



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

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REPUBLIC OF ECUADOR

FINAL REPORT

(Adopted at the September 15, 2016 plenary session)

SUMMARY

This Report contains a comprehensive review of the implementation of the recommendations formulated to Ecuador in the Second Round Report with respect to paragraphs 5 and 8 of Article III of the Inter-American Convention against Corruption. These provisions refer, respectively, to systems for hiring public servants and procuring government goods and services and protecting public servants and private citizens who report, in good faith, acts of corruption, as well as to the definition of offenses involving acts of corruption set forth in Article VI of the Convention. Where appropriate, reference is made to new developments in implementing these provisions.

Furthermore, the Report includes a comprehensive review of Ecuador's implementation of paragraphs 3 and 12 of Article III of the Convention, selected by the MESICIC Committee of Experts for the Fifth Round. These provisions address, respectively, measures aimed at creating, maintaining, and strengthening instruction to personnel at public entities to ensure proper understanding of their responsibilities and the ethical rules governing their activities, as well as the study of other preventive measures that take into account the relationship between equitable compensation and probity in public service. Reference has also been made to best practices reported by the State with respect to implementation of the provisions selected for the Second and Fifth Rounds.

The review was conducted in accordance with the Convention, the Report of Buenos Aires, the Committee's Rules of Procedure, and the methodologies adopted by the Committee for conducting on-site visits and for the Fifth Round; this includes the criteria established therein to guide the review with respect to equal treatment for all States parties, functional equivalency, and the aim both of the Convention as well as MESICIC to promote, facilitate, and strengthen cooperation between the States to prevent, detect, punish, and eradicate corruption.

To conduct the review, Ecuador's response to the questionnaire, as well as the information gathered during the on-site visit to the country from April 5-7, 2016 were used. A representative of Guatemala, as part of the Review Subgroup, took part in the visit, during which, with the support of the MESICIC Technical Secretariat, there was the opportunity to specify, clarify, and supplement the information furnished by Ecuador, and to hear the opinions of civil society and private sector organizations, professional associations, and academics on the issues under review.

Recommendations were formulated to Ecuador in the Second Round Report, which the Committee deemed required additional attention in the Third Round Report. With respect to implementation of said recommendations, based on the Fifth Round methodology and given the information furnished in the response to the questionnaire and during the on-site visit, the Committee outlined which of these recommendations had been implemented satisfactorily, which required additional attention, which were to be reformulated, and which were no longer valid.

Several positive steps have been highlighted with respect to the systems for hiring public servants, particularly the enactment of Organic Law on Public Service (LOSEP) (published in Official Gazette No. 294 of October 6, 2010) and its General Regulations (published in Official Gazette No. 416 of April 1, 2011), which introduce mandatory provisions governing human resources and compensation throughout the public administration, as well as provide that entry to a public-sector position shall be on the basis of a merit-based competitive examination process that evaluates the suitability of interested parties and to which free access is guaranteed on the basis of the precepts of justice, transparency, and nondiscrimination.

As for the system for government procurement of goods and services, the enactment of the Organic Law of the National Government Procurement System (LOSNCPS), as amended by Law No. 0 (published in Official Gazette Supplement 100 of October 14, 2013) is noteworthy. Also noteworthy is the creation of the National Government Procurement Service (SERCOP), which is the governing body of the National Government Procurement System (SNCP). SERCOP has issued many normative resolutions as well as a Handbook of Best Practices in Public Procurement for the Development of Ecuador.

On the matter of protecting whistleblowers who report acts of corruption, among others, the report alludes to the new Regulations for Handling Requests and Complaints regarding Acts or Omissions that Impair Participation or Generate Corruption of the Citizen Participation and Oversight Council (CPCCS), as well as the implementation of the National System of Protection and Assistance for Victims, Witnesses, and Other Participants in Criminal Proceedings (SPAVT) and the “[Whistleblower] Reports Management System” by the National Secretariat for Public Administration (SNAP).

With respect to criminalization of the acts of corruption provided for in Article VI of the Convention, approval of the Comprehensive Organic Criminal Code (COIP) is noted, through which, in general terms, Ecuador could advance considerably in the implementation of the recommendations formulated on criminal legislation.

Furthermore, based on the review of new developments in Ecuador in connection with implementing the Convention provisions selected for the Second Round, the Committee has also formulated recommendations regarding matters such as:

- Adopt appropriate measures to increase the number of competitively hired employees in the Executive Branch, that the use of occasional contracts be further reduced, and that competitions be held for positions filled by provisional appointments;
- Analyze the composition of the Appeals Board with a view to more strongly highlighting the effectiveness of the second instance;
- Adopt appropriate measures to continue to increase the percentage of competitively hired employees in the Executive Branch by implementing the plans for the competitions for positions occupied by provisionally appointed personnel and reviewing the proportion in which occasional contracts are used;
- Take appropriate steps to reduce the high proportion of provisional appointees in administrative career paths in the Judicial Branch, by holding the necessary merit-based competitive examination processes;
- Evaluate and modify the government procurement system in order to make competitive processes the general rule for contract tendering procedures in the State system for procurement of goods, services, and works;
- Design and implement a mechanism to conduct periodic comprehensive evaluations to assess the use and effectiveness of the goods, services and works procurement system and, based on its results,

where appropriate, define and consider adopting specific measures by which to ensure its transparency, openness, equity, and efficiency;

- Precisely define the concepts of “standardized” and “non-standardized” goods and services in the rules and regulations governing government procurement lest those concepts be left to the discretion of the procurement entity;
- Establish applicable objective criteria for procurement processes that are not subject to a public tender or competitive process and require the existence of at least three pro forma quotes in those cases, when the circumstances so allow;
- Publish the new Regulations of the Organic Law of the National Government Procurement System (LOSNCP);
- Give due consideration to reducing the amount of 70% of the updated or adjusted value of the principal contract in the case of supplementary works and consultancy contracts;
- Consider enacting legislation that comprehensively regulates protection of public servants and private citizens who in good faith report acts of corruption in the administrative sphere, including protecting their identity, in accordance with the Constitution and the fundamental principles of its domestic legal order, taking into account the criteria outlined in the Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses.¹
- Bring criminal legislation into line such that it includes the elements of acts of corruption set forth under Article VI(1) of the Convention.

The first provision selected for the Fifth Round refers to instruction to personnel of public entities to ensure proper understanding of their responsibilities and the ethical rules governing their activities, provided for in Article III(3) of the Convention. For review of the aforementioned provision, in keeping with the methodology for this Round, the country under review selected the National Government Procurement Service (SERCOP), the Judiciary Council’s Judicial Academy, and the State Oil and Gas Enterprise (EP PETROECUADOR), based on the consideration that they stand out for having implemented programs in that connection.

This review is focused on determining whether provisions and/or measures have been adopted that ensure these groups of employees’ proper understanding of their responsibilities and the ethical rules governing their activities, how and when instruction is imparted, the programs provided for this purpose, the offices that have responsibilities in this respect, as well as the objective results obtained in applying such provisions and/or measures that govern the activities of personnel at the institutions mentioned above, taking note of the difficulties and/or weaknesses in achieving the aim of this provision of the Convention.

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

- Include, as part of the content of the Technical Regulations on Training and Education in Public Service the provisions or other measures that it deems appropriate to make everyone who becomes a

¹ Available at: http://www.oas.org/juridico/english/draft_model_reporting.pdf

public servant in Ecuador aware of the risks of corruption inherent to the performance of their duties, as well as the consequences and penalties for involvement in acts of corruption;

- Amend the Code of Ethics for the Well-Being of the Executive Branch in order to broaden the role of institutional Ethics Committees so that they may also serve in an advisory capacity, and establish simplified, streamlined and expedited written procedures so that any official may rely on them to obtain information or resolve doubts about the scope or manner of interpreting the ethical rules governing their activities;

- Expressly identify in the Code of Ethics of the Judiciary the body that has responsibility for receiving and resolving queries about the scope and interpretation of the ethical rules that govern the activities of members of the judiciary, and establish simplified, streamlined and expedited written procedures so that they may pose questions and receive answers to such questions;

- Conduct periodic training courses on ethics for personnel of SERCOP and the Judiciary Council to promote the dissemination and implementation of their respective institutional Codes of Ethics and the ethical values and principles governing their activities.

In keeping with the aforementioned methodology, the review of the second provision selected for the Fifth Round, set forth in Article III(12) of the Convention, is focused on determining whether the State has studied preventive measures that take into account the relationship between equitable compensation and probity in public service and whether it has established objective and transparent criteria for determining compensation for public servants. The Committee did not formulate recommendations in this section.

Finally, the best practices about which Ecuador provided information refer, in synthesis, to the “Nation Public Sector Remuneration System (Wage Unification and Harmonization)” by the Ministry of Labor; the “Merit-based competitive examinations, citizen challenges and societal oversight in the appointment of judicial public servants” implemented by the Judiciary Council; the “Creation of mechanisms for participatory analysis of anti-corruption practices in government procurement and the Manual of Best Practices in Government Procurement for the Development of Ecuador” by the National Government Procurement Service (SERCOP), and; the “Public advisory services on legal matters and on the political oversight role of the National Assembly in the “*Contigo de Ley*” (With You by Law) program”, which consists of a mobile office of the National Assembly's Technical Unit for Political Monitoring and Oversight that accompanies the speaker of the National Assembly on visits to individual cantons in Ecuador's provinces, which are broadcast live every Friday on a radio program.

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

**REPORT ON IMPLEMENTATION IN THE REPUBLIC OF ECUADOR OF THE
CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE FIFTH ROUND, AND
ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED AND PROVISIONS
REVIEWED DURING THE SECOND ROUND²**

INTRODUCTION

1. Contents of the Report

[1] As agreed upon by the Committee of Experts (hereinafter “the Committee”) of the Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) at its Twenty-fourth Meeting,³ this report will first refer to follow up on implementation of the recommendations formulated to the Republic of Ecuador in the report from the Second Round,⁴ which the Committee deemed required additional attention in the report from the Third Round.⁵

[2] Second, where applicable, it will refer to new developments in the Republic of Ecuador 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 that the country under review wished voluntarily to 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, the Republic of Ecuador ratified the Inter-American Convention against Corruption on May 26, 1997 and deposited its instrument of ratification on June 2, 1997.

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

² 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, March 12-15, 2016.

³ See the Minutes of the 24th Meeting of the Committee, available at: http://www.oas.org/juridico/docs/XXIV_min.doc

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

⁵ Available at: http://www.oas.org/juridico/english/mesicic_III_rep_ecu.pdf

I. SUMMARY OF INFORMATION RECEIVED

1. Response of the Republic of Ecuador

[7] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Ecuador, in particular, from the Council for Citizen Participation and Social Oversight (CPCCS), which was evidenced, *inter alia*, in the response to the Questionnaire, in the constant willingness to clarify or complete its contents, and in the support for the on-site visit referred to below. Together with its response, the Republic of Ecuador sent the provisions and documents it considered pertinent.⁶

[8] The Committee also notes that the country under review gave its consent for the on-site visit, in accordance with provision 5 of the *Methodology for Conducting On-site Visits*.⁷ As a member of the Review Subgroup, the representative of Guatemala conducted the on-site visit on April 6 and 7, 2016, 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 the Republic of Ecuador up to April 7, 2016, as well as that furnished and requested by the Technical Secretariat and the members of the review subgroup, to carry out its functions in keeping with its *Rules of Procedure; the Methodology for Follow-up on the Implementation of the Recommendations Formulated and Provisions reviewed in the Second Round and for Analysis of the Convention Provisions Selected for the Fifth Round; and the Methodology for Conducting On-Site Visits*.⁸

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

[10] The Committee did not receive documents from civil society organizations within the time frame established in the schedule for the Fifth Round, as envisaged by Article 34(b) of the Committee's Rules of Procedure.

[11] Nonetheless, during the course of the on-site visit, information was gathered from civil society and private sector organizations; professional associations; and academics invited to participate in meetings to that end, pursuant to Article 27 of the *Methodology for Conducting On-site visits*. A list of those persons is included in the agenda for the visit, which is appended hereto. 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 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 the Republic of Ecuador with respect to the recommendations formulated and measures for their

⁶ The response as well as those provisions and documents are available at: www.oas.org/juridico/spanish/mesicic5_ecu.htm

⁷ Available at: www.oas.org/juridico/english/met_onsite.pdf

⁸ Available at: www.oas.org/juridico/spanish/mesicic5_ecu.htm

implementation suggested by the Committee in its Second Round report,⁹ which the Committee deemed required additional attention in the Third Round report,¹⁰ 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 the Republic of Ecuador 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 on implementation of the recommendation formulated in the Second Round

Recommendation 1.1.1:

Strengthen government hiring systems in general.

Measure suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

- *Follow up on the way in which Article 20 of the RLOSCCA is applied with regard to the hiring of occasional services in order to ascertain whether the system prevents successive renewals, so that exceptions are not used as a means of evading merit-based and competitive exams.*

[15] In its response,¹¹ the country under review presents the following information on the foregoing measure:

[16] *“The Civil Service and Administrative Career Path Law (Ley de Servicio Civil y Carrera Administrativa) and its implementing regulations were repealed and replaced by the Organic Law on Public Service (Ley Orgánica de Servicio Público) and its implementing regulations, as published in Official Gazette (Registro Oficial) No. 294 of October 6, 2010.*

[17] *As regards hiring of occasional services, Article 58 of the Organic Law on Public Service (LOSEP) provides that the maximum length of service of occasional personnel in public-sector*

⁹ Available at: http://www.oas.org/juridico/english/mesicic_II_rep_ecu.pdf

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

¹¹ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, p. 61, available (in Spanish only) at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

institutions is 12 months or until the end of the fiscal year; under Article 143, second paragraph, of the General Regulations, the contract may be extended or renewed for up to 24 months, except in the case of recently created institutions as recognized at Article 144 of its General Regulations.

[18] *Further to the consistent recommendations contained in the report on the Second Round of Review concerning government hiring, it should be pointed out that the rules and regulations have been completely overhauled, starting with the Constitution of the Republic of Ecuador, which was published in the Official Gazette No. 449 of October 20, 2008, Article 228 of which states that “[a]dmission to public service and advancement and promotion along the administrative career path shall be by competitive merit-based examination, as provided for by law, except for public servants who are elected by universal suffrage or whose appointment and recall are discretionary. Noncompliance shall be cause for dismissal of the appointing official.”*

[19] Bearing in mind that the Civil Service and Administrative Career Path Law (LOSCCA) and its implementing regulations—to which the recommendation contained in the above measure referred—were repealed by the Organic Law on Public Service (LOSEP) and its implementing regulations as published in Official Gazette No. 294 of October 6, 2010, the Committee finds that the aforesaid recommendation is no longer pertinent.

[20] Bearing in mind that the LOSEP and its implementing regulations contain mandatory provisions on human resources throughout the public administration, the Committee considers that it would be more useful for the review to concentrate on standards that constitute a new development in the legal framework on such matters and, in accordance with the methodology adopted for the Fifth Round, will offer appropriate comments and recommendations in that regard in the relevant section of this report.

Recommendation 1.1.2:

Strengthen the systems for the hiring of public servants for the legislature.

Measure (a) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

- *Formulate the amendments that need to be made to the Regulations on the Judicial Career (RCJ) in order to set guidelines on the implementation of the subsystem for selecting personnel, establishing the parameters on how the competitions should be conducted, including the mechanism for announcing vacancies and publishing selection requirements, in order to ensure that merit-based competitive examination processes conform to the principles of legality, equity, neutrality, equality and transparency.*

[21] With respect to the foregoing measure, the country under review stated in its response that *“there have been profound normative changes in Ecuador, starting with the 2008 Constitution of the Republic, Article 228 of which provides that “[a]dmission to public service and advancement and promotion along the administrative career path shall be by competitive merit-based examination, as provided for by law, except for public servants who are elected by universal suffrage or whose appointment and recall are discretionary.”*¹²

¹² See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the

[22] In that connection, a law interpreting Article 3 of the LOSEP (published in Official Gazette Supplement No. 651 of March 1, 2012) determined that the human resources of the National Assembly are not governed by the LOSEP but by the Organic Law of the Legislature (*Ley Orgánica de la Función Legislativa - LOFL*) and resolutions passed by the Legislature Administration Council (*Consejo de Administración Legislativa - CAL*).

[23] In that regard, the country under review also mentioned in its response that “*under this legal framework, the National Assembly, through the Office of the Coordinator-General for Human Resources (Coordinación General de Talento Humano), is developing draft In-house Rules of Procedure for Personnel Management (Reglamento Interno de Administración de Personal), which include policies and standards governing merit-based and competitive examination processes and will enter into force following their adoption by the maximum administrative organ of the National Assembly.*”¹³

[24] In that regard, bearing in mind that the above In-House Rules of Procedure for Personnel Management have not yet been adopted, the Committee will reformulate measure (a) of recommendation 1.1.2. above, based on the clarifications made by the country under review in its response to the questionnaire. (See recommendation 1.1.3.7. in Section 1.1.3. of Chapter II of this report.)

Measure (b) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

- *Study the modification of Article 5 of the LCAFL, so candidates who apply for a vacancy through an open competition, and are neither officials nor employees of the Legislative, have access to the same appeals processes as the public servants referred to.*

[25] In its response,¹⁴ the country under review presents the following information on the foregoing measure:

[26] “*The Law on Career Employees in the Legislature, which was the subject of the above measure, was repealed by the Organic Law of the Legislature published in Official Gazette Supplement No. 642 of July 27, 2009.*”

[27] *As was mentioned in the response to the questions connected with measure (a) of this recommendation, the law interpreting Article 3 of the LOSEP determined that personnel management in the National Assembly is governed by the Organic Law of the Legislature, its internal regulations, and resolutions passed by the Legislature Administration Council (CAL), for the governance of which, the National Assembly is developing draft In-House Rules of Procedure for Personnel*

Convention selected for the Fifth Round, p. 67, available (in Spanish only) at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

¹³ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, p. 67, available (in Spanish only) at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

¹⁴ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, p. 70, available (in Spanish only) at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

Management, which include policies and standards governing merit-based and competitive examination processes and will enter into force following its adoption by the maximum administrative organ of the National Assembly.

[28] *The merit-based and competitive examinations have not yet been developed, so it is not possible to describe any measures in that regard. However, it should be mentioned that all the parameters for developing merit-based and competitive examinations envisaged in the rules and regulations to be proposed include mechanisms to ensure equal opportunities for applicants at every stage of those processes.*

[29] Bearing in mind that the Law on Career Employees in the Legislature, to which the recommendation contained in the above measure applies, was repealed by the Organic Law of the Legislature published in Official Gazette Supplement No. 642 of July 27, 2009, the Committee finds that said recommendation is no longer pertinent.

[30] In that connection, the Committee considers that it would be more useful for the review to concentrate on new developments in relation to the legal framework on such matters and, in keeping with the methodology adopted for the Fifth Round, will offer appropriate comments and recommendations in that regard in the relevant section of this report.

Measure (c) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

- *Study the modification of paragraph (b) of Article 1-A of the LCAFL, so as to define “temporary or occasional staff,” in order to prevent appointments of public servants for an indefinite period and without having been subject to a merit-based competition, under the heading “other temporary or occasional staff.”*

[31] In its response,¹⁵ the country under review presents the following information on the foregoing measure:

[32] *“Given the legislative changes described in the responses to the preceding questions, in particular the repeal of the Law on Career Employees in the Legislature, the drafting of the In-House Rules of Procedure for Personnel Management, will include the established parameters for hiring, which is subject to approval by the maximum administrative organ in the legislature.”*

[33] Bearing in mind that the Law on Career Employees in the Legislature—to which the recommendation contained in the above measure applies—was repealed by the Organic Law of the Legislature published in Official Gazette Supplement No. 642 of July 27, 2009, the Committee finds that said recommendation is no longer pertinent.

[34] In that connection, the Committee considers that it would be more useful for the review to concentrate on new developments in relation to the legal framework on such matters and, in keeping

¹⁵ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, p. 72, available (in Spanish only) at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

with the methodology adopted for the Fifth Round, will offer appropriate comments and recommendations in that regard in the relevant section of this report.

Recommendation 1.1.3:

Strengthen the systems for hiring public servants for the Judiciary.

Measure (a) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

- *Formulate the amendments that need to be made to the Regulations on the Judicial Career (RCJ) in order to set guidelines on the implementation of the subsystem for selecting personnel, establishing the parameters on how the competitions should be conducted, including the mechanism for announcing vacancies and publishing selection requirements, in order to ensure that merit-based and competitive examinations conform to the principles of legality, equity, neutrality, equality and transparency.*

[35] With respect to the foregoing measure, the country under review said in its response that there had been significant developments in relation to government hiring in the Judicial Branch.¹⁶

[36] In that regard, the relevant part of Article 170 of the 2008 Constitution of the Republic provides: *“For admittance to the Judicial Branch, the criteria of equality, equity, rectitude, competitiveness, merits, publicity, challenge and public participation shall be observed.”*

[37] In addition, the Organic Code of the Judiciary (COFJ) was promulgated in March 2009, repealing the Organic Law of the Judiciary and the Regulations on the Judicial Career Path.

[38] According to the State’s response, *“that code sets out specific parameters for hiring judiciary personnel by means of merit-based competitive examination processes; furthermore, regulations and directives have been issued to ensure that hiring processes are carried out correctly and the LOSEP, its implementing regulations, and the standards governing the Selection Subsystem for Public-Sector Personnel, where appropriate, act as supplementary norms to support those processes.*

[39] Finally, it is worth mentioning the adoption of Resolution 107-2014 by the Judiciary Council, which enacts the Rules of Procedure for Merit-based Competitive Examinations, Citizen Challenges, and Societal Oversight for Admission to the Judiciary. Those regulations which are currently in force, establish the following phases for merit-based competitive examinations: (a) Announcement, (b) Application, (c) Merits, (d) Examination, and (e) Citizen Challenge and Societal Oversight, thus safeguarding the principles of equality, probity, nondiscrimination, disclosure, and meritocratic competition, the purpose of which is also that personnel selection processes be public, freely accessible and transparent.

[40] Bearing in mind that the Organic Law of the Judiciary and the Regulations on the Judicial Career Path—to which the recommendation contained in the above measure referred—were repealed by the Organic law of the Judiciary (COFJ) as published in Official Gazette No. 544 of March 9, 2009 and by the Rules of Procedure for Merit-based Competitive Examinations, Citizen Challenges,

¹⁶ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, p. 74, available (in Spanish only) at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

and Societal Oversight for Admission to the Judiciary, the Committee finds that said recommendation is no longer pertinent.

[41] Bearing in mind that the COFJ and the above Competition Rules of the Judiciary Council govern the procedure for application, hiring, and appointment by means of public, merit-based competitive examination processes for judiciary personnel, the Committee considers that it would be more useful for the review to concentrate on standards that constitute a new development in the legal framework on such matters and, in accordance with the methodology adopted for the Fifth Round, will offer appropriate comments and recommendations in that regard in the relevant section of this report.

Measure (b) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

- *Draft the amendments that should be made to the RCJ in order to set up a mechanism for contesting selection processes, accessible for officials and employees of the Judicial Branch and for external candidates.*

[42] As is mentioned previously, bearing in mind that the Organic Law of the Judiciary and the Regulations on the Judicial Career Path—to which the recommendation contained in the above measure referred—were repealed by the Organic law of the Judiciary (COFJ) as published in Official Gazette No. 544 of March 9, 2009 and by the Rules of Procedure for Merit-based Competitive Examinations, Citizen Challenges, and Societal Oversight for Admission to the Judiciary, enacted by Resolution 107-2014, which rules are currently in force and set out the procedure for citizen challenges with respect to probity and suitability, noncompliance with requirements, presentation of false information by applicants, and ineligibility, conflict of interest, or prohibitions established in the Constitution or the law, the Committee finds that said recommendation is no longer pertinent.

[43] Bearing in mind that the COFJ and the above Competition Rules of the Judiciary Council govern the procedure for application, hiring, and appointment by means of public, merit-based competitive examination processes for judiciary personnel, the Committee considers that it would be more useful for the review to concentrate on those standards, which provide that for all personnel, admission to the judiciary shall be via merit-based competitive examination processes subject to appeal and societal oversight, tending towards gender parity, in accordance with the procedures set forth. Those standards that constitute a new development in the legal framework on such matters and, in accordance with the methodology adopted for the Fifth Round, will offer appropriate comments and recommendations in that regard in the relevant section of this report.

Measure (c) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

- *Amend Article 10 of the Regulations on the Judicial Career in order to eliminate the possibility of public officials continuing to be employed without taking a merit-based and competitive examination, because of the alleged urgency for the service.*

[44] As is mentioned previously, bearing in mind that the Organic Law of the Judiciary and the Regulations on the Judicial Career Path—to which the recommendation contained in the above measure referred—were repealed by the Organic Law of the Judiciary (COFJ) as published in Official Gazette No. 544 of March 9, 2009 and by the Rules of Procedure for Merit-based

Competitive Examinations, Citizen Challenges, and Societal Oversight for Admission to the Judiciary, the Committee finds that said recommendation is no longer pertinent.

[45] Bearing in mind that the COFJ and the above Competition Rules of the Judiciary Council govern the procedure for application, hiring, and appointment by means of public, merit-based competitive examination processes for judiciary personnel, the Committee considers that it would be more useful for the review to concentrate on standards that constitute a new development in the legal framework on such matters and, in accordance with the methodology adopted for the Fifth Round, will offer appropriate comments and recommendations in that regard in the relevant section of this report, considering the stipulations contained in Article 42 of the COFJ, which mentions the career paths in the judiciary, including the prosecutorial career path and the administrative prosecutorial career path.

Recommendation 1.1.4:

Strengthen the systems for hiring public servants for the Public Prosecutions Service.

Measure (a) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

- *Update Article 5 of the Instructions on Recruitment of Staff for the Public Prosecutions Service (IRSPMP), in order to include other media such as radio, television, satellite, Internet, etc. when announcing vacancies subject to open competition, thereby ensuring broader publicity of the announcement.*

[46] In its response,¹⁷ the country under review presents the following information on the foregoing measure:

[47] *“The Organic Code of the Judiciary (COFJ) was promulgated in March 2009 as part of the measures taken to improve hiring processes. Repealing provision No. 3 abolished the Organic Law of the Public Prosecution Service published in Official Gazette 250 of April 13, 2006, as a result of which the Directive on Personnel Recruitment and Selection in the Public Prosecution Service (IRSPMP) ceased to be in effect.”*

[48] Furthermore, during the on-site visit, the review subgroup was informed that with the promulgation of the Constitution of 2008, the Office of the Prosecutor General was incorporated into the judiciary as an autonomous organ of that branch (Article 178 of the Constitution) and the Judiciary Council was given authority over its employee hiring processes (Article 181 of the Constitution).

[49] Taking into account that the Organic Law of the Public Prosecution Service and the Directive on Personnel Recruitment and Selection in the Public Prosecution Service (IRSPMP)—to which the recommendation contained in the above measure referred— were repealed by the Organic Law of the Judiciary (COFJ) as published in Official Gazette No. 544 of March 9, 2009 and by the Rules of

¹⁷ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, pp. 84-85, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

Procedure for Merit-based Competitive Examinations, Citizen Challenges, and Societal Oversight for Admission to the Judiciary, the Committee finds that said recommendation is no longer pertinent.

[50] Bearing in mind that the COFJ and the above Competition Rules of the Judiciary Council govern the procedure for application, hiring, and appointment by means of public, merit-based competitive examination processes for judiciary personnel (including employees of the Office of the Prosecutor General), the Committee considers that it would be more useful for the review to concentrate on standards that constitute a new development in the legal framework on such matters and, in accordance with the methodology adopted for the Fifth Round, will offer appropriate comments and recommendations in that regard in the relevant section of this report.

Measure (b) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

- *Amend Article 22 of the IRSPMP to extend the period during which a candidate can contest a competition to a more fair and realistic term, taking into account that the period begins the next day of the publication of the results, in order to guarantee a transparent process. Additionally, make the necessary amendments to ensure that the appealing instance is not the same one that rated the competition. This would ensure the possibility of a second instance for appeals.*

[51] As is mentioned previously, taking into account that the Organic Law of the Public Prosecution Service and the Directive on Personnel Recruitment and Selection in the Public Prosecution Service (IRSPMP)—to which the recommendation contained in the above measure referred— were repealed by the Organic Law of the Judiciary (COFJ) as published in Official Gazette No. 544 of March 9, 2009 and by the Rules of Procedure for Merit-based Competitive Examinations, Citizen Challenges, and Societal Oversight for Admission to the Judiciary, the Committee finds that said recommendation is no longer pertinent.

[52] Bearing in mind that the COFJ and the above Competition Rules of the Judiciary Council govern the procedure for application, hiring, and appointment by means of public, merit-based competitive examination processes for judiciary personnel (including employees of the Office of the Prosecutor General), the Committee considers that it would be more useful for the review to concentrate on standards that constitute a new development in the legal framework on such matters and, in accordance with the methodology adopted for the Fifth Round, will offer appropriate comments and recommendations in that regard in the relevant section of this report.

Recommendation 1.1.5, which requires further attention under the terms provided in the report from the Third Round:

Take the necessary measures to unify and harmonize the systems of government hiring, thereby avoiding its fragmentation, and fostering better compliance with the principles of legality, fairness, neutrality, equality and transparency foreseen in the Convention.

[53] In its response,¹⁸ the country under review presents the following information on the foregoing measure:

¹⁸ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the

[54] “(...) Considering that, in accordance with Article 228 of its Constitution, Ecuador has unified and harmonized the systems for admission to public service, primarily through the enactment of the LOSEP, which envisages only a handful of exceptions (pertaining to the nature of each of those regimes) to its scope of application as provided in Article 3, we consider that recommendation 1.1.5 has been satisfactorily met.”

[55] The Committee also takes note of how the roles of the Ministry of Labor and the Judiciary Council have been strengthened as governing bodies of the systems for hiring personnel in general and in the judiciary, respectively, as well as the enactment of specific standards that harmonize merit-based competitive examination processes, such as the Technical Regulations on the Hiring Subsystem (*Norma Técnica del Subsistema de Selección de Personal*) (promulgated by Decision No. MRL-2014-0222 and published in the Supplement to Official Gazette No. 383 of November 26, 2014) and by the Rules of Procedure for Merit-based Competitive Examinations, Citizen Challenges, and Societal Oversight for Admission to the Judiciary (adopted by Resolution 107-2014 of the Plenary of the Judiciary Council).

[56] Taking into consideration the important constitutional and regulatory changes alluded to above, the Committee considers that the aforesaid recommendation is no longer pertinent and that it would be more useful for the review to concentrate on new developments in relation to the legal framework on such matters and, in keeping with the methodology adopted for the Fifth Round, will offer appropriate comments and recommendations in that regard in the relevant section of this report.

1.1.2 New developments with respect to implementation of the Convention provision on government hiring systems

[57] The Committee had information at its disposal on the following new developments in this area, on which it will formulate pertinent observations and recommendations:

1.1.2.1 New developments in the regulatory framework

a. Scope

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

[58] – The Constitution of the Republic of Ecuador (published in Official Gazette No. 449 of October 20, 2008), Article 228 of which states: “*Admission to public service and advancement and promotion along the administrative career path shall be by competitive merit-based examination, as provided for by law, except for public servants who are elected by universal suffrage or whose appointment and recall are discretionary. Noncompliance shall be cause for dismissal of the appointing official.*”

[59] In addition, Article 230 of the Constitution expressly prohibits nepotism in the exercise of public office.

[60] – The Organic Law on Public Service (LOSEP) (published in Official Gazette No. 294 of October 6, 2010) and its General Regulations (published in Official Gazette No. 416 of April 1, 2011), which introduce mandatory provisions governing human resources and pay throughout the public administration, which, according to Article 3 of the LOSEP, encompasses: 1. All agencies and offices of the executive, legislative, judicial and indigenous justice, electoral, transparency and societal oversight branches, as well as the Office of the Attorney General and the Constitutional Court; 2. All entities under the decentralized autonomous regime and special regimes; 3. Or agencies and entities created by the Constitution or the law to exercise State authority, provide public services, or engage in economic activities pursued by the State; and 4. All legal persons created by regulatory acts of decentralized autonomous governments and special regimes for the provision of public services.

[61] The principles espoused by the LOSEP, according to its Article 1, include quality, warmth, competitiveness, continuity, decentralization, devolution, effectiveness, efficiency, fairness, equality, seniority, loyalty, timeliness, participation, rationality, responsibility, solidarity, transparency, oneness, and universality by which to promote interculturality, equality, and nondiscrimination.

[62] Article 50 of the LOSEP (in conjunction with Articles 112 and 117 of its General Regulations) provides that the following agencies are in charge of human resources management: (a) Ministry of Labor Relations (currently the Ministry of Labor) and (b) Human Resources Units (*Unidades de Administración del Talento Humano* - UATH) in each entity, institution, agency, or legal person.

[63] The areas of authority of the Ministry of Labor are set down in Article 51 of the LOSEP (in conjunction with Article 112 of its General Regulations) and include supervision of public-sector pay and issuing the appropriate technical rules in relation to human resources. Article 52 of the LOSEP (in conjunction with Article 118 of its General Regulations) establishes the functions and responsibilities of the UATHs, which include, in particular: (a) observing and enforcing the LOSEP, its general regulations, and decisions of the Ministry of Labor in their area of responsibility; (b) drafting and implementing positions description, evaluation, and classification manuals with a focus on the management of functions and duties; and (c) implementing the subsystem on hiring for merit-based competitive examination processes in accordance with the standard adopted by the Ministry of Labor.

[64] Chapter 1 of Title 5 of the LOSEP (Articles 53 and 54) establishes the Integrated Public-Sector Human Resources Development System (*Sistema Integrado de Desarrollo del Talento Humano del Sector Público*), which comprises the following subsystems: human resources planning; post classification; personnel recruitment and hiring; and instruction, training, professional development, and performance evaluation.

[65] Article 58 of the LOSEP provides, inter alia, that the number of personnel hired under occasional contracts may not surpass 20% of the hiring entity's total personnel. If that percentage is exceeded, prior authorization shall be required from the Ministry of Labor Relations (now the Ministry of Labor). The duration of such contracts may not exceed 12 months or the end of the fiscal year in progress.

[66] Regarding the personnel hiring subsystem, Article 65 of the LOSEP provides that entry to a public-sector position shall be on the basis of a merit-based competitive examination process that evaluates the suitability of interested parties and to which free access is guaranteed. Entry to public-sector positions shall be governed by the precepts of justice, transparency, and nondiscrimination.

Merit-based competitive examinations are required to be graded according to objective parameters and in no circumstances may the appointing authorities intervene directly or subjectively or employ discretionary mechanisms in the process. Such irregularities shall invalidate personnel hiring processes.

[67] When there are vacant positions to be filled, according to Article 66 of the LOSEP, public, merit-based competitive examination processes shall be held that ensure that aspirants can participate without discrimination, as envisaged in the Constitution of the Republic, the LOSEP, and the latter's implementing regulations. These competitions shall be implemented by the relevant Human Resources Units (UATH).

[68] Article 67 of the LOSEP provides that the appointing authority shall designate the winner of the competition, as named in the report issued by the UATH. The appointment shall go to the highest-scoring candidate in the competition.

