaints against the alleged perpetrators of acts of corruption of which they are victims. The Committee will make recommendations to that effect (see recommendation 4.4.8 and 4.4.9 of Chapter II of this report).

[314] Fifth, the Committee notes that, during the on-site visit, the representatives of the SUNAI said that one difficulty they faced was the inadequacy of the budgetary resources allocated to the Institution for the performance of its functions, strengthening the internal control system, and making it more efficient. They said they also needed more staff to perform their functions properly, as

¹¹¹ Response of Venezuela to the Fourth Round questionnaire, p. 96.

¹¹² See http://www.oas.org/juridico/PDFs/mesicic4_norm_part_ciud.pdf and <http://www.cgev.gov.ve/normativas/18%20NFPC.pdf>

evidenced by the request for 72 additional provisions, as mentioned above, that the Ministry of Planning had still to approve. They added that they were therefore also requesting an increase in their budget allocation. Here, the Committee thinks that the State would do well to consider strengthening the SUNAI by providing it -- within the funds available -- with the human and budgetary resources it needs to fully perform its functions. The Committee will make a recommendation in this regard (see recommendation 4.4.10 in Chapter II of this report).

[315] Sixth, the Committee notes that during the on-site visit the representatives of the SUNAI mentioned, when referring to the difficulties they faced, the need to unify and update the internal control criteria used by the UAI, with a view to making the evaluation process more effective and better able to confront the challenge posed by corruption. It is worth adding that the need to update internal control criteria was also mentioned in the list of specific technical cooperation needs.¹¹³ In this regard, the Committee thinks it would be appropriate for the State under review to consider taking the measures it deems necessary to update, where relevant, the internal control criteria used by the UAI, so as to make evaluation more effective and better confront the challenge of corruption. Several steps could be taken to achieve this, including risk mapping, technical round tables, talks, and so on. To that end, the Committee will make a recommendation (see recommendation 4.4.11 in Chapter II of this report).

[316] Seventh, the Committee notes that one of the difficulties pointed out by the representatives of the SUNAI during the on-site visit with respect to the internal control system's preventive work was that the working procedures used by the internal auditors had been geared to ex-post evaluation of processes, neglecting preventive evaluation of processes. Thus, they said there was a need to "*conduct preventive evaluations more frequently, as they would serve to identify potential shortcomings in advance and allow corrective action plans to be drawn up.*" It is worth adding that both issues were also mentioned by the SUNAI representatives in their list of specific technical cooperation needs.¹¹⁴ Mindful of the importance of preventive work in combating corruption, the Committee will make recommendations (see recommendation 4.4.12 in Chapter II of this report).

[317] Eighth, the Committee further notes that, as an example of the difficulties they faced, the SUNAI representatives cited, during the on-site visit, the need to develop an appropriate communications and outreach policy that would publicize the institution's spheres of competence and functions within the overall dynamics of the Central and functionally Decentralized National Public Administration, along with resources needed to implement such a policy. Thus, the State under review lists under its technical cooperation needs the strengthening of the communications area in the SUNAI, as a tool for consolidating its competences and functions within the Central and functionally Decentralized National Public Administration. Bearing in mind the importance of internal controls and their consolidation within the structure of public administration, the Committee will make a recommendation (see recommendation 4.4.13 in Chapter II of this report).

[318] During the on-site visit, the representatives of the SUNAI said that internal control work was hampered by the fact that not all internal auditors were familiar with government guidelines and policies. Given the importance of having effective and efficient UAI, the Committee thinks it would be beneficial for the State under review to consider furnishing the SUNAI with the resources needed to train all the internal auditors, to the extent that such resources are available, and developing communication strategies to ensure that they keep up with the State's internal control guidelines and policies. The Committee will make a recommendation in that regard (see recommendation 4.4.14 in Chapter II of this report).

¹¹³ See the document provided by the SUNAI, p. 14

http://www.oas.org/juridico/PDFs/mesicic4_ven_ana_sun.pdf

¹¹⁴ *Idem.*

[319] Along the same lines, during the on-site visit, the SUNAI representatives mentioned that in many cases the UAI did not receive support or recognition from the agencies they pertain to, which tended to result in delays. Accordingly, the Committee thinks that the State would benefit by giving consideration to the adoption of pertinent measures aimed at supporting and strengthening the UAI within their own agencies, so as to ensure that internal control processes are as efficient as possible. The Committee will make a recommendation (see recommendation 4.4.15 in Chapter II of this report).

[320] The representatives also said that in some areas channels of communication with the bodies subject to their oversight were far from ideal, so that the flow of information was restricted and meant, among other things, that there were delays in the delivery of the information requested from those bodies. Hence, the Committee considers that the State under review would do well to optimize channels of communication between the entities it oversees and to establish mechanisms designed to ensure that the information requested is delivered to the SUNAI and the UAI correctly and on time. The Committee will make a recommendation (see recommendation 4.4.16 in Chapter II of this report).

[321] Finally, during the on-site visit, the representatives of the SUNAI, stressed that their technical cooperation needs are geared to sharing experiences and hearing in advance about new economic, administrative and productive processes; keeping internal control procedures up to date, so that evaluations are more effective, through technical round tables, debates, talks, and so on; conducting more frequent preventive evaluations to detect possible shortcomings in advance and be able to prepare corrective action plans; following up on the corrective action plan implemented by the agency in order to take observations made in the internal control evaluation; strengthening the SUNAI's communications area in order to consolidate its competences and functions within the dynamics of the Central and functionally Decentralized National Public Administration; training and raising awareness among the authorities and government officials about public administration and internal controls; evaluating the internal control systems in place in the organs and entities of the National Public Administration; and providing technical counseling on internal control matters. In this connection, the Committee takes note of the needs mentioned by the CGR and of the need for the State under review to provide the necessary support. It also invites the states parties (in particular, their internal audit institutions) and other cooperation organizations to assist the institution in these areas. The Committee will make a recommendation (see recommendation 4.4.17 in Chapter II of this report).

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

[322] The response to the questionnaire of the State under review and the on-site visit yielded information on results achieved by the National Superintendency of Internal Audit (SUNAI), notably in respect of the following:

[323] In its reply, the State under review provided, in particular, the following information regarding activities designed to prevent corrupt practices:

[324] During the on-site visit, the representatives of the SUNAI said that between 2011 and October 2014, training had been provided to 7,894 people and furnished the following statistical Table:¹¹⁵

TABLE 1:

¹¹⁵ See the Power Point presentation, p.13 http://www.oas.org/juridico/PDFs/mesicic4_ven_ana_sun.pdf

Topic	2011	2012	2013	2014	Total Attending
Internal control	1556	763	288	0	2607
Examination of Accounts	150	131	67	72	420
Government Procurement	162	578	114	56	910
Public Administration	0	0	276	296	572
Government Auditors	92	484	417	188	1181
Investigative Authority	427	249	139	25	840
Legal Audits	0	0	437	58	495
Law of Administrative Procedures	0	62	109	128	299
Supervisory Responsibility and Disciplinary Regime	0	0	14	0	14
Strengthening of the UAI in the National Public Administration (APN)	189	0	0	0	189
Competitions for appointing heads of APN offices	175	27	56	0	258

[325] The Committee notes that this Table contains no figures for 2009 and 2010. Nevertheless, the Committee finds that the above information serves to demonstrate that measures for the prevention of acts of corruption have been carried out at the SUNAI, in keeping with its functions in that regard.

[326] That notwithstanding, the figures show a gradual decline, sometimes to zero, in the number of people trained in subjects relating to internal control, examination of accounts, government procurement, government auditors, investigative authority, legal audits, supervisory responsibility and disciplinary regime, the strengthening of the UAI in the National Public Administration (APN), and competitions for appointing heads of APN offices. Here, the Committee notes that one of the difficulties pointed out by the State under review, in its reply, is “*Ignorance on the part of civil servants regarding the tools, mechanisms, and indications for implementing and enforcing internal controls in the activities they carry out.*”¹¹⁶

[327] In view of the above, the Committee thinks it would be appropriate for the State under review to consider taking the necessary steps to provide officials in the APN with adequate training on preventing corruption and strengthening internal controls, in addition to completing the statistics on the results of the SUNAI’s efforts to prevent acts of corruption, with a view to identifying challenges and recommending corrective measures, where necessary. The Committee will make recommendations (see recommendations 4.4.18 and 4.4.19 in Chapter II of this report).

[328] Second, during the on-site visit, the representatives of the SUNAI, stated that “*Since 2010, the SUNAI conducted 165 evaluations of the Internal Controls System, broken down as follows:*”

TABLE 2

YEAR	EVALUATIONS SCI	PERCENTAGE	CLASSIFICATION
2010	25	70%	Weak
2011	30	27%	Moderate

¹¹⁶ Response of Venezuela to the Fourth Round questionnaire, p. 96.

2012	48
2013	50
2014	12

3%	Satisfactory
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[329] On this, the Committee notes that the statistics in Table 2 show the number of internal control system evaluations by the SUNAI increasing between 2010 and 2013 (the 2014 figures are for January-October only). However, the figures for 2008-2009 are missing. Adding them would enable the Committee to have a more complete grasp of trends in the data.

[330] Likewise, the information now available does not tell us whether evaluations were conducted in 165 National Public Administration bodies (APN) or whether 165 evaluations were carried out in fewer APN bodies. Nor is there any exact indication of what is being evaluated, so that it is difficult to arrive at an overall assessment of the information. At the same time, the statistical Table on the right indicates that only 3% of the evaluations were “satisfactory.” 27% were “moderate” and 70% “weak.”

[331] Bearing all that in mind, the Committee considers that implementing the recommendations made by the SUNAI to the evaluated bodies as a result of these exercises is of the utmost importance for boosting the APN bodies’ internal controls for preventing and combating corruption. However, there is no information about the extent to which these recommendations have been or are being implemented.

[332] Moreover, the Committee notes that, in its reply, the State under review includes, as one of the difficulties it faces, “*Scant supervision and monitoring of projects, activities, and tasks established in the work plans, and the lack of management indicators.*”¹¹⁷

[333] On this, the representatives of the SUNAI mentioned during the on-site visit that one problem they faced was that the institution lacks the coercive powers needed to ensure more expeditious implementation of the recommendations it makes to APN bodies and entities. They added that they were currently proposing legal measures to amend the Public Sector Financial Administration Law so that it grants coercive powers to the SUNAI.

[334] In light of the above, the Committee deems it advisable that the State under review consider compiling statistics to keep track of projects, activities, and tasks assigned in work plans, to show how many bodies were evaluated, how many recommendations were made to each of them, and the extent to which they have been implemented. Likewise, the Committee thinks it would be beneficial for the State under review to consider adopting pertinent legislative measures to endow the SUNAI with the coercive powers needed to enforce implementation of the recommendations it makes to bodies in the APM under the authority vested in it by law as the internal control system’s policy-making organ. The Committee will make recommendations (see recommendations 4.4.20 and 4.4.21 in Chapter II of this report).

¹¹⁷ Response of Venezuela to the Fourth Round questionnaire, p. 96.

[335] Third, the Committee notes that the SUNAI has no powers to investigate and punish acts of corruption that involve criminal liability and that, during the on-site visit, the representatives of the SUNAI explained that, although the institution coordinates the work of the UAI, in reality it is those units that actually conduct the audits of each body and, as a result of their audits, are able to detect circumstantial evidence of punishable acts. Likewise, the representatives reported that, although the UAI are obliged to refer case files in which they discover circumstantial evidence of criminal liability to the competent authority for investigation and punishment, they have no obligation to notify the SUNAI of such deeds and they are therefore unable to compile statistics showing how many cases were referred to those authorities and what happened to them in the end.

[336] On this, the Committee considers that, while the SUNAI's functions do not include investigating and punishing acts of corruption involving criminal liability, it is indeed the authority responsible for internal oversight of the organs and entities of the State, and that it would be advisable for the State under review to consider the possibility of establishing the obligation of the UAI to notify the SUNAI of the number of cases in which circumstantial evidence of criminal liability was found and which were referred to the CGR or the Public Prosecution Service (MP) for investigation and punishment. It should also establish an inter-agency coordination mechanism with the CGR and the MP to follow up on such cases, so that the SUNAI can keep statistics aimed at identifying challenges and recommending corrective measures, as needed. The Committee will make recommendations in this regard (see recommendations 4.4.22 and 4.4.23 in Chapter II of this report).

[337] Finally, the Committee notes that the State under review provided no information, either in its reply or during the on-site visit, regarding the outcomes of internal disciplinary proceedings against SUNAI officials charged with corrupt practices. On this, the Committee deems that the State under review could consider compiling statistics on disciplinary proceedings in the SUNAI, connected with corrupt acts that involve disciplinary, administrative, financial, or civil liability, in order to know the total number of cases investigated over the last five years, the number of decisions adopted in connection with those cases, as well as the number of decisions that have resulted in: an accusation or a penalty; no accusation or an acquittal; and prescription of action or extinction of liability for lack of a decision within statutory time limits, in order to identify challenges and recommend the adoption of corrective measures, as necessary (see recommendation 4.4.24 in Chapter II, of this report).

4.4. Conclusions and recommendations

[338] Based on the above comprehensive review of the National Superintendency of Audits (SUNAI), the Committee formulates the following conclusions and recommendations:

[339] **The Bolivarian Republic of Venezuela has considered and adopted measures intended to maintain and strengthen the National Superintendency of Audits (SUNAI), as an oversight body, as indicated in Chapter II, Section 4 of this report.**

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

- 4.4.1. Promptly complete revision of the SUNAI Job Description Manual, making sure that classification and pay scales are harmonized with the national system (see Chapter II, Section 4.2 of this report).

- 4.4.2. Promptly resume competitions to recruit SUNAI personnel, making sure that they are conducted transparently, equitably and efficiently (see Chapter II, Section 4.2 of this report).
- 4.4.3. Promptly conclude the review of the SUNAI's structure and organizational manual, as well as any other of its manuals and rules of procedure currently being reviewed (see Chapter II, Section 4.2 of this report).
- 4.4.4. Take appropriate measures to ensure the appointments of all internal auditors are made through competitive exam, transparently, equitably and efficiently (see Chapter II, Section 4.2 of this report).
- 4.4.5. Take such measures as it deems necessary to ensure that all Internal Audit Units (UAI) always comply with their obligation to promptly refer to the competent authority files in which, thanks to their engagements, circumstantial evidence of criminal liability has been found, in accordance with procedures established in the legislation currently in force (see Chapter II, Section 4.2 of this report).
- 4.4.6. Issue an internal control standards manual specifically tailored to the SUNAI, based on the Internal Control Standards Handbook for a Generic Model of the Central and Functionally Decentralized Administration, that contemplates appropriate policies, standards and procedures, along with mechanisms for implementing them effectively (see Chapter II, Section 4.2 of this report).
- 4.4.7. Issue a complaints and denunciations procedures manual specifically for the SUNAI that addresses not just procedures for receiving them but also what is done internally with those complaints and denunciations after they have been received by the institution (see Chapter II, Section 4.2 of this report).
- 4.4.8. Post an electronic mailbox specifically to receive complaints and denunciations regarding failures to comply with the institution's objectives or the performance of its staff directly on the home page of the SUNAI's Internet portal, containing clear instructions, so that citizens can readily use this tool (see Chapter II, Section 4.2 of this report).
- 4.4.9. Provide the SUNAI with a cost-free telephone line so that people without access to the Internet can report acts of corruption they become aware of or file claims against the alleged perpetrators of acts of corruption of which they are the victims (see Chapter II, Section 4.2 of this report).
- 4.4.10. Strengthen the SUNAI by providing it, within the resources available, with the necessary human and budgetary resources to perform its functions properly (see Chapter II, Section 1.4 of this report).
- 4.4.11. Take such steps as are needed to update and unify the internal control criteria used by the UAI, in order to achieve more effective evaluation of the bodies it oversees and better confront the challenge of corruption (see Chapter II, Section 1.4 of this report).
- 4.4.12. Adopt appropriate measures to strengthen the preventive aspects of the internal audit system under the SUNAI's control, so that possible shortcomings in the

evaluated bodies can be diagnosed ahead of time and corresponding corrective action plans can be worked out (see Chapter II, Section 4.2. of this report).

