



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

FINAL REPORT

(Adopted at the September 15, 2016 plenary session)

SUMMARY

This Report contains a comprehensive review of the implementation of the Recommendations that were formulated to the Republic of Costa Rica in the report of the Second Round with respect to paragraphs 5 and 8 of Article III of the Inter-American Convention against Corruption, which refer, respectively, to systems of government hiring and procurement of goods and services and for the protection of public servants and private citizens who, in good faith, report acts of corruption. Reference is also made, when appropriate, to new developments with respect to the implementation of these provisions.

In addition, the Report includes a comprehensive review of the implementation in the Republic of Costa Rica of paragraphs 3 and 12 of Article III of the Convention, which refer, respectively, to measures intended to create, maintain and strengthen instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities; and a study of further preventive measures that take into account the relationship between equitable compensation and probity in public service. These provisions were selected by the MESICIC Committee of Experts for the Fifth 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 Fifth 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 mainly taking into account the Republic of Costa Rica's Response to the Questionnaire and information gathered during the on-site visit conducted between April 19 to 21, 2016, by representatives of Panama and the Dominican Republic, with the support of the Technical Secretariat. During that visit, the information furnished by Costa Rica was clarified and supplemented with the opinions of civil society organizations.

With regard to the follow-up on the recommendations formulated to the Republic of Costa Rica in the Second Round and with respect to which the Committee, in the Third Round report, found required additional attention, based on the methodology for the Fifth Round and bearing in mind the information provided by the Republic of Costa Rica 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, which required reformulation and which were no longer valid.

With respect to systems of government hiring, it is pertinent to highlight the following: the publication of the Descriptive Manual of Posts for the Civil Service, Judicial Branch and Office of the Comptroller General. Moreover, the Office of the Comptroller General has established objective criteria in order to enforce Article 3 of the Law on Salaries and the Merit Regime of the Comptroller General of the Republic and has strengthened provisions required for the publication of vacancies in the Office of the Comptroller General, via the internet.

Some of the recommendations formulated in the Second Round that remain valid or have been reformulated address issues such as: consider the adoption of provisions that require a Minister or

Chief to always provide reasons selecting a candidate from a list presented by the General Directorate of the Civil Service; establish a sole electronic platform for all public-sector procurement processes in the Public Sector; assess the monetary limits by which direct contracting is allowed by public bodies or agencies so that they are carried out less often or establish uniform limits; and adopt comprehensive regulations on protection of public servants and private citizens who in good faith report acts of corruption.

In addition, regarding the new developments in the Republic of Costa Rica with respect to the implementation of the provisions of the Convention selected for the Second Round, the Committee formulated recommendations, such as consider removing provisions that allow interim officials and employees off trust in the Legislative Assembly to access permanent posts in the public service without having previously participated in an external competition; and consider consolidating the various procurement procedures into a single legal instrument.

For the review of the first provisions selected for the Fifth Round that refer to instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, as set out under Article III, paragraph 3 of the Convention, the Republic of Costa Rica selected the personnel of the Executive Branch covered by the Civil Service Regime, the career and trust personnel of the Legislative Branch and all the personnel of the Judicial Branch, as the country under review considers them as principal groups that merit review, due to them being a majority or based on the importance of their functions.

This review was focused on determining, with respect to the selected personnel, if the country under review has adopted provisions and/or measures which ensure the proper understanding of their responsibilities and the ethical rules governing their activities; the manner or occasions in which personnel are provided instructions; the programs in place for them; the bodies responsible for them; as well as the objective results obtained on the implementation of said provisions and/or measures, taking into account any difficulties and/or weaknesses to achieve the purpose of this provision of the Convention. At the same time, it took note of any difficulties and/or shortcomings in accomplishing the object of that provision of the Convention.

Some of the recommendations formulated to the Republic of Costa Rica, for its consideration, with respect to this topic, are noted as follows:

With respect to the Executive Branch, encourage the General Directorate of the Civil Service to issue directives to ensure that the institutions subject to the Civil Service Regime provide their personnel with uniform information on their responsibilities.

With respect to personnel in the Legislative Branch, impart training to Legislative Branch personnel to ensure a proper understanding of their responsibilities whenever those responsibilities change.

With respect to the Judiciary, adopt provisions to make training for new personnel compulsory, as necessary.

In accordance with the aforementioned methodology, the review of the second provision selected for the Fifth Round, as set out under Article III, paragraph 12 of the Convention, which refers to the study of preventive measures that take into account the relationship between equitable compensation and probity in the public service, and if objective and transparent criteria has been established for determining the compensation of public servants, the Republic of Costa Rica has been recommended

to consider establishing a legal framework that sets out objective and transparent criteria to determine civil servant remunerations.

Finally, the best practices about which Costa Rica provided information refer, in synthesis, to the “Creation of the Psychosocial Workplace Assessment Area,” which performs background checks, and socio-psychological evaluations for applicants for the position of assistant prosecutor; and the “Ethical Management System,” which combines various processes for ethical management at the institutional level. It envisages the creation of entities in charge of the issue, the performance of baseline and follow-up assessments, long-range planning that includes communication and education strategies, and the inclusion of ethics in human resource management processes (recruitment, selection, induction, training, and performance evaluation, among others).

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

**FINAL REPORT ON FOLLOW-UP ON IMPLEMENTATION IN THE REPUBLIC OF
COSTA RICA OF THE RECOMMENDATIONS FORMULATED AND PROVISIONS
REVIEWED IN THE SECOND ROUND, AND ON THE PROVISIONS OF THE
CONVENTION SELECTED FOR REVIEW IN THE FIFTH ROUND¹**

INTRODUCTION

1. Content of the Report

[1] As agreed upon by the Committee of Experts (hereinafter “the Committee”) of the Follow-Up Mechanism for Implementation of the Inter-American Convention against Corruption (“MESICIC”) at its Twenty-fourth Meeting,² this Report will first refer to follow up on implementation of the recommendations formulated to Costa Rica in the Report from the Second Round,³ and which were deemed by the Committee to require additional attention in the Report from the Third Round.⁴

[2] Second, where applicable, it will refer to new developments in Costa Rica with regard to the provisions of the Inter-American Convention against Corruption (hereinafter “the Convention”) selected for the Second Round, and regarding such matters as the legal framework, technological developments and results, and, if applicable, appropriate observations and recommendations will be formulated.

[3] Third, it will address implementation of the provisions of the Convention selected by the Committee for the Fifth Round. Those provisions are contained in paragraphs 3 and 12 of Article III regarding, respectively, measures to establish, maintain, and strengthen “*instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities*”, and “*the study of preventive measures that take into account the relationship between equitable compensation and probity in public service.*”

[4] Fourth, it will refer to the best practices, where applicable, that Costa Rica has wished to voluntarily share regarding implementation of the provisions of the Convention selected for the Second and Fifth Rounds.

2. Ratification of the Convention and adherence to the Mechanism

[5] According to the official records of the OAS General Secretariat, Costa Rica deposited the instrument of ratification of the Inter-American Convention against Corruption on May 9, 1997.

¹ This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on September 15, 2016, at its Twenty-Seventh meeting, held at OAS Headquarters, September 12 – 16, 2016.

² See the Minutes of the 24th Meeting of the Committee, available at: http://www.oas.org/juridico/docs/XXIV_min.doc

³ Available at: http://www.oas.org/juridico/english/mesicic_II_rep_cri.pdf

⁴ Available at: http://www.oas.org/juridico/english/mesicic_III_rep_cri.pdf

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

I. SUMMARY OF INFORMATION RECEIVED

1. Response of the Republic of Costa Rica

[7] The Committee wishes to acknowledge the cooperation that it received throughout the review process from Costa Rica, in particular, from the Office of the Public Ethics Prosecutor, which was evidenced, inter alia, in its reply to the Questionnaire, in the constant willingness to clarify or complete its contents, and in the support for the execution of the on-site visit referred to below. Together with its Response, Costa Rica sent the provisions and documents it considered pertinent.⁵

[8] The Committee also notes that Costa Rica gave its consent for the *on-site visit*, in accordance with provision 5 of the *Methodology for Conducting On-site Visits*.⁶ That visit was conducted from April 19 – 21, 2016, by representatives of Panama and the Dominican Republic, in their capacity as members of the review subgroup, with the support of the MESICIC Technical Secretariat. The information obtained during that visit is included in the appropriate sections of this Report, and the agenda of meetings is attached hereto, in keeping with provision 34 of the above-mentioned *Methodology*.

[9] For its review, the Committee took into account the information provided by Costa Rica up to April 21, 2016, as well as that furnished and requested by the Technical Secretariat and the members of the review subgroup, to carry out their functions in keeping with the *Rules of Procedure and Other Provisions*;⁷ the *Methodology for follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round and for the review of the provisions of the Convention selected for the Fifth Round*;⁸ and the *Methodology for Conducting On-site visits*.

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

[10] The Committee also received, within the time limit set in the Schedule for the Fifth Round, a document from the civil society organization Asociación Costa Rica Integra, which was presented by that organization in accordance with Article 34(b) of the Committee's Rules.⁹

[11] Moreover, on the occasion of the on-site visit to the country under review from April 19 – 21, 2016, information was also gathered from other civil society organizations, professional associations, academics and researchers, who were invited to participate in the meetings held for that purpose, pursuant to provision 27 of the *Methodology for Conducting On-Site Visits*. A list of invitees is included in the agenda of the on-site visit, which has been annexed to this Report. Pertinent parts of this information are reflected in the appropriate sections of this Report.

II. FOLLOW UP ON IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE SECOND ROUND AND NEW DEVELOPMENTS WITH

⁵ Available at: http://www.oas.org/juridico/spanish/mesicic5_cri.htm

⁶ Available at: http://www.oas.org/juridico/english/met_onsite.pdf

⁷ Available at: http://www.oas.org/juridico/PDFs/mesicic4_rules_en.pdf

⁸ Available at: http://www.oas.org/juridico/PDFs/mesicic5_metodologia_en.pdf

⁹ Available at: http://www.oas.org/juridico/PDFs/mesicic5_cri_resp_soc_civ.pdf

REGARD TO THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THAT ROUND

[12] First, the Committee will refer to progress made and new information and developments in Costa Rica with respect to the recommendations formulated and measures for their implementation suggested by the Committee in its Report from the Second Round,¹⁰ which the Committee deemed required additional attention in the Third Round Report,¹¹ and it will proceed to take note of those that have been satisfactorily considered and of those that need further attention, in which case it will refer to the ongoing relevance of those recommendations and measures and to their restatement or reformulation, pursuant to Section V of the *Methodology* adopted by the Committee for the Fifth Round.

[13] In this section, the Committee will, where applicable, take note of any difficulties indicated by the country under review with implementing the recommendations and measures alluded to in the foregoing paragraph and of any technical cooperation requested by the State in that connection.

[14] Second, where applicable, it will refer to new developments in Costa Rica in respect of the provisions of the Convention selected for the Second Round regarding such matters as the legal framework, technological developments and results, and will formulate any observations and recommendations that may be applicable.

1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)

1.1. SYSTEMS OF GOVERNMENT HIRING

1.1.1. Follow-Up to the Implementation of the Recommendations Formulated in the Second Round

Recommendation 1.1.1:

Strengthen the hiring systems for employees of the Executive branch.

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

Enact guidelines in order to enforce Article 27 of the Civil Service Statute, with objective criteria.

[15] In its Response, the country under review provides information which it considers related to the foregoing measure:¹²

[16] *“Executive Decree No. 35865-MP of March 2, 2010, amended the Regulations on the Civil Service Statute, Executive Decree No. 21. In order to ensure implementation of article 27 to which this recommendation referred, the reform included a section on the responsibilities and operations of the human resources offices (Oficinas de Gestión Institucional de Recursos Humanos – OGEREH) in each ministry, institution, or attached organ covered by the Civil Service Regime.*

¹⁰ Available at: http://www.oas.org/juridico/english/mesicic_II_rep_cri.pdf

¹¹ Available at: http://www.oas.org/juridico/english/mesicic_III_rep_cri.pdf

¹² See Response by the Republic of Costa Rica for the Fifth Round of Review, pgs. 1 - 2, http://www.oas.org/juridico/spanish/mesicic5_cri.htm

[17] *In addition, Circular No. ARSP-003-2014 was sent out on September 17, 2014 (published on the website of the General Directorate of the Civil Service (DGSC), specifically at <http://www.dgsc.go.cr/dgsc/servicios.php>), in which the Personnel Recruitment and Selection Area of the DGSC disseminated the updated Candidate List Module User's Manual of the Automated Human Resources Management System (Sistema Automatizado de Gestión del Talento Humano – SAGETH) to the heads of human resources, the 47 OGEREHs of the ministries, institutions, and attached organs covered by the Civil Service Statute, and DGSC area directors and unit chiefs. The purpose of the new document is to ensure that candidate lists drawn up by the DGSC Personnel Recruitment and Selection Area are correctly and efficiently processed in order to meet the personnel needs to fill vacant positions in the institutions under the Civil Service Regime.*

[18] *Furthermore, in June 2014 the DGSC issued circulars DG-011-2014 and DG-012-2014 reminding the human resources units of the ministries, institutions, and attached organs covered by the Civil Service Regime, and DGSC area directors and unit coordinators of the rules and regulations that govern the formation and processing of list of eligible candidates. Those circulars underscored, inter alia, the time limits for OGEREHs to make a decision on lists as well as DGSC oversight with respect to invitation of candidates and compliance with the final paragraph of Article 27 of the Civil Service Statute and paragraph 15 of the Regulations on the Civil Service Statute.”*

[19] Also, during the on-site visit DGSC representatives referred to elements of Article 27 of the Civil Service Statute, highlighting the following three aspects: (1) The minister must choose from the top three candidates on the list of eligible candidates; (2) the possibility of not making a decision solely on the basis of justified arguments – for example, lack of criteria for making a selection; and (3) the possibility of appeal to the Civil Service Tribunal in the event of disagreement.¹³ The representatives also mentioned the appointment process, referring to the mechanism for drawing up the list of eligible candidates; the variables to consider in preparing lists; staffing requests; registration of eligible applicants; and the list of eligible candidates.¹⁴

[20] The Committee notes that in the Report of the Second Round of Review for the Republic of Costa Rica, it was observed that while Article 27 of the Civil Service Statute provides that the authorized minister or chief shall select the new employee from among the first three names on the list of eligible candidates submitted by the General Directorate of the Civil Service, it would be convenient to have mechanisms in place which impart objectivity with respect to that final decision.¹⁵ In this regard, the Committee notes that Article 27 provides that the Minister or chief may reject the candidates contained on the list, and in that case, it must provide reasons for doing so to the General Directorate. If a candidate is sent three times in a list to the same Minister or chief, and a candidate that scored lower is selected, the Minister or chief must provide reasons to the General Directorate why that candidate was not selected.

[21] In that same vein, the Committee considers that the country under review should consider requiring a Minister or chief to always provide the reasons for selecting a candidate from the list submitted by the General Directorate of the Civil Service. In that way, it will allow for transparency in the selection process, and thus ensure openness, equity and efficiency in the system of government

¹³ See presentation of the DGSC: Follow-up on implementation of the recommendations formulated in the Second Round of Review of the MESICIC, pg. 3 http://www.oas.org/juridico/spanish/mesicic5_cri.htm

¹⁴ *Ibid*, pg. 4.

¹⁵ Report on Implementation in Costa Rica of the Inter-American Convention against Corruption Provisions selected for Review in the Framework of the Second Round, pg. 6, *supra* note 3.

hiring in the Executive Branch. Given the foregoing, the Committee believes that measure a) should be reformulated. (see Recommendation 1.1.3.1 of Section 1.1.3 of Chapter II of this Report)

[22] In addition, the Committee notes that in the Response to the Questionnaire, the country under review noted the following, with respect to a difficulty in the recruitment and selection process:¹⁶

[23] *“The DGSC sends shortlists to the OGEREHs for a decision; however, due to the fact that the decision on list of candidates is in the hands of the requesting institution, those lists may be returned without a decision, provided that the return is justified on technical grounds. In such cases the DGSC must send another shortlist; thus, a decision is not made on all lists of candidates sent to the requester.”*

[24] During the on-site visit, the representatives of the General Directorate of the Civil Service noted that with the adoption of Circular No DG-011-2014 of June of 2014, which reminds the human resource offices of the norms applicable to a list of eligible candidates, this issue had improved.¹⁷ Between 2010 and 2014, the percentage of short-lists that were approved and not returned would fluctuate between 27 and 35%. For 2015, this number increased to 60%, and for 2016, of 350 shortlists, only 51 have been returned to the General Directorate of the Civil Service.¹⁸

[25] The Committee notes however, that this still represents a significant number of shortlists prepared by the DGSC that are being returned to them from the institutions of the Executive Branch. The country under review noted that these are at times being returned without any reasons being provided as to why the candidates on the list were not considered adequate for a position. To this end, the Committee believes the country under review should consider undertaking a review of the preparation process of the shortlists by the DGSC, to identify and address the reasons as to why they are being sent back so that another list of candidates can be considered. The Committee will formulate a recommendation. (See Recommendation 1.1.3.2 of Section 1.1.3 of Chapter II of this Report)

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

Continue with efforts and strengthen the provisions required for the publication of the Descriptive Manual of Civil Service Posts, as well as updates thereto, via the internet.

[26] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:¹⁹

[27] *“Articles 106 and 132 (h) of the Regulations on the Civil Service Statute (Executive Decree No. 21) provide that the DGSC and the 47 OGEREHs of the various ministries, institutions, and attached organs covered by the Civil Service Regime shall be responsible for keeping their post classifications up to date, which task is performed as follows:*

[28] *In order to amend classifications and specialties, technical studies are put forward to support the requested amendment, which is adopted by means of a resolution.*

¹⁶ Response to the Questionnaire, pg. 2, *supra* note 10.

¹⁷ Circular No. DG-011-2014, <http://cidseci.dgsc.go.cr/datos/OFICIO%20CIRCULAR%20DG-011-2014%20-%20Modificacion%20a%20lineamiento.pdf>

¹⁸ See Presentation by the General Directorate of the Civil Service, pg. 11, *supra* note 13.

¹⁹ Response to the Questionnaire, pg. 3 *supra* note 12.

[29] “The resolution is published, as required, in the Official Gazette.

[30] The amendment is then applied to the relevant Classification and Specialty Manual.

[31] The classification and specialty manuals published on the DGSC website, specifically at http://www.dgsc.go.cr/dgsc/clases/dgsc_servicios_clasificacion.php and http://www.dgsc.go.cr/dgsc/clase_docente/dgsc_servicios_docente.php, are updated immediately. The website shows the date of the most recent update.”

[32] The Committee notes that during the on-site visit, representatives from the General Directorate of the Civil Service mentioned that while Article 16 of the Civil Service Statute refers to a Descriptive Manual of Civil Service Posts, in fact, there are several Manuals, which are amended as needed. For example, there exists a Manual of Broad Categories (*Manual de Clases Anchas*), which is updated less frequently, as compared to Institutional Manuals, Manual of Specialties and Job Category Manuals, which are constantly updated as a result of occupational studies and analysis at the request of the Institutional Offices of Human Resources Management (OGEREH).²⁰ Moreover, a table was provided by the representatives, which sets out the number of times these Manuals are updated.²¹

ACT	2015	2016 (up to April 12)
Inclusion for clarification	23	12
Update on scope of application	10	3
Removal of classes	2	0
Modification of classes	1	0
Required modification due to absence of post	2	0
Modification in the definition of specialties	2	0
Elimination of an Institutional Manual	0	1
Modification of clarifications	0	2
Total	40	18

[33] The Committee also notes that the webpage containing the Manuals set out the last time they were updated.

²⁰ Presentation by the General Directorate of the Civil Service, pg. 13, *supra* note 13.

²¹ *Ibid*, pg. 14.

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

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

Continue with efforts and strengthen the provisions required for the publication of the Executive branch vacancy announcements, through the development of an electronic system which allows for the publication and dissemination of such vacancies to the public at large.

[35] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:²²

[36] *“The amendment of the Regulations on the Civil Service Statute (Executive Decree No. 21), applied through Executive Decree No. 35865-MP of March 2, 2010, which added a section on the responsibilities and operations of the OGEREHs of each ministry, institution, and attached organ covered by the Civil Service Regime, reinforces the obligation of human resources units to update the information on the positions of each institution and adopt the necessary measures to announce vacant positions in an effort to foster transparency.*

[37] *At the same time, it is important to mention that for several years the Office of the Comptroller General of the Republic (CGR) has been publishing an Institutional Management Index (Índice de Gestión Institucional – IGI), which broadly evaluates the management capacity of public-sector institutions. One of the parameters that the Index measures is the human resources variable, one aspect of which has precisely to do with keeping current information about positions in public-sector institutions, including vacancies. The findings of the Index for 2014 can be seen on page 209 of the Annual Report of the CGR: https://cgrfiles.cgr.go.cr/publico/docsweb/rev_dig/mem_anual/2014/files/assets/downloads/publicacion.pdf.”*

[38] The Committee notes that during the on-site visit, the representatives of the General Directorate of the Civil Service observed that there is a principle of openness and transparency in the civil service regime for vacancies to be published on websites.²³ However, they further noted that it does not have the tools to maintain all external vacancies on a webpage. They also noted that due to the decentralized system in place for the hiring of public servants in the Executive Branch, it made it difficult to centralize this information, and as result, they do not have an automated system that recompiles data.²⁴ For example, of the 47 agencies that make up the Executive Branch and have an Institutional Office of Human Resources Management in place, only 26 are part of a centralized system, while the rest have their own system. It was also stated that there is an initiative with the Open Government Partnership to develop a platform to publicize all vacancies in the Executive Branch.²⁵ Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementation thereto. (see Recommendation 1.1.3.3 of Section 1.1.3 of Chapter II of this Report)

²² Response to the Questionnaire, pg. 4 *supra* note 12.

²³ Presentation by the General Directorate of the Civil Service, pg. 11, *supra* note 13.

²⁴ *Ibid*, pg. 12.

²⁵ Alliance for Open Government Action Plan 2015 – 2017, http://www.oas.org/juridico/spanish/mesicic5_cri.htm

[39] In addition, the Committee notes that the legal framework in place does not contain provisions that set out the manner that vacancy announcements in the Executive Branch are to be carried out, such as providing minimum periods for advertising notices, as well as minimum periods during which registration can be accepted from applicants; and including in the content of notices the schedule established and places where registrations are accepted and where more information can be obtained regarding the notice. The Committee will formulate a recommendation. (see Recommendation 1.1.3.4 of Section 1.1.3 of Chapter II of this Report)

Recommendation 1.1.2:

Strengthen the hiring systems for employees of the Legislative branch.

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

Enact guidelines in order to enforce article 12 of the Law for Personnel of the Legislative Assembly, with objective criteria.

[40] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure.²⁶

[41] “April 2013 saw the adoption of the “[Regulations on Selection and Appointment of Personnel through Internal Competitions in the Legislative Assembly](#).” That instrument governs the personnel selection and appointment procedure and strengthens the obligation derived from Article 192 of the Constitution to make selections based on the principle of proven suitability.

[42] *The competition process envisaged would show the appropriate application of that principle in a framework of equal conditions and opportunity to everyone who participates and meets the requirements stipulated for the vacancy in question.*

[43] The Committee notes that the objective of the Regulation on Selection and Appointment of Personnel through Internal Competitions in the Legislative Assembly is to ensure the objectivity and transparency in the selection and appointment process carried out by this institution; to appoint qualified personnel; and regulate the internal process of personnel selection. The Committee further notes that the provisions are applicable to both internal and external competitions, excluding those appointed into trust positions.²⁷ The Committee also observes that Articles 15 and 16 of this Regulation provide that a short-list is to be composed of the three candidates who scored the highest during the recruitment process, and that a vacancy is to be filled through persons that belong to this short-list presented by the Department of Human Resources.

[44] However, the Committee notes that Article 12 of the Law for Personnel of the Legislative Assembly provides that the Administrator Director of the Legislative Assembly is to select a candidate within 8 days of the presentation of the short-list, unless there are reasons to object to them. As noted in the Report of the Second Round of Review for the Republic of Costa Rica, the Committee considered that it would be “*convenient to have mechanisms in place which impart*

²⁶ Response to the Questionnaire, pg. 4 *supra* note 12.

²⁷ Article 18, Regulation on Selection and Appointment of Personnel through Internal Competitions in the Legislative Assembly, http://www.oas.org/juridico/spanish/mesicic5_cri.htm

*objectivity with respect to the final selection decision made by the Administrative Director of the Assembly, from the three-name shortlist submitted by the General Directorate.*²⁸

[45] In other words, the country under review should consider adopting provisions that require the Administrative Director to provide the reasons for selecting a candidate from the list submitted by the General Directorate of the Legislative Branch. In this manner, it will strengthen transparency in the selection process, and thus ensure openness, equity and efficiency in the system of government hiring in the Legislative Branch. Given the foregoing, the Committee believes that measure a) should be reformulated. (see Recommendation 1.1.3.7 of Section 1.1.3 of Chapter II of this Report)

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

Continue with efforts and strengthen the provisions required for the publication of the Job Description Manual for Legislative Assembly Posts, as well as any updates thereto, such as by electronic publication via the internet.

[46] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure.²⁹

[47] “Published on the website of the [Legislative Assembly](http://www.asamblea.go.cr/Centro_de_informacion/sitio_rr_hh/default.aspx), specifically at http://www.asamblea.go.cr/Centro_de_informacion/sitio_rr_hh/default.aspx, is the Job Description Manual for Administrative Positions in the Legislative Assembly, with the latest approved and published amendments.

[48] In addition, available for download from the [Costa Rican Legal Information System](#), a legal IT project of the Justice Administration Modernization Program, is the latest version of the Job Description Manual of the Legislative Assembly, [Decision No. 13](#), as are the reforms that it has undergone.”

[49] The Committee notes that the Manual is available online, and the representatives of the Legislative Branch had indicated that the Manual underwent a major revision in 2009 and was last updated in 2014. Nevertheless, while it appears that the Manual is being updated, it should indicate, either in the webpage where it is posted, or in the Manual itself, the last time this occurs. Given the foregoing, the Committee believes that measure b) should be reformulated. (see Recommendation 1.1.3.6 of Section 1.1.3 of Chapter II of this Report)

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

Continue with efforts and strengthen the provisions required for the publication of vacancies in the Legislative branch, through the development of an electronic system which allows for the publication and dissemination of such vacancies to the public at large.

²⁸ Report of the Second Round, pg. 7, *supra* note 3.

²⁹ Response to the Questionnaire, pg. 6 *supra* note 12.

[50] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as steps that contribute to progress in the implementation of the measure:³⁰

[51] *“The Legislative Branch has been publishing announcements of external competitions for its vacant positions on its website since 2014; it also responds to queries in that area via its website. That is how external competition 01-2014 was managed and how the competition for the vacant position of internal auditor is being processed.*

[52] *Vacancies open to internal competitions are announced on the intranet since they are viable in-house opportunities for the institution's personnel.*

[53] *This recommendation did not call for the introduction of additional provisions to those already in force; however, it is worth mentioning that the new Regulations on Selection and Appointment of Personnel have reinforced institutional obligations with respect to the transparency of selection and appointment processes.”*

[54] The Committee notes that the country under review has adopted the Regulations on Selection and Appointment of Personnel through Internal Competitions in the Legislative Assembly. In this Regulation, Article 18 provides that for external competitions, the provisions applicable to internal ones in the Regulation, as well as those found in the Civil Service Statute and its Regulations are to apply. In this regard, the Committee observes that these legal instruments do not require the publication of vacancy announcements. In addition, the country under review, noted as a difficulty, the following, in its Response to the Questionnaire:³¹

[55] *“The use of the Internet portal for external competitions has occasionally given rise to problems of communication. Applicants have been unable, through that channel, to complete the application form and submit it to the Department of Human Resources of the Legislative Assembly, which has delayed the competitions concerned.”*

[56] During the on-site visit, it was noted by the representatives of the Legislative Branch that the system in use for external applicants to apply for a position is based on SharePoint 2007. As a result, candidates using web browsers other than Microsoft Explorer, such as Chrome, Firefox or Safari, had problems filling in the on-line forms due to incompatibility issues.

[57] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementation thereto, and put in place an electronic system that all candidates may use, regardless of the web browser in use. (see Recommendation 1.1.3.7 of Section 1.1.3 of Chapter II of this Report)

[58] In addition, the Committee notes that the Regulations do not contain provisions that set out the manner that vacancy announcements in the Legislative Branch are to be carried out, such as providing minimum periods for advertising notices, as well as minimum periods during which registration can be accepted from applicants; and include in the content of notices the schedule established and places where registrations are accepted and where more information can be obtained regarding the notice. The Committee will formulate a recommendation. (see Recommendation 1.1.3.8 of Section 1.1.3 of Chapter II of this Report)

³⁰ *Ibid*, pg. 7.