[69] The requirements for admission to public service are detailed in Article 5 of the LOSEP (in conjunction with Article 3 of its General Regulations) and include, *inter alia*, the following: (a) Be at least 18 years old and in full exercise of the rights envisaged in the Constitution of the Republic and the law for the performance of public duties; (b) Not be under suspension of their civil rights, a debtor in bankruptcy proceedings, or found by a court of law to be in a state of fraudulent insolvency; (c) Not be covered by any of the causes for disqualification from the exercise of public duties; (d) Meet the requirements with respect to academic and other qualifications envisaged in the LOSEP and its implementing regulations; and (e) Be declared the winner of the merit-based competitive examination process, except in the cases of public servants chosen by universal suffrage or discretionary appointment.

[70] Articles 6 and 7 of the LOSEP (in conjunction with Article 6 of its General Regulations) expressly prohibit nepotism in the designation, appointment, or hiring of personnel. That ban extends to relatives of the appointing official up to the fourth degree of consanguinity and the second degree of affinity, as well as to their spouse or with whomever they have a de facto union. They also provide that infringement of the ban against nepotism in appointing or contracting personnel shall void the appointment or contract and, as applicable, give rise to the return of any unduly paid remuneration or supplementary income plus interest, among other penalties.

[71] The public service career path is established in Article 82 of the LOSEP. Article 83 establishes those who are excluded from the public service career path, including employees appointed on a discretionary or provisional basis. Article 58(4) of the LOSEP provides that public servants retained under occasional services contracts are also prohibited from entry to the public service career path while their contract is in effect.

[72] – Executive Decree No. 901 of February 1, 2016, by which the National Meritocracy Institute was merged with the Ministry of Labor by absorption. The Institute was established by Executive Decree No. 737 of May 5, 2011 with the mission of strengthening public administration, ensuring application of a technical system of merit in terms of competencies, abilities, capacities, skills, and values to enable suitable personnel to be hired into public service. It has the authority to verify and monitor the processes of recruitment, hiring, promotion, advancement, and evaluation of public servants at the central and institutional level in order to ensure their compliance with the Constitution of the Republic of Ecuador, the LOSEP and its general regulations, and other applicable standards, as

a means of guaranteeing that the best qualified and best suited human resources enter the public sector.

[73] According to Article 2, the responsibilities, powers, obligations, representations, programs, projects, resources, and delegated functions that used to correspond to the National Meritocracy Institute, as recognized in laws, decrees, regulations, contracts, and regulatory provisions in effect shall be assumed by the Ministry of Labor.

[74] - Technical Regulations on the Hiring Subsystem (promulgated by Decision No. MRL-2014-0222 and published in the Supplement to Official Gazette No. 383 of November 26, 2014), which establishes the procedure and technical and operational instruments by which the UATHs of state institutions governed by the LOSEP select the best-suited individuals from among applicants for public-sector positions, based on a combination of requirements established in the post descriptions and profiles and the applicants' formal educational qualifications, experience, and competencies.

[75] Under Article 2, application of the Technical Regulations is mandatory for all State institutions covered by Article 3 of the LOSEP. Excluded from its application is the admissions process for active members of the Armed Forces, National Police, Fire Department, and Transit Commission of Ecuador; teachers under the aegis of the Organic Law of Higher Education or the Organic Law of Intercultural Education; and judicial and foreign service diplomatic career personnel, which are governed by their respective laws.

[76] The Technical Regulations contain detailed rules on the hiring of personnel for positions protected by the public service career path as well as on the components of merit-based competitive examination processes: terms and conditions, announcement, examinations, interview, grading, and competency criteria to be assessed in the decisions adopted at each stage of the process; as well as provisions to ensure the transparency of the process, including publication of scores and the possibility of lodging appeals.

[77] Article 13 of the Technical Regulations describes the preliminary steps to be taken by UATHs in preparing merit-based competitive examination processes, which includes keeping the institutional positions manual up to date as an essential instrument for drafting the terms and conditions of competitions.

[78] According to Article 10 of the Technical Regulations, the Merit-based Competitive Examination Board (*Tribunal de Méritos y Oposición*) is the body that announces the winner of merits-based competitions or declares them void. The Merit-based Competitive Examination Board comprises the following: (a) the appointing official or their delegate, who chairs the Board; (b) the person responsible at the UATH or their delegate; and (c) the person responsible at the administrative unit where the vacant position is located or their delegate.

[79] Article 11 of the Technical Regulations recognizes the authority of the Appeals Board (*Tribunal de Apelaciones*) to examine and decide appeals lodged by applicants at the merits stage as well as in relation to the results of technical knowledge examinations. The Appeals Board comprises the following: (a) the appointing officials or their delegate, who chairs the Board; (b) the person responsible at the UATH or their delegate; and (c) the person responsible at the administrative unit where the vacant position is located or their delegate. Members who serve on the Merits-based Competitive Examination Board may not be members of the Appeals Board.

[80] Article 15 of the Technical Regulations on the Hiring Subsystem provides in its second and third paragraphs that the announcement of merit-based competitive examinations is initiated with the registration of the relevant plan on the technology platform. Once that is done the necessary provisional appointments may be granted to cover the positions for which the competitions will be held; and that plan shall be in force from the date on which the terms and conditions of the competition are uploaded until the date on which the announcement of the final scheduled selection process is published, [which will be] a maximum of one calendar year.

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

[81] – The Law Interpreting Article 3 of the Organic Law on Public Service (published in Official Gazette Supplement No. 651 of March 1, 2012), which stipulates that the human resources of the National Assembly are not governed by the LOSEP but by the Organic Law of the Legislature (LOFL) and resolutions passed by the Legislature Administration Council (CAL).

[82] – The Organic Law of the Legislature (LOFL) (published in Official Gazette Supplement No. 642 of July 27, 2009) and its Regulations (published in Official Gazette No. 182 of April 29, 2010), which govern the operations of the National Assembly, establish its structure, and set out its constitutional obligations, duties, and powers.

[83] Article 161 of the LOFL establishes that the following are public servants of the Legislative Branch: 1. Permanent legislature personnel, who are those that, having been appointed via a merit-based competitive examination process, serve in the administrative apparatus of the National Assembly; 2. Occasional legislature personnel, who are those who serve under contracts as advisers, assistants to assembly members, Secretary and pro-Secretary of special committees, among others mentioned in the respective regulations; and 3. Employees under discretionary appointment, including the Secretary and Pro-Secretary or Pro-Secretary General, General Administrator, Directors, the Legal Counsel, the Advisor, Secretary and Pro Secretary-Rapporteur of the special committees, and the other heads of the various administrative units, irrespective of the title of their post.

[84] Furthermore, Article 159 of the LOFL provides that “*each assembly member may request the hiring of two advisors and two assistants, whose contractual relationship shall terminate at the assembly member’s request or by decision of the Legislature Administration Council (CAL).*”

[85] *The CAL shall determine the procedure and conditions of such hires, as well as the requirements in terms of educational qualifications and experience. The prohibition of nepotism by the appointing authority and assembly members shall be expressly established.*

[86] *The list of hired advisers shall be published on the official website of the National Assembly.*

[87] In addition to advisors for each assembly member, the Legislature Administration Council (CAL) shall determine the organization and advisory and administrative staffing of the Offices of the Vice Speakers and Non-Executive Officers, the Legislature Administration Council, and special committees.

[88] Finally, under Articles 45 and 46 of the Organic and Operational Regulations of the Legislature, the Office of the Coordinator-General for Human Resources manages the human

resources of the General Assembly, relying on planning, hiring, evaluation, and training processes for ensuring an efficient staff in a workplace environment of well-being.

[89] – The Regulations on Hiring Advisers, Secretary-Rapporteurs, Pro Secretary-Rapporteurs, Consultants, Administrative Technicians, and Administrative Assistants (Codified) (Published in the Second Supplement of Official Gazette No. 873 of January 17, 2013) and its Amendment (Resolution CAL-2015-2017-079 of December 15, 2015), which describes the hiring procedure, profile, impediments, rights, obligations, and the content of contracts and their termination with respect to advisers, secretary rapporteurs, pro secretary-rapporteurs, consultants, and administrative assistants who serve at the National Assembly.

[90] Under Article 4 of the Regulations, advisers, secretary-rapporteurs, pro secretary-rapporteurs, and administrative assistants are considered public servants and sign an occasional contract for services authorized by the Speaker of the National Assembly or their delegate, following an opinion by the Department of Human Resources and provided that there are funds for that purpose.

[91] Under Article 5 of the Regulations, the maximum duration of an occasional contract for services is the time that remains in the fiscal year in progress; the contract may be renewed in the succeeding fiscal year. Such contracts do not require a merit-based competitive examination process.

[92] – The Processes-Base Organic and Operational Regulations of the National Assembly (adopted by Resolution CAL-2015-2017-115 of March 15, 2016), that allow an organizational structure to be defined based on processes in the National Assembly, through management innovation, streamlining, and enhancement in order to respond to citizen needs.

[93] Article 28 of the above Regulations establishes, *inter alia*, the mission, powers, and responsibilities of the Human Resources Department. Those powers include overseeing personnel recruitment and hiring processes before candidates are admitted to vacancies via merit-based competitive examination processes as prescribed by law.

- **Statutory and other legal provisions applicable to Judges, Prosecutors, and other Public Servants in the Judiciary,¹⁹ among which the following should be noted:**

[94] – The Constitution of the Republic of Ecuador (published in Official Gazette No. Article 449 of October 20, 2008), which provides: “*For admittance to the Judicial Branch, the criteria of equality, equity, rectitude, competitiveness, merits, publicity, challenge and public participation shall be observed.*”

[95] Furthermore, Article 176 provides that “*The requirements and procedures for designating public servants of the judiciary must involve a merit-based competitive examination process, subject to challenge and social oversight.*”

¹⁹ According to Article 38 of the Organic Code of the Judiciary, “*the following are members of the judiciary and are referred to, in general, as public servants of the judiciary*”: 1. Judges, associate judges, and other public servants of the judiciary that sit on the National Court of Justice, provincial courts, tribunals, and courts of first instance; 2. Provisional judges, for the time that they are in charge of the unit; 3. Members of the Judiciary Council and other public servants of the judiciary who serve it; 4. The Prosecutor General of the State, the Public Defender, and other public servants of the judiciary who serve at the Office of the Prosecutor General or the Public Defender’s Office Notaries and other public servants of the judicial branch who serve at auxiliary organs of the judiciary Anyone who is appointed a provisional public servant of the judicial branch to serve the organs of the judiciary.

[96] Article 178 of the Constitution establishes the Judiciary Council as the body in charge of the governance, administration, oversight and discipline in the Judicial Branch. According to article 179 of the Constitution, the Judiciary Council comprises five members with their respective alternates, who are elected for a six-year term of office from shortlists of candidates submitted to the President of the National Court of Justice (whose representative chairs it) by the Prosecutor General of the State, the Public Defender, the Executive Branch, and the National Assembly.

[97] The functions of the Judiciary Council, as set forth in Article 181 of the Constitution, include “[t]o direct the processes to select judges and other public servants of the Judicial Branch, as well as their evaluation, advancement and sanction. All processes shall be public and decisions reasoned.”

[98] – The Organic Code of the Judiciary (COFJ) (published in Official Gazette Supplement No. 544 March 9, 2009), which encompasses the structure of the judiciary, the powers and duties of its jurisdictional, administrative, auxiliary, and autonomous organs as recognized in the Constitution and laws; the jurisdiction and authority of judges, and the relationship with public servants of the judiciary and other individuals involved in the administration of justice.

[99] Article 36 of the COFJ provides that the following guiding principles are to be observed in competitions for admission to, and promotion within, the judiciary: equality, integrity, nondiscrimination, disclosure, competition, and merit.

[100] The above provision also establishes that “[t]he competitive examination phase includes theory, practical, and psychological exams.

[101] *Merit will be evaluated in accordance with rules issued by the Judiciary Council; in addition to the human resources policies to which this Code refers, those rules shall adopt objective criteria to evaluate professional qualities and ascertain the substantive merits of each candidate.*

[102] *Competitions will be held with citizen participation and societal oversight, in the manner to be determined by the rules issued by the Judiciary Council for that purpose.”*

[103] According to Article 42 of the COFJ, there are six career paths in the judiciary: (a) the jurisdictional judicial career path for those who serve as judges; (b) the administrative judicial career path for all other public servants of the Judicial Branch; (c) the prosecutorial career path for those who serve as prosecutors; (d) the administrative prosecutorial path for all other public servants of the Office of the Prosecutor; (e) the public defender career path for those who serve as public defenders; (f) and the administrative public defender career path for all other public servants of the Office of the Public Defender.

[104] The provisions of Chapter II “Admission and Promotion” of the COFJ sets out in its first part (Articles 51 to 57) general and specific requirements for admission to the judicial jurisdictional, prosecutorial, and public defender career paths.

[105] Specifically, Article 52 of the COFJ provides that “*all personnel admission to the judiciary shall be via merit-based competitive examination processes subject to appeal and societal oversight, tending towards gender parity, in accordance with the procedures set forth in this Code.*”

[106] The different phases of the selection process set out in the COFJ are as follows: (a) Convocation; (b) Application; (c) Merits; (d) Competitive Examination; (e) Citizen Challenge and Societal Oversight.

[107] Articles 58 and 59 outline the convocation process, and instruct that the judiciary shall publish the announcement in the Official Gazette and disseminate it in nationally circulated print media and on the judiciary website, without prejudice to the use of other available media (COFJ, Article 58)

[108] For its part, Article 59 provides that the announcement shall contain the legal and formal requirements to be met by candidates as well as indications as to where documents should be delivered, the closing date, and the hours for presenting applications. All of this information, together with the competition instructions, should be available on the judiciary website.

[109] Article 60 deals with grading of applications and the unit responsible (Human Resources Unit) within the Judiciary Council for justifying disqualifications and the list of applicants who will sit in on the exams.

[110] Articles 61 to 65 concern the different selection phases, outlining the three types of applicable exams (theory, practical, psychological) for competitions; the obligation to abide by the ranking of scores and publish the results in a widely circulated newspaper; and where to submit challenges and the closing date for doing so.

[111] Article 66 outlines the components of the challenge phase for merit-based competitive examination processes, by which anyone may object to a candidate's application, and defines the challenge mechanism as well as how they are decided. Articles 67 to 71 describe the conditions and stages of initial instruction for those who successfully complete the above phases.

[112] Article 72 refers to the establishment by the Human Resources Unit of a database of eligible persons resulting from selection processes (merit-based competitive examinations). Such persons are kept in the database for six years. In the event that vacancies need to be filled, priority shall be given to those in the database of eligible persons, in strict order of their scores. The database shall also be used to select replacements for incumbents in the event of their absence, impediment, or contingencies.

[113] Article 73 provides that the results of competitions and evaluations of students of the Judicial College are binding upon the appointing authorities, which, therefore, shall appoint to the post or position the contestant who scored highest in the competition, whether for admission or promotion within a category, on the appropriate grading scale. If several vacancies in a particular category need to be filled, the contestants who obtained the highest scores behind the first-placed contestant shall be appointed in the order of their scores.

[114] Articles 77 and 78 have to do with general grounds for ineligibility and disqualification based on family ties from holding a post or position in the judiciary, the latter including being a spouse, having a de facto union, or being a relative up to the fourth degree of consanguinity or the second of affinity of the appointing authority or a member thereof if the authority is a collegiate body; or of a public servant of the judiciary who serves in the same unit.

[115] Finally, pursuant to paragraph 10 of Article 264 of the COFJ, one of the functions of the Plenary of the Judiciary Council is: *'10. To enact, amend, abrogate, and interpret with mandatory effect the Code of Ethics of the Judiciary, the Organic Administrative Statute of the Judiciary, and its internal rules of procedure, manuals, instructions, and resolutions, in accordance with the Constitution and the law, for the organization, workings, responsibilities, control, and disciplinary regime of the judiciary, in particular to ensure its transparency and efficiency'; therefore, in*

accordance with the above norms, the Rules of Procedure for Merit-based Competitive Examinations were enacted with the aim of regulating the procedure for the application, selection, and appointment of public servants in the judiciary through public competitions.”

[116] Rules of Procedure for Merit-based Competitive Examinations, Citizen Challenges, and Societal Oversight for Admission to the Judiciary (adopted by Resolution 107-2014 of the Plenary of the Judiciary Council), which sets out detailed rules on merits, scores, and competency criteria to be evaluated for adopting decisions at each phase of the selection process in the judiciary, as well as on disclosure measures (including announcements), publications, the different stages of the competition, procedure, requirements to be met, challenges, terms and deadlines, which have been established for the purpose of ensuring that hiring processes are public, freely accessible, and transparent, so as to obtain a number of eligible persons to be considered for admission to the judiciary, taking into account their scores in the selection process, for which reason they are announced through publication in the Official Gazette, widely circulated national print media, the Judiciary Council website (www.funcionjudicial.gob.ec), and national radio and television.

[117] Articles 4 to 6 of the Regulations describe, respectively, the powers and duties of the Plenary of the Judiciary Council, the Office of the Director General, and the National Department of Human Resources of the Judiciary Council in merit-based competitive examination processes, as well as outlining in detail how each phase shall be managed: (a) convocation; (b) application; (c) merits; (d) competitive examination; (e) citizen challenge and societal oversight.

[118] In the framework of the stipulations contained in Article 6(a) the Rules of Procedure for Merit-Based Competitive Examinations, one of the duties of the National Director of Human Resources is: ‘To manage merit-based competitive examinations, citizen challenges and societal oversight of the judiciary’ in coordination with the different areas involved in the process: National Directorate of Information and Communication Technologies, the National Directorate of Social Communication, the Judicial Academy, and the National Directorate and Plenary of the Council, as applicable.

[119] In addition, in accordance with Article 19 of the above-mentioned Rules of Procedure, concerning the duration of competition phases, the different phases of competitions shall be carried out in accordance with the established schedule prepared for that purpose by the National Directorate of Human Resources and approved by the National Directorate of the Judiciary Council. Accordingly, the various phases of competitions shall proceed in accordance with the schedule drawn up by the National Directorate of Human Resources and approved by the National Directorate of the Judiciary Council. That schedule establishes the deadlines for presenting requests for reconsideration or reassessment in the merits and competitive examination phases, respectively. According to the approved competition methodology, the reassessment of requests for reconsideration is analyzed by the National Directorate of Human Resources, which submits a report to the National Directorate of the Judiciary Council so that it may adopt a decision, the results of which are communicated to each applicant.

b. Observations

- **With respect to new legal developments applicable to a majority of public servants:**

[120] The Committee acknowledges that the new legal developments in this area are positive steps toward establishing a more unified and harmonious system for the meritocratic entry of public

servants to public-sector institutions and agencies and a career in government administration. Nevertheless, the Committee deems it appropriate to make a number of observations in that regard:

[121] As regards the Organic Law on Public Service (LOSEP) and merit-based selection for admission to public service, the Committee notes, first, that Article 17 of the law provides that public service appointments may be either permanent (those approved to fill vacancies by means of the selection system envisaged in the LOSEP) or provisional.

[122] In that connection, Article 5 of the General Regulations of the LOSEP establishes exceptions to the requirement of a merit-based competitive examination process to fill provisional, discretionary, or fixed-term positions in the public sector, which are excluded from the public service career path, as provided at Article 17, paragraphs b(1), b(2), b(3), b(4), (c) and (d); and at Article 83 (a), (b) and (h) of the LOSEP. Occasional contracts for services are also, owing to their nature, not subject to merit-based competitive examination processes and, therefore, do not belong to the public service career path, as established by Article 58 (4) of the LOSEP.

[123] in that regard, according to the following information submitted in the course of the on-site visit,²⁰ the Committee finds that the majority (55%) of public servants in the Executive Branch gained entry by means of a competition, 14% are provisional appointees (awaiting a competition or in a three-month probation period), and 17% are under occasional contracts for services.

TOTAL PUBLIC SERVANTS EXECUTIVE BRANCH		
PUBLIC SERVANTS	FIGURE PROVIDED	PERCENTAGE
Provisional Appointment	58,814	14%
Permanent Appointment	235,399	55%
Occasional Contracts	71,944	17%
Senior Level	4,837	1%
Labor Code	58,403	14%
Total Executive Branch	429,397	100%

As at: December 2015

[124] In light of the foregoing, while the Committee recognizes the progress made relative to the situation that existed at the time of the Second Round of review,²¹ it also believes it important that appropriate measures be taken to continue to increase the percentage of competitively hired employees in the Executive Branch by implementing the plans for the competitions for positions occupied by provisionally appointed personnel and reviewing the proportion in which occasional contracts are used. The Committee will make a recommendation in that regard (See recommendation 1.1.3.1 in Section 1.1.3 of Chapter II of this report.)

[125] In second place, and concerning a matter related to the above point, the Committee notes the provisions contained in Article 58 of the LOSEP on occasional contracts for services and exceptions thereto:

²⁰ See presentation by the Ministry of Labor during the on-site visit, slides 13 and 14. Available at: http://www.oas.org/juridico/ppt/mesicic5_ecu_pan_3_min_trab.pptx

²¹ See pp. 6 and 7, available at http://www.oas.org/juridico/english/mesicic_II_rep_ecu.pdf

[126] *“The signing of occasional contracts for services shall be authorized by the appointing authority to meet the institution’s needs, following a report from the human resources management unit, provided that a budget heading exists and that there are funds available for that purpose.*

[127] *The number of personnel hired under occasional contracts may not surpass 20% of the hiring entity’s total personnel. If that percentage is exceeded, prior authorization shall be required from the Ministry of Labor Relations. The duration of such contracts may not exceed 12 months or the end of the fiscal year in progress. **Recently established institutions or agencies that need to hire personnel in this manner until the relevant merit-based competitive examination processes are held, as well as positions corresponding to investment projects or that belong to the senior level scale are excepted from this percentage.** Owing to their nature, contracts of this type do not give rise to tenure. (...) Public servants retained under such contracts shall not enter the public service career path while their contract is in effect. (...) Should it be necessary, the institution may renew an occasional contract for services once for up to an additional 12 months, except in the case of positions corresponding to investment projects or at the senior level scale.”*

[128] The Committee also notes that Article 13 of the Technical Regulations on the Hiring Subsystem provides that the up-to-date positions description, evaluation, and classification manual is an essential instrument for drafting the terms and conditions of competitions.

[129] In that regard, based on information submitted during the on-site visit,²² The Committee finds that as of March 2016, out of a total of 113 entities under the LOSEP, 73% had approved manuals and 27% did not.

[130] Of the institutions without up-to-date positions manuals, 22 do not have a statute (62%), many of which had been recently established; 6 required technical assistance (17%); 5 had received observations from the Ministry of Labor (14%); 1 was under senior management review (3%), and one was reviewing a second amended draft (3%).²³

[131] Based on the information above and taking into account the importance of up-to-date positions description, evaluation, and classification manuals for drafting the terms and conditions of hiring competitions, the Committee believes it is important that efforts continue to promote mechanisms to ensure the institutionalization processes of all the entities to which the LOSEP applies, so that they have updated institutional positions manuals, duly approved by the Ministry of Labor in its capacity as the lead agency, within a reasonable time. The Committee will make a recommendation in that regard. (See recommendation 1.1.3.2 in Section 1.1.3 of Chapter II of this report.)

[132] Third, in spite of the fact that the LOSEP and its general regulations charge the UATHs with keeping positions description, evaluation, and classification manuals up-to-date and the Basic Law on Transparency and Access to Public Information ensures this information’s publication, the Committee has verified that not all information contained in said manuals is public. The Committee

²² See presentation by the Ministry of Labor during the on-site visit, slide 8. Available at: http://www.oas.org/juridico/ppt/mesicic5_ecu_pan_3_min_trab.pptx

²³ During the Review Subgroup’s meeting, the country under review reported that, *“The Ministry of Labor has sent information as of August 2016 from institutions that do not have an up-to-date positions manual. This information reveals that 15 institutions, many of which have recently been established, do not have a statute (42%); 13 require technical assistance (36%); 4 have received observations from the Ministry of Labor (11%); 1 is under senior management review (3%); 1 is reviewing a second amended draft (3%); and 2 are drafting a statute with the lead agency (SNAP). The foregoing shows progress in compliance.”*

will make a recommendation in that regard. (See recommendation 1.1.3.3 in Section 1.1.3 of Chapter II of this report.)

[133] Fourth, regarding the system of appeals during hiring processes, the Committee notes that the composition of the Merit-based Competitive Examination Board (which declares the winner of the competition) and the Appeals Board consists exclusively of staff of the hiring institution, in spite of the fact that Article 11 of the Technical Regulations on the Hiring Subsystem provides that no personnel may sit on both boards.

[134] In that regard, the Committee finds it important for the country under review to work for greater effectiveness of this second body to examine and decide appeals submitted during the merits and in relation to the results of technical knowledge examinations.

[135] In that connection, a focus on ongoing improvement of the current competition model was identified in a proposal shared after the on-site visit,²⁴ starting with areas where there is room for improvement such as: *“(...) transparency, due to the fact that there is a weakness in terms of credibility and concerns regarding the levelness of the playing field between internal and external applicants in the process (...)”*

[136] Among other things, the proposal recommends holding public competitions executed by the Ministry of Labor at the request of entities for positions envisaged in their optimal staffing plan; the creation of economies of scale by grouping small hiring processes (minimal number of headings), especially for entities whose size makes the cost of holding one competition per entity prohibitive; holding system-wide, merit-based competitions by stages that would be publicly announced by the Ministry of Labor; centralizing selection/hiring for eligible or uniform positions while keeping specialized positions decentralized; definition of a timetable of staggered competitions to fill periodic vacancies through targeted competitions; establishment of a consolidated public-sector labor exchange and a consolidated database of persons eligible for public-sector employment.

[137] In the interests of ongoing improvement in terms of safeguarding the principles of transparency, equality, fairness, and efficiency in merit-based competitive examination processes, the Committee believes it important for the country under review to consider implementing the recommendations contained in the proposal of the Ministry of Labor and to consider analyzing the composition of the Appeals Board. The Committee will make recommendations in that regard. (See recommendations 1.1.3.4 and 1.1.3.5 in Section 1.1.3 of Chapter II of this report.)

[138] Germane to the foregoing are the observations on this subject presented by representatives of civil society and private sector organizations, professional associations, and academics invited to participate in the on-site visit. In that regard, representatives of the Central Unitary Workers Union (CUT) stated the following:²⁵ *“(...) in practice it has been seen that public, merit-based competitive examination processes have been held, which are published in the main mass media and on the websites of the various public sector entities; however, the results are not guaranteed to be transparent and/or the most suitable. Therefore, competitive examinations should be public and any challenges or appeals should be decided by an authority other than the human resources unit, so that it is not both judge and party when it comes to settling a challenge, which does not ensure propriety*

²⁴ Available at: http://www.oas.org/juridico/docs/mesicic5_ecu_ane_mdt_2.1_prop_prot.docx

²⁵ See presentation by the Central Unitary Workers Union (CUT) during the on-site visit, slide 6. Available at: http://www.oas.org/juridico/ppt/mesicic5_ecu_soc_civ_tem_1_prim_cut_fin.pptx

in the process. Therefore, effective implementation of the principles of equality, fairness, and efficiency remains latent.

[139] *While it is true that the Ministry of Labor makes efforts to see to it that these principles are applied across the public sector, it is no less a fact that mid-level managers in public-sector entities fail to abide by these legally and constitutionally recognized principles.”*

[140] Finally, in the interests also of limiting any disadvantages to external candidates in relation to internal candidates in competitions, the Committee believes it important for the country under review to consider increasing the time limit of four days for the publication and dissemination of notices of convocation competitions and submitting applications to enter them.

[141] The Committee considers that relatively short time limits for disclosure and submitting applications could give an advantage to internal candidates in preparing their applications. The Committee will make a recommendation in that regard. (See recommendation 1.1.3.6 in Section 1.1.3 of Chapter II of this report.)

• **With respect to new legal developments applicable to a majority of public servants in the Legislative Branch:**

[142] The Committee takes note of the new legal developments applicable to public servants in the Legislative Branch. Nevertheless, the Committee deems it appropriate to make a number of observations in that regard:

[143] First, and similar to what was noted in the section above on the review of measure (a) of recommendation 1.1.2, the Committee notes that the National Assembly is still developing a draft In-House Rules of Procedure for Personnel Management, which, according to the country under review, “include policies and standards governing merit-based and competitive examination processes and will enter into force following their adoption by the maximum administrative organ of the National Assembly.”

[144] Therefore, based on what was stated in the response to the questionnaire and confirmed by representatives of the National Assembly during the on-site visit,²⁶ since the promulgation of the 2008 Constitution, no merit-based competitive examination processes have been held for the hiring of permanent legislature personnel, which, according to Article 228 of the Constitution at article 161 of the LOFL, are only to be hired in that manner.

[145] In that regard, based on information provided during the on-site visit, with the enactment of the Regulations on Hiring Advisers, Secretary-Rapporteurs, Pro Secretary-Rapporteurs, Consultants, Administrative Technicians, and Administrative Assistants for the National Assembly, the Committee notes that at present there are more requirements to be met in hiring discretionarily appointed personnel than for career public servants in the legislature.

²⁶ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, p. 67, available (in Spanish only) at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

[146] In that connection, the Committee considers it important that the In-House Rules of Procedure for Personnel Management of the National Assembly be approved and that they contain detailed parameters on how competitions should be conducted, including the mechanism for announcing vacancies with reasonable deadlines, publication of selection requirements and criteria, and challenge mechanisms intended to clarify, amend, or revoke substantive decisions in hiring processes, in order to ensure that merit-based competitive examination processes conform to the principles of legality, equity, neutrality, equality and transparency. The Committee will make a recommendation in that regard. (See recommendation 1.1.3.7 in Section 1.1.3 of Chapter II of this report.)

[147] Second, the Committee notes that preparing the terms and conditions of hiring competitions for permanent legislature personnel will require a Manual of Legislative Branch Positions.

[148] In that regard, in response to the request for information made during the on-site visit, representatives of the National Assembly forwarded a copy of Memorandum No. 660-CGTH-AN-16 of April 6, 2016, by which the Office of the Coordinator-General for Human Resources sent the General Administrator the draft National Assembly Positions Description, Evaluation, and Classification Manual for review prior to its submission to the relevant body for approval.

[149] The Committee takes note of that information and considers it important that the jobs manual be given prompt consideration with a view to its final approval. The Committee also believes it important that the country under review consider introducing regulatory provisions requiring that the Positions Manual be kept up-to-date and published on the National Assembly website so that anyone may consult it. The Committee will make recommendations in that regard. (See recommendations 1.1.3.8 and 1.1.3.9 in Section 1.1.3 of Chapter II of this report.)

[150] Third, the Committee also considers it critical that, once the above In-House Rules of Procedure for Personnel Management of National Assembly and its Positions Description, Evaluation, and Classification Manual have been approved, merit-based competitive examination processes be initiated to fill permanent staff positions in the legislature, thus ensuring that the majority of public servants in the Legislative Branch are hired through meritocratic procedures. The Committee will make a recommendation in that regard. (See recommendation 1.1.3.10 in Section 1.1.3 of Chapter II of this report.)

[151] Finally, the Committee takes note of the following difficulty mentioned by the country under review in its response to the questionnaire:²⁷ *“The personnel section tool is currently being developed. Once it is approved, the implementation phase will begin. However, one possible obstacle to implementation might be the difficulty of obtaining the budget appropriation needed. This is because optimizing and revitalizing the processes involved will require personnel who are specialists in various different institutional spheres.”*

[152] Based on the above information, the Committee considers it important to provide the Office of the Coordinator-General for Human Resources with the financial resources that it needs to properly perform its functions and operations in the meritocratic hiring of permanent Legislative

²⁷ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, p. 68, available (in Spanish only) at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

Branch personnel. The Committee will make a recommendation in that regard. (See recommendation 1.1.3.11 in Section 1.1.3 of Chapter II of this report.)

• **With respect to new legal developments applicable to Judges, Prosecutors, and other Public Servants of the Judicial Branch:**

[153] The Committee acknowledges that the new legal developments in this area are positive steps in improving the meritocratic system of entry for judges, prosecutors, and other public servants of the Judicial Branch. Nevertheless, the Committee deems it appropriate to make a number of observations in that regard:

[154] First, with regard to the Organic Code of the Judiciary (COFJ) and the Rules of Procedure for Merit-based Competitive Examinations, Citizen Challenges, and Societal Oversight for Admission to the Judiciary, the Committee finds that those rules do not establish reasonable time limits for publishing the notice of convocation. In that respect, the Committee notes that Article 15 of the Rules of Procedure for Competitive Examinations merely states that the time limit for applications is determined in the instructions for each competition, counted from the publication of the notice of convocation in the Official Gazette.

[155] Bearing in mind the importance to have legally established reasonable time limits for the publication of the notice of convocation in order to ensure equal treatment in terms of the application opportunity for internal and external candidates, the Committee will make a recommendation in that regard. (See recommendation 1.1.3.12 in Section 1.1.3 of Chapter II of this report.)

[156] Second, the Committee observes that the right to appeal or request a reassessment at different stages of the process is recognized, not in the CSJ, but in the Rules of Procedure for Competitions of the Judicial Branch.

[157] Articles 26, 27, and 33 of the aforesaid Rules of Procedure for Competitive Examinations establish, respectively, the rights of all candidates to request reconsideration or reassessment of merits or theory or practical examinations through the computerized system and within the time limits established in the instructions for each competition. Such requests are decided by the director of the Judiciary Council or their delegate, and the respective candidates notified of the decisions, which are also published on the institution's website.

[158] In that connection, the Committee notes that not all competition instructions establish the deadline for presenting requests for reassessments or appeals. For example, Article 13 of the "Instructions for the Merit-based Competitive Examination with the Possibility of Citizen Challenges and Societal Oversight for a Place on the Initial Instruction Course at the Judiciary College for the National Prosecutorial Career Path" (adopted by Resolution 108-2014 of the Plenary of the Council of the Magistracy) provides that "*petitions for reassessment of merit should be submitted within the time limit determined in the competition timetable in accordance with the Rules of Procedure for Merit-based Competitive Examinations, Citizen Challenges, and Societal Oversight for Admission to the Judiciary.*"²⁸

[159] Bearing in mind that the problem of extremely short time limits for lodging appeals was identified in the report on the Second Round,²⁹ the Committee considers it important that the Rules of

²⁸ Available at <http://www.funcionjudicial.gob.ec/www/pdf/resoluciones/2014cj/108-2014.pdf>

²⁹ See p. 9, available at: http://www.oas.org/juridico/english/mesicic_II_rep_ecu.pdf

Procedure for Merit-based Competitive Examinations, Citizen Challenges, and Societal Oversight for Admission to the Judiciary establish reasonable time limits for presenting requests for reconsideration or reassessment of merits and theory or practical examinations. In addition, modifications should be made to ensure that the appellate body is not the same one that graded the competition, which would ensure the effectiveness of the second instance and that decisions are adopted by a collegiate body, such as the Plenary of the Judiciary Council. The Committee will make a recommendation in that regard. (See recommendation 1.1.3.13 in Section 1.1.3 of Chapter II of this report.)