- 4.4.13. Establish an appropriate communications and outreach policy that would publicize the SUNAI's spheres of competence and functions within the overall dynamics of the Central and functionally Decentralized National Public Administration, and consolidate them in that environment, endowing the institution, within the resources available, with the human and budgetary resources needed to implement such a policy (see Chapter II, Section 4.2 of this report).
- 4.4.14. Provide the SUNAI, within the resources available, with the human and budgetary resources needed to train all the internal auditors and to develop communication strategies that will enable them to keep up-to-date with internal control guidelines and policies issued by the government (see Chapter II, Section 4.2 of this report).
- 4.4.15. Take appropriate steps to support and strengthen the UAI within the agencies/bodies to which they pertain (see Chapter II, Section 4.2 of this report).
- 4.4.16. Optimize communication channels between the SUNAI and the bodies it oversees and establish mechanisms designed to ensure that the information requested is remitted correctly and on time to the SUNAI and the UAI (see Chapter II, Section 4.2 of this report).
- 4.4.17. Make the necessary arrangements with other States and cooperation agencies to provide the SUNAI, as the policy-making body for the Internal Audit System (SCI), with the technical cooperation needed to ensure efficient and effective performance by the entities making up that System (see Chapter II, section 4.2 of this report).
- 4.4.18. Adopt such measures as are needed to provide adequate training in the prevention of corruption and strengthening of internal controls for officials in the National Public Administration within the SUNAI's oversight sphere (see Chapter II, section 4.3 of this report).
- 4.4.19. Supplement the results statistics relating to its corruption prevention functions, with a view to identifying challenges and recommending corrective measures, as needed (see Chapter II, section 4.3 of this report).
- 4.4.20. Develop statistics to keep track of the projects, activities and tasks included in work plans, so as to show how many bodies were evaluated, how many recommendations were made to each of them, and the extent to which those recommendations were implemented, with a view to identifying challenges and recommending corrective measures, as needed (see Chapter II, section 4.3 of this report).
- 4.4.21. Consider adopting pertinent legislative measures to endow the SUNAI -- within the functions assigned to it by law as the policy-making body for the Internal Audit System -- with the coercive powers needed to ensure that the recommendations it makes to bodies in the National Public Administration are actually implemented (see Chapter II, section 4.3 of this report).

- 4.4.22. Make it mandatory for the UAI to report to the SUNAI any cases referred to the CGR or the Public Prosecution Service (MP) for investigation and prosecution because circumstance evidence was found of criminal liability, so that the SUNAI can keep the corresponding statistics, with a view to identifying challenges and recommending corrective measures, as needed (see Chapter II, section 4.3. of this report).
- 4.4.23. Establish inter-agency mechanisms with the CGR and the MP, with a view to keeping track of the cases referred to those authorities by the UAI for investigation and/or possible punishment and to knowing what happens to such cases in the end. In this way, the SUNAI can compile the corresponding statistics, with a view to identifying challenges and recommending corrective measures, as needed (see Chapter II, section 4.3. of this report).
- 4.4.24. Compile statistics on disciplinary proceedings in the SUNAI, connected with corrupt acts that involve disciplinary, administrative, financial, or civil liability, in order to know the total number of cases investigated, the number of decisions adopted in connection with those cases, as well as the number of decisions that have resulted in: an accusation or a penalty; no accusation or an acquittal; and prescription of action or extinction of liability for lack of a decision within statutory time limits, in order to identify challenges and recommend the adoption of corrective measures, as necessary (see Chapter II, Section 4.3 of this report).

5. Ombudsperson's Office (DP)

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

[341] The Ombudsperson's Office (*Defensoría del Pueblo* -DP) has a set of provisions in its legal framework, as well as other measures that refer, inter alia, to the following:

[342] Article 280 of the Constitution of the Bolivarian Republic of Venezuela (CRBV) establishes that "*The People Defender's Office* [Tr. hereinafter Ombudsperson's Office] *is charged with the furtherance, defense and oversight of the rights and guarantees established under this Constitution and international treaties on human rights, in addition to defending the legitimate, collective and diffuse interests of the citizen.*"

[343] As for its objectives, according to Article 4 of the Organic Law of the Ombudsperson's Office (LODP) they are: "*the furtherance, defense, and oversight of 1. human rights; 2. The rights, guarantees, and interests of all persons with respect to administrative services provided by the public sector. 3. The rights, guarantees, and interests of all persons with respect to public services, regardless of whether they are provided by public or private juristic persons.*"

[344] Article 281 of the C RBV establishes the functions of the DP, as follows: "*1. To see that the human rights provided for in this Constitution and in the international treaties, agreements and conventions on human rights ratified by the Republic are effectively respected and guaranteed, investigating either on its own initiative or at the request of a party any denunciation of which it becomes aware. [Tr. published English translation is corrected here] 2. To see to the proper functioning of public services; protect and defend the legitimate, collective and diffuse rights and interests of persons against arbitrary acts, abuse of authority and errors committed in the providing of such public services, filing when appropriate, any actions to demand that the State compensate parties subject to its administrative actions for any damages that may have*

been caused them in connection with the functioning of such public services. 3. To file unconstitutionality actions, summary constitutional remedies, habeas corpus, habeas data and any other actions or motions necessary in order to exercise the powers indicated above, where proper in accordance with law. 4. To urge the General Prosecutor of the Republic [Tr. Fiscal General de la República] to pursue any appropriate actions or motions against public officials responsible for violations of or encroachment upon human rights. 5. To ask the Republican Ethics Council to take the appropriate measures with regard to public officials responsible for violations of or encroachment upon human rights. 6. To ask the competent authority to apply appropriate corrective and punitive measures in cases involving violations of the rights of consumers and users, in accordance with law. 7. To submit to legislative organs at the municipal, state or national levels, bills or other initiatives for the progressive protection of human rights. 8. To protect the rights of native peoples and take such action as may be necessary to guarantee and protect such rights effectively. 9. To visit and inspect the dependencies and establishments of State agencies, to prevent or protect human rights. 10. To place before the appropriate organs recommendations and observations as necessary in the interest of providing optimum protection for human rights, to which end it shall develop mechanisms for remaining in constant communication with national and international public and private organs for the protection and defense of human rights. 11. To promote and implement policies for the expansion and effective protection of human rights. 12. Such other functions as may be established by the Constitution and by law. “ [Tr. The published English translation of the Constitution used (and corrected) in this document is posted at: <http://www.venezuelaemb.or.kr/english/ConstitutionoftheBolivarianingles.pdf>]

[345] As regards the autonomy of the DP, Article 5 of the LODP establishes that “The Ombudsperson’s Office, as an organ of Citizen Power, is independent of the other branches of State and enjoys organizational, functional, financial, and administrative autonomy.”

[346] Article 7 of the LODP defines the DP’s sphere of action and establishes that “*The activity of the Ombudsperson’s Office encompasses all acts by any organ or official pertaining to the national, state, or municipal public authority, in any of its executive, legislative, judicial, electoral or military branches, as well as other Citizen Power organs. It likewise encompasses the actions of private individuals providing public services, pursuant to the Constitution of the Bolivarian Republic of Venezuela and the law.*”

[347] With respect to inter-agency coordination, numbered paragraph 10 of Article 281 of the CRBV lists as one of the DP’s functions “*To place before the appropriate organs recommendations and observations as necessary in the interest of providing optimum protection for human rights, to which end it shall develop mechanisms for remaining in constant communication with national and international public and private organs for the protection and defense of human rights.*” Furthermore, during the on-site visit, the representatives of the DP reported that they had a formal cooperation agreement with the Office of the Comptroller General of the Republic (CGR).

[348] As regards the exercise of functions that overlap or are shared with those of other authorities, Article 69 of the LODP establishes that: “*In exercising its functions, the Ombudsperson’s Office will act in cooperation with other public authorities, via the following, and other, procedures: 1. When a matter is under consideration by another authority, the Ombudsperson’s Office shall have access to pertinent information and documents, and may contribute any material resulting from its own investigation. 2. When the Office of the Ombudsperson requests other authorities to undertake certain actions within their sphere of competence, the latter shall keep it informed of the processing of such matters or, failing that, the*

Office of the Ombudsperson may request the corresponding information. 3. When the Ombudsperson's Office undertakes proceedings related to the administration of justice, it shall notify the Supreme Court of Justice; and it may bring actions before courts competent to hear judicial disciplinary cases. 4. When, in the performance of its duties, the Office of the Ombudsperson becomes cognizant of facts that fall within the sphere of competence of the Office of the Attorney General (Fiscalía General de la República) or the Office of the Comptroller General of the Republic, it shall ask them to intervene, as appropriate. 5. When, in the performance of their duties, executive organs become apprised of facts pertaining to the sphere of competence of the Ombudsperson's Office, they shall notify the latter and request its intervention."

[349] As for the way the DP takes its decisions, Article 10 of the LODP establishes that *"Actions undertaken by the Ombudsperson's Office are non-coercive in nature, which means that it is not a judicial body and lacks executive competence to issue, amend, or annul orders, judgments, or proceedings stemming from any branch of government. The Ombudsperson's Office may alternative conflict resolution mechanisms when the circumstances of the case so warrant."*

[350] Article 13 of the LODP establishes that *"No judicial appeal may be filed against recommendations and observations made by the Ombudsperson's Office. The Ombudsperson may reconsider them when facts or circumstances so warrant."*

[351] With respect to actions needed to apply or enforce the DP's decisions, Article 12 of the LODP establishes that *"Any official or person referred to in Article 7 of this Law who receives a request from the Ombudsperson's Office must cooperate, help, and facilitate or provide the reports, files, documents, information, and explanations requested. Furthermore, officials of the Ombudsperson's Office must be allowed free access to places and documents so that they can discharge their duties. Failure to comply with the provisions of this article will render the person concerned subject to the liabilities provided for in Title IV of this Law."*

[352] Regarding the way in which DP's most senior authorities are appointed, article 17 of the LODP establishes that: *"The Ombudsperson shall be appointed for a single seven-year term by the National Assembly, by a vote in favor by two-thirds of its members, pursuant article 279 of the Constitution of the Bolivarian Republic of Venezuela."*

[353] Likewise, article 25 of the LODP establishes that *"The Ombudsperson's functions shall be terminated on any of the following grounds: 1. Resignation or death of the Ombudsperson. 2. Disability certified by a medical board appointed by the Supreme Court 3. Expiration of the constitutional term corresponding to his/her appointment. 4. Disqualification on any of the grounds established in this Law; 5. Conviction, in a final judgment; political offenses excepted."*

[354] Eligibility conditions for an Ombudsperson are set out in article 19 of the LODP, while disqualifications for the post are listed in Article 20. Article 22 of the same law spells out the kinship restrictions.

[355] As for the way the DP's human resource requirements are determined, the Staff Rules of the Ombudsperson's Office (EPDP), issued on January 22, 2014, regulate procedures for entering and leaving the service, disciplinary sanctions, disqualifications and other rules relating to the

Office's personnel. The DP also has its Internal Organizational and Operational Rules of Procedure.¹¹⁸

[356] Article 13 of the EPDP establishes that DP officials shall either pertain to the career service or be freely appointed and removed by the Ombudsperson.

[357] In addition, Article 14 of the EPDP states that career service officers shall be those who joined the DP after passing a competitive exam; have satisfactorily completed the trial period required under the Staff Rules, and following their appointment, perform permanent functions in positions that are not high-level or trust positions.

[358] The DP also has its Job Descriptions Manual, which is a "*document listing all current positions, classified according to job category, as well as information on the specific features and factors characterizing each of the positions, and determining its ranking on the corresponding pay scale.*"¹¹⁹ During the on-site visit, the DP representatives also mentioned that staff received periodic training with respect to said functions.

[359] With respect to documented procedures for its work, as mentioned above, the State under review reported in its reply to the questionnaire that the DP has its Internal Organizational and Operational Rules of Procedure, "*which establish processes, competences, and other aspects relating to the way it is structured and how it operates, with respect to its staff and citizens in general.*"¹²⁰

[360] Regarding Institution-building or quality-improvement measures implemented, the State under review indicates in its reply that "the Ombudsperson's Office works with a "National Plan to Promote and Disseminate Human Rights." *The following programs are executed under this Plan: 1. School-level Human Rights Defenders Programs; 2. Program to Disseminate Sexual and Reproductive Rights; 3. Program to Disseminate the Right to be Treated Decently; 4. Special Indigenous Peoples' Jurisdiction Program; and 5. National Human Rights Education Program for Persons Deprived of Liberty.*"

[361] Furthermore, in its reply to the questionnaire, the State under review reported that, as of 2009, "a series of activities have been conducted to correct, perfect, adapt, and develop the preventive potential of the information systems currently in place, and to coordinate tasks relating to the security and integrity of data and of the current I.T. platform."¹²¹

[362] Regarding the way in which the public is informed about the DP's objectives and functions and are offered guidance on how to complete formalities with it, the State under review pointed, in its reply, to the following mechanisms: Representative Offices of the Ombudsperson at the state level, volunteer defenders, mobile ombudsperson offices, communal council, the Postbox (for receiving complaints), the on-line Ombudsperson's Office (website), and the cost-free "0800 Pueblo" hot line.¹²²

¹¹⁸ Response of Venezuela to the Fourth Round questionnaire, p. 77.

¹¹⁹ See the PowerPoint presentation

at http://www.oas.org/juridico/PDFs/mesicic4_ven_pres_final_def_pue.pdf

¹²⁰ Response of Venezuela to the Fourth Round questionnaire, p. 80.

¹²¹ Response of Venezuela to the Fourth Round questionnaire, pp. 80-82.

¹²² *Idem*, pp. 82-83.

[363] With respect to mechanisms for internal control and for dealing with claims, complaints, or allegations related to the pursuit of the DP's objectives and the performance of their personnel, the country under review mentioned in its response that such mechanisms are contemplated in the aforementioned Internal Organizational and Operational Rules of Procedure of the DP and that interested parties can file complaints with the Inspection, Discipline, and Follow-Up Directorate regarding any actions by staff of the Ombudsperson's Office that impair their rights and interests.¹²³

[364] On this, the State under review also reports in its reply that the Inspection, Discipline, and Follow-Up Directorate is responsible for pursuing disciplinary proceedings within its sphere of competence initiated as a result of misdemeanors on the part of officials in the Ombudsperson's Office, in accordance with the law and the Staff Rules (Articles 24 and 25 of the Internal Organizational and Operational Rules of Procedure of the Ombudsperson's Office).¹²⁴

[365] Regarding the way in which the DP's budgetary needs are met, article 76 of the LODP provides that "*The Ombudsperson's Office shall draw up its annual draft expenditure budget, which shall be remitted to Citizen Power for forwarding to the National Executive and incorporated without amendments into the corresponding draft Budget Law to be submitted for consideration by the National Assembly.*"

[366] Regarding the obligation to ensure accountability to the State and to citizens for the performance of the DP's functions and the manner in which accountability information is made public, so that citizens have access to it, numbered paragraph 5 of article 29 of the LODP stipulates that the Ombudsperson must "*submit the institution's annual report, special reports, and any other reports required of it under the Constitution of the Bolivarian Republic of Venezuela, with a view to correcting situations that make it harder to achieve the objectives set forth in this Law.*"

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

[367] The Ombudsperson's Office (DP) has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were described in brief in section 5.1 of this report. Nevertheless, the Committee deems it appropriate to make a number of observations in relation thereto:

[368] First, regarding human resource-related rules at the DP, the Committee notes that, during the on-site visit, the representatives of the institution pointed out that until 2013, passing a competitive exam had not been a requirement for a career service entry into the DP, as it was not required under the DP's Staff Rules (EPDP). That changed on January 22, 2014, when the new EPDP were published and, in article 14, made passing a competitive exam a prerequisite for entry into the DP.