³¹ *Ibid*, pg. 8.

Recommendation 1.1.3:

Strengthen the hiring systems for employees of the Judicial branch.

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

Continue with efforts and strengthen the provisions required for the publication of vacancies for those who fall within the category of employee/ service official (“servidores”/funcionarios de servicio”) in the Judicial branch, as is the case with vacancies for those who comprise the career service. These vacancies, together with career service vacancies may be published by means of an electronic system which allows for their dissemination to the public at large, possibly via the internet.

[59] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as steps that contribute to progress in the implementation of the measure:³²

[60] “Published on the [Judicial Branch](http://sitios2.poder-judicial.go.cr/personal/concursos_1.htm) website, specifically at http://sitios2.poder-judicial.go.cr/personal/concursos_1.htm, are all the competitions for the appointment of professional and non-professional personnel in the Judiciary and auxiliary justice agencies (Public Defender Office, Judicial College, Public Prosecution Service, and the Judicial Investigation Agency).

[61] *This is complemented through internal dissemination to all Judicial Branch staff via the intranet and mailshots to judicial workers.*

[62] *In addition, information about the judicial career path and the rules and procedural manuals that govern recruitment and selection of Judiciary personnel are available at <http://sitios2.poder-judicial.go.cr/personal/concursos.htm>.”*

[63] The Committee would first like to note that during the on-site visit, the representatives of the Judicial Branch stated that the first paragraph of Article 47 of the Organic Law of the Judicial Branch, denotes the difference, in this Branch of government, between those that serve as judges or magistrates, and employees:³³

[64] *“Those who work in the Judicial Branch are broadly referred to as ‘servants.’ However, when this law talks about ‘officials who administer justice’ it should be understood as referring to magistrates and judges; the term ‘officials’ alludes to those who, aside from the aforementioned, have their own functions, powers, and responsibilities as determined by this law, while ‘employees’ refers to all other individuals who serve in positions remunerated through the salary system.”*

[65] For candidates who want to work in the Judicial Branch, whether in the judicial career path, or as an employee, they are required to register and apply in an electronic database. For those in the career path, this database is the Administrative Judicial Career System,³⁴ and candidates can refer to a guide for registration, the General Information for Entry into the Judicial Career.³⁵ Likewise, those

³² *Ibid.*

³³ [Organic Law of the Judicial Branch](#)

³⁴ Administrative Judicial Career System (Sistema Administrativo de la Carrera Judicial), <https://pjenlinea2.poder-judicial.go.cr/SACJ/FrmLogin.aspx>

³⁵ [General Information for Entry into the Judicial Career](#), (Información General para el Ingreso a la Carrera Judicial)

who would like to work as employees are to register in the GH on Line,³⁶ and a guide is also provided online.³⁷ With respect to these employees, the website cited by the country under review does not appear to have a similar system of registration as for those applying for a position in the judicial career.

[66] The Committee observes that there exists a Recruitment, Selection, and Appointment Model for Vacancies in the Judicial Branch. This Model, which was published in the Judicial Gazette (*Boletín Judicial*) No. 28 of February 8, 2012, is applicable to all positions in the Operational, Administrative Support, Specialized Technical, and Jurisdictional Support categories, the recruitment and selection processes for which are the responsibility of the Recruitment and Selection Section of the Department of Human Resources (*Departamento de Gestión Humana*). Vacancy announcements may be published however the Department of Human Resources considers appropriate, provided that the principles of objectivity, reasonableness, and institutional best interests are met, for which purpose, the website of the Department of Human Resources, the Judicial Gazette, and a notice in a nationally distributed newspaper must be used.³⁸

[67] In this respect, the Committee notes that this Model has similar language as that of Article 73 of the Judicial Service Statute, which provides that vacancy announcements for entry into the Judiciary career must be published in the Judicial Bulletin and in a major national newspaper.³⁹

[68] The Committee observes, however, that the Model does not contain provisions that make it mandatory the publication of external employment opportunities for employee positions in the Judicial Branch, unlike those for the career path, as found under Article 73 of the Judicial Service Statute. Given the foregoing, the Committee considers that the measure should be reformulated, so that the country under review should consider implementing provisions that require the publication of vacancy announcements for those who enter the Judicial Branch as employees. (see Recommendation 1.1.3.9 of Section 1.1.3 of Chapter II of this Report)

[69] In addition, the Committee notes that the legal framework in place does not contain provisions that set out the manner that vacancy announcements in the Judicial Branch are to be carried out, such as providing minimum periods for advertising notices, as well as minimum periods during which registration can be accepted from applicants; and include in the content of notices the schedule established and places where registrations are accepted and where more information can be obtained regarding the notice. The Committee will formulate a recommendation. (see Recommendation 1.1.3.10 of Section 1.1.3 of Chapter II of this Report)

[70] The Committee also further notes that this Model, while available on the website of the Judicial Branch, it is not readily available and therefore, in the interests of transparency and ensuring a system of hiring that assures openness, equity and efficiency, the country under review should

³⁶ GH on Line (GH en Línea), <https://pjenlinea2.poder-judicial.go.cr/ghenlinea/wIngreso.aspx>

³⁷ Available at: <https://www.poder-judicial.go.cr/gestionhumana/docconcurso/2016/oferentes/GUIA%20GH%20EN%20L%C3%8DNEA.pdf>

³⁸ Recruitment, Selection, and Appointment Model for Vacancies in the Judicial Branch, https://www.imprentanacional.go.cr/pub-boletin/2012/02/bol_08_02_2012.html. The country under review also notes that the Personnel Council of the Judicial Branch, in session N°18-2014 Article XIV, agreed to approve the use of the administrative recruitment and selection process that applies to the posts of Investigator, which has been used for more than 20 years, for the posts of Security Assistant (Guard), Custodian of Detainees, Agent for the Protection of Victims, Witnesses, and Other Individuals, Agent for the Protection of Judicial Officers, and Investigator charged with Locating and Summoning Individuals, http://www.oas.org/juridico/spanish/mesicic5_cri.htm

³⁹ [Judicial Service Statute](#)

consider adopting measures that ensure easy electronic access to the Model. The Committee will formulate a recommendation. (see Recommendation 1.1.3.11 of Section 1.1.3 of Chapter II of this Report)

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

Continue with efforts and strengthen the provisions required for the publication of the Post Classification Manual, as well as any updates thereto, via the internet.

[71] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as steps that contribute to progress in the implementation of the measure:⁴⁰

[72] “Published on the [Judicial Branch](http://sitios2.poder-judicial.go.cr/personal/manual.htm) website, specifically at <http://sitios2.poder-judicial.go.cr/personal/manual.htm>, is the Job Description Manual for positions in the Judiciary and auxiliary justice agencies (Public Defender Office, Judicial College, Public Prosecution Service, and the Judicial Investigation Agency).”

[73] The Committee notes that the Manual is available online, and the representatives of the Judicial Branch had indicated that the Manual is updated when a review is carried out of a post, through the Post Analysis Section of the Department of Human Resources. In this respect, the Committee notes that the posts found on the website of the Manual contain, at the end of the described post, the date in which it was modified.

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

Recommendation 1.1.4:

Strengthen the hiring systems for Public Ministry employees.

Measure suggested by the Committee that requires additional attention within the Framework of the Third Round:

Continue the efforts required for the publication of vacancies via the Internet.

[75] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as steps that contribute to progress in the implementation of the measure:⁴¹

[76] “Published on the [Judicial Branch](http://sitios2.poder-judicial.go.cr/personal/concursos_1.htm) website, specifically at http://sitios2.poder-judicial.go.cr/personal/concursos_1.htm, are all the competitions for the appointment of professional and non-professional personnel in the Judiciary and auxiliary justice agencies (Public Defender Office, Judicial College, Public Prosecution Service, and the Judicial Investigation Agency).

[77] *This is complemented through internal dissemination to all Judicial Branch staff via the intranet and mailshots to judicial workers.”*

⁴⁰ Response to the Questionnaire, pg. 9 *supra* note 12.

⁴¹ Response to the Questionnaire, pg. 9 *supra* note 12.

[78] The Committee notes that under the Organic Law of the Public Ministry, there are no provisions that require the posting of vacancy announcements to work in the Public Ministry. In addition, during the on-site visit, the representatives of the Public Ministry stated that there is no law requiring this publication, though they did emphasize that this is carried out in practice. In this respect, the Committee observes that the website cited in its Response contains postings for entry into the Judicial Branch, of which the Public Ministry is a part, as well as that of the Public Ministry itself.⁴²

[79] The Committee further notes that in the Report of the Second Round of Review for the Republic of Costa Rica, it was noted that there is an absence of provisions requiring or providing for the publication of vacancies in the Public Ministry.⁴³

[80] Given the foregoing, the Committee believes that the measure should be reformulated, so that the country under review should consider implementing provisions that require the publication of vacancy announcements by the Public Ministry, in order to ensure that the opportunities to enter the Public Ministry can be afforded to all qualified persons. (See Recommendation 1.1.3.12 of Section 1.1.3 of Chapter II of this Report)

[81] In addition, the Committee notes that the legal framework in place does not contain provisions that set out the manner by which vacancy announcements in the Public Ministry are to be carried out, such as providing minimum periods for advertising notices, as well as minimum periods during which registration can be accepted from applicants; and include in the content of notices the schedule established and places where registrations are accepted and where more information can be obtained regarding the notice. The Committee will formulate a recommendation. (see Recommendation 1.1.3.13 of Section 1.1.3 of Chapter II of this Report)

Recommendation 1.1.5:

Strengthen the hiring systems for Comptroller General employees.

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

Enact guidelines in order to enforce Article 3 of the Law on Salaries and the Merit Regime of the Comptroller General of the Republic, with objective criteria.

[82] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as steps that contribute to progress in the implementation of the measure.⁴⁴

[83] “The CGR has guidelines on the personnel recruitment and selection process that sets out all the steps to be followed in hiring human resources as well as staffing policies. It also carries out studies on the lives and customs of those who join the workforce of the Office of the Comptroller.”

[84] These guidelines on personnel recruitment were adopted after the Second Round of Review,⁴⁵ and, as noted during the on-site visit, in a presentation made by the representatives of the Office of the

⁴² Publication of Competitions for Hiring of Personnel, http://ministeriopublico.poder-judicial.go.cr/transparencia/recurso_humano.html#HERMES_ACCORDION_1_1

⁴³ Report of the Second Round, pg. 7, *supra* note 3.

⁴⁴ See Response to the Questionnaire, pg. 11 *supra* note 12.

Comptroller on the recruitment and selection process,⁴⁶ this involves a three-part process: assessment of requirements, tests and interviews. In the assessment of requirements, the work experience, academic degree and training are examined. Technical and psychometric tests are also administered. Finally, interviews regarding lifestyle and habits are carried out in front of a panel of interviewers.

[85] The country under review notes that this entire personnel recruitment and selection process is conducted based on objective criteria, which ultimately enable the Human Resources Management Unit (Personnel Office for purposes of the Law on Salaries and Merits Regime) to prepare and present a list of candidates selected in keeping with the order of excellence shown throughout the competition, the result of which is that any of the individuals on the list are, in keeping with the competition's outcome, prepared to fill the respective position and are suitable candidates for the post. In other words, the selection process ends with the identification of the most suitable candidates, so that thereafter the respective appointment—or appointments in the case where the competition is to obtain eligible individuals for a general position—can be made.

[86] The Committee notes that Article 3 of the Law on Salaries and the Merit Regime of the Office of the Comptroller General of the Republic, provides that *“in appointing personnel, the Comptroller shall make their selection from a list submitted to them by the Personnel Office for each vacancy, taking into account order of the scores obtained by the candidates.”*⁴⁷

[87] To this end, the country under review notes that candidates contained in the list presented by the Personnel Office are the result of comprehensive process based on objective criteria, and the selection of the person for appointment to a vacant post can only be made from suitable candidates from that list, determined from the scores obtained by the contestants.

[88] Given the foregoing, the Committee takes note of the satisfactory consideration by the country under review of measure a) of the foregoing recommendation taking into account that the Office of the Comptroller General introduces a personnel selection process with objective criteria to ensure transparent hiring.

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

Continue efforts and strengthen the provisions required for the publication of vacancies in the Office of the Comptroller General, via the internet.

[89] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as steps that contribute to progress in the implementation of the measure:⁴⁸

⁴⁵ The recruitment of personnel is set out in detail in the human management section of the 2010 Manual of Comprehensive Audit of the CGR, which is available at the following link: http://cgrw01.cgr.go.cr/pls/portal/docs/PAGE/PORTAL_FUNCIONARIOS_2008/SECCIONES%20FUNCIONARIOS/DOCUMENTOS/NORMATIVA_INTERNA/MAGEFI/GESTION%20DEL%20CONOCIMIENTO/PA-06%20GESTION%20DEL%20POTENCIAL%20HUMANO/DTI_VFP_2.PDF

⁴⁶ See, Strengthen the systems for hiring public servants in the Office of the Comptroller General (Fortalecer los sistemas para la contratación de los funcionarios públicos en la Contraloría General de la República), http://www.oas.org/juridico/spanish/mesicic5_cri.htm

⁴⁷ [Law on Salaries and the Merit Regime of the Office of the Comptroller General of the Republic](#)

⁴⁸ Response to the Questionnaire, pgs. 12-13, supra note 12.

[90] “The CGR updates the number of vacancies every semester and publishes them on the website of the CGR, specifically at <https://sites.google.com/a/cgr.go.cr/cgr/transparencia/remuneraciones-beneficios>.

[91] Likewise, external competitions for vacancies are posted at <https://sites.google.com/a/cgr.go.cr/cgr/servicios/empleo-cgr> where the information can be seen all members of the public. This is complemented through internal dissemination to all CGR staff via their work emails.

[92] The publication of competitions on the website serves to inform the public about vacancies in the organization and provides interested individuals who meet the necessary requirements with the opportunity to take part in the competition.

[93] It should also be noted that the CGR has a Competency-Based Management Model and that those who participate in competitions organized by the institution are evaluated using tools for that purpose and undergo a competency-based interview by a panel to assess whether or not candidates have the minimum competencies required to fill a position.

[94] At present, the human resources unit is engaged in a review of the staffing process with a view to refining and improving how participants are assessed in competitions. The results of the review will be reported to the Committee of Experts.”

[95] The Committee observes that the Office of the Comptroller General has established a website where one can apply for posts to work within this institution. At the webpage cited in its Response above, an electronic system is in place whereby candidates can electronically submit their background and register a curriculum vitae. It allows a user to also update their information. Moreover, when describing the terms of each of the vacancies, it expressly provides that the details of the competition will be published on the institutional website.

[96] While the Committee observed in the Report of the Second Round of Review for the Republic of Costa Rica that there are no provisions in place legally requiring the Office of the Comptroller General to publish employment opportunities on its website, which continues to be the case,⁴⁹ as noted above, the publication of vacancies is carried out in its webpage. Given the foregoing, the Committee takes note of the satisfactory consideration by the country under review of measure b) of the foregoing recommendation.

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

Continue efforts and strengthen the provisions required for the publication of the Descriptive Manual of Posts, as well as any updates thereto, via the internet.

[97] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as steps that contribute to progress in the implementation of the measure:⁵⁰

⁴⁹ Report of the Second Round, pg. 8, *supra* note 3.

⁵⁰ See Response to the Questionnaire, pg. 14 *supra* note 12.

[98] “Published on the website of the [Office of the Comptroller General](https://sites.google.com/a/cgr.go.cr/cgr/transparencia/remuneraciones-beneficios), specifically at <https://sites.google.com/a/cgr.go.cr/cgr/transparencia/remuneraciones-beneficios> is the Job Profiles Manual of the Office of the Comptroller General ...

[99] It is also worth noting that the CGR has had a Competencies Manual since 2010 that is tailored to its Competency-Based Management Model. That document is available for download at <https://sites.google.com/a/cgr.go.cr/cgr/transparencia/remuneraciones-beneficios>.”

[100] The Committee notes that during the on-site visit, the representatives of the Office of the Comptroller General stated that the Descriptive Manual of Posts is updated as required. In this regard, it was updated twice, in both 2014 and 2015. The Committee notes that Article 5 of the Law on Salaries and the Merit Regime of the Comptroller General of the Republic provides that the Personnel Office is to maintain a Descriptive Manual of Posts.

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

1.1.2. New Developments with Respect to the provisions of the Convention on Systems of Government Hiring

1.1.2.1 New Developments with Respect to the Legal Framework

a) Scope

- Statutory and other legal provisions applicable to a majority of public servants in the Executive Branch, among which the following should be noted:⁵¹

[102] – Executive Decree No. 35865-MP of March 2, 2010, which adds a new chapter to the Regulations on the Civil Service Statute. That reform created the Human Resources Management System, which it defined as “*the group of competent organs and entities under the scope of the Civil Service Regime that are necessary to oversee and implement the applicable processes for that management in the ministries, institutions, and attached organs covered by said regime.*” It also incorporated a set of broad regulations that more clearly and precisely define the functions and responsibilities of the human resources offices (OGEREH) and the basic processes that those administrative departments must perform.⁵² Those standards establish responsibilities to be discharged by OGEREHs, including: implementation of the human resources policies and regulations adopted by the General Directorate of the Civil Service and other entities with similar legal authority; see to the provision of public sector employees covered by the Civil Service Regime required by ministries, institutions, and attached organs governed by the Civil Service Statute and its Regulations, through internal and external competitions; keep an Updated Positions Registry, including their history and that of their occupants, conditions of occupancy, and other related data on all positions in ministries, institutions, and attached organs governed by the Civil Service Regime; and keep up-to-date the manuals of rules and procedures and instruments governing the various working processes that go into human resources management.

⁵¹ *Ibid.*, pgs., 30 – 31.

⁵² [Executive Decree 35865-MP](#)

[103] – Circular ARSP-008-0013 of June 15, 2013, which provides guidelines complementing the applicable standards on the formation and processing of list of candidates.⁵³ The circular refers, *inter alia*, to the time limits for making a decision on lists, the minimum timeframe for holding hiring interviews, mechanisms for announcing competitions, and the and the maximum timeframe appointments.

[104] – Circulars DG-011-2014 and DG-012-2014 of June 2014, reminding the human resources units of the ministries, institutions, and attached organs of the rules and regulations that govern the formation and processing of list of eligible candidates.⁵⁴

[105] – Circular ARSP-003-2014 of September 17, 2014, which circulated the updated Candidate List Module User's Manual of the Automated Human Resources Management System (SAGETH) to the heads of human resources.⁵⁵

[106] – Resolution DG-155-2015, which governs the holding of internal competitions for positions covered by the Civil Service Regime that come under Titles I and II—on Technical Teachers and Administrative Teachers—and IV of the Civil Service Statute and its Regulations.⁵⁶

- Statutory and other legal provisions applicable to a majority of public servants in the Legislative Branch, among which the following should be noted:⁵⁷

[107] – The Regulations on Selection and Appointment of Personnel through Internal Competitions in the Legislative Assembly, which sets out the procedures for selection and appointment of personnel. The regulations have four main objectives: (a) to ensure the objectiveness and transparency of personnel selection and appointment processes held within the institution with a view to the entry of the personnel to the Civil Service Regime; (b) to permanently appoint suitable personnel to serve in the institution's different areas of activity; (c) to govern the internal personnel selection process in order to provide job stability at the earliest opportunity and guarantees the utmost compatibility between the institution's needs and staff's aptitudes, tasks, responsibilities, capacities, and interests, in accordance with the standards and regulations in place; and (d) to promote the administrative careers of the staff of the Legislative Assembly and foster personnel advancement.⁵⁸ In its Response to the Questionnaire, the country under review mentions that the objectiveness and transparency of personnel selection and appointment processes are embodied in Article 9 of the Regulations, which states that the criteria for a selection and appointment processes must be transparent and objective, and that said article requires the authority that makes the decision on the appointment to provide a reasoned decision whenever the criteria recommended by the Department of Human Resources of the Legislative Assembly vary and respect a level playing field for all participants.⁵⁹

⁵³ [Circular ARSP-008-2013](#). See also presentation of the DGSC, pg. 9 *supra* note 13.

⁵⁴ [Circular DG-011-2014](#) and [Circular DG-012-2014](#).

⁵⁵ [Circular ARSP-003-2014](#), Candidate List Module User's Manual, http://www.dgsc.go.cr/dgsc/documentos/reclutamiento/Guia_uso_Modulo_Nominas.pdf

⁵⁶ [Resolution DG-155-2015](#)

⁵⁷ See Response to the Questionnaire, pg. 31 *supra* note 12.

⁵⁸ See Article 2 of the [Regulations on Selection and Appointment of Personnel through Internal Competitions in the Legislative Assembly](#)

⁵⁹ See Response to the Questionnaire, pg. 31 *supra* note 12.

- Statutory and other legal provisions applicable to a majority of public servants in the Judicial Branch, among which the following should be noted:⁶⁰

[108] – At session No. 12-15 of February 12, 2015, the Superior Council of the Judiciary ordered the amendment of the selection model for administrative, operational, and technical support positions, in order to ensure that all merit-based appointments, whether temporary or permanent, are made in accordance with the recruitment and selection system approved by the Superior Council and based on the registries of applicants and eligible candidates established for that purpose. The new model comprises different stages, beginning with a general announcement to give those interested the opportunity to register, take the relevant examinations under equal conditions, and be graded as eligible at the end of the process in the position classes that interest them, thus enabling them, depending on their score, to be included in the various shortlists forwarded to the offices.

[109] – At Session No. 18-2014 of September 11, 2014, the Personnel Board of the Judiciary approved the standardization of the recruitment and selection process for positions which, owing to the nature of their duties, require a psychological evaluation to carry firearms; specifically those of Security Assistant; Investigator 1; Detainee Guard; Protection Agent for Victims, Witnesses and Other Persons; Protection Agent for Judicial Officials; and Location and Appearance Investigator; with the exception of security assistants, all who hold these positions serve in different offices of the Judicial Investigation Agency.

[110] – The Department of Human Resources of the Judiciary prepared a proposal for appointments under the responsibility of the Full Court of the Judicial Branch that was examined by the Full Court at its Session No. 26-15 of July 6, 2015.

[111] – The Selection Model for positions in the Public Defender Office based on valid and reliable selection methods that serve to demonstrate that applicants for positions meet the basic suitability requirements. The model was adopted by the Superior Council of the Judiciary at its Session No. 61-15 of July 2, 2015.

[112] – In 2011, the Public Prosecution Service created an office exclusively devoted to psychosocial workplace assessments called the Psychosocial Workplace Assessment Area (*Área de Valoración Psico-Socio-Laboral – AVAL*), for hiring prosecutors and other nonprofessional personnel. (The decision was taken by the Superior Council of the Judiciary on June 14, 2011 [Article XL, Session No. 54-11]; Resolution No. 67-2013 of the Office of the Prosecutor General of the Republic, adopted at 10:12 a.m. on December 12, 2013.)

b) Observations

[113] First, the Committee would like to recognize the new regulatory measures adopted by the Republic of Costa Rica to continue to push forward with the creation, maintenance, and strengthening of its systems of government hiring as referred to in Article III (5) of the Convention.

[114] Having said that, it believes it useful to make a number of comments regarding the advisability of strengthening, developing, and/or adapting certain provisions that have to do with those new developments, notwithstanding the observations made by the Committee in Section 1.1.1. above in connection with the follow-up on implementation of the recommendations made to the country under review in the Report from the Second Round.

⁶⁰ *Ibid*, pgs. 31-32.

- With respect to public servants of the Legislative Branch, the Committee notes the following:

[115] The Committee observes that during the onsite visit, the representatives noted that in the Legislative Branch, there are approximately 1000 employees, around 300 of which are positions of trust, that work in the offices of the legislators, and the remaining 700, which are employees of this Branch of government. As noted in the Response, and during the visit, only two external competitions have been carried out, in the past several years, for employee positions of the Legislative Branch. It would appear that external competitions are not the norm for recruiting personnel, with the focus clearly on internal competitions, evidenced by the adoption of the aforementioned Regulation. The Committee further notes that Articles 19 and 51 of the Law for Personnel of the Legislative Assembly,⁶¹ recognizes the right for interim staff and employees of trust to participate in internal competitions for positions left vacant by regular employees. This, in the opinion of this Committee, explains in part the prevalence of internal competitions over external ones in the Legislative Assembly, by allowing interim and trust officials to access posts in the public service, through participation in these internal competitions. This gives them preferential treatment in comparison with other interested persons, as they do not have to previously demonstrate their merit for such access through participation in an external competition.

[116] The Committee notes that the country under review should consider repealing these legal provisions that allow interim officials and employees of trust to be appointed to vacant permanent positions⁶² of the Legislative Assembly through internal competitions, without having previously participated in an external competition, in order to promote equal opportunity for access to public positions and promote external competitions for this purpose. The Committee will make a recommendation. The Committee will formulate a recommendation. (see Recommendation 1.1.3.14 of Section 1.1.3 of Chapter II of this Report).

1.1.2.2 New Developments with Respect to Technology

[117] With respect to developments of this type in the Legislative Assembly, Costa Rica referred in its Response to the creation of a Share Point 2007 platform in 2014, which is a site containing a form for establishing contact with candidates for external competition No. 01-2014, the purpose of which was to recruit and select a person for a Chief Professional 1 position.

[118] The Committee notes that the issue of technology and the system of government hiring were examined in a more in depth manner under section 1.1.1.1 of this Report.

1.1.2.3 Results

[119] In its Response to the Questionnaire,⁶³ the country under review presented information on the Legislative Assembly regarding the processing of External Competition No. 01-2014 to recruit and select a person for a Chief Professional 1 position in 2014. The process was announced on the Legislative Assembly's website and in a nationally circulated newspaper. Another competition is currently being processed via the same mechanisms for the position of internal auditor of the Legislative Assembly.

⁶¹ [Law for Personnel of the Legislative Assembly](#)

⁶² The country under review notes that appointment to these permanent positions means that a person has acquired the rights to a career post.

⁶³ See Response to the Questionnaire, pg. 33 *supra* note 12.

[120] The Committee also notes that in its annual reports the Public Prosecutions Service includes tables on the recruitment of auxiliary prosecutors in a particular year. For example, the following information appears in the 2015 Annual Report:⁶⁴

Persons enrolled	Men	Women	Total
	175	160	335
Number of persons who completed the process	Men	Women	Total
	107	108	215
Number of people who passed the exam	Men	Women	Total
	25	35	60

[121] The Committee notes that neither the Executive, Judicial or Legislative Branch or the Office of the Comptroller General, provide objective results with respect to the system of government hiring carried out under their respective competence.⁶⁵ The Committee notes, for example, in the Report to the President prepared on an annual basis by the General Directorate of the Civil Service, no statistical information is provided with respect to the number of recruitment and selection processes were carried out in a given year in the Executive Branch.⁶⁶ This is also true when examining the chapters of the Executive Directorate in the Legislative Annual Reports of the Legislative Assembly of Costa Rica and the Annual Reports of the Office of the Comptroller General.⁶⁷ The Judicial Branch, in the Work Report 2014 of the Superior Council of the Judicial Branch makes reference to the appointment of 849 persons, but that is to overcome a problem of officials in interim positions for prolonged periods of time.⁶⁸

[122] As such, the Committee notes, it cannot rely on statistical data on the number of competitions carried out in a year, how many were completed, how many were abandoned, how many persons applied to a position, as well as the number of persons entering into the public service in a given year. The lack of information makes it hard for the Committee to determine the efficiency and transparency of the government hiring system in place. The Committee will formulate a recommendation. (see Recommendation 1.1.3.15 of Section 1.1.3 of Chapter II of this Report)

⁶⁴ 2015 Annual Report, Public Prosecutions Service, pg. 19, <http://ministeriopublico.poder-judicial.go.cr/transparencia/memorias%20listas/memorias/2015.pdf>

⁶⁵ In its observations to the draft preliminary report, the Office of the Comptroller General provided information on the competitions carried out in this institution for the years 2012 – 2015. Please see Concursos 2012 2013 2014 y 2015 – CGR, available at http://www.oas.org/juridico/spanish/mesicic5_cri.htm

⁶⁶ See the Report at the following link: http://www.dgsc.go.cr/dgsc/dgsc_redtransparencia.php

⁶⁷ [Annual Reports of the Legislative Assembly of Costa Rica](#), [Annual Reports of the Office of the Comptroller General](#).

⁶⁸ See Work Report of the Superior Council of the Judicial Branch, <http://www.poder-judicial.go.cr/consejosuperior/index.php/component/content/article/8-general/2-informes-de-labores> and Work Report 2014, pg. 15, <http://www.poder-judicial.go.cr/consejosuperior/images/documentos/informeannualdelabores2014.pdf>

[123] The Committee notes that in the case of the Executive Branch, the decentralized nature of the hiring system makes it hard to gather such data.