[160] Finally, based on the information supplied by the Judiciary Council during the on-site visit,³⁰ the Committee is concerned at the high number of uncontested appointments in administrative career paths in the Judicial Branch at the national level. According to the information, 58% of public servants (5,724) have provisional appointments and 16% (1,545) are employed under occasional contracts for services. Meanwhile, the percentage of public servants with permanent appointments (on the strength of merit-based competitive examination processes) is only 14% (1,379).

[161] Furthermore, in response to a request made during the on-site visit,³¹ representatives of the Office of the Prosecutor General reported that as of April 2016, the institution had a total of 848 prosecutors, 772 of whom had permanent appointments (91%) while 76 were provisionally appointed (9%), as a result of the merit-based competitive examination process designed and implemented by the Judiciary Council in 2014.

[162] It is worth highlighting that during the on-site visit it was clarified that all members of the jurisdictional judicial career path (judges) had permanent appointments. It was further clarified that occasional contracts for services are only valid for administrative personnel in the Judicial Branch, not for judges, prosecutors, notaries, or public defenders, who are exclusively retained via merit-based competitive examination processes.

[163] In light of the foregoing, the Committee considers it important that the country under review consider taking steps to reduce the high proportion of provisional appointees in administrative career paths in the Judicial Branch by holding the merit-based competitive examination processes. The Committee will make a recommendation in that regard. (See recommendation 1.1.3.14 in Section 1.1.3 of Chapter II of this report.)³²

1.1.2.2 New developments with regard to technology

- New technological developments applicable to the Ministry of Labor and the entities under its authority:

³⁰ See presentation by the Judiciary Council during the on-site visit, slide 25. Available at: http://www.oas.org/juridico/ppt/mesicic5_ecu_pan_3_ter_con_jud_fin.pptx

³¹ See additional information requested of Ecuador during the on-site visit, second part, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_con_inof_adi_2_parte.pdf

³² During the meeting of the review subgroup, the State under review informed that “*In 2015, the Judiciary Council worked in coordination with the Ministry of Labor and the Ministry of Finance in order to earmark appropriations for administrative positions with a view to holding merit-based competitive examination processes for the award of regular appointments in the administrative career path in the judiciary. Based on the plan drawn up for the merit-based competitive examination process, and in view of the existence of personnel already hired under occasional contracts who met the statutory length of service requirements, a competition was convened, enabling provisional appointments to be awarded. At present, the relevant areas of the institution are engaged in a review aimed at improving the institution’s structures, job profiles, and administrative processes. Once that information is available, the merit-based competitive examination processes for the year in progress will be reactivated.*”

[164] With respect to new technological developments, the Committee notes that in 2013 the country under review established the Internet portal “Plataforma RED SOCIO EMPLEO,”³³ which provides information technology support to facilitate human resources application, hiring, and selection processes. Vacancy announcements and the terms and conditions of public service hiring competitions are published on the portal.

[165] In that connection, Article 3 of the Technical Regulations on the Hiring Subsystem provides that all hiring of personnel for positions protected by the public service career path must be done through merit-based competitive examination processes using the aforementioned technology platform of the Ministry of Labor as the only valid mechanism for such processes.

[166] The Committee also takes note of the establishment of the Integrated Human Resources IT System (SIITH),³⁴ which, according to Article 133 of the General Regulations of the LOSEP, is composed of “*modules concerned with management, service quality assurance, human resources, remuneration and supplementary income, personnel movement, identification of persons ineligible for public service, comprehensive real estate register, and such others as may be established, for which the relevant technical standards shall be adopted.*”³⁵ The information recorded in the SIITH is strictly the responsibility of the institutional human resources units (UATHs) and its administration and subsequent safekeeping shall be the responsibility of the Ministry of Labor.

[167] Under Article 134 of the General Regulations of the LOSEP application of the SIITH is mandatory for all institutions covered by Article 3 of the LOSEP. Those institutions are required to record in the aforesaid System all information connected with the personnel movements of their institution’s human resources at the time of each administrative act, as well as their pay.

- New technological developments applicable to the Judiciary Council:

[168] As regards developments of this type on the part of the Judicial Council, the Committee should mention the Judicial Branch Personnel Hiring System,³⁶ which consists of a platform on which interested parties can record and update their particulars, submit their curriculum vitae, choose and participate in merit-based competitive examination processes in the Judicial Branch, and monitor the hiring process.

1.1.2.3 Results

[169] In its response to the questionnaire,³⁷ with the exception of information for the Judiciary Council, the country under review does not provide information on objective results obtained with the systems of government hiring referred to in Article III(5) of the Convention. However, based on the information gathered during the on-site visit as well as that which it had at its disposal, the Committee believes it appropriate to offer the following considerations:

³³ www.socioempleo.gob.ec

³⁴ <http://www.trabajo.gob.ec/sistema-informatico-integrado-de-talento-humano/>

³⁵ Available at: <http://www.trabajo.gob.ec/wp-content/uploads/downloads/2013/06/2013-Acuerdo-0093-Norma-t%C3%A9cnica-para-el-uso-del-sistema-inform%C3%A1tico-integrado-del-talento-humano-y-remuneraci%C3%B3n-SIITH1.pdf>

³⁶ <http://app.funcionjudicial.gob.ec/SISPERFUJv1.8/>

³⁷ See response of Ecuador to the questionnaire for the fifth round, pp. 155-157. Available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

- **With respect to the majority of public servants:**

[170] First, the Committee reiterates its observations regarding the importance that the country under review adopt appropriate measures to continue to increase the number of competitively hired employees in the Executive Branch by implementing the plans for the competitions for positions occupied by provisionally appointed personnel and reviewing the proportion in which occasional contracts are used. The Committee will make a recommendation in that regard. (See recommendation 1.1.3.1 in Section 1.1.3. of Chapter II of this report.)

[171] Furthermore, during the on-site visit, with respect to the number and percentage of appeals filed against decisions adopted in recruitment processes and the current status of proceedings involving such cases, the Ministry of Labor reported that of a total of 2,803,482 applicants to public competitions,³⁸ 317,351 (11%) lodged appeals against the assessment of merits and 71,195 (3%) presented appeals against technical examinations.

[172] However, the Committee was unable to obtain any additional information on the status of the appeals filed. Bearing in mind the observations made in the preceding section regarding the composition of the Appeals Board, the Committee reiterates the need for the country under review to consider revising it in order to more strongly highlight the effectiveness of the second instance (See recommendation 1.1.3.5 in Section 1.1.3 of Chapter II of this report.)

- **With respect to the Legislative Branch:**

[173] The Committee reiterates the need that, once the In-House Rules of Procedure for Personnel Management of National Assembly and its Positions Description, Evaluation, and Classification Manual have been approved, merit-based competitive examination processes be initiated to fill permanent staff positions in the legislature, thus ensuring that the majority of public servants in the Legislative Branch are hired through meritocratic procedures. (See recommendation 1.1.3.5 in Section 1.1.3 of Chapter II of this report.)

[174] In that regard, it is worth noting that during the on-site visit representatives of the National Assembly mentioned the positions currently filled by means of occasional contracts for services will be filled by personnel recruited under merit-based competitive examination processes.³⁹ Those competitions are being planned, and until they are held, provisional appointments will be granted

- **With respect to the Judicial Branch:**

[175] In its response to the questionnaire,⁴⁰ the country under review submitted the following information on merit-based competitive examination processes held by the Judiciary Council:

[176] **Statistics for merit-based competitive examination processes held by the Judiciary Council in 2014 and 2015:**

³⁸ See presentation by the Ministry of Labor during the on-site visit, slide 15. Available at: http://www.oas.org/juridico/ppt/mesicic5_ecu_pan_3_min_trab.pptx

³⁹ See presentation by the National Assembly during the on-site visit, slide 25. Available at: http://www.oas.org/juridico/ppt/mesicic5_ecu_pan_3_asa_nacl.pptx

⁴⁰ See response of Ecuador to the questionnaire for the fifth round, pp. 155-157. Available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

[177] Merit-based competitive examination with the possibility of citizen challenges and societal oversight for a place on the initial instruction course at the judiciary college for the **national jurisdictional judicial career path**

[178] · Applicants Registered:	5,213
[179] · General requirements met and merits assessed	2,778
[180] · Applicants who sat the theory examination	1,648
[181] · Applicants who did not pass the psychological examination	392
[182] · Applicants eligible to sit the practical examination	1,256
[183] · Applicants who sat the practical examination	1,056
[184] · Applicants eligible to take the initial instruction course	584

[185] Merit-based competitive examination with the possibility of citizen challenges and societal oversight for selection and appointment of **secretaries of lower courts and judicial units at the national level; secretary rapporteurs of provincial courts at the national level; and secretary rapporteurs of the National Court of Justice**

[186] · Applicants Registered:	5,919
[187] · General requirements met and merits assessed	2,799
[188] · Applicants with disqualifying factors at the Ministry of Labor Relations	65
[189] · Applicants who met the general requirements	2,756
[190] · Applicants with a score of 70 points or better in the merits and competitive examination phase	964
[191] · Applicants with a score of 70 points or better in the competitive examination phase	964
[192] · Applicants who did not pass the psychological suitability phase	24
[193] · Applicants who passed the competition	940
[194] ü Secretary Rapporteur of the National Court	8
[195] ü Secretary Rapporteur of a Provincial Court	155
[196] ü Secretary of a Lower Court or Judicial Unit	777

[197] Merit-based competitive examination for a place on the initial instruction course for the **national prosecutorial career path**

[198] · Applicants Registered:	3,186
[199] · Applicants who met the general requirements	1,390
[200] · Applicants who qualify on merits and passed the psychological assessment	864
[201] · Applicants with scores above 750	280

[202] Merit-based competitive examination with the possibility of citizen challenges and societal oversight for the **partial renewal of the National Court of Justice**

[203] · Applicants Registered:	316
[204] · Applicants with complete information	199
[205] · Applicants who met the general requirements	139
[206] · Passed public hearings and moved on to the competitive examination phase	120

[207] · Applicants who did not sit the examination	23
[208] · Applicants eligible for practical examinations	97
[209] · Applicants who sat the practical examination	89
[210] Applicants with scores above 75	38

[211] Merit-based competitive examination with the possibility of citizen challenges and societal oversight for a place on the initial instruction course at the judiciary college for the **auxiliary organ of the notary service at the national level**

[212] · Applicants Registered:	5,416
[213] · Active applicants for verification	5,006
[214] · General requirements met and merits assessed	2,361
[215] · Applicants who withdrew	2
[216] · Applicants whose merits were assessed	2,359
[217] · Applicants who withdrew	3
[218] · Applicants who graduated to the competitive examination phase	2,356
[219] · Applicants with scores over 70 points and awarded psychological certificates	796
[220] · Applicants who did not pass the psychological examination phase	12
[221] · Applicants who graduated to the initial instruction course	763
[222] · Places on the initial instruction course	446

[223] Source: Judiciary Council

[224] In addition, during the on-site visit representatives of the Judiciary Council presented the following table on reconsideration and reassessment requests lodged in the various competitions:⁴¹

BREAKDOWN OF RECONSIDERATION AND REASSESSMENT REQUESTS PRESENTED IN THE VARIOUS COMPETITIONS								
COMPETITION	PHASES							
	GENERAL REQUIREMENTS		MERITS		COMPETITIVE EXAMINATION			
	PRESENTED	ACCEPTED	PRESENTED	ACCEPTED	THEORY - PRESENTED (in number of questions)	THEORY - ACCEPTED (in number of questions)	PRACTICAL - PRESENTED (in number of cases)	PRACTICAL - ACCEPTED (in numbers of cases)
JURISDICTIONAL JUDICIAL CAREER PATH	564	27	1,832	379	2,547	255	1,889	148
NOTARY SERVICE	820	137	492	54	1,748	230	2,339	226

⁴¹ See presentation by the Judiciary Council during the on-site visit, slide 27. Available at: http://www.oas.org/juridico/ppt/mesicic5_ecu_pan_3_ter_con_jud_fin.pptx

	<i>PRESENTED</i>	<i>ACCEPTED</i>	<i>PRESENTED</i>	<i>ACCEPTED</i>	<i>THEORY - PRESENTED (in number of questions)</i>	<i>THEORY - ACCEPTED (in number of questions)</i>	<i>PRACTICAL - PRESENTED (in number of cases)</i>	<i>PRACTICAL - ACCEPTED (in numbers of cases)</i>
PARTIAL RENEWAL OF THE NATIONAL COURT OF JUSTICE	-	-	396	5	383	125	263	13
PROSECUTORIAL CAREER PATH	605	17	-	-	2,506	429	1,352	905
SECRETARIES 2014	220	42	265	N/I	2,597	163	753	154
PUBLIC DEFENDER CAREER PATH	254	144	2,374	231	5,482	358	5,543	912

[225] During the on-site visit, Representatives of the Judicial Council also presented information about the number of citizen challenges received:⁴²

[226] The competitions for the judicial career path and for the notary service (2014) received one citizen challenge each; the competitions for the partial renewal of the National Court of Justice and for the public defender career path were the subject of two challenges each; the competition for secretaries (2014) received three challenges. There were no citizen challenges for the prosecutorial career path competition (2014). Of all the challenges presented, only one was accepted—the one relating to the partial renewal of the National Court of Justice.

[227] Based on the above information, the Committee finds that the Judicial Council has been moving forward with selection processes for judicial officials in accordance with the provisions of the new regime governing the judicial career path. However, no information was provided for competitions held for the entry of public servants to the various administrative career paths in the judiciary. Accordingly, the Committee reiterates the importance that the country under review take steps to reduce the high proportion of provisional appointees in administrative career paths in the Judicial Branch, by holding the necessary merit-based competitive examination processes. (See recommendation 1.1.3.14 in Section 1.1.3 of Chapter II of this report.)⁴³

⁴² See presentation by the Judicial Council during the on-site visit, slide 28. Available at: http://www.oas.org/juridico/ppt/mesicic5_ecu_pan_3_ter_con_jud_fin.pptx

⁴³ During the meeting of the review subgroup, the State under review informed that “In 2015, the Judiciary Council worked in coordination with the Ministry of Labor and the Ministry of Finance in order to earmark appropriations for administrative positions with a view to holding merit-based competitive examination processes for the award of regular appointments in the administrative career path in the judiciary. Based on the plan drawn up for the merit-based competitive

[228] Finally, the Office of the Prosecutor General also provided information on competitions in the course of the on-site visit detailing the results of open merit-based competitive examinations held between 2011 and 2015.⁴⁴ With regard to this information, the Committee notes that new competitions for admission to the administrative prosecutorial career path were held while there were still approved candidates in the database of eligible persons, which, according to Article 72 of the COFJ, is valid for six years.

[229] In that regard, the representatives of the Office of the Prosecutor General provided the following information:⁴⁵ *“As regards this concern, it is worth mentioning that the Office of the Prosecutor General, in coordination with the Judicial Council, has announced new merit-based competitive examinations with the possibility of citizen challenges and societal oversight, despite the existence of databases containing eligible candidates from past competitions for the following reasons:*

[230] • *There are no eligible persons for the provinces where vacancies have arisen either because of the creation of new positions or the termination of public servants.*

[231] • *The number of eligible persons falls short of the number of vacancies in the institution.”*

1.1.3 Recommendations

[232] In light of the comments made 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 appropriate measures to continue to increase the percentage of competitively hired employees in the Executive Branch by implementing the plans for the competitions for positions occupied by provisionally appointed personnel and reviewing the proportion in which occasional contracts are used (See paragraph 124 in Section 1.1.2.1. of Chapter II of this report.)
- 1.1.3.2 Improve the mechanisms for ensuring the institutionalization process, so that the entities to which the Organic Law on Public Service (LOSEP) applies have their positions description, evaluation, and classification manuals up to date and duly approved by the Ministry of Labor, within a reasonable timeframe. (See paragraph 131 in Section 1.1.2.1. of Chapter II of this report.)
- 1.1.3.3 Consider establishing provisions requiring the relevant entities to publish up-to-date positions description, evaluation, and classification manuals on their websites so that anyone can consult them. (See paragraph 132 in Section 1.1.2.1. of Chapter II of this report.)

examination process, and in view of the existence of personnel already hired under occasional contracts who met the statutory length of service requirements, a competition was convened, enabling provisional appointments to be awarded. At present, the relevant areas of the institution are engaged in a review aimed at improving the institution's structures, job profiles, and administrative processes. Once that information is available, the merit-based competitive examination processes for the year in progress will be reactivated”.

⁴⁴ See additional information requested of Ecuador during the on-site visit, second part, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_con_inof_adi_2_parte.pdf

⁴⁵ See additional information requested of Ecuador during the on-site visit, second part, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_con_inof_adi_2_parte.pdf

- 1.1.3.4 Consider implementing the recommendations contained in the proposal of the Ministry of Labor, in order to ensure the principles of transparency, equality, fairness, and efficiency in merit-based competitive examination processes, such as:
 - i. holding public competitions executed by the Ministry of Labor at the request of entities for positions envisaged in their optimal staffing plan;
 - ii. holding system-wide, merit-based competitions by stages that would be publicly announced by the Ministry of Labor;
 - iii. centralizing selection/hiring for eligible or uniform positions while keeping specialized positions decentralized;
 - iv. establishment of a consolidated database of persons eligible for public-sector employment. (See paragraph 137 in Section 1.1.2.1 of Chapter II of this report.)
- 1.1.3.5 Analyze the composition of the Appeals Board with a view to more strongly highlighting the effectiveness of the second instance (See paragraph 137 in Section 1.1.2.1 of Chapter II of this report.)
- 1.1.3.6 Reasonably expand the time limits for publication and dissemination of notices of convocation for competitions and for submitting applications to enter them. (See paragraph 141 in Section 1.1.2.1 of Chapter II of this report.)
- 1.1.3.7 Approve the In-House Rules of Procedure for Personnel Management of the National Assembly and ensure that they contain detailed parameters on how merit-based competitive examination processes should be conducted, including:
 - i. Publicly announce vacancies in the Legislative Branch via the mass media, including the Internet;
 - ii. Provide reasonable time limits for the dissemination of notices of convocation for entrance examinations, selection requirements and criteria, and the closing date for applications;
 - iii. Include in announcements the proposed timetable and indications as to where candidates can register and obtain more information about the competition;
 - iv. Provide challenge mechanisms to allow substantive decisions in meritocratic hiring processes to be clarified, amended, or revoked, through both administrative and judicial proceedings, so as to ensure that merit-based competitive examination processes are characterized by their adherence to the principles of legality, equity, neutrality, equality, and transparency. (See paragraphs 24 and 146 in Sections 1.1.1 and 1.1.2.1, respectively, of Chapter II of this report.)
- 1.1.3.8 Adopt appropriate measures to ensure that the National Assembly approves its positions description, evaluation, and classification manual and establishes regulatory provisions that require that manual to be kept up to date. (See paragraph 149 in Section 1.1.2.1. of Chapter II of this report.)

- 1.1.3.9 Establish provisions requiring the publication of the up-to-date positions description, evaluation, and classification manual of the National Assembly to be published on its website, so that anyone can consult it. (See paragraph 149 in Section 1.1.2.1. of Chapter II of this report.)
- 1.1.3.10 Adopt appropriate measures to initiate merit-based competitive examination processes to fill permanent staff positions in the legislature, thus ensuring that the majority of public servants in the Legislative Branch are hired through meritocratic procedures. (See paragraph 150 in Section 1.1.2.1. of Chapter II of this report.)
- 1.1.3.11 Within the resources available, provide the Office of the Coordinator-General for Human Resources with the financial resources that it needs to perform properly its functions and operations in the meritocratic hiring of permanent Legislative Branch personnel. (See paragraph 152 in Section 1.1.2.1. of Chapter II of this report.)
- 1.1.3.12 Provide reasonable time limits for publication of notices of convocation for public competitions for entry to the judicial career paths. (See paragraph 155 in Section 1.1.2.1 of Chapter II of this report.)
- 1.1.3.13 Establish in the Rules of Procedure for Merit-based Competitive Examinations, Citizen Challenges, and Societal Oversight for Admission to the Judiciary establish reasonable time limits for presenting requests for reconsideration or reassessment of merits and theory or practical examinations. In addition, make the necessary modifications to ensure that the appellate body is not the same one that graded the competition, which would ensure the effectiveness of the second instance and that decisions are adopted by a collegiate body, such as the Plenary of the Judiciary Council (See paragraph 159 in Section 1.1.2.1 of Chapter II of this report.)
- 1.1.3.14 Take appropriate steps to reduce the high proportion of provisional appointees in administrative career paths in the Judicial Branch, by holding the necessary merit-based competitive examination processes (See paragraphs 163 and 227 in Section 1.1.2.1 of Chapter II 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:

Strengthen public tendering procedures, public competitive bidding processes and procurement in general.

Measure suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

Review the exceptions, exclusions and special procurement systems, unifying their practices and systems, particularly those contained in Articles 4 to 6 of the Public Procurement Law and Articles 12 and 14 of the Consulting Services Law, and ensuring that public tendering and competitive

bidding serve as the general rule for the selection of hiring systems in the state procurement system, thereby ensuring compliance with the principles of openness, equity and efficiency envisaged in the Convention.

[233] In its response to the questionnaire,⁴⁶ the country under review provides information on the Organic Law of the National Government Procurement System (LOSNCPP), published in Official Gazette No. 395 of August 4, 2008. However, that law has already been reviewed in the report of the Third Round.⁴⁷

[234] However, during the on-site visit the country under review presented information and new developments with respect to the above measure.⁴⁸ In that regard, the Committee notes the following as steps that contribute to progress in its implementation:

[235] – The General Regulations of the Organic Law of the National Government Procurement System, adopted by Executive Decree No. 1700 (as amended), published in Official Gazette Supplement 588 of May 12, 2009, Articles 68 to 108 of which govern the different types of special contracts recognized in Article 2 of the LOSNCPP.⁴⁹

[236] The procurement procedures for the different types of special regime contracts involve a variety of selection criteria, including reverse auction (in the case of medicine purchases), shortlists (one of the options for social communication and advertising services contracts), and direct contracting (for all other cases, including social communication and advertising services contracts; legal advisory and representation services; works of art, literature, art or science; spare parts or accessories not available in the electronic catalog; unique or sole-provider goods and services; contracts between public-sector entities or their subsidiaries; state-owned financial and insurance institutions; state-owned commercial enterprises and subsidiaries; and strategic sectors).

[237] It should be highlighted that, in general, the highest-ranking official in the procurement entity or the person delegated by them issues a reasoned decision demonstrating the existence of the specific need that warrants recourse to the special regime.

[238] Furthermore, all special regime procedures include the obligation to publish the key decisions in each procurement process on the government procurement (COMPRASPÚBLICAS) website.⁵⁰ Emergency procurement (Article 57 of the LOSNCPP and Article 5 of Resolution SERCOP No. 045-2010) also requires, once the emergency has passed, the publication of a report on the website detailing the contracts made, budget spent, and results obtained.

⁴⁶ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, p. 95, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

⁴⁷ See Report on Ecuador for the Third Review Round, p. 40. Available at: http://www.oas.org/juridico/english/mesicic_III_rep_ecu.pdf

⁴⁸ See additional information requested of Ecuador during the on-site visit, second part, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_con_inof_adi_2_parte.pdf

⁴⁹ Broadly speaking, according to Article 2 of the LOSNCPP the types of special contracts are as follows: 1. Purchase of Medicines; 2. Internal and External Security; 3. Social Communication; 4. Legal Advisory and Representation Services; 5. Works of Art, Literature, or Science; 6. Spare Parts or Accessories; 7. Unique or Sole-Provider Goods and Services; 8. International and Domestic Mail Transport; 9. Contracts between Public-Sector Entities or Their Subsidiaries; 10. State-Owned Financial and Insurance Institutions; 11. State-Owned Mercantile Companies and Subsidiaries Strategic Sectors.

⁵⁰ <http://portal.compraspublicas.gob.ec/sercop/>

[239] In that regard, the Committee considers that the special systems are regulated and broadly encompass all goods, works, and services (including consulting services).

[240] However, to verify whether public tendering and competitive bidding are the general rule in the selection of contracting procedures in the state procurement system, thereby ensuring compliance with the principles of openness, equity and efficiency as envisaged in the Convention, during the on-site visit, information was requested on results in that regard.

[241] Among other relevant information, the country under review provided a table with information on award amounts by type of procedure between 2010 and 2015.⁵¹ That information was used to prepare the following chart showing the award amounts in percentages:

Type of procedure	2010	2011	2012	2013	2014	2015	Average
Regular regime	62.37%	51.63%	65.03%	55.02%	60.64%	63.43%	59.28%
Electronic catalogue	1.99%	2.05%	3.10%	3.44%	4.92%	4.54%	3.31%
Public competition	0.59%	2.02%	1.70%	1.06%	0.97%	0.61%	1.21%
Public shortlist competition declared void	0.00%	0.02%	0.02%	0.02%	0.01%	0.07%	0.02%
Direct contracting	1.30%	1.23%	1.25%	1.02%	1.64%	1.65%	1.32%
Quotation	6.65%	6.55%	7.61%	6.33%	8.08%	7.97%	7.15%
Inclusive Fairs	0.00%	0.00%	0.16%	0.57%	0.70%	0.82%	0.37%
Tenders	23.22%	18.78%	26.03%	19.94%	15.20%	14.49%	19.81%
Insurance Tenders	0.56%	0.80%	0.21%	0.42%	0.41%	0.40%	0.46%
Short list	1.10%	1.01%	1.19%	1.02%	1.37%	1.59%	1.19%
Direct contracting short lists declared void	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Minor contracts	8.65%	7.00%	6.77%	5.88%	5.71%	6.08%	6.62%
Electronic reverse auction	18.30%	12.18%	16.98%	15.32%	21.63%	25.23%	17.81%
Special Regime	37.63%	48.36%	34.97%	44.86%	38.95%	36.00%	40.55%
Legal Advisory and Representation Services				0.11%	0.20%	0.14%	0.07%
Legal Advisory and Representation Services - Specific consultancies				0.00%	0.00%	0.00%	0.00%
Unique goods and services				1.67%	5.60%	4.22%	1.79%
Social Communication - Direct contracting				0.94%	1.54%	1.34%	0.62%
Social Communication - Selection process				0.44%	1.33%	1.21%	0.46%

⁵¹ See statistics provided by SERCOP after the on-site visit, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_con_inof_adi_2_parte.pdf

Contracting by State-Owned Financial and Insurance Institutions				0.01%	0.01%	0.01%	0.00%
Insurance contracts				0.66%	1.07%	0.38%	0.35%
Contracts with international public enterprises				0.85%	2.60%	6.41%	1.47%
Contracts between Public-Sector Entities or their Subsidiaries				4.45%	10.65%	7.02%	3.53%
State-owned commercial enterprises or subsidiaries				1.92%	8.05%	2.13%	1.93%
Artistic, scientific or literary works				0.22%	0.45%	0.59%	0.20%
Publication	37.63%	48.36%	34.97%	32.72%	5.85%	11.02%	29.48%
Spare Parts or Accessories				0.87%	1.60%	1.51%	0.63%
Domestic or international mail transport				0.00%	0.00%	0.01%	0.00%
Other Procedures		0.00%	0.00%	0.12%	0.41%	0.57%	0.17%
Real Estate Acquisition				0.01%	0.01%	0.03%	0.01%
Real Estate Leasing				0.11%	0.41%	0.54%	0.16%
Direct contracting short lists declared void		0.00%	0.00%				0.00%
Grand total	100%	100%	100%	100%	100%	100%	100%

[242] The Committee notes that, broadly speaking, special regimes account for a high percentage of amounts awarded in government contracts in Ecuador (40.55% on average for the last five years), reaching almost half the total amount awarded in 2011. The Committee is struck by the fact that one of the most used types of procedure was the “Publication” category, which accounted for 100% of the amounts awarded for special regime contracts in 2010, 2011, and 2012. This is particularly so, since the Committee is unable to identify any provisions that apply to this type of procedure in the regulations of the LOSNCP.

[243] The Committee also notes certain trends in terms of an increase in the use of electronic reverse auctions and in the use of the electronic catalogue for the procurement of standardized goods and services, as well as a gradual decline in the total percentage of amounts awarded via competitive bidding (tenders). The information provided by the State shows that electronic reverse auctions and electronic catalogue processes have been encouraged for the procurement of standardized goods and services inasmuch as these are advantageous in terms of time, effectiveness, and cost, thus enabling transparent, effective, nimble, and participatory public procurement.⁵² At the same time, there was a considerable increase in amounts awarded through other special regime processes, such as direct contracting of unique goods and services, contracts with international public enterprises,

⁵² During the meeting of the Review Subgroup, the country under review also reported that “*The State as a matter of public policy guarantees domestic production through the participation of actors from the popular and solidarity-based economy, through the use of the electronic catalogue, which in and of itself is an inclusive, dynamic catalogue.*”

contracts among public-sector entities or their subsidiaries, and other contracts by state-owned commercial enterprises or their subsidiaries.

[244] The Committee also notes that no information was provided on very small contracts or on the amount awarded under the exceptions envisaged in Article 3 of the LOSNCP in relation to contracts financed through loans and international cooperation.⁵³

[245] In light of the foregoing, while taking note of the steps taken by the country under review to move forward with implementing the sole measure contained in recommendation 1.2.1 in Chapter II of this report, the Committee believes it appropriate to reformulate the recommendation to the effect that the government procurement system be evaluated and adjusted so that competitive processes become the norm in selecting contracting procedures in the government system for procurement of goods and services and works contracts. In addition, design and implement a mechanism to perform periodic comprehensive evaluations that make it possible to assess the use and effectiveness of the system for procurement of goods and services and works contracting, and, based on its results, where appropriate, define and consider adopting specific measures that make it possible to ensure transparency, openness, equity, and efficiency. The Committee will make recommendations in that regard. (See recommendations 1.2.3.1 and 1.2.3.2 in Section 1.2.3 of Chapter II of this report.)

[246] Germane to the above are the observations put forward by an academic during the on-site visit regarding possible non-compliance and arbitrary application of the special regime envisaged in Article 2 of the LOSNCP,⁵⁴ particularly with respect to the “specific line of business”; inter-administrative contracts, and contracts with sole providers. In her opinion the system needs a comprehensive evaluation (regulatory, technological, and in terms of institutions)

RECOMMENDATION 1.2.2:

Strengthen the government procurement system’s mechanisms of control.

Measure (a):

⁵³ During the meeting of the review subgroup, the State under review indicated that “Detailed information on the amount of government procurement conducted through the Very Small Amount procedure is as follows:

Year	Percentage
2010	0,03%
2011	2%
2012	4%
2013	9%
2014	7%
2015	7%
2016	5%

Source: Statistical bulletin and SOCE database, S.I. system.

As regards procurement under Article 3 of the Organic Law of the National Government Procurement System, according to that provision, such procurement is not registered in the government procurement portal because those transactions are governed by the provisions contained in the loan agreement, which is confidential, the only government institution privy thereto being the Ministry of Finance, by reason of its legal authority. Detailed information in that regard was highlighted during the presentation given and in the replies to the questions made during the on-site visit.

In addition, it is important to note that in the case of contracts entered into under international loan agreements the LOSNCP is used in a supplementary capacity.”

⁵⁴ See presentation by Dr. Inés María Baldeón Barriga, available at: http://www.oas.org/juridico/PDFs/mesicic5_eu_soc_civ_tem_2_ter_dra_in_mar_bal.pdf

[247] This measure was satisfactorily considered and, therefore, does not require additional attention.

Measure b):

[248] This measure was satisfactorily considered and, therefore, does not require additional attention.

RECOMMENDATION 1.2.3:

Continue strengthening the use of electronic media and information systems for government procurement.

Sole measure:

[249] This measure was satisfactorily considered and, therefore, does not require additional attention.

RECOMMENDATION 1.2.4:

Strengthen the identification of selection criteria for contractors.

Measure (a) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

Define the scope of the expression “convenient to national and institutional interests” used in Article 26 of the Law on Public Procurement to define that criterion more accurately.

[250] In its response to the questionnaire,⁵⁵ the country under review reported that the Law on Public Procurement was repealed and replaced by the Organic Law of the National Government Procurement System (LOSNCOP), published in Official Gazette No. 395 of August 4, 2008. However, that law has already been reviewed in the report on the Third Round.⁵⁶

[251] The Committee notes, however, that the objective of measure (a) above was to avoid or reduce the use of subjective criteria in awarding contracts, since Article 26 of the former Law on Public Procurement provided that “the contract [shall be awarded] to the bid that is most convenient to national and institutional interests” without providing a definition of those terms.

[252] Accordingly, the Committee notes that, by its authority under Article 10 of the LOSNCOP, the National Government Procurement Service (SERCOP), introduced, among other things, a number of mandatory model pre-contractual and contractual documents applicable to the various government contracting modalities and procedures, notably:

⁵⁵ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, p. 95, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

⁵⁶ See Report on Ecuador for the Third Review Round, p. 42. Available at: http://www.oas.org/juridico/english/mesicic_III_rep_ecu.pdf

[253] - Resolution No. RE-SERCOP-2013-02 of December 27, 2013, which contains the pre-contractual model documents and templates for the execution of works, procurement of goods, and/or provision of services, including consultancies, under special regime contracts.

[254] - Resolution No. RE-SERCOP-2014-03 of February 6, 2014, which issues the rules on the application of bid-grading parameters established in specific model terms and conditions for the various contracting procedures under the regular regime, the purpose being to establish basic criteria to determine the technical, financial, and/or legal capacities of participants and their bids.

[255] According to Article 4 of Resolution No. RE-SERCOP-2014-03, the requisite technical, financial, and/or legal capacities may be analyzed:

[256] *“(a) using a single-phase assessment by means of the “meets/does not meet” methodology, in the case of electronic reverse auctions; small works, goods and services contracts; and direct consultancy contracts; and*

[257] (b) in the case of all other contracting procedures under the regular regime, using a dual-phase assessment; the first being the “meets/does not meet” methodology, the parameters for which shall be set in the bidding terms and conditions of the procurement entity; subsequently and only for qualified bidders, the second evaluation stage will be “by scores” via the institution’s portal.

[258] - Resolution No. RE-SERCOP-2014-04 of February 20, 2014, which contains the SERCOP 1.1 versions of the pre-contractual and contractual model documents for the execution of works, procurement of goods, and/or provision of services, including consultancies.

[259] - Resolution No. RE-SERCOP-2014-14 of October 1, 2014, which sets out the score evaluation parameters for grading bids.

[260] - Resolution No. RE-SERCOP-2014-17 of October 29, 2014, which contains the model pre-contractual documents for the procurement of works, goods, and/or services, including consultancies, financed by the Inter-American Development Bank (IDB).

[261] However, the Committee observes that there is a significant difference between the use of objective selection criteria in contracting “standardized” goods and services and “non-standardized” ones. In general, the grading system for “standardized” goods and services is less subjective (“meets/does not meet”), while for “non-standardized” ones the grading system is still based on scores.⁵⁷

[262] In that connection, Article 6(17) of the LOSNCP defines “Best Cost in ‘Standardized’ Goods and Services” as follows: *“The bid that both meets all the technical, financial, and legal specifications and requirements laid in the pre-contractual documents, and offers the lowest price.*

[263] For its part, paragraph 18 of the same provision contains the following definition for “Best Cost in Works or in ‘Non Standardized’ Goods and Services”: *“The bid that offers the entity the best current and future conditions in terms of technical, financial, and legal aspects, where lowest is not*

⁵⁷ According to the First Transitory Provision of the LOSNCP, “goods and services commercialized in the public market shall be standardized by the competent entity in charge of standardization; in its absence, the persons responsible for establishing transitory guidelines and parameters to be observed in the procurement process are the National Government Procurement Service (SERCOP) and the procuring entities in the order indicated and on an exclusive basis.”

the only selection parameter. At all events, it is mandatory that the evaluation parameters be set down in the Terms and Conditions.”