[369] Accordingly, the representatives of the DP reported that that they were in the process of designing the recruitment subsystem with a view to conducting the competition and complying with the new EPDP rules on recruitment to positions in the institution.

¹²³ *Idem*, p. 83

¹²⁴ *Idem*.

[370] Here, the Committee considers that it would be beneficial for the State under review to promptly complete the design of the subsystem for recruiting DP officials, making sure that it embodied the principles of transparency, equity, and efficiency upheld in the Convention, with a view to implementing competitive procedures for joining the DP. The Committee will make a recommendation (see recommendation 5.4.1 in Chapter II of this report).

[371] Second, regarding the manner in which accountability information is made public, so that citizens have access to it, the Committee notes that, although most of the DP’s annual reports are posted on its website, information for 2013 is still missing. Here, the Committee considers that it would be useful for the State under review to publish all of the DP’s activities reports on its website, so as to facilitate citizen access to that information. The Committee will make a recommendation (see recommendation 5.4.2 in Chapter II of this report).

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

[372] The response to the questionnaire of the State under review and the on-site visit yielded information on results achieved by the Ombudsperson’s Office (DP), notably in respect of the following:

[373] Regarding its prevention efforts, during the on-site visit the representatives of the DP reported that they had carried out the following activities:

Table 1:

Year	Activity	Activities	Number of persons trained
2009	Social Oversight	8 workshops	400
2011	Citizen Auditor for the Defense of Human Rights	8 courses	477
2013	Social Oversight	8 courses	307

[374] On this, the State under review indicated that these were “*outreach activities geared to forging a culture of respect and protection of public property and the general interest.*”

[375] However, the Committee notes that, when it expands its explanation of the contents of these courses, the State under review explains that the Social Oversight course entails “*Explaining the theoretical, methodological, and practical knowledge required for effective social oversight, through audit, follow-up, monitoring and evaluation actions at the individual, collective, and organizational level, from a clearly focused human rights perspective,*” while the objective pursued by the Citizen Auditor for the Defense of Human Rights is to “*generate tools*

for exercising social oversight rooted in a theoretical, legal, methodological, and technical framework, so as to foster harmonious coexistence based on guarantees for human rights.”¹²⁵

[376] On this matter, while the Committee considers that these are very important issues given the nature of the DP’s functions, it also thinks that it would be useful if these outreach activities, courses, and workshops included topics geared to preventing acts of corruption, such as protection of public property, the nature of acts of corruption, protection for bona fide witnesses of acts of corruption, and other principles upheld in the Convention. The Committee will make a recommendation (see recommendation 5.4.3 in Chapter II of this report).

[377] Regarding statistics concerning denunciations, complaints, or petitions related to acts of corruption, the representatives of the DP submitted the following data during the on-site visit:

**Table 2:
Corruption Case Statistics**

Year	Total cases registered	Prior Knowledge of the Competent Authority.	Referred to the Competent Authority	Counseling provided
2009	4	3		1
2012	14	5	3	6

[378] In this regard, the Committee notes that data for 2010, 2011, and 2013 are missing and there is no indication as to whether the CGR is the competent authority or the MP. The Committee’s view is that it would be useful for the State under review to consider completing the above-mentioned data and keeping consistent statistical records of denunciations and complaints regarding acts of corruption and of the competent authority they were forwarded to.

[379] It would also be advisable for the State under review to consider implementing an inter-agency coordination mechanism with the CGR and the MP, so that the DP can keep track of what happens to these cases. The Committee will make recommendations (see recommendations 5.4.4 and 5.4.5 in Chapter II of this report).

[380] Regarding functions relating to disciplinary actions within the institution to punish corrupt acts by DP officials, the Committee notes that no information was provided either in the reply to the questionnaire or during the on-site visit. On this, the Committee deems that the State under review could consider compiling statistics on disciplinary proceedings in the DP, connected with corrupt acts that involve disciplinary, administrative, financial, or civil liability, in order to disclose the total number of cases investigated, the number of decisions adopted in connection with those cases, as well as the number of decisions that have resulted in: an accusation or a penalty; no accusation or an acquittal; and prescription of action or extinction of liability for lack of a decision within statutory time limits, in order to identify challenges and recommend the adoption of corrective measures, as necessary (see recommendation 5.4.6).

5.4. Conclusions and recommendations

¹²⁵ See the PowerPoint presentation at http://www.oas.org/juridico/PDFs/mesicic4_ven_pres_final_def_pue.pdf

[381] Based on the comprehensive analysis of the Ombudsman's Office set forth above, the Committee arrives at the following conclusions and recommendations:

[382] **The Bolivarian Republic of Venezuela has considered and adopted measures intended to maintain and strengthen the Ombudsman's Office (DP), as an oversight body, as indicated in Chapter II, Section 4 of this report.**

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

- 5.4.1. Promptly conclude the design of the subsystem for recruiting DP staff, making sure that it is based on the principles of transparency, equity, and efficiency upheld in the Convention, and implement competitive proceedings (exams) for those seeking to join the DP (see Chapter II, Section 5.2 of this report).
- 5.4.2. Post all the DP's annual reports on the institution's website, so as to facilitate citizen access to said information (see Chapter II, Section 5.2 of this report).
- 5.4.3. Include subjects relating to the prevention of corruption and disseminate the principles upheld in the Convention in the DP's training courses, workshops and other outreach activities of the institution (see Chapter II, Section 5.3 of this report).
- 5.4.4. Supplement the statistics on complaints and denunciations relating to acts of corruption, in such a way as to disclose how many cases were registered, in how many cases the DP provided advice, and how many cases were referred to which competent authority, with a view to identifying challenges and adopting corrective measures, as necessary (see Chapter II, Section 5.3 of this report).
- 5.4.5. Implement an inter-agency coordination mechanism with the CGR and the MP, in such a way that the DP can monitor what happens to those cases (see Chapter II, Section 5.3 of this report).
- 5.4.6. Compile statistics on disciplinary proceedings in the DP, connected with corrupt acts that involve disciplinary, administrative, financial, or civil liability, in order to know the total number of cases investigated, the number of decisions adopted in connection with those cases, as well as the number of decisions that have resulted in: an accusation or a penalty; no accusation or an acquittal; and prescription of action or extinction of liability for lack of a decision within statutory time limits, in order to identify challenges and recommend the adoption of corrective measures, as necessary (see Chapter II, Section 5.3 of this report).

III. BEST PRACTICES

[384] 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 sound practices identified by the State under review that it has wished to share with the other member countries of the MESICIC in the belief that they could be of benefit to them:

- In connection with the Office of the Comptroller General of the Republic (CGR):

[385] The on-line Sworn Statement of Net Worth, which involves setting up a mechanism by which citizens can comply on line and safely, swiftly, and in an uncomplicated manner with the obligation to declare their net worth as and when required by law. This mechanism also helps ensure an effective process of recording, storing, keeping and analyzing that information. This constitutes one of the principal preventive mechanisms envisaged in the Anti-Corruption Law.¹²⁶

- In connection with the Public Prosecution Service:

- In connection with the Public Prosecution Service (MP):

[386] As part of the National Crime Prevention Plan, the MP provided anti-corruption training in the form of talks on offenses addressed by the Anti-Corruption Law to personnel attached to various oversight and prevention bodies, such as the National Institute for Prevention, Occupational Health and Safety (Inpsasel); the Public Prosecution Service itself; the Ministry of Citizen Power for the Communes and Social Protection; the communal councils fund (*Servicio Autónomo Fondo Nacional de los Consejos Comunales* -SAFONAC); and the Comptroller's Office of the Sucre Municipality and members of its communal councils. Such training was also delivered in other parts of the country.¹²⁷

- In connection with the Supreme Court of Justice:

[387] The implementation of itinerant (mobile) courts. *"Their program enhances institutional management and strengthens groups by generating, handling, and using information and knowledge to consolidate access to justice, without discrimination of any kind and with a commitment to equity, its purpose being to gradually help strengthen the Democratic and Social State founded upon Law and Justice."*¹²⁸

[388] Likewise, the implementation of the Automated Judicial Case File Control System for overseeing and tracking all case files seen in each chamber, from entry to closure.¹²⁹

- In connection with the National Superintendency of Internal Audit (SUNAI)

[389] Education and training in citizen participation and social oversight for citizens and civil servants, raising awareness of the importance of their personal and individual actions within the collective sphere, so that they learn to act responsibly when performing their duties and exercising their rights, while participating as citizens through social oversight and in that way contributing to better community and public administration.¹³⁰

- In connection with the Ombudsperson's Office (DP)

[390] The "Forging a Community for Human Rights" (*Haciendo Comunidad para los Derechos Humanos*) program: a proposal to develop human rights policies based on the

¹²⁶ Response of Venezuela to the Fourth Round questionnaire, pp. 69-73.

For more information, see also: <http://www.cgr.gob.ve/contenido.php?Cod=047> and <http://www.cgr.gob.ve/contenido.php?Cod=051>

¹²⁷ Response of Venezuela to the Fourth Round questionnaire, pp. 47-48.

¹²⁸ *Idem*, pp. 27-28.

¹²⁹ *Idem*, pp. 28-29.

¹³⁰ Response of Venezuela to the Fourth Round questionnaire, p. 97.

See also www.sunai.gob.ve

constitutional principle of participatory and proactive democracy (*democracia participativa y protagónica*).¹³¹

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 ROUND¹³²

[391] The Committee will now refer to progress made and new information and developments in the Bolivarian Republic of Venezuela with respect to the recommendations formulated and measures for their implementation suggested by the Committee in its First Review Round reports and which, in its opinion, required additional attention in the Second and Third Round reports¹³³, and it will proceed, where applicable, to take note of those that received satisfactory treatment and those that require additional attention on the part of the State under review, in which case it will refer to the ongoing relevance of those recommendations and measures and to their reframing or reformulation, pursuant to Section VI of the methodology adopted by the Committee for the Fourth Round.

[392] 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)

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

Recommendation 1.1.1:

Strengthen the implementation of laws and regulatory systems concerning conflicts of interest, so as to permit the practical and effective application of a system of public ethics.

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

Review and analyze the possibility of regulating procedures regarding the prevention of conflicts of interest, impediments, disqualifications, and prohibitions relating to senior government positions, bearing in mind their particularities and importance, as well as mechanisms for rendering them effective; considering, inter alia, provision for incompatibility in the exercise of public office vis-à-vis other activities that might impair impartiality; the strengthening of penalties; and provision for a fully autonomous body to monitor due compliance with these regulations.

[393] In its response the state under review did not refer to implementation of the above recommendation. The Committee notes the need for the State to continue to give attention to this recommendation.

¹³¹ Response of Venezuela to the Fourth Round questionnaire, pp. 86-87.

See also www.defensoria.gob.ve

¹³² The recommendations that, following this review, still require additional attention or have been reframed are listed in Annex I to this report.

¹³³ Available at: <http://www.oas.org/juridico/spanish/ven.htm>

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

Review and analyze broadening and strengthening the system of legal impediments, prohibitions, incompatibilities and disqualifications contained in the sectoral laws related to conflicts between private and public interests. In so doing, consider making provision for and broadening certain assumptions that could shape conflicts of interest and that, because of their importance, it would be appropriate to deal with in a more detailed and specific manner; determining the entities or officials in charge of ensuring compliance; and applying measures and penalties in case of non-compliance.

[394] In its response the State under review presented information and new developments with respect to the above recommendation.¹³⁴ In this regard, the Committee notes the following as steps that contribute to its implementation:

[395] The incorporation of a number of legal and sub-legal instruments (statutes issued by institutions and agencies endowed by law with organizational and functional autonomy), 10 of which are listed in the corresponding section of the reply to the questionnaire.¹³⁵

[396] The bill on Conflicts of Interest currently before the National Assembly of the Bolivarian Republic of Venezuela.

[397] In light of the above, the Committee takes note of the steps taken by the State under review to advance in its implementation of measure (a) of the foregoing recommendation and the need for it to continue to give attention thereto, particularly since the bill on Conflicts of Interest has not yet become law and the origin of this measure dates back to the first round review, in which the Committee noted that: *“As for sectoral legislation, the Committee notes that most of the pertinent standards could be improved by strengthening or adding provisions that include a broader and more comprehensive list of the prohibitions, incompatibilities, and disqualifications that can arise in the performance of public duties and that, because of their importance, could be dealt with in a more specific and detailed manner.”* For example, the Organic Act of the Public Prosecutor’s Office [Tr. Public Prosecution Service] is limited to one provision in Article 70 that establishes the incompatibility of public servants in this Ministry [Tr. Service] as regards the freedom to practice law and the prohibition against holding more than one public office at the same time...”,¹³⁶ and that although certain laws have been amended and new norms issued that provide for various prohibitions and restrictions relating to conflicts of interest, the revisions suggested in the aforementioned measure b) have not yet been implemented.

[398] For instance the Organic Law of the Public Prosecution Service currently in effect only stipulates the incompatibility of public servants provided for in the article 70 referred to in the analytical part of the First Round report, and the only difference is that today it is stipulated in article 87 of the LOMP, without the revision adding any other eventual circumstances that could give rise to conflicts of interest, as was suggested in the First Round.¹³⁷

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

¹³⁴ Response of Venezuela to the Fourth Round questionnaire, pp. 98-100.

¹³⁵ *Idem*, pp. 99-100.

¹³⁶ Report on Venezuela for the First Round, pp.6-7.

¹³⁷ *Idem*.

[399] *Ensure the applicability and application of the sanctions envisaged for public servants who infringe the rules governing conflicts of interest, including among other provisions, the cases covered in Article 123 of the National Public Treasury Organic Act.*

[400] In its response the state under review did not refer to implementation of the above recommendation. The Committee notes the need for the State to continue to give attention to this recommendation.