1.1.3. Recommendations

[124] In light of the observations formulated in sections 1.1.1 and 1.1.2 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

- 1.1.3.1 Adopt provisions that require a Minister or chief to always provide reasons for selecting a candidate from the list submitted by the General Directorate of the Civil Service (see paragraph 21 in Chapter III, Section 1.1.1. of this Report).
- 1.1.3.2. Review the short list preparation process by the General Directorate of the Civil Service, in order to address the high number of rejections by affected institutions (see paragraph 25 in Chapter III, Section 1.1.1. of this Report).
- 1.1.3.3. Move forward with efforts, and strengthen the provisions needed, to publish vacancy announcements in the Executive Branch by means of an electronic system for the publication and general dissemination of such announcements (see paragraph 38 in Chapter III, Section 1.1.1. of this Report).
- 1.1.3.4. Adopt provisions that set out the manner the vacancy announcements in the Executive Branch are to be carried out, such as providing minimum periods for advertising notices of civil service entry examinations, as well as minimum periods during which registration can be accepted from applicants; and include in the content of notices the schedule established and places where registrations are accepted and where more information can be obtained regarding the notice (see paragraph 39 in Chapter III, Section 1.1.1. of this Report).
- 1.1.3.5. Adopt provisions that require the Administrative Director to provide reasons for selecting a candidate from the list submitted by the General Directorate of the Legislative Branch (see paragraph 45 in Chapter III, Section 1.1.1. of this Report).
- 1.1.3.6. Make evident when the Job Description Manual for Legislative Assembly Posts has been updated (see paragraph 49 in Chapter III, Section 1.1.1. of this Report).
- 1.1.3.7. Move forward with efforts, and strengthen the provisions needed, to publish vacancy announcements for open competitions in the Legislative Branch by means of an electronic system for the publication and general dissemination of such announcements (see paragraph 57 in Chapter III, Section 1.1.1. of this Report).
- 1.1.3.8. Adopt provisions that set out the manner the vacancy announcements in the Legislative Branch are to be carried out, such as providing minimum periods for advertising notices of entry examinations, as well as minimum periods during which registration can be accepted from applicants; and include in the content of notices the schedule established and places where registrations are accepted and where more information can be obtained regarding the notice (see paragraph 58 in Chapter III, Section 1.1.1. of this Report).

- 1.1.3.9. Adopt provisions that require the publication of vacancies for those who fall within the category of employee/ service official (“servidores”/funcionarios de servicio”) of the Judicial branch, as is the case with vacancies for those who comprise the career service (see paragraph 68 in Chapter III, Section 1.1.1. of this Report).
- 1.1.3.10. Adopt provisions that set out the manner the vacancy announcements in the Judicial Branch are to be carried out, such as providing minimum periods for advertising notices of Judicial Service entry examinations, as well as minimum periods during which registration can be accepted from applicants; and include in the content of notices the schedule established and places where registrations are accepted and where more information can be obtained regarding the notice (see paragraph 69 in Chapter III, Section 1.1.1. of this Report).
- 1.1.3.11. Adopt measures to ensure easy access to the Recruitment, Selection, and Appointment Model for Vacancies in the Judicial Branch, through the website of the Judicial Branch (see paragraph 70 in Chapter III, Section 1.1.1. of this Report).
- 1.1.3.12. Adopt the provisions needed for the publication of vacancies in the Public Prosecutions Service (see paragraph 80 in Chapter III, Section 1.1.1. of this Report).
- 1.1.3.13. Adopt provisions that set out the manner the vacancy announcements in the Public Ministry are to be carried out, such as providing minimum periods for advertising notices of Judicial Service entry examinations, as well as minimum periods during which registration can be accepted from applicants; and include in the content of notices the schedule established and places where registrations are accepted and where more information can be obtained regarding the notice (see paragraph 81 in Chapter III, Section 1.1.1. of this Report).
- 1.1.3.14. Consider repealing the legal provisions that allow interim officials and employees of trust to access permanent posts in the public service through internal competitions in the Legislative Assembly, without having previously participated in an external competition (see paragraph 116 in Chapter III, Section 1.1.1. of this Report).
- 1.1.3.15. Adopt appropriate measures to strengthen the compilation and update of statistics as it pertains to the public servants of the Executive Branch, Legislative Branch, Judicial Branch, and Office of the Comptroller General regarding, inter alia, the number of employment opportunities publicized, and the number and percentage of public servants employed via meritocratic selection processes; as well as make available to the public on the number of competitions carried out in a year, how many were completed, how many were abandoned, how many persons applied to a position, as well as the number of persons entering into the public service in a given year, in order to identify challenges and recommend corrective measures where appropriate (see paragraph 122 in Chapter III, Section 1.1.1. of this Report).

1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES

1.2.1 Follow-Up to the Implementation of the Recommendations Formulated in the Second Round

Recommendation 1.2.1 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Ensure observance of the public bidding regime, when public bidding is the procedure to be applied pursuant to law.

[125] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure.⁶⁹

[126] The Office of the Comptroller General of the Republic says that it has adhered to the thesis that regular procedures, specifically abbreviated public bidding processes, should be observed, and that, as concrete steps, bidding processes or contracts have been annulled when, upon examining challenges against the final decision, it has been revealed that the established procedure was not followed. The Office of the Comptroller also says that particular attention has been given not only to legal provisions regarding amounts, but also to the guarantees of disclosure, transparency, free participation, and efficiency. Thus, in all cases in which it has been determined in the challenge stage to final decisions (ex ante oversight) that the proper procedure was not followed, this has led to their annulment, even where the matter at issue was not alleged by the challengers (ex officio annulment).

[127] - In the Response to the Questionnaire, the CGR also mentioned that Costa Rican law contains regulations that prevent evasion of the public bidding process by breaking up procurement operations into two or more processes with less stringent requirements, and cites as examples Articles 37 of the Law on Administrative Contracting⁷⁰ and 13 of its Regulations (Executive Decree No. 33411).⁷¹ In addition, based on data provided by the Operational and Evaluative Oversight Division of the CGR, an estimate taking inflation into account is made, after which institutions are classified according to different strata based on their parameters for using public contracting, abbreviated contracting and direct purchases. It is also mentioned whether or not review before the CGR is available.

[128] During the on-site visit, representatives of the Office of the Comptroller General (CGR) indicated that pursuant to challenges lodged with regard to the announcement and final decisions of procurement processes, they can clarify the application of the rules stipulated for selection of the most suitable tender offer in a timely manner (40 working days for public bidding and 30 business days for abbreviated bidding), and may even invalidate a process and request that a new one be initiated where it is deemed that the entire process is flawed. These prerogatives not only ensure the principles of efficiency and unfettered competition, but also allow for verification of the reasons behind and transparency of public procurement decisions. The representatives also underscored the CGR's role in the procurement process: its acts as an ex ante control through the authorization to use exceptions to public bidding that are not provided for in legal provisions and regulations for Public Administration, in addition to conducting ex post controls.

⁶⁹ See Response to the Questionnaire, pg. 15, *supra* note 12.

⁷⁰ [Law on Administrative Contracting](#)

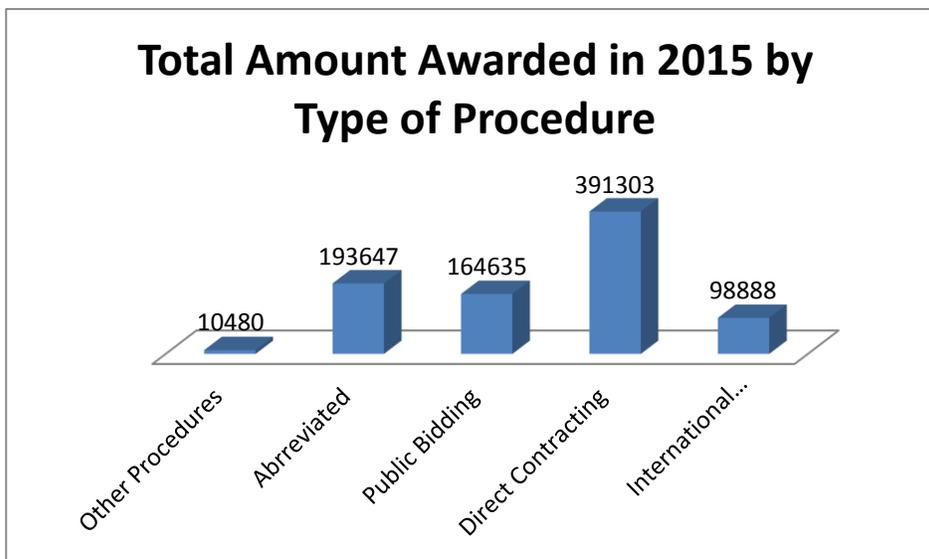
⁷¹ [Regulations of the Law on Administrative Contracting](#)

[129] The representatives also stated that public bidding is the rule, and that there has been an increase in the use of this procurement process from 2014 to 2015.

[130] The Committee notes that in the Report of the Second Round for Costa Rica, it was observed that there is a broad regime of exceptions to public bidding, and in this regard, considers that it might be beneficial for the Republic of Costa Rica to consider ensuring the observance of the public bidding regime, when public bidding is the procedure to be applied pursuant to law.⁷²

[131] In that same report, results were provided that indicated that in 2005, less than 2% of contracting processes were carried out via public bidding, with 89% being carried out through direct contracting. It was also noted, in terms of monetary amount, direct contracting amounted to 5.4% of procurements in Costa Rica in 2005.⁷³

[132] The Committee further notes that the overwhelming use of direct contracting in the country under review for public procurements has not improved considerably since the adoption of the Report of the Second Round. In the 2015 Annual Report of the CGR, it is noted that public bidding, along with the abbreviated method allowed by the Law of Administrative Contracting, accounted for 20% of all public procurement processes, which represented 53.5% of amount awarded, versus the 60547 direct contracting processes, which amounted to 80% of all procurement processes, representing 44% of all amounts awarded.⁷⁴ The following chart also illustrates the total amount awarded, per procurement process for the year 2015, in millions of Colones, for the country under review:⁷⁵



⁷² Report of the Second Round, pg. 14, *supra* note 3.

⁷³ *Ibid*, pgs. 15 – 16.

⁷⁴ 2015 Annual Report of the CGR, pgs. 243 – 244, https://cgrfiles.cgr.go.cr/publico/docsweb/rev_dig/mem_anual/2015/files/assets/downloads/publicacion.pdf

⁷⁵ Information obtained from Statistics from the CGR on Public Funds Procurement, <https://cgrweb.cgr.go.cr/apex/f?p=307:2:0::::>

[133] The Committee observes that the use of direct contracting appears to be the rule, rather than the exception, for public procurement in Costa Rica, a view shared by the CGR, as found in the 2015 Annual Report:⁷⁶

[134] *“By constitutional mandate, procurement of goods and services by the public administration must be done through of competitive processes because they are more rigorous and more open to competition among providers, thereby ensuring better purchasing conditions for the State. For that reason, the law envisages direct procurement as an exceptional procedure. However, as the above figures show, the latter tends to predominate in terms of numbers of procedures initiated.”*

[135] However, given the disproportionate amount of direct contracting procurement procedures being carried out, the country under review should consider examining the reasons for this. In a 2010 report prepared by the Bureau of Asset Administration and Government Procurement of the Ministry of Finance, it was noted that at that time, some 95% of all purchases were carried out through direct contracting, and that for decentralized entities, this amount was higher than 80%, since the threshold for allowing direct contracting was very high. Moreover, this study noted that direct contracting is less competitive, and in practice, has the least accountability and controls, and for this reason, entities prefer to use this type of contracting, as other contracting processes are very cumbersome.⁷⁷

[136] This outlook is also shared by the OECD in a 2015 Good Governance Report on Costa Rica, where it notes:⁷⁸

[137] *“[T]he excessive use of these modalities may reflect an attempt to avoid more complex, and longer, tendering processes that have more requirements and formalities and are perceived by procurement officials as burdens, or may result from a lack of planning at the level of both requirement forecasting and management of the procurement process.”*

[138] The OECD also noted that the differences in procurement procedures among institutions can create confusion in their application:⁷⁹

[139] *“Costa Rica’s procurement units are used to having different thresholds to carry out their procurement work, whereas this can create confusion and extra work for suppliers, as well as have an impact on the negotiating power of the ministries and small institutions vis-à-vis powerful and autonomous institutions. The threshold to carry out different procedures differs among institutions related to the allocated budget: the higher the budget, the higher the thresholds to carry out the direct awards.”*

[140] In the case of Costa Rica there are also different types of thresholds at public institutions, which means different rules to promote procurement procedures even in the case where public

⁷⁶ 2015 Annual Report of the CGR, *supra* note 74, pg. 244.

⁷⁷ Strategic Plan for Public-Sector Procurement Modernization: Nine Strategies to Enhance the Impact of the State on the Well-Being of the Community and Economic Growth, pgs. 11 – 12, http://www.oas.org/juridico/PDFs/mesicic5_cri_resp_soc_civ_ane1.pdf

⁷⁸ OECD (2015), Costa Rica: Good Governance, from Process to Results, OECD Public Governance Review, pg. 115, http://www.oas.org/juridico/PDFs/mesicic5_cri_resp_soc_civ_ane3.pdf

⁷⁹ *Ibid.* pg. 115.

bidding is used,⁸⁰ as well as a variety of procurement regimes in general (special laws on lending, public trusts, institutions subject to competition, public enterprises, etc.).

[141] The Committee does note that the use of the different procurement processes depends on monetary thresholds as set out under Article 27 of the Law of Administrative Contracting, and which is updated on a yearly basis by the CGR, taking as a reference, among other things, the percentage variation of the consumer price index. During the second half of February each year, at the latest, the Office of the Comptroller General of the Republic issues a resolution containing the increases and specifying the parameters in force for each body and entity covered by that Law.⁸¹

[142] The Committee observes, however, that the amount allowed for a direct contracting procedure depends on the procurement budget allocated to a government entity. For example, under the new thresholds adopted in February of 2016, which is made up of ten tiers, at the top end, a government entity with a procurement budget of over 72 500 000 000 Costa Rican Colones (approximately \$135 million US Dollars), is allowed to carry out direct contracts that are valued less than approximately US \$169 000. At the other end, an entity with a procurement budget of less than 72 500 000 Costa Rican Colones (approximately \$135 000 US Dollars), are allowed to carry out direct contracts that are valued less than approximately \$5200 US Dollars. For public works, the amounts allowed at the top end for direct contracts are approximately \$262 000 US Dollars, and at the lower end, \$8000 US Dollars, for the same budgetary allocation for non-public works procurements.

[143] The Committee believes that the high threshold for allowing direct contracts is a significant amount, without allowing for the requisite oversight and control that may be more appropriate under the public or abbreviated bidding procedure. As such, the country under review should consider assessing the monetary limits by which direct contracting is allowed by public bodies or agencies so that they are carried out less often or establish uniform limits that apply to the entire Costa Rican public sector, in order to promote the use of public and abbreviated bidding, thus reducing the use of direct contracting exceptions, while respecting the special regimes regulated by the legislature. Given the foregoing, the Committee believes that Recommendation 1.2.1 should be reformulated. (see Recommendation 1.2.3.1 of Section 1.2.3 of Chapter II of this Report).

Recommendation 1.2.2 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Strengthen the systems for the contracting of public works by implementing provisions addressing the following:

- Provisions which develop and implement a comprehensive citizen oversight mechanism that covers all the different stages of public works procurement procedures, without prejudice to existing internal or external institutional controls.

⁸⁰ In this regard, see Article 20 of Law 8660 on Strengthening and Modernization of Public Telecommunications Sector Entities (*Fortalecimiento y Modernización de las Entidades Públicas del Sector Telecomunicaciones*), which are in competition, and most recently Article 1 of Law 9366 on Strengthening the Costa Rican Intercity Rail and Promotion of Electric Train of the Greater Metropolitan Area (*Fortalecimiento del Instituto Costarricense de Ferrocarriles y Promoción del Tren Eléctrico Interurbano de la Gran Área Metropolitana*), which amended Article 16 ch) of the Organic Law of the Costa Rican Institute of Railways (*Ley Orgánica del Instituto Costarricense de Ferrocarriles*).

⁸¹ See Economic Limits and Average Budgetary Amounts (*Límites Económicos y Montos Presupuestarios Promedios*), <https://sites.google.com/a/cgr.go.cr/cgr/documentos/limitesca>

[144] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:⁸²

[145] - *“In 2013 a methodological proposal was devised for evaluating the procurement system used by Costa Rican public-sector entities, with the aim of assessing the maturity of the internal control systems of Costa Rican public-sector entities, in addition to which a procurement performance index was developed.*

[146] *Furthermore, the third report on procurement was produced, titled “Oversight Report on Contract Performance Control and Completion” (REPORT No. DFOEST- AHP-01-2013 of January 30, 2013).*

[147] *Oversight efforts in this area have centered in particular on establishing adequate policies, processes, and procedures for managing contracts throughout their lifecycle. The indices prepared have given particular importance to transparency in government contracting procedures and to access for interested parties and the general public to contract documents, which facilitates citizen oversight.”*

[148] - In that connection, the country under review has developed two performance indices as diagnostic assessment tools for government institutions: the Municipal Performance Index (*Índice de Gestión Municipal* - IGM), which evaluates the performance of Costa Rica's local governments based on 61 indicators on their main substantive and assistance activities, which yields information for decision making by the local government and to the general public, the overall aim being to strengthen governments' capacities and improve quality of life for their residents,⁸³ and the Institutional Performance Index (*Índice de Gestión Institucional* - IGI), an instrument created by the CGR to gather information on progress made by institutions in taking steps to strengthen their performance, particularly in the areas of internal control, planning, financial and budget management, service to users, and procurement.⁸⁴

[149] - As the supervising body of the control and oversight system, the CGR has also developed public-access instruments to foster transparency and accountability in government organs and entities in order to facilitate citizen oversight of the use of public funds. Those instruments include:

[150] - The public consultation tool “Know what your money is spent on” (*Conozca en qué se gasta su dinero*), a mechanism created to promote transparency in the use of public funds that provides citizens with information on annual budgets, their results, and targets met by the public sector. It consists of the following modules and may be visited at <https://sites.google.com/a/cgr.go.cr/cgr/consultas/transparencia-presup-publicos>.

[151] - The Public Procurement Consultation tool (*Consulta de compras con fondos públicos*) (SIAC), which is an automated system that records and processes information on contracting by entities subject to CGR control and oversight, the purposes of which are to provide data for management, control, and oversight as well as to meet the information needs of the domestic and

⁸² See Response to the Questionnaire, pgs. 16-19, *supra* note 12.

⁸³ The findings of this index are available at https://cgrfiles.cgr.go.cr/publico/docsweb/rev_dig/inf_opinion/2014/index.html#/10

⁸⁴ The findings of this index for 2011 and 2013 are available at <https://cgrfiles.cgr.go.cr/publico/jaguar/Documentos/cgr/estrategia/documentos/DFOE-ST-SGP-0001-2013.pdf>.

international community. The tool provides access to reports containing statistics on all procurement with public funds since 2007. The reports are: (a) contract procedures initiated and awarded; (b) millions of Colones awarded by year and type procedure; (c) millions of Colones awarded by year; and (d) an annual report on contracting activity that summarizes information since 2007. The tool is available at <https://sites.google.com/a/cgr.go.cr/cgr/tramites/centro-operaciones-cgr/c-definicion>.

[152] - The State Budget Plan System (*Sistema de Información sobre Planes y Presupuestos - SIPP*) where most of the budget is supervised by the CGR can be examined in detail (income, expenditure, results, and other documents). It can also be used to obtain information on the income, expenditure, and results of most of the public-sector institutions included in the SIPP based on their budget and planning documents processed in the CGR. The SIPP may be visited at <https://cgrweb.cgr.go.cr/apex/f?p=102:1:3398961392701>.

[153] A [mobile application](#) was developed to encourage the reporting of complaints by citizens and access to public information. It can be downloaded from the App Store for telephones using iOS operating systems, from Google Play for Android telephones, and from the Amazon Appstore for Kindle Fire telephones. The purpose of the application is to promote citizen participation, facilitate societal oversight, and strengthen governance, democracy, and civic mindedness with respect to public affairs.⁸⁵

[154] - The CGR has been carrying out pilot projects with a view to implementing an electronic records system for processing different tasks that the CGR deals with and also with the aim of connecting those records with the electronic procurement systems used by government entities. In future this will facilitate access for everyone to the elements contained in the record, which will be connected to the electronic procurement system.

[155] Finally, on the CGR website there is a User Services and Citizen Consultation section (*Servicios de Atención y Consulta Ciudadana*) where members of the public can access information on different areas under CGR oversight, namely: Government contracting, electronic complaints, sworn statements of net worth, the Internal Audit Work Plan System, legalization of books and suitability rating, the Integrated Procurement System (SIAC), the Integrated State Budget Plan System (SIPP), frequently asked questions about the municipal sector, CGR consultation processing, and zonal weighting, mileage and per diem allowances.

[156] In addition, during the on-site visit, the representatives of the CGR highlighted what is contained in the Response to the Questionnaire, and also noted that there is a proposal to participate in the CoST (Construction Sector Transparency) Initiative, which promotes transparency by disclosing data from public infrastructure investment, which in turn informs and empowers citizens, enabling them to hold decision-makers to account.⁸⁶ Moreover, the representatives also noted that Law 9292 creates a citizen oversight mechanism to oversee the public works project, “*Corredor vial San José-San Ramón y sus radiales*.”⁸⁷ This Law provides that the trust to oversee the public works

⁸⁵ The application allows users to access information from the CGR from their smart phones or tablets, including: (a) the latest news on recent oversight reports, press releases, and CGR procurement processes; (b) an institutional activity calendar; (c) rules on zonal weighting, mileage, and per diem allowances; (d) YouTube videos on various topics to do with CGR’s oversight activities; (e) a direct link to the CGR electronic complaints system; and (f) a direct link to the “Know what your money is spent on” tool.

⁸⁶ See Presentación CGR: Sobre cuestionario de análisis del MESICIC, Adquisición de bienes y servicios, pg. 4, http://www.oas.org/juridico/spanish/mesicic5_cri.htm, and Construction Sector Transparency Initiative, <http://www.constructiontransparency.org/home>

⁸⁷ [Ley 9292](#)

contract is to have a structure to control, supervise and monitor the project, and it is to have two representatives from civil society to this end.⁸⁸

[157] The Committee takes note of the steps taken by the country under review to advance in its implementation of Recommendation 1.2.2, as well as the need for it to continue to give attention thereto, bearing in mind that there is an absence of provisions establishing citizen oversight mechanisms that cover all the different stages of public works procurement procedures, without prejudice to existing internal or external institutional controls. (see Recommendation 1.2.3.2 of Section 1.2.3 of Chapter II of this Report).

[158] In this respect, the Committee notes that the Bureau of Asset Administration and Government Procurement of the Ministry of Finance prepared a study in 2015 evaluating the public procurement process in Costa Rica, Evaluation of the Procurement System of Costa Rica.⁸⁹

[159] In this study, it observed the following with respect to the participation of civil society in the government procurement process:⁹⁰

[160] *“In 2014 there began to be signs that the Government was considering the opinions of users on specific road-related issues. However, there has been no evidence of concrete measures to encourage the participation of the private sector, civil society, and beneficiaries of public spending projects aimed at fostering the creation of a more transparent procurement market. In Costa Rica there is a clear lack of civil society participation, which not only limits the promotion of tools and results, but also hinders possibilities for dialogue among the various actors in the process and allows a potential increase of the risk of corruption in the area of procurement.”*

[161] In this regard, the OECD in a 2015 Good Governance Report on Costa Rica, noted that there is no institutionalized process for civil society to participate in the procurement process, highlighting that direct accountability to the public and other stakeholders is a fundamental means of increasing transparency and integrity in decision making.⁹¹

[162] Given the foregoing, the Committee believes that not only should there be citizen oversight mechanisms that cover all the different stages of public works procurement procedures, but also to monitor the execution of contracts where their nature, importance, or magnitude so warrants. The Committee will formulate a recommendation. (see Recommendation 1.2.3.3 of Section 1.2.3 of Chapter II of this Report).

[163] Moreover, a civil society organization, Asociacion Integra Costa Rica, notes in its Response to the Questionnaire for the Fifth Round the following:⁹²

[164] *“Costa Rica does not have any institutional mechanism for citizen participation in the supervision of government procurement or public works. Although, legally, no impediment exists, in*

⁸⁸ *Ibid.*, article 11.

⁸⁹ 2015 Evaluation of the Procurement System of Costa Rica (Evaluación del Sistema de Adquisiciones de Costa Rica, Dirección General de Administración de Bienes y Contratación Administrativa of the Ministerio de Hacienda), http://www.oas.org/juridico/spanish/mesicic5_cri.htm

⁹⁰ *Ibid.*, pgs. 199 – 200.

⁹¹ 2015 OECD Good Governance Report on Costa Rica, pg. 117, *supra* note 78.

⁹² Document submitted by Asociacion Integra Costa Rica, pg. 16, *supra* note 9.

contrast to the majority of Latin American countries there are no observatories, societal audits of works projects, or ethics agreements.”

Recommendation 1.2.3 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Consider the creation of a national Registry of Providers, which could be used by all of the entities of the Public Administration.

[165] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:⁹³

[166] *“The government goods and services procurement process currently uses to technology platforms: [CompraRed](#) and [Mer-Link](#). The former is mainly used by the central government, and the latter, by autonomous Costa Rican institutions. Both have electronic records on providers for the public entities that use them.*

[167] *In 2014, the Executive Branch decided to replace the above technology platforms with the Integrated Government Procurement System (Sistema Integrado de Compras Públicas - SICOP), which will utilize the KONEPS source code used by Mer-Link as the basic platform for its configuration. It also instructed that SICOP should be rolled out gradually according to the guidelines issued by the Bureau of Asset Administration and Government Procurement (Dirección General de Administración de Bienes y Contratación Administrativa) of the Ministry of Finance and that the deadline by which all entities of the central administration had to be enrolled in SICOP is December 31, 2016, on which date CompraRed would be taken out of commission.*

[168] *SICOP was established by Executive Decree No. [38830-H-MICITT](#) and will serve as the technology platform for mandatory use by the entire central administration for handling government contracting procedures and all acts and contracts deriving therefrom. Other public-sector institutions that wish to adopt SICOP may use it as a basic technology platform to support their procurement processes.*

[169] *SICOP will have an electronic registry of providers comprising companies that have formally enrolled as SICOP providers beforehand.*

[170] *It should also be mentioned that the Ministry of Finance and Radiográfica Costarricense, S.A., the supervising entity of the financial administration system and a state-owned enterprise owned by the Costa Rican Electricity Institute, respectively, signed an agreement to supply the State with the technology platform on which SICOP will be based as well as all other information and communication technology services associated with the platform.”*

[171] The Committee acknowledges the implementation of a new electronic platform, the Integrated Government Procurement System (SICOP), to carry out public procurement in the Central Administration. The Committee notes, however, that this Registry would only be applicable to those entities that form the Central Administration, and not all entities that make up the Public Sector. For

⁹³ See Response to the Questionnaire, pgs. 20-21, supra note 12.

this reason, the following observation was made in the Report of the Second Round for Costa Rica namely:⁹⁴

[172] *“The Committee notes that Article 46 of the Law of Administrative Contracting provides that each contracting agency shall maintain a Registry of Providers. In this regard, the Committee considers that it would be convenient for the Republic of Costa Rica to consider the creation of a national Registry of Providers, which could be used by all of the entities of the Public Administration.”*

[173] In that respect, the country under review does not have one registry of providers, but several, and the Committee observed that it would be convenient to have a sole registry of providers.

[174] To this end, the Committee observes that in several studies carried out by the country under review, in particular by the CGR, it has been observed that in order to modernize the procurement system of the Public Sector of Costa Rica, it is advisable to implement, among other things, a registry of national providers that is national in scope.⁹⁵ Also, in the aforementioned study carried out by the Bureau of Asset Administration and Government Procurement of the Ministry of Finance, Evaluation of the Procurement System of Costa Rica, the following was noted:⁹⁶

[175] *“There is no central government office where an enterprise can register and where the application process serves to participate in the rest of the public sector. For fiscal year 2014, the SIAC procurement system reported that 308 institutions were required to report their procurement activity in the system. It is important to underline that this shortcoming in the providers’ registry detected as a potential barrier to participation has been improved with the latest amendments to the Law on Administrative Contracting. However, in terms of simplifying the presentation of documents to the administration, it remains an obstacle because to avoid having to enter their information for each contract they take part in, bidders must enroll in the providers’ registry of all the institutions with wish they hope to contract. A central Providers’ Registry needs to be created to solve this situation.”*

[176] Given the foregoing, the Committee reiterates the need for the country under review to give additional attention to implementation thereto. (see Recommendation 1.2.3.4 of Section 1.2.3 of Chapter II of this Report)

[177] The Committee also notes that Article 99 and 100 of the Law on Administrative Contracting provides for sanctions that can be applied to firms and individuals for violating the Law. Moreover, Article 215 of the Regulation to the Law on Administrative Contracting provides that the name of each firm or person that has been sanctioned for violating the Law is to be published in the Official Gazette, so that they can be included in the registry of suppliers maintained by the various entities in Costa Rica, as set out below:

⁹⁴ Report of the Second Round, pg. 14, *supra* note 3.