[264] Furthermore, according to the First Transitory Provision of the LOSNCP, “*goods and services commercialized in the public market shall be standardized by the competent entity in charge of standardization; in its absence, the persons responsible for establishing transitory guidelines and parameters to be observed in the procurement process are the National Government Procurement Service (SERCOP) and the procuring entities in the order indicated and on an exclusive basis.*”

[265] Thus, the Committee did not consider that there are clear rules in place for defining the concepts “standardized” and “non-standardized” and this could give rise to greater subjectivity in bid evaluation processes. In that connection, while taking note of the steps taken by the country under review to move forward with implementing measure (a) contained in recommendation 1.2.4 in Chapter II of this report, the Committee believes it appropriate to reformulate the recommendation to the effect that the country under review consider precisely defining the above concepts lest they be left to the discretion of the procurement entity. The Committee will make a recommendation in that regard. (See recommendation 1.2.3.3 in Section 1.2.3 of Chapter II of this report.)

[266] Germane to the foregoing are the observations on this subject that were presented by representatives of civil society and academics invited to participate in the on-site visit as regards the distortion and vagueness of the concepts “standardized” and “non-standardized” that leads to discretionary selections in procurement processes.⁵⁸ It was also mentioned that SERCOP’s terms and conditions included several grounds for challenging the evaluation; however, in certain direct contracting processes, failure to justify the selection of providers is a persisting problem.

Measure (b) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

Establish selection criteria for procurement processes that are not subject to a public tender or competitive process.

[267] In its response to the questionnaire,⁵⁹ the country under review provides information on the Organic Law of the National Government Procurement System (LOSNCP), published in Official Gazette No. 395 of August 4, 2008. However, that law has already been reviewed in the report on the Third Round.

[268] Nonetheless, the Committee notes the following as steps that contribute to progress in implementation of the recommendation:

[269] - Article 51 of the LOSNCP, as amended by Law No. 0, published in Official Gazette Supplement 100 of October 14, 2013. Following the reform, the above provision required at least three pro forma invoices for small-amount direct contracting of non-standardized goods and services, except consultancies and works procurement.

⁵⁸ See presentation by Dr. Inés María Baldeón Barriga, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_soc_civ_tem_2_ter_dra_in_mar_bal.pdf

⁵⁹ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, pp. 103-104, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

[270] - Resolution INCOP No. 062-2012 of May 30, 2012, which issues a case-by-case ruling on the use of the very small contracting procedure (benchmark contracting budget less than or equal to the coefficient 0.0000002 of the Initial State Budget).⁶⁰

[271] At Article 7 it provides: “*Concurrent bids. Contracting entities are urged, if possible, to have at least three pro forma invoices before choosing providers to be awarded very small contracts.*”

[272] In that regard, the Committee considers it progress to require at least three pro forma invoices for small-amounts direct contracting. However, while it may contribute to transparency in the procurement process, on its own, requiring three pro forma invoices does not necessarily imply that objective criteria will be used in requesting the invoices or in selecting the person or entity to be awarded the contract.

[273] Furthermore, the Committee notes that in cases of very small contracts, the contracting entities are urged, rather than obliged, to have three pro forma invoices before awarding the contract. Nor was the existence of selection criteria noted in direct contracting in situations envisaged under the special regime (Article 2 of the LOSNCP).

[274] In that regard, while taking note of the steps taken by the country under review to move forward with implementing measure b) contained in recommendation 1.2.4 in Chapter II of this report, the Committee believes it appropriate to reformulate the recommendation to the effect that the country under review consider establishing applicable objective criteria for procurement processes that are not subject to a public tender or competitive process and consider requiring the existence of at least three pro forma quotes in those cases, when the circumstances so allow (See recommendation 1.2.3.4 in Section 1.2.3 of Chapter II of this report.)

RECOMMENDATION 1.2.5:

Continue fostering the principles of openness, equity and efficiency foreseen in the Convention.

Sole measure:

[275] This measure was satisfactorily considered and, therefore, does not require additional attention.

1.2.2. New developments with respect to implementation of the Convention provision on government systems for the procurement of goods and services

[276] The Committee had information at its disposal on the following new developments in this area, on which it will formulate relevant observations and recommendations:

1.2.2.1. New developments in the legal framework

a. Scope

- **Statutory and other legal and other provisions, among which the following should be noted:**

⁶⁰ For 2016, that amount was the equivalent of US\$5,967.02.

[277] – Organic Law of the National Government Procurement System (LOSNCPP), as amended by Law No. 0, published in the Official Gazette Supplement 100 of October 14, 2013, and its Regulations, which establish the National Government Procurement System and the principles and rules governing contracting procedures for the purchase or lease of goods, execution of works, and provision of services, including consultancies by: (1) Bodies and dependencies of the different branches of government; (2) Electoral bodies; (3) Oversight and regulatory bodies; (4) Entities belonging to the autonomous sectional regime; (5) The agencies and entities created by the Constitution or the law to exercise State authority, provide public services, or engage in economic activities pursued by the State; (6) Legal persons created by sectional legislative acts to provide public services; (7) Corporations, foundations, all civil associations in any of the cases identified in the law;⁶¹ and (8) Commercial companies, created or incorporated in accordance with the law, regardless of their origin.⁶²

[278] Article 2 of the LOSNCPP establishes a special procurement regime,⁶³ which is subject to specific rules issued by the President of the Republic under the Law's Regulations (Articles 68 to 108).

[279] The procurement scenarios that are excluded from the LOSNCPP are set out in Article 3 of the Law, which refers to contracts financed under funding agreements with multilateral credit agencies of which Ecuador is a member, or contracts financed with reimbursable or non-reimbursable funds through government-to-government financing or from international cooperation agencies. In such cases, the relevant agreements shall be observed. However, anything not provided for in such agreements will be governed by the provisions of the LOSNCPP.

[280] According to Article 4 of the LOSNCPP procurement is governed, *inter alia*, by the principles of legality, fair treatment, equality, quality, technological currency, timeliness, concurrence, transparency, disclosure, and national participation.

[281] Articles 7 to 13 have to do with the National Government Procurement System (SNCP) and its component bodies. Article 10 creates the National Government Procurement Service (SERCOP)

⁶¹ Under Article 1(7) of the LOSNCPP, that Law applies to corporations, foundations, civil associations in any of the following cases: “(a) those that comprise or mostly comprise any of the bodies and entities mentioned in paragraphs 1 to 6 of this article or, in general, state institutions; or (b) those that possess or administer property, funds, securities, shares, equity interests, assets, rents, profits, surpluses, subsidies, and any rights belonging to the State and its institutions, regardless of the source from which they proceed, including those originating from loans, donations, and conveyances otherwise rendered to the State or its institutions; provided that 50% or more of their equity or of the resources assigned to them belongs to the State; and, in general, any contract in which the public resources used in each case account for more than 50% of the value of the contract.”

⁶² Article 1(8) of the LOSNCPP provides that the Law governs “commercial companies, regardless of their origin, creation, or incorporation, that possess or administer property, funds, securities, shares, equity interests, assets, rents, profits, surpluses, subsidies, and any rights belonging to the State and its institutions, regardless of the source from which they proceed, including those originating from loans, donations, and conveyances otherwise rendered to the State or its institutions; provided that 50% or more of their equity or of the resources assigned to them belongs to the State; and, in general, any contract in which the public resources used in each case account for more than 50% of the value of the contract. The legal persons referred to in Article 2(8) of this law are excepted from this provision; they shall be subject to the regime set forth in this law.”

⁶³ Broadly speaking, according to Article 2 of the LOSNCPP the types of special contracts are as follows: 1. Purchase of Medicines; 2. Internal and External Security; 3. Social Communication; 4. Legal Advisory and Representation Services; 5. Works of Art, Literature, or Science; 6. Spare Parts or Accessories; 7. Unique or Sole-Provider Goods and Services; 8. International and Domestic Mail Transport; 9. Contracts between Public-Sector Entities or Their Subsidiaries; 10. State-Owned Financial and Insurance Institutions; 11. State-Owned Commercial Companies and Subsidiaries; 12. Strategic Sectors.

as a technical and regulatory public-law entity with its own legal personality and administrative,⁶⁴ technical, operational, financial, and budgetary autonomy. Its chief spokesperson and legal representative is its Director General, who is appointed by the President of the Republic.

[282] SERCOP is the system's governing body and its powers include, *inter alia*: (a) to establish general guidelines that serve as the basis for formulating the procurement plans of the entities subject to the LOSNCP; (b) to manage the Consolidated Register of Suppliers (RUP); (c) to develop and manage the Official Government Procurement System of Ecuador, COMPRASPUBLICAS, and introduce policies and conditions on the use of the system's information and electronic tools; (d) to establish and administer catalogs of standardized goods and services; (e) to issue mandatory model pre-contractual and contractual documents applicable to the various government procurement methods and procedures; (f) to issue administrative rules, manuals, and instructions in connection with this Law.

[283] In addition, in accordance with Article 14, SERCOP has oversight powers in relation to the pre-contractual, contract performance, and contract evaluation phases, which include verifying "*1. The mandatory use of the system tools for accountability, reporting, promotion, publication, and carrying out the entire transactional cycle for government contracts; 2. The mandatory use of official pre-contractual and contractual model documents sanctioned by the National Government Procurement Service; 3. Compliance with the policies adopted by the Board of Directors of SERCOP and with the institutional plans and budgets in the area of government procurement; 4. Contracting with suppliers registered in the RUP, saving the exceptions stipulated in this Law; 5. That selected suppliers are not in any way in eligible or incapacitated prior to contracting with them; and 6. That the information contained in the System tools is up to date,*

[284] Any breach shall give rise to the penalties envisaged in articles 106 to 108 of the LOSNCP. SERCOP also has the authority to request information from any public or private entities that it deems appropriate, which have an obligation to provide that information free of charge within a maximum of 10 days following the request.

[285] Article 15 sets out the powers of the state oversight bodies, which have the authority, *inter alia*, to perform ex-post control of procurement procedures carried out by contracting entities.

[286] The same article also provides that SERCOP is required to notify the Office of the Comptroller General (CGE) and the Office of the Attorney General whenever infringements of the provisions of the LOSNCP come to its attention.

[287] Articles 16 to 20 concern the Consolidated Registry of Suppliers (RUP), inscription in which is mandatory in order to participate individually or partnership with others in contracts governed by the LOSNCP. In exceptional circumstances, persons not registered with the RUP may take part in bidding processes for small contracts; however, they are required to enroll in the Register before signing the relevant contracts (Article 18 of the LOSNCP).

[288] Information in the RUP is public and shall be available at the COMPRASPUBLICAS portal (Article 17).

⁶⁴ The National Government Procurement Institute (INCOP) was created following the adoption of the LOSNCP in 2008. It was replaced by SERCOP following the reform of the LOSNCP, in accordance with the third transitory provision of the LOSNCP, as added by Law No. 0 published in Official Gazette Supplement 100 of October 14, 2013.

[289] Article 19 sets out the grounds for temporary suspension of suppliers from the RUP. A supplier shall be suspended from the RUP with prejudice if they provided adulterated information for the purposes of registration, and provided that said situation is recognized in a final judgment delivered at the instance of last resort.

[290] Article 21 creates the Official Government Procurement System of Ecuador (COMPRASPUBLICAS),⁶⁵ which is managed by SERCOP and the use of which is mandatory for entities governed by the LOSNCP.

[291] The information posted on the COMPRASPUBLICAS portal includes,⁶⁶ *inter alia*, the RUP, the Electronic Catalog, the list of SNCP institutions and contractors, reports by contracting entities, statistics, contractors in breach, and information on the status of government contracts. The portal is the only mechanism used for all electronic procedures connected with a government procurement process, in accordance with the provisions of the LOSNCP, its regulations, and SERCOP rules.

[292] The LOSNCP also makes it a mandatory requirement for information pertaining to procurement procedures to be published on the COMPRASPUBLICAS portal.⁶⁷

[293] Article 13 of the regulations of the LOSNCP defined what constitutes relevant information for the purposes of disclosure of procurement procedures on the COMPRASPUBLICAS portal,⁶⁸ which includes: 1. Announcement; 2. Terms and conditions; 3. Invited bidders; 4. Questions and answers on procurement procedures; 5. Bids submitted by bidders, except that information classified as confidential by the procurement entity in accordance with the terms and conditions; 6. Award decision; 7. The signed contract, except that information classified as confidential by the procurement entity in accordance with the terms and conditions; 8. Supplementary contracts, if any are signed; 9. Ordered changes, if any; 10. Contract activities performance schedule; 11. Payment schedule; 12. Certificate of delivery/receipt, or administrative acts connected with the termination of the contract; and 12-A. In general, any other document pertaining to the preparatory, pre-contractual, contract, performance, or evaluation phases as determined by SERCOP by means of a resolution for the disclosure of the transactional cycle of the government contract.

[294] Articles 22 to 59(1) set out the rules governing government contracting procedures. Article 22 of the LOSNCP and articles 25 and 26 of its Regulations set out guidelines on the formulation, content, and disclosure of Annual Procurement Plans (PAC), which are subject to obligatory publication on the website of the procurement entity concerned within the first 15 days of January each year, acting in combination with the COMPRASPUBLICAS portal. Any amendments to PAC are also required to be made public.

[295] Article 23 makes it compulsory (depending on the nature of the contract) for the procurement entity, before initiating any pre-contractual procedure under its PAC, to have complete, definitive and up-to-date studies and designs; plans and calculations; and technical specifications duly approved by the competent agencies.

⁶⁵ <https://www.compraspublicas.gob.ec/ProcesoContratacion/compras/>

⁶⁶ <https://www.compraspublicas.gob.ec/ProcesoContratacion/compras/>

⁶⁷ <https://www.compraspublicas.gob.ec/ProcesoContratacion/compras/>

⁶⁸ <https://www.compraspublicas.gob.ec/ProcesoContratacion/compras/>

[296] The procurement methods are primarily established in Articles 40, 44, 48, 50, 51, and 52(1). See the following table provided by SERCOP.⁶⁹ with the margins for 2016:

[297]

Procurement	Procedures	2016 Contract Amounts	Coefficient
Standardized Goods and Services	Electronic Catalog (Article 44 of the LOSNCP)	(Direct Purchase) Less than or equal to US\$5,967.02	Less than or equal to 0.0000002 * Initial State Budget
		(Best Offer) More than US\$5,967.02	More than 0.0000002* Initial State Budget
		(Best Offer with auction) More than US\$5,967.02	More than 0.0000002* Initial State Budget
	Very small amount (Article 52(1) of the LOSNCP)	Less than US\$5,967.02	Less than or equal to 0.0000002* Initial State Budget
Non Standardized Goods and Services	Small Amount (Article 51 of the LOSNCP)	Less than US\$59,670.20	Up to 0.000002 *Initial State Budget
	Quotation (Article 50 of the LOSNCP)	Between US\$59,670.20 and US\$447,526.47	From 0.000002 * Initial State Budget to 0.000015 * Initial State Budget
	Tender (Article 48 of the LOSNCP)	More than US\$447,526.47	More than 0.000015 * Initial State Budget
Works	Small Amount (Article 51 of the LOSNCP)	Less than US\$208,845.69	Up to 0.000007 *Initial State Budget
	Quotation (Article 50 of the LOSNCP)	Between US\$208,845.69 and US\$895,052.95	From 0.000007 * Initial State Budget to 0.00003 * Initial State Budget
	Tender (Article 48 of the LOSNCP)	More than US\$895,052.95	More than 0.00003 * Initial State Budget
	Fixed Price Comprehensive Contract (Article 53 of the LOSNCP)	More than US\$29,835,098.32	More than 0.1 * Initial State Budget
Consultancy (Article 40 of the LOSNCP)	Direct Contract	Less than or equal to US\$59,670.20	Less than or equal to 0.000002 * Initial State Budget

⁶⁹ See additional information requested of Ecuador during the on-site visit, second part, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_con_inof_adi_2_parte.pdf

	Short List	More than US\$59,670.20 and less than US\$447,526.47	From 0.000002 * Initial State Budget to 0.000015 * Initial State Budget
	Public Competition	More than or equal to US\$447,526.47	More than 0.000015 * Initial State Budget
Non Standardized	Special Regime (Legal Advisory and Representation Services – Specific Consultations) (Article 2 of the LOSNCP)	Up to US\$14,917.55 (all year)	Up to 0.0000005 * Initial State Budget

Source: SERCOP

[298] Articles 32, 33, and 34, respectively, govern the award, the voiding of procedures, and their cancellation.

[299] Article 57 addresses the procedure for procurement operations in emergency situations,⁷⁰ which require a resolution setting out the reasons for and justifying the operation issued by the Minister or, in general, the highest authority in the entity declaring the emergency prior to the procurement procedure. That resolution shall be posted on the COMPRASPUBLICAS Portal,⁷¹ along with -- once the emergency is over -- a report detailing the procurement operations carried out and the budget used for them, and an indication of the results obtained.

[300] Articles 62 and 63 establish, respectively, the general and specific disqualifications for entering into a contract with the Procurement Entity.

[301] If a contract is entered into despite an express prohibition under the LOSNCP, Article 64 authorizes the highest authority in the Procurement Entity to terminate it in advance and unilaterally, with no possibility of compensation being granted to the contractor.

[302] Should the contract entered into have caused any financial loss to the Procurement Entity, the contractor and the officials who processed and concluded the contract shall be held jointly and severally liable for that loss, without prejudice to any applicable administrative or criminal sanctions.

[303] Article 65 regulates the grounds for annulment of contracts, which the Attorney General must demand as soon as he becomes aware of irregularities. In addition, Article 66 establishes that complaints against contracts entered into with disqualified persons or to which any of the grounds for annulment apply may be filed with the Attorney General by any individual submitting documentary

⁷⁰ The definition of “emergency situation” can be found in Article 6.31 of the LOSNCP. It reads as follows: “*They are situations generated by grave events, such as accidents, earthquakes, floods, drought, serious internal disturbances, imminent external attacks, international war, natural disasters, and other outcomes of force majeure or fortuitous events at a national, sectoral, or institutional level. An emergency situation is concrete, immediate, unforeseen, proven, and objective.*”

⁷¹ <https://www.compraspublicas.gob.ec/ProcesoContratacion/compras/>

evidence, so that the admissibility of a demand for annulment of the contract can be examined, without prejudice to the initiation of the other civil or criminal suits that may apply.

[304] Article 65 addresses the eventuality of supplementary works and services. In the event of it being necessary to expand, modify, or supplement particular work or service for duly substantiated unforeseen or technical reasons that emerge during execution, the State or the Contracting Entity may enter into additional contracts with the same contractor, without a tender or bidding procedure, if those contracts are required to perform the aforementioned modifications, provided that the prices of items in the original contract are maintained, adjusted to the date at which the respected supplementary contract is signed.

[305] Article 87, for its part, establishes that the amounts of supplementary contracts may not, in total, exceed thirty-five percent (35%) of the updated or adjusted principal contract.

[306] In the case of works, the total sum of the supplementary contracts, work orders and difference in quantities referred to in this chapter of the LOSNCP may under no circumstance exceed seventy percent (70%) of the updated or adjusted principal contract.

[307] In the case of consultancy contracts, the value of any supplementary consultancy contracts may not exceed seventy percent (70%) of the updated or adjusted principal contract.

[308] Supplementary contracts are not allowed for the procurement of goods subject to the LOSNCP.

[309] In addition, Article 88 authorizes the entity to pay -- without the need for a supplementary contract and provided the object of the contract is not altered -- up to twenty-five percent (25%) of the adjusted value of the contract if, according to the design and specifications of the contract, differences should be ascertained between actual quantities and those figuring in the Table of Estimated Quantities cited in the contract. All that is required is that a record be made of the change in a document signed by the Parties.

[310] For their part, Articles 102 to 105 address the mechanism for filing claims and settling disputes. The competent body to hear and resolve claims is the National Public Procurement Service (SERCOP), when there is circumstantial evidence of a failure to comply with the rules set forth in the LOSNCP, its regulations, and the regulations, technical standards, and other rules issued by SERCOP itself.

[311] At the same time, under Article 103, an appeal may be filed only against administrative acts of governmental contracting entities. Those who have a direct interest in the public procurement process have three (3) days to file an appeal from the date of notification of the administrative act. The Contracting Entity must issue its substantiated resolution within no more than seven (7) days from the date the appeal was filed.

[312] The filing of an appeal does not suspend execution of the contested administrative act. However, if the appeal is not resolved within the period allowed, SERCOP will suspend continuation of the procedure on the institutional portal until the filed appeal is resolved; without prejudice to any applicable administrative and civil liability.

[313] Articles 97 and 98 establish general aspects of the Electronic Public Register of Contracts run by SERCOP and the register of cases of noncompliance, respectively. Thus, the entities are required to remit to SERCOP the list naming all contractors or suppliers that have failed to meet their contractual obligations or which refused to sign contracts awarded to them, along with the corresponding documentary evidence, so that they can be suspended in the Single Public Roster (RUP) for five (5) and three (3) years, respectively.

[314] Articles 106 to 108 establish the violations and administrative sanctions applicable to suppliers. Such sanctions are imposed by SERCOP.

[315] Finally, the second general provision establishes several important prohibitions, including splitting government procurement contracts, as follows: *“Entities are prohibited from procuring through third parties, intermediaries, delegates, or purchasing agents.*

[316] *The object of a procurement or execution of a project may not be divided into lesser amounts in order to elude the procedures established in this Law.*

[317] *To establish whether division has occurred, an analysis shall be made to see whether institutional plans have been contravened.*

[318] *If it is determined that government finances were impaired as a result of the division, the Office of the Comptroller General shall dismiss the officials or employees responsible, without prejudice to any applicable civil or criminal liabilities.*

[319] *It shall be understood that no such division exists in cases in which two or more specific and differentiated stages were envisaged when planning project execution or when revising said planning, provided that the execution of each stage performs a separate function and is coordinated with the other stages in such a way as to guarantee the unity of the project.”*

[320] - Resolution No. INCOP-053-2011 of October 14, 2011, which provides for publication of the relevant documentation at the different stages of the procurement procedure.

[321] - Resolution No. RE-SERCOP-2013-02 of December 27, 2013, establishing the pre-contractual document models and formats for executing works, purchasing goods, and/or providing services, including consultants' services, in procurement operations subject to the Special Regime.

[322] - Resolution No. RE-SERCOP-2014-03 of February 6, 2014, which contains the regulation on the application of the evaluation parameters for ranking bids established in the particular terms of reference of the model bidding conditions for the different procurement procedures under the Standard Regime. Its purpose is to establish the core criteria for determining the technical, economic/financial and/or legal capacities of the bidders and their bids.

[323] - Resolution No. RE-SERCOP-2014-04 of February 20, 2014, containing SERCOP Version 1.1 of the pre-contractual and contractual document models and formats for executing works, purchasing goods, and/or providing services, including consultants' services.

[324] - Resolution No. RE-SERCOP-2014-10 of February 20, 2014, containing the regulation regarding certification of the competencies of the National Public Procurement System (SNCP) operators.

[325] - Resolution No. RE-SERCOP-2014-11 of September 16, 2014, regulating the simplified Single Public Register (“paperless” RUP) procedure and its update, using the Official Government Procurement System (SOCE), which can be accessed on SERCOP’s institutional portal (www.compraspublicas.gob.ec).

[326] - Resolution No. RE-SERCOP-2014-14 of October 1, 2014, containing the parameters for awarding evaluation scores when ranking bids.

[327] - Resolution No. RE-SERCOP-2014-17 of October 29, 2014, establishing the model pre-contractual documents for procuring works, goods, and/or providing services, including consultants’ services, financed by the Inter-American Development Bank (IDB).

[328] - Resolution No. RE-SERCOP-2016-44 of January 11, 2016, containing instructions for regulating the Corporate Reverse Auction of Medicines procedure.

[329] - Resolution No. RE-SERCOP-2016-48 of April 21, 2016, issuing provisions for emergency procurement operations.

[330] – The 2015 Handbook of Best Practices in Public Procurement for the Development of Ecuador. This Handbook, the use of which is mandatory for all contracting entities in the National Public Procurement System referred to in Article 1 of the LOSNCP, as well as for suppliers of goods, works, or services, including consultants’ services, was written by SERCOP to summon all agents involved in the National Public Procurement System and make them aware of eight categories of strategic policies pursued by government procurement in Ecuador, distilled from the observation of four thousand procedures in 2014-2015, so that they can be alert during surveillance and monitoring of all the procedures.

[331] Thus the Handbook seeks to help guarantee transparency and the quality of expenditure in government purchases and constitutes a supportive tool and set of guidelines for consistent implementation of comprehensive best practices in government procurement throughout the country.

[332] Compliance with those practices will be examined in SERCOP’s supervision and risk-based audits.

[333] – Resolution No. 005-319-CPCCS-2014 of the Plenary of the Citizen Participation and Social Oversight Council (CPCCS), which approves the General Regulations for Citizen Oversight Bodies (*Veedurías Ciudadanas*), Article 6 of which establishes that those bodies constitute social oversight mechanisms for keeping track of, supervising and checking on public administration, with a view to knowing what is going on, being informed, monitoring, expressing an opinion, and presenting observations before, during, and after government acts, as well for demanding accountability and thereby helping to improve the management of public affairs.

[334] The Regulations also establish the requirements and disqualifications for being a “watchdog” (*veedor*), as well functions and duties, in Articles 10, 11, 12, and 13, respectively.

[335] Chapter V of the aforementioned Regulations specifies the procedure to be followed for forming Citizen Oversight Bodies.

[336] – Establishment of the Citizen Oversight Body to Ensure Transparency in the Corporate Reverse Auction of Medicines (SICM 2015), within the framework of the cooperation agreements

between the CPCCS and SERCOP, signed on October 20, 2015: As we were told during the *on-site* visit by one of the representatives of the citizen oversight body comprising 57 citizens from all over the country,⁷² the SICM was the procedure used to identify and select national and international bidders for the provision of medicines for human use and consumption for the Integral Public Health Network (RPIS), made up of the health units of the Ecuadorian Social Security Institute (IESS), the Social Security Institute of the Armed Forces (ISSFA), the Social Security Institute of the Police (ISSPOL), and Ecuador's Ministry of Public Health (MSP).

[337] In that procedure, the Ecuadorian State envisaged purchasing 414 types of medicine included in the National Basic Medicines Table. The cost of that purchase would be approximately US\$500 million over two years.

b. Observations

[338] The Committee acknowledges that the new legal developments in this area are positive steps in enhancing government procurement processes in Ecuador and making them more transparent. Nevertheless, the Committee deems it appropriate to make a number of observations with regard to these new developments:

[339] First, the Committee notes that, according to the sixth transitory provision of the LOSNCP, added by Law No. 0 published in Official Gazette Supplement 100 of October 14, 2013, the President of the Republic would sign into law the new general regulations on the LOSNCP within 90 days of that date, adapted to the standing provisions contained in that law. However, despite the fact that the above deadline came and went more than two years ago, the revised regulations have not yet been published.

[340] In that connection, the Committee notes that significant amendments were made to the LOSNCP that require regulation. For example, based on what was mentioned in the preceding section, the reform of the LOSNCP added the first transitory provision on the process of "standardization" of goods and services; however, since no regulations have been issued on that provision, there is no definition of the concepts of "standardized" and "non-standardized" goods or services, which could give rise to greater subjectivity in the grading of bids.

[341] Another important point that has yet to be addressed through the adoption of new regulations, concerns the seventh general provision, which was added by the Law Reforming the LOSNCP and states that upon presenting bids, bidding enterprises are required to submit a list of their partners or shareholders in order to verify that those with a majority interest are not ineligible to take part in government procurement procedures. According to that transitory provision, the proportion of the equity interest of the partners or shares that would disqualify them from taking part in public procurement processes would be set in the law's implementing regulations. Those regulations are still pending.

[342] Bearing in mind the foregoing and the fact that adopting the regulations is essential for developing the content of the reforms to the LOSNCP, the Committee considers it important that appropriate steps be taken to publish the new regulations on the LOSNCP. That would contribute to and facilitate the work of implementing the reforms to the standards on government procurement.

⁷² See presentation by the representative of the Citizen Oversight Body to Ensure Transparency in the Corporate Reverse Auction of Medicines (SICM) during the on-site visit, slides 8 and 9. Available at: http://www.oas.org/juridico/ppt/mesicic5_ecu_soc_civ_tem_2_seg_veed.ppt

The Committee will make a recommendation in that regard. (See recommendation 1.2.3.5 in Section 1.2.3 of Chapter II of this report.)

[343] Germane to the foregoing are the observations on this subject that were presented by private sector representatives and academics who were invited to participate in the on-site visit regarding the need promptly to enact the regulations on the LOSNCP.⁷³

[344] Second, the Committee observes that, the fourth transitory provision of the LOSNCP, also added by Law No. 0 published in Official Gazette Supplement 100 of October 14, 2013, states that within 30 days following that date SERCOP was to codify and update all the resolutions adopted (both by SERCOP and its forerunner, the National Government Procurement Institute [INCOP]) in order to bring them into line with the Law's provisions.⁷⁴

[345] However, the Committee finds that more than two years have passed and that transitory provision has not yet been complied with. As a result, approximately 60 resolutions issued by INCOP that predate the October 2013 reform of the LOSNCP remain in force with their own numbering.⁷⁵

[346] It is worth mentioning that the academic invited to participate in the on-site visit said that the delay was due to the fact that SERCOP had been awaiting the publication of the new Regulations on the LOSNCP,⁷⁶ which seemed to her to be the correct thing to do, even if the LOSNCP reform law set a shorter timeframe for that exercise (30 days) than for the publication of the Regulations on the LOSNCP (90 days).

[347] In that connection, in the information provided after the on-site visit the country under review advised,⁷⁷ *"With respect to the codification of the resolutions, that is still underway and it is estimated that it will be published at the end of April [2016]. The codification will include a compilation of the resolutions adopted by SERCOP, which are still in force, while leaving aside all those resolutions that have been abrogated and could, therefore, cause confusion.*

[348] *Until that codification is published, anyone may visit the SERCOP institutional website and consult in the "Library" (Biblioteca) section on the homepage, the legal standards in force on government procurement, including the internal and external resolutions adopted by SERCOP: <http://portal.compraspublicas.gob.ec/sercop/biblioteca/>*"

[349] Bearing in mind the foregoing, the Committee considers it necessary that measures be adopted to advance and conclude the codification of the SERCOP resolutions, so as to facilitate the work of all actors in the government procurement process and avoid potential inconsistencies between the reformed LOSNCP and the resolutions issued by SERCOP and its predecessor, INCOP. Furthermore, that exercise should be repeated when the new Regulations on the LOSNCP are enacted. The

⁷³ See presentation by Dr. Inés María Baldeón Barriga, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_soc_civ_tem_2_ter_dra_in_mar_bal.pdf

⁷⁴ The State under review reported that "By means of resolution No. RE-SERCOP-2016-0000072 of August 31, 2016, the National Government Procurement Service enacted the Codification and Updating of the Resolutions issued by the National Government Procurement Service, which has been published at the following link: <http://portal.compraspublicas.gob.ec/sercop/anexos/>."

⁷⁵ A list of the resolutions in force is published at http://portal.compraspublicas.gob.ec/sercop/cat_normativas/nor_res_ext

⁷⁶ See presentation by Dr. Inés María Baldeón Barriga, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_soc_civ_tem_2_ter_dra_in_mar_bal.pdf

⁷⁷ See additional information requested of Ecuador during the on-site visit, second part, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_con_inof_adi_2_parte.pdf

Committee will make a recommendation in that regard. (See recommendation 1.2.3.6 in Section 1.2.3 of Chapter II of this report.)

[350] Third, the Committee observes that Article 85 of the LOSNCP authorizes supplementary contracts to be entered into with the same contractor without a new tender or competition should it be necessary to expand, modify, or add to a particular work or service for duly substantiated unforeseen or technical reasons that arise in the course of the contract's performance, provided that the prices of the items under the original contract are kept the same and only adjusted upon the date of signing the respective supplementary contract.

[351] The Committee also notes that Article 87 of the LOSNCP allows contractual amendments (supplementary contracts) by up to 70% of the updated or adjusted value of the principal contract in the case of works and consultancies. Furthermore, according to Article 15 of the LOSNCP, only the Office of the Comptroller General (CGE) has the authority to carry out ex-post control of contracting entities' procurement procedures.

[352] In that connection, the Committee considers that, in spite of the fact that the supplementary contract might consist of the necessary expansion, modification, or addition of works or services that, despite not being envisaged in the terms and conditions or in the original contract, and the situation is one where a change of contractor would not be feasible for economic or technical reasons and would create significant inconvenience or a substantial increase in costs to the State or the procurement entity, the legal authorization of an increase that almost doubles the revised or adjusted value of the contract could lead to potential risks that would warrant strengthening existent control mechanisms.⁷⁸

⁷⁸ The State under review reported that: "Article 23 of the LOSNCP establishes the obligation, prior to commencing a works procurement procedure, of first having the complete, definitive, and updated studies, designs, plans, calculations, and technical specifications duly approved by the relevant agencies associated with the entity's Annual Procurement Plan. It also establishes that the maximum authority of the contracting entity and the officers who were involved in preparing the studies, at the time that they were contracted for and approved, shall share joint responsibility with the consultants or contractors, as applicable, for the validity of the results and for any harm that may arise from their subsequent implementation.

In addition, Article 100 of the LOSNCP provides that the consultants are responsible for the scientific and technical validity of the contracted services and their applicability, within the terms of the contract. That responsibility expires five years after the final reception of the studies. Should studies prepared by consultants cause technical or economic harm in contract execution, as established by courts of law or arbitration, the suppliers shall be suspended for a period of five years, without prejudice to their civil or criminal liability.

In turn, Article 63, section two, of the LOSNCP provides, in connection with special disqualifications, that the following may not enter into contracts with the contracting entity: "persons and corporations, including the legal representatives thereof, who carried out the studies, designs, and engineering or architecture projects and who are related to those executing the works project (...)."

The possibility of executing amounts in addition to those initially established in the original contract, up to the amount of 70%, is regulated and differentiated; thus, as part of complementary contracts, the established limit is 35%, up to 10% for the execution of new items and up to 25% for additional amounts of items already existing in the study. That is set forth in Articles 85, 86, 87, 88, and 89 of the LOSNCP, in Articles 119, 132, and 136 to 138 of the Regulations to the Law (LOSNCP), and in Articles 357 to 360 of the Codification of Resolutions issued by the SERCOP. In all cases, the regulations are explicit that this condition always applies provided that the initial object of the contract – in other words, the purpose and scope of the contract – is not modified. In addition, in such cases the approval of the oversight agencies must be given for new items and the corresponding budgetary certification and issuance of the additional financial guarantees must be obtained. All this must be published on the public procurement web site.