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

[401] *Extend the statutory limitation period established in Article 88 of the Civil Service Statute, taking into account the importance of strengthening instruments that currently available to the administration, so that they do not constitute an obstacle to determining the individual disciplinary liability of public servants who commit offences, and the need for the above-mentioned period to be consistent with and fulfill the same purpose as other existing time limits, as noted in section 1.1.2 of this report*

[402] The country under review provides the following information in its response:

[403] “As it pointed out in its progress report on the Fifteenth Meeting, the Bolivarian Republic of Venezuela does not consider it pertinent to amend the norm referred to in this observation by the Committee because of the prescription established in aforementioned article 88 of the Civil Service Statute, which literally reads as follows:

[404] *“Article 88. Misconduct by civil servants punishable with dismissal shall prescribe in eight months from the time the next higher-ranking official in that unit became aware of the misconduct and did not request the opening of the corresponding administrative investigation.”*

[405] *“The provision transcribed above serves as the basis for punishing any civil servant who, although he/she was obliged to impose a penalty failed to do so and thereby let the action prescribe. This, in turn, ties in with the provisions in the last paragraph of article 79 of the aforementioned law, which establish the following:*

[406] *“Article 79. Civil servants shall be accountable under criminal, civil, and administrative law and disciplinary provisions for any crimes, misdemeanors, illicit acts and administrative irregularities committed in the performance of their functions. This liability shall not preclude any consequences that might apply to them by virtue of other laws or based on their status as citizens.*

“Any civil servant who, being duty-bound to punish, does not do comply with that duty, shall be punished by the corresponding authority pursuant to this Law, its enabling regulations, and other pertinent laws. This liability shall not preclude any consequences that might apply to them by virtue of other laws or based on their status as citizens.” (Underlining added)

[407] *“Accordingly, and based on the above, the Bolivarian Republic of Venezuela does not consider it necessary to extend the prescription time established in article 88 of the Civil Service Statute.”*

[408] Here, the Committee notes that, although establishing penalties for any civil servant who, being duty-bound to punish, fails in his duty to do so, furthers the anti-corruption purposes of the Convention, it does not get rid of the problem of letting misconduct punishable with dismissal be subject to a statute of limitations.

[409] Indeed, article 86 of the Civil Service Statute lists among grounds for dismissal such conduct as unethical behavior (numbered subparagraph 6); a criminal conviction or certificate of administrative liability issued by the CGR (numbered subparagraph 10); requesting or receiving money or any other benefit, taking advantage of civil servant status (numbered subparagraph 11); and having shares in his or her own name, or through intermediaries, in companies or corporations having ties with the body or entity concerned if those ties are directly or indirectly related to the position he or she holds (numbered subparagraph 13). This article also cites as further grounds conduct that impairs State property (numbered subparagraphs 3 and 8) and arbitrariness in the exercise of authority (numbered subparagraph 7).

[410] On this, the Committee observes that, already in the First Round, note was taken of the fact that article 271 of the Constitution of the Republic establishes that crimes against State property do not prescribe, a view that was ratified in a judgment of the Constitutional Division of the Supreme Court of Justice in 2001; which solves the problem of the prescription of corrupt practices that result in impairment of State property addressed in article 86 of the LEFP.

[411] However, it does not solve the problem of allowing the prescription of corrupt practices addressed in other numbered subparagraphs of the aforementioned article 86 of the LEFP, that do not necessarily entail impairment of public property.

[412] In light of the above, measure d) of the previous recommendation, is reframed as follows:

- Consider taking the necessary legislative steps to prevent acts of corruption that do not necessarily entail impairment of public property being subject to the statute of limitations.

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

Ensure that the registry of civil servants in the employ of the national civil service, provided for in Article 9 of the Civil Service Statute, is used for the prevention and punishment of conflicts of interest.

[413] In its response the state under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that indicate satisfactory consideration of the measure¹³⁸:

[414] *“In order to implement this measure, the Venezuelan Government incorporated a register of civil servants kept by the Office of the Comptroller General of the Republic to the On-Line Sworn Statement of Net Worth system. A registration system for public-sector organs and entities was set up in order to ensure control and monitoring of the obligation to submit asset disclosures and to make the necessary organizational arrangements/ Both of these systems are integrated with the civil servant registration system, which will facilitate their use in the prevention and punishment of conflict-of-interests violations .”*

¹³⁸ Response of Venezuela to the Fourth Round questionnaire, p.101.

[415] In light of the foregoing, the Committee takes note of the satisfactory consideration of measure (a) of recommendation 1 above.

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

Review and analyze the possibility of incorporating a regulation that limits or prohibits the participation of former civil servants in the management of certain areas of activity and, in general, situations that could lead to individuals taking undue advantage of their status as former public servants.

[416] In its response the state under review did not refer to implementation of the above recommendation. The Committee notes the need for the State to continue to give attention to this recommendation.

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

Recommendation 1.2.1:

Continue to bring the Criminal Code in line with the provisions of Article 271 of the Constitution, which stipulates the non-applicability of statutory limitations on crimes against public property.

[417] In its response the State under review presented information and new developments with respect to the above recommendation.¹³⁹ In this regard, the Committee notes the following as steps that contribute to its implementation:

[418] - Review of the Organic Law of the Supreme Court of Justice (LOTSJ) in October 2010, article 95 of which establishes: the inadmissibility of the lapsing of a lawsuit due to inactivity in proceedings intended to punish, inter alia, crimes against public property.”

[419] - The promulgation of a series of laws that “seek, among other thing, to ensure the preservation and appropriate use of the resources assigned to civil servants.”

[420] -The Draft Reform of the Venezuelan Criminal Code currently being debated in the National Assembly.

[421] In light of the above, the Committee takes note of the steps taken by the State under review to implement measure a) of the foregoing recommendation and of the need for it to continue addressing this matter, particularly since this suggested measure refers to the constitutionally established non-prescribable nature of crimes against public property and “*the need to develop this principle in the Criminal Code, the Anti-Corruption Law and other laws and legal standards relating to this matters, in order to ensure its effectiveness and applicability.*”¹⁴⁰

Recommendation 1.2.2:

Consider the possibility of extending the five-year disqualification period for public service, established in Article 96 of the Anticorruption Act (LCC), to any official or public employee

¹³⁹ Response of Venezuela to the Fourth Round questionnaire, pp. 101-102.

¹⁴⁰ Report on Venezuela for the First Round, pp.

punished for any crime stipulated in this Act, to 15 years, pursuant to Article 105 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System (LOCGRSNC).

[422] In its response the state under review did not refer to implementation of this recommendation. The Committee notes the need for the State to continue to give attention to this recommendation.

Recommendation 1.2.3:

Strengthen the power of the Judiciary so that it retains the power to determine the liability of public servants for crimes of corruption, notwithstanding laws that allow other bodies to take administrative or other action.

It is suggested that a review and analysis be made of the possibility of developing regulations that clearly delimit the scope of the expression in 'order to avoid paralysis of service operations' contained in Article 59 of the Anticorruption Act, with a view to limiting room for discretionary decision-making in implementing the said standard and the procedure to be followed, specifying the moment when such authorization must be produced.

[423] In its response the state under review did not refer to implementation of this recommendation. The Committee notes the need for the State to continue to give attention to this recommendation.

Recommendation 1.2.4:

Take relevant measures to ensure that the discretion allowed in several provisions related to government procurement, as well as in Article 59 of the Anti-Corruption Act (LCC), does not constitute an element that affects or could prompt a public servant to engage in illicit conduct or to make arbitrary decisions, in relation to the preservation and proper use of public resources, as mentioned in Section 1.2.3.

[424] In its response the state under review did not refer to implementation of this recommendation. The Committee notes the need for the State to continue to give attention to this recommendation.

Recommendation 1.2.5:

Design and implement mechanisms to inform and train all public servants with respect to the standards of conduct mentioned in this section, and to handle enquiries about the standards, as well as provide periodic training and updating with regard to said standards

[425] In its response the state under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that indicate satisfactory consideration of the measure¹⁴¹:

[426] *"In response to the aforementioned recommendation, the organs of the Venezuelan State have implemented a series of courses designed to train officials with respect to the rules of conduct set forth in the Civil Service Statute, the Anti-Corruption Law, and other instruments, as*

¹⁴¹ Response of Venezuela to the Fourth Round questionnaire, pp. 102-107.

well as other internal codes of conduct. Accordingly, the courses cover such topics as conflicts of interest, ethics, civil servant liabilities, administration, the handling and custody of resources, as described in a number of regulations and procedures...

[427] On this matter, the reply of the State under review presented pertinent and comprehensive information on such training, which included, notably, programs in the following bodies:

[428] - Office of the Comptroller General (CGR), through the “Gumersindo Torres” Foundation’s Advanced Studies in Fiscal Oversight and State Audit Institute (COFAE), as well as the Inter-American Convention against Corruption’s Executive Comprehensive Distance Education. Program

[429] - Supreme Court of Justice, through the National Judges Academy (*Escuela Nacional de la Magistratura*).

[430] - The Attorney General’s Office (*Fiscalía General de la República*), through the National Public Prosecutor’s Academy.

[431] - The Public Prosecution Service through the Foundation for Public Prosecution Research, Training and Development.

[432] - The National Public Administration, through the National Public Administration and Finance Academy.

[433] - The National Electoral Council, through the Advanced Electoral Studies Foundation (IAEPE).

[434] - The Ombudsperson’s Office, through the Human Rights Academy.

[435] - The National Assembly, through the “Dr. Carlos Escarrá Malavé” All Round Education Academy.

[436] The National Combined Customs and Tax Authority (SENIAT), through the Taxation Studies Center (*Centro de Estudios Fiscales*).

[437] - The National Superintendency of Internal Audit (SUNAI) conducts a series of courses and workshops at its headquarters aimed at improving internal control and auditing, as part of its training plan.

[438] In light of the foregoing, the Committee takes note of the satisfactory consideration of aforementioned recommendation 1.2.5.

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

Recommendation 1.3.1:

Develop regulations and mechanisms in order to facilitate and promote the reporting of acts of corruption. This should be complemented by measures that protect public servants who report these acts, in particular when these acts involve managers or superiors.

Ensure that the regulations and provisions in force, for instance Article 2 of the Presidential Order through establishing the Code of Conduct of Public Servants, specifically allows people to report unlawful acts to the oversight bodies, eliminating the requirement to inform only the management of the institution where the public servant reported works.

[439] In its response the State under review presented information and new developments with respect to the above recommendation. In this regard, the Committee notes the following as steps that contribute to progress in its implementation¹⁴²:

[440] *“In the exercise of the powers conferred on it by articles 5 and 10, numbered paragraphs 1 and 4 of the Organic Law of Citizen Power and the Single Temporary provision of the Anti-Corruption Law, the Republican Ethics Council issues the Civil Servants Code of Ethics through Resolution N° CMR-016-2013, published in the Official Gazette of the Bolivarian Republic of Venezuela, No. 40.314 of December 12, 2013. The contents of this Code take into consideration the Committee recommendation referred to in the second paragraph, when, in Article 7 on the “Obligation to Report,” it provides that: “Civil Servants must report to Citizen Power, their supervisor, or the competent oversight bodies acts of which they become aware in the course of their duties that could transgress, threaten or impair public ethics and administrative morals.”*

[441] - The establishment by the Public Prosecution Service of the National Coordination Office for the Protection of Victims, Witnesses and other Persons in Proceedings, which is responsible for guaranteeing the defense and protection of the rights of all victims of crime, as published in the Official Gazette No. 39,935 of June 1, 2012.

[442] Here, the Committee notes that the question of measures to protect civil servants who denounce these acts, especially when they involve managers and superiors, was specially examined in the Second Round, after which recommendations were made to Venezuela. Follow-up on implementation of those recommendations was scheduled for the Fifth Round. That being so, the Committee will postpone consideration until the Fifth Round and reserves the right to comment at that time.

[443] In its reply, the State under review makes no mention of the development of regulations and mechanisms to facilitate and promote whistle-blowing in respect of acts of corruption. Without prejudice to the above, the Committee noted during its on-site visit, when it reviewed the oversight bodies’ mechanisms for receiving and processing denunciations, that existing mechanisms could be improved because, in practice, they do not always function as efficiently as expected, to the detriment of the State’s anti-corruption efforts and goals, thereby discouraging citizens from submitting their complaints.

[444] In view of the above, the Committee notes the satisfactory consideration of the second paragraph of recommendation 1.3.1 above, as well as the steps taken by the State under review to implement parts of the first paragraph regarding the protection of whistle-blowers reporting acts of corruption. The recommendation is therefore reframed as follows:

[445] - *Develop regulations and mechanisms to facilitate and promote the submission of complaints of acts of corruption and improve existing mechanisms for receiving and processing complaints.*

¹⁴² Response of Venezuela to the Fourth Round questionnaire, p.101.

[446] Here it should be pointed out that during the on-site visit, the representatives of the Federación Venezolana de Porcicultura (FEDEPORCINA)” business association indicated that the existing mechanisms for receiving and processing complaints could be improved, because the formalities were often cumbersome and complicate, which did not exactly encourage citizens to file complaints.

[447] At the same time, on that same occasion, one of the academics taking part cited the example of how the Number 800 telephone hotlines for complaints to be found in a number of institutions were overburdened with calls from would-be whistleblowers, but then no answer was available regarding the processing or outcome of the complaints. so that citizens were discouraged from complying their civic duty to report.

[448] Along similar lines, the representative of the “FEDEINDUSTRIAS” business association said that State needed to give complainants a prompt reply after they had filed a complaint. She was seconded by another academic present, who felt that more flexible mechanisms were needed for answering citizens’ complaints.

Recommendation 1.3.2:

Consider the possibility, in the case of employees who fail to comply with the obligation to report, of imposing punishment of a criminal or administrative nature that is more severe than the current system of fines, including loss of employment, among other penalties, depending on the seriousness of the offence.

[449] In its response the state under review did not refer to implementation of this recommendation. The Committee notes the need for the State to continue to give attention to this recommendation.

Recommendation 1.3.3:

Update the financial penalties set forth in the criminal code, taking into account the seriousness of corruption offenses in the public service.

[450] In its response the state under review did not refer to implementation of this recommendation. The Committee notes the need for the State to continue to give attention to this recommendation.

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

Recommendation:

Broaden and complement the systems for disclosing income, assets and liabilities by adopting pertinent legal regulations.

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

Promulgate legal provisions and other pertinent measures in order to establish clearly those parties from whom the Comptroller General of the Republic may request the periodic presentation of a sworn statement of net worth, to ensure that these provisions include senior

officials within the public administration and those who, given the importance and nature of their posts, could facilitate or generate illicit enrichment or other unlawful acts against public property, and to determine the deadlines for presenting said statements, their contents and formal requirements.

[451] In its reply,¹⁴³ the State under review presented information regarding measure a) in the foregoing recommendation, including the following that the Committee wishes to highlight:

[452] “Regarding this measure, article 78 of the Organic Law of the Office of the Comptroller General of the Republic and the National Fiscal Oversight System (LOCGRSNCF), published in the Official Gazette No. 8.013, *Special Edition of December 23, 2010* reads as follows:

[453] “*Article 78. The Office of the Comptroller General of the Republic may request sworn statements of net worth from public sector officials, employees, and workers; from private individuals who have performed such functions or work; from taxpayers or those liable to pay tax pursuant to the Organic Tax Code; and from anyone who in any manner enters into contracts, negotiates, or conducts operations relating to public property, or who receives contributions, subsidies, other transfers, or tax incentives...*”

[454] “*In relation to the above, the Office of the Comptroller General of the Republic published the following resolutions in the Official Gazette:*

[455] “*Resolution No. 01-00-057 of the CGR. As of March 27, 2009, all senior officials of the organs and entities pertaining to National, State, or Municipal Public Authorities must submit an annually updated sworn statement of net worth between July 1 and 31 of each year. These senior officials are: The President and Vice President of the Republic, members of the National Assembly, Justices of the Supreme Court of Justice and of the First and Second Courts for Administrative Litigation, the Board of Directors of the National Electoral Council, the Attorney General and Deputy Attorney General of the Republic, the Ombudsperson and the Executive Director of the Ombudsperson’s Office, the Comptroller General and Deputy Comptroller General of the Republic, Governors and Government Secretaries, legislators in state legislative councils, state prosecutors, assistant prosecutors and directors general, state comptrollers, mayors, district and municipal councilors, and district and municipal receivers.*” *In addition to them, , others required to submit annual sworn statements of net worth are senior officials in the organs and entities listed under numbered paragraphs 1 through 11 of article 9 of the LOCGRSNCF, who perform permanent or temporary functions, whether for wages or free of charge, elected , appointed , or hired under a contract from the competent authority.*

[456] “*Resolution N° 01-00-0122 of the Office of the Comptroller General of the Republic, as of June 19, 2009, the “System for Electronic Submission of Sworn Statements of Net Worth” was introduced to make it easier for senior officials to file their sworn statements from any computer in or outside the country, via the CGR’s website, www.cgr.gob.ve where they can find instructions on how to file.*

[457] On this matter, the Committee observes that, already in the Third Round, note had been taken of CGR Resolution N° 01-00-057 as a step toward implementation of measure a) of the foregoing recommendation.