⁹⁵ See Report Concerning the Electronic Procurement Systems in the Public Sector (2008), (Informe sobre el Estudio Realizado en Relación con los Sistemas de Compras Electrónicas en el Sector Público (2008)), pg. 5, http://cgrfiles.cgr.go.cr/publico/docs_cgr/2008/SIGYD_D_2008022853.doc and Report on the Special Audit on the Transition to the Consolidated Electronic Procurement System (2014), (Informe de la Auditoria de Carácter Especial sobre el Proceso de Transición al Sistema Unificado Electrónico de Compras Públicas (2014)), pg. 7, http://www.oas.org/juridico/PDFs/mesicic5_cri_resp_soc_civ_ane2.pdf

⁹⁶ 2015 Evaluation of the Procurement System of Costa Rica, pg. 149, *supra* note 89.

[178] “Unappealable disqualifications that encompass the whole public administration must be published in the Official Gazette so that each administration can update its providers' registry.

[179] *In order to keep a readily accessible record of individuals disqualified by the administration and the Office of the Comptroller General, the information must be recorded and kept up to date in the CompraRed government procurement system, to which end the procedures established by the Bureau of Asset Administration and Government Procurement must be observed.”*

[180] The Committee notes, however, as will be addressed under Recommendation 1.2.4 below, that not all government entities of the Public Administration participate in CompraRed, being the Ministries and Attached Institutions and the Supreme Electoral Tribunal. It is only these institutions that are required to enter and update the registry of sanctions found in CompraRed. As noted in the Directive DGABCA-NP-08-2015 issued by the Bureau of Asset Administration and Government Procurement (DGABCA) of the Ministry of Finance:⁹⁷

[181] *“In keeping with Comptroller General's Report No. DFOESAF-IF-16-2014 of January 16, 2015, all institutions of the central administration (that is, ministries and attached institutions) and the Supreme Electoral Tribunal must register and update their records on SANCTIONS as envisaged in Articles 99 and 100 of the Law on Administrative Contracting in the CompraRed system, so that the data contained in the Registry of Sanctions of the CompraRed system can be verified.”*

[182] Moreover, CompraRed is in the process of being phased out, while a new electronic platform, the Integrated Government Procurement System (SICOP) is to be instituted throughout the Central Administration by the end of December 2016. In this regard, in the Legislation and Jurisprudence page of the website of the Ministry of Finance for Government Procurement and Asset Administration, government institutions that do not use the SICOP are required to send by email to bienesycontratacion@hacienda.go.cr, information on the registry of sanctioned providers.

[183] The Committee notes, however, that this mechanism of relying on those government entities that do not form part of the Central Administration to provide a list of persons and firms that have been sanctioned has not worked well in the past. In a report by the Office of the Comptroller General DFOESAF-IF-16-2014 of January 16, 2015, Special Audit Report on the Transition Process of the Unified Electronic Public Procurement System, it observed that, for the years 2010 – 2013, when a comparison was made between the registry of sanctions maintained by institutions outside of the Central Administration, with that contained in the registry maintained in the CompraRed system by the Bureau of Asset Administration and Government Procurement (DGABCA), there were significant differences.⁹⁸ Moreover, there were differences found even for those institutions that form part of the Central Administration. The table below reproduces the differences, as found in the aforementioned Report:

Reports on Sanctioned Providers, 2010-2013

Name of the institution	Disqualified		Warned	
	Institution	DGABCA	Institution	DGABCA

⁹⁷ Directive DGABCA-NP-08-2015, Ministry of Finance, http://www.hacienda.go.cr/docs/5596c5160d97e_DIRECTRIZ%20SANCIONES%20MAY-2015.pdf

⁹⁸ Report on the Special Audit on the Transition to the Consolidated Electronic Procurement System, pgs., 25 – 26, *supra* note 95.

Cartago University College	0	0	3	0
Costa Rican Electricity Institute	1	0	134	0
Costa Rican Insurance Institute	7	0	14	0
Board of Directors of the Bureau of Immigration and Alien Affairs	0	0	3	4
Ministry of Education	0	1	39	37
Ministry of Public Works	0	0	240	19
Ministry of Public Security	1	0	172	42
Costa Rican Petroleum Refinery	10	0	159	0
University of Costa Rica	0	0	9	0
National University	8	0	36	0

[184] Moreover, it found that there were instances where some institutions that do not form part of the Central Administration and therefore do not use CompraRed, never reported the sanctions imposed on individuals and firms, namely, the Cartago University College, the Costa Rican Electricity Institute, the Costa Rican Insurance Institute, the Costa Rican Petroleum Refinery, the University of Costa Rica, and the National University.⁹⁹

[185] One of the reasons provided by the DGABCA for this discrepancy is that they do not carry audits to corroborate the quality of the information and of the registry of suppliers itself.¹⁰⁰

[186] For this reason, in the aforementioned Report, the CGR concluded that:¹⁰¹

[187] *“The sum of these facts creates a sensation of uncertainty regarding the veracity and coverage of public records, which were conceived precisely so that administrations, as well as citizens in their role as supervisors of the use of public funds, can know who has been punished in government contracting processes, regardless of whether or not they are part of the central administration.”*

[188] The Committee notes that Article 1 of the Law on Administrative Contracting provides that the scope of the Law is for the Public Sector of Costa Rica, and not just limited to the Central Administration.¹⁰² Given the foregoing, the Committee notes that the country under review should also consider establishing a sole registry of persons and firms that have been sanctioned for violating the procurement law, which can be included in the recommended sole registry of suppliers. The

⁹⁹ *Ibid.*, pg. 27.

¹⁰⁰ *Ibid.*, pg. 28.

¹⁰¹ *Ibid.*, pg. 29.

¹⁰² Article 1 of the Law provides: *“This law shall govern the contracting activity of the organs of the Executive Branch, the Judiciary, the Legislative Branch, the Supreme Electoral Tribunal, the Office of the Comptroller General of the Republic, the Ombudsman’s Office (Defensoría de Habitantes), the decentralized territorial and institutional sector, non-state public entities, and state-owned enterprises. Contracts with any other individuals or legal persons that are either partially or wholly funded with public resources shall be subject to the principles of this law. The use of the term ‘Administration’ in this Law shall be understood as referring to any of the persons to which its regulations apply. Law on Administrative Contracting, supra note 70.*

Committee will formulate a recommendation. (see Recommendation 1.2.3.5 of Section 1.2.3 of Chapter II of this Report)

[189] The Committee also notes that Article 22 and 22bis of the Law on Administrative Contracting provides for important prohibitions on persons to contract with the state, for example, the for example the President and Vice-President of the Republic, Ministers and Deputy Ministers, Deputies to the Legislative Assembly, Judges of the Supreme Court and the Supreme Electoral Tribunal, the Comptroller General, among others.

[190] In addition, the Regulation to the Law on Administrative Contracting, under Article 20, provides that in order to maintain a registry of prohibitions, all institutions of the Public Administration are to register and update the list of prohibited persons in ComprareRed, and under procedures established by the DGABCA:

[191] *“The Administration is required to adopt such verification measures as are necessary to prevent violations of the prohibitions regime established in Articles 22 and 22 bis of the Law on Administrative Contracting. To that end it shall request bidders to provide a sworn statement indicating that the prohibitions do not apply to them, along with any other document that it considers pertinent.*

[192] *The sworn statement need not be notarized; for that purpose, an informal document or an express manifestation within the body of the bid shall suffice, unless the Administration should require proof by other means.*

[193] *For the purposes of that verification all institutions of the public administration shall keep an up-to-date record in the ComprareRed government procurement system of information on individuals covered by the prohibitions regime that work in their offices, to which end the procedures established by the Bureau of Asset Administration and Government Procurement must be observed.”*

[194] The Committee notes, however, that it appears that the DGABCA is only maintaining a registry of prohibited persons for those entities that form the Central Administration, and not the Public Administration as a whole as set out under Article 20 of the Regulations. In a Directive issued by this body, Directriz DGABCA-NP-07-2015, it states:¹⁰³

[195] *“In keeping with Comptroller General's Report No. DFOESAF-IF-16-2014 of January 16, 2015, all institutions of the central administration (that is, ministries and attached institutions) and the Supreme Electoral Tribunal must register and update their records on prohibitions as envisaged in Articles 22 and 22 bis of the Law on Administrative Contracting in the ComprareRed system, so that the data contained in the disqualified persons record of the ComprareRed system can be verified.”*

[196] The Committee believes the country under review should consider establishing a sole registry of prohibited persons, and not have in a place a mechanism that only covers those institutions of the Central Administration. It should also provide that there be an authority responsible for receiving and updating this information, whether it is the DGABCA, or some other appropriate authority.¹⁰⁴

¹⁰³ Directive DGABCA-NP-07-2015, http://www.hacienda.go.cr/docs/555f9df7dafab_DGABCA-NP-07-2015%20Reporte%20de%20Inhibidos%20MAY-2015.pdf

¹⁰⁴ The country under review, in its observations to the draft preliminary report, noted that the General Directorate for the Administration of Goods and Administrative Procurement [Dirección General de la Administración de Bienes y Contratación Administrativa] of the Ministry of Finance, as the lead agency on this matter, issued a directive in May of this

[197] To this end, the Committee observes that there are appears to be in place, two registries of prohibited personnel. On the webpage for CompraRed, there is a link for Prohibited Personnel, which is a pdf file of Ministers and Vice-Ministers prohibited with contracting with the State, available at <https://www.hacienda.go.cr/comprared/INHIBIDOS.PDF>. However, this list ends with the administration of the former President Laura Chinchilla Miranda, that is for the years 2010 – 2014. There is no information provided for the current administration in power, for the years 2014 – 2018. The Committee notes that there is an additional list, found in the webpage www.hacienda.go.cr/cotenido/12511-registros-y-listados-de-interes, under the link, “[Registry of public officials prevented from contracting with the State due to their Office](#)” (Registro de funcionarios públicos que en razón de su cargo están inhabilitados para contratar con el Estado), which provides more information, but is not found in the webpage of CompraRed, as required by the Regulations.

[198] As noted by the CGR in the Special Audit Report on the Transition Process of the Unified Electronic Public Procurement System, regarding the incomplete registries in place for both sanctioned suppliers and prohibited personnel:

[199] *“The sum of these facts creates a sensation of uncertainty regarding the veracity and coverage of public records, which were conceived precisely so that administrations, as well as citizens in their role as supervisors of the use of public funds, can know who has been punished in government contracting processes, regardless of whether or not they are part of the central administration.”*

[200] In addition, the country under review should consider establishing a mechanism to ensure that all appropriate public officials are placed on the list. In the aforementioned Special Audit Report of the Office of the Comptroller General, it found that at the time, upon reviewing the more complete list of prohibited personnel cited above, it found that certain ministries had not provided this information, namely, the Ministry of Health, the Ministry of the Presidency, the Ministry of Finance, the Ministry of Planning and Economic Policy, and the Ministry of Public Works and Transport. The Committee notes that this information is still missing from this list.

[201] The Committee observes that this list should be updated, containing all the relevant public officials that are legally prohibited from participating in government procurement procedures, as provided by Law. It should also note when this list is updated and make it easily available to the public at large and in the webpage of the CompraRed, as required by Law. The Committee will formulate recommendations. (see Recommendations 1.2.3.6, 1.2.3.7 and 1.2.3.8 of Section 1.2.3 of Chapter II of this Report)

Recommendation 1.2.4 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Consider the possibility of extending the use of CompraRED to include the other branches and entities of the Public Administration.

year for the entire public sector requesting that information be updated on individuals barred from procurement with the state in order to create the national registries of individuals sanctioned and barred from procurement. The announcement was made in the Official Gazette ‘La Gaceta’ on June 9, 2016.

[202] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments, which the Committee notes as a step that contributes to progress in the implementation of the measure:¹⁰⁵

[203] *“The government goods and services procurement process currently uses to technology platforms: [CompraRed](#) and [Mer-Link](#). The former is mainly used by the central government, and the latter, by autonomous Costa Rican institutions. Both have electronic records on providers for the public entities that use them.*

[204] *In 2014, the Executive Branch decided to replace the above technology platforms with the Integrated Government Procurement System (Sistema Integrado de Compras Públicas - SICOP), which will utilize the KONEPS source code used by Mer-Link as the basic platform for its configuration. It also instructed that SICOP should be rolled out gradually according to the guidelines issued by the Bureau of Asset Administration and Government Procurement (Dirección General de Administración de Bienes y Contratación Administrativa) of the Ministry of Finance and that the deadline by which all entities of the central administration had to be enrolled in SICOP was December 31, 2016, on which date CompraRed would be taken out of commission.*

[205] *SICOP was established by Executive Decree No. [38830-H-MICITT](#) and will serve as the technology platform for mandatory use by the entire central administration for handling government contracting procedures and all acts and contracts deriving therefrom. Other public-sector institutions that wish to adopt SICOP may use it as a basic technology platform to support their procurement processes.*

[206] *SICOP will have an electronic registry of providers comprising companies that have formally enrolled as SICOP providers beforehand.*

[207] *It should also be mentioned that the Ministry of Finance and Radiográfica Costarricense, S.A., the supervising entity of the financial administration system and a state-owned enterprise owned by the Costa Rican Electricity Institute, respectively, signed an agreement to supply the State with the technology platform on which SICOP will be based as well as all other information and communication technology services associated with the platform.”*

[208] The Committee takes note of the progress made by the country under review with respect to the above mentioned Recommendation. However, the Committee notes that Executive Decree n.º 38830-H-MICITT, which creates the SICOP as an electronic platform for carrying out public procurement in Costa Rica, is only applicable to institutions of the Central Administration, that is Ministries of the Executive Branch and its deconcentrated bodies. As noted under Article 2 of this Decree:

[209] *“The Integrated Government Procurement System (hereinafter SICOP) is hereby established as the technology platform for mandatory use by the entire central administration for handling government contracting procedures and all acts and contracts deriving therefrom. Other public-sector institutions that may wish to implement it may use this system as a basic technology platform to support their procurement processes.*

[210] The Committee notes that it makes it quite evident that this system is limited in scope, and only applies to the Central Administration, leaving important segments of the public sector excluded

¹⁰⁵ See Response to the Questionnaire, pgs. 20-21, supra note 12.

from this electronic system. The Committee further observes that the major buyers in Costa Rica are autonomous institutions that do not form part of the Central Administration, such as the Costa Rican Electricity Institute, the Costa Rican Insurance Institute, the Costa Rican Petroleum Refinery, and the Costa Rican National Bank. According to a Report prepared by the OECD, the 2015 Good Governance Report on Costa Rica, overall, 92% of purchases are carried out by these autonomous institutions, 6% by the central government, and approximately 2% by municipalities and other non-state entities.¹⁰⁶ Moreover, regarding CompraRed, which SICOP will replace, it is noted that of 308 entities that make up the Public Sector, only 71 use this system, and that many of these have their own information procurement system, such as the Judicial Branch, the National Learning Institute, the Costa Rican Institute of Aqueducts and Sewers, and the Central Bank of Costa Rica, among many others.¹⁰⁷

[211] Taking these numbers into account, the Committee believes that the country under review should consider instituting one electronic procurement system for the public sector as a whole, given that the great majority of electronic purchases are carried out outside of the Central Administration and the reach of the SICOP.

[212] The Committee further notes that during the on-site visit, it was stated that in the country under review, there are 17 – 20 different electronic platforms in use, as those entities that form part of the Public Sector are not required to use the one in use by the Central Administration.

[213] This multiplicity of platforms and the detrimental effect it has for transparency in the government procurement process is an issue that the country under review has been considering and acknowledging as causing potential problems for transparency and efficiency. For example, in a 2008 Report Concerning the Electronic Procurement Systems in the Public Sector by the Oversight Area of the Financial Management System of the Office of the Comptroller General, it noted that, with respect to the CompraRed:¹⁰⁸

[214] *“due to the fact that the use of the system is only obligatory for entities of the central administration, its benefits have not spread to the rest of the institutions in the public sector, and efforts to standardize electronic procurement processes in the public sector have not succeeded.”*

[215] In its Report on the Special Audit on the Transition to the Consolidated Electronic Procurement System, the CGR said that:¹⁰⁹

[216] *“[T]his oversight organ focused on the coexistence in the country of several systems and supervision mechanisms to support different procurement processes that had not failed to standardize and integrate their activities, resulting in the allocation of considerable resources to new solutions in that regard. Therefore, the Office of the President of the Republic was advised that the multiple platforms that support procurement processes with varying scopes in State institutions should be integrated and consolidated, with the attendant benefits (economies of scale, control, simplification*

¹⁰⁶ 2015 Good Governance Report on Costa Rica, pg. 110, *supra* note 78. In the 2015 Evaluation of the Procurement System of Costa Rica, it notes that only a small portion of all procurement procedures is carried out by institutions regulated by the DGABCA, while the remaining, which amounts to 96% of all amounts awarded, is carried out by decentralized institutions, and each of them manage their own system, formulas and controls, 2015 Evaluation of the Procurement System of Costa Rica, pg. 119, *supra* note 89.

¹⁰⁷ 2015 Evaluation of the Procurement System of Costa Rica, pgs. 112 – 113, *supra* note 89.

¹⁰⁸ Report Concerning the Electronic Procurement Systems in the Public Sector, pgs. 4 – 5, *supra* note 95.

¹⁰⁹ Report on the Special Audit on the Transition to the Consolidated Electronic Procurement System, pg. 8, *supra* note 95.

of processes, promptness, and efficiency) of a consolidated national government procurement system.”

[217] In a later report (Report on Initiatives to Develop a Digital Government and an Information and Knowledge-based Society in Costa Rica) issued on June 21, 2012, the CGR made the following recommendations:¹¹⁰

[218] *“Integrate and, to the extent possible, consolidate the multiple platforms that support procurement processes with different scopes in State institutions (including any under development), so that, within the framework of the regulations governing such matters, the benefits (economies of scale, control, simplification of processes, promptness, and efficiency) of a consolidated, integrated and centralized national government procurement system are realized.”*

[219] The Committee further notes that the multiplicity of electronic platforms and systems makes it more difficult for a person or firm to obtain information on procurement opportunities. In the Report by the Bureau of Asset Administration and Government Procurement of the Ministry of Finance, Evaluation of the Procurement System of Costa Rica, the following was noted:¹¹¹

[220] *Although there is evidence that the information is, broadly speaking, available, there is a degree of fragmentation that could restrict the right of access to information of bidders and citizens in general. To be sure, that fragmentation and lack of information on the public sector makes procurement procedures less transparent. For example, in gathering information for this study it was found that certain institutions have mixed procurement procedures, some on digital platforms and others on physical ones.*

[221] As such, the observation made by the Committee, in the Report of the Second Round for Costa Rica, is still valid, although made with respect to the system being replaced by SICOP, CompraRED:¹¹²

[222] *“With respect to CompraRED, the Committee notes that its use is mandatory for the Executive branch and optional for the remainder of the Public Administration. In this regard, the Committee considers that Costa Rica might benefit from considering the possibility of extending the use of CompraRED to include the other branches and entities of the Public Administration.”*

[223] Given the foregoing, the Committee considers that Recommendation 1.2.4 should be reformulated, as CompraRed is being phased out, though maintaining the observation that there should be a sole electronic platform for all procurement processes in the public sector of Costa Rica. The Committee will formulate a recommendation. (see Recommendation 1.2.3.9 of Section 1.2.3 of Chapter II of this Report)

[224] In this respect, the Committee was provided a copy of draft law No. 19.123, “Transparency in Administrative Contracting through the Amendment of Article 40 and Inclusion of Article 40 bis in Law No. 7494 on Administrative Contracting, of May 2, 1995, as amended.”¹¹³ The purpose of the

¹¹⁰ Report on Initiatives to Develop a Digital Government and an Information and Knowledge-based Society in Costa Rica, DFOE-IFR-IF-5-2012, June 21, 2012, pg. 58, http://www.hacienda.go.cr/docs/51dc7283c011f_DFOEIFRIF52012-DGABCA.pdf

¹¹¹ 2015 Evaluation of the Procurement System of Costa Rica, pg. 183, *supra* note 89.

¹¹² Report of the Second Round, pg. 14, *supra* note 3.

¹¹³ See Draft Law No. 19.123, “Transparency in Administrative Contracting through the Amendment of Article 40 and Inclusion of Article 40 bis in Law No. 7494 on Administrative Contracting, of May 2, 1995, as amended,

draft law is to provide that all administrative contracting, including special regimes, are to be carried out through a unified digital public Procurement system.¹¹⁴

[225] Finally, the Committee observes that in the OECD 2015 Good Governance Report on Costa Rica, the following is noted:¹¹⁵

[226] “Costa Rica would benefit from agreeing on a single procurement platform that covers the whole public sector, including the autonomous entities. In order to ensure transparency, provide equal access to information for all suppliers, and promote competition and reinforce supplier trust, Costa Rica will need to ensure a proper integration of the different platforms.”

Recommendation 1.2.5 suggested by the Committee that requires additional attention within the Framework of the Third Round:

[227] This Recommendation was satisfactorily considered and, therefore, does not require additional attention.

Recommendation 1.2.6 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Establish guidelines which encourage the dissemination, prior to publication, of bid documents or invitations to participate in bidding processes, so that suggestions can be received from the private sector.

[228] In its Response, the country under review did not provide information further to that reviewed by the Committee in the Report from the Third Round in connection with the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention to thereto.¹¹⁶ (See recommendation 1.2.3.10 in Section 1.2.3 of Chapter II of this Report.)

1.2.2 New Developments with Respect to the provisions of the Convention on Government Systems for the Procurement of Goods and Services

1.2.1.1 New Developments with Respect to the Legal Framework

a) Scope

[229] With respect to new developments in the legal framework in Costa Rica regarding government systems for the procurement of goods and services, in its Response to the Questionnaire the country under review notes the following:¹¹⁷

http://www.oas.org/juridico/spanish/mesicic5_cri.htm. In addition, the CGR provided a document analyzing this draft law, Consultation on Draft Law, “Transparency in Administrative Contracting through the Amendment of Article 40 and Inclusion of Article 40 bis in Law No. 7494 on Administrative Contracting, of May 2, 1995, as amended”, http://www.oas.org/juridico/spanish/mesicic3_cri_resp_sp.pdf

¹¹⁴ The country under review, in its observations to the draft preliminary report, notes that draft law 19.123 was approved by the Legislative Assembly on July 27, 2016.

¹¹⁵ 2015 Good Governance Report on Costa Rica, *supra* nota 78.

¹¹⁶ See Response to the Questionnaire, pg. 23, *supra* note 12, and Response to the Questionnaire in the Third Round, pgs. 52-53, http://www.oas.org/juridico/spanish/mesicic3_cri_resp_sp.pdf

¹¹⁷ Response to the Questionnaire, *ibid*, pg. 33.

[230] *“The government goods and services procurement process currently uses two technology platforms: CompraRed and Mer-Link. The former is mainly used by the central government, and the latter, by autonomous Costa Rican institutions. Both have electronic records on providers for the public entities that use them.*

[231] *In 2014, the Executive Branch decided to replace the above technology platforms with the Integrated Government Procurement System (Sistema Integrado de Compras Públicas - SICOP), which will utilize the KONEPS source code used by Mer-Link as the basic platform for its configuration. It also instructed that SICOP should be rolled out gradually according to the guidelines issued by the Bureau of Asset Administration and Government Procurement (Dirección General de Administración de Bienes y Contratación Administrativa) of the Ministry of Finance and that the deadline by which all entities of the central administration had to be enrolled in SICOP was December 31, 2016, on which date CompraRed would be taken out of commission.*

[232] *SICOP was established by Executive Decree No. 38830-H-MICITT and will serve as the technology platform for mandatory use by the entire central administration for handling government contracting procedures and all acts and contracts deriving therefrom. Other public-sector institutions that wish to adopt SICOP may use it as a basic technology platform to support their procurement processes.*

[233] *SICOP will have an electronic registry of providers comprising companies that have formally enrolled as SICOP providers beforehand.*

[234] *It should also be mentioned that the Ministry of Finance and Radiográfica Costarricense, S.A., the supervising entity of the financial administration system and a state-owned enterprise owned by the Costa Rican Electricity Institute, respectively, signed an agreement to supply the State with the technology platform on which SICOP will be based as well as all other information and communication technology services associated with the platform.”*

b) Observations

[235] First, the Committee would like to acknowledge the new developments in Costa Rica's legal framework that create, maintain, and strengthen government systems for the procurement of goods and services as envisaged in the Inter-American Convention against Corruption.

[236] Having said that, the Committee considers it appropriate to make certain comments regarding the advisability of drafting and strengthening certain provisions in relation to those new developments, notwithstanding the observations made by the Committee in Section 1.2.1. above in connection with the follow-up on implementation of the recommendations made to the country under review in the Second Round.

[237] The Committee would like to highlight that the proposed implementation of SICOP was already addressed in section 1.2.1 of this Report, and recommendations were formulated in that regard. The Committee would also like to point out that under the discussion of the implementation of the SICOP and the creation of a sole registry of suppliers, in the Response to the Questionnaire, the country under review also identified some difficulties, namely:

[238] *“The main obstacle that the Ministry of Finance faces is basically having such a fragmented and sprawling legal framework on public procurement processes in the country, in which more than 10 legal regimes coexist that provide exceptions in the application of principles and mandates governing government contracting. That obstacle limits the scope of action that the Ministry of Finance has to organize and implement government procurement policy.*

[239] *To overcome the above difficulty, the Ministry of Finance set up an ad hoc commission which drafted a set of legal reforms as an indispensable legal step in overcoming said difficulty and which are gradually been discussed with the various stakeholders in the government procurement process with a view to their presentation to the Legislative Assembly.*

[240] The Committee observes that the Bureau of Asset Administration and Government Procurement, has carried out a study on the public procurement process in Costa Rica, namely, Evaluation of the Procurement System of Costa Rica. In this study, it notes that Articles 10, 105 and 109 of the Law of Administrative Contracting allows for government entities subject to the Law to issue their own internal regulations, so long as it does not address issues such as prerequisites, guarantees, prohibitions, sanctions and remedies.¹¹⁸ Moreover, there are specialized laws for certain public institutions, such as the Costa Rican Electricity Institute, Costa Rican Department of Social Security and the Costa Rican Insurance Institute, which in turn, have their own regulations due to the subject matter that each institution is responsible for. In this case, each institution is responsible for updating their regulations, taking into account what is provided in Article 109 of the Law, namely:

[241] *“Each of the organs or entities bound by this law may issue such supplementary regulations as they may need to improve the performance of their contracting-related activities.*

[242] *Executive regulations on prerequisites, guarantees, prohibitions, penalties, and resources shall be outside the regulatory scope of the entities governed by this law. For such purposes, they shall abide in full with the Regulations enacted by the Executive Branch on such matters.”*

[243] Moreover, in this study, it further observed that many regulations in place are not updated on a regular basis, or there are many important omissions or contradictions in the law.¹¹⁹

[244] That aspect of the public procurement system was also identified as an issue in the 2010 report prepared by the Ministry of Finance's Bureau of Asset Administration and Government Procurement, entitled Strategic Plan for Public-Sector Procurement Modernization: Nine Strategies to Enhance the Impact of the State on the Well-Being of the Community and Economic Growth, which concluded that:¹²⁰

[245] *“The diagnostic assessment of public procurement in Costa Rica shows that its main weakness is its fragmentation. In practice, our country does not have one procurement system, but as many systems as there are institutional providers' offices, each with its own set of rules and way of operating. The countries with the most effective and transparent procurement systems, on the other hand, have a single integrated system guided by common policies and criteria and generally adopted best practices.”*

¹¹⁸ 2015 Evaluation of the Procurement System of Costa Rica, pgs. 77 – 78, *supra* note 89.

¹¹⁹ *Ibid.*, pg. 78.

¹²⁰ Strategic Plan for Public-Sector Procurement Modernization, pg. 24, *supra* note 77.

[246] To that end, a first step towards a system, the country under review could consider the possibility of consolidating the different procurement procedures into a sole legal instrument that covers the entire public sector, without prejudice to legislation that provides for special needs in the case of public enterprises whose commercial activity so requires and institutions subject to a competitive regime, thus reasonably reducing the range of special regimes mentioned. The Committee will formulate a recommendation. (see Recommendation 1.2.3.11 of Section 1.2.3 of Chapter II of this Report)

[247] Moreover, the country under review may consider establishing a governing body to regulate the procurement process for the public sector. During the on-site visit, the representatives of various government bodies noted that such an institution does not exist in Costa Rica, or at least one that encompasses the public sector as a whole. For the Central Administration, the DGABCA has been appointed as this body, but as noted previously, this leaves out important government entities that make up the overwhelming majority of procurement processes carried out in the country under review. In this respect, of 308 government bodies, the DGABCA only governs 68 of them.¹²¹ A sole government body would also help ensure that Costa Rica has a single integrated system. Again, as in the issue of a single electronic platform, the country under review, through various studies, have decided on the benefits of establishing a single governing body for all government institutions, not just limited to the Central Administration.