At the same time, given that the execution of works contracts is an important part of the increase in public assets, when their execution and approval is charged to the General State Budget they must be part of the Annual and Multiyear Investment Plan, the formulation of which is the task of the National Planning and Development Secretariat (SENPLADES) in coordination with the Coordinating Ministries and the Ministry of Finance. In such cases, it must be indicated that by

[353] The State's right of recourse in such cases is recognized at Article 99 of the LOSNCP, which provides: "*The entity's highest authority as well as its officials or employees that took part in any stage of the pre-contractual procedures of preparation, selection and procurement, as well as in the performance of the contract itself shall be personally and financially liable for any violation of the provisions of this law, without prejudice, as appropriate to any liability to criminal proceedings that may arise.*" However, that article has no rules governing its application, which could give rise to difficulties in its implementation.

[354] In that regard, the Committee considers it important for the country under review to adopt implementing regulations for Article 99 of the LOSNCP in order to allow an effective application of the "right of recourse" in favor of the State in the event of harm occasioned by poorly prepared advance studies.

[355] In addition, in light of the foregoing, the Committee believes it important that due consideration be given by the country under review to reduce the amount of 70% of the updated or adjusted value of the principal contract in the case of supplementary works and consultancy contracts. The Committee will make recommendations in that regard. (See recommendations 1.2.3.7 and 1.2.3.8 in Section 1.2.3 of Chapter II of this report.)

[356] Fourth, the Committee notes that the second paragraph of Article 15 of the LOSNCP establishes the obligation for the SERCOP to notify the CGE and the Office of the Attorney General whenever infringements of that law's provisions come to its attention.

[357] In that respect, the Committee suggests that consideration be given by the country under review to establishing interagency agreements among those bodies in order to coordinate their activities and, thus, more effectively monitor the application of penalties in such cases. In that regard, the Committee highlights the cooperation agreement signed in 2015 by the CPCCS and SERCOP as a positive example. The Committee will make a recommendation in that regard. (See recommendation 1.2.3.9 in Section 1.2.3 of Chapter II of this report.)

means of Executive Decree No. 838 of November 25, 2015, the President of the Republic of Ecuador enacted the "Provisions for overseeing the efficiency of public investments of the Executive Branch or charged to the General State Budget." That Decree establishes that if duly grounded modifications covered by the LOSNCP are required in execution, a system of prior authorizations must exist, to be given, depending on the amount, first by the Coordinating Ministry of the relevant Sectoral Council when the variation in cost is no more than 30%, or, failing that, if the amount is greater, by the National Planning and Development Secretariat, which shall also update the priority ruling and issue the guarantee (Consistency: Interministerial Agreement between the National Planning Secretariat and the Ministry of Finance No. SNPD- MF- 0058-2014 58 of June 16, 2014, Ministerial Agreement No. 29 of July 27, 2016).

Irrespective of this, as provided for by Article 15 of the Organic Law of the National Public Procurement System, the oversight agencies of the State, including the Comptroller General's Office, within the framework of their powers, are responsible for subsequent oversight of the procurement procedures carried out by the Contracting Entities. Thus, in January 2014, the Comptroller General of the State, by means of Agreement No. 996-CG-2014, issued modifications to the Internal Oversight Standards for entities, public-sector organs, and private-law corporate entities that make use of public resources whereby, as part of the ex-post evaluation process, consultants or consultancy companies are held responsible for the quality of the studies and designs prepared; consequently, should they be shown to be inapplicable, or should project execution with the designs for which the consultants were responsible lead to harm of any nature, they would be civilly and criminally liable. It also establishes the requirement that the designer provide advice for as long as project execution requires, up until provisional and final reception. Should differences of opinion arise between the consultant responsible for the designs, the oversight agencies, or the contractor executing the project, the administrator of the contract shall be responsible for the arbitration of the final decision."

[358] Fifth, with respect to procurement operation in emergency situations, the Committee notes that Article 57 requires publication on the COMPRASPUBLICAS portal,⁷⁹ after the emergency situation has been dealt with, of a final report specifying the procurement operations carried out and the budgetary outlays involved, with an indication of the results achieved.

[359] The Committee notes that only 14 reports are posted on the SERCOP website, all of them relating to 2009 and 2010.⁸⁰ At the same time, a much larger number of emergency resolutions are posted for that period.

[360] Accordingly, and due to the fact that emergency procurement operations account on average for 10% of the amount awarded annually in government procurement in Ecuador, according to SERCOP's activities reports for 2011-2014,⁸¹ the Committee believes it important that the country under review consider taking steps to ensure compliance with the obligation to publish final reports on emergency procurement operations and that the oversight bodies implement measures to verify compliance with the publication requirement, review the contents of their respective reports, using a risk-based matrix for their analysis, and impose sanctions, where applicable. The Committee will make a recommendation in that regard. (See Recommendation 1.2.3.11. in Section 1.2.3. of Chapter II of this report.)

[361] Sixth, the Committee takes note of the study entitled "Analysis of the Annual Government Procurement Plan (PAC) for 2014,"⁸² prepared by SERCOP. That study concludes that "(...) *there are many government procurement entities posting poorly prepared PACs on the government procurement portal. The main errors involve erroneously increasing unit costs, thereby overstating the amount of the published PAC, and even copying the "CPC" of a similar entity's PAC. The PAC published by the Rural Parochial Decentralized Autonomous Governments should never be larger than the PAC published by District (cantonal) Decentralized Autonomous Governments, nor should the latter be larger than the PAC by Provincial Decentralized Autonomous Governments. However the fact that this is not always the case tells us that some PACs are poorly prepared (...)* It was also shown that the procurement entities plan to devote the greater part of the PAC to the procurement of goods and a smaller portion to works. However, when it comes to actual execution, most is for works, with goods accounting for less than one third of the amount stated in the Plan.

[362] In this regard, the country under review submits the following information in response to a request for additional information on the subject made during the on-site visit:⁸³

[363] "Through resolution No. RE-SERCOP-20140000015 of October 2, 2014, SERCOP issued the rules governing the use of government procurement facilitating modules, which include the I.T. application for drawing up the Annual Government Procurement Plan (USHAY PAC).

[364] *This application makes preparation of the Annual Procurement Plan (PAC) easy and intuitive, as it provides already set parameters for the information needed for procurement entities to input and publish their plans for goods, works, and services, including consultants' services, for the fiscal year. Use of this tool became mandatory as of January 1, 2015.*

⁷⁹ <https://www.compraspublicas.gob.ec/ProcesoContratacion/compras/>

⁸⁰ See <http://portal.compraspublicas.gob.ec/sercop/biblioteca/>

⁸¹ Available at: <http://portal.compraspublicas.gob.ec/sercop/biblioteca/>

⁸² Available at: <https://drive.google.com/open?id=0B0RKf7-ltRDtQ3dpS3VobF9KOVE>

⁸³ See additional information requested of Ecuador during the on-site visit, second part, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_con_inof_adi_2_parte.pdf

[365] <http://ricg.org/modulo-facilitador-de-la-contratacion-publica-ushay/postulacion/43/es/>

[366] (...)

[367] *In addition, through Resolution No. RE-SERCOP-2014-000021 of November 17, 2014, SERCOP issued the rules governing selection of the Central Product Classifier - CPC in the PAC, under which entities subject to the LOSNCP are required to choose a nine-digit CPC code for the goods, works, and services—including consultants' service—that they are planning to procure in the corresponding fiscal year.*

[368] *The same resolution indicates that interoperability shall be maintained with the Ministry of Finance in order to validate the budget allocation information. Thus, based on the above, the PAC tool is operating as per the regulations in force.*

[369] *Moreover, SERCOP published handbooks both for entities that use the Financial Management System –ESIGEF– and for those that do not. Those handbooks are posted at the following link: <http://portal.compraspublicas.gob.ec/compraspublicas/capacitacion/manuales-ushay-2015/Entidades>*

[370] Without prejudice to the progress referred to above, and bearing in mind the vital importance of having Annual Procurement Plans (PAC) that are well prepared and with just a few and justified modifications so as to strengthen the task of planning and the predictability of government procurement in Ecuador, the Committee considers that SERCOP should pay additional attention to this matter, both preventively, by providing more extensive training for officials in charge of procurement entities, and ex post facto, with follow-up studies and controls aimed at identifying challenges and recommending corrective measures. The Committee further deems it advisable that consideration be given by the country under review to implement an electronic notification system so that oversight bodies, like the CGE and SERCOP are advised in good time about the above-mentioned modifications. The Committee will make recommendations in this regard. (See recommendations 1.2.3.11 and 1.2.3.12 in Section 1.2.3 of Chapter II of this report.)

[371] Seventh, the Committee notes that SERCOP's most recent activities report published on its website is the 2014 report.⁸⁴ Likewise, neither the report referred to earlier, entitled "Analysis of the 2014 Annual Government Procurement Plan," nor some of the other reports mentioned by the country under review in its response, appear to have been published.⁸⁵ Accordingly, the Committee considers it important that SERCOP review the content of its web page and publish all the reports it has produced, so that they can be easily accessed and consulted by any interested person. The Committee will make a recommendation in that regard. (See recommendation 1.2.3.13. in Section 1.2.3. of Chapter II of this report.)⁸⁶

[372] Eighth, as regards the government procurement oversight system, the Committee notes that, following amendment of the LOSNCP, SERCOP acquired the power to temporarily suspend for seven days persons against whom a substantiated complaint has been filed by persons having a direct interest in steps taken by procurement entities (Article 102 of the LOSNCP).

⁸⁴ See <http://portal.compraspublicas.gob.ec/sercop/biblioteca/>

⁸⁵ Available at: http://www.oas.org/juridico/spanish/mesicic5_ecu.htm

⁸⁶ During the meeting of the review subgroup, the State under review informed that "The following link contains the record of the publication of SERCOP's Activities Report for 2015, <http://portal.compraspublicas.gob.ec/sercop/informe-de-rendicion-de-cuentas-2015/>."

[373] However, the same Article establishes that “*At the end of the period provided for in this Article, the highest authority in the procurement entity may make any appropriate rectifications, or continue the process.*”

[374] Accordingly, the Committee notes that SERCOP’s powers of oversight are restricted to imposing the temporary suspension referred to above. SERCOP is not empowered to maintain the suspension if the head of the procurement entity ignores its recommendation. If that happens, SERCOP may only “*suggest measures needed to rectify the process and, where applicable, the definitive suspension of the pre-contractual procedure, and notify the competent oversight bodies of its recommendation.*”

[375] Here, the Committee deems it necessary that consideration be given by the country under review to revising that Article in the LOSNCP, in such a way as to grant SERCOP authority to suspend a government procurement process until such time as any identified issues have been corrected. That would enable SERCOP to exercise effective oversight of what goes on in said processes. The Committee will make a recommendation in that regard. (See Recommendation 1.2.3.14. in Section 1.2.3. of Chapter II of this report.)

1.2.2.2. New developments with regard to technology

[376] In its response to the questionnaire⁸⁷ and after the on-site visit,⁸⁸ the country under review presented information on new development relating to technological aspects of the process. Among them, the Committee would like to highlight the following:

[377] – The Official Government Procurement System (SOCE), version 1, through which the parties involved in government procurement require goods, works, or services and in turn offer them to the State.

[378] Version 2 is undergoing final analyses before being officially launched. That version will include the implementation of controls between the Ministry of Finance and SERCOP, pursuant to Presidential Decree 838, and of new products and categories in the e-Catalogue and Inclusive Catalogue.

[379] The information provided after the on-site visit,⁸⁹ describes the progress and improvements made to the platform in 2015: Implementation of Ecuadorian Value Added, in accordance with pre-established thresholds; the “Paperless project; Simplified mass registration of Suppliers/providers; and fast-track online processing.

[380] Also worth highlighting is the “Corporate Reverse Auction for Medicines Platform,”⁹⁰ established in the framework of the Corporate Reverse Auction for Medicines System (SICM), which is being executed by SERCOP for the provision of more than 400 medicines for the Ministry of Public Health and other entities.

⁸⁷ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, pp. 158 and 159, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

⁸⁸ See additional information requested of Ecuador during the on-site visit, second part, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_con_inof_adi_2_parte.pdf

⁸⁹ See additional information requested of Ecuador during the on-site visit, second part, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_con_inof_adi_2_parte.pdf

⁹⁰ The instructions on use of the portal can be found at: <https://www.youtube.com/watch?v=CpoqTS9rhA4>

[381] – USHAY application for Government Procurement Entities and Suppliers to facilitate interaction with the SOCE; USHAY, a Quechua word meaning “easy,” is a name given to a set of I.T. applications making up Ecuador’s “Government Procurement Facilitating Module.”

[382] According to the country under review, prior to the implementation of USHAY, the Government Procurement Portal allowed procurement entities to upload such files as: the Annual Procurement Plan (PAC), specifications, bidding documents, bids, and rankings with no information validation procedure, because, although benchmark formats were available, there was no way of tabulating the data contained in the documents.

[383] USHAY made it easier for users of the Official Government Procurement System (SOCE) to prepare the qualifying documentation needed for the preparatory and pre-contractual phase, such as the Annual Procurement Plan, specifications, bidding documents, bids, and ranking procedures.

[384] USHAY comprises applications or desktop tools in a *web* format enabling both suppliers and procurement entities to generate qualifying documentation needed for such pre-contractual procedures as: The PAC (Annual Procurement Plan), regular regime bidding documents, bids, and the ranking matrix. These tools work and interact with Ecuador’s official government procurement portal.

[385] The “Government Procurement Facilitating Model” - USHAY was implemented in January 2015 and is mandatory for both procurement entities and suppliers.

[386] – The SICONROL tool for the monitoring and supervision of the government procurement procedures used by government procurement entities: According to the country under review, the “Fact Check” option was implemented, which, based on risk indicator inputs, identifies government procurement risks based on poor procurement practices.

[387] In addition, the “SI CONTROL” tool is used to perform constant oversight of the riskiest procurement procedures, whereby a number of variables are established for a procedure to be rated as such, including competition among providers per “territorial sector” and the level of risk of both the supplier and the procuring entity.

1.2.2.3. Results

[388] In the information it provided following the on-site visit,⁹¹ addition to that referred to earlier in Section 1.2.1., the country under review reported the following results obtained with respect to certain aspects of the systems for government procurement of goods and services mentioned in Article III (5) of the Convention, namely:

- **Regarding sanctions imposed on contractors and procurement entities:**

[389] The Committee did not have statistics on sanctions imposed on contractors and those in charge of procurement entities, nor on findings regarding effective verification and application of

⁹¹ See additional information requested of Ecuador during the on-site visit, second part, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_con_inof_adi_2_parte.pdf

disqualification procedures. The Committee will make a recommendation in that regard. (See Recommendation 1.2.3.15. in Section 1.2.3. of Chapter II of this report.)

- **Training**

[390] The training courses provided by SERCOP regarding the implementation of instruments and tools, and regarding procedures relating to government procedures are posted on its web site.⁹²

[391] Thus, the Committee ascertains that SERCOP has been advising procurement entities and also training suppliers working with the National Government Procurement System on the interpretation and application of the rules governing procurement procedures.

[392] Both online and on-site (in person) training courses are provided. The ‘in person’ activities planned for each month are posted on the SERCOP website,⁹³ where the virtual and e-learning self-training courses can also be accessed.⁹⁴

[393] As regards the latter, a virtual course, entitled “National Government Procurement System” was developed for public servants responsible for administering State resources. It has several modules for different tools, such as the LOSNCP and its General Regulations, the Organic Law of State Enterprises, SERCOP resolutions, model bidding documents, and user manuals for the various government procurement tools.

[394] In light of the above, the Committee takes note of the training activities carried out and of the skills-development opportunities offered, as posted on the SERCOP *web* site. The Committee considers it vital that SERCOP’s training and dissemination activities continue, and that activities also be conducted to disseminate information regarding the mechanism for denouncing violations by Government entities of Government procurement rules and regulations. The Committee will make a recommendation in that regard. (See Recommendation 1.2.3.16. in Section 1.2.3. of Chapter II of this report.)

[395] The Committee likewise takes note of the rules of procedure for certifying the competencies of National Government Procurement System (SNCP) operators, issued in Resolution No. RE-SERCOP-2014-10 of 20 February 2014. For public servants to obtain certification, they must be sponsored by the procurement entity they are working for and submit to the evaluation required for certification convened by SERCOP.

[396] However, the Committee had no information regarding progress with implementing the aforementioned resolution. The Committee will make a recommendation in that regard. (See Recommendation 1.2.3.17. in Section 1.2.3. of Chapter II of this report.)

- **Level of competence**

[397] In information provided after the on-site visit,⁹⁵ the country under review reported on the average number of participants for each type of government procurement process in Ecuador, as

⁹² <http://portal.compraspublicas.gob.ec/sercop/capacitacion/>

⁹³ <http://portal.compraspublicas.gob.ec/sercop/13269-2/>

⁹⁴ <http://portal.compraspublicas.gob.ec/sercop/capacitaciones-virtuales/>

follows: electronic reverse auction, lower-amount, price quotation, tenders, short list, and competitive public bidding. The other procedures do not enter into the calculation as only one supplier submitted a bid:

Type of procedure	2011	2012	2013	2014	2015
Regular regime					
Competitive public bidding	4.2	3.8	4.43	4.51	4.58
Price quotation	6.25	4.06	4.23	5.86	8.6
Tender	25.65	8.65	24.74	28.9	18.98
Short list	1.72	1.68	1.66	1.66	2.39
Lesser amount	4.03	3.08	2.78	5.87	10.01
Electronic reverse auction			2.67	3.54	5.17

[398] The Committee notes that, in general and particularly in the case of electronic reverse auctions, there was increased competitiveness in the various kinds of government procurement procedures in Ecuador. The figures for tenders, however, vary markedly, declining to 8.65 bidders per process in 2012 and rising to 28.9 bidders in 2014, only to fall again to 18.98 thereafter.

[399] Likewise, in a study entitled “Supplier Concentration” of June 2014,⁹⁶ SERCOP concluded that, inter alia:

[400] *“1. The 20 suppliers winning the largest number of procurement processes account for 2% of the value of public procurement between January and November 2013.*

[401] *2. 10% of suppliers won at least 5 processes. Of them, 70% are MSEs (micro and small enterprises).*

[402] *3. The top 3% of suppliers awarded the largest contracts account for 60% of government procurement, while 10% of providers account for 77% of the total amount.*

[403] *4. The 20 suppliers awarded the highest amounts through November of this year account for 18% of government purchases. (...)*

[404] *6. 44% of suppliers account for 94% of government purchases. (...)*

[405] *8. By amounts awarded, the concentration of government procurement for works versus goods and services is similar. Measured by number of procurement processes, providers of goods and services accounted for a majority.*

⁹⁵ See additional information requested of Ecuador during the on-site visit, second part, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_con_inof_adi_2_parte.pdf

⁹⁶ Available at: <https://drive.google.com/open?id=0B0RKf7-ltRDid0F1cG8yZnpWenM>

[406] 11. *Based on this analysis, it seems fair to say that there is a correlation between the low number of suppliers and the degrees of concentration shown.*

[407] 12. *In terms of the numbers of processes in which a contract was awarded, there is a decent level of diversification among MSEs. That is to say, there are few MSEs winning many processes but several that won at least one. (...)*

[408] 15. *It is important to note that in certain cases there is a natural concentration when it comes to government procurement due to certain suppliers' specializations and improvements based on innovation, which gives them a competitive advantage.*

[409] In light of the above, the Committee shares some of the recommendations put forward in the aforementioned study, especially the importance for SERCOP to prepare a study to identify the provinces where there is a large concentration of suppliers and the reasons for that, with a view to measures being taken to increase the level of competition in government procurement. The Committee will make a recommendation in this regard. (See recommendation 1.2.3.18 in Section 1.2.3 of Chapter II of this report.)

- **Ex post facto audits and complaints received**

[410] In the information it provided after the on-site visit,⁹⁷ the country under review reported, as follows, on complaints relating to the procurement of goods, works, and services received by the Office of the Comptroller General of the Republic (CGE) and the outcomes of those complaints:

[411] *"(...) The Office of the Comptroller General of the Republic reports that of the 1,172 complaints filed regarding procurement processes for good, works, and services, in 2011-2015, 195 were analyzed and resolved. It should be explained that the remaining complaints in that period were derived to other oversight units nationwide for the following actions to be taken: to be considered in future oversight actions and preliminary verifications. At the same time, the complainants were asked for further information and/or to meet certain requirements, which they sometimes failed to do. Likewise, in many cases, the complainants received replies indicating that this entity does not order expenditures or authorize payments, particularly when their requests have to with retention by the procurement entities of payments to contractors."*

[412] Statistics are also submitted on oversight actions related to special inspections of engineering and procurement of goods, services, and works, as well as actions undertaken in response to complaints about the procurement processes for goods, works, and services.⁹⁸

[413] Nevertheless, the information provided is not enough for a comprehensive review because it omits to mention whether the oversight actions resulted in assignment of liability or sanctions. There is also no indication of results in terms of the status of implementation by the procurement entities of recommendations that the CGE might have made.

[414] Accordingly, the Committee will not issue a new recommendation, but rather it will reiterate recommendation 3.4.6 in the Report on the Fourth Round,⁹⁹ regarding standardization of the

⁹⁷ See additional information requested of Ecuador during the on-site visit, second part, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_con_inof_adi_2_parte.pdf

⁹⁸ Available at: http://www.oas.org/juridico/spanish/mesicic5_ecu.htm

information compiled for these kinds of statistics, so that it is consistent and can be analyzed with a view to identifying challenges and recommending any necessary corrective measures.¹⁰⁰

[415] Finally, the Committee takes note of the unconstitutionality suit filed by the CGE in December 2015 against the amendment to Articles 211 and 212 of the Constitution that eliminates the institution's authority to conduct management audits (Case 0100-15-IN).

1.2.3. Recommendations

[416] In light of the comments made 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 Evaluate and modify the government procurement system in order to make competitive processes the general rule for contract tendering procedures in the State system for procurement of goods, services, and works. (See paragraph 245 in Section 1.2.1 of Chapter II of this report.)
- 1.2.3.2 Design and implement a mechanism to conduct periodic comprehensive evaluations to assess the use and effectiveness of the goods, services and works procurement system and, based on its results, where appropriate, define and consider adopting specific measures by which to ensure its transparency, openness, equity, and efficiency. (See paragraph 245 in Section 1.2.1 of Chapter II of this report.)
- 1.2.3.3 Precisely define the concepts of "standardized" and "non-standardized" goods and services in the rules and regulations governing government procurement lest those concepts be left to the discretion of the procurement entity. (See paragraph 265 in Section 1.2.1 of Chapter II of this report.)
- 1.2.3.4 Establish applicable objective criteria for procurement processes that are not subject to a public tender or competitive process and require the existence of at least three pro forma quotes in those cases, when the circumstances so allow (See paragraph 274 in Section 1.2.1 of Chapter II of this report.)
- 1.2.3.5 Publish the new Regulations of the Organic Law of the National Government Procurement System (LOSNCP). (See paragraph 342 in Section 1.2.2.1 of Chapter II of this report.)
- 1.2.3.6 Conclude the codification of the SERCOP resolutions, so as to facilitate the work of all actors in the government procurement process and avoid potential inconsistencies between the reformed LOSNCP and the resolutions issued by SERCOP and its predecessor, INCOP. Furthermore, update the codification once the new Regulations

⁹⁹ See Report on Ecuador from the Fourth Round, pp. 36 and 38. Available at: http://www.oas.org/juridico/PDFs/mesicic4_ecu_en.pdf

¹⁰⁰ During the meeting of the review subgroup, the State under review informed that "the accountability reports corresponding to the years 2011, 2012, 2013, 2014, and 2015 specify the outcomes of the oversight actions taken by the Office of the Comptroller General in the institutions subject to its oversight nationwide through operational units. The detailed findings, broken down by type of audit, liabilities, and the amounts involved are to be found in the aforementioned accountability reports, which be consulted on the institution's website. www.contraloria.gob.ec -> informativo -> informes a la nación."

of the LOSNCP have been enacted. (See paragraph 349 in Section 1.2.2.1 of Chapter II of this report.)

- 1.2.3.7 Adopt implementing regulations for Article 99 of the LOSNCP in order to allow an effective application of the “right of recourse” in favor of the State in the event of harm occasioned by poorly prepared advance studies. (See paragraph 354 in Section 1.2.2.1. of Chapter II of this report.)
- 1.2.3.8 Give due consideration to reducing the amount of 70% of the updated or adjusted value of the principal contract in the case of supplementary works and consultancy contracts. (See paragraph 355 in Section 1.2.2.1. of Chapter II of this report.)
- 1.2.3.9 Establish interagency agreements among the National Government Procurement Service (SERCOP), the Office of the Comptroller General (CGE), and the Office of the Attorney General (PGE) in order to coordinate their oversight activities and, thus, more effectively monitor the application of penalties for violations of the rules on public procurement. (See paragraph 357 in Section 1.2.2.1. of Chapter II of this report.)
- 1.2.3.10 Ensure compliance with the obligation to publish final reports on procurement operations in emergency situations and take steps to ensure that the oversight bodies verify compliance with that obligation, review the contents of the respective reports, using a risks matrix for their analysis, and impose any applicable penalties. (See paragraph 360 in Section 1.2.2.1 of Chapter II of this report.)
- 1.2.3.11 Pay additional attention to the preparation of Annual Procurement Plans, while encouraging SERCOP to expand the training given to the procurement entity officials responsible for preparing them and conduct follow-up studies and audits, in order to identify challenges and recommend corrective measures. (See paragraph 370 in Section 1.2.2.1 of Chapter II of this report.)
- 1.2.3.12 Set up a notification system in the Official Government Procurement System (SOCE) to ensure that the oversight bodies, such as the Office of the Comptroller General of the Republic (CGE) and the National Government Procurement Service (SERCOP) are promptly informed of any changes to the Annual Procurement Plans. (See paragraph 370 in Section 1.2.2.1 of Chapter II of this report.)
- 1.2.3.13 Revise the contents of SERCOP’s web page and post all the reports it has prepared, so that they can be easily accessed and consulted by any interested person. (See paragraph 371 in Section 1.2.2.1. of Chapter II of this report.)
- 1.2.3.14 Consider amending Article 102 of the LOSNCP in such a way as to give SERCOP power to suspend a government procurement process until any identified issues with it have been resolved, and thereby enable that entity to exercise effective oversight of what goes on in those processes. (See paragraph 375 in Section 1.2.2.1. of Chapter II of this report.)
- 1.2.3.15 Compile detailed statistics on the imposition of sanctions against contractors and responsible parties in the procurement entities, as well as on the findings relating to effective verification and enforcement of the disqualification procedures envisaged in the LOSNCP. (See paragraph 389 in Section 1.2.2.1. of Chapter II of this report.)

- 1.2.3.16 Ensure continuity in SERCOP training and dissemination activities, and take steps to disseminate existing mechanisms for denouncing violations by government entities of government hiring and procurement regulations. (See paragraph 394 in Section 1.2.2.1. of Chapter II of this report.)
- 1.2.3.17 Adopt appropriate measures to make progress with certifying the skills of operators in the National Government Procurement System (SNCP) (Resolution No. RE-SERCOP-2014-10 of February 20, 2014) and provide information on the status of its implementation and on results. (See paragraph 396 in Section 1.2.2.1. of Chapter II of this report.)
- 1.2.3.18 Conduct a study to identify provinces with high levels of supplier concentration and the reasons for that, and strive to ensure that appropriate steps are taken to enhance competitiveness in government procurement. (See paragraph 409 in Section 1.2.2.1. of Chapter II 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 on implementation of the recommendation formulated in the Second Round

Recommendation 2.1:

Strengthen the systems to protect public officials and private citizens who, in good faith, report acts of corruption.

Measure (a) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

Make the necessary amendments to protect the identity of people who, in good faith, report acts of corruption in accordance with the legislation regarding public service, even after the pertinent reports are published.

Measure (b) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

Make the necessary amendments to current legislation, in order to better protect whistleblowers who in good faith report acts of corruption, and their families, within the framework of public service legislation, so this protection would not be limited to criminal procedures but would include public administration in general. Protection would be extended to labor situations, particularly in the cases of public servants, and in those cases when those acts of corruption could involve a superior or a colleague.

[417] In its response to the questionnaire and during the on-site visit, the country under review presented information and new developments with respect to measures a) and b) of the above

recommendation.¹⁰¹ In this regard, the Committee notes the following as steps that contribute to progress in their implementation:

[418] – The Comprehensive Organic Criminal Code (COIP) (published in Official Gazette Supplement No. 180 of February 10, 2014), Article 421, second paragraph of which provides that “*The complaint shall be public, without prejudice to the personal identification data of the complainant, accused, or victim being withheld for their protection.*”

[419] – The Organic Law of the Citizen Participation and Oversight Council (published in Official Gazette Supplement No. 22 of September 9, 2009), Article 14 of which provides that “*the Citizen Participation and Oversight Council is required to receive, process, accept for processing, and investigate should there be sufficient merit, complaints regarding acts or omissions that impair participation or generate corruption. The person making the complaint shall be guaranteed anonymity and protection.*”

[420] – The new Regulations for Handling Requests and Complaints regarding Acts or Omissions that Impair Participation or Generate Corruption of the CPCCS (CPCCS resolution PLE-022-26-11-2015 published in Official Gazette No. 673 of January 20, 2016), Article 18 of which ensures protection by the Citizen Participation and Oversight Council (CPCCS) for the identities of whistleblowers and/or the officials involved in the investigation.

[421] In addition, Article 17 establishes the obligation of the CPCCS to ensure protection for whistleblowers upon request, who may also request the Office of the Prosecutor General for protection through the National Protection System for Victims and Witnesses, in the appropriate cases.

[422] Furthermore, its Fourth Transitory Provision states that within 90 days following the enactment of these regulations, the technical secretary for transparency and the fight against corruption shall draw up, *inter alia*, the protocol for ensuring whistleblower anonymity.

[423] In the course of the on-site visit, it was informed that said “General Protocol to Ensure Protection for Persons Who in Good Faith Report Acts of Corruption” was submitted on February 26, 2016, to the Chair of the CPCCS for consideration and approval.

[424] That draft protocol seeks to implement part of the suggestions put forward at an international event held on June 18 and 19, 2014, in partnership with EUROsocial on “*Administrative Protection Mechanisms for Corruption Whistleblowers* [Mecanismos de Protección Administrativa a Denunciantes de Actos de Corrupción],” which provided inputs for the analysis of a proposed legal reform and the possible implementation of specific mechanisms for protecting whistleblowers in the administrative sphere. In the course of the on-site visit, it was informed that the discussions at that event also turned to the recommendations made by MESICIC on such matters as well as the “Model law to facilitate and encourage the reporting of acts of corruption and to protect whistle-blowers and witnesses.”¹⁰²

¹⁰¹ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, pp. 106 to 124, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

¹⁰² Available at: http://www.oas.org/juridico/english/draft_model_reporting.pdf

[425] – The Rules on Receiving and Processing Complaints for Administrative Investigation in the Office of the Comptroller General, issued by the Comptroller General, through Decision [Acuerdo] 34-2009, Article 10 of which establishes that “*Personnel in the Office of the Comptroller General responsible for receiving and appraising complaints and for conducting preliminary investigations, shall respect the confidentiality of the acts brought to their attention and of the identity of those lodging the complaints and of those against whom a complaint has been lodged.*”

[426] *Only the person against whom a complaint has been lodged may request a copy of the complaint and of any documents annexed to it.”*

[427] – Resolution No. 001 October 30, 2014 of the National Secretariat for Public Administration, which contains instructions on lodging, analysis, and investigation of complaints submitted to the Technical Secretariat for Transparency and Management (STTG).^{103 104}

[428] As regards whistleblower anonymity, Article 11 provides that “*anyone who files a complaint may express their desire to keep their identity secret and confidential. Similarly, the identity of the whistleblower shall be kept completely secret while proceedings are under way as well as in the Report on Technical and Legal Findings.*”

[429] As regards other protection measures, Article 13 provides that the STTG shall look for mechanisms to contribute to the protection of persons who report acts of corruption or who collaborate with their investigation.

[430] – The STTG’s¹⁰⁵ draft “Protocol of Protection for Persons Who Report Alleged Acts of Corruption,” an initiative to develop timely protection mechanisms for whistleblowers that envisages the adoption and strengthening of protection measures over three time frames: short-, medium-, and long-term.

[431] One of the expected results, according to the country under review, is a directive that leads to the development of a provision that, based on existing standards, will introduce rules on the work of public servants and the National Secretariat for Public Administration, which could give rise to recommendations on the current regulations governing matters connected with family and workplace protection, for example: personal and family protection with a plainclothes police security detail, both at the whistleblower’s home, and in the movements necessary for carrying out the procedures

¹⁰³ According to Article 5 of the Resolution, the functions of the Technical Secretariat for Transparency and Management (STTG) include “*to investigate alleged acts of corruption committed in the central public administration and its institutions, promote transparent public administration, and propose, coordinate, and implement transparency policies, strategies, plans, projects, and measures.*”

To bring alleged acts of corruption to the attention of the authorities, including those reportedly committed in the autonomous institutions that are part of the executive branch and those in which the aforesaid administrations are shareholders or partners; as well as in all other public-sector institutions and in corporations, foundations, civil associations, commercial companies, and public-sector enterprises in which the State has an ownership interest.

To coordinate its activities with the Public Prosecution Service, the Transparency, Oversight, and Societal Control Service [Función de Transparencia, Fiscalización y Control Social], the judiciary, the armed forces, the police, oversight agencies, and other public-sector entities, for the purpose of eradicating corruption.”

¹⁰⁴ During the meeting of the review subgroup, the State under review informed that “*On April 8, 2016, through Executive Decree No. 985, the Constitutional President of the Republic of Ecuador, mindful of the need to optimize the way government bodies are organized so that they can perform their current functions, eliminated the Technical Secretariat for Transparency in Management attached to the National Secretariat for Public Administration. That Decree also establishes that files being processed by the Technical Secretariat for Transparency in Management and which by law refer to matters subject to oversight by the Office of the Comptroller General of the Republic shall be remitted to that oversight body”.*

¹⁰⁵ *Id.*

requested during the (administrative) investigation process; and protection of labor rights in the event that the whistleblower is a public official.