¹⁴³ Response of Venezuela to the Fourth Round questionnaire, pp. 109-110.

[458] At the same time, the Committee wishes to point out that the origin of measure a) of the foregoing recommendation dates back to the analytical section of the First Round in which the Committee stated that ¹⁴⁴:

[459] *“... Nevertheless Article 78 of the LOCGRSNCF states: ‘The CGR may¹⁴⁵ request sworn statements...’ ...” It is the understanding of the Committee that the verb form used in this standard implies the establishment of a power that the Office of the Comptroller General might or might not exercise, at its discretion, with respect to the public servants who are obliged to present such a statement under the prevailing rules. Also noted is the “power to periodically exempt certain officials, employees, or other parties..”*

[460] *“...It is advisable not only from the standpoint of legal security to specify and circumscribe – through a law or a regulation – the parties obliged to present such statements of income, assets and liabilities, the contents and the deadline for presentation, but furthermore, it is not appropriate to grant one administrative body or a single official discretionary powers to determine overarching matters on which the smooth operation of the system depends. A law or regulation such as the one being suggested here could help to remove room for discretionary behavior that could permit, facilitate or promote illegal acts against public property. Taking into account the above considerations, the Committee will formulate a recommendation”.*

[461] In light of the above, the Committee takes note of the need for the State under review to continue giving attention to measure a) in the foregoing recommendation.

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

Consider the appropriateness of requiring sworn statements at times other than those already provided for, establishing reasonable timelines for updating them or circumstances under which it would be advisable to require their presentation.

[462] In its response the State under review presented information and new developments with respect to the above recommendation. In this regard, the Committee notes the following as steps that contribute to progress in the implementation of measure (b) of the recommendation:¹⁴⁶

[463] *“[H]aving implemented the consolidated register of public officials required to submit statements, as mentioned above, the CGR has set about updating the DJP for all public sector officials, employees, and workers, the idea being to request annual updates.”*

[464] - Resolution No. 01-00-000247 dated December 14, 2011, published in Official Gazette of the Bolivarian Republic of Venezuela, No. 39,821 of December 15, 2011, by which the CGR requested the presentation of updated sworn statements of net worth to personnel of the Public Prosecution Service (*Ministerio Público* - MP), the staff, employees, and workers who perform permanent, temporary, paid, or free, services as a result of an appointment or contract granted by the competent authority. In this way, the country’s top comptroller body required all Public Prosecution Service personnel to submit a sworn declaration of net worth, regardless of whether they had updated or presented one during fiscal year 2011.

¹⁴⁴ Report on Venezuela for the First Round, p.19

¹⁴⁵ Underlining added.

¹⁴⁶ Response of Venezuela to the questionnaire for the Fourth Round, p. 101.

[465] - Resolution No. 01-00-000248 dated December 19, 2012, published in Official Gazette of the Bolivarian Republic of Venezuela, No. 40,076 of December 20, 2012, adopted by the Office of the Comptroller General, resolution requesting all police personnel at the national, state, and municipal level to submit updated sworn statements of net worth between January 1 and 31, 2013.

[466] In this regard, the Committee recalls that this measure goes back to the review in the first round, in which it noted the advisability from the standpoint of legal security to specify and circumscribe – through a law or a regulation – the deadlines for presenting statements of income, assets, and liabilities, as was explained in the section referring to measure (a) of this recommendation.

[467] In light of the foregoing, the Committee takes note of the steps taken by the State under review to advance in its implementation of measure (b) of the foregoing recommendation and the need for it to continue to give attention thereto.

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

Strengthen the role afforded to officials in charge of human resources units under Article 26 of the Anticorruption Act [LCC]. This could be achieved by stipulating the obligation of these units to immediately notify the Office of the Comptroller General whenever an individual obliged to do so fails to present proof of presentation of the statement of income, assets and liabilities, and by specifying/detailing the corresponding actions to be taken by the Office of the Comptroller General in such situations.

[468] In its response the State under review presented information and new developments with respect to the above recommendation. In this regard, the Committee notes the following as steps that contribute to progress in the implementation of measure (c) of the recommendation:¹⁴⁷

[469] *System for the Registration of Public Sector Bodies and Institutions (Sistema de Registro de Organos y Entes del Sector Público—SISROE), by Resolution No. 01-00-049 of March 9, 2009, published in Official Gazette No. 39.138 of March 13, 2009, in which all the bodies and institutions stipulated in items 1 to 11 of Article 9 of the Organic Law of the Office of the Comptroller-General of the Republic and the National System for Auditing Control must be registered, for the purpose of simplifying the presentation, in electronic format, of the Sworn Statement of Assets by all those required to submit it, as well as to guarantee monitoring and follow-up by the human resources departments of public sector bodies and institutions.*

[470] *“Officials in charge of human resources units in the above bodies and institutions, are required to include the relevant institutional information in the aforesaid system, as well as information on personnel income and expenditures within five (5) days after their occurrence. <http://www.cgr.gob.ve/contenido.php?Cod=070>”*

[471] The Committee takes note of the steps taken by the State under review to advance in its implementation of measure (c) of the foregoing recommendation and the need for it to continue to give attention thereto, given that the measure dates from the review carried out in the first round, in which the Committee suggested that *“the Bolivarian Republic of Venezuela could benefit from strengthening the work carried out by the human resources department of each institution; this*

¹⁴⁷ Response of Venezuela to the questionnaire for the Fourth Round, p. 111.

could be accomplished by providing expressly for the obligation of these departments to inform the Office of the Comptroller General as soon as an employee fails to comply, so that the Office can take appropriate action.”

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

Regulate the conditions, procedures and other appropriate aspects related to the publicizing of sworn statements of income, assets and liabilities, as applicable.

[472] In its response the State under review presented information and new developments with respect to the above recommendation. In this regard, the Committee notes the following as steps that contribute to progress in the implementation of measure (d) of the recommendation:¹⁴⁸

[473] *“The Office of the Comptroller General published in Official Gazette No. 40.066 of December 6, 2012, preliminary reports containing the findings of net worth verification procedures carried out by the CGR on the citizens mentioned therein. Those reports contain the preliminary results of the net worth verification procedure carried out by the Office of the Comptroller General, as requested by the Public Prosecution Service, in accordance with Article 30 of the Anti-Corruption Law. Said preliminary net worth audit reports contain verifications of the net worth situations as well as comparisons with the economic and financial activities of those citizens while performing official duties.”*

[474] In light of the foregoing, the Committee takes note of the steps taken by the State under review to advance in its implementation of measure (d) of the foregoing recommendation and the need for it to continue to give attention thereto, given that this measure refers to the conditions, procedures and other appropriate aspects related to the public disclosure of sworn statements of income, assets and liabilities, as applicable

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

Use sworn statements of income, assets and liabilities to detect and prevent conflicts of interest.

[475] In its response the State under review did not refer to measure (e) of the foregoing recommendation. The Committee notes the need for the State to continue to give attention to this recommendation.

Measure (f) suggested by the Committee:

This measure has been satisfactorily considered and, therefore, the State need provide no further information.

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

Implement the necessary procedures for achieving effective control over compliance in presenting these statements, in accordance with the recommendation made in measure (f) above.

¹⁴⁸ Response of Venezuela to the questionnaire for the Fourth Round, p. 112.

[476] In its response the State under review presented information and new developments with respect to the above recommendation. In this regard, the Committee notes the following as steps that contribute to progress in the implementation of measure (d) of the recommendation:¹⁴⁹

[477] *“With the implementation of the Electronic Submission System for Sworn Statements of Net Worth, which went into effect on June 19, 2009, following the publication of Office of the Comptroller General resolution No. 01-00-0122 published in Official Gazette No, 39,205, compliance by government officials with the obligation to submit sworn statements of net worth is more closely monitored.”*

[478] *“In addition, with respect to the electronic submission of sworn statements of net worth, a toll-free number (0800-Declara) has been set up to respond to inquiries from members of the public, including confirmation of their net worth. Furthermore, service requests are handled via the System for the Registration of Public Sector Bodies and Institutions (Sistema de Registro de Órganos y Entes del Sector Público—SISROE) <http://www.cgr.gob.ve/contenido.php?Cod=047>.”*

[479] In this regard, the Committee notes that during the on-site visit, CGR representatives explained that the new electronic sworn statements submission system has helped greatly in making control of sworn statements of net worth more efficient. However, they also noted that a number of obligated officials have yet to be included in the online sworn statements of net worth system and that the number of statements is expected to increase as those officials are incorporated.

[480] In light of the foregoing, the Committee takes note of the steps taken by the State under review to advance in its implementation of measure (g) of the foregoing recommendation and the need for it to continue to give attention thereto.

Measure (h) suggested by the Committee:

This measure has been satisfactorily considered and, therefore, the State need provide no further information.

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

Recommendation 3.1:

Strengthen the supervisory work carried out by the Office of the Comptroller General, as the lead body for oversight and monitoring of state comptroller’s offices, considering the possibility of conducting a larger number of evaluations or diagnoses on their activities, or using the mechanisms or instruments deemed appropriate to verify their proper operation.

[481] In its response the State under review presented information and new developments with respect to the above recommendation. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:¹⁵⁰

[482] *“[t]he Office of the Comptroller General, as governing organ of the National Fiscal Control System, the Office of the Comptroller General performs assessments and reviews, as well as engaging in joint activities with the other bodies that comprise the System, in order to ensure*

¹⁴⁹ Response of Venezuela to the questionnaire for the Fourth Round, pp. 112-113.

¹⁵⁰ Response of Venezuela to the questionnaire for the Fourth Round, pp. 113-115.

that it functions properly, harmonize criteria, and make efficient use of the resources allocated to the fiscal control organs. As a result of the assessments carried out under Article 34 of the LOCGRSNCF (Organic Law of the Office of the Comptroller General), the Office of the Comptroller General has intervened in state and municipal comptroller's offices as well as in internal audit units."

[483] "...Furthermore, in order to continue strengthening the supervisory work that it carries out as an oversight body, the Office of the Comptroller General" provides the following summary of activities in which it has engaged:

[484] - First training day for the year with state comptrollers, held in February 2011, during which the project "National Encounter of State Comptrollers [*Encuentro Nacional de Contralores Estadales*]" was unveiled and guidelines were issued for the preparation of the annual management report and work programs for the new coordinated audits to be conducted by state and municipal comptrollers' offices.

[485] - Training day on the regulations for registration, grading, selection, and hiring of auditors, consultants, and independent oversight professionals, held in August 2012.

[486] - Guidelines on communication with state comptrollers' offices via social media.

[487] - Issuance of specific guidelines to the state comptrollers' offices represented by all 23 state comptrollers at a meeting held on February 28, 2012, on various actions executed by the regional oversight bodies, in order to harmonize criteria in connection with the coordinated audit process implemented by the CGR in 2012.

[488] - Meeting of state comptrollers to discuss operational aspects of their work, such as the accounts audit, as well as to receive administrative guidance and strategies for strengthening the National Fiscal Control System (held on June 22, 2012).

[489] - Training course "Accounts Audit" [*Examen de la Cuenta*] for staff of the States Oversight Division of the Office of the Comptroller General and for representatives of the 23 state comptroller's offices.

[490] - Reactivation of Special Training Days in 2013, in order to move forward with the design of the strategic plan of the National Fiscal Control System, organized by the CGR and Gumersindo Torres Foundation (COFAE).

[491] In light of the foregoing, the Committee takes note of the steps taken by the State under review to advance in its implementation of the above recommendation and the need for it to continue to give attention thereto, given that it provides no statistics that would allow a comparison of the number of evaluations or diagnostic assessments on the activities of state comptrollers' offices or a determination as to how it was verified that they were operating adequately.

Recommendation 3.2:

Strengthen the work of the Office of the Comptroller General by putting into practice policies and concrete actions to check follow-up and implementation by entities under its supervision of corrective actions suggested during audits, diagnoses or evaluations.

[492] In its response the State under review did not refer to recommendation 3.2 above. The Committee notes the need for the State to continue to give attention to this recommendation.

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

4.1. General participation mechanisms

Recommendation

Analyze existing legal norms, for the purposes of identifying provisions that could be adversely affecting these rights, including those provisions related to the requirement concerning sources for funding civil society organizations and for the purposes of making changes that are deemed relevant to assuring that in the existing juridical structure, there are no provisions that put a limit on their participation in the prevention of corruption.

[493] In its response the State under review mentioned that “*the Bolivarian Republic of Venezuela ratified the aforementioned in the progress report presented at the fifteenth meeting of the Committee of Experts of MESICIC.*”¹⁵¹

[494] The Committee notes the need for the State to continue to give attention to the above recommendation.

4.2 Mechanisms for access to information

Recommendation

Institute legal standards and measures to support access to public information.

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

Strengthen the guarantees provided on the exercise of the right to public information, including the possibility of accessing a type of information other than that already provided for; and consider the implementation of provisions that ensure that access to such information can only be denied for reasons explicitly regulated and determined by law.

[495] In its response the State under review did not refer to measure (a) of recommendation 4.2 above. The Committee notes the need for the State to continue to give attention to this recommendation.

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

¹⁵¹ The full text of what the Bolivarian Republic of Venezuela stated in the progress report presented at the fifteenth meeting of the Committee of Experts may be found on pages 115 and 116 of the response of Venezuela to the questionnaire for the fourth round.

Consider the advisability of integrating and systematizing in a single regulatory text the provisions that guarantee access to public information.

[496] In its response the State under review did not refer to measure (b) of recommendation 4.2 above. The Committee notes the need for the State to continue to give attention to this recommendation.

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

Establish a specific procedure to protect the right of citizens to access public information, establishing for this purpose, among other aspects, the following: i) procedures for accepting requests and responding to them on a timely basis; ii) an entity or offices charged with this function and an oversight agency that should monitor the implementation of these regulations; iii) requirements on admissibility and consequences when such requirements are not met; iv) reasons why a request may be denied; v) method for communicating with the official who submitted the request; vi) prompt and specialized administrative remedies allowing for appeal of a decision made by a public servant who improperly denies access to the information being sought; and vii) an increase in the number of sanctions so as to cover a broader spectrum of circumstances that could hamper, delay or prevent the exercise of this right and that involve the conduct of public servants

[497] In its response the State under review did not refer to measure (c) of recommendation 4.2 above. The Committee notes the need for the State to continue to give attention to this recommendation.

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

Implement, if this has not yet been done, the provision of Article 9 of the Anticorruption Act relating to the creation of public or citizen service offices, ensuring that they have sufficient resources to carry out their work.