[248] For example, in the aforementioned study, Strategic Plan for Public-Sector Procurement Modernization, it is noted:¹²²

[249] *“Integrating the national procurement system requires a coordinating entity that should prevent each entity that engages in procurement from developing its own procedures with different interpretations of the law, specific documentation, unique contract terms and conditions, and disparate forms of reporting. Such diversity hampers the unified bargaining capacity of the Government, diminishes the quality of strategic and budgetary planning, undermines the capacity of the private sector to understand government processes, turns procurement into the purview of legal experts, and has a negative impact on transparency and efficiency owing to the tendency of procurement processes to be complex, lengthy, and filled with bureaucratic procedures.”*

[250] Additionally, in the aforementioned Evaluation of the Procurement System of Costa Rica, this study noted that Costa Rica:¹²³

[251] *“A single state entity or organ is needed to regulate procurement for the entire public-sector under a solitary set of parameters, without prejudice to the ability of autonomous and decentralized institutions to undertake their own procurement with complete independence, while following, however, the same general rules under the umbrella of one single public-sector procurement system.”*

[252] The Committee notes that under legislative dossier No. 19.775, Congress is currently debating the bill “Addition of a New Chapter XII to the Law on Administrative Contracting, Law No. 7494, to create the National Administrative Procurement Authority.”¹²⁴ It would be important for the country under review to designate, as appropriate, a government body to regulate and monitor the procurement system in Costa Rica, providing it the necessary hierarchy, authority, and financing to

¹²¹ 2015 Evaluation of the Procurement System of Costa Rica, pg. 101, *supra* note 89.

¹²² Strategic Plan for Public-Sector Procurement Modernization, pgs. 24 – 25, *supra* note 77.

¹²³ 2015 Evaluation of the Procurement System of Costa Rica, pg. 20, *supra* note 89.

¹²⁴ Available at: http://www.asamblea.go.cr/sil_access/ver_texto_base.aspx?Numero_Proyecto=19775

exercise said function. The Committee will formulate a recommendation. (See recommendation 1.2.3.12 in Section 1.2.3 of Chapter II of this Report.)

[253] To this end, the Committee observes that the OECD in its 2015 Good Governance Report on Costa Rica, noted:¹²⁵

[254] *“The country could benefit from creating an authority to set a national procurement vision, work in a cohesive manner toward clear priorities and objectives. This public procurement authority could work closely with the different actors in order to consolidate goods and services and promote a more expansive use of framework agreements.”*

[255] The Committee also notes that in the country under review, it appears that obtaining information on procurement opportunities is not easy for the public at large. This is due to the various electronic systems and platforms in places throughout the public sector, including that of the Central Administration, which makes it difficult to centralize this information in one place where the public may consult and become aware of these procurement opportunities. As observed in the Evaluation of the Procurement System of Costa Rica study:¹²⁶

[256] *“[A]s regards disclosure, there is no centralization of information that would allow potential bidders to know about procedures that are underway. Thus, one can see that, despite the fact that the publication of contracting procedures is obligatory by law, the disclosure mechanisms are not broadly accessible, fundamentally because there is no single platform that the entire public sector is required to use, a situation unquestionably aggravated by the absence of a single providers' registry.*

[257] As noted above, the country under review does not have a single comprehensive law that implements a system uniformly and throughout the public sector.

[258] Given the foregoing, the country under review should consider placing all opportunities for public procurement in one single official government website, easily accessible to the public at large. The Committee will formulate a recommendation. (see Recommendation 1.2.3.15 of Section 1.2.3 of Chapter II of this Report)

[259] In that connection, the Committee notes that draft law No. 19.123, titled “Transparency in Administrative Contracting through the Amendment of Article 40 and Inclusion of Article 40 bis in Law No. 7494 on Administrative Contracting, of May 2, 1995, as amended,”¹²⁷ seeks that all State institutions that engage in any kind of procurement include a link on their websites to enable the citizenry to access the Electronic Consolidated Government Procurement System, and that they publish the following on their website in language that any reader can understand: 1. The announcement that the administrative decision has been made to initiate a contracting process, including the goods or services to be contracted. 2. The most salient aspects of the invitation to tender. 3. Each of the bids submitted, which shall be published immediately after the deadline for their submission expires. 4. The successful bidder and the reasons and criteria that justified their selection. 5. The main terms of the contract. This draft law also seeks to make it mandatory for the Government to make all information concerning direct procurement, regardless of the amount concerned, publicly available on their websites.

¹²⁵ 2015 OECD Good Governance Report on Costa Rica, pg. 119, *supra* note 78.

¹²⁶ 2015 Evaluation of the Procurement System of Costa Rica, pg. 16, *supra* note 89.

¹²⁷ See Draft Law No. 19.123, *supra* note 113.

1.2.1.2 New Developments with Respect to Technology

[260] In its Response to the Questionnaire, the country under review presents various technological developments, which are presented as follows:¹²⁸

[261] First, the country under review mentions that the CGR, as the supervising body of the control and oversight system, has developed a series of public-access instruments to foster transparency and accountability in government bodies and entities, notably the following:

[262] - The on-line public consultation tool “Know what your money is spent on” (*Conozca en qué se gasta su dinero*), on the CGR website (<https://sites.google.com/a/cgr.go.cr/cgr/consultas/transparencia-presup-publicos>), where citizens can obtain information on annual budgets, their results, and targets met by the public sector.

[263] - The on-line Public Procurement Consultation tool (*Consulta de compras con fondos públicos*) (SIAC), which is an automated system that records and processes information on contracting by entities subject to CGR control and oversight, the purposes of which are to provide data for management, control, and oversight as well as to meet the information needs of the domestic and international community. The tool provides access to reports containing statistics on all procurement with public funds since 2007. The reports are: (a) contract procedures initiated and awarded; (b) millions of Colones awarded by year and type procedure; (c) millions of Colones awarded by year; and (d) an annual report on contracting activity that summarizes information since 2007. The tool is available at <https://sites.google.com/a/cgr.go.cr/cgr/tramites/centro-operaciones-cgr/c-definicion>.

[264] - The State Budget Plan System (*Sistema de Información sobre Planes y Presupuestos - SIPP*) where most of the budgets supervised by the CGR can be examined in detail (income, expenditure, results, and other documents). It can also be used to obtain information on the income, expenditure, and results of most of the public-sector institutions included in the SIPP based on their budget and planning documents processed in the CGR. The SIPP may be visited at <https://cgrweb.cgr.go.cr/apex/f?p=102:1:3398961392701>.

[265] In that regard, the country under review says that the CGR has sought to encourage public-sector institutions to link or relate their income and expenditure to the execution of public works, projects, or targets toward which they are working, in a bid to foster political control and citizen oversight, and to make that information available to members of the public interested in knowing what their money is spent on.

[266] It has also launched an overhaul of the SIPP and as part of that process proposes to develop a module containing basic information on public spending projects. For example, the plan is to provide information on the unique code number with which the Ministry of National Planning and Economic Policy identifies each public works project, its name, its direct relationship to plans, its specific budget, geographical location, the type of contract, the names of the contracted enterprises, progress in the contract’s performance at different stages, spending, and physical execution. Once that information is available, the plan is to place it at the public’s disposal on the CGR website in a user-friendly, simple, and accessible way.

¹²⁸ Response to the Questionnaire, pgs. 34-35, *supra* note 12.

[267] A [mobile application](#) was developed to encourage the reporting of complaints by citizens and access to public information. It can be downloaded from the App Store for telephones using iOS operating systems, from Google Play for Android telephones, and from the Amazon Appstore for Kindle Fire telephones. The purpose of the application is to promote citizen participation, facilitate societal oversight, and strengthen governance, democracy, and civic mindedness with respect to public affairs. The country under review says that the application allows users to access information from the CGR from their smart phones or tablets, including: (a) the latest news on recent oversight reports, press releases, and CGR procurement processes; (b) an institutional activity calendar; (c) rules on zonal weighting, mileage, and per diem allowances; (d) YouTube videos on various topics to do with CGR's oversight activities; (e) a direct link to the CGR electronic complaints system; and (f) a direct link to the "Know what your money is spent on" tool.

[268] Finally, on the CGR website there is a User Services and Citizen Consultation section ([Servicios de Atención y Consulta Ciudadana](#)) where members of the public can access information on different areas under CGR oversight, namely: Government contracting, electronic complaints, sworn statements of net worth, the Internal Audit Work Plan System, legalization of books and suitability rating, the Integrated Procurement System (SIAC), the Integrated State Budget Plan System (SIPP), frequently asked questions about the municipal sector, CGR consultation processing, and zonal weighting, mileage and per diem allowances.

1.2.1.3 Results

[269] In its Response to the Questionnaire, the country under review presents the following information:¹²⁹

[270] *"Since 2011, the CGR has been developing performance indices as diagnostic assessment tools for government institutions. The indices serve to make evaluations in a variety of areas, including government contracting:*

[271] *The Municipal Performance Index (Índice de Gestión Municipal - IGM), which evaluates the performance of Costa Rica's local governments based on 61 indicators on their main substantive and assistance activities, which yields information for decision making by the local government and to the public in general, the overall aim being to strengthen governments' capacities and improve quality of life for their residents. The findings of this index are available at https://cgrfiles.cgr.go.cr/publico/docsweb/rev_dig/inf_opinion/2014/index.html#/10/.*

[272] *The Institutional Performance Index (Índice de Gestión Institucional - IGI), an instrument created by the CGR to gather information on progress made by institutions in taking steps to strengthen their performance, particularly in the areas of internal control, planning, financial and budget management, service to users, and procurement. The findings of this index for 2011 and 2013 are available at <https://cgrfiles.cgr.go.cr/publico/jaguar/Documentos/cgr/estrategia/documentos/DFOE-ST-SGP-0001-2013.pdf>.*"

[273] The Committee also highlights the existence of the Integrated Procurement System (SIAC), which is an automated system that records and processes information on contracting by entities subject to CGR control and oversight, the purpose of which is to provide data for management, control, and oversight. The tool provides access to reports containing statistics on all procurement

¹²⁹ *Ibid.* pgs. 35-36.

with public funds since 2007. The reports are: (a) contract procedures initiated and awarded; (b) millions of Colones awarded by year and type procedure; (c) millions of Colones awarded by year; and (d) an annual report on contracting activity that summarizes information since 2007. The tool is available at <https://sites.google.com/a/cgr.go.cr/cgr/tramites/centro-operaciones-cgr/c-definicion>.

1.2.2 Recommendations

[274] In light of the observations formulated in sections 1.2.1 and 1.2.2 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendations:

- 1.2.3.1 Assess the monetary limits by which direct contracting is allowed by public bodies or agencies so that they are carried out less often or establish uniform limits that apply to the entire Costa Rican public sector, in order to promote the use of public and abbreviated bidding, thus reducing the use of direct contracting exceptions, while respecting the special regimes regulated by the legislature (see paragraph 143 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.2 Establish provisions aimed at creating and implementing a comprehensive citizen oversight mechanism that covers all the different stages of public works procurement procedures, without prejudice to existing internal or external institutional controls (see paragraph 157 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.3 Establish provisions which develop and implement a comprehensive citizen oversight mechanism that covers all the different stages of procurement procedures, where their nature, importance, or magnitude so warrants, without prejudice to existing internal or external institutional controls (see paragraph 162 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.4 Create a national Registry of Providers, which could be used by all of the entities of the Public Administration (see paragraph 176 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.5 Establish a sole registry of suppliers of the public sector that have been sanctioned for violating the procurement law (see paragraph 188 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.6 Establish a sole registry of public officials that are legally prohibited from participating in government procurement procedures (see paragraph 201 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.7 Establish or designate an authority for receiving and updating the information contained in a sole registry of public officials that are legally prohibited from participating in government procurement procedures (see paragraph 201 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.8 Ensure that the list of public officials that are legally prohibited from participating in government procurement procedures is updated and maintained on the webpage of the CompraRed or other electronic platform of the Central Administration, as required by Law (see paragraph 201 in Chapter III, Section 1.2.1. of this Report).

- 1.2.3.9 Establish a sole electronic platform for all procurement process in the public sector of Costa Rica (see paragraph 223 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.10 Study the possibility of publishing, where appropriate, preliminary bidding terms and conditions for interested parties to consider and submit observations (see paragraph 228 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.11 Consider consolidating the various procurement procedures into a single legal instrument, without prejudicing the possibility of legislative action that may be required for the commercial activity of public enterprises or institutions subject to a competitive regime in the terms provided for in paragraph 246 (see paragraph 248 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.12 Establish or designate, as deemed appropriate, a government body to regulate and monitor the procurement system in Costa Rica, granting it the necessary rank, authority, and financing to perform that function (see paragraph 252 in Chapter III, Section 1.2.1. of this Report).
- 1.2.3.13 Place all opportunities for public procurement in one single official government website that is easily accessible to the public at large (see paragraph 258 in Chapter III, Section 1.2.1. of this Report).

2. SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO, IN GOOD FAITH, REPORT ACTS OF CORRUPTION (ARTICLE III (8) OF THE CONVENTION)

2.1 Follow-Up to the Implementation of the Recommendations Formulated in the Second Round

Recommendation 2 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Adopt, through the respective authority, a comprehensive regulation on protection of public servants and private citizens who in good faith report acts of corruption, in accordance with the fundamental principles of its domestic legal order, which could include, among others, the following aspects:

- a) Protection for persons who report acts of corruption subject to investigation in administrative or judicial proceedings.*
- b) Protective measures aimed not only at protecting the physical integrity of the informant and his or her family, but also at protecting their employment situation, especially in the case of public servants, especially in cases where the acts of corruption may involve his or her hierarchical superior or colleagues.*
- c) Provisions which sanction the failure to observe the rules and/or duties relating to protection.*
- d) A simplified whistleblower protection application process.*

e) Mechanisms which facilitate international cooperation in the foregoing areas, when appropriate, including the assistance and cooperation provided for by the Convention, as well as the exchange of experiences, training and mutual assistance.

f) The respective competence of judicial and administrative authorities with respect to this area, clearly distinguishing one from the other.

[275] In its Response the country under review did not provide information further to that reviewed by the Committee in the Report from the Third Round in connection with the foregoing recommendation and measures.¹³⁰

[276] However, the Committee finds that in its Response to the Questionnaire the country under review refers to legislative bill No. 18.348 (Proposed Law Partially Reforming the Law against Corruption and Illicit Enrichment), which, if passed, would introduce mechanisms to protect whistleblowers and witnesses from reprisals in the workplace:

[277] *“The new provisions would empower the Government to order measures such as the following: (a) to stop harassment; (b) not to interfere in the use and enjoyment of the work tools at the disposal of the servant concerned; (c) to suspend any administrative acts that might entail an injury to the protected officials; (d) to provisionally relocate, transfer, or switch in their position, or, as an exceptional measure, temporarily separate from service with pay the servant from whom the threats or reprisals emanate or the official who is being subjected to threats or reprisals; and (e) any other protection measure analogous to the above.”*

[278] The Committee notes, however, that in its Response to the Questionnaire the country under review said that the proposed law, which would introduce a protection regime against possible reprisals in the workplace has not yet been adopted, despite four years of legislative processing.

[279] Therefore, the Committee reiterates the need for the country under review to give further attention to those measures, taking into account the criteria established in the Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses.¹³¹ (See Recommendation 2.3.1 in Chapter II, Section 2.3 of this Report.)

[280] Moreover, a civil society organization, Asociación Integra Costa Rica, notes in its Response to the Questionnaire for the Fifth Round, the following:¹³²

[281] *“The information gathered by Asociación Costa Rica Íntegra suggests that this section of the Convention is one on which least progress has been made in the country. Public servants, particularly those not covered by a civil service regime, have no incentive or protection when it comes to reporting supervisors since they could suffer reprisals that are not criminalized by law. For example, failure to renew contracts, unjustified transfers, being passed over for promotion, etc.”*

¹³⁰ See Response to the Questionnaire, pgs. 24-25, *supra* note 12, and Response to the Questionnaire in the Third Round, pgs. 53-57, *supra* note 116.

¹³¹ Model law to facilitate and encourage the reporting of acts of corruption and to protect whistle-blowers and witnesses, http://www.oas.org/juridico/PDFs/model_law_reporting.pdf

¹³² Document presented by Asociación Integra Costa Rica, pg. 28, *supra* note 9.

2.2 New Developments with Respect to the Provision of the Convention on Systems for Protecting Public Servants and Private Citizens Who, in Good Faith, Report Acts of Corruption

2.2.1 New Developments with respect to the Legal Framework

a) Scope

[282] The country under review provided the following information as new developments with respect to the Convention provision on systems for protecting public servants and private citizens who in good faith report acts of corruption.¹³³

[283] *“Law No. 8720 of March 4, 2009 (Law on the Protection of Victims, Witnesses, and other Persons Involved in Criminal Proceedings, Reforms and Additions to the Code of Criminal Procedure and the Criminal Code) introduced a system of protection measures in the context of criminal proceedings. These protection measures are applicable to whistleblowers, victims and witnesses in criminal proceedings for corruption.*

[284] *Protection measures in criminal cases may be procedural or extraprocedural. The purpose of the former is to keep secret the identity of the person at risk and, in exceptional cases, their physical characteristics. With extraprocedural protection measures, the victim, witnesses, and other persons involved in the criminal proceeding are entitled to request and receive special protection in the event of a risk or serious threat to their lives or well-being, those of members of their families, or of persons related to the person involved in the proceeding.*

[285] *Law No. 8720 also adds the criminal offense ‘disclosure of confidential information’ in Article 332 bis of the Criminal Code, which punishes anyone who discloses confidential information relating to beneficiaries of protection measures in the victim and witness protection program.*

[286] *The Office of Assistance for Victims and Witnesses of the Public Prosecution Service and the Victim and Witness Protection Unit of the Judicial Investigation Agency (2010) were set up to process protection requests and implement agreed-upon measures.*

[287] *As the Committee is aware, Article 6 of the Internal Control Law (Law No. 8292 of September 31, 2002) and Article 8 of the Law on Corruption and Illicit Enrichment of Public Servants (Law No. 8422 of October 6, 2004), introduced the principle of confidentiality for the identity of the whistleblower as a protection mechanism for whistleblowers in administrative investigations.*

[288] *An amendment to the aforesaid Article 8 by Law No. 8630 of January 17, 2008, strengthened the protection regime in administrative proceedings by recognizing the possibility of using the administrative police to provide physical protection to whistleblowers.”*

b) Observations

[289] The Committee notes, that the information provided was already reviewed and considered by the Committee during the Third Round of Review.¹³⁴

¹³³ See Response to the Questionnaire, pgs. 36-37, *supra* note 12.

2.2.2 New Developments with Respect to Technology

[290] The country under review did not provide information on developments in this regard either in its Response to the Questionnaire or during the on-site visit.

2.2.3 Results

[291] During the on-site visit representatives of the Public Prosecution Service, specifically of the Office of Assistance for Victims and Witnesses, reported that in 2012 protection measures were arranged in three cases, while in 2015 they were provided in five cases. However, those results are based on legislation that the committee had already reviewed and considered in the Third Round.¹³⁵

2.2.4 Recommendations

[292] In light of the observations formulated in section 2 of Chapter II of this Report, the Committee suggests that the country under review consider the following recommendation:

2.3.1 Adopt, through the respective authority, a comprehensive regulation on protection of public servants and private citizens who in good faith report acts of corruption, in accordance with the fundamental principles of its domestic legal order, which could include, among others, the following aspects:

- a) Protection for persons who report acts of corruption subject to investigation in administrative or judicial proceedings.
- b) Protective measures aimed not only at protecting the physical integrity of the informant and his or her family, but also at protecting their employment situation, especially in the case of public servants, especially in cases where the acts of corruption may involve his or her hierarchical superior or colleagues.
- c) Provisions which sanction the failure to observe the rules and/or duties relating to protection.
- d) A simplified whistleblower protection application process.
- e) Mechanisms which facilitate international cooperation in the foregoing areas, when appropriate, including the assistance and cooperation provided for by the Convention, as well as the exchange of experiences, training and mutual assistance.
- f) The respective competence of judicial and administrative authorities with respect to this area, clearly distinguishing one from the other (see paragraph 279 in Chapter III, Section 2.1. of this Report).

3. ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)

3.1. Follow-up on implementation of the recommendations formulated in the Second Round

¹³⁴ See Report of the Third Round, pgs. 40 – 41, http://www.oas.org/juridico/spanish/mesicic_III_inf_cri.pdf and Response to the Questionnaire for the Third Round, *supra* note 116.

¹³⁵ *Ibid.*

[293] No recommendations were formulated to the country under review under this section during the Second Round of Review.

3.2. New developments in respect of the Convention provision on acts of corruption

3.2.1. New developments in the legal framework

a) Scope

[294] - Law No. 8630 of January 17, 2008, which contains four reforms for combating bribery-related offenses. First, it includes Article 44 bis in the Law on Corruption and Illicit Enrichment of Public Servants (Law No. 8422), which envisages: the possibility of imposing administrative penalties on legal persons involved in transnational bribery, solicitation or acceptance of bribes for violation of official duty, solicitation or acceptance of bribes for performance of official duty, aggravated corruption, acceptance of gifts for the performance of an act, corruption by judges, corruption of public officials. Second, it amends the definition of the crime of transnational bribery contained in Article 55 of Law No. 8422 to widen its scope and incorporate a number of circumstances that could not be punished under the original definition. Third, it adds Article 345 bis to the Criminal Code, which provides that the penalties on bribery-related offenses shall be applied in the following two situations: (a) when the gift, undue advantage, or promise is requested or accepted by the official, either for themselves or for a third party; and (b) when the official uses their position as such, even though the act is outside their purview. Finally, it amends Article 345 of the Criminal Code (which defines the offense of corruption of public officials) with the addition of the verb “offers,” which was not previously included in the definition.¹³⁶

b) Observations

[295] The Committee recognizes that the new legislative developments in this matter are positive steps to improve the criminalization of offenses involving acts of corruption and the effectiveness thereof. The Committee has no additional observations to make in that regard.

3.2.2. New developments with respect to technology

[296] The country under review made no mention of new developments with respect to technology in this area.

3.2.3. Results

[297] In its Response to the Questionnaire the country under review provided the following tables on results obtained with respect to acts of corruption referred to in Article VI of the Convention:¹³⁷

**MOVEMENTS IN CRIMINAL COURTS
JUDICIARY, 2010 – 2014.**

YEAR	OUTSTANDING CASES AS OF JANUARY 1 EACH YEAR	CASES ADMITTED	CASES READMITTED	CASES CONCLUDED	CASES WITH A VERDICT AND JUDGMENT	CASES WITH A VERDICT AND JUDGMENT INVOLVING MALFEASAN

¹³⁶ Response to the Questionnaire, pgs. 37-38, supra note 12.

¹³⁷ *Ibid.* pgs. 38-39. Source: Judiciary Planning Department.

						CE IN PUBLIC OFFICE
2010	799	527	68	451	327	80
2011	943	624	142	646	458	136
2012	1,066	580	129	796	464	136
2013	979	674	72	617	433	119
2014	1,108	708	117	665	427	131

Source: Judiciary Planning Department.

**TYPES OF JUDGMENT ISSUED BY CRIMINAL COURTS IN CASES OF MALFEASANCE IN PUBLIC OFFICE
JUDICIARY, 2010 – 2014.**

TYPE OF OFFENSE	Year 2010		Year 2011		Year 2012		Year 2013		Year 2014	
	<i>TYPE OF JUDGMENT</i>		<i>TYPE OF JUDGMENT</i>		<i>TYPE OF JUDGMENT</i>		<i>TYPE OF JUDGMENT</i>		<i>TYPE OF JUDGMENT</i>	
	Convicti on	Acquittal								
Abuse of authority	5	20	19	31	16	51	3	46	8	36
Bribery	5	0	3	3	6	0	1	0	2	6
Extortion	7	6	9	4	8	6	19	12	10	5
Aggravated corruption	3	8	9	3	10	2	5	3	4	8
Corruption by judges	0	0	0	0	0	0	1	0	0	0
Dereliction of duty	0	0	0	0	0	0	0	0	1	11
Conflict of interest	0	0	0	0	0	1	0	0	0	0
Embezzlement	9	6	10	17	15	6	5	14	9	5
Embezzlement, attempted	0	0	0	0	0	0	2	0	0	0
Corruption of a public official	4	1	3	4	4	2	4	3	4	3
Breach of public duties	0	0	0	7	0	1	1	0	0	3
Culpable facilitation of theft	0	1	0	0	0	0	0	0	0	0
Illegal appointments	0	1	0	0	0	0	0	0	0	0
Offering or granting a gift or reward	0	1	0	0	0	0	0	0	0	0
Illegal exaction	0	0	0	1	0	1	0	0	0	0
Misappropriation	0	0	0	0	0	1	0	0	0	0
Violation of Law No. 8422	1	2	11	2	1	5	0	0	14	2
TOTAL	34	46	64	72	60	75	41	78	52	79

Source: Judiciary Planning Department.

[298] The Committee considers that the above results indicate that the existing provisions in Costa Rica which criminalize several of the acts referred to in Article VI of the Convention, have been applied to concrete cases. The Committee considers that this is a positive step towards implementation of the Convention.

3.3. Recommendations

[299] In light of the comments made in Sections 3.1 and 3.2 of Chapter II of this Report, the Committee does not offer any recommendations.

4. GENERAL RECOMMENDATIONS

Recommendation 4.1 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, provisions, measures, and mechanisms considered in this report, for the purpose of ensuring that they are adequately known, managed, and implemented.

[300] In its Response to the Questionnaire, the country under review submitted information on the following virtual training activities carried out by the General Directorate of the Civil Service in the area of personnel recruitment and selection from 2012 to 2014:¹³⁸

VIRTUAL TRAINING COURSES, ACHIEVEMENT SCHEME GENERAL DIRECTORATE OF THE CIVIL SERVICE 2012 – 2014.

NAME OF THE ACTIVITY	NUMBER PERSONS	OF
Preparation of technical studies for post classifications (DGSC-ITCP-V-01-2014)	28	
Preparation of technical studies for post classifications (DGSC-ITCP-V-02-2014)	26	
Recruitment and Selection	24	
Recruitment and Selection	28	
Recruitment and Selection	20	
Total	126	

Source: General Directorate of the Civil Service

[301] The DGSC also offered the following on-site training activities in 2005:

ON-SITE TRAINING COURSES, ACHIEVEMENT SCHEME GENERAL DIRECTORATE OF THE CIVIL SERVICE 2015

NAME OF THE ACTIVITY	NUMBER PERSONS	OF
Bidder evaluation in selection processes	50	
Post reassignments (Civil Service Regime) 2015 (Post Classification)	68	
Total	118	

Source: General Directorate of the Civil Service

[302] In its Response to the Questionnaire, the country under review also mentions that the CGR has implemented virtual courses on government contracting, internal audits, internal control, and

¹³⁸ *Ibid*, pg. 26.

administrative procedures, among other topics.¹³⁹ In that connection, the country under review notes that the CGR offers public officials specialized courses through the on-line Integrated Government Procurement Training System (or SICCA Virtual) offered by the Government Procurement Division of the CGR, which provides its training in the form of modules that combine a practical approach with theoretical content on salient topics related to government procurement. The SICCA Virtual modules are: Terms and Conditions; Types of Procedure; Bid Evaluation; Challenge Mechanisms; and Contract Performance. In 2015 SICCA Virtual was staged twice with a total of 169 public officials enrolling.

[303] Finally, the country under review imparts courses, activity strategies, and congresses through the CGR, focusing on the issues of government procurement and internal audits.¹⁴⁰

[304] Given that in sections 1, 2 and 3 of Chapter II of this Report provides an updated and detailed follow-up of the recommendations formulated to the Costa Rica in the Second Round of Review, as well as the systems, standards, measures and mechanisms that the suggested recommendations concern, the Committee adopts what is set out in said sections, and, therefore, believes that this recommendation is redundant.

Recommendation 4.2 suggested by the Committee that requires additional attention within the Framework of the Third Round:

Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, provisions, measures, and mechanisms considered in this report, and to verify follow-up on the recommendations made herein.

[305] Given that in sections 1, 2 and 3 of Chapter II of this Report provides an updated and detailed follow-up of the recommendations formulated to Costa Rica in the Second Round of Review, as well as the systems, standards, measures and mechanisms that the suggested recommendations concern, the Committee adopts what is set out in said sections, and, therefore, believes that this recommendation is redundant.

III. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE ORIENTAL REPUBLIC OF COSTA RICA OF THE CONVENTION PROVISIONS SELECTED FOR THE FIFTH ROUND

1. INSTRUCTIONS TO GOVERNMENT PERSONNEL TO ENSURE PROPER UNDERSTANDING OF THEIR RESPONSIBILITIES AND THE ETHICAL RULES GOVERNING THEIR ACTIVITIES (ARTICLE III, PARAGRAPH 3 OF THE CONVENTION)

[306] In accordance with the Methodology adopted by the Committee for the Fifth Round regarding the implementation of Article III, paragraph 3 of the Convention, which refer to measures that intended to establish, maintain and strengthen “*instruction[s] to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities,*” the country under review selected the personnel of the Executive Branch covered by the Civil Service Regime , the career and trust personnel of the Legislative Branch and all the personnel of the Judicial

¹³⁹ *Ibid.*, pg. 27.

¹⁴⁰ *Ibid.*, pg. 28.

Branch, as the country under review considers them as principal groups that merit review, due to them being a majority or based on the importance of their functions.

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

[307] Costa Rica has a set of provisions and/or measures that provide instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, among which the following are highlighted:

- Statutory and other legal provisions applicable to the selected personnel of the Executive Branch, among which the following should be noted:

[308] With respect to provisions and/or measures for providing instruction to Executive Branch personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, Article 5 of Resolution DG-135-2013 (Standards to Govern the Training and Development System in the Civil Service Regime) introduces the obligation for public servants to undergo training and technical enhancement programs required for the proper performance of their duties and to contribute to the transfer of the knowledge acquired. In addition, the Administration has a duty to provide them with the conditions and possibilities to enable that training, improvement, and transfer.¹⁴¹

[309] The country under review also has Resolution DG-132-97, Article 1 of which provides that the human resources units are responsible for formulating and developing induction programs for both new employees and those who, because of promotions, relocations, swaps, and other movements of a similar nature, experience significant changes in their duties. Those units shall rely on permanent advisory services from the General Directorate of the Civil Service and shall meet the following minimum requirements in designing institutional induction programs: (a) adequately plan the induction program; (b) include a training process for those responsible for implementing the induction program; (c) cover the welcome, introduction to the organization, and follow-up stages; (d) impart the induction program upon the new servant's entry or when a change of duties occurs; and (e) include the Civil Service Regime and ethics in public service as topics in all induction programs for new employees, which preferably should be imparted by servants of the General Directorate of the Civil Service.¹⁴² In that connection, in its Response to the Questionnaire the country under review says that all ministries, institutions, and organs of the Executive Branch covered by the Civil Service Regime have a Human Resources Office (OGEREH), which is under the technical supervision of the Office of the Director and required to apply the human resources management policies and standards issued by the General Directorate of the Civil Service.¹⁴³

[310] The country under review also says that Directive No. 042-P of the Office of the President says that:¹⁴⁴

[311] *“The human resources offices of ministries, institutions, and attached organs covered by the Civil Service Regime are required to promote and advance the establishment of ethical policies and*

¹⁴¹ Resolution DG-135-2013 (Standards to Govern the Training and Development System in the Civil Service Regime), http://www.oas.org/juridico/spanish/mesicic5_cri.htm

¹⁴² Resolution DG-132-97, http://www.oas.org/juridico/spanish/mesicic5_cri.htm. See presentation of the DGSC on ethics and values, pg. 5, http://www.oas.org/juridico/spanish/mesicic5_cri.htm

¹⁴³ Response to the Questionnaire, pgs. 41-42, *supra* note 12.

¹⁴⁴ Directive No. 042-P, http://www.oas.org/juridico/spanish/mesicic5_cri.htm, and presentation of the DGSC on ethics and values, pg. 6, *supra* note 142.

practices in public service in the pursuit of their various activities, as well as to create and organize an environment conducive to the strengthening and emergence of social responsibility toward the environment, the community, and the citizenry, the implementation of which involves constant and continuous coordination with the Office of the Director General.”

[312] In that connection, there is a Manual on Ethics in Public Service (adopted in 2013), Article 2 of which states:¹⁴⁵

[313] *“This manual on ethics must be known, applied, observed, and disseminated by all public servants in the Executive Branch that belong to the various ministries, institutions, and public agencies covered by the Civil Service Regime. Managers, coordinators, section chiefs, and other supervisors in the aforementioned institutions are responsible for the dissemination in their organizations of the following provisions and of generating conditions conducive to their implementation and introduction.”*

[314] Finally, the country under review has Executive Decree No. 33146 (Ethical Principles Governing Public Officials) of May 24, 2006, a directive that contains the ethical principles that public officials are required to observe in the performance of their duties.¹⁴⁶

[315] As to the way in which personnel are apprised of their responsibilities or functions, the country under review says that the Executive Branch has the Descriptive Manual of Civil Service Posts, which contains the powers, duties, and minimum requirements for each position of employment and defines in writing the functions and responsibilities of each servant according to the position that they occupy. According to Article 39 of the Civil Service Statute (Law No. 1581) it is incumbent upon all public servants to abide by the Statute and its Regulations and to fulfill the obligations attaching to their posts.¹⁴⁷

[316] As regards the occasion(s) when personnel are informed of their responsibilities or functions, indicating whether this is when they begin performing them or at some later point; when said functions change; or when functions change due to a change of duties, the country under review says that personnel should be informed of their responsibilities and functions before entering public service or taking up public duties, specifically when the chief of the human resources area and the person responsible in the unit where the vacancy occurs interview each applicant on the list or shortlist of candidates. Furthermore, Article 39 of the Civil Service Statute (Law No. 1581) provides that it is incumbent upon all public servants to abide by the Statute and its Regulations and to fulfill the obligations attaching to the posts.¹⁴⁸

[317] In addition, during the on-site visit, representatives of the DGSC mentioned that human resources offices (OGEREH) organize induction and re-induction training for newly admitted or promoted personnel, in accordance with resolution DG-132-97 and Directive No. 042-P.¹⁴⁹

¹⁴⁵ Manual on Ethics in Public Service disseminated in 2013, http://www.dgsc.go.cr/dgsc/documentos/transparencia/Manual_etica_Funcion_Publica.pdf, and Presentation of the DGSC on ethics and values, pg. 7, *idem*.

¹⁴⁶ Executive Decree No. 33146 (Ethical Principles Governing Public Officials) of May 24, 2006, http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=57282&nValor3=62848&strTipM=TC

¹⁴⁷ See Response to the Questionnaire, pg. 41 *supra* note 12.

¹⁴⁸ *Ibid.*

¹⁴⁹ Presentation of the DGSC on ethics and values, pgs. 5-6, *supra* note 142.

[318] As to the existence of induction, training, or instruction programs and courses for personnel on the proper performance of their responsibilities and functions, and, in particular, to make them aware of the inherent corruption risks in their performance, the country under review mentioned in its Response to the Questionnaire that the OGEREH of each ministry, institution, and attached organ covered by the Civil Service Regime is in charge of the employment management process, which includes developing suitable education and training mechanisms to ensure that state workers individually and collectively know about the functions and responsibilities associated with their duties and the inherent risks in their performance.¹⁵⁰ In that regard, during the on-site visit, DGSC representatives presented information on a public service induction course offered by the DGSC Training and Development Center (CECADES) from its virtual campus.¹⁵¹ The campus has a platform at the service of the OGEREHs and public servants and seeks to harness expertise in this area from various quarters (Office of Public Ethics [*Procuraduría de la Ética Pública*], National Values Committee, Ombudsman, DGSC, and others) in order to design more virtual courses on the campus, both in the traditional virtual learning format and in a self-taught format. The campus can be accessed at the following link: <http://campus.dgsc.go.cr/campus/>.¹⁵² Furthermore, during the on-site visit, DGSC representatives submitted a list of courses and activities held on the subject in 2015.¹⁵³

[319] As regards the use of modern communication technologies to apprise personnel of their responsibilities or functions and to provide guidance on how to perform them honestly, during the on-site visit, the country under review, said that the CECADES virtual campus is used, as are information and communication technologies, including, for example: (1) Information capsules - using e-mail to foster ethics and values in public servants in the Civil Service Regime; (2) use of institutions' intranets to distribute relevant information on the subject; and (3) websites to divulge information on national and international events, such as the Judiciary's "International Congress on Vulnerabilities, Victims, and Survival," the content of which included ethical principles and values.¹⁵⁴

[320] With respect to the existence of bodies to which personnel can turn for information or to dispel doubts about how to perform their responsibilities or functions honestly, the country under review indicated that the OGEREH of each ministry, institution, and attached organ covered by the Civil Service Regime is charged with providing advice and guidance to management, supervisors, and staff on their responsibilities and functions as well as staging activities to ensure adequate human and social relations in their respective institutions.¹⁵⁵

[321] As regards the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed about their responsibilities or functions, the country under review said that under Articles 122 and 130 of the Regulations on the Civil Service Statute (Executive Decree No. 21), the General Directorate of the Civil Service is the governing organ with the authority to issue rules governing the processes of the Civil Service Regime's Human Resources Management System.¹⁵⁶

¹⁵⁰ See Response to the Questionnaire, pg. 41 *supra* note 12.

¹⁵¹ Virtual Campus, http://www.oas.org/juridico/spanish/mesicic5_cri.htm

¹⁵² See presentation of the DGSC on ethics and values, pg. 16, *supra* note 142.

¹⁵³ *Ibid.*, pgs. 9-10.

¹⁵⁴ *Ibid.* pgs. 14-16 and 32-33.

¹⁵⁵ See Response to the Questionnaire, pg. 45 *supra* note 12.

¹⁵⁶ *Ibid.*

[322] As to the manner in which personnel are informed of the ethical rules governing their activities, the country under review explained that this is done by notifying all administrative units of provisions that are enacted, by the corporate mail system. They are also published on the institutional intranet, distributed in print form, and imparted in courses.¹⁵⁷

[323] As to the manner in which personnel are informed of the ethical rules governing their activities, and whether that is done verbally or in writing and if a record is kept thereof, the country under review said that special written rules on public ethics are issued specifically for Executive Branch officials, and that the special regime and all other rules governing public service in the country are verbally imparted to servants of the Executive Branch in training courses and instructions.¹⁵⁸

[324] In addition, in a presentation given during the on-site visit, representatives of the DGSC provided the following information: (1) A record is kept of the content of training and/or induction programs and forms are used to record the attendance of participants in activities as well as their knowledge of the activities' content; (2) when micro capsules or communiqués are sent by e-mail, Outlook records when they were delivered to and read by the public servants who received them; and (3) public servants sign a receipt when they are given a copy of the Public Service Code of Ethics or their institution's code of ethics.¹⁵⁹

[325] With respect to the moments at which personnel are informed of ethical rules governing their activities, whether this is done when they begin performing them or at a later point, when a change in their functions entails a different set of applicable ethical rules, or when changes are made to those rules, the country under review mentions in its Response to the Questionnaire that there is no uniform policy applicable to all the public-sector institutions of which the Executive Branch is composed that governs the different times at which public servants should be apprised of the ethical standards that govern public service. The country under review also says that each organization has the obligation to take steps to meet the above aim, which may vary in scope in practice.¹⁶⁰

[326] In that connection, during the on-site visit, representatives of the DGSC said that the National Committee to Restore Values (*Comisión Nacional de Rescate de Valores*) is the supervising body responsible for directing and coordinating institutions' Values Committees. They also referred to the standards in force on public ethics, conflict of interest, and the fight against corruption, including the Law against Corruption and Illicit Enrichment in Public Service, Executive Decree No. 33146, and the Ethical Principles for Public Officials, among others.¹⁶¹

[327] As for the existence of induction, training, and instruction programs and courses for personnel on ethical rules governing their activities, the country under review mentioned in its Response to the Questionnaire that each organization in the Executive Branch has the obligation to adopt measures to inform its staff of the ethical rules that govern their official activities and the consequences of their violation. In that connection, the Manual on Ethics in Public Service is binding on all public servants and assigns responsibility for its dissemination in each institution and for establishing conditions conducive to its proper implementation therein to the management of the institution concerned. In addition, the Office of Public Ethics offers training programs to raise

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*, pg. 46.

¹⁵⁹ See presentation of the DGSC on ethics and values, pg. 18, *supra* note 142.

¹⁶⁰ Response to the Questionnaire, pgs. 46-47, *supra* note 12.

¹⁶¹ Presentation of the DGSC on ethics and values, pgs. 22-25, *supra* note `142.

awareness of the ethical standards that govern public service and the consequences of their infringement, and it is frequently invited to impart those programs in the institutions that make up the Executive Branch.¹⁶²

[328] In that respect, during the on-site visit, representatives of the DGSC presented two tables. One contained the total number of people who had received training in “Ethics and Probity in Public Service,” “Ethical Principles Governing Public Service,” and “Ethics in Universities as Public Institutions” from the Office of Public Ethics from 2013 to February 2016. The other table contained information on training provided, also by the Office of Public Ethics, on “Ethics and Probity in Public Service” to groups in the police, customs, the tax authority, and financial regulators.¹⁶³

[329] As regards the use of modern communication technologies to apprise personnel of ethical standards, during the on-site visit, the country under review, said that the CECADES virtual campus is used, as are information and communication technologies, including, for example: (1) Information capsules - using e-mail to foster ethics and values in public servants in the Civil Service Regime; (2) use of institutions’ intranets to distribute relevant information on the subject; and (3) websites to divulge information on national and international events, such as the Judiciary’s “International Congress on Vulnerabilities, Victims, and Survival,” the content of which included ethical principles and values.¹⁶⁴

[330] As regards the existence of bodies to which personnel can turn to obtain information or dispel doubts about the scope or correct interpretation of the ethical rules that govern their activities, the country under review said that officials in the Executive Branch can obtain information or answers to queries on ethical rules from the following entities: their institution’s department of human resources, their institution’s ethics and values committee, and the Office of Public Ethics.¹⁶⁵

[331] As regards the existence of a governing organ, authority or body responsible for defining, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, the country under review mentioned in its Response to the Questionnaire that each organization in the Executive Branch has the obligation to adopt measures to inform its staff of the ethical rules that govern their official activities and the consequences of their violation. In that connection, the Manual on Ethics in Public Service is binding on all public servants in the Executive Branch and assigns responsibility for its dissemination in each institution and for establishing conditions conducive to its proper implementation therein to the management of the institution concerned.¹⁶⁶

- Statutory and other legal provisions applicable to the selected personnel of the Legislative Branch, among which the following should be noted:

[332] With respect to provisions and/or measures to provide instruction to Legislative Branch personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, in its Response to the Questionnaire the country under review mentions the Job Description Manual of the Legislative Assembly,¹⁶⁷ which contains specifications and descriptions for the various

¹⁶² See Response to the Questionnaire, pg. 47 *supra* note 12.

¹⁶³ Presentation of the DGSC on ethics and values, pgs. 11-12, *supra* note 142.

¹⁶⁴ *Ibid.* pgs. 14-16 and 32-33.

¹⁶⁵ See Response to the Questionnaire, pg. 49 *supra* note 12.

¹⁶⁶ *Ibid.*

¹⁶⁷ [Job Description Manual of the Legislative Assembly](#)

types of positions in the Executive Branch; the Autonomous Regulations on Service in the Legislative Assembly,¹⁶⁸ which govern employment relations between the Legislative Assembly and its staff and establishes a set of principles and ethical duties that govern the conduct of servants of the Legislative Assembly; and the Legislative Assembly Code of Ethics and Conduct, institutional guiding principles,¹⁶⁹ which sets out principles, values, and rules of conduct as a source of inspiration for Legislative Assembly personnel.¹⁷⁰ The provisions contained in those bodies of rules apply to all staff in the Legislative Assembly. The country under review also says that the Legislative Branch has a specialized Department of Human Resources, one of the responsibilities of which is to provide information on the functions and ethical rules that apply to Legislative Branch staff and ensure that they understand them. It also has a Values Committee that promotes the institution's values.

[333] As to the way in which personnel are informed of their responsibilities or functions, the country under review mentioned that the Job Description Manual of the Legislative Assembly contains specifications and descriptions on the different types of positions in the prospective branch. In that connection, Legislative Branch personnel are verbally informed of their responsibilities and functions and the staff may also receive the information in writing upon request to the Legislative Branch's Department of Human Resources.¹⁷¹

[334] As regards the occasion(s) when personnel are informed of their responsibilities or functions, indicating whether this is when they begin performing them or at some later point; when said functions change; or when functions change due to a change of duties, the country under review says that for both types of workers in the Legislative Branch—those who serve political parties (trust personnel who rotate with each constitutional term) and administrative career personnel (regular staff appointed in accordance with the provisions of the Legislative Assembly Personnel Law)—are apprised of their responsibilities and functions when they enter public service; in other words, when they begin performing their duties.¹⁷²

[335] As to the existence of induction, training, or instruction programs and courses for personnel on the performance of their responsibilities, the country under review mentions in its Response to the Questionnaire that staff who serve political parties (trust personnel who rotate with each constitutional term) are offered a seminar attended by different institutional actors to provide information on legislative procedure, legislative techniques, political control, and information about the activities of the technical area of the Legislative Branch. The country under review also reports that the Department of Human Resources carries out individual and collective training activities for Legislative Branch workers with the aim of maintaining and developing the skills of staff, supporting their professional advancement and the achievement of the organization's goals, and, naturally, familiarizing them with the inherent risks in the performance of their duties. Finally, the country under review says that, at the request of the administrative authorities of the Legislative Branch, the

¹⁶⁸ [Autonomous Regulations on Service in the Legislative Assembly](#)

¹⁶⁹ [Legislative Assembly Code of Ethics and Conduct, institutional guiding principles](#). The purpose of the Code is to set out principles, values, and rules of conduct and to serve as a source of inspiration for the personnel of the Legislative Assembly, guiding their actions toward the excellence and best practices that all employees should observe regardless of the nature of their employment. Section III provides, *inter alia*, that the Code is an instrument for the continuous improvement and update of the organization's management and that it should be used as a tool for the induction of new permanent, internal, or trust-appointment personnel who join the institution and as an instrument for the processes of ongoing training, reflection, and assimilation within the institution as a means to promote best practices and strengthen an ethical organizational culture built on values.

¹⁷⁰ See Response to the Questionnaire, pg. 41 *supra* note 12.

¹⁷¹ *Ibid.*, pg. 42.

¹⁷² *Ibid.*, pg. 43.

Office of Public Ethics has on several occasions imparted its training programs to Legislative Branch personnel in order to make them aware of the risks of corruption.¹⁷³

[336] As regards the use of modern communication technologies to apprise personnel of their responsibilities or functions and to provide guidance on how to perform them properly, during the on-site visit, the country under review said that the Internet was used. In that regard it said that the Job Description Manual of the Legislative Assembly contained the institution's website address.¹⁷⁴

[337] As regards the existence of bodies to which personnel can turn for information or to dispel doubts about how to perform their responsibilities or functions properly, the country under review indicated that according to the Autonomous Regulations on Service in the Legislative Assembly, directors and unit chiefs are in charge of providing information or dispelling the doubts of the personnel under their direction. It says that one of the responsibilities of the Department of Human Resources is to provide information on the duties assigned to each worker in the Legislative Branch staff and ensure that they understand them.¹⁷⁵

[338] As regards the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed about their responsibilities or functions, the country under review said that the Department of Human Resources is responsible for monitoring and issuing opinions on the classification and evaluation of posts, hiring, human development and multiple related queries, and that it also advises the institution's senior management.¹⁷⁶

[339] In relation to the way in which personnel are apprised of the ethical standards that govern their activities, the country under review said that there are special written rules on public ethics specifically for Legislative Branch employees, notably the Legislative Assembly Code of Ethics and Conduct, institutional guiding principles. It also mentions that Legislative Branch servants are informed of them verbally by means of training courses and instructions, of which no records are kept. The country under review says that, internally, the Legislative Branch produces "Parliamentary Life" (*Vida Institucional Parlamentaria*), a series of online short informative films to continuously disseminate and promote institutional values both within the organization and beyond.¹⁷⁷

[340] As regards occasions when personnel are informed of ethical rules governing their activities, the country under review says that the Legislative Branch periodically produces informative short films as part of the "Parliamentary Life" (*Vida Institucional Parlamentaria*) series to continuously disseminate and promote institutional values both within the organization and beyond.¹⁷⁸

[341] As regards the existence of induction, training, and instruction programs and courses for personnel on ethical rules governing their activities, the country under review says that the Legislative Assembly has produced a series of written and audiovisual communication materials with the following objectives: (a) to refresh the institution's guiding values and principles using clear and concise examples; (b) to transmit colloquial messages that identify and brand legislative staff as

¹⁷³ *Ibid.* pgs. 43-44.

¹⁷⁴ Presentation on the Legislative Assembly, Amplification of the Responses of the Legislative Assembly of the Republic of Costa Rica to the Questionnaire for the Fifth Round of Review of the MESICIC, pg. 4, http://www.oas.org/juridico/spanish/mesicic5_cri.htm

¹⁷⁵ See Response to the Questionnaire, pg. 45 *supra* note 12.

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*, pg. 46.

¹⁷⁸ *Ibid.*, pg. 47.

ethical individuals who are ready to serve; and (c) to make a positive contribution to enhancing the institution's image and that of its personnel in the eyes of public opinion. The Legislative Branch also receives support from the Office of Public Ethics. The Office of Public Ethics offers training programs to raise awareness of the ethical standards that govern public service and the consequences of their infringement, and on several occasions has been invited by the Legislative Branch to impart those programs for its personnel.¹⁷⁹

[342] As to the use of modern communication technologies to apprise personnel of the ethical rules in place, the country under review referred to the use of the "Parliamentary Life" series and audiovisual communications to inform personnel of the ethical rules governing their activities.¹⁸⁰

[343] As regards the existence of bodies to which personnel can turn to obtain information or dispel doubts about the scope or correct interpretation of ethical rules, the country under review said that personnel can obtain information or answers to queries on ethical rules from the following four internal entities: the Department of Human Resources, the Department of Strategic Development, the Legal Department, and the Committee on Ethics and Restoration of Values. Furthermore, public servants, in general, can approach the Office of Public Ethics.¹⁸¹

[344] As regards the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of ethical rules governing their activities, the country under review said that there are two entities in charge of issues relating to ethical standards: the Department of Strategic Development and the Committee on Ethics and Restoration of Values. Those bodies are specifically in charge of assigning responsibility for planning, stewardship, coordination, control, and follow-up on measures to promote ethics in the institution.¹⁸²

- Statutory and other legal provisions applicable to the personnel of the Judicial Branch, among which the following should be noted:

[345] As regards provisions and/or measures to provide instruction to Judiciary personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, the Judiciary has a Department of Human Resources (*Dirección de Gestión Humana*) the responsibilities of which include providing information on the functions of, and ethical rules that apply to, servants of the Judiciary and ensuring that they understand them. It also has an Ethics and Values Committee that promotes and fosters values in judicial activities. The Judiciary also relies on special internal regulations as a mechanism to provide information on the work-related responsibilities and ethical duties of judicial officials. Specifically, there are four instruments for that purpose: (a) Post Classification and Description Manual, <http://sitios.poder-judicial.go.cr/personal/manual.htm>; (b) Ethical Management Guidelines for Ethics and Values Committees, <https://cnrvcr.files.wordpress.com/2014/06/lineamientos-para-las-ciev.pdf>; (c) Axiological Policy of the Judiciary, http://www.escuelajudicial.ac.cr/eticayvalores/images/descargas/politica_axiologica.pdf; and (d) Manual of Common Values, http://sitios2.poder-judicial.go.cr/comisiondevalores/manual_de_valores.htm. Finally, the country under review says that it uses an induction program for orientation of judicial personnel on the Judiciary's overall

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid*, pg. 49.

¹⁸¹ *Ibid.*

¹⁸² *Ibid*, pg. 50.

organization and on the specific tasks and roles that pertain to individual positions of employment under a crosscutting approach to impart the organization's common values. It is divided into three key stages: (a) Awareness raising for unit and sections through workshops and tours; (b) a virtual general induction course; and (c) specific induction on the position by means of mentoring by the unit or section instruction and guidance personnel assigned by the unit or section chief.¹⁸³

[346] As to the way in which personnel are informed of their responsibilities and functions, the country under review again mentioned the Post Classification and Description Manual, which contains a written description of the functions and responsibilities of each post in the organization; and a Specific Induction Manual,¹⁸⁴ for unit chiefs, guides, and instructors. The Manual has a series of objectives, such as transmitting the organizational culture of, and information on, the institution to the inductee and providing them with basic information about the workplace and their specific position of employment. The country under review also says that there is a document entitled “Policies and Obligations of the Judiciary Induction Program,”¹⁸⁵ which defines the limits and scope of the entities and individuals involved in the Induction Program’s implementation and its three components (awareness raising for units/sections, general induction, and specific induction), in order to provide guidance to recent entrants to the Judiciary, direct their energies toward the institution’s strategic objectives, establish the obligations of the individuals involved in the Program’s implementation, provide information about the consequences of violating obligations, and ensure the Program’s success. No records are kept as to whether an individual received specific induction training; however, pass records are kept for the virtual general induction course.¹⁸⁶

[347] With respect to the moments at which personnel are informed of their responsibilities and functions, whether this is done when they begin performing them or at a later point, when their functions are modified, or when those functions change because of a change of position, the country under review said that that occurs in the first few days after the person’s entry or move and is what the manual identifies as specific induction, after which the individual will be required to undergo general induction, which consist of a virtual course. The country under review also notes that the extent of the specific and general induction will depend on whether the individual concerned is a new entrant or has transferred from another office where their duties and position were different.¹⁸⁷

[348] As to the existence of induction, training, or instruction programs and courses for personnel on the proper performance of their responsibilities, the country under review mentioned in its Response to the Questionnaire that there are seven programs: (1) The Judiciary Induction Program, a mandatory virtual course that covers, *inter alia*, aspects related to the regulatory framework, ethics, and institutional policy. It includes knowledge tests and is obligatory for all Judiciary personnel (<http://moodle.poder-judicial.go.cr/moodle21/>); (2) The Basic Judicial Training Program, a mandatory virtual program that includes courses on ethics in the Judiciary, public service, and related aspects. It includes knowledge tests and is obligatory for all Judiciary personnel (<http://moodle.poder-judicial.go.cr/moodle21/>); (3) Initial Training Program for Aspirants to the Judicature, which includes an on-site course entitled “Ethical Implications of Judicial Office,” in which prospective judges receive basic training on the duties and ethical responsibilities associated with their office (<http://sitios2.poder-judicial.go.cr/escuelajudicial/>); (4) Distance-Learning Program for Judiciary Technical Staff, which includes an on-site course titled “Judicial Ethics” in which prospective

¹⁸³ *Ibid.*, pg. 41.

¹⁸⁴ Specific Induction Manual, http://www.oas.org/juridico/spanish/mesicic5_cri.htm

¹⁸⁵ Policies and Obligations of the Judiciary Induction Program, http://www.oas.org/juridico/spanish/mesicic5_cri.htm

¹⁸⁶ See Response to the Questionnaire, pg. 42 *supra* note 12.

¹⁸⁷ *Ibid.*, pg. 43.

Judiciary technical staff received basic training on the duties and ethical responsibilities associated with their position (<http://sitios2.poder-judicial.go.cr/escuelajudicial/>); (5) Induction Program for Assistant Prosecutors which is designed for aspirants to the position of interim assistant prosecutor in the Public Prosecutions Service. The Public Prosecutions Service makes it a requirement for all aspirants to pass the Basic Judiciary Training Program, which includes a mandatory course titled “Our Values: A Path to Human Fulfillment,” a topic that has been made a cross-cutting theme in its evaluation and training process; (6) the Basic Initial Training Program for Public Defenders. The Public Defender Office makes it a requirement of its initial program for all aspirants to pass the Basic Judiciary Training Program, which includes a mandatory course titled “Our Values: A Path to Human Fulfillment”; and (7) the Basic Initial Training Program for Public Defenders. As part of its initial training program, the Judicial Investigation Agency requires aspirants to pass the courses under the Basic Judicial Training Program, which includes the mandatory course “Our Values: A Path to Human Fulfillment.”¹⁸⁸

[349] As regards use of modern communication technologies to apprise personnel of their responsibilities or functions and to provide guidance on how to perform them properly, the country under review said that the following tools are used: the virtual course platforms, e-mail, the social media site Facebook, and the intranet.¹⁸⁹ In that connection, the Judicial Branch has C@pacítate,¹⁹⁰ a virtual platform where officials can enroll in virtual courses and programs that are personalized and free.