[432] However, the Committee takes note of the following information presented both in the response to the questionnaire and during the on-site visit by the Office of the Comptroller General with respect to difficulties with implementing measure (a):¹⁰⁶

[433] *“Broadly speaking, the Office of the Comptroller General has not encountered any difficulties in the activities that it carries out in accordance with its constitutional and legal authority because it is protected by a system of laws that guarantees oversight of the use of public resources. However, as regards protection of whistleblowers in the specific sphere of the oversight body, that protection is not fully guaranteed given that the rules on lodging and processing complaints for administrative investigation in the Office of the Comptroller General require the whistleblower formally to acknowledge complaint.*

[434] *The acknowledgment rule helps to ensure that complaints lodged in responsible manner, as well as ensuring observance of the human rights enshrined in Article 66 of the Constitution, in particular:*

[435] *18. The right to respect for one’s honor and good name. The law shall protect the image and voice of persons.*

[436] *19. The right to protection of personal data, which includes access to and decisions on information and data of that nature, as well as their rightful protection. The collection, archive, processing, distribution, or disclosure of that data or information shall require the permission of the owner or a legal mandate.*

[437] *20. The right of the individual and the family to privacy.*

[438] *Under those principles, the anonymity of the whistleblower is protected from third parties, but not from the person against whom the complaint is made, given that the latter is also entitled to know the alleged acts of which they are accused so that they can exercise their right to defend themselves.”*

[439] In that regard, the Committee notes that the CGE’s interpretation with respect to protecting the identity of persons who in good faith report acts of corruption seems not to match that of the CPCCS and the STTG,¹⁰⁷ which will not help to reassure whistleblowers that their identities will be protected

¹⁰⁶ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, pp. 106 to 119, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

¹⁰⁷ During the meeting of the review subgroup, the State under review informed that *“On April 8, 2016, through Executive Decree No. 985, the Constitutional President of the Republic of Ecuador, mindful of the need to optimize the way government bodies are organized so that they can perform their current functions, eliminated the Technical Secretariat for Transparency in Management attached to the National Secretariat for Public Administration. That Decree also establishes that files being processed by the Technical Secretariat for Transparency in Management and which by law refer to matters subject to oversight by the Office of the Comptroller General of the Republic shall be remitted to that oversight body”.*

when lodging complaints with the Office of the Comptroller General because the latter does not guarantee that the complainant's identity will be withheld from the accused.¹⁰⁸

[440] Furthermore, in its response, the country under review identifies other difficulties with implementing the two measures suggested, including the following:¹⁰⁹

[441] *“The institutional reforms that have on several occasions altered the distribution of powers of government institutions, with the result that their focus is on strengthening interagency efforts to ensure that each institution preserves its powers and functions where the implementation of protection measures is concerned.*

[442] *The scant impact had by campaigns to encourage citizens and public servants to report acts of corruption; as well as the reluctance of citizens to file complaints and their confusion over acts of corruption that are susceptible to reporting, are further difficulties that need to be addressed.*

[443] *In spite of the efforts that have gone into the directive's design, adoption, and execution, and despite the resolutions on the investigation of complaints of corruption that envisage protection measures for the whistleblower, protection is not regarded as a compulsory measure within the system as a whole owing to the absence of a specific law consolidating protection for whistleblowers and informants.*

[444] (...)

[445] *The legal standards on the public service designed to ensure protection for whistleblowers who are public servants need to be expanded in the administrative sphere, particularly for complaints relating to acts of an administrative nature for which the authority to which complaints should be directed is the Office of the Comptroller General as well as for other entities with responsibilities for the workplace, in order to prevent whistleblowers from being made the targets of different kinds of reprisals at work.*

[446] (...)

[447] *In addition, there are difficulties including the whistleblower in the System of Protection and Assistance for Victims, Witnesses, and Other Participants in Criminal Proceedings, when the case is not part of a judicial proceeding.*

¹⁰⁸ The country under review reported that *“the treatment of complaints the treatment of complaints filed at the CGE and the CPCCS is not the same because of the nature of the control measures and investigations that, as a result of those complaints, are initiated in each of these institutions. As a result, although the CGE has implemented alternative methods for receiving complaints, the restricted identity of the whistleblower can be accepted only by the CPCCS.”* In addition, *“On September 8, 2016, the Comptroller General of the State, by means of Agreement No. 0032-CG, amended the “Regulations for the Classification of Restricted and Confidential Information of the Office of the Comptroller General of the State,” Article 2.k of which provides that “The personal data of individuals filing complaints with the Comptroller General’s Office in accordance with the “Regulations for the Reception and Processing of Complaints for Administrative Investigation in the Office of the Comptroller General of the State” are considered restricted information and/or documents.”*

¹⁰⁹ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, pp. 106 to 124, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

[448] Finally, in its response the country under review also mentioned a need for technical cooperation to support the creation of mechanisms, protocols, and rules on protection for persons who report acts of corruption in the administrative sphere.¹¹⁰

[449] In light of the foregoing, while taking note of the steps taken by the country under review to move forward with implementing measure (a) contained in recommendation 2.1 in Chapter II of this report, the Committee believes it appropriate to reformulate the above measure to the effect that appropriate steps be taken to expedite adoption of the “General Protocol to Ensure Protection for Persons Who in Good Faith Report Acts of Corruption” and to ensure that said protocol protects the identity of persons who in good faith report acts of corruption, including after publication by the CPCCS of the relevant reports. (See Recommendation 2.3.1 in Chapter III, Section 2.3 of this report.)

[450] Furthermore, as regards the implementation of measures (a) and (b) suggested above, the Committee feels it necessary to reformulate both measures to the effect that the consideration be given to enacting legislation standardizing protection for those who in good faith report acts of corruption and their families, including withholding their identities and protection in the workplace, among other safeguards, bearing in mind the criteria laid out in the Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses.”¹¹¹ (See Recommendation 2.3.2 in Chapter III, Section 2.3 of this report.)

2.2. 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

2.2.1. New developments in the legal framework

a. Scope

[451] – The Constitution of the Republic of Ecuador (published in Official Gazette No. 449 of October 20, 2008), Article 78 of which provides that “(...) [a] system for the protection of and assistance to victims, witnesses, and participants in the proceedings shall be established.”

[452] Furthermore, Article 198 of the Constitution provides that the system will be governed by the principles of accessibility, responsibility, complementariness, timeliness, effectiveness, and efficiency, and that the Office of the Prosecutor General (*Fiscalía General del Estado*) will direct the national system, for which it will coordinate the mandatory participation of public institutions related to the system’s interests and objectives and will articulate the participation of civil society organizations.

[453] – The Organic Code of the Judiciary (COFJ) (published in Official Gazette Supplement No. 544 of March 9, 2009), Article 295 of which provides that highest authority in the Office of the Prosecutor General will adopt rules governing its organization and the proper procedures for its implementation.” All protection measures shall be governed by the principles of willingness, confidentiality, investigation, connection, direction and temporariness.

¹¹⁰ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, p. 119, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

¹¹¹ Available at: http://www.oas.org/juridico/english/draft_model_reporting.pdf

[454] – The Comprehensive Organic Criminal Code (COIP) (published in Official Gazette Supplement No. 180 of February 10, 2014), Articles 445 to 447 of which refer to the National System of Protection and Assistance for Victims, Witnesses, and Other Participants in Criminal Proceedings (SPAVT).

[455] According to Article 445, the Office of the Prosecutor General directs the SPAVT, through which all participants in the pretrial investigation or in any other stage of the proceedings may invoke special protection and assistance measures to safeguard their integrity and prevent their revictimization, should they be in danger.¹¹² It also provides that the System will be provided with the necessary funds from the National Budget to ensure that it functions efficiently

[456] In addition, Article 447 provides that the SPAVT shall be governed by standards drawn up in coordination with the public entities that support the System.

[457] As for protection measures, Article 502(9) provides that anyone who is summoned to provide a statement and who is in danger shall be entitled to protection provided by the prosecutor through the SPAVT or instructions to the National Police, in order to ensure the integrity of their person, their testimony, and their appearance at the trial hearing, where they may submit their testimony using technological means or in a way that safeguards their well-being.

[458] In addition, with respect to precautionary and protection measures for cooperating witnesses (*cooperación eficaz*), Article 494 provides: *“If necessary, the prosecutor shall request the judge to order appropriate precautionary and protection measures to ensure the success of the investigation and safeguard the integrity of accused persons who cooperate with the prosecution, the victim, their family, witnesses, and other participants, at any stage of the proceedings. All measures adopted in relation to cooperating witnesses shall be kept secret and off the record of proceedings.*

[459] *As appropriate, after the proceedings have concluded, the competent authorities, depending on the degree of risk or danger, may adopt such protection measures as are necessary for the cooperating witness to serve their punishment, which measures may be extended for as long as they or their families are in danger.”*

[460] – The Processes-Based Organic Statute on Organizational Management of the Office of the Prosecutor General, Article 12 (2.1.4) of which outlines the mission, powers, responsibilities, and products of the area responsible for management of the National System of Protection and Assistance for Victims, Witnesses, and Other Participants in Criminal Proceedings.

[461] – The Regulations on the National System of Protection and Assistance for Victims, Witnesses, and Other Participants in Criminal Proceedings (SPAVT) (Office of the Prosecutor General Resolution 24, published in the Second Supplement to Official Gazette No. 219 of April 4, 2014), which contains comprehensive rules on the SPAVT and sets out at Articles 7 and 8, respectively, the rights and obligations of protected persons and of servants of the System.

¹¹² The protection measures that may be adopted are set out in Article 558 and include, *inter alia*, the following: “1. A prohibition against the accused visiting certain places or meeting certain persons. 2. A prohibition against the accused approaching the victim, witnesses, or certain persons, wherever they happen to be. 3. A prohibition against the accused following or intimidating the victim or members of their immediate family, either in person or through third parties (...).”

[462] The internal and external structures of the SPAVT are outlined in Articles 9 to 25. In the context of the Office of the Prosecutor General, the System comprises the Prosecutor General, the Board of Directors of the SPAVT; the provincial prosecutors; and the provincial coordination offices.

[463] The special protection and comprehensive assistance measures are outlined in Articles 26 to 32, and personal security and protection measures, temporary change of phenotype or image; psychological care; and other measures such as finding employment for protected persons in special programs for entrepreneurs and small business owners.

[464] Admission to, and continuation in, the SPAVT is governed by the rules contained in Articles 33 to 49.

[465] – The drafting of a General Procedures Manual for the System of Protection and Assistance for Victims, Witnesses, and Other Participants in Criminal Proceedings, which includes the recommendations contained in the Santiago Guidelines on Victim and Witness Protection of the Ibero-American Association of Public Prosecutors (AIAMP).

b. Observations

[466] The Committee takes note of the new legal developments in this area, which constitute steps to continue moving forward with the establishment, maintenance, and strengthening of systems for protecting public servants and private citizens who, in good faith, report acts of corruption, to which Article III (8) of the Convention refers.

[467] Having said that, the Committee believes it useful to make a number of comments regarding the advisability of strengthening those new developments, notwithstanding the observations made by the Committee in Section 2.1 above in connection with follow-up on implementation of the recommendation made to the country under review in the report from the Second Round.

[468] To begin with, the Committee notes that although the SPAVT may be used in cases involving persons who report acts of corruption, it is not specifically designed for such cases nor does it address protection for those who report acts of corruption that can be investigated in either administrative or noncriminal proceedings. In addition, it does not expressly state if the protection measures can be extended to the family of the protected person.

[469] Furthermore, with the exception of general protection measures for cooperating witnesses, the protection measures contained in Article 558 of the COIP are also not specifically designed for persons who in good faith report acts of corruption.

[470] Accordingly, the Committee reiterates the recommendation put forward in section 2.1 above regarding the need for the country under review to consider enacting legislation to provide comprehensive protection to those who in good faith report acts of corruption and their families, including withholding their identities and protection in the workplace, among other safeguards, bearing in mind the criteria laid out in the Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses.¹¹³ (See Recommendation 2.3.2 in Chapter III, Section 2.3 of this report.)

¹¹³ Available at: http://www.oas.org/juridico/english/draft_model_reporting.pdf

[471] Second, the Committee notes that according to information requested during the on-site visit, the budget of the SPVAT has declined significantly over the past three years, from approximately US\$1.5 million in 2013 to US\$410,000 in 2016.

[472] In that connection, in its response, the country under review identifies other difficulties with implementing the two measures suggested, including the following:¹¹⁴

[473] *“Employee turnover at the SPAVT is a problem for the System, given that personnel who have received human rights, gender, generational, intercultural, and ethnic awareness training (Article 4 of the Regulations on the SPAVT) are removed every two years (the statutory period for completing the employment contract), which means that new staff has to be retrained in performing the appropriate protection and assistance processes with a rights-based approach for public officials and their families and for private citizens and their families.”*

[474] Accordingly, the Committee will make a recommendation that the System of Protection and Assistance for Victims, Witnesses, and Other Participants in Criminal Proceedings (SPAVT) be provided, within the resources available, with the necessary financial, human, and technical resources to deliver statutory protection measures, particularly for public officials and private citizens who in good faith report acts of corruption. (See Recommendation 2.3.3 in Chapter III, Section 2.3 of this report.)

2.2.2. New developments with regard to technology

[475] In its response to the questionnaire,¹¹⁵ the country under review provided information on new developments with respect to technology, in particular:

[476] – Implementation of the “[Whistleblower] Reports Management System,” by the National Secretariat for Public Administration (SNAP) at the end of 2011, an IT application for managing the processing of complaints and investigations by the Technical Secretariat for Transparency in Management (STTG),¹¹⁶ has improved the quality of reporting, the time taken to notify investigators upon being assigned a complaint; and the time needed to dispose of a complaint when its deadline approaches.

[477] The application is for internal use; only the reporting form for members of the public is available under the “Complaints” (*Denuncias*) section on the websites of the SNAP (<http://www.administracionpublica.gob.ec/>) and STTG¹¹⁷ (<http://www.transparencia.gob.ec/>)

¹¹⁴ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, pp. 122 and 123, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf.

¹¹⁵ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, pp. 113 and 162, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf.

¹¹⁶ During the meeting of the review subgroup, the State under review informed that “On April 8, 2016, through Executive Decree No. 985, the Constitutional President of the Republic of Ecuador, mindful of the need to optimize the way government bodies are organized so that they can perform their current functions, eliminated the Technical Secretariat for Transparency in Management attached to the National Secretariat for Public Administration. That Decree also establishes that files being processed by the Technical Secretariat for Transparency in Management and which by law refer to matters subject to oversight by the Office of the Comptroller General of the Republic shall be remitted to that oversight body”.

¹¹⁷ *Id.*

2.2.3. Results

[478] In its response to the questionnaire,¹¹⁸ the country under review provided information on reports of acts of corruption received by the Office of the Comptroller General (CGE) and the National Secretariat for Public Administration (SNAP). However, that information did not contain specific results obtained with systems to protect public officials and private citizens who in good faith report acts of corruption, to which Article III (8) of the Convention refers.

[479] Nevertheless, the Committee takes note of the following information offered with respect to results obtained by the SNAP: *“From 2015 onwards there was a notable decline in the complaints that this Secretariat is required to investigate, for the following reasons: First, according to the information gathered by this entity, after conducting a number of nationwide polls, it was determined that the public are afraid to lodge complaints because there are no protection measures in place to ensure their well-being and that of their families, or guarantees in terms of protection of their labor rights.*

[480] In light of the foregoing, the Committee will make a recommendation that the institutions responsible for assessing and/or granting protection measures to public servants and private citizens who in good faith report acts of corruption have access to statistics on the performance of their respective functions, relating to aspects such as the number of cases of acts of corruption in which whistleblowers and witnesses have requested and received protection measures, the type of measure granted, and the number of requests denied together with the reason for their denial, in order to identify challenges and, where appropriate, take corrective steps. (See Recommendation 2.3.4 in Chapter III, Section 2.3 of this report.)

2.3. Recommendations

[481] In light of the comments made in Sections 2.1 and 2.2 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

- 2.3.1. Take appropriate steps to expedite adoption of the “General Protocol to Ensure Protection for Persons Who in Good Faith Report Acts of Corruption” and to ensure that said protocol protects the identity of persons who in good faith report acts of corruption, including after publication by the Citizen Participation and Oversight Council (CPCCS) of the relevant reports. (See paragraph 449 in Section 1.2.1 of Chapter II of this report.)
- 2.3.2. Consider enacting legislation that comprehensively regulates protection of public servants and private citizens who in good faith report acts of corruption in the administrative sphere, including protecting their identity, in accordance with the Constitution and the fundamental principles of its domestic legal order, taking into account the criteria outlined in the Model Law to Facilitate and Encourage the

¹¹⁸ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, pp. 163 to 165, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses¹¹⁹ which could include, among others, the following aspects:

- (a) protection measures, covering not only the physical integrity of the whistleblower and his or her family, but also employment status, particularly for public officials who report acts of corruption that could involve their superior or workmates;
 - (b) provisions to punish noncompliance with the rules and/or obligations applicable to protection measures.
 - (c) simplify formalities for requesting protection for whistleblowers.
 - (d) reporting mechanisms, such as anonymous complaints and identity-protected complaints, to guarantee the personal security and identity confidentiality of public officials and private citizens who, in good faith, report acts of corruption.
 - (e) mechanisms for reporting threats or reprisals made against whistleblowers, indicating the authorities responsible for processing protection requests and the agencies responsible for providing such protection.
 - (f) mechanisms for the protection of witnesses, providing them with the same guarantees as public officials and private citizens;
 - (g) mechanisms to facilitate, when appropriate, international cooperation in the above areas, including the technical assistance and reciprocal cooperation described in the Convention, along with exchanges of experiences, training, and mutual assistance;
 - (h) the coordination of existing whistleblower protection programs and measures in the administrative and criminal jurisdictions. (See paragraphs 450 and 470 in Sections 2.1 and 2.2 of Chapter II of this report.)
- 2.3.3. Provide the System of Protection and Assistance for Victims, Witnesses, and Other Participants in Criminal Proceedings (SPAVT), within the resources available, with the necessary financial, human, and technical resources to deliver statutory protection measures, particularly for public officials and private citizens who in good faith report acts of corruption. (See paragraph 474 in Section 2.2 of Chapter II of this report.)
- 2.3.4. Draw up statistics on steps taken by the CPCCS, the Office of the Comptroller General (CGE) and the Office of the Prosecutor General (FGE) in the performance of their respective functions with respect to protection for public servants and private citizens who in good faith report acts of corruption, relating to aspects such as the number of cases of acts of corruption in which whistleblowers and witnesses have requested and received protection measures, the type of measure granted, and the number of requests denied together with the reason for their denial, in order to

¹¹⁹ Available at: http://www.oas.org/juridico/english/draft_model_reporting.pdf

identify challenges and, where appropriate, take corrective steps. (See paragraph 480 in Section 2.2 of Chapter II 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

Recommendation:

Consider adapting its criminal legislation to the Inter-American Convention against Corruption.

Measure suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

- *“Adjust Ecuadorian criminal legislation to the Inter-American Convention against Corruption, taking into account the revisions suggested in the study entitled “ Adapting Ecuadorian Legislation to the Inter-American Convention against Corruption.”*

[482] Both in its response to the questionnaire and during the on-site visit,¹²⁰ the country under review provided information regarding these kinds of developments. The Committee wishes to highlight the following:

[483] *“The Comprehensive Organic Criminal Code (COIP) entered into force on August 10, 2014, abrogating prior provisions on the subject, such as the Criminal Code, the Code of Criminal Procedure, and the Code on Execution of Sentences. Section Three of the COIP provides for offenses against efficiency in Public Administration; a legal institution akin to the violations relating to acts of corruption, defined mainly in Articles 278, 279, 280, 281, 285, 286, and 289, which address the offenses of embezzlement, unlawful enrichment, bribery, extortion, influence peddling, offering to engage in influence peddling, and illegal representation (“testaferismo”). Those articles already incorporate the recommendation made to Ecuador in the Second Round of Review of the MESICIC.*

[484] (...)

[485] • *The following article of the COIP incorporates the recommendations made regarding Articles 285, 286 and 290 of the repealed Criminal Code:*

[486] *Art. 280. **Bribery.** Public servants and persons who, by virtue of holding state authority in any State institution listed in the Constitution of the Republic, receive or accept, themselves or through another person, an unlawful financial or other kind of benefit for themselves or a third person, be it to do, omit, expedite, delay, or impose conditions regarding matters relating to their functions shall be punished with deprivation of liberty for between one and three years.*

[487] *If a public servant executes the act or fails to carry out an act he should perform, he shall be punished with deprivation of liberty for between three and five years.*

¹²⁰ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, pp. 124 to 136, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

[488] *If the conduct described is in order to commit another offense, the public servants shall be punished with deprivation of liberty for between five and seven years.*

[489] *Anyone who, in any form, offers, gives, or promises a public servant a donation, gift, promise, advantage or unlawful financial benefit or other material asset in return for doing, omitting, expediting, delaying, or conditioning matters relating to his function or to commit an offense shall be punished with the same sanctions as those indicated for public servants.]*

[490] • *The following article of the COIP incorporates the observation made regarding Article 257 of the repealed Criminal Code:*

[491] *Art. 278. **Embezzlement.** Fourth subparagraph amended by the Thirty-seventh Amendment Provision of the Law published in the Official Gazette Supplement 332 of September 12, 2014 and by Article 4 of the Law published in the Official Gazette Supplement 598 of September 30, 2015). Public servants and persons who, by virtue of holding state authority in any State institution listed in the Constitution of the Republic, misuse, appropriate, misappropriate, or arbitrarily dispose of movable or immovable assets, public or private funds, securities (efectos) representing them, pieces, deeds, or documents that are at their disposal by virtue or reason of their office, to benefit themselves or third parties, shall be punished with deprivation of liberty for between ten and thirteen years.*

[492] *If the individuals described in the first subparagraph use, for their own benefit or third parties, employees of the State or of public sector entities or public sector assets, when such use is for personal profit or increases their wealth, they shall be punished with deprivation of liberty for between five and seven years.*

[493] *The same punishment shall be imposed if the individuals described in the first subparagraph take financial advantage, for their own benefit or that of third persons, of studies, projects, reports, resolutions and other documents classified as secret, confidential, or for restricted circulation that they became aware of or were responsible for by reason of or due to the office they hold or held.*

[494] *The following shall be guilty of embezzlement: public servants, officials, managers, executives, or employees of national financial system institutions who perform financial intermediation tasks, and the members or chairs of boards of directors and management and supervisory councils of those institutions, who, misusing the functions proper to their position: a) fraudulently dispose of, appropriate, or embezzle funds, assets, cash or private securities representing money; b) have willfully performed operations that diminish the assets or increase the liabilities of the institution; or c) in any way order the freezing or arbitrary or across-the-board retention of funds or deposits in national financial system institution, to the direct financial detriment of their partners, depositors, account holders (cuenta partícipes) or owners of the assets, funds, or cash. In all these cases, those responsible shall be punished with deprivation of liberty for between ten and thirteen years.*

[495] *If the individuals described in the foregoing subparagraph fraudulently cause the bankruptcy of national financial system institutions, they shall be punished with deprivation of liberty for between ten and thirteen years.*

[496] *Anyone who obtains or grants related or inter-group loans, violating express legal provisions regarding those kinds of operations, to the detriment of the financial institution, shall be punished with deprivation of liberty for between seven and ten years.*

[497] *The same punishment shall be imposed on any person benefiting from involvement in the commission of this offense and on any person who lends his name for his own or a third party's benefit, even though he might not meet the description contained in the foregoing paragraph.*

[498] *Persons convicted of any conduct covered by this Article shall be disqualified for life from performing any public office or from holding any position in a financial institution or entity pertaining to the social solidarity economy that engages in financial intermediation.*

[499] • *The following Article in the COIP characterizes the offense of money laundering and incorporates suggestions made in the observation on Article 569 of the repealed Criminal Code.*

[500] *Art. 317. **Money laundering.** Anyone who, directly or indirectly:*

[501] *1. Has, acquires, transfers, possesses, administers, uses, maintains, keeps, delivers, transports, converts, or in any way benefits from ill-gotten assets;*

[502] *2. Hides, dissimulates, or obstructs determination of the real nature, origin, provenance or connection of ill-gotten assets.*

[503] *3. Lends his name, or that of a company or enterprise of which he is a partner or shareholder, for the commission of offenses characterized in this article.*

[504] *4. Organizes, arranges, counsels, finances, or participates in the commission of offenses characterized in this article.*

[505] *5. Carries out, himself or through third parties, financial or economic operations and transactions designed to make money laundering assets look licit.*

[506] *6. Brings in or takes out ill-gotten money using the country's roads and bridges.*

[507] *These offenses are considered to be separate from others committed inside or outside the country, without prejudice to cases in which legal suits or sentences may be cumulative. This shall not exempt the Public Prosecutor's Office from investigating the illicit origin of the assets for which the offense was committed.*

[508] *Money laundering shall be punished with the following sanctions:*

[509] *1. Deprivation of liberty for between one and three years when the value of the assets involved in the offense is less than 100 average basic monthly wages of the country's workers.*

[510] *2. With deprivation of liberty for between five and seven years when the commission of the offense does not presuppose conspiracy to commit a crime. With deprivation of liberty for between seven and ten years in the following cases:*

[511] *a) When the value of the assets involved in the offense is equal to or higher than 100 average basic monthly wages of the country's workers.*

[512] *b) When commission of the offense presupposes conspiracy to commit crime, without the constitution of companies or enterprises or the use of existing, legally established, companies or enterprises.*

[513] *c) When the offense is committed using financial or insurance system institutions; public institutions or public figures; or the performance of managerial positions, functions or jobs in those systems.*

[514] *3. With deprivation of liberty for between ten and thirteen years in the following cases:*

[515] *a) When the value of the assets involved in the offense is higher than 200 average basic monthly wages of the country's workers.*

[516] *b) When commission of the offense presupposes conspiracy to commit crime, without the constitution of companies or enterprises or the use of existing, legally established, companies or enterprises.*

[517] *c) When the offense was committed using public institutions, public figures, positions, or jobs.*

[518] *In the aforementioned cases, money laundering is also punished with a fine equivalent to double the value of the assets involved in the offense committed as described in this Code, and the dissolution and liquidation of any legal entity established for the purpose of committing the crime.*

[519] • *The following articles of the COIP determine the existence of the offenses of association and conspiracy to commit crimes.*

[520] *Art. 369. **Organized Crime.** Anyone who, by means of an agreement or through consensus building forms a structured group of two or more persons who, either constantly or repeatedly, finance in any way, command or direct or plan the activities of a criminal organization, for the purpose of committing one or more offenses punishable with deprivation of liberty for more than five years, the ultimate purpose of which is to obtain financial or other material gains, shall be punished with deprivation of liberty for between seven and ten years.*

[521] *All others cooperating in the commission of the offense shall be punished with deprivation of liberty for between five and seven years.*

[522] *Art. 370. **Unlawful Association.** When two or more people associate with one another for the purpose of committing crimes punishable with deprivation of liberty for fewer than five years, each shall be punished, for the mere fact of the association, with deprivation of liberty for between three and five years.*

[523] • *The following Articles in the COIP contain a general characterization of forms of participation in the commission of offenses:*

[524] *Art. 41. **Participation.** Individuals participate in an offense as either the perpetrators or accomplices.*

[525] *The circumstances mitigating or aggravating the criminal liability of a perpetrator or accomplice do not affect the legal status of the other participants in the criminal offense.*

[526] *Art. 42. **Perpetrators.** Persons who enter into any of the following categories shall be held liable as perpetrators:*

[527] 1. *Direct perpetrators*

[528] a) *The direct and immediate authors of the offense.*

[529] b) *Those who, being legally bound to do so, do not prevent or attempt to prevent the commission of the offense.*

[530] 2. *Command perpetrator (or perpetrator-through-another):*

[531] a) *A person who instigates or counsels another person to commit an offense, when it is demonstrated that that instigation or advice led to the offense being committed.*

[532] b) *Those who order the commission of an offense through another person or persons, regardless of whether they can be charged or not, by setting a price, or through a gift, promise, offer, order, or any other, direct or indirect, fraudulent means.*

[533] c) *Those who, using physical violence, abusing authority, or employing threats or other coercive means oblige a third party to commit the offense, even though it may not be possible to describe the force used to achieve that outcome as irresistible.*

[534] d) *Those who issue the orders in a criminal organization.*

[535] 3. *Co-perpetrators: Those who provide key assistance to the commission of an offense by deliberately and intentionally carrying out an act without which the offense could not have been committed.*

[536] *Art. 43. **Accomplices.** Persons who willfully facilitate or cooperate with acts that are secondary or prior to, or simultaneous with the commission of a criminal offense, in such a way that the offense would have been committed even without them, shall be held liable as accomplices.*

[537] *There is no complicity in culpable (culposos) offenses.*

[538] *If, from the circumstances surrounding the offense, it transpires that a person accused of being an accomplice cooperates in an act that is less serious than the one committed by the perpetrator, the sentence shall only be based on the act he intended to carry out.*

[539] *The sentence of an accomplice shall be equivalent to between one third and one half of that applicable to the perpetrator.*

[540] • *As regards concealment, since the COIP entered into force, Ecuador has classified it as an autonomous offense in Article 272, as follows:*

[541] *Art. 272. **Procedural fraud.** Anyone who, in the course of a civil or administrative proceeding or prior to or during criminal proceedings, attempts to deceive a judge by hiding instruments or evidence or altering the status of objects, places, or individuals, shall be punished with deprivation of liberty for between one and three years.*

[542] *The same punishment shall be imposed on anyone who, knowing about the criminal conduct of one or more people provides him or them with a place to live or hide in, or provides them with the means to benefit from the gains from the offense committed, or helps them by hiding the instruments*

or material evidence of the offense or by destroying the signs or traces of the offense, to prevent their being prosecuted, and on those who by virtue of their profession, job, art, or office are obliged to examine the signs or traces of the offense or to shed light on the punishable act, but hide or misrepresent the truth, to favor the perpetrators.

[543] (...).

[544] • *Even though in Section "3.2 Adequacy of the legal framework and/or other measures" of the Report of the Second Round of Review no recommendations or suggestions were made regarding Art. 264 of the repealed Criminal Code, which legally defined the offense of extortion, following is the equivalent provision in the COIP:*

[545] *Art. 281. **Extortion.** Public servants and persons who, by virtue of holding state authority in any State institution listed in the Constitution of the Republic, their agents or persons officially reporting to them, and misusing their position or functions, directly or through third parties order or demand the surrender of entitlements, quotas, contributions, income, interest, wages or unlawful gratuities, shall be punished with deprivation of liberty for between three and five years.*

[546] *If the conduct described in the foregoing subparagraph is performed using violence or threats, the public servant shall be punished with deprivation of liberty for between five and seven years.*

[547] • *Since the COIP entered into force, influence peddling was established as a defined criminal offense separate from the embezzlement referred to in Article 257-C of the repealed Criminal Code (added by Law No. 6, published in the Official Gazette Supplement 260 of August 29, 1985). Subparagraphs 2 and 3 of this norm are considered to contain elements of the criminal law characterization referred to in paragraph 6.1.c of the CICC. Following is the COIP article in question:*

[548] *Art. 285. **Influence peddling.** Public servants and persons who, by virtue of holding state authority in any State institution listed in the Constitution of the Republic, and taking advantage of the prerogatives of their position or any other circumstance derived from a personal or hierarchical relationship, exert influence over another public servant to obtain an act or decision in their interest or that of third parties, shall be punished with deprivation of liberty for between three and five years.*

[549] *The maximum sentence provided for shall be applicable when the persons described in the first subparagraph, taking advantage of their position as representatives of the people or of the office they hold, do or did favors for individuals or legal entities so that they, violating express legal or regulatory provisions, award them contracts or enable them to do business with the State or any other public sector agency.*

[550] *Included in this provision are directors (vocales) or members of State administrative agencies or of the public sector in general who, with their vote, cooperate in the commission of this offense.*

[551] • *For the first time, the COIP includes the offense of offering to engage in influence peddling, as follows:*

[552] *Art. 286. **Offering to engage in influence peddling.** Anyone who, in offering to engage in the conduct described in the foregoing Article, requests from third parties: gifts, presents, or any other*

remuneration, or accepts an offer or promise, shall be punished with deprivation of liberty for between three and five years.

[553] (...)."

[554] Furthermore, Articles 70 and 71 establish, respectively, the rules for imposing fines in the case of violations punished with deprivation of liberty and the specific penalties applicable to legal entities, which include, apart from fines, criminal confiscation, criminal or final closure, a temporary or definitive ban on doing business with the State, and even the dissolution of the legal entity.

[555] On this, the Committee formulates the following observations on the steps taken to implement the suggested measure:

[556] – The offense of solicitation or acceptance of bribes (*cohecho pasivo*) (Article 280, first paragraph, of the COIP) was amended to include the words “directly or indirectly” (“*por sí o por interpuesta persona*”) and “for another person” (“*para sí o un tercero*”), contained in Article VI.1.a. of the Convention, as recommended in the Second Round report.¹²¹

[557] - However, the offense of offering bribes (*cohecho activo*) (Article 280, fourth paragraph, of the COIP, was not amended as recommended in the Second Round report (adding “directly or indirectly” and “for another person” used in Article VI.1.b of the Convention).¹²²

[558] – The offense of embezzlement (Article 279 of the COIP) now includes the phrase (“*for himself or for a third party*”) as used in Article VI.1.c. of the Convention and as recommended in the Second Round report.¹²³

[559] -- The characterization in the COIP of the offense of money laundering as an autonomous offense is a fundamental step toward adapting national law to match Article VI.1.d of the Convention, as recommended in the Second Round report.¹²⁴

[560] – As regards adaptation to Article VI.1.e. of the Convention, Article 370 of the COIP characterizes the offense of unlawful association but limits its applicability to two or more persons who “*associate with one another in order to commit crimes punished with deprivation of liberty for fewer than five years*”. That characterization would not apply to a large percentage of acts of corruption punishable under the COIP with more than five years’ imprisonment. For those cases, the offense of organized crime contemplated in Article 369 of the COIP would be applicable. However, that Article establishes other requirements, such as demonstration of an “*agreement or consensus*” to form “*a structured group of two or more persons who, either constantly or repeatedly, finance in any way, command or direct or plan the activities of a criminal organization, for the purpose of committing one or more offenses punishable with deprivation of liberty for more than five years, the ultimate purpose of which is to obtain financial or other material gains (...)*”

[561] - Finally, the COIP does not define “public servant.” That definition is to be found in the first paragraph of Article 229 of the Constitution, which establishes: “*Public servants shall consist of all*

¹²¹ See p. 30, available at: http://www.oas.org/juridico/english/mesicic_II_rep_ecu.pdf

¹²² See p. 30, available at: http://www.oas.org/juridico/english/mesicic_II_rep_ecu.pdf

¹²³ See p. 30, available at: http://www.oas.org/juridico/english/mesicic_II_rep_ecu.pdf

¹²⁴ See p. 30, available at: http://www.oas.org/juridico/english/mesicic_II_rep_ecu.pdf

*those persons who in any way or under any category, provide services or hold an office, function, or dignity in the public sector.”*¹²⁵

[562] The Committee is not clear as to the scope of the term “public servant” in Ecuadorian criminal legislation. Among other things, the definition provided does not appear to include the elements found in Article 1 of the Convention: “(...) *any official or employee of the State or its agencies, including those who have been selected, appointed, or elected to perform activities or functions in the name of the State or in the service of the State, at any level of its hierarchy.*”

[563] Accordingly, it would be important to include in the COIP a definition of “public servant” containing all the elements found in Article 1 of the Convention.

[564] In light of the above, while taking note of the steps taken by the country under review to move toward implementation of the sole measure contained in recommendation 3.1 of Chapter II of this report, the Committee deems it appropriate to reformulate the recommendation (See recommendations 3.3.1., 3.3.2. and 3.3.3. of Section 3.3. of Chapter II of this report.)