[498] In its response the State under review presented information and new developments with respect to the above recommendation. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:¹⁵²

[499] *“The Office of the Comptroller General has been very persistent in promoting the creation of Citizen Assistance Offices at all public administration entities, which have responded satisfactorily. The entry into force of the new Rules for Promotion of Citizen Participation has encouraged their creation, which the Office of the Comptroller General has followed very closely. In that connection, the Office of the Comptroller General issued instructions for all organs that comprise the National Fiscal Control System, upon carrying out their oversight activities, to verify the creation of Citizen Assistance Offices in accordance with the aforementioned legal instrument at all public-sector organs and agencies at the national, state, and municipal level.*

[500] Furthermore, during the on-site visit, representatives of the CGR mentioned that a survey have been carried out on compliance with the obligation of entities and agencies to create their

¹⁵² Response of Venezuela to the questionnaire for the Fourth Round, pp. 116-117.

own citizen assistance offices, and it was found that 80 percent of them had already met this obligation.

[501] In light of the foregoing, the Committee takes note of the steps taken by the State under review to advance in its implementation of the above recommendation and the need for it to continue to give attention thereto, given that citizen assistance offices have not yet been implemented at all public-sector entities and agencies and that it has furnished no information as to whether or not they have sufficient resources to perform their functions.

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

Implement training and dissemination programs on mechanisms for access to public information held by the State, in order to facilitate the understanding thereof by public officials and citizens and optimize the use of the technology available for this purpose.

[502] In its response the State under review did not refer to measure (e) of recommendation 4.2 above. The Committee notes the need for the State to continue to give attention to this recommendation.

4.3. Mechanisms for consultation

Recommendation

Strengthen and continue implementing procedures, as applicable, that make it possible to conduct public consultations

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

Carry out processes to allow consultation with interested sectors with respect to the design of public policies and the preparation of draft laws, decrees or resolutions in the sphere of the Executive Branch

[503] The State under review provided the following information in its response:¹⁵³

[504] *The Bolivarian Republic of Venezuela has many instruments that generate processes to allow consultation with interested sectors with respect to the design of public policies and the preparation of draft laws, decrees or resolutions in the sphere of the Executive Branch.*

[505] *The Venezuelan State has consultation mechanisms envisaged in its domestic system of laws, including referendums, plebiscites, open councils, and citizen assemblies, which derive directly from the Constitution.*

[506] *In addition, Articles 138—on promotion of citizen participation—and 139—on the procedure for consultation on sectoral regulations—of the Organic Law of the Public Administration (LOAP) provide the following:*

¹⁵³ Response of Venezuela to the questionnaire for the Fourth Round, pp. 117-118.

[507] *“Article 138. The organs and entities of the public administration shall promote citizen participation in public management.*

[508] *Either directly or through organized communities, persons may submit proposals and opinions concerning the performance of organs and entities of the public administration, as well as participate in drafting regulatory instruments.”*

[509] *“Article 139. When public-sector organs and entities propose the adoption of regulatory standards or provisions of another rank as part of their sectoral regulation role, they shall initiate the relevant public consultation process and submit the preliminary draft to organized communities. The official letter forwarding the preliminary draft shall indicate the deadline for the receipt in writing of observations, which will begin to run from the tenth business day following delivery of the preliminary draft.*

[510] *At the same time, the relevant public-sector organ or entity shall announce the initiation of the consultation process through any communication medium, indicating its duration. It shall also announce the consultation on its website, on which it will set out the document or documents with which the consultation is concerned.*

[511] *In the course of the consultation process anyone may present written observations and comments on the preliminary draft.*

[512] *After the deadline for the receipt of observations has expired, the public-sector organ or entity may set a date for its members of staff, invited experts, and organized communities to exchange opinions, pose questions, make observations, propose that the preliminary draft be adopted, discarded, or amended, or consider a new preliminary draft.*

[513] *The result of the consultation process is not binding.*

[514] The Committee would like to mention that these processes and the content of the provisions from the LOAP (formerly Articles 136 and 137) were considered in the first review round and, therefore, do not amount to new information on implementation of this measure.¹⁵⁴

[515] It should also be recalled that in the analysis section of the report from the first round, the Committee noted that *“the above provisions and mechanisms could be strengthened by facilitating consultations with interested sectors with respect to the development of public policies. Bearing this in mind, the Committee will formulate a recommendation.”*¹⁵⁵

[516] Having said that, during the on-site visit, the State under review presented other information and new developments with respect to the above recommendation. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:¹⁵⁶

[517] - Consultation processes held with interested parties in connection with the design of public policies, such as the National Consultation for Quality Education, through the Ministry of People’s Power for Education *“in which 7.2 million people, including parents and representatives, teachers, directors, students, and the people’s power took part in a national*

¹⁵⁴ Report on Venezuela for the First Round, pp. 33.

¹⁵⁵ *Idem.*

¹⁵⁶ See http://www.oas.org/juridico/spanish/mesicic4_ven.htm .

debate which will generate the policies that will govern the education system for the next 10 years”

[518] - Participatory municipal-budget drafting processes

[519] - Statistics on laws adopted by the National Assembly through the public consultation processes, dubbed “parliamentarianism of the street,” for the last five years.

[520] In light of the foregoing, the Committee takes note of the satisfactory consideration of measure (a) of recommendation 4.3 above.

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

Develop suitable mechanisms for conducting public consultations on subjects relating to the performance of administrative functions of a type other than the regulatory activity of the Administration, based on what was stated in Section 4.3.2 of this report.

[521] In its response the State under review did not refer to measure (b) of recommendation 4.3 above. The Committee notes the need for the State to continue to give attention to this recommendation.

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

Regulate the pertinent provisions to eliminate areas of discretion that appear to exist in some provisions now in force, as indicated in Section 4.3.2 of this report.

[522] In its response the State under review did not refer to measure (c) of recommendation 4.3 above. The Committee notes the need for the State to continue to give attention to this recommendation.

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

Supplement regulations, when appropriate, on participation mechanisms provided in national legislation, so as to define aspects such as the value to be given to consultations and information and the results produced and the consequences for failure to comply with obligations relating to existing consultation mechanisms, such as penalties for infringing them.

[523] In its response the State under review did not refer to measure (d) of recommendation 4.3 above. The Committee notes the need for the State to continue to give attention to this recommendation.

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

Design and implement programs to disseminate consultation mechanisms and, when appropriate, train and provide necessary tools for civil society and non-governmental organizations, as well as public officials and employees in the use of such mechanisms.

[524] In its response the State under review did not refer to measure (e) of recommendation 4.3 above. The Committee notes the need for the State to continue to give attention to this recommendation.

4.4. Mechanisms to encourage participation in public administration

Recommendation

Strengthen and continue implementing mechanisms to encourage civil society and non-governmental organizations to participate in public administration.

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

Strengthen and continue to implement rules and mechanisms that encourage the participation of civil society and non-governmental organizations in public administration efforts to prevent corruption. Also, consider establishing a legal structure that systematically increases, promotes and includes such aspects methods of participation other than those already anticipated, as well as different mechanisms to promote, facilitate, consolidate and assure this participation.

[525] In its response the State under review did not refer to measure (a) of recommendation 4.4 above. The Committee notes the need for the State to continue to give attention to this recommendation.

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

Adopt the legal provisions and measures considered appropriate to ensure that the registry of organized communities and non-governmental organizations is not used as a restrictive tool to discourage the participation of civil society and non-governmental organizations in efforts designed to prevent corruption.

[526] The State under review provided the following information in its response:¹⁵⁷

[527] *“The Bolivarian Republic of Venezuela reiterates that the Ministry of People’s Power for Communes and Social Protection (currently the Ministry of Peoples Power for Communes and Social Movements), through the Presidential Council for People’s Power, keeps a record of all communal councils constituted in the country, including their bylaws and articles of incorporation approved by the Citizens’ Assembly, for the simple purpose of complying with the provisions contained in Article 20 of the Communal Councils Law and not with the intention of acting as a restrictive factor to deter civil society participation in anti-corruption efforts. On the contrary, the main aim of the register is to keep track of resources assigned to these organizations in order to ensure that they are used to finance social and productive projects for the development of community areas <http://www.mpcomunas.gob.ve/contenido.php?id=214>.”*

[528] The Committee notes the need for the State to continue to give attention to measure (b) of the above recommendation.

¹⁵⁷ Response of Venezuela to the questionnaire for the Fourth Round, p. 118.

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

Regulate Article 76 of the Organic Law of the Office of the Comptroller General and the National Fiscal Control System which grants civil society and nongovernmental organizations the right to suggest candidates to lead fiscal control units in the institutions subject to this law.

[529] In its response the State under review did not refer to measure (c) of recommendation 4.4 above. The Committee notes the need for the State to continue to give attention to this recommendation.

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

Take steps towards the repeal of the “contempt laws.”

[530] In its response the State under review did not refer to measure (d) of recommendation 4.4 above. The Committee notes the need for the State to continue to give attention to this recommendation.

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

Design and implement programs and disseminate information so as to encourage participation in public administration and, when appropriate provide civil society, non-governmental organizations, public officials and employees with the necessary training and tools to use such mechanisms.

[531] In its response the State under review did not refer to measure (e) of recommendation 4.4 above. The Committee notes the need for the State to continue to give attention to this recommendation.

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

Recommendation

Strengthen and continue implementing mechanisms that encourage civil society and non-governmental organizations to participate in the follow-up of public administration.

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

Promote and continue implementing methods, when appropriate, so that those who carry out public functions will allow, help and assist civil society and non-governmental organizations to develop activities to follow-up government actions.

[532] In its response the State under review did not refer to measure (a) of recommendation 4.5 above. The Committee notes the need for the State to continue to give attention to this recommendation.

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

Consider the implementation of dissemination programs directed to civil society and non-governmental organizations on the aspects dealt with in sections 4.1 to 4.5. [of the Report of the First Round].

[533] The State under review presented information and new developments with respect to the above recommendation. In this regard, the Committee notes the following as steps that contribute to progress in its implementation.¹⁵⁸

[534] *“Further to the recommendation made by the MESICIC Committee of Experts, the Bolivarian Republic of Venezuela stated in its progress report to the fifteenth meeting of MESICIC that awareness programs targeting civil society and nongovernmental organizations have been implemented through various organs of State, addressing the contents of sections 4.1 to 4.5 this document, by means of public information campaigns conducted via the social communication media, the design of methodologies and education materials, production of publications, and organization of opportunities for analysis and debate, such as workshops, seminars, forums, and national and international congresses, executed by state agencies and educational institutions, including the universities of the country.”*¹⁵⁹

[535] In light of the foregoing, the Committee takes note of the satisfactory consideration of measure (b) of recommendation 4.5 above.

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

Recommendation 5.1.

Analyze the possibility of including the acts of corruption referred to in the Inter-American Convention against Corruption in bilateral legal cooperation treaties subscribed in the future, especially those involving other States Parties to the Inter-American Convention against Corruption.

[536] In its response, the State under review reiterates information submitted in the third round to the effect that *“the Inter-American Convention against Corruption is part of the legal basis for extradition requests in connection with criminal offenses that have been classified in keeping with the Convention and Venezuela’s domestic system of laws, especially when no extradition treaty exist with the requesting country.”*¹⁶⁰

[537] In light of the foregoing, the Committee notes the need for it to continue to give attention to implementing the above recommendation.

Recommendation 5.2

Promote the harmonization of domestic legislation with the provisions of the Inter-American Convention against Corruption pertaining to extradition, and compile in a single text the

¹⁵⁸ Response of Venezuela to the questionnaire for the Fourth Round, p. 119.

¹⁵⁹ See progress report of Venezuela presented at the fifteenth meeting of the Committee of Experts of MESICIC.

¹⁶⁰ Response of Venezuela to the questionnaire for the Fourth Round, p. 119.

provisions and standards relating to international treaties on mutual legal assistance in criminal matters.

[538] In its response the State under review presented information and new developments with respect to the above recommendation. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:¹⁶¹

[539] - The reform of the Organic Code of Criminal Procedure on June 15, 2012, published in Official Gazette of the Bolivarian Republic of Venezuela, No. 6.078. *Inter alia*, the reform expands the content of Article 382 (replacing Article 391) in Title VI on Extradition, as follows: “*Extradition is governed by the provisions set forth in the Constitution of the Bolivarian Republic of Venezuela, the international treaties, conventions, and agreements signed and ratified by the Republic, and the norms under this title*”.

[540] - Membership of the State under review, through the Public Prosecution Service, of the Ibero-American Network of International Legal Cooperation (IberRed), a body comprising central authorities and points of contact from the ministries of justice, attorneys general offices, and judiciaries of the 22 countries that make up the Ibero-American Community of Nations.

[541] In this connection, the Committee would like to recall that this recommendation originally comes from the report for the first round of review, the analysis section of which said: “*In this regard, the Committee considers that the Bolivarian Republic of Venezuela could benefit from compiling in a single text, of the provisions or standards related to international treaties on mutual legal assistance in criminal matters.*”¹⁶²

[542] In light of the foregoing, the Committee takes note of the steps taken by the State under review to advance in its implementation of the above recommendation and the need for it to continue to give attention thereto.

Recommendation 5.3

Consider deepening internal coordination among the various bodies responsible for Mutual Legal Assistance.

[543] The State under review presented information and new developments with respect to the above recommendation. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:¹⁶³

[544] - “*By virtue of the modernization of the Venezuelan state, institutions such as the Public Prosecution Service, Ministry of Foreign Affairs, and Supreme Court of Justice have absolute control in terms of coordination in the area of mutual legal assistance. This allows them to be more efficient and reply in a timely manner to any requests submitted.*”

[545] In light of the foregoing, the Committee takes note of the satisfactory consideration of recommendation 5.3 above.

Recommendation 5.4

¹⁶¹ Response of Venezuela to the questionnaire for the Fourth Round, p. 120.

¹⁶² Report on Venezuela for the First Round, pp. 41.

¹⁶³ Response of Venezuela to the questionnaire for the Fourth Round, p. 121.

Determine and prioritize specific areas in which the Bolivarian Republic of Venezuela considers that technical cooperation from other States Parties is necessary to strengthen its capacity to prevent, detect, investigate and punish acts of corruption.

[546] In its response the State under review did not refer to measure (a) of recommendation 5.4 above. The Committee notes the need for the State to continue to give attention to this recommendation.

Recommendation 5.5

Design and implement a comprehensive information and training program for applicable authorities and officials, with the objective of ensuring that they are aware of the mutual legal assistance provisions and can provide assistance needed for investigation and/or prosecution of acts of corruption provided for in the Convention and in other treaties subscribed by the Bolivarian Republic of Venezuela.

It is also recommended that the appropriate public servants be trained to ensure the broadest possible mutual legal and technical cooperation to prevent, detect, investigate and punish acts of corruption.

[547] In its response the State under review did not refer to measure (a) of recommendation 5.4 above. The Committee notes the need for the State to continue to give attention to this recommendation.

Recommendation 5.6

Design and implement an information system that enables authorities of the Bolivarian Republic of Venezuela to ensure ongoing follow-up of requests for legal assistance in reference to acts of corruption and, in particular, to those covered in the Inter-American Convention against Corruption.

[548] The State under review presented information and new developments with respect to the above recommendation. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:¹⁶⁴

[549] - *“Further to the recommendation made by the Committee of Experts, the Bolivarian Republic of Venezuela implemented, through the Public Prosecution Service and its Anticorruption Division, for the purposes of effective performance of its functions, the International Affairs Coordination Office of the Public Prosecution Service, which has a registration, follow-up, and control system on letters rogatory and requests for mutual assistance in criminal matters made (directed abroad) and received (from abroad), designed by the Technology Department of the Anticorruption Division of the Public Prosecution Service. The aforementioned system has been in operation since 2010. In its, requests are cataloged by reception date, together with a short description of the case (including information on the investigation), the requested or requesting country (according to whether the requests are outgoing or incoming, respectively) the status of the proceedings, and the offense.”*

[550] In light of the foregoing, the Committee takes note of the satisfactory consideration of recommendation 5.6 above.