[350] As regards the existence of bodies to which personnel can turn for information or to dispel doubts about how to perform their responsibilities and functions properly, the country under review explains that according to the Job Description Manual of the Judiciary the various chiefs of section/unit are expected to provide information or dispel the doubts of their personnel as to how to perform their responsibilities and functions properly. In offices where the induction program is already being implemented the guidance and instruction personnel may also do likewise.¹⁹¹

[351] As to the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed about their responsibilities and functions, the country under review said that the Department of Human Resources, as part of its recruitment and selection processes, provides guidance to those entering the organization and its respective offices, and that the sections and units are responsible for the induction of their staff based on the information imparted at the awareness workshops and on the tools distributed at those workshops (manuals, e-books, and supporting information). The country under review also noted that the Department of Human Resources' training management process is jointly responsible for delivering the awareness workshops, distributing the tools to sections/units, assisting in the selection of guidance and instruction personnel in each office, keeping a record of the general and specific induction processes, and evaluating the induction program and its implementation in offices where sections/units have already attended the workshops and received the tools.¹⁹²

[352] In relation to the way in which personnel are apprised of the ethical rules that govern their activities, the country under review mentioned in its Response to the Questionnaire that the Judiciary

¹⁸⁸ *Ibid.*, pg. 44.

¹⁸⁹ *Ibid.*, pg. 45.

¹⁹⁰ Available at <http://moodle.poder-judicial.go.cr/moodle21>

¹⁹¹ See Response to the Questionnaire, pg. 45 *supra* note 12.

¹⁹² *Ibid.*, pg. 46.

uses e-mail, noticeboards distributed throughout all Judiciary buildings, and a virtual noticeboard to divulge new directives, policies, or general rules and regulations on the subject. The platforms of virtual training courses and the [Costa Rican Juridical Information System](#).¹⁹³

[353] As for the occasions when personnel are informed of ethical rules governing their activities, the country under review says that this occurs in the Judiciary Induction Program and in the Basic Judicial Training Program, both of which are mandatory for all judicial personnel to attend within the first year following their appointment. Changes in ethical standards are notified by the following means: e-mail, circulars, information campaigns, and notice boards distributed throughout all Judiciary buildings.¹⁹⁴

[354] As to the existence of induction, training, or instruction programs and courses for personnel on the ethical rules that govern their activities, the country under review mentioned in its Response to the Questionnaire that there are seven programs: (1) The Judiciary Induction Program, a mandatory virtual course that covers, *inter alia*, aspects related to the regulatory framework, ethics, and institutional policy. It includes knowledge tests and is obligatory for all Judiciary personnel (<http://moodle.poder-judicial.go.cr/moodle21/>); (2) The Basic Judicial Training Program, a mandatory virtual program that includes courses on ethics in the Judiciary, public service, and related aspects. It includes knowledge tests and is obligatory for all Judiciary personnel (<http://moodle.poder-judicial.go.cr/moodle21/>); (3) Initial Training Program for Aspirants to the Judicature, which includes an on-site course entitled “Ethical Implications of Judicial Office,” in which prospective judges receive basic training on the duties and ethical responsibilities associated with their office (<http://sitios2.poder-judicial.go.cr/escuelajudicial/>); (4) Distance-Learning Program for Judiciary Technical Staff, which includes an on-site course titled “Judicial Ethics” in which prospective Judiciary technical staff received basic training on the duties and ethical responsibilities associated with their position (<http://sitios2.poder-judicial.go.cr/escuelajudicial/>); (5) Induction Program for Assistant Prosecutors which is designed for aspirants to the position of interim assistant prosecutor in the Public Prosecutions Service. The Public Prosecutions Service makes it a requirement for all aspirants to pass the Basic Judiciary Training Program, which includes a mandatory course titled “Our Values: A Path to Human Fulfillment,” a topic that has been made a cross-cutting theme in its evaluation and training process; (6) the Basic Initial Training Program for Public Defenders. The Public Defender Office makes it a requirement of its initial program for all aspirants to pass the Basic Judiciary Training Program, which includes a mandatory course titled “Our Values: A Path to Human Fulfillment”; and (7) the Basic Initial Training Program for Public Defenders. As part of its initial training program, the Judicial Investigation Agency requires aspirants to pass the courses under the Basic Judicial Training Program, which includes the mandatory course “Our Values: A Path to Human Fulfillment.”¹⁹⁵

[355] In addition, in its Response to the Questionnaire the country under review says that the document “Policies and Obligations of the Judiciary Induction Program” contains a section on violation of obligations that applies to those involved in implementing the Induction Program and that the Judiciary is in the process of adopting penalizing regulations on training that apply to entities and individuals who take part in instruction and training processes and establish the consequences for the violations concerned.¹⁹⁶

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*, pg. 47.

¹⁹⁵ *Ibid.* pgs. 47-48.

¹⁹⁶ *Ibid.*, pg. 48.

[356] As regards use of modern communication technologies to apprise personnel of existing ethical rules, the country under review said that the following tools are used: the virtual course platforms, e-mail, the social media site Facebook, and the intranet.¹⁹⁷ In that connection, the Judicial Branch has C@pacitate, a virtual platform where officials can enroll in virtual courses and programs that are personalized and free.

[357] The country under review also mentioned that the Office of the Attorney General of the Republic and the Office of the Comptroller General use their websites to provide information about the ethical framework that governs public service in the country and about the scope of that framework. For example, they provide access to an annotated version of the Law on Corruption and Illicit Enrichment of Public Servants jointly prepared by those institutions that includes comments with observations on the administrative and judicial jurisprudence with respect to each provision.¹⁹⁸

[358] As regards the existence of bodies to which personnel can turn to obtain information or dispel doubts about the scope or correct interpretation of ethical rules, the country under review said that in the Judiciary personnel can obtain information or answers to queries on ethical rules from the following three internal entities: the Committee on Ethics and Values, the Council of Notables, and the Technical Secretariat for Ethics and Values. Furthermore, public servants, in general, can approach the Office of Public Ethics.¹⁹⁹

[359] As regards the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of ethical rules governing their activities, the country under review said that there are two entities in charge of issues relating to ethical standards: the Committee on Ethics and Values and the Department of Human Resources. In addition, the Internal Audit Office and the Judicial Inspection Office conduct audits on ethics and review, investigate, and decide disciplinary faults, respectively.²⁰⁰

1.2 Adequacy of the legal framework and/or other measures

[360] With respect to the statutory and other legal provisions reviewed by the Committee on the measures intended to provide instructions to government personnel of the three bodies selected by the country under review that ensure proper understanding of their responsibilities and the ethical rules governing their activities, the Committee notes that they are relevant for promoting the purposes of the Convention.

[361] Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures:

- With respect to the provisions and/or other measures applicable to the **selected** personnel of the Executive Branch, the Committee notes the following:

[362] As regards the occasions at which personnel are informed about their responsibilities and functions, the Committee notes that this mainly occurs before they take up their duties, specifically during the interview phase of the hiring process. In addition, the country under review indicates that, according to Article 39 of the Civil Service Statute, it is incumbent upon all public servants to abide

¹⁹⁷ *Ibid.* pgs. 48-49.

¹⁹⁸ *Ibid.*, pg. 49.

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*, pg. 50.

by the Statute and its Regulation and to fulfill the obligations attached to their posts. In that connection, the Committee notes that under Article 1 of Resolution DG-132-97, human resources units are responsible for formulating and developing induction programs for both new employees and those who, because of promotions, relocations, swaps, and other movements of a similar nature, experience significant changes in their duties.

[363] As regards the occasions on which personnel are informed of their ethical duties, the country under review said that special written rules on public ethics are issued specifically for Executive Branch officials, and that the special regime and all other rules governing public service in the country are verbally imparted to servants of the Executive Branch in training courses and instructions.²⁰¹

[364] The Committee notes, however, that the country under review, in its Response to the Questionnaire, noted the following difficulty:

[365] *“The public-sector entities that make up the Executive Branch have an obligation to take steps to ensure that their servants know and properly understand their functions and responsibilities. However, there is a lack of uniformity in terms of the form, timing, and basic content of the activities implemented by each organization, which hampers follow-up on performance of that obligation and measurement of results.”*

[366] The same observation was made with respect to instruction given to personnel to ensure proper understanding of the ethical rules that govern their activities.²⁰² The country under review also says that due to the fact that each organization has the obligation to take steps to meet the above aim, in practice, their scope varies.²⁰³

[367] In reference to those difficulties, during the on-site visit, representatives of the DGSC said that there is a Job Description Manual and that the DGSC Training and Development Center (CECADES) is responsible for providing training under the annually approved Institutional Training Plans, which include activities relating to ethics and combating corruption. In addition, a performance evaluation is carried out annually across the entire Civil Service Regime.²⁰⁴

[368] In addition, during the on-site visit, the country under review indicated that, in keeping with the policies and guidelines of the National Committee to Restore Values, each institution in the civil service is to establish its own ethics committee or commission based on that Committee’s policies and guidelines and to put into practice the ethics management procedure to be used.²⁰⁵ It also mentioned various norms in force, including the Law on Corruption and Illicit Enrichment of Public Servants, Executive Decree No. 33146, the Ethical Principles for Public Officials, and the DGSC policy on inclusion of ethics and values institutional management.

²⁰¹ *Ibid.*, pg. 46.

²⁰² *Ibid.*, pg. 54, where the country under review mentions: *“The public-sector entities that make up the Executive Branch have an obligation to take steps to ensure that their servants know and properly understand the ethical rules that govern their activities. However, there is a lack of uniformity in terms of the form, timing, and basic content of the activities implemented by each organization, which hampers follow-up on performance of that obligation and measurement of results.”*

²⁰³ Response to the Questionnaire, pgs. 46-47, *supra* note 12.

²⁰⁴ Presentation of the DGSC on ethics and values, pgs. 37, *supra* note 142.

²⁰⁵ *Ibid.*, pg. 21.

[369] The Committee notes that while these efforts are laudable, they do not appear to address the difficulty expressed by the country under review, notably that there is a lack of uniformity in the Executive Branch on the manner, occasions and minimum content of the actions to be implemented by each organization, which ensure that personnel are informed of their responsibilities and ethical duties in the performance of their duties. Given the foregoing, the Committee believes that the DGSC, as the oversight agency for governing the processes of the Human Resources Management System of the Civil Service Regime, should issue directives in order ensure that the institutions subject to said Regime provide their personnel standardized information on their responsibilities and ethical duties; and require that these institutions report back on the activities undertaken on a yearly basis to this end, so that these activities can be properly reviewed and assessed to ensure their adequacy. The Committee will formulate recommendations. (See recommendations 1.4.1, 1.4.2, 1.4.3, and 1.4.4 of Chapter III of this Report).

- With respect to the provisions and/or other measures applicable to the selected personnel of the Legislative Branch, the Committee notes the following:

[370] The country under review observes that both types of workers in the Legislative Branch—those who serve political parties (trust personnel who rotate with each constitutional term) and administrative career personnel (regular staff appointed in accordance with the provisions of the Legislative Assembly Personnel Law)—are apprised of their responsibilities and functions when they enter public service; in other words, when they begin performing their duties. However, it is not indicated if training is also provided in order to ensure that officials properly understand their responsibilities when their functions are modified or when those functions change because of a change of position. The Committee will make a recommendation. (See recommendation 1.4.5 in Chapter III of this Report.)

[371] The Committee also notes that in its Response to the Questionnaire the country under review mentioned that the Legislative Branch uses the Internet to advise personnel about their responsibilities and functions and guide them in their appropriate performance. To help ensure that its personnel properly understand their responsibilities, the Legislative Branch should consider incorporating modern communication technologies, including but not limited to videoconferencing and virtual courses. The Committee will make a recommendation. (See recommendation 1.4.6 in Chapter III of this Report.)

[372] The Committee also observes that in its Response to the Questionnaire, the country under review mentioned the following difficulty:

[373] *“The seminar offered by the Department of Human Resources of the Legislative Assembly to trust personnel admitted for each constitutional term does not enjoy a 100% attendance rate over the course of its entire duration. It should be added that there are no institutional repercussions in place to encourage participation in that induction process.”*

[374] The Committee believes that the country under review should consider implementing provisions or other relevant measures to make induction training compulsory for all Legislative Assembly staff, whether they be trust or administrative career personnel, in order to ensure a proper understanding of their responsibilities. The Committee will make a recommendation. (See recommendation 1.4.7 in Chapter III of this Report.)

[375] With respect to occasions when personnel are informed of ethical rules governing their activities, that is, whether this is done when they begin performing them or at a later point, when a change in their functions entails a different set of applicable ethical rules, or when changes are made to those rules, the Committee notes that the country under review resorts to the production of informative short films as part of the "Parliamentary Life" (*Vida Institucional Parlamentaria*) series to continuously disseminate and promote institutional values both within the organization and beyond. The Committee notes, however, that while these informative short films are useful for divulging and promoting the institution's values, it is not clear to what extent they contain information about ethical rules that govern officials' activities. For example, the Legislative Branch has the Legislative Assembly Code of Ethics and Conduct, with the institution's guiding principles that should be made available to all personnel when they begin performing their functions, when a change in their functions entails a different set of applicable ethical rules, or when changes are made to those rules. The Committee will make a recommendation. (See recommendation 1.4.8 in Chapter III of this Report.)

[376] The Committee also observes that during the on-site visit, Legislative Assembly representatives said that the Office of the Public Ethics gave a series of talks in October 2013 on two subjects: "Ethics and Probity in Public Service" and "Criminal Liability of Public Servants" and provided copies of the attendance records, which showed that about 270 legislative assembly personnel took part.²⁰⁶ The Committee notes that while these tools are useful, a structured training program on ethical standards should exist that sets out the courses offered and a timetable. That training program should also be scheduled annually, taking into account the needs of Legislative Branch personnel, and should include modules on the Legislative Assembly Code of Ethics and Conduct that complement the programs of courses offered by the Office of Public Ethics. The Committee will make a recommendation. (See recommendation 1.4.9 in chapter III of this Report)

[377] Finally, implementing a formal training program on ethical standards for Legislative Branch personnel will require funding that would have to be made available annually. To that end, the country under review should consider furnishing the Legislative Branch with the necessary budgetary, technological, and human resources to carry out a training program that ensures that its personnel properly understand the ethical rules that govern their activities. The Committee will make a recommendation. (See recommendation 1.4.10 in chapter III of this Report)

- With respect to the provisions and/or other measures applicable to the personnel of the Judicial Branch, the Committee notes the following:

[378] The Committee notes that the country under review, in its Response to the Questionnaire, observed the following difficulty:²⁰⁷

[379] *"The Judiciary's Department of Human Resources and Technical Secretariat for Ethics and Values identified two main hurdles when it comes to their various employees properly understanding their responsibilities and functions: (a) Judicial servants have difficulty taking part in training processes (due to lack of available time and interest); and (b) limited financial resources for implementing more measures to disseminate and promote ethics."*

[380] First, the Committee notes that there are no provisions that make training for new personnel compulsory. In that regard, the Committee observes that, where the Executive Branch concerned,

²⁰⁶ Archived in the Technical Secretariat of the MESICIC.

²⁰⁷ Response to the Questionnaire, pg. 54, *supra* note 12.

Article 5 of Resolution DG-135-2013 (Standards to Govern the Training and Development System in the Civil Service Regime) establishes the obligation for public servants of the Executive Branch to undergo training and technical enhancement programs required for the proper performance of their duties and to contribute to the transfer of the knowledge acquired.²⁰⁸

[381] With respect to the above, the Committee believes that the country under review should consider implementing provisions or other relevant measures to make training for new personnel compulsory, as necessary, in the Judicial Branch. The Committee will make a recommendation. (See recommendation 1.4.11 in chapter III of this Report)

[382] In addition, taking into account the difficulties noted above, the Committee considers that the country under review may consider adopting relevant measures so that judicial servants have the necessary time to participate in training activities. The Committee will formulate a recommendation. (See recommendation 1.4.12 in chapter III of this Report)

[383] As well, the Committee observes that while many steps are taken to ensure that the personnel of the Judicial Branch are informed of their ethical rules governing their activities, it appears there are no formal training programs in place for this purpose.

[384] The Committee considers that a structured training program should exist that sets out the courses offered and a timetable. That training program should also be scheduled annually, taking into account the needs of Legislative Branch personnel, and should include modules on the Manual of Common Values. The Committee will make a recommendation. (See recommendation 1.4.13 in chapter III of this Report)

[385] Having such a program might also address a difficulty identified by the country under review, whereby:

[386] *“The Judiciary's Department of Human Resources and Technical Secretariat for Ethics and Values mentioned as a difficulty with respect to their various employees properly understanding their responsibilities and functions the fact that there is confusion in national and international entities with respect to concepts, scope, and limits in relation to ethics, disciplinary rules, and the law. That complicates internal efforts at clarification and education internally.”*

[387] Finally, implementing a formal training program on ethical standards for Judicial Branch personnel will require funding that would have to be made available annually, and the lack of financial resources is another difficulty cited by the country under review above. To that end, the country under review should consider providing the Judiciary with the necessary budgetary, technological, and human resources to carry out a training program that ensures that its personnel properly understand the ethical rules that govern their activities. The Committee will make a recommendation. (See recommendation 1.4.14 in chapter III of this Report)

1.3 Results

[388] In its Response to the Questionnaire and during the on-site visit, the country under review described the following results from the application of the provisions and/or measures relating to

²⁰⁸ Resolution DG-135-2013 (Standards to Govern the Training and Development System in the Civil Service Regime), *supra* note 141.

instruction given to government personnel in order to ensure proper understanding of their responsibilities and the ethical rules governing their activities.

[389] – With respect to the Executive Branch, the country under review mentioned in its Response to the Questionnaire that in 2013 the DGSC drafted a Manual on Ethics in Public Service, hardcopies of which were distributed to the human resources offices at all 47 institutions under the Civil Service Regime, as well as posting it on its website. The DGSC Ethics Committee also held talks and presentations on the Manual both for DGSC personnel and for other Civil Service Regime entities.²⁰⁹

[390] In addition, during the on-site visit, the country under review provided examples of courses implemented in 2015 by a number of human resources offices in different ministries, institutions, and attached organs under the Civil Service Regime:²¹⁰

Name of the institution	Activity	Number of participants	Duration (hours)	Scheme
MEIC	Talk on ethics in public service	25	3	Attendance
SINAC	Internal control and SEVRI (including a topic on ethics and public service)	50	16	Participation
Office of the Attorney General of the Republic	Talk on institutional principles and values and ethical duties and obligations	8	4.	Participation
Ministry of the Interior and Police	Professional ethics	14	24	Participation
Ministry of Public Works and Transportation	Institutional Code of Ethics: From Knowledge to Practice	79	12	Participation
Ministry of Public Works and Transportation	Course "Building the MOPT We Want: Strategic and Emotionally Intelligent Leadership	13	36	Participation
Ministry of Public Works and Transportation	1. Talks: 1. Institutional Code of Ethics of the Public Sector	37	3	Attendance
Ministry of Public Works and Transportation	Institutional Ethics: From Knowledge to Practice	22	3	Attendance
Ministry of Public Works and Transportation	Ethics and Probity in Public Service	62	3	Attendance
Ministry of Public Works and Transportation	Right of Access to Public Information	54	3	Attendance
Ministry of Public Works and Transportation	Criminal Liability of Public Officials	75	3	Attendance
Ministry of Public Works and Transportation	Course on Ethics in Public Service	1	32	Participation
Ministry of Public Works and Transportation	Workshop "Institutional Code of Ethics: From Knowledge to Practice"	356	7	Attendance
Bureau of Immigration and Alien Affairs	Professional ethics	3	24	Participation
Bureau of Immigration and Alien Affairs	Commitment and respect for the user	23	8	Attendance
Bureau of Immigration and Alien Affairs	Course on Ethics	6	30	Participation
Bureau of Immigration and Alien Affairs	The Value of Trust	62	8	Attendance
Name of the institution	Activity	Number of participants	Duration (hours)	Scheme
General Directorate of the Civil Service	Third National Congress on Ethical Management (Public Administration, the Private Sector, and the Citizenry)	2	16	Attendance

²⁰⁹ See Response to the Questionnaire, pg. 51 *supra* note 12.

²¹⁰ Presentation of the DGSC on Ethics and Values, pgs. 9-10, *supra* note 142.

Ministry of the Presidency	Ethics and Professional Conduct	16	30	Achievement
Ministry of Culture and Youth	Third National Congress on Ethical Management (Public Administration, the Private Sector, and the Citizenry)	14		Participation
Ministry of Culture and Youth	Workshop on Values: Reaching for the Impossible	45	3	Attendance
Ministry of Culture and Youth	Ethics in Public Service (second edition)	1		Participation
Ministry of Culture and Youth	Workshop on Ethics in Public Service	1		Attendance
MIVAH	Third National Congress on Ethical Management	4	16	Participation
MIDEPLAN	Values Banquet 2015	100	4	Participation
DINADECO	Ethics and Professional Conduct	20	30	Achievement
National Roads Board	THIRD INTERNATIONAL CONGRESS ON ETHICS	7	16	Participation
Costa Rican Institute on Drugs	Values Week Rally	80	4	Attendance
Ministry of Finance	Ethics in Public Service (Third edition)	14	32	Achievement
Ministry of Finance	Conflict Management and Resolution (Second edition)	25	48	Achievement
Ministry of Finance	Conflict Management and Resolution (Third edition)	27	48	Achievement
Ministry of Finance	Conflict Management and Resolution (Fourth edition)	16	48	Achievement
Ministry of Labor and Social Security	Ethics and Probity in Public Service	One activity a month is held for 30 people each time	2	Attendance
Ministry of Labor and Social Security	Criminal Liability of Public Officials	One activity a month is held for 30 people each time	2	Attendance

[391] A table was also presented on the total number of people who received training in “Ethics and Probity in Public Service,” “Ethical Principles Governing Public Service,” and “Ethics in Universities as Public Institutions” by the Office of Public Ethics from 2013 to February 2016.²¹¹

Year	Topic	Number of persons
2013	Ethics and Probity in Public Service	1,665
	Ethical Principles in Public Service	155
	Total	1,820
2014	Ethics and Probity in Public Service	2010
2015	Ethics and Probity in Public Service	2075

²¹¹ *Ibid*, pg. 11.

	Ethics in Universities as Public Institutions	100
	Total	2,175
Feb. 2016		
	Ethics and Probity in Public Service	343
	Total	6,348

[392] During the on-site visit the following table was presented with information on training provided by the Office of Public Ethics on “Ethics and Probity in Public Service” to groups in the police, customs, the tax authority, and financial regulators.²¹²

Year	Profile	Institution	Participants	Activities
2013	Traffic Police Cadets	MOPT	55	3
	Members of the Board of Governors	BNCR	17	1
	Technical and managerial staff	MEIC	41	1
	Office chiefs in the technical-administrative sector	OIJ	20	1
	Technicians and professionals	Sugeval	45	1
2014	Legal advisers	BCCR	24	1
	Professional, administrative and managerial staff	MEIC	28	1
2015	Department coordinators and directors	BCCR	38	1
2016	-	-	-	-

[393] The Committee finds that it does not have any other information showing the coverage and content of training that the Executive Branch provides. Given that the information supplied refers exclusively to training on ethics, it contains no data on any kind of induction or ongoing training dispensed by this branch of government to its personnel.

[394] In light of the foregoing, as regards instruction given to its personnel to ensure proper understanding of their responsibilities and functions, the Executive Branch should consider compiling and analyzing information that covers aspects such as the nature and periodicity of training imparted; numbers of officials trained; preparation of guidelines for public officials on the proper performance of their functions and to alert them to the risks of corruption inherent in the performance of their

²¹² *Ibid*, pg. 12.

responsibilities; responses to queries from public officials about the correct performance of their functions and the use of modern technologies for that purpose; and indicators to show that they have understood the information and are applying it in the performance of their functions.

[395] Furthermore, with respect to instruction to ensure proper understanding by its personnel of the ethical rules that govern their activities, the Executive Branch should consider preparing a summary of results in that regard that provides information on, for example: preparation of guidelines for public servants on the scope and interpretation of ethical rules and the consequences of their infringement for public-sector institutions and infringers; responses to queries made by public servants in that regard and the use of modern technologies for that purpose; activities undertaken to determine if the goal of ensuring that ethical rules are understood has indeed been met; and measures or actions adopted by the authorities or entities responsible for ensuring that instruction is properly provided for that purpose and for seeing to it that the provisions and/or measures in place are applied. The Committee will make recommendations in that regard. (See recommendations 1.4.15 and 1.4.16 in Chapter III of this Report).

[396] As for the Legislative Branch, in its Response to the Questionnaire, the country under review indicated the following with respect to results obtained in the application of provisions and/or measures relating to instruction given to government personnel in the Legislative Branch to ensure proper understanding of their responsibilities and functions:²¹³

[397] *“At the start of each constitutional term the Department of Human Resources of the Legislative Branch organizes a seminar for new deputies and advisers (approximately 330 people) to inform them about legislative procedure, legislative techniques, political control, and information about the activities of the technical area of the Legislative Branch.*

[398] *In addition, the officers of the legislature adopted the Autonomous Regulations on Service in the Legislative Assembly, which govern employment relations between the Legislative Assembly and its staff and establish a set of principles and ethical duties that govern the conduct of servants of the Legislative Assembly.”*

[399] Furthermore, during the on-site visit, representatives of the Legislative Branch provided the following table which provides details about the free courses offered by the Department of Human Resources in the second and third quarters of 2014, respectively:²¹⁴

Name of the Activity	SEX		LOCATION		TOTALS
	F	M	ADMINISTRATIVE	PARTY	
One talk on preparation for retirement	12	4	16		16
Parliamentary Law	12	9	3	18	21
Bidding terms and conditions and contract administration	9	11	20		20

²¹³ See Response to the Questionnaire, pg. 50 *supra* note 12.

²¹⁴ Presentation by the Legislative Assembly, pg. 8, *supra* note 174.

Induction to parliamentary procedure and organizational structure	49	62		111	111
Introduction to computing	5	1	6		6
Research for drafting proposed laws	7	9	4.	12	16
National Financial System Program	1				1
Grand total	95	96	49	141	191

Name of the Activity	SEX		LOCATION		TOTALS
	F	M	ADMINISTRATIVE	PARTY	
Talk on Internal Control	12	8	14	6	20
Talk on Ethics and Probity in Public Service and Criminal Liability of Public Officials	33	23	32	24	56
Parliamentary Law	12	11	9	14	23
Parliamentary Procedure, 1 group	14		4.	10	16

[400] The Committee finds that it does not have any other information showing the coverage and content of training that the Legislative Branch provides to its personnel to ensure proper understanding of the ethical rules that govern their activities; the information provided refers to induction training in general terms.

[401] In light of the foregoing, as regards instruction given to its personnel to ensure proper understanding of their responsibilities and functions, the Legislative Branch should consider compiling and analyzing information that covers aspects such as the nature and periodicity of training imparted; preparation of guidelines for public officials on the proper performance of their functions and to alert them to the risks of corruption inherent in the performance of their responsibilities; responses to queries from public officials about the correct performance of their functions and the use of modern technologies for that purpose; and indicators to show that they have understood the information and are applying it in the performance of their functions.

[402] Furthermore, with respect to instruction to ensure proper understanding by its personnel of the ethical rules that govern their activities, the Legislative Branch should consider preparing a summary of results in that regard that provides information on, for example: preparation of guidelines for public servants on the scope and interpretation of ethical rules and the consequences of their infringement for public-sector institutions and infringers; responses to queries made by public servants in that regard and the use of modern technologies for that purpose; activities undertaken to

determine if the goal of ensuring that ethical rules are understood has indeed been met; and measures or actions adopted by the authorities or entities responsible for ensuring that instruction is properly provided for that purpose and for seeing to it that the provisions and/or measures in place are applied. The Committee will make recommendations in that regard. (See recommendations 1.4.17 and 1.4.18 in Chapter III of this Report).

[403] - With respect to the Judiciary, the country under review mentions in its Response to the Questionnaire that the Judiciary's Department of Human Resources and Technical Secretariat for Ethics and Values have recorded a series of results obtained from measures implemented to ensure that their various employees properly understand their responsibilities and functions:

[404] The General Induction Course approved by the Superior Council in 2015 has been imparted to 1,190 judicial officials. The following have been used as guides to provide orientation to judicial servants on that course: (1) [Manual of Common Values \(Code of Ethics\)](#); (2) [Recommendations of the Council of Notables](#); (3) [Judicial Ethics Logbooks](#); and (4) [Other academic documents, books, and magazines](#). The following modern communication technologies are used to deliver the courses: (1) [Virtual Community](#); (2) [Facebook account of the Judiciary](#); 3) Virtual training platforms, which can be visited at <http://sitios2.poder-judicial.go.cr/escuelajudicial/> y <http://moodle.poder-judicial.go.cr/moodle21/>. The country under review also said that the following verification activities are applied in the Judiciary: (1) [Diagnostic Assessment of Timeliness in the Judiciary](#), which explored the ethical environment and identified areas where measures were necessary under the axiological policy; (2) [Study on Moral Judgment in the Judiciary](#), which examined the moral judgment capacity of servants and served to devise intervention strategies; (3) [Study on Ethical Management in the Judiciary](#), which evaluated progress in implementing the Ethical Management System and identified opportunities for improvement; and (4) [Follow-Up on the Axiological Policy of the Judiciary](#). The country under review also said that there are internal mechanisms in the Judiciary to evaluate accomplishment of goals and targets.²¹⁵

[405] In its Response to the Questionnaire, the country under review mentions that the Judiciary's Department of Human Resources and Technical Secretariat for Ethics and Values have recorded a series of results obtained from measures implemented to ensure that their various employees properly understand ethical rules.²¹⁶

**JUDICIAL OFFICIALS TRAINED BY THE TECHNICAL SECRETARIAT FOR ETHICS AND
VALUES
JUDICIARY, 2011 – 2015.**

YEARS				
2011	2012	2013	2014	2015 ²¹⁷
1,435	200	1,406	2,634	859

Source: Judiciary

**JUDICIAL OFFICIALS WHO COMPLETED THE COURSE ON ETHICS OF THE
BASIC JUDICIAL TRAINING PROGRAM**

²¹⁵ Response to the Questionnaire, pgs. 50-51, *supra* note 12.