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

- **Statutory and other legal provisions, among which the following should be noted:**

[565] – Constitution of the Republic of Ecuador (published in the Official Gazette No. 449 of October 20, 2008), which establishes in the second paragraph of Article 233 that “*Public servants and the delegates or representatives of the senior management committees of State institutions shall be subject to the sanctions established for the offenses of embezzlement, bribery, extortion and illicit enrichment. The proceedings to prosecute them and the corresponding penalties shall not be subject to any statute of limitations and, in these cases, the trials shall begin and even continue in the absence of the persons charged. These norms shall also be applicable to those who participate in these offenses even when they do not have the above-mentioned qualities.*”

[566] – Comprehensive Organic Criminal Code (COIP) (published in the Official Gazette Supplement No. 180, of February 10, 2014), which entered into force in August of the same year. That Code regulates substantive matters, criminal procedure, and the rules governing the enforcement of sentences. It also characterizes several acts of corruption, as mentioned in above Section 3.1.

a. Observations

¹²⁵ According to Article 225 of the Constitution, the public sector comprises: “1. *The bodies and agencies of the Executive, Legislative, Judicial, Electoral and Transparency and Social Control Branches of Government.* 2. *The institutions that comprise the decentralized autonomous system of government;* 3. *Agencies and entities created by the Constitution or the law to exercise State authority, provide public services, or engage in economic activities pursued by the State;* and 4. *The legal entities created by regulatory acts issued by the decentralized autonomous governments for the provision of public services.*”

[567] The Committee acknowledges that the new legal developments in this area are positive steps in improving the criminalization of acts of corruption and in enhancing its effectiveness. The Committee has no further observations to make, beyond those formulated in above Section 3.1.

[568] However, the Committee also reiterates recommendation 4.4.2 contained in the report from the Fourth Round of review by the MESICIC,¹²⁶ that the country under review consider taking the steps necessary to ensure there are no obstacles preventing the FGE from proceeding on a timely basis with prosecutorial inquiries into the crimes of embezzlement and illicit enrichment, bearing in mind the practical challenges presented by the decision of the National Court of Justice of February 24, 2010, which establishes ruled that bringing public criminal action for the crimes of illicit enrichment and embezzlement required a prior report from the Office of the Comptroller General of the State establishing the existence of indications of criminal liability.

3.2.2. New developments with respect to technology

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

3.2.3. Results

[570] In response to a request made during the on-site visit, the country under review provided, inter alia, the following tables on results achieved in respect of some acts of corruption referred to in Article VI of the Convention, namely:¹²⁷

[571] NUMBER OF CASES FILED, RESOLVED

RECATEGORIZATION OF THE CRIME	CASES FILED 2010	CASES FILED 2011	CASES FILED 2012	CASES FILED 2013	CASES FILED 2014	CASES FILED 2015	CASES FILED 2016
BRIBERY	64	71	51	77	90	77	13
EXTORTION	25	29	21	16	38	66	6
ILLICIT ENRICHMENT	10	31	20	24	15	10	1
TOTAL	99	131	92	117	143	153	20

RECATEGORIZATION OF THE CRIME	CASES RESOLVED 2010	CASES RESOLVED 2011	CASES RESOLVED 2012	CASES RESOLVED 2013	CASES RESOLVED 2014	CASES RESOLVED 2015	CASES RESOLVED 2016
BRIBERY	47	55	39	96	122	108	26
EXTORTION	16	22	22	18	39	61	12
ILLICIT ENRICHMENT	12	25	13	24	20	22	1
TOTAL	75	102	74	138	181	191	39

NOTE: The data on filed cases corresponds only to what was registered in each period. The cases resolved correspond to those which were resolved in the period but also include those filed in previous years. This means that the cases resolved include cases that were pending from previous years and that have been dispatched.

¹²⁶ See Report on Ecuador from the Fourth Round, pp. 24, 25, and 42. Available at: http://www.oas.org/juridico/PDFs/mesicic4_ecu_en.pdf

¹²⁷ See the additional information provided by the Judiciary Council, as requested during the on-site visit, available at: http://www.oas.org/juridico/ppt/mesicic5_ecu_pan_3_ter_con_jud_fin.pptx

Source: Automatic Judicial Processing System (SATJE)

Cut-off date: March 31, 2016

[572] **NUMBER OF CASES RESOLVED**

HOW THEY ENDED	CASES RESOLVED 2010	CASES RESOLVED 2011	CASES RESOLVED 2012	CASES RESOLVED 2013	CASES RESOLVED 2014	CASES RESOLVED 2015	CASES RESOLVED 2016	TOTAL
DISCONTINUED/SHELVED	12	22	10	19	28	38	5	134
ADMITTED (<i>ACEPTANDO</i>)	6	5	4	7	14	10	3	49
FINAL DECISION	9	10	12	30	32	28	3	124
CONFIRMING	-	-	-	-	2	4	2	8
ABANDONMENT/WITHDRAWAL OF SUIT	8	16	11	13	5	1	-	54
ABATEMENT	-	9	8	8	9	6	1	41
INDICTMENT	9	9	5	6	9	12	4	54
REJECTION	2	2	-	2	7	12	1	26
ANNULMENT	-	1	-	-	1	2	-	4
PRESCRIPTION UNDER STATUTE OF LIMITATIONS	1	1	1	9	11	6	3	32
AMENDMENT (<i>REFORMANDO</i>)	-	-	-	-	1	3	-	4
ACQUITTAL	7	7	4	15	16	8	4	61
JUDGMENT OF ACQUITTAL/CONVICTION	-	-	-	-	-	2	-	2
CONVICTION	3	8	12	15	27	34	3	102
DISMISSAL	18	12	7	14	18	25	8	102
CONDITIONAL SUSPENSION OF ENFORCEMENT OF SENTENCE	-	-	-	-	1	-	2	3
TOTAL	75	102	74	138	181	191	39	800

Source: Automatic Judicial Processing System (SATJE)

Cut-off date: March 31, 2016

[573] Regarding the above data, the Committee notes that there was an increase in both the number of extortion and bribery cases admitted and the number of such cases that were resolved. Although the second Table does break down the data by offense, one notes a high number of discontinued or shelved proceedings (about 17%) and of proceedings dismissed (approximately 13%). Also noticeable is a relatively low number of prescribed cases (about 4%), where there is a downward trend, taking into consideration that since entry into force of the 2008 Constitution there is no statute of limitations for the offenses of embezzlement, bribery, extortion, and illicit enrichment.

[574] Accordingly, as indicated in the Report of the Fourth Round of Review of the MESICIC,¹²⁸ the Committee notes that Ecuador keeps statistics on the status of proceedings for corruption offenses. However, it is also true that, as they are presented, the data do not make it possible to conduct a comprehensive review of the subject. Here, the Committee considers that it would be beneficial if the country under review could conduct a detailed study of recurrence and trends for each of the corruption offenses and the status of proceedings. That would render this database clear and easy to

¹²⁸ See the Ecuador Report of the Fourth Round, pp.29-31. Available at: http://www.oas.org/juridico/pdfs/mesicic4_ecu_sp.pdf

interpret for all users, as well as useful for identifying challenges and adopting any necessary corrective measures.

[575] Accordingly, the Committee will not make a new recommendation, but rather it reiterates Recommendations 2.4.6 and 2.4.7 of the Report of the Fourth Round.¹²⁹

3.3. Recommendation

[576] In light of the comments made in Sections 3.1 and 3.2 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations

- 3.3.1. Amend and/or supplement, as the case may be, the last paragraph of Article 280 of the comprehensive Organic Criminal Code (COIP) in such a way that it incorporates the elements for the act of corruption contemplated in Article VI.1.b of the Convention. (See paragraph 564 in Section 3.1. of Chapter II of this report.)
- 3.3.2. Amend and/or supplement, as the case may be, Article 370 of the COIP so that it can apply to all criminalized acts of corruption, pursuant to Article VI.1.e of the Convention. (See paragraph 564 in Section 3.1. of Chapter II of this report.)
- 3.3.3. Include a definition of the term “public servant” in the COIP for purposes of criminal law, making sure that it includes those who have been selected, appointed, or elected to perform activities or functions in the name of the State or in the service of the State, even if they have not taken up the position or office. (See paragraph 564 in Section 3.1. of Chapter II of this report.)

4. GENERAL RECOMMENDATIONS

Recommendation 4.1 suggested by the Committee, which requires further attention under the terms provided for in the report from the Third Round:

Design and implement, where appropriate, training programs for public servants responsible for application of the systems, standards, measures, and mechanisms included in this report, in order to ensure their proper acquaintance, management, and application.

[577] Bearing in mind that sections 1, 2, and 3 of Chapter II of this report contain an up-to-date, detailed analysis both of the follow-up on the recommendations made to the Republic of Ecuador in the Second Round and of the systems, standards, measures, and mechanisms to which the above recommendation refers, the Committee, reaffirms the contents of those sections and, therefore, considers that this recommendation is redundant.

Recommendation 4.2 suggested by the Committee, which requires further attention under the terms provided for in the report from the Third Round:

¹²⁹ See the Ecuador Report of the Fourth Round, pp.29-31. Available at: http://www.oas.org/juridico/pdfs/mesicic4_ecu_sp.pdf

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

[578] Bearing in mind that sections 1, 2, and 3 of Chapter II of this report contain an up-to-date, detailed analysis both of the follow-up on the recommendations made to the Republic of Ecuador in the Second Round and of the systems, standards, measures, and mechanisms to which the above recommendation refers, the Committee, reaffirms the contents of those sections and, therefore, considers that this recommendation is redundant.

III. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE FIFTH ROUND

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

[579] In keeping with the Methodology agreed upon by the Committee for its review of the provision selected for the Fifth Round, which is contained in Article III (3) of the Convention and concerns measures to create, maintain, and strengthen “instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities,” the country under review selected the National Government Procurement Service (SERCOP), the Judiciary Council’s Judicial Academy, and the State Oil and Gas Enterprise (EP PETROECUADOR), based on the consideration that they stand out for having implemented programs in that connection.

[580] The following is a brief description of the three bodies selected by the Republic of Ecuador that are to be examined in this section:

[581] – National Government Procurement Department (SERCOP):¹³⁰ A technical, autonomous entity governed by public law, with its own juridical personality as well as administrative, technical, operational, financial, and budgetary autonomy. It has nationwide jurisdiction and governs the National Government Procurement System (SNCP), which includes, according to Articles 10 and 14 of the Organic Law of the National Government Procurement System, the pre-contractual phase, the contract’s performance, and its evaluation.

[582] – The Judicial Academy of the Judiciary Council: An agency of the Judiciary, its mission, according to Articles 80 to 89 of the Organic Code of the Judiciary (COFJ), is to strengthen the professional competencies of judges, prosecutors, public defenders, lawyers, judicial public servants, and law students by designing and implementing initial education, continuing education, capacity-building, and vocational training programs.

[583] – The State Oil and Gas Enterprise (EP PETROECUADOR): A legal person governed by public law, it was created by Executive Decree No. 315 of April 6, 2010. It has its own capital,

¹³⁰ The National Government Procurement Institute (INCOP) was created with the adoption of the Organic Law of the National Government Procurement System (LOSNCOP), published in Official Gazette Supplement No. 395 of August 4, 2008. Subsequently, the Organic Law Reforming the Organic Law of the National Government Procurement System, published in the Second Supplement of Official Gazette No. 100 of October 14, 2013, established the National Government Procurement Department (SERCOP).

budgetary, financial, economic, administrative, and managerial autonomy, and its primary purpose is the management of the strategic nonrenewable natural resources sector with a view to the sustainable use of those resources in accordance with the Organic Law of State-Owned Enterprises (*Ley Orgánica de Empresas Públicas*) and the Hydrocarbons Law in conditions that ensure environmental conservation and observance of the rights of peoples.

1.1. Existence a legal framework and/or other measures

[584] The Republic of Ecuador has a set of provisions and/or measures on instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, notable among which are the following:

- Constitutional, legal and other provisions applicable to most government personnel, including, in particular:

[585] – The Constitution of the Republic of Ecuador (published in Official Gazette No. 449 of October 20, 2008), Article 234 of which provides: *“The State shall guarantee the continuing education and training of public servants by means of schools, institutions, academies and public sector education or training programs, and coordination with national and international institutions that function on the basis of agreements with the State.”*

[586] – The Organic Law on Public Service (LOSEP) (published in Official Gazette No. 294 of October 6, 2010) and its General Regulations (published in Official Gazette No. 416 of April 1, 2011), which contain provisions on education and training for public servants.

[587] Article 71 of the LOSEP provides that in discharging its obligation to provide public services of the highest quality, the State shall ensure and provide funding for the continuing education and training of public servants in training programs developed and implemented for that purpose. They shall be based on the National Plan on Education and Training for Public Servants (*Plan Nacional de Formación y Capacitación de los Servidores Públicos*) and the mandatory systematic monitoring of its results through the Public Service Continuing Education and Training Network (*Red de Formación y Capacitación Continuas del Servicio Público*), for which purpose the opinion of the National Higher Education Institute (IAEN) will be taken into account.

[588] It is incumbent on the Ministry of Labor, under Article 72 of the LOSEP, to coordinate with each institution’s Public Servant Education and Training Networks and Human Resources Units on the implementation of the National Plan on Education and Training for Public Servants, which should be decentralized, in accordance with the constitutional principles.

[589] As regards induction in public service, Article 189 of the General Regulations of the LOSEP provides that *“UATHs shall implement induction mechanisms to ensure the winners of merit-based competitive examinations are properly acclimated in their new position of employment and assimilated into the organizational culture of the institution where they will work. That induction period will include aspects such as rights promotion, the position’s duties and responsibilities, gender awareness in the treatment of coworkers and members of the public, treatment of persons with disabilities, and such other aspects as are considered relevant.”*

[590] As to the periodicity of induction programs, the third paragraph of Article 64 of the LOSEP provides that *“(…) in the first month of each year, all public servants belonging to the previous*

year's intake shall receive mandatory induction training on treatment and rights promotion in relation to their coworkers and members of the public who deserve priority attention."

[591] – The Technical Regulations on Training and Education in Public Service (published in Official Gazette No. 296 of July 24, 2014), which outline the regulatory and technical mechanisms with which the Human Resources Units (UATH) of public-sector institutions are to plan, organize, implement, evaluate, and improve education and training programs aimed at the acquisition, development, and strengthening of knowledge, skills, abilities, and attitudes by public servants for the performance of their duties.

[592] According to Article 12 of those Regulations, training is divided into the following categories: induction, technical, management and/or executive, and other. The provisions that it contains on induction training are as follows:

[593] *(a) Induction training. - Training designed to guide, inform, and reaffirm in public servants the principles and values of the institution in accordance with its vision, mission, and objectives.*

[594] *The induction program will basically cover the specific characteristics of the positions that they occupy, the mission and portfolio of products and services of the processes in which they are involved, and the institution's strategic objectives.*

[595] *Induction training events may be organized in the form of observation visits and training sessions in other administrative units, whether in-house or at other similar entities, and as information mechanisms on the institution's workings.*

[596] *Each institution's UATH shall keep a record of induction processes, which require at least 24 hours of attendance and must be completed within the first month of work."*

[597] – The Code of Ethics for the Well-Being of the Executive Branch (CEBV) (adopted by the National Secretariat for Transparency in Management¹³¹ by Resolution No. 2 published in Official Gazette Supplement No. 960 of March 23, 2013), the purpose of which is to establish and promote ethical principles, values, responsibilities, and commitments in relation to the conduct and practices of public servants and employees of Executive Branch entities,¹³² in order to accomplish the institutional objectives and contribute to the good use of public resources.

[598] Article 4 sets out the institutional responsibilities and commitments corresponding to all Executive Branch entities, which include: (a) Disseminating the contents of the Code of Ethics and how they should be applied, with the highest authorities undertaking to perform that task personally; and (b) Establishing permanent training and induction mechanisms on how to apply the Constitution, laws and their regulations, codes, organic statutes, internal rules of procedure, missions, vision statements, goals, institutional objectives, and systems to promote transparency and combat corruption, all aimed at the collective good and applicable to public service.

¹³¹ The Technical Secretariat for Transparency in Management was abolished by Executive Decree No. 985 of April 8, 2016.

¹³² According to Article 2 of the Code of Ethics for the Well-Being of the Executive Branch, the Code's mandatory scope encompasses all public servants and employees that serve, perform duties or functions, or hold office in the executive branch, as defined in Article 141 of the Constitution of the Republic of Ecuador. All servants and employees, including the highest authorities, those belonging to the upper hierarchy, temporary or permanent appointments, those with part-time contracts, those receiving professional honoraria, consultants, and, in general, anyone involved in the formulation or execution of public policy in an institution are required to comply with and uphold the Code of Ethics.

[599] Article 6 of the CEBV establishes the "Ethics Committee" as an interdepartmental and interdisciplinary group to be in charge of monitoring and ensuring enforcement of, and compliance with, the Code of Ethics for the Well-Being of the Executive Branch within their respective entities. The Ethics Committee will receive, take up, investigate, and decide cases of administrative infringements of the Code of Ethics, in addition to issuing recommendations and adopting moral actions in parallel to the administrative penalties envisaged in the standards in force, aimed at modifying employee conduct and ensuring harmonious coexistence in the institution. Acts that give rise to penalties under civil or criminal law, shall be referred to the appropriate internal authority. In both instances, the principles of protection and anonymity of the person alleging the violation shall be observed, as will the guarantees of due process and presumption of innocence of the accused.

[600] The composition of Ethics Committees is governed by Article 6(2). They shall comprise: (a) the Strategic Management Coordinator (provincial or zonal director), who chairs the committee and has the casting vote; (b) the highest authority, or their delegate, of the value-adding units, who shall be chosen at random by the Committee and rotate every six months (with the right to speak and vote); (c) two public servants or senior workers, two alternates chosen at random by their co-workers every six months from among public servants who do not belong to the areas in which the complaint originates (with the right to speak and vote); (d) the Director of Human Resources or whoever acts on their behalf, who shall advise on the process (with the right to speak); and (e) the legal coordinator, or their delegate, who shall serve as adviser and secretary (with the right to speak).

[601] As regards the periodicity of their meetings, Article 7 provides that the Ethics Committee shall hold a monthly regular meeting and may meet at any other time at the reasoned request of one or more of its members and when convened by its chair.

- Statutory and other legal provisions or measures applicable to SERCOP personnel, among which the following should be noted:

[602] As to the way in which personnel are informed of their responsibilities or functions, the country under review mentioned both in its response to the questionnaire,¹³³ and in the information provided after the on-site visit¹³⁴ that there is a SERCOP Human Resources Induction Plan, which was drafted by the institution's UATH on January 4, 2016.

[603] According to the Plan, the SERCOP induction program has three stages: (1) digitalized information that covers the public administration context, its organization and structure, the National Well-Being Plan, the role of the public servant, laws and standards on the performance of the public servant, the importance of good service and attention to the public; (2) guidelines on the content of the induction information specific to each specific institution and position: mission, vision statement, values, objectives, statute, processes, working strategy; and (3) training on the ethical rules contained in the institutional code of ethics that governs the institution: scope, conflict of interest, information management, and exclusivity of employment, duty to report wrongdoing, use of institutional

¹³³ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, pp. 12 to 57, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

¹³⁴ See additional information requested of Ecuador during the on-site visit, second part, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_con_inof_adi_2_parte.pdf

property, misconduct, external relations, the ethics committee, occupational safety, and workplace risk prevention.

[604] The Induction Plan also contains details about the induction program for newly admitted public servants, which includes a number of activities on the first day of work of new entrants, including the initiation of post-specific induction training. The Plan also envisages a monthly general induction talk for all the month's new entrants, which is held on the last working Monday of the month of entry. On the first working day of the third week of the second month following entry an evaluation is conducted of the post-specific induction training, based on an interview conducted by the supervisor or the person responsible for training the new public servant.

[605] 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 there is an intranet platform by which the staff are sent communiqués and have access to institutional information and important documents, such as manuals, forms, legal standards, and directives.

[606] With respect to the existence of bodies to which personnel can resort to obtain information or resolve doubts about how to perform their responsibilities or functions properly, the country under review indicated that queries can be directed to the supervisor or the Department of Human Resources of SERCOP, in accordance with the institution's Organic Statute on Process-Based Management.

[607] The country under review also informs that the Department of Human Resources is the authority responsible for compliance and enforcement of the provisions contained in the legislation in force, its regulations, and other provisions and resolutions adopted by the Ministry of Labor in relation to human resources management. It also advises and answers queries on issues relating to institutional development, management of human resources, wage management, and human resources welfare, as well as supervising administration of labor relations in accordance with the standards in force and the policies adopted by the Office of the Director General.

[608] As to how personnel are informed of the ethical rules that govern their activities, the country under review mentioned in its response that Resolution No. RI-INCOP-2013-73 of April 23, 2013, introduced the Institutional Code of Ethics, the First Final Provision of which provides that the National Directorate of Human Resources will be in charge of its dissemination, distribution, and enforcement, to which end a dissemination plan was established for the Code of Ethics of the National Government Procurement Institute (INCOP, now SERCOP).

[609] According to Article 10(c) of the SERCOP Code of Ethics, for the purposes of implementing the Code of Ethics for the Well-Being of the Executive Branch (CEBV) and the Institutional Code of Ethics, their contents will be disseminated at general induction talks for personnel entering SERCOP under any form of engagement.

[610] As regards use of modern communication technologies to apprise personnel of the ethical rules that govern their activities and to provide guidance on their scope or interpretation, the country under review does not have virtual tools for that purpose; however, it has an intranet platform by which the Institutional Code of Ethics is disseminated.

[611] According to Article 8 of the SERCOP Code of Ethics, the Institutional Ethics Committee is the agency in charge of monitoring and ensuring enforcement of, and compliance with, the Code of Ethics.

[612] The Ethics Committee also takes up cases of alleged infringement of the standards set out in that Code and will recommend solutions aimed at correcting inappropriate conduct. If it deems it appropriate it may bring such cases to the attention of the National Directorate of Human Resources, which is the sole instance at the domestic level with competence for disciplinary matters.

[613] According to Article 9 of the SERCOP Code of Ethics, its institutional Ethics Committee is composed of: (a) the Executive Director, who chairs it and has a casting vote; (b) the Deputy Director or a person delegated thereby (with the right to speak and vote) Delegates shall be chosen from the value-adding units on a rotating basis every six months; (c) two public servants (with the right to speak and vote) and two alternates chosen at random by their co-workers every six months from among public servants who do not belong to the areas in which the complaint originates; (d) the National Director of Human Resources or whoever acts on their behalf, who shall advise on the process (with the right to speak); and (e) the National Coordinator of Legal Advisory Service, or their delegate, who shall serve as adviser and secretary (with the right to speak).

[614] According to the SERCOP Code of Ethics, the Committee shall hold a monthly regular meeting and may meet at any other time at the reasoned request of any of its members or when convened by its chair [Article 10(a)]. In addition, the SERCOP Code of Ethics assigns it the responsibility of drafting, for preventive purposes, a manual that brings together cases it has examined and solutions proposed; and of making suggestions [Article 10(b)] Finally, the Ethics Committee also has the function of examining cases of positive ethical conduct and following up on cases referred to the competent domestic bodies [Article 10(d)]

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

[615] As to the manner in which personnel are informed of their responsibilities or functions, the country under review mentioned, both in its response to the questionnaire,¹³⁵ and in the information provided during the on-site visit¹³⁶ that the Judiciary Council has a formal procedure for the induction of new personnel, of which the National Directorate of Human Resources is in charge. For that purpose, a Protocol (adopted by the National Directorate by Memorandum CJ-DG-2015-6491) is applied that governs both induction processes overall, and the specific process for jurisdictional and administrative personnel of the Judiciary Council at the national level.

[616] According to the Protocol, the induction process is mandatory for all employees engaged by the Judiciary Council within their first month of employment.

¹³⁵ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, pp. 12 to 57, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

¹³⁶ See presentation by the Judiciary Council during the on-site visit, slides 30 to 35. Available at: http://www.oas.org/juridico/ppt/mesicic5_ecu_pan_3_ter_con_jud_fin.pptx

[617] The Chief and analysts of the Training Unit of the National Directorate of Human Resources (at headquarters) and the human resources officers (at the provincial level) are responsible for carrying out the induction, analyzing its results, and issuing the relevant certificate

[618] General and strategic induction is each carried over the course of one day, every 15 days. In turn, specific induction is the duty of the person responsible in the directorate, coordination office, and unit, as well as of the supervisor. That induction must be carried out over a period of 15 days.

[619] According to the Protocol, the objectives of strategic and general induction are: (a) to help new employees of the institution to become acquainted and help each other to have a productive beginning; (b) to implant favorable attitudes in new employees towards the institution, its policies, and its personnel; (c) to help new employees to develop a sense of belonging and acceptance in order to instill enthusiasm and high level of morale; and (d) to help workers adapt as quickly as possible to their new working environment.

[620] As regards Judges, Prosecutors, Defenders, and Notaries, the Judicial Academy apprises judicial servants of their responsibilities and functions in the initial education process, hence the inclusion in the curriculum of the contents of the Organic Code of the Judiciary, the Judicial Management Model, and Transparency in the Judicial System.

[621] 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 there is an intranet platform by which the staff are sent communiqués and have access to institutional information and important documents, such as manuals, forms, legal standards, and directives. Furthermore, the platform includes a video outlining the general responsibilities of the institution's personnel in order to guide them in the correct performance of their duties.

[622] The country under review also advised that as part of the virtual general induction process, employees are required to watch the institutional video and then undergo a digital evaluation using an electronic form. A record is automatically generated of those who have completed the induction process, which is useful for monitoring and tracking purposes.

[623] The state also mentioned in its response that in February 2014, the Judicial Academy implemented a Learning Management System (LMS) – Moodle 2.6, which has so far been used to provide training to a total of 61,767 people nationwide, including Judges, Prosecutors, Defenders, Notaries, Police, Judicial Officials, and External Personnel.

[624] The system allows for the creation of courses tailored to the management model established for the Judicial Academy, including initial education, continuing education, and training. Academic material is published for each course, which includes printed and audiovisual materials as well as timetable of compulsory activities, such as feedback, evaluation, assignments, and forums. The system distinguishes between types of users for each course according to the profile categories of tutor, professor, supervisor, and student.

[625] With respect to the existence of bodies to which personnel can obtain information or to resolve doubts about how to perform their responsibilities or functions properly, the country under review indicated that the National Directorate of Human Resources of the Judiciary Council, as the governing body, through the Sub-Directorate for Implementation of Human Resources Technology

Systems, determines and provides guidance, advice, and assistance on how personnel should be apprised of their responsibilities and functions through the specific induction process for each employee. In addition, there are Provincial Human Resources Unit which are in a position to answer queries in that regard.

[626] As to the manner in which the Judiciary Council apprises its personnel of the ethical rules that govern their activities, in its response, the country under review said that on November 11, 2015, the plenary of the Judiciary Council adopted Resolution 363-2015 (published in Official Gazette No. 630 of November 18, 2015), which enacted the Code of Ethics for Public Servants and Workers of the Judiciary of Ecuador, the second transitional provision of which provides that *“within 90 days from the entry into force of this resolution, the Judiciary Council, through the National Directorate for Transparency in Management, shall disseminate the contents of this code of ethics among judicial public servants and workers.”*

[627] Accordingly, it said that the National Directorate for Transparency in Management of the Judiciary Council issued Official Circulars -CJ-DNTG-2015-757 and 758 of November 18, 2015, inviting the national and provincial directorates of the Judiciary Council to training workshops on the Code of Ethics for Public Servants and Workers of the Judiciary of Ecuador, which would be held from December 9 to 11, 2015. Three officials from each directorate were invited to the workshops in order to receive training so that, subsequently, within 15 days, they might train the personnel at their national directorates or, in the case of the provinces, all the judicial personnel in their jurisdiction.

[628] In addition, the country under review advised that in memorandum CJ-DNTG-2015-755 of November 17, 2015, the National Directorate for Transparency in Management requested the National Directorate for Social Communication of the Judiciary Council to appoint a person to work jointly on an awareness campaign to disseminate the content of the ethical rules and principles approved in the aforementioned Code of Ethics. Various campaigns were carried out to that end, including mail shots to all public officials, information posters put up across the country, and videos on the institution's website and national screens.

[629] It is worth mentioning that the general provision contained in Resolution 363-2015 provides that all judicial officials, regardless of the nature of their engagement, are required, upon taking up their duties and after receiving the relevant training, to sign a pledge to behave in accordance with the principles, values, and conduct envisaged in the Code of Ethics.

[630] As regards use of modern communication technologies to apprise personnel of the ethical rules that govern their activities and to provide guidance on their scope or interpretation, the country under review mentioned in its response that, in addition to the intranet platform, with respect to officials newly entering the judiciary, the National Directorate for Transparency in Management jointly with the Judicial Academy will develop a mandatory virtual course that new entrants will have to take upon assuming their duties. Having passed the course, they will then sign the aforementioned pledge, which will be inserted in their personnel file kept in the human resources archives of the Judiciary Council.

[631] As regards the existence of bodies to which personnel can turn to obtain information or resolve doubts about the scope or correct interpretation of the ethical rules that govern their activities, the country under review mentioned in its response that the final provision of the Code of Ethics of the Judiciary states that the code's execution will be assigned, within their respective purviews, to the

Office of the Director General, the National Directorate of Human Resources, the National Directorate for Transparency in Management, the Judicial Academy, the National Directorate for Social Communication, and the Provincial Directorates of the Judiciary Council.

[632] In that connection, the country under review posited that the bodies to which personnel can turn to obtain information or resolve doubts about the scope or how to interpret the ethical rules that govern their activities are, at the central level, the National Directorate for Transparency in Management, specifically through its National Subdirectorate for Transparency and Prevention for Administrative Organs; and, at the decentralized level, the Provincial Directorates through their Human Resources Units.

- Statutory and other legal provisions applicable to EP PETROECUADOR personnel, among which the following should be noted:

[633] As to the manner in which personnel are informed of their responsibilities or functions, the country under review mentioned, both in its response to the questionnaire,¹³⁷ and in the information provided after the on-site visit¹³⁸ that Resolution No. DIR-EPP-36-2013-11-26 of November 26, 2013, adopted by the Board of Directors of EP PETROECUADOR, by which it approved the Internal Standards on Human Resources Management, provides at Article 24 that *"induction training shall be provided in order to help the public servant' become acquainted with and adapt to the Company, for which purpose the human resources area will be in charge of arranging for the various bodies responsible to provide an overview of the organization and orientation with respect to the processes, procedures, and roles of their work area, as well as the Company's goals."*

[634] In that connection, the EP PETROECUADOR engagement process is governed by document GTH.03 (Version 5) of February 23, 2015, which describes the content of corporate and job-specific induction.

[635] According to that document, corporate induction should include information on the history and achievements of the Enterprise; its vision, mission statement, values, objectives, purpose, and positioning; corporate social responsibility; organizational structure; standards, rules of procedure, and code of ethics; information concerning human resources (pay, attendance, leave, advancement prospects, etc.), employee entitlements and benefits; performance evaluation; industrial safety, environmental management, biological health, and other aspects.

[636] Job-specific induction, to be provided by the new employee's supervisor or someone delegated by them, includes: An explanation about the position that he or she will occupy as well as its characteristics, duties (job profile), relationship to other positions or areas, resources, and work tools used; the area's goals and strategies; delivery of necessary materials and tools; workday and work schedules; working environment, personal relationships as regards coexistence, working habits; use of facilities; other relevant aspects of the job, the area, or work team; a tour of the Company facilities; and industrial safety and environmental management.

¹³⁷ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, pp. 12 to 57, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

¹³⁸ See additional information requested of Ecuador during the on-site visit, second part, available at: http://www.oas.org/juridico/PDFs/mesicic5_con_inof_adi_2_parte.pdf

[637] Based on the information provided, in accordance with the engagement procedure, induction training is provided when employees join the company, with continuing training provided thereafter. When personnel movements occur (internal promotion, transfer, commissions), according to the engagement procedure in force, the immediate supervisor is responsible for apprising the employee of their new duties and responsibilities.

[638] 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 there is an intranet platform by which the staff are sent communiqués and have access to institutional information and important documents, such as manuals, forms, legal standards, and directives.

[639] With respect to the existence of bodies to which personnel can obtain information or to resolve doubts about how to perform their responsibilities or functions properly, the country under review indicated that the organ or area authorized to provide guidance on job responsibilities or duties is the Engagement Section of the Department of Human Resources at the time of personnel induction, with the chief of the employee's unit subsequently taking part in that process.

[640] In relation to the manner in which personnel are apprised of the ethical rules that govern their activities, the country under review mentioned in its response that through Resolution No. 2013249 of October 14, 2013, EP PETROECUADOR adopted its code of ethics and that new personnel are informed of its contents upon taking up their duties, with initiatives undertaken annually thereafter to ensure familiarity with its contents.

[641] In addition, Article 11 of the EP PETROECUADOR Code of Ethics provides that the Code should be included in the company induction process, published on the Company's website, be readily accessible, and disseminated among all the Company's public servants, responsibility for all of which lies with the Human Resources Area.

[642] According to the information received, in 2014 its contents were disseminated among the Company personnel via their institutional e-mail accounts, as well as through workplace visits (oral presentation using computer tools). In 2015 it was included in a mandatory virtual training course.

[643] The country under review also mentioned in its response that, as an ethical rule, all employees are required to sign Form GTH.03.03.FO-05 (V01), which is a confidentiality agreement.

[644] As regards use of modern communication technologies to apprise personnel of the ethical rules that govern their activities and to provide guidance on their scope or interpretation, the country under review mentioned in its response that, in addition to using the intranet platform and institutional e-mails, it has a compulsory web-based virtual training course (e-learning platform), which guarantees that employees can undergo training in the Code of Ethics anywhere and at any time. The platform keeps a record of each employee's passing grade for the course.

[645] As regards the existence of bodies to which personnel can turn to obtain information or resolve doubts about the scope or correct interpretation of the ethical rules that govern their activities, the country under review reported in its response that, according to Article 13 of the EP PETROECUADOR Code of Ethics, "*the Ethics Committee is a multidisciplinary team that sees to*

the enforcement of the EP PETROECUADOR Code of Ethics. That body shall receive, take cognizance of, and settle any doubts or queries that may arise with respect to the conduct of EP PETROECUADOR public servants that are not envisaged in [the] Code and shall issue recommendations to be implemented in it.”

[646] In addition, according to Article 12 of the Code, “*explanations regarding infringements of the Code of Ethics shall be addressed by the Ethics Committee, which will observe the principles of protection and anonymity of the person alleging the violation, and the guarantees of due process and presumption of innocence of the accused. Its report will include conclusions and recommendations for the human resources area to analyze and implement.*”

[647] The Ethics Committee is composed of the following four delegates, who are appointed for a two-year term with the right to be reappointed once: one for the General Manager, who chairs it and has the right to speak and vote; one for the Legal Department, with the right to speak and vote; one national representative of the Company employees or workers, appointed by legally recognized associations, with the right to speak and vote; and one for the Department of Human Resources, who shall serve as secretary and have the right to speak (Article 14 of the EP PETROECUADOR Code of Ethics).

[648] According to Article 16 of the EP PETROECUADOR Code of Ethics, the Ethics committee holds two regular meetings annually and whenever necessary to take up matters relating to the Code of Ethics at the reasoned request of one or more of its members and went convened by its chair. In order for the ethics committee to analyze a query, it must be submitted in a formal document addressed to the Chair of the Committee within a maximum of five days after the incident occurred.

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

[649] Based on its examination of the constitutional, legal and other provisions on measures for providing instruction to government personnel at the three public-sector entities selected by the country under review in order to ensure proper understanding of their responsibilities and the ethical rules governing their activities, the Committee finds that they are relevant for the purposes of the Convention.