¹⁶⁴ Response of Venezuela to the questionnaire for the Fourth Round, pp. 121-122.

Recommendation 5.7

Continue ongoing technical cooperation exchanges with other States Parties and consider holding discussions with other States on the most effective ways and means to prevent, detect, investigate and punish acts of corruption.

[551] In its response the State under review did not refer to measure (a) of recommendation 5.7 above. The Committee notes the need for the State to continue to give attention to this recommendation.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1

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

[552] In its response the State under review did not refer to measure (a) of recommendation 7.1 above. The Committee notes the need for the State to continue to give attention to this recommendation.

Recommendation 7.2

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

[553] In its response the State under review did not refer to measure (a) of recommendation 7.2 above. The Committee notes the need for the State to continue to give attention to this recommendation.

Recommendation 7.3

Develop, as appropriate and where they do not yet exist, procedures designed to determine the effectiveness of the systems and mechanisms mentioned in this report.

[554] In its response the State under review did not refer to measure (a) of recommendation 7.3 above. The Committee notes the need for the State to continue to give attention to this recommendation.

ANNEX I

CURRENT AND REFORMULATED RECOMMENDATIONS ON THE TOPICS ANALYZED IN THE FIRST ROUND

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

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

Recommendation 1.1.1:

Strengthen the implementation of laws and regulatory systems concerning conflicts of interest, so as to permit the practical and effective application of a system of public ethics.

Suggested measures:

- a) Review and analyze the possibility of regulating procedures regarding the prevention of conflicts of interest, impediments, disqualifications, and prohibitions relating to senior government positions, bearing in mind their particularities and importance, as well as mechanisms for rendering them effective; considering, inter alia, provision for incompatibility in the exercise of public office vis-à-vis other activities that might impair impartiality; the strengthening of penalties; and provision for a fully autonomous body to monitor due compliance with these regulations.
- b) Review and analyze broadening and strengthening the system of legal impediments, prohibitions, incompatibilities and disqualifications contained in the sectoral laws related to conflicts between private and public interests. In so doing, consider making provision for and broadening certain assumptions that could shape conflicts of interest and that, because of their importance, it would be appropriate to deal with in a more detailed and specific manner; determining the entities or officials in charge of ensuring compliance; and applying measures and penalties in case of non-compliance.
- c) Ensure the applicability and application of the sanctions envisaged for public servants who infringe the rules governing conflicts of interest, including among other provisions, the cases covered in Article 123 of the National Public Treasury Organic Act.
- d) Consider taking the necessary legislative steps to prevent acts of corruption that do not necessarily entail impairment of public property being subject to the statute of limitations.
- e) This measure has been satisfactorily considered.
- f) Review and analyze the possibility of incorporating a regulation that limits or prohibits the participation of former civil servants in the management of certain areas of activity and, in general, situations that could lead to individuals taking undue advantage of their status as former public servants.

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

Recommendation 1.2.1:

Continue to bring the Criminal Code in line with the provisions of Article 271 of the Constitution, which stipulates the non-applicability of statutory limitations on crimes against public property.

Recommendation 1.2.2:

Consider the possibility of extending the five-year disqualification period for public service, established in Article 96 of the Anticorruption Act (LCC), to any official or public employee punished for any crime stipulated in this Act, to 15 years, pursuant to Article 105 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System (LOCGRSNC).

Recommendation 1.2.3:

Strengthen the power of the Judiciary so that it retains the power to determine the liability of public servants for crimes of corruption, notwithstanding laws that allow other bodies to take administrative or other action.

It is suggested that a review and analysis be made of the possibility of developing regulations that clearly delimit the scope of the expression in ‘order to avoid paralysis of service operations’ contained in Article 59 of the Anticorruption Act, with a view to limiting room for discretionary decision-making in implementing the said standard and the procedure to be followed, specifying the moment when such authorization must be produced.

Recommendation 1.2.4:

Take relevant measures to ensure that the discretion allowed in several provisions related to government procurement, as well as in Article 59 of the Anti-Corruption Act (LCC), does not constitute an element that affects or could prompt a public servant to engage in illicit conduct or to make arbitrary decisions, in relation to the preservation and proper use of public resources, as mentioned in Section 1.2.3.

Recommendation 1.2.5:

This recommendation has been satisfactorily considered.

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

Recommendation 1.3.1:

Develop regulations and mechanisms to facilitate and promote the submission of complaints of acts of corruption and improve existing mechanisms for receiving and processing complaints.

Recommendation 1.3.2:

Consider the possibility, in the case of employees who fail to comply with the obligation to report, of imposing punishment of a criminal or administrative nature that is more severe than the current system of fines, including loss of employment, among other penalties, depending on the seriousness of the offence.

Recommendation 1.3.3:

Update the financial penalties set forth in the criminal code, taking into account the seriousness of corruption offenses in the public service.

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

Recommendation:

Broaden and complement the systems for disclosing income, assets and liabilities by adopting pertinent legal regulations.

Suggested measures:

- a) Promulgate legal provisions and other pertinent measures in order to establish clearly those parties from whom the Comptroller General of the Republic may request the periodic presentation of a sworn statement of net worth, to ensure that these provisions include senior officials within the public administration and those who, given the importance and nature of their posts, could facilitate or generate illicit enrichment or other unlawful acts against public property, and to determine the deadlines for presenting said statements, their contents and formal requirements.
- b) Consider the appropriateness of requiring sworn statements at times other than those already provided for, establishing reasonable timelines for updating them or circumstances under which it would be advisable to require their presentation.
- c) Strengthen the role afforded to officials in charge of human resources units under Article 26 of the Anticorruption Act [LCC]. This could be achieved by stipulating the obligation of these units to immediately notify the Office of the Comptroller General whenever an individual obliged to do so fails to present proof of presentation of the statement of income, assets and liabilities, and by specifying/detailing the corresponding actions to be taken by the Office of the Comptroller General in such situations.
- d) Regulate the conditions, procedures and other appropriate aspects related to the publicizing of sworn statements of income, assets and liabilities, as applicable.
- e) Use sworn statements of income, assets and liabilities to detect and prevent conflicts of interest.
- f) This measure has been satisfactorily considered.

g) Implement the necessary procedures for achieving effective control over compliance in presenting these statements, in accordance with the recommendation made in measure (f) above.

h) This measure has been satisfactorily considered.

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

Recommendation 3.1:

Strengthen the supervisory work carried out by the Office of the Comptroller General, as the lead body for oversight and monitoring of state comptroller's offices, considering the possibility of conducting a larger number of evaluations or diagnoses on their activities, or using the mechanisms or instruments deemed appropriate to verify their proper operation.

Recommendation 3.2:

Strengthen the work of the Office of the Comptroller General by putting into practice policies and concrete actions to check follow-up and implementation by entities under its supervision of corrective

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

4.1. General participation mechanisms

Recommendation

Analyze existing legal norms, for the purposes of identifying provisions that could be adversely affecting these rights, including those provisions related to the requirement concerning sources for funding civil society organizations and for the purposes of making changes that are deemed relevant to assuring that in the existing juridical structure, there are no provisions that put a limit on their participation in the prevention of corruption.

4.2 Mechanisms for access to information

Recommendation

Institute legal standards and measures to support access to public information.

Suggested measures:

a) Strengthen the guarantees provided on the exercise of the right to public information, including the possibility of accessing a type of information other than that already provided for; and consider the implementation of provisions that ensure that access to such information can only be denied for reasons explicitly regulated and determined by law.

- b) Consider the advisability of integrating and systematizing in a single regulatory text the provisions that guarantee access to public information.
- c) Establish a specific procedure to protect the right of citizens to access public information, establishing for this purpose, among other aspects, the following: i) procedures for accepting requests and responding to them on a timely basis; ii) an entity or offices charged with this function and an oversight agency that should monitor the implementation of these regulations; iii) requirements on admissibility and consequences when such requirements are not met; iv) reasons why a request may be denied; v) method for communicating with the official who submitted the request; vi) prompt and specialized administrative remedies allowing for appeal of a decision made by a public servant who improperly denies access to the information being sought; and vii) an increase in the number of sanctions so as to cover a broader spectrum of circumstances that could hamper, delay or prevent the exercise of this right and that involve the conduct of public servants.
- d) Implement, if this has not yet been done, the provision of Article 9 of the Anticorruption Act relating to the creation of public or citizen service offices, ensuring that they have sufficient resources to carry out their work.
- e) Implement training and dissemination programs on mechanisms for access to public information held by the State, in order to facilitate the understanding thereof by public officials and citizens and optimize the use of the technology available for this purpose.

4.3. Mechanisms for consultation

Recommendation:

Strengthen and continue implementing procedures, as applicable, that make it possible to conduct public consultations

Suggested measures:

- a) This measure has been satisfactorily considered.
- b) Develop suitable mechanisms for conducting public consultations on subjects relating to the performance of administrative functions of a type other than the regulatory activity of the Administration, based on what was stated in Section 4.3.2 of this report.
- c) Regulate the pertinent provisions to eliminate areas of discretion that appear to exist in some provisions now in force, as indicated in Section 4.3.2 of this report.
- d) Supplement regulations, when appropriate, on participation mechanisms provided in national legislation, so as to define aspects such as the value to be given to consultations and information and the results produced and the consequences for failure to comply with obligations relating to existing consultation mechanisms, such as penalties for infringing them.

- e) Design and implement programs to disseminate consultation mechanisms and, when appropriate, train and provide necessary tools for civil society and non-governmental organizations, as well as public officials and employees in the use of such mechanisms.

4.4. Mechanisms to encourage participation in public administration

Recommendation:

Strengthen and continue implementing mechanisms to encourage civil society and non-governmental organizations to participate in public administration.

Suggested measures:

- a) Strengthen and continue to implement rules and mechanisms that encourage the participation of civil society and non-governmental organizations in public administration efforts to prevent corruption. Also, consider establishing a legal structure that systematically increases, promotes and includes such aspects methods of participation other than those already anticipated, as well as different mechanisms to promote, facilitate, consolidate and assure this participation.
- b) Adopt the legal provisions and measures considered appropriate to ensure that the registry of organized communities and non-governmental organizations is not used as a restrictive tool to discourage the participation of civil society and non-governmental organizations in efforts designed to prevent corruption.
- c) Regulate Article 76 of the Organic Law of the Office of the Comptroller General and the National Fiscal Control System which grants civil society and nongovernmental organizations the right to suggest candidates to lead fiscal control units in the institutions subject to this law.
- d) Take steps towards the repeal of the “contempt laws.”
- e) Design and implement programs and disseminate information so as to encourage participation in public administration and, when appropriate provide civil society, non-governmental organizations, public officials and employees with the necessary training and tools to use such mechanisms.

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

Recommendation

Strengthen and continue implementing mechanisms that encourage civil society and non-governmental organizations to participate in the follow-up of public administration.

Suggested measures:

- a) Promote and continue implementing methods, when appropriate, so that those who carry out public functions will allow, help and assist civil society and non-governmental organizations to develop activities to follow-up government actions.

b) This measure has been satisfactorily considered.

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

Recommendation 5.1.

Analyze the possibility of including the acts of corruption referred to in the Inter-American Convention against Corruption in bilateral legal cooperation treaties subscribed in the future, especially those involving other States Parties to the Inter-American Convention against Corruption.

Recommendation 5.2.

Promote the harmonization of domestic legislation with the provisions of the Inter-American Convention against Corruption pertaining to extradition, and compile in a single text the provisions and standards relating to international treaties on mutual legal assistance in criminal matters.

Recommendation 5.3

This recommendation has been satisfactorily considered.

Recommendation 5.4

Determine and prioritize specific areas in which the Bolivarian Republic of Venezuela considers that technical cooperation from other States Parties is necessary to strengthen its capacity to prevent, detect, investigate and punish acts of corruption.

Recommendation 5.5

Design and implement a comprehensive information and training program for applicable authorities and officials, with the objective of ensuring that they are aware of the mutual legal assistance provisions and can provide assistance needed for investigation and/or prosecution of acts of corruption provided for in the Convention and in other treaties subscribed by the Bolivarian Republic of Venezuela.

It is also recommended that the appropriate public servants be trained to ensure the broadest possible mutual legal and technical cooperation to prevent, detect, investigate and punish acts of corruption.

Recommendation 5.6

This recommendation has been satisfactorily considered.

Recommendation 5.7

Continue ongoing technical cooperation exchanges with other States Parties and consider holding discussions with other States on the most effective ways and means to prevent, detect, investigate and punish acts of corruption.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1

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

Recommendation 7.2

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

Recommendation 7.3

Develop, as appropriate and where they do not yet exist, procedures designed to determine the effectiveness of the systems and mechanisms mentioned in this report.

ANNEX II

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

FOURTH ROUND OF REVIEW

AGENDA FOR THE ON-SITE VISIT TO VENEZUELA

Monday, September 29, 2014	
4:00 – 5:30 p.m. <i>Hotel</i>	Coordination meeting of the representatives of the member states of the Subgroup and the Technical Secretariat.
5:30 – 6:30 p.m. <i>Hotel</i>	Coordination meeting of representatives of the State under review, the members states of the Subgroup, and the Technical Secretariat
Tuesday, September 30, 2012	
8:30 – 9:45 a.m. <i>Office of the Comptroller General (CGR)</i>	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional associations, academics or researchers. ^{165/}
	Subject: <ul style="list-style-type: none"> • Mechanisms for participation by civil society
	<p><u><i>Representatives of Civil Society Organizations</i></u></p> <ol style="list-style-type: none"> 1. Juan Camargo. Spokesman, <i>Núcleo de Desarrollo Endógeno Fabricio Ojeda</i>. 2. Luisa Castillo and José Medina, Spokespersons of Matanza Community Council and UCO 3334 Community Council 3. Gabriela Henríquez Pacheco, Spokeswoman, <i>Movimiento Social “Otro Beta”</i> 4. Karina Ribas and Pablo Arteaga, Director of Emisora Comunitaria CRP 91 and Spokesman of Alicia Benítez Commune, Maca-Petare Sur. <p><u><i>Representatives of the Industrial Sector</i></u></p> <ol style="list-style-type: none"> 5.-Dr. Marianela Hernández, Vice President of Finance (FEDEINDUSTRIAS) 6.- Nelson Quijada, President, Venezuelan-Brazilian Chamber (Food Sector, Venezuela Chapter). 7.- Alberto Cudemus, President, Venezuelan Pork Breeders’ Federation (Feporcina) <p><u><i>Representatives of the Academic Sector</i></u></p>

¹⁶⁵ It is suggested that various other organizations and individuals be invited to attend, as envisaged in item 27 of the Methodology for Conducting On-site Visits adopted by the MESICIC Committee of Experts, which permits the invitation to these meetings of “civil society organizations and/or, *inter alia*, private sector organizations, professional associations, academics, or researchers.