²¹⁶ *Ibid*, pg. 52.

²¹⁷ Preliminary figure to November 6

JUDICIARY 2011 – 2015

YEARS					
2011	2012	2013	2014	2015 ²¹⁸	
2,334	2,299	2,784	1,855	1,080	

Source: Judiciary

[406] The country under review also refers in this regard to the induction course is mentioned above.²¹⁹

[407] In addition, with respect to results obtained from the application of provisions designed to ensure instruction for public officials on public ethics and the consequences of acts of corruption, in its Response to the Questionnaire the country under review provided the following data in relation to the work of the Office of Public Ethics in providing answers to queries and training:

**QUERIES ANSWERED BY THE OFFICE OF PUBLIC ETHICS, BY TYPE OF ATTENTION
OFFICE OF PUBLIC ETHICS 2011 – 2014**

TYPE OF ATTENTION	YEAR 2011	2012	2013	2014
Telephone	135	260	123	145
In person	76	94	53	76
TOTAL	211	354	176	221

Source: Office of Public Ethics

**TALKS ON ETHICS AND PROBITY IN PUBLIC SERVICE
OFFICE OF PUBLIC ETHICS 2011 – 2014**

YEAR 2011	2012	2013	2014
5	16	44	49

Source: Office of Public Ethics

**TALKS ON CRIMINAL LIABILITY OF PUBLIC OFFICIALS
OFFICE OF PUBLIC ETHICS 2011 – 2014**

YEAR 2011	2012	2013	2014
2	5	29	33

Source: Office of Public Ethics

[408] Finally, following the on-site visit, the country under review furnished the following table on the results of the course on internal control, which covers aspects relating to the issue of internal

²¹⁸ Preliminary figure to October

²¹⁹ Response to the Questionnaire, pgs. 50-51, *supra* note 12.

control, with a view to their application in the workplace. The table contains statistics on the number of people who passed, failed, or did not finish the course on internal control from 2009 to 2016.

2009-2016	Men	Women	Total
Pass	1,544	1,694	3,238
Fail	328	343	671
Did not finish	465	414	879

[409] Based on the foregoing, the Committee considers that the training activities carried out by the Judiciary are relevant for promoting the purposes of the Convention.

1.4 Conclusions and recommendations

[410] Based on the review conducted regarding the implementation of by the Republic of Costa Rica of Article III, paragraph 3 of the Convention, the Committee offers the following conclusions and recommendations:

[411] **The Republic of Costa Rica has considered and adopted measures intended to establish, maintain and strengthen the instructions provided to government personnel by the bodies selected that ensure proper understanding of their responsibilities and the ethical rules governing their activities, as described in Chapter III, Section 1 of this Report.**

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

- 1.4.1 Encourage the General Directorate of the Civil Service to issue directives to ensure that the institutions subject to the Civil Service Regime provide their personnel with uniform information on their responsibilities. (See paragraph 369 in Chapter III, Section 1.2 of this Report.)
- 1.4.2 Encourage the General Directorate of the Civil Service to issue directives to ensure that the institutions subject to the Civil Service Regime provide their personnel with uniform information on their ethical duties. (See paragraph 369 in Chapter III, Section 1.2 of this Report.)
- 1.4.3 Require all Executive Branch institutions to report on the activities that they carry out annually to ensure that their personnel have a proper understanding of their responsibilities, so that the country under review may duly analyze and evaluate those activities and verify that they are adequate. (See paragraph 369 in Chapter III, Section 1.2 of this Report.)
- 1.4.4 Require all Executive Branch institutions to report on the activities that they carry out annually to ensure that their personnel have a proper understanding of the ethical rules that govern their activities, so that the country under review may duly analyze and evaluate those activities and verify that they are adequate. (See paragraph 369 in Chapter III, Section 1.2 of this Report.)

- 1.4.5 Impart training to Legislative Branch personnel to ensure a proper understanding of their responsibilities whenever those responsibilities change. (See paragraph 370 in Chapter III, Section 1.2 of this Report.)
- 1.4.6 Incorporate modern communication technologies in the training programs offered to personnel of the Legislative Branch, including but not limited to videoconferencing or virtual courses. (See paragraph 371 in Chapter III, Section 1.2 of this Report.)
- 1.4.7 Adopt provisions to make induction training compulsory for all Legislative Assembly staff, whether they be trust or administrative career personnel. (See paragraph 374 in Chapter III, Section 1.2 of this Report.)
- 1.4.8 Impart training to Legislative Branch personnel to ensure proper understanding of ethical rules governing their activities when they begin performing them; when a change in their functions entails a different set of applicable ethical rules; or when changes are made to those rules. (See paragraph 375 in Chapter III, Section 1.2 of this Report.)
- 1.4.9 Establish a structured training program of courses offered by the Legislative Branch to its personnel on ethical rules, including a timetable. (See paragraph 376 in Chapter III, Section 1.2 of this Report.)
- 1.4.10 Provide the Legislative Branch with the necessary budgetary, technological, and human resources, subject to their availability, to carry out a training program that ensures that its personnel properly understand the ethical rules that govern their activities, (See paragraph 377 in Chapter III, Section 1.2 of this Report.)
- 1.4.11 Adopt provisions to make training for new personnel compulsory, as necessary, in the Judicial Branch. (See paragraph 381 in Chapter III, Section 1.2 of this Report.)
- 1.4.12 Adopt relevant measures so that judicial servants have the time necessary to participate in training activities. (See paragraph 382 in Chapter III, Section 1.2 of this Report.)
- 1.4.13 Establish a structured training program of courses offered by the Judiciary to its personnel on ethical rules, including a timetable. (See paragraph 384 in Chapter III, Section 1.2 of this Report.)
- 1.4.14 Provide the Judiciary with the necessary budgetary, technological, and human resources, subject to their availability, to carry out a training program that ensures that its personnel properly understand the ethical rules that govern their activities, (See paragraph 387 in Chapter III, Section 1.2 of this Report.)
- 1.4.15 Compile and analyze information on instruction imparted to personnel in the Executive Branch for ensuring that they have a proper understanding of their responsibilities and functions. That information could cover aspects such as the nature and periodicity of training imparted; numbers of officials trained; preparation of guidelines for public officials on the proper performance of their functions and to alert them to the risks of corruption inherent in the performance of their responsibilities; responses to queries from public officials about the correct performance of their functions and the use of modern technologies for that purpose; and indicators to show that they have understood the information and are applying it in the performance of their functions. (See paragraph 395 in Chapter III, Section 1.3 of this Report.)

- 1.4.16 Prepare a summary of results obtained from instruction imparted to personnel in the Executive Branch to ensure proper understanding of the ethical rules that govern their activities, providing information on, for example: preparation of guidelines for public servants on the scope and interpretation of ethical rules and the consequences of their infringement for public-sector institutions and infringers; responses to queries made by public servants in that regard and the use of modern communication technologies for that purpose; activities undertaken to determine if the goal of ensuring that ethical rules are understood has indeed been met; and measures or actions adopted by the authorities or entities responsible for ensuring that instruction is properly provided for that purpose and for seeing to it that the provisions and/or measures in place are applied. (See paragraph 395 in Chapter III, Section 1.3 of this Report.)
- 1.4.17 Compile and analyze information on instruction imparted to personnel in the Legislative Branch for ensuring that they have a proper understanding of their responsibilities and functions. That information could cover aspects such as the nature and periodicity of training imparted; preparation of guidelines for public officials on the proper performance of their functions and to alert them to the risks of corruption inherent in the performance of their responsibilities; responses to queries from public officials about the correct performance of their functions and the use of modern technologies for that purpose; and indicators to show that they have understood the information and are applying it in the performance of their functions. (See paragraph 402 in Chapter III, Section 1.3 of this Report.)
- 1.4.18 Prepare a summary of results obtained from instruction imparted to personnel in the Legislative Branch to ensure proper understanding of the ethical rules that govern their activities, providing information on, for example: preparation of guidelines for public servants on the scope and interpretation of ethical rules and the consequences of their infringement for public-sector institutions and infringers; responses to queries made by public servants in that regard and the use of modern communication technologies for that purpose; activities undertaken to determine if the goal of ensuring that ethical rules are understood has indeed been met; and measures or actions adopted by the authorities or entities responsible for ensuring that instruction is properly provided for that purpose and for seeing to it that the provisions and/or measures in place are applied. (See paragraph 402 in Chapter III, Section 1.3 of this Report.)

2. THE STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE (ARTICLE III, PARAGRAPH 12 OF THE CONVENTION)

2.1 STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE

[413] In its Response to the Questionnaire, the country under review notes that it has not carried out studies of prevention measures that take into account the relationship between equitable compensation and probity in public service.²²⁰

2.2 ESTABLISHMENT OF OBJECTIVE AND TRANSPARENT CRITERIA FOR DETERMINING THE COMPENSATION OF PUBLIC SERVANTS

²²⁰ *Ibid*, pg. 54.

2.2.1 Existence of a legal framework and/or other measures

[414] In its Response to the Questionnaire, the country under review notes the following:²²¹

[415] *“In the case of the Judiciary, the institutional salary policy considers five basic elements: (a) Salaries are to be adjusted at least in line with the cost of living; (b) salaries should be kept competitive and [in a position of] leadership in the public sector; (c) salaries should be kept reasonable for a public-sector entity relative to similar positions in the private sector; (d) the structure should be reviewed constantly; and (e) internal consistency should be striven for.*

[416] *It is also important to mention that the Post Review Section of the Judiciary's Department of Human Resources is the administrative unit in charge of addressing all matters concerning the Post Evaluation Classification System in accordance with the scientific instruments and techniques that apply to human resources administration and current approaches thereto. Its basic activity is to perform individual, partial, or comprehensive post classification and evaluation studies and to carry out market studies to determine the salary position of jobs in the Judicial Branch based on wage analyses in the domestic and external markets.*

[417] *Positions in the Judiciary are constantly reviewed with the aim of maintaining a staffing structure in line with current demands and in accordance with the levels of responsibility and complexity necessary for their duties to be well performed, as well as to offer competitive salaries in relation to the market and subject to budget availability.”*

[418] The country under review also has the Government Salary Law (*Ley de Salarios de la Administración Pública*), which governs the remunerations of all posts classified in the Job Description Manual in accordance with the Civil Service Statute. Article 4 of the Government Salary Law sets out a salary scale with 73 categories that applies to the entire public sector and may be amended based on technical studies performed by the General Directorate of the Civil Service.²²²

[419] The country under review also has the Law on Salaries and the Merit Regime of the Office of the Comptroller General of the Republic (*Ley de Salarios y Régimen de Méritos de la Contraloría General de la República*), Article 7 of which sets out a salary scale with 60 categories and a salary increase limit for each of those categories.²²³

2.2.2 Adequacy of the legal framework and/or other measures

[420] With respect to the provisions that refer to the establishment of objective and transparent criteria for determining the compensation of public servants, that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention. However, the Committee would like to make a number of observations.

[421] To begin with, the Committee notes the absence of a comprehensive system establishing objective and transparent criteria for determining civil servant remunerations. A study prepared by the Ministry of National Planning and Economic Policy in 2012 entitled "Status of Salaries and Remunerations in the Costa Rican Public Sector" (*Estado de Situación en Materia de Salarios y*

²²¹ *Ibid*, pg. 55.

²²² <http://www.dgsc.go.cr/dgsc/salarios/Resoluciones%20Salariales%202016/I%20Semestre%202016/Escala/Escala%20Enero%202016%20DG-053-2016.pdf>

²²³ [Law on Salaries and the Merit Regime of the Office of the Comptroller General of the Republic](#)

Remuneraciones del Sector Público Costarricense) mentions the following with respect to the need for the study:²²⁴

[422] *“This initiative stems from the need to organize public sector salaries and pay and to balance the principles and general regulations that should govern such matters. The current state of affairs reveals a diversity of rules that make the ideal established in our Constitution practically unattainable:*

[423] *“All workers shall have the right to a minimum wage periodically established for a regular day's work that affords them well-being and a decent existence. The same salary shall always be paid for the same work under identical conditions of efficiency. All matters to do with setting minimum wages shall be under the responsibility of the technical agency determined by law.” (Art. 57)*

[424] *This diagnostic assessment addresses the state and reality of the regulations in this area in the Costa Rican “State and the resulting diversity of conditions and pay for civil servants under special regimes that give rise to large asymmetries in pay. The aim is to contribute to objective decision making in such regards. The diagnostic assessment reveals the heterogeneity of the legal frameworks in place, a situation that has major repercussions, particularly on salaries, chiefly as a result of the disparities in the bonuses or incentives that apply to civil servants, depending on the institution where they work and the salary regime to which they belong.”*

[425] The study also concludes:²²⁵

[426] *“The disorderly state of regulations, be they laws, rules of procedure, collective agreements, board decisions, or other provisions examined in this review, has a direct adverse impact on the system of salaries and pay. The most obvious effect of this state of affairs are the unjustified disparities that exist among employees who work in the same conditions, moving us ever further from the Constitution's mandate: ‘The same salary shall always be paid for the same work under identical conditions of efficiency.’*

[427] *Owing to the nature of the system of salaries and pay, there is no transparency in the end result of salary increases because a percentage increase of a certain size will have different effects depending on the benefits established by the regime in the institution concerned.”*

[428] The OECD reached similar conclusions in its Report "Costa Rica: Good Governance, from Process to Results":²²⁶

[429] *“Currently the Costa Rican salary system is very difficult to control, adjust, target and manage, due in part to the lack of an integrated database on public employment, no fiscal ceiling that limits the pay envelope, complex combinations of bonuses and allowances that differ greatly from employee to employee, and an interrelated web of collective agreements and legislation that tie increases in salary of one group to another. Pay determination in Costa Rica is a complex affair. For many of the more senior positions, base salary only accounts for as little as 20% of total pay. The system of “pluses”, bonuses and allowances added to base pay enables organisations to raise pay through means that are less transparent and controllable. While the majority of decentralised institutions follow the CSR's [Civil Service Regime] job classification and base salary standards,*

²²⁴ [Estado de Situación en Materia de Salarios y Remuneraciones del Sector Público Costarricense](#), pg. 2.

²²⁵ *Ibid*, pg. 57.

²²⁶ 2015 OECD Good Governance Report on Costa Rica, pg. 98, *supra* note 78.

there is no common standard for pluses and bonuses. Hence, it is easy to maintain disequilibrium through the use of such tools while still maintaining compliance with the overall framework.

[430] *The complexity of this system leads to a variety of pay distortions which diverge from the merit principle of equal pay for equal work. The misalignment of pay to the value of work can have a demotivating impact on the workforce, particularly for those who perceive their work as less valued by their organisation. These imbalances can also have a direct impact on the capacity of organisations to attract and retain the right employees. Costa Rica could improve the merit focus of its compensation and improve control over workforce costs by first clarifying the interrelated webs of regulations and collective agreements to ensure a broad and consistent understanding of the existing situation among those responsible for the system. Next, the system could be simplified by incorporating existing pluses into a clear and simple base salary for new employees (the so-called single salary system). Finally, the salary envelope could be controlled through budgetary measures and controls.*

[431] In light of the foregoing, the country under review should consider establishing a legal framework that sets out objective and transparent criteria to determine civil servant remunerations, bearing in mind the diversity of regulations that exist, the disparities among employees working in the same conditions, and the lack of control over bonuses and incentives. That legal framework may include the appointment or establishment of a governing body to oversee civil servant remunerations. The Committee will make recommendations in that regard. (See sole recommendation in Chapter III of this Report).

[432] In that connection, the civil society organization Asociación Integra Costa Rica provided the following information in its Response to the Questionnaire for the Fifth Round, citing the XXI Report on the State of the Nation (*XXI Informe Estado de la Nación*):²²⁷

[433] *“The problem is not one of highly qualified professionals with elevated pay, but of a plethora of diverse rules on pay, the result of which is a system with three main characteristics. First, “pluses” have progressively grown to the point where they currently represent 50% of total public-sector spending on wages. Second, a horizontal inequity has been created; that is, people who work in similar positions, based on their duties, responsibilities, and job requirements, receive different salaries. Finally, a permanent payment is not associated with a results-based evaluation (improvements in quality of services) or with special tasks performed over a specific time, but precisely that: a permanent payment or an increase in the basic salary, not an incentive.”*

2.2.3. Conclusions and Recommendations

[434] Based on the review conducted in the above sections regarding the implementation of by the Republic of Costa Rica of Article III, paragraph 12 of the Convention, the Committee offers the following conclusions and recommendations:

[435] **The Republic of Costa Rica has considered and adopted measures intended to establish objective and transparent criteria for determining the compensation of public servants, as described in Chapter III, Section 2 of this Report.**

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

²²⁷ Document presented by Asociación Integra Costa Rica, pg. 16, *supra* note 9.

- Consider establishing a legal framework that sets out objective and transparent criteria to determine civil servant remunerations for the entire Public Sector. (See paragraph 431 in Chapter III, section 2.2.2 of this Report.)

IV. BEST PRACTICES

[437] In keeping with section VI of the Methodology for follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round and for the review of the provisions of the Convention selected for the Fifth Round, the following describes the best practices identified by the country under review that it has wished to share with the other member countries of the MESICIC in the belief that they could be of benefit to them.

[438] – **Creation of the Psychosocial Workplace Assessment Area (*Área de Valoración Psico-Socio-Laboral* – AVAL),²²⁸** which performs background checks, and socio-psychological evaluations for applicants for the position of assistant prosecutor

[439] It is considered a best practice because it is a strategy for shielding the Public Prosecutions Service from the potential risk of admitting personnel with a history of questionable ethical conduct or links to organized crime.

[440] – **Ethical Management System,²²⁹** which combines various processes for ethical management at the institutional level. It envisages the creation of entities in charge of the issue, the performance of baseline and follow-up assessments, long-range planning that includes communication and education strategies, and the inclusion of ethics in human resource management processes (recruitment, selection, induction, training, and performance evaluation, among others).

[441] It is considered a best practice because it choreographs and gives direction to an institution's efforts on the issue with a view to enhancing results. It focuses on prevention of corruption, rather than combating it.

²²⁸ See Response to the Questionnaire, pg. 56 *supra* note 12.

²²⁹ *Ibid*, pg. 57.

ANNEX

AGENDA FOR THE ON-SITE VISIT TO COSTA RICA

<u>Monday, April 18, 2016</u>	
5:00 – 6:00 p.m. <i>Parque del Lago Boutique Hotel</i>	Coordination meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat
6:00 – 7:00 p.m. <i>Parque del Lago Boutique Hotel</i>	Coordination meeting between the representatives of the member states of the subgroup and the Technical Secretariat.
<u>Tuesday, April 19, 2016,</u>	
8:30 a.m. – 1:00 p.m. <i>Headquarters of the PGR</i>	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional associations, academics or researchers.
8:30 – 11:00 a.m.	<u>First session:</u> <ul style="list-style-type: none"> • Content of the Document presented by Asociación Costa Rica Integra
	<u>Participant:</u> <i>Asociación Costa Rica Integra</i> Ms. Evelyn Villarreal Fernandez, Vice Chair
11:00 a.m. – 12:30 p.m.	<u>Second session:</u> <ul style="list-style-type: none"> • Follow-Up on the Implementation of the Recommendations of the Second Round: <ul style="list-style-type: none"> - Systems of Government Hiring. - Government Systems for the Procurement of Goods and Services. - Systems for Protecting Public Servants and Private Citizens who Report Acts of Corruption • Instructions to Government Personnel to Ensure Proper Understanding of their Responsibilities and the Ethical Rules Governing their Activities • Study of Preventive Measures that Take into Account the Relationship between Equitable Compensation and Probity in Public Service

	<p><u>Participants:</u></p> <p><i>Chamber of Commerce of Costa Rica</i></p> <p>Ms. Yolanda Fernández Ochoa, President</p> <p>Mr. Alonso Elizondo, Executive Director</p> <p><i>Bar Association of Costa Rica</i></p> <p>Mr. Jorge Jara Porras, Commission from the Regulatory Observatory on Transparency and Corruption</p> <p>Ms. Daniela Kirsch, Commission from the Regulatory Observatory on Transparency and Corruption</p> <p><i>Costa Rican Chamber of Construction</i></p> <p>Mr. Jorge Arturo González, President</p> <p>Mr. Javier Muñoz, Director</p> <p>Mr. Roberto Fiatt, Director</p> <p>Ms. Mónica Castillo, Director</p>
12:30 – 2:00 p.m.	Lunch
2:00 – 5:00 p.m.	Meeting with representatives of the <u>Executive Branch</u>
	<p><u>Panel 1:</u></p> <ul style="list-style-type: none"> • Follow-up on recommendations from the second round regarding government hiring systems: • Instructions to Government Personnel to Ensure Proper Understanding of their Responsibilities and the Ethical Rules Governing their Activities
	<p><u>Participants:</u></p> <p><i>General Directorate of the Civil Service</i></p> <p>Mr. Rómulo Castro Víquez, Director, Personnel Recruitment and Selection and Management of Human Resources</p> <p>Ms. Anabelle Rodríguez Córdoba, Coordinator, Personnel Recruitment and Selection Unit</p> <p>Ms. Sandra María Quirós Álvarez, Director, Training and Development Center</p> <p>Mr. Sergio Ulloa Mattey, Coordinator, Competitions Management Unit</p> <p>Mr. Juvenal Ramírez Artavia, Training Professional</p>
5:00 – 5:30 p.m.	Informal meeting with representatives of the member states of the subgroup and the Technical Secretariat.

<u>Wednesday, April 20, 2016</u>	
8:30 a.m. - 12:00 p.m.	Meeting with representatives of the <u>Judiciary</u>
	<p><u>Panel 2:</u></p> <ul style="list-style-type: none"> • Follow-Up on the Implementation of the Recommendations of the Second Round: <ul style="list-style-type: none"> - Systems of Government Hiring. - Systems for Protecting Public Servants and Private Citizens who Report Acts of Corruption • Instructions to Government Personnel to Ensure Proper Understanding of their Responsibilities and the Ethical Rules Governing their Activities • Study of Preventive Measures that Take into Account the Relationship between Equitable Compensation and Probity in Public Service
	<p><u>Participants:</u></p> <p>Ms. Karen Leiva Chavarría, Expert in International Cooperation Projects, Office of Cooperation and International Relations</p> <p>Mr. Jorge Morales, Legal Counsel, Office of Cooperation and International Relations</p> <p>Ms. Zahira Chavarria, Expert in International Cooperation Projects, Office of Cooperation and International Relations</p> <p>Mr. Dixon Carvajal, Chief, Victim Protection Unit, Judicial Investigation Agency</p> <p>Mr. Gustavo Portuguez, Investigator, Victim Protection Unit, Judicial Investigation Agency</p> <p>Ms. Roxana Arrieta, Coordinator, Judiciary</p> <p>Ms. Elizabeth Chacon, Representative of the Transparency Committee, Judiciary</p> <p>Mr. Luis Guzman Guitierrez, Representative of the Transparency Committee, Judiciary</p> <p>Mr. Elias Muñoz, Planning Department, Judiciary</p> <p>Mr. Juan Carlos Ebabaur, Chief, Secretariat for Ethics, Judiciary</p> <p>Mr. Jose Luis Bermudez, Director, Judiciary</p>
12:00 - 2:00 p.m.	Luncheon
2:00 - 5:30 p.m.	Meeting with representatives of the <u>Legislative Branch</u>

	<p><u>Panel 3:</u></p> <ul style="list-style-type: none"> • Follow-up on recommendations from the second round regarding government hiring systems: • Instructions to Government Personnel to Ensure Proper Understanding of their Responsibilities and the Ethical Rules Governing their Activities <p><u>Participants:</u></p> <p>Mr. Antonio Ayales Esna, Executive Director <i>Department of Human Resources</i></p> <p>Mr. Hugo Cascante Micó, Director</p> <p>Ms. Susana Quirós Ramirez, Analyst, Provision and Application of Human Resources <i>Department of Institutional Strategic Development</i></p> <p>Mr. Fernando Roman Carvajal, Director</p> <p>Mr. Milton Madriz Cedeño, Deputy Director</p> <p>Mr. Félix Arce Arce, Adviser D.E.I.</p>
5:30 – 6:00 p.m.	Informal meeting with representatives of the member states of the subgroup and the Technical Secretariat.
<u>Thursday, April 21, 2016</u>	
8:30 a.m. – 12:30 p.m.	Meeting with representatives of the <u>Office of the Comptroller General of the Republic</u>
	<p><u>Panel 4:</u></p> <ul style="list-style-type: none"> • Follow-Up on the Implementation of the Recommendations of the Second Round: • Systems of Government Hiring. <ul style="list-style-type: none"> - Government Systems for the Procurement of Goods and Services.

	<p><u>Participants:</u></p> <p>Allan Ugalde Rojas, Manager, Administrative Contracting Department</p> <p>Luis Diego Ramírez González, Manager, Legal Department</p> <p>Manuel Martínez Sequeira, Manager, Support Management Department</p> <p>Daniel Sáenz Quesada, Manager, Technical Secretariat Area</p> <p>Elard Ortega Perez, Associate Manager, Administrative Contracting Department</p> <p>Rafael Picado López, Manager, Complaints and Investigations Area</p> <p>Rosa Fallas Ibañez, Associate Manager, Legal Division</p> <p>Maritza Sanabria Masís, Chief, Corporate Governance Unit</p> <p>Lorena Sánchez Salas, Chief, Human Resources</p> <p>Ana Lorena Montero, Inspector</p>
12:30 – 2:00 p.m.	Luncheon
2:00 hrs. – 3:30 p.m. <i>Headquarters of the PGR</i>	Meeting with representatives of the <u>Ministry of Finance</u>
	<p><u>Panel 5:</u></p> <ul style="list-style-type: none"> • Follow-up on recommendations from the second round regarding systems of government procurement of goods and services
	<p><u>Participant:</u></p> <p>Fabián Quirós Álvarez, Director, Assets and Administrative Contracting</p> <p>Marisol Brenes, Ministry of Finance</p>
2:30 – 5:00 p.m. <i>Headquarters of the PGR</i>	Meeting with representatives of the <u>Public Prosecutions Service</u>
	<p><u>Panel 6:</u></p> <ul style="list-style-type: none"> • Follow-Up on the Implementation of the Recommendations of the Second Round: <ul style="list-style-type: none"> - Systems of Government Hiring. - Systems for Protecting Public Servants and Private Citizens who Report Acts of Corruption

	<p><u>Participants:</u></p> <p>Ms. Claudia Villafuerte, Prosecutor</p> <p>Ms. Berenice Smith Bonilla, Prosecutor</p> <p>Ms. Milena Brenes, Prosecutor</p> <p>Ms. Jose David Valverde, Prosecutor</p> <p>Ms. Sara Arce Moya, Prosecutor</p>
5:00 – 5:30 p.m.	Informal meeting with representatives of the member states of the subgroup and the Technical Secretariat.
5:30 p.m.	Final meeting with representatives of the country under review, the member states of the subgroup, and the Technical Secretariat.

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

COUNTRY UNDER REVIEW:

REPUBLIC OF COSTA RICA

Tatiana Gutiérrez Delgado

Lead Expert to the Committee of Experts of the MESICIC
Public Ethics Prosecutor
Attorney General's Office

MEMBER STATES OF THE PRELIMINARY REVIEW SUBGROUP:

PANAMA

Antonio M. Lam

Chief, Office of International Technical Cooperation
National Authority on Transparency and Access to Information

DOMINICAN REPUBLIC

Carlos Guiliani

Head of the Department of Investigation and Follow-Up
Bureau of Governmental Integrity and Ethics

TECHNICAL SECRETARIAT OF THE MESICIC

Rodrigo Silva

Legal Officer, Department of Legal Cooperation
OAS Secretariat for Legal Affairs.