	<p>8.- Prof. Víctor Álvarez, Research Professor, <i>Centro Internacional Miranda</i> (CIM) 9.- Prof. Javier Biardeau, Universidad Central de Venezuela 10.- Prof. Alfredo Sequera, Instituto de Altos Estudios de Control Fiscal y Auditoría de Estados</p>
<p>9:45 – 11:00 a.m.</p>	<p>Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers (ctd.).</p>
	<p>Subject:</p> <ul style="list-style-type: none"> • Mechanisms for access to information
	<p><u><i>Representatives of Civil Society Organizations</i></u></p> <ol style="list-style-type: none"> 1. Juan Camargo. Spokesman, <i>Núcleo de Desarrollo Endógeno Fabricio Ojeda</i>. 2. Ms. Luisa Castillo and José Medina, Spokespersons of Matanza Community Council and UCO 3334 Community Council 3. Gabriela Henríquez Pacheco, Spokeswoman, Movimiento Social “Otro Beta” 4. Karina Ribas and Pablo Arteaga, Director of Emisora Comunitaria CRP 91 and Spokesman of Alicia Benítez Commune, Maca-Petare Sur. <p><u><i>Representatives of the Industrial Sector</i></u></p> <ol style="list-style-type: none"> 5.- Dr. Marianela Hernández, Vice President of Finance (FEDEINDUSTRIAS) 6.- Nelson Quijada, President, Venezuelan-Brazilian Chamber (Food Sector, Venezuela Chapter). 7.- Alberto Cudemus, President, Venezuelan Pork Breeders’ Federation (Feporcina) <p><u><i>Representatives of the Academic Sector</i></u></p> <ol style="list-style-type: none"> 8.- Víctor Álvarez, Researcher, <i>Centro Internacional Miranda</i> (CIM) 9.- Javier Biardeau, Universidad Central de Venezuela 10.- Prof. Alfredo Sequera, Instituto de Altos Estudios de Control Fiscal y Auditoría de Estados
<p>11:00 a.m. – 12:30 p.m.</p>	<p>Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers (ctd.).</p>
	<p>Subject:</p> <ul style="list-style-type: none"> • Prevention, detection, investigation, prosecution and punishment of acts of corruption in Venezuela.
	<p><u><i>Representatives of Civil Society Organizations</i></u></p> <ol style="list-style-type: none"> 1. Juan Camargo. Spokesman, <i>Núcleo de Desarrollo Endógeno Fabricio Ojeda</i>. 2. Luisa Carrillo and José Medina, Spokespersons of Matanza Community Council and UCO 3334 Community Council 3. Gabriela Henríquez Pacheco, Spokeswoman, Movimiento Social “Otro Beta” 4. Karina Ribas and Pablo Arteaga, Director of Emisora Comunitaria CRP 91 and Spokesman of Alicia Benítez Commune, Maca-Petare Sur. <p><u><i>Representatives of the Industrial Sector</i></u></p> <ol style="list-style-type: none"> 5.-Dr. Marianela Hernández, Vice President of Finance (FEDEINDUSTRIAS) 6.- Nelson Quijada, President, Venezuelan-Brazilian Chamber (Food Sector, Venezuela Chapter). 7.- Alberto Cudemus, President, Venezuelan Pork Breeders’ Federation (Feporcina) <p><u><i>Representatives of the Academic Sector</i></u></p> <ol style="list-style-type: none"> 8.- Víctor Álvarez, Researcher, <i>Centro Internacional Miranda</i> (CIM) 9.- Javier Biardeau, Universidad Central de Venezuela

	10.- Prof. Alfredo Sequera, Instituto de Altos Estudios de Control Fiscal y Auditoría de Estados
12:30 – 2:00 p.m.	Lunch
2:00 – 3:00 p.m. <i>CGR</i>	Panel 1: Office of the Comptroller General of the Republic (CGR)
	Topics: <ul style="list-style-type: none"> • Introduction (5 min.) • Institutional coordination mechanisms and regime of competencies • Legal and administrative human resources regime
	<ol style="list-style-type: none"> 1. Dr. Adelina González, Comptroller General of the Bolivarian Republic of Venezuela 2. Dr. Armando E. Ouédez, Deputy Comptroller General of the Bolivarian Republic of Venezuela 3. Dr. Ivanova Pacheco, Director of Human Resources
3:00 – 4:00 p.m.	Panel 2: Office of the Comptroller General of the Republic (CGR)
	Topics: <ul style="list-style-type: none"> • Domestic standards on the performance of its duties • Budgetary regime
	<ol style="list-style-type: none"> 1. Dr. Adelina González, Comptroller General of the Bolivarian Republic of Venezuela 2. Dr. Armando E. Ouédez, Deputy Comptroller General of the Bolivarian Republic of Venezuela 3. Basilio Jáuregui, Technical Director General
4:00 – 5:00 p.m.	Panel 3: Office of the Comptroller General of the Republic (CGR)
	Subject: <ul style="list-style-type: none"> • Results in relation to the fulfillment of its responsibilities • Problems encountered and technical cooperation needs
	<ol style="list-style-type: none"> 1. Dr. Adelina González, Comptroller General of the Bolivarian Republic of Venezuela 2. Dr. Armando E. Ouédez, Deputy Comptroller General of the Bolivarian Republic of Venezuela 3. Dr. Carmen D. González, Director, Special Procedures 4. Dr. Mercedes de Blanco, Director General of Oversight of the Branches of Government 5. Dr. Félix Zambrano, Director General of Oversight of States and Municipalities

	<ol style="list-style-type: none"> 6. Rafael Yoll, Director General of Oversight of Decentralized Administration 7. Basilio Jáuregui, Technical Director General
5:00 – 6:00 p.m.	Panel 4: Office of the Comptroller General of the Republic (CGR)
	<p>Topics:</p> <ul style="list-style-type: none"> • Follow-up of the recommendations formulated in the First Round <ul style="list-style-type: none"> - Standards of conduct to ensure the proper conservation and use of resources entrusted to government officials and enforcement mechanisms - Systems for registering income, assets, and liabilities
	<ol style="list-style-type: none"> 1. Dr. Adelina González, Comptroller General of the Bolivarian Republic of Venezuela 2. Dr. Armando E. Ouédez, Deputy Comptroller General of the Bolivarian Republic of Venezuela 3. Dr. Carmen D. González, Director, Special Procedures 4. Dr. Mercedes de Blanco, Director General of Oversight of the Branches of Government 5. Dr. Félix Zambrano, Director General of Oversight of States and Municipalities 6. Rafael Yoll, Director General of Oversight of Decentralized Administration 7. Basilio Jáuregui, Technical Director General
6:00 p.m.	Informal Meeting with representatives of the member states of the subgroup and the Technical Secretariat. ^{166/}
Wednesday, October 1, 2014	
8:30 – 9:30 a.m. Office of the Comptroller General (CGR)	Panel 5: Public Prosecution Service
	<p>Topics:</p> <ul style="list-style-type: none"> • Introduction (5 min.) • Institutional coordination mechanisms and regime of competencies • Decision making • Legal and administrative human resources regime
	<ol style="list-style-type: none"> 1. Dr. Luisa Ortega Díaz, Prosecutor General of the Republic 2. Dr. Jesús Gerardo Peña Rolando, Director, Anticorruption 3.- Dr. Indira León, Deputy Director, Anticorruption

¹⁶⁶ The second paragraph of item 20 of the Methodology for Conducting On-Site Visits states: “At the conclusion of the meetings on each day of the on-site visit, the Technical Secretariat shall organize an informal meeting with the members of the Subgroup, to exchange preliminary points of view on the topics addressed at those meetings.”

9:30 – 10:30 a.m.	Panel 6: Public Prosecution Service (MP)
	Subject: <ul style="list-style-type: none"> • Internal control mechanisms • Budgetary regime
	1. Dr. Luisa Ortega Díaz, Prosecutor General of the Republic
10:30 – 11:30 a.m.	Panel 7: Public Prosecution Service (MP)
	Subject: <ul style="list-style-type: none"> • Results in relation to the fulfillment of its responsibilities • Problems encountered and technical cooperation needs
	1. Dr. Luisa Ortega Díaz, Prosecutor General of the Republic
11:30 a.m. – 12:30 p.m.	Panel 8: Public Prosecution Service
	Topics: <ul style="list-style-type: none"> • Follow-up of the recommendations formulated in the First Round <ul style="list-style-type: none"> - Mechanisms to facilitate and encourage reporting of corruption - Assistance and Cooperation
	1. Dr. Luisa Ortega Díaz, Prosecutor General of the Republic
12:30 – 2:00 p.m.	Lunch
2:00 – 3:00 p.m. <i>CGR</i>	Panel 9: Judiciary
	<ul style="list-style-type: none"> • Introduction (5 min.) • Institutional coordination mechanisms and regime of competencies • Legal and administrative human resources regime
	Supreme Court of Justice (TSJ) <ol style="list-style-type: none"> 1. Dr. Gladys M. Gutiérrez, President, Supreme Court of Justice 2. Dr. Arcadio Delgado, Justice of the Constitutional Division 3. Dr. Mónica Misticchio, Justice of the Political and Administrative Division 4. Dr. Juan José Mendoza, Justice of the Constitutional Division 5. Dr. Luis Damiani, Alternate Justice of the Constitutional Division 6. Dr. Francia Coello, Alternate Justice of the Constitutional Division 7. Dr. Romer Pacheco, Legal Consultant of the Supreme Court of Justice 8. Lewis Aparicio, Director of Human Resources 9. Dr. Mónica Rodríguez, official on the Judicial Committee 10. Argenis Chávez, Executive Director of the Magistracy

3:00 – 4:00 p.m.	Panel 10: Judiciary
	Topics: <ul style="list-style-type: none"> • Domestic standards on the performance of its duties • Internal control mechanisms • Budgetary regime
	Superior Court of Justice (TSJ) <ol style="list-style-type: none"> 1. Dr. Gladys M. Gutiérrez, President, Supreme Court of Justice 2. Dr. Mónica Misticchio, Justice of the Political and Administrative Division 3. Dr. Luis Damiani, Alternate Justice of the Constitutional Division 4. Dr. Francia Coello, Alternate Justice of the Constitutional Division 5. Dr. Romer Pacheco, Legal Consultant 6. Dr. Gerardo Altuve, Internal Auditor 7. Roy Román, Director of Administration and Services (E) 8. Silio Sánchez, Coordinator, Office of Social Participation
4:00 – 5:00 p.m.	Panel 11: Judiciary
	Subject: <ul style="list-style-type: none"> • Results in relation to the fulfillment of its responsibilities • Problems encountered and technical cooperation needs
	Superior Court of Justice (TSJ) <ol style="list-style-type: none"> 1. Dr. Gladys M. Gutiérrez, President, Supreme Court of Justice 2. Dr. Deyanira Nieves, Justice, President of the Criminal Cassation Division 3. Dr. Luis Damiani, Alternate Justice of the Constitutional Division 4. Dr. Romer Pacheco, Legal Consultant 5. Dr. Daniel Ramírez, Assistant Attorney, Criminal Cassation Division 6. Dr. Daniel Ramírez, Assistant Attorney, Criminal Cassation Division
5:00 – 6:00 p.m.	Panel 12: Judiciary
	Subject: <ul style="list-style-type: none"> • Follow-up of the recommendations formulated in the First Round - Assistance and Cooperation
	Superior Court of Justice (TSJ) <ol style="list-style-type: none"> 1. Dr. Gladys M. Gutiérrez, President, Supreme Court of Justice 2. Dr. Deyanira Nieves, Justice, President of the Criminal Cassation Division 3. Dr. Luis Damiani, Alternate Justice of the Constitutional Division 4. Dr. Romer Pacheco, Legal Consultant 5. Dr. Daniel Ramírez, Assistant Attorney, Criminal Cassation Division 6. Dr. Franklin Vezga, Attorney, Criminal Cassation Division
6:00 p.m.	Informal Meeting with representatives of the member states of the subgroup and

	the Technical Secretariat. ^{167/}
Thursday, October 2, 2014	
8:30 – 09:30 a.m. <i>CGR</i>	Panel 13: - National Superintendency of Internal Audits (SUNAI)
	Topics: <ul style="list-style-type: none"> • Introduction (5 min.) • Institutional coordination mechanisms and regime of competencies • Decision making
	1. Dr. Cerecita Olavarrieta A., National Superintendent of Internal Audits
9:30 – 10:30 a.m.	Panel 14: - National Superintendency of Internal Audits (SUNAI)
	Topics: <ul style="list-style-type: none"> • Legal and administrative human resources regime • Institution-building or quality-improvement measures implemented
	1. Dr. Cerecita Olavarrieta A., National Superintendent of Internal Audits
10:30 – 11:30 a.m.	Panel 15: - National Superintendency of Internal Audits (SUNAI)
	Topics: <ul style="list-style-type: none"> • Internal control mechanisms • Budgetary regime
	1. Dr. Cerecita Olavarrieta A., National Superintendent of Internal Audits
11:30 a.m. – 12:30 p.m.	Panel 16: - National Superintendency of Internal Audits (SUNAI)
	<ul style="list-style-type: none"> • Results in relation to the fulfillment of its responsibilities • Problems encountered and technical cooperation needs
	1. Dr. Cerecita Olavarrieta A., National Superintendent of Internal Audits
12:30 – 2:00 p.m.	Lunch

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2:00 – 3:00 p.m. <i>CGR</i>	Panel 17: Ombudsperson’s Office (DP)
	Topics: <ul style="list-style-type: none"> • Introduction (5 min.) • Nature, functions and objectives • Inter-agency coordination mechanisms • Legal and administrative human resources regime
	<ol style="list-style-type: none"> 1. Dr. Gabriela Ramírez, Ombudswoman 2. Dr. Ilaria Márquez, Executive Director of the Ombudsperson’s Office
3:00 – 4:00 p.m.	Panel 18: Ombudsperson’s Office (DP)
	Topics: <ul style="list-style-type: none"> • Budgetary regime • Results in relation to the fulfillment of its responsibilities • Problems encountered and technical cooperation needs
	<ol style="list-style-type: none"> 1. Dr. Gabriela Ramírez, Ombudswoman 2. Dr. Ilaria Márquez, Executive Director of the Ombudsperson’s Office 3. Name and position
4:00 – 5:00 p.m.	Panel 19: Follow-up on the recommendations from the First Round
	Subject: <ul style="list-style-type: none"> • Follow-up on implementation of the recommendations formulated in the First Round <ul style="list-style-type: none"> - Mechanisms for access to information - Mechanisms for consultation
	<ol style="list-style-type: none"> 1. Dr. Gabriela Ramírez, Ombudswoman 2. Dr. Ilaria Márquez, Executive Director of the Ombudsperson’s Office
5:00 – 6:00 p.m.	Panel 20: Follow-up on the recommendations from the First Round (ctd.)
	Subject: <ul style="list-style-type: none"> • Follow-up on implementation of the recommendations formulated in the First Round <ul style="list-style-type: none"> - Mechanisms to encourage participation in public administration - Mechanisms for participation in the follow-up of public administration
	<ol style="list-style-type: none"> 1. Dr. Gabriela Ramírez, Ombudswoman 2. Dr. Ilaria Márquez, Executive Director of the Ombudsperson’s Office
6:00 p.m.	Informal meeting with representatives of the member states of the subgroup and the Technical Secretariat.

7:00 p.m.	Final meeting with representatives of the State under review, the members states of the subgroup, and the Technical Secretariat.

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

STATE UNDER REVIEW:

VENEZUELA

Adelina González

Lead Expert on the Committee of Experts of the MESICIC
Comptroller General
Office of the Comptroller General of the Bolivarian Republic of Venezuela

Basilio Jáuregui

Alternate Expert on the Committee of Experts of the MESICIC
Technical Director General
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HAITI

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Alternate Expert on the Committee of Experts of the MESICIC
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Justice
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Alfredo Edgar Rebaza Vargas

Alternate Expert on the Committee of Experts of the MESICIC

Superior Court Prosecutor
Superior Court Prosecution Unit for Money Laundering
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TECHNICAL SECRETARIAT OF THE MESICIC

Marta Laura Martínez
Principal Legal Officer
Department of Legal Cooperation
OAS Secretariat for Legal Affairs.