[650] However, the Committee believes it timely to make a number of observations in relation thereto:

- With regard to constitutional, legal and other provisions applicable to most government personnel, the Committee notes the following:

[651] To begin with, the Committee notes that according to Article 12 of the Technical Regulations on Training and Education in Public Service, induction training is that which is designed to offer guidance to, disseminate and/or reaffirm in public servants the principles and values of the institution in accordance with its vision, mission, and objectives and that the induction program will basically cover the specific characteristics of the positions that they occupy, the mission and portfolio of products and services of the processes in which they are involved, and the institution’s strategic objectives.

[652] In that connection, the Committee believes it is positive that efforts are underway to establish a minimum content for the orientation programs. The Committee recommends that this minimum information in the orientation program include provisions and other measures that are deemed

appropriate for making all individuals who enter public service aware of the risks of corruption inherent in the performance of their duties, as well as the consequences and penalties for becoming involved in corruption. The Committee will formulate a recommendation in that regard. (See recommendation 1.4.1 in Chapter III of this report.)

[653] Second, the Committee observes that the role that the Code of Ethics for the Well-Being of the Executive Branch (CEBV) gives each institution's Ethics Committee is largely one of receiving and investigating allegations of possible infringements of that code. The Committee considers it important expressly to broaden the role of institutional Ethics Committees so that they may also serve in an advisory capacity, enabling officials who might have doubts about a particular ethical issue can consult them. Thus, the Committee believes that simplified, streamlined and expedited written procedures should be established that any official may utilize to obtain information or resolve doubts about the scope or manner of interpreting the ethical rules governing their activities. The Committee will formulate a recommendation in that regard. (See recommendation 1.4.2 in Chapter III of this report.)

- In relation to statutory and other legal provisions applicable to SERCOP personnel, the Committee considers the following:

[654] First, the Committee believes it appropriate that tools be developed to verify that SERCOP personnel have adequately understood the ethical rules governing their activities. To that end, the Committee suggests that efforts be made to use modern communication technologies. The Committee will formulate a recommendation in that regard. (See recommendation 1.4.3 in Chapter III of this report.)

[655] Second, the Committee notes the training and instruction efforts being pursued by SERCOP to ensure that both its personnel and that of all other public-sector entities properly understand their responsibilities and the ethical rules governing their activities in the area of government procurement. However, in the interests of transparency and promoting societal oversight, the Committee notes, based on the information available, the importance for the country under review to consider more broadly disseminating and publicizing those efforts and their results in order to enable civil society and the general public to be informed in that regard. The Committee will formulate a recommendation in that regard. (See recommendation 1.4.4 in Chapter III of this report.)

[656] In addition, the manual envisaged at Article 10(b) of the SERCOP Code of Ethics, which brings together cases that the institution's Ethics Committee has examined, the preventive solutions it has proposed, and the suggestions it has made, should be published and disseminated. The Committee will formulate a recommendation in that regard. (See recommendation 1.4.5 in Chapter III of this report.)

- In relation to statutory and other legal provisions applicable personnel of the Judicial Branch, the Committee considers the following:

[657] In that connection, the Committee finds that the Code of Ethics of the Judiciary does not expressly determine which bodies personnel can turn to obtain information or dispel doubts about the scope of, or how to interpret, the ethical rules that govern their activities are, although the country under review reports that that responsibility belongs to the National Directorate for Transparency in Management, specifically through its National Subdirectorate for Transparency and Prevention for Administrative Organs In that respect, the Committee believes it important for appropriate measures

to be taken to expressly identify the body that has responsibility for taking and answering queries about the Code of Ethics of the Judiciary, and that simplified, streamlined and expedited written procedures be introduced so that any member of the judiciary may pose questions and receive answers to such questions. The Committee will formulate a recommendation in that regard. (See recommendation 1.4.6 in Chapter III of this report.)¹³⁹

[658] Second, the Committee takes note of the following difficulties mentioned by the country under review in its response to the questionnaire:¹⁴⁰

[659] “- Disseminate the legal ethical and deontological framework so that it is applicable and executable.

[660] - Foster interagency cooperation with other areas of government in order to improve processes and make them more transparent.

[661] - Broaden international cooperation with other judicial academic institutions.”¹⁴¹

- With regard to constitutional, legal and other provisions applicable to the personnel of EP PETROECUADOR, the Committee notes the following:

[662] First, the Committee notes that although Article 13 of the EP PETROECUADOR Code of Ethics provides that the institution's Ethics Committee is supposed to receive, take cognizance of, and settle doubts or queries, there do not appear to be a procedure or information about how to make such consultations. In that connection, the Committee believes it important that simplified, streamlined written procedures be established that any employee of EP PETROECUADOR may utilize to obtain information or resolve doubts about the scope or manner of interpreting the ethical rules governing their activities. The Committee will formulate a recommendation in that regard. (See recommendation 1.4.7 in Chapter III of this report.)¹⁴²

¹³⁹ The country under review stated that “the Comprehensive Statute on Process-Based Organizational Management of the Judicial Council, delivered to the delegate of the Technical Secretariat of the MESICIC and to the Lead Expert in connection with the on-site visit conducted from April 5 to 7, 2016, clearly establishes what unit has the powers referred to. Thus, Article 4.2.1.c states that it is up to the Provincial Legal Advice Unit to “advise on legal provisions and settle legal queries at the provincial level.” Thus the body for eliciting information or solving doubts regarding the scope or proper way to interpret the ethical norms governing activities has already been established, so this observation no longer applies and should be dropped.

In addition, the 1800-TRANSPARENCIA telephone line is used to resolve queries about the application or scope of the Ethics Code. Such queries are dealt with on the spot by personnel in the Directorate. It is worth noting that this helpline is cost-free, in a bid to bring the Directorate closer into contact with the general public and with all Council officials.

Also worth pointing out is the fact that the Ethics Code represents an attempt to define the rules that should govern the conduct of a judge in the performance of his or her jurisdictional functions. It is not meant to be a procedures manual, so that including a mention of how to process queries would not be appropriate. This is done pursuant to the Comprehensive Statute on Process-Based Organizational Management of the Judicial Council.”

¹⁴⁰ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, p. 57, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

¹⁴¹ During the meeting of the review subgroup, the State under review informed that “The Judicial Council has signed Cooperation agreements with the French National School of the Judiciary and with the Judicial Studies Center of Uruguay, and it plays an active part in Judicial Summit activities, spearheading academic cooperation projects.”

¹⁴² During the meeting of the review subgroup, the State under review informed that “Regarding this recommendation, it is worth noting that, via its in-house communications system, EP PETROECUADOR has disseminated the procedure to be followed by its staff for receiving complaints to be processed in the Ethics Committee. However, it is important to point out that the idea is to prepare and adopt by 2017 an “Ethics Committee Procedure for Processing Complaints.”

[663] Second, the Committee notes that in its response to the questionnaire,¹⁴³ the country under review mentions that “[p]art of the induction process involves Form No. GTH.03.03.FO-01(V02) (Corporate Induction), with the support of an engagement analyst, which is a personalized assistance process, at the end of which the new employee has the option to indicate whether they consider that they need additional training on a particular issue and to obtain feedback on the process, after which they sign the form. With that they formally indicate that everything was understood.

[664] (...)

[665] *Recognizing that this procedure has a highly subjective content, despite the existence of a form, we consider it essential to have a measurement instrument by which periodically to evaluate understanding of corporate information, and we believe it would be useful to incorporate technical assistance.”*

[666] (...)

[667] *EP PETROECUADOR has made efforts to infuse in its employees an ethical commitment to practicing the institution's values, especially respect and loyalty, which are the Company's core values.*

[668] *One weakness is that there are no technical instruments to measure whether these ethical rules are adequately grasped by the personnel, for which reason it would be useful to receive technical cooperation and assistance from experts in order to provide us with guidance on how to generate awareness of the subject and ensure its understanding and compliance, and, above all, in order to measure the impact of actions implemented in that regard.*

[669] Bearing in mind the foregoing, the Committee will make a recommendation to the country under review that it consider taking appropriate steps to request from international agencies or other countries the technical cooperation that it needs in relation to the aforementioned aspects. (See Recommendation 1.4.8 in Chapter III of this report).¹⁴⁴

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

[670] In its response to the questionnaire and during the on-site visit, the country under review presented the following results obtained in the application of the provisions and/or measures relating to instruction given to government personnel at the public-sector entities selected in order to ensure proper understanding of their responsibilities and the ethical rules governing their activities.

[671] – With respect to SERCOP and its personnel, according to information provided after the on-

¹⁴³ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, pp. 56 and 57, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

¹⁴⁴ During the meeting of the review subgroup, the State under review informed that “Through its online “Code of Ethics” course, EP PETROECUADOR measures the extent to which its staff understand ethical standards. Here, due to the subjectivity of such an assessment, the question arose as to whether there is a precise technical tool for appraising adequate comprehension of the aforementioned ethical standards. Should such a tool exist, EP PETROECUADOR would welcome technical cooperation from international organizations or other countries.”

site visit,¹⁴⁵ induction training is carried out on a monthly basis, and in 2015, of a total of 180 new public servants, 136 attended the induction program, which includes training on the ethical rules that govern the institution. The State also informed that there are no records on induction courses held in previous years (2011-2014) in the SERCOP archives.

[672] Furthermore, in its response to the questionnaire,¹⁴⁶ the country under review mentioned that in fiscal year 2014 the Department of Human Resources conducted surveys to prepare a situation analysis of the SERCOP working environment, in order to have information about the staff's perceptions with respect to the variables that impact on climate in the workplace. The surveys found that 75% of the 191 employees interviewed said that they were appropriately informed of their responsibilities and activities at work, while 88% considered that there was effective communication with their supervisor.

[673] – With respect to personnel of the Judicial Branch, according to information provided after the on-site visit,¹⁴⁷ in 2015, a total of 296 induction processes were carried out (288 in provincial areas and 8 at headquarters). In total, 3,408 people received induction training in 2015; 98% passed the induction program on the first attempt, and 2% on the second.

[674] As to results of instruction to ensure an adequate understanding of ethical rules governing the activities of judiciary personnel, it was mentioned that in December 2015, 4 training events were held at headquarters, and 2 in the provinces, which were attended, respectively, by 53 and 48 employees, who were assigned by each directorate or unit and were then responsible for replicating the workshop with their co-workers. It is worth mentioning that the Code of Ethics for Public Servants and Workers of the Judiciary of Ecuador was adopted on November 11, 2015, by Resolution No. 363-2015 of the Plenary of the Judiciary Council.

[675] Information was also provided that of the total of 12,536 public servants in the judiciary, 9,622 (77%) had signed the pledge to behave in accordance with the principles, values, and conduct envisaged in the Code of Ethics (2,509 members of the administrative staff and 7,113 members of the administrative-jurisdictional and jurisdictional staff) The country under review noted its intention to ensure that 100% of personnel of the Judicial Branch had signed the pledge by June 2016.¹⁴⁸

[676] As regards EP PETROECUADOR, between January 2014 and April 2016, induction training was provided to a total of 675 employees who joined the Company: 370 in 2014, 191 in 2015, and 114 in the year to April 2016.

¹⁴⁵ See additional information requested of Ecuador during the on-site visit, second part, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_con_inof_adi_2_parte.pdf

¹⁴⁶ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, pp. 39 to 47, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

¹⁴⁷ See additional information requested of Ecuador during the on-site visit, second part, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_con_inof_adi_2_parte.pdf

¹⁴⁸ During the meeting of the review subgroup, the State under review informed that “*With respect to the Pledges of Honor signed by personnel of the Judicial Council nationwide, by May 31, 2016 such pledges had been signed by 76.75% of all personnel. As of the date of this report, that percentage had increased to 98% and was expected to reach 100% by third quarter 2016.*”

[677] Regarding training activities on ethics, in its response to the questionnaire,¹⁴⁹ the country under review reported that “[f]ollowing the adoption of the Code of Ethics toward the end of 2013, EP PETROECUADOR launched a series of initiatives to spread knowledge of its contents. In 2014, its contents were disseminated using the company's e-mail addresses; in 2015 modern technology was harnessed for that purpose, in the form of a web-based virtual platform, which ensured that all employees, whether at work or not, had access to the Code and were able to take the virtual course designed for that purpose. This initiative reached approximately 4,600 workers, or 92% of the total workforce.

[678] In addition, based on information provided after the on-site visit, in 2015 a total of 4,576 (99.6%) workers passed the virtual course on the company's Code of Ethics; of those 67% obtained a score of 100% and 33% scored 80%.

[679] The Committee considers that the above information is pertinent for demonstrating that the public-sector entities selected by the country under review have obtained results in the application of provisions and/or measures relating to instruction given to government personnel to ensure proper understanding of their responsibilities and the ethical rules that govern their activities.

[680] Nevertheless, the Committee deems it appropriate to make a number of observations in relation thereto:

[681] First, the Committee notes that training on ethical rules is only provided in the context of the induction programs in two of the three entities analyzed (SERCOP and the Judiciary Council); that is, no provision is made for periodic training on ethics for employees in order to promote awareness and implementation of their codes of ethics and the ethical values and principles that govern their activities. The Committee will formulate a recommendation in that regard. (See recommendation 1.4.9 in Chapter III of this report.)

[682] Second, the Committee believes that it is important that there be an effort to have statistical data on issues such as the results of activities conducted, in order to verify that the goal of understanding ethical rules has been achieved and that public servants' questions about the scope and interpretation of such ethical rules be addressed in order to identify challenges and adopt, where appropriate, corrective measures. (See recommendation 1.4.10 in Chapter III of this report.)

[683] Finally, the Committee considers that it would be beneficial if the selected entities had handbooks, guidelines, and other instruments for public servants on the proper discharge of their functions, alert them to the inherent corruption risks in the performance of their duties, and inform them about the scope and interpretation of the ethical rules that govern their activities and the consequences of their infringement for the public service and for violators. (See recommendation 1.4.11 in Chapter III of this report.)

1.4. Conclusions and recommendations

[684] Based on the review conducted in foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article III (3) of the Convention:

¹⁴⁹ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, p. 52, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

[685] The Republic of Ecuador has considered and adopted certain measures intended to establish, maintain, and strengthen in the selected public-sector entities instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, as indicated in Chapter III, Section 1 of this report.

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

- 1.4.1. Include, as part of the content of the Technical Regulations on Training and Education in Public Service the provisions or other measures that it deems appropriate to make everyone who becomes a public servant in Ecuador aware of the risks of corruption inherent to the performance of their duties, as well as the consequences and penalties for involvement in acts of corruption. (See paragraph 652 in Chapter III, section 1.2 of this report).
- 1.4.2. Amend the Code of Ethics for the Well-Being of the Executive Branch in order to broaden the role of institutional Ethics Committees so that they may also serve in an advisory capacity, and establish simplified, streamlined and expedited written procedures so that any official may rely on them to obtain information or resolve doubts about the scope or manner of interpreting the ethical rules governing their activities. (See paragraph 653 in Chapter III, section 1.2 of this report).
- 1.4.3. Develop tools to verify that SERCOP personnel have an adequate understanding of the ethical rules governing their activities, seeking to use modern communication technology for such purposes. (See paragraph 654 in Chapter III, section 1.2 of this report).
- 1.4.4. Publish on the SERCOP website and on any other media considered advisable information about the training and instruction efforts and programs being pursued by the entity to ensure that both its personnel and that of all other public-sector entities properly understand their responsibilities and the ethical rules governing their activities in the area of government procurement. (See paragraph 655 in Chapter III, section 1.2 of this report).
- 1.4.5. Publish on the SERCOP website, the manual envisaged at Article 10(b) of the SERCOP Code of Ethics, which brings together cases that the institution's Ethics Committee has examined, the preventive solutions it has proposed, and the suggestions it has made. (See paragraph 656 in Chapter III, section 1.2 of this report).
- 1.4.6. Expressly identify in the Code of Ethics of the Judiciary the body that has responsibility for receiving and resolving queries about the scope and interpretation of the ethical rules that govern the activities of members of the judiciary, and establish simplified, streamlined and expedited written procedures so that they may pose questions and receive answers to such questions. (See paragraph 657 in Chapter III, section 1.2 of this report).
- 1.4.7. Establish simplified, streamlined written procedures so that any employee of EP PETROECUADOR may turn to the Company's Ethics Committee to obtain

information or resolve doubts about the scope or manner of interpreting the ethical rules governing their activities. (See paragraph 662 in Chapter III, section 1.2 of this report).

- 1.4.8. Adopt appropriate measures to request international organizations or other countries to provide the technical cooperation needed by EP PETROECUADOR regarding guidelines on technical instruments that will make it possible to gauge whether personnel adequately grasped the ethical rules governing their activities and to measure the impact of actions undertaken in that area (See paragraph 669 in Chapter III, Section 1.2 of this report).
- 1.4.9. Conduct periodic training courses on ethics for personnel of SERCOP and the Judiciary Council to promote the dissemination and implementation of their respective institutional Codes of Ethics and the ethical values and principles governing their activities (See paragraph 681 in Chapter III, Section 1.1 of this report).
- 1.4.10. Supplement the statistical information on SERCOP, the Judiciary Council, and EP PETROECUADOR with such data as the outcomes of activities carried out to verify whether the goal (i.e. a proper grasp of ethical norms) was achieved and data on answers to public servants' queries regarding the scope and interpretation of said ethical norms, in order to identify challenges and, where applicable, adopt corrective measures (See paragraph 682 in Section 1.3 of Chapter III of this report).
- 1.4.11. Prepare manuals, guidelines, and other types of instruments to guide public servants from SERCOP, the Judiciary Council, and EP PETROECUADOR on appropriately performing their duties and to alert them to the risks of corruption inherent to complying with their responsibilities, in addition to the scope and interpretation of ethical rules that govern their activities and the consequences that violation of such standards entails for public service and for the wrongdoers. (See paragraph 683 in Section 1.3 of Chapter III of this report).

2. THE STUDY OF FURTHER 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

[687] In its response to the questionnaire, the country under review mentions that¹⁵⁰ *"In that regard, the Ministry of Labor's mission is to issue regulations shaped by the principles of equity in the generation of public policy. To that end, it has technical units responsible for developing public policy, disseminating it and overseeing its implementation in each of the public institutions covered by the Organic Law of the Civil Service.*

¹⁵⁰ See the response of the Republic of Ecuador to the questionnaire with respect to follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round, as well as with respect to the provisions of the Convention selected for the Fifth Round, p. 58, available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

[688] *Those regulations are posted at the following addresses: <http://www.trabajo.gob.ec/biblioteca/> and <http://gestiondeltalentohumano.trabajo.gob.ec/>*

[689] *(...) Although it is prior to promulgation of the LOSEP (published in the Official Gazette Supplement No. 294 of October 6, 2010), but on the subject of post classification contemplated in Chapter 3, "Subsystem on Classification of Civil Service Posts" in Title V "Technical Administration of Human Talent" of the LOSEP, current resolution No. SENRES-2005-000042, published in the Official Gazette No. 103 of September 14, 2005 establishes the guidelines and methodologies for grading civil service posts, within the aforementioned scales, taking the following factors into account: skills, complexity, and responsibility."*

2.2. ESTABLISHMENT OF OBJECTIVE AND TRANSPARENT CRITERIA TO DETERMINE COMPENSATION FOR PUBLIC SERVANTS

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

[690] The Republic of Ecuador has a set of provisions on establishing objective and transparent criteria for determining the compensation of public servants, in particular:

[691] – The Constitution of the Republic of Ecuador (published in Official Gazette No. 449 of October 20, 2008), which establishes in Article 229, fourth paragraph, that: "Remuneration of public servants shall be fair and equitable, in line with their respective duties, and shall take into account their professional development, training, responsibility, and experience."

[692] – The Organic Law on Public Service (LOSEP) (published in Official Gazette No. 294 of October 6, 2010) and its General Regulations (published in Official Gazette No. 416 of April 1, 2011), which establish a policy of unifying and standardizing civil service wages that is mandatory for the entire public administration. According to the third and fourth paragraphs of the LOSEP: "*(...) All the bodies referred to in Article 225 of the Constitution of the Republic and this Article shall be obligatorily be subject to decisions taken by the Ministry of Labor Relations regarding remuneration and supplementary income.*"

[693] *The pay scales of the entities covered by the decentralized autonomous regime and special regimes shall be subject to their actual economic capacity and shall not exceed the ceilings or floors established by the Ministry of Labor Relations for each post or occupational category. Under no circumstances shall the floor be lower than the unified basic wage for private sector workers in general (...)"*

[694] Furthermore the Fifth General Provision of the LOSEP prohibits all the institutions, agencies, and entities referred to in its Article 3 and government enterprises and commercial corporations in which the State or its institutions have a majority shareholding from creating or establishing, through any mechanism, in any way, or under any circumstance whatsoever, supplementary allocations, wages, additional benefits or special bonuses, or in general any form of pay, in cash or in kind, additional to that provided for in the LOSEP.

[695] Finally, the Seventh General Provision of the LOSEP provides that: "*No public servant in any of the institutions referred to in Article 3 of this Law, and no person providing his or her services in any capacity, may receive a unified monthly wage lower than the minimum established in the pay scales issued by the Ministry for Labor Relations, or equal to or higher than the salary of the President of the Republic.*"

[696] *Exceptions to the maximum referred to in this provision may apply to members of the Foreign Service, the Armed Forces, the National Police and other State institutions performing full-time diplomatic, consular or attaché functions as representatives of Ecuador abroad. Also excepted are international teacher-researchers invited by State Universities and Polytechnics to conduct vocational training activities or scientific or technological research, pursuant to such regulations as may be established by the Ministry of Labor Relations and those decreed by the President of the Republic under Constituent Mandate No. 2:"*

[697] - Constituent Mandate No. 2 of January 24, 2008, issued by the Constituent Assembly, the first Article of which establishes that the maximum unified monthly remuneration (RMU) for all public servants is equivalent to 25 times the unified basic wage for workers in the private sector.

[698] Excluded from the RMU are: the thirteenth and fourteenth wage or remunerations, per diems, travel expenses and subsistence allowances, overtime and special hours, substitution of functions or assignments, compensation on account of residence, the employers' contribution to the Ecuadorian Social Security Institute, and the reserve funds,

[699] The second Article establishes the scope of application of the Constituent Mandate, while Article 3 establishes exceptions, which include: 1) members of the Foreign Service, the Armed Forces, the National Police and other State institutions performing full-time diplomatic, consular or attaché functions as representatives of Ecuador abroad; and 2) public servants or government workers in the Galapagos Islands, whose wages may be increased by 100 percent of the RMU.

[700] - La Resolution No. MRL-2012-0024, of January 27, 2012 and Ministerial Agreement No. MDT-2015-0040, of February 25, 2015, which establish two pay scales to be established across the boards for, respectively, career service personnel and for authorities and senior officials in all government institutions, with the exception of agencies under the autonomous section regime, for which payment scale ceilings are established that may not be higher than those contemplated in the above-mentioned resolutions and agreements.

[701] The career service encompasses 22 steps ¹⁵¹ (2 steps at the services level, 4 steps at the public service support staff level and 16 public servant level steps) and its RMU ranges between US\$527 and US\$, 5,000 a month.

[702] For its part, the RMU scale for dignitaries, authorities and senior officials has ten steps, ranging from US\$2,115 to US\$6,261 a month.

[703] – Ministerial Decision No. MDT-2015-0060 (published in Official Gazette Supplement No. 469 of March 30, 2015), which establishes the scale of ceilings and floors for unified monthly wages of public servants in the decentralized autonomous municipal governments..

[704] – Ministerial Decision No. MDT-2015-0071 (published in Official Gazette Supplement No. 473 of April 06, 2015), which establishes the scale of ceilings and floors for unified monthly wages of public servants in the decentralized autonomous provincial governments.

[705] – Ministerial Decision No. MDT-2015-0226 (published in the Official Gazette No. 608 of

¹⁵¹ It is worth noting that Resolution No. MRL 2014-00365, published in the Official Gazette No. 273, of June 23, 2014, incorporated steps 21 and 22 in the unified monthly pay scale, exclusively for researchers certified by the Secretariat for Higher Education, Science, Technology and Innovation (formerly SENESCYT).

October 15, 2015), which establishes the scale of unified monthly wages of public servants governed by the Organic Law of Public Service, State Universities and Government Polytechnics regime.

[706] – Ministerial Decision No. MRL-2014-0171 (published in the Official Gazette No. 332 of September 12, 2015), which establishes the salary scales for diplomats and foreign service support personnel serving in Ecuador or abroad, and the parameters and formulas to be used to determine the sums to be paid as per diem and representation allowances when they perform services abroad.

[707] – Resolution No. MDT-2015-0021 (published in the Official Gazette No. 552 of July 27, 2015) which determines the unified monthly salary scale for Public Prosecutors and Juvenile Offender Prosecutors, by category.

[708] – Ministerial Decision No. MDT-2015-0263 (published in the Official Gazette No. 635 of November 25, 2015), which establishes the pay scale and per diem for personnel serving in Commercial Offices abroad.

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

[709] With respect to the provisions on the establishment of objective and transparent criteria for determining the compensation of public servants, the Committee notes that, on the basis of the information available to it, they are pertinent for the purposes of the Convention.

2.2.3. Conclusions and recommendations

[710] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review, of the provisions contained in Article III, paragraph 12 of the Convention:

[711] **The Republic of Ecuador has considered and adopted measures aimed at establishing objective and transparent criteria to determine compensation for public servants in keeping with what is stated in section 2 of Chapter III of this report.**

[712] No recommendations are formulated by the Committee in this section.

IV. BEST PRACTICES

[713] 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:

- In relation to Article III(12) of the Convention:

[714] – **Nation Public Sector Remuneration System (Wage Unification and Harmonization)**¹⁵² The purpose of which is the unification and harmonization of the remunerations paid to employees who serve in any capacity, job, or function in the institutions governed by the Organic Law on Public Service

¹⁵² See the standard form accompanying the response of Ecuador to the questionnaire, pp. 167 and 168. Available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

(LOSEP), through a national public sector remuneration system that sets down generally applicable guidelines and standards in that regard

[715] Resolution No. SENRES-2009-000013, published in Official Gazette No. 541 of March 20, 2009 adopts the unified monthly pay scale for 20 grades based on the need to establish other grades above that of 14 on the scale in force up to then, in order to increase the value of strategic public-sector positions in keeping with Constituent Mandate No. 2 and Article 313 of the Constitution.

[716] The Ministry of Labor, through the Under-Secretariat for Public Service Evaluation and Technical Control and the Office of the Comptroller General, are in charge of follow-up on implementation of this best practice within the sphere of their authority.

[717] The country under review considers this a best practice because it corrected the disorderly remuneration system and human resources mismatches caused by the exceptions in the Civil Service and Administrative Career Path Law (LOSCCA) and in the unification and harmonization of public-sector wages.

- In relation to Article III(5) of the Convention:

[718] - **Merit-based competitive examinations, citizen challenges and societal oversight in the appointment of judicial public servants**¹⁵³ by the Judiciary Council, which consist of:

[719] - *Merit-based competitive examinations, citizen challenges and societal oversight*: In order to provide a better service in Ecuador, the Judiciary Council, in accordance with Article 176 of the Constitution, has held several merit-based competitive examinations for the purpose of hiring honest and suitable jurisdictional and administrative public servants. This best practice allows interested members of the public to apply, compete for, and obtain a permanent position in the judiciary, thereby enabling greater participation.

[720] - *Affirmative-action measures*: The purpose of affirmative-action measures is to eliminate all the barriers that might impede or hinder groups who suffer discrimination from access the labor market on an equal footing with the rest. Affirmative-action policies have spread to encompass all rights and are regarded as steps that are, or should be, taken to enable groups that are traditionally discriminated against to have the same opportunities of access on equal terms to all services in the exercise of their rights. Mindful of this reality, the Judiciary Council consistently fosters affirmative action measures, as is reflected in the standards in force, their daily application, and the competitions held to appoint judicial public servants.

[721] - *Implementation of the judiciary's own platforms in merit-based competitive examinations*: In order to enable mass participation in merit-based competitive examinations a public announcement is made in accordance with Chapter III of the Rules of Procedure for Merit-based Competitive Examinations, Citizen Challenges, and Societal Oversight for Admission to the Judiciary contained in Resolution No. 107-2014 adopted by the Judiciary Council. To apply, candidates need only use the system implemented by the Judiciary Council on its website.

[722] The country under review considers this a best practice because, with it, the Judiciary Council has improved its personnel recruitment and the appointment of judicial public servants, allowing a public-

¹⁵³ See the standard form accompanying the response of Ecuador to the questionnaire for the Fifth Round, pp. 168 to 172. Available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

sector career path to exist while safeguarding equality, cohesion, inclusion, and social and territorial equity in diversity.

[723] – **Creation of mechanisms for participatory analysis of anti-corruption practices in government procurement and the Manual of Best Practices in Government Procurement for the Development of Ecuador**¹⁵⁴ by the National Government Procurement Service (SERCOP), consisting of the following:

[724] – *Creation of mechanisms for participatory analysis of anti-corruption practices in government procurement*: SERCOP has established mechanisms for citizen dialogue in order to hear all points of view from actors in the National Government Procurement System as a mechanism to combat corruption in aid of the ethical revolution proposed by the country's government. Its purpose is to develop governmental policies, measures, and best practices that ensure a transparent government procurement model and combat collusion and white-collar crime, using innovative strategies and in cooperation with various public and private sector entities and the public.

[725] The process implemented by SERCOP is essential to ensuring that government procurement is conducted correctly. It is regarded as a fundamental best practice and a basic pillar for the reform process in the Ecuadorian State from the point of view of government procurement and has become a model of quality, excellence, transparency, and use of modern technology in Latin America.

[726] - *Code of Ethics of Public Servants with Certified Competencies in Government Procurement*: This is a document that is part of the National Government Procurement Service's competency certification program, which was conceived as a commitment to including the State in a coordinated, open, participatory process involving public and private institutions and the public.

[727] As a best practice, it represents the commitment of all the actors in the government procurement process, particularly public servants with certified competencies in the National Government Procurement System, to ensuring that their expertise and skills are used to guarantee the quality of their performance based on ethical values (integrity, responsibility, accountability, effectiveness, and trust).

[728] *Manual of Best Practices in Government Procurement for the Development of Ecuador*: This document seeks to improve government procurement policies, encourage transparent procurement, fair trade, and the ethical competition among providers, in order to advance productivity, reduce poverty, and increase access to employment.

[729] As a best practice, its importance is as an information guide on relevant aspects of government procurement (whatever the kind), as established in the LOSNCP. It describes illegal practices and also ones that, while not illegal, are illegitimate and unethical and have emerged in the system and mutated after being detected. It sets out clear steps on how to ensure a good government procurement process overall based on the principles of legality, equality, timeliness, fair treatment, transparency, concurrence, quality, technological currency, and inclusion.

- In relation to Article III (8) of the Convention:

¹⁵⁴ See the standard form accompanying the response of Ecuador to the questionnaire for the Fifth Round, pp. 173 and 180. Available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

[730] – **Public advisory services on legal matters and on the political oversight role of the National Assembly in the “*Contigo de Ley*” (With You by Law) program,**¹⁵⁵ which consists of a mobile office of the National Assembly's Technical Unit for Political Monitoring and Oversight that accompanies the speaker of the National Assembly on visits to individual cantons in Ecuador's provinces, which are broadcast live every Friday on a radio program called “*Contigo de Ley*.”

[731] The speaker of the National Assembly informs the public about the presence of the Unit's mobile office at the top of the program, so that it can provide legal advisory services and information about the National Assembly's constitutionally recognized political oversight role.

[732] After being advised by officials, the public submit complaints and those cases that warrant political oversight are processed through the Unit. A physical form was developed for that purpose, on which the individual presenting the complaint provides their name, identity document number, a detailed account of the case, and their signature.

[733] The Oversight Unit then activates the oversight process by issuing the relevant requests for public information in order to establish the existence of the faults allegedly committed by the accused public official.

[734] The country under review considers the activity described a best practice as it provides citizens with direct access to a service that is physically located in the city of Quito, making it easier for members of the public who would have difficulty traveling there to exercise their rights. In this specific case, oversight processes are initiated with the aim of resolving the problem reported by the citizen.

¹⁵⁵ See the standard form accompanying the response of Ecuador to the questionnaire for the Fifth Round, pp. 192 to 195. Available at: http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf

ANNEX I

**AGENDA OF THE ON-SITE VISIT TO THE
REPUBLIC OF ECUADOR**

<u>Monday, April 4, 2016</u>	
3:30 p.m. – 4:30 p.m. <i>Citizen participation and oversight council</i>	Meeting with officials of the Citizen Participation and Oversight Council, in its capacity as Ecuador’s Central Authority for the purposes of international assistance and cooperation provided for in the Inter-American Convention against Corruption.
4:30 p.m. – 5:00 p.m. <i>Citizen participation and oversight council</i>	Coordination meeting of the representatives of the member states of the subgroup and the Technical Secretariat.
5:00 p.m. – 5:30 p.m. <i>Citizen participation and oversight council</i>	Coordination meeting of representatives of the country under review, the member states of the subgroup, and the Technical Secretariat.
5:30 p.m. – 6:30 p.m. <i>José Joaquín de Olmedo Room, Ministry of Foreign Affairs and Human Mobility (MREMH)</i>	Visit of the international delegation to the meeting venue.
<u>Tuesday, April 5, 2016</u>	
9:00 a.m. 12:30 p.m. <i>José Joaquín de Olmedo Room, Ministry of Foreign Affairs and Human Mobility (MREMH)</i>	Meetings with civil society organizations and/or, inter alia, private sector organizations, professional associations, academics, or researchers
First Meeting 9:00 a.m. 10:30 a. m.	<p><u>Topics:</u></p> <p>Government hiring systems Systems for protecting whistleblowers who report acts of corruption</p> <p><u>Participants:</u></p> <p><i>Single Confederation of Workers of Ecuador (CUT)</i></p> <ul style="list-style-type: none"> - Mr. Mario Molina, Secretary for Legal Affairs - Dr. Marcelo Orellana, Secretary for International Relations

	<p><i>National Staff Association of the Attorney General (AFEMPE)</i></p> <ul style="list-style-type: none"> - Mr. Fabián Salazar, National President <p><i>Federation of Petroleum Workers of Ecuador (FETRAPEC)</i></p> <ul style="list-style-type: none"> - Mr. John Reyes Marín, President
<p>Second Meeting 10:30 a. m. 12:00 p.m.</p>	<p><u>Topic:</u> Systems for government procurement of goods and services</p> <p><u>Participants:</u></p> <p><i>Ecuadorian Federation of Metal Industries (FEDIMETAL)</i></p> <ul style="list-style-type: none"> - Mr. Guillermo Pavón Pérez, Director General <p><i>Citizen Oversight to verify proper development stages of Corporate Drug Reverse Auction (MICS 2015).</i></p> <ul style="list-style-type: none"> - Mr. Felipe Fiallos, General Coordinator <p><i>Academics and Researchers:</i></p> <ul style="list-style-type: none"> - Prof. Inés María Baldeón Barriga, Ph.D, Professor, Simon Bolivar Andean University
<p>Third Meeting 12:00 p.m. 12:45 p. m.</p>	<p><u>Topic:</u> Categorization of acts of corruption</p> <p><u>Participant:</u></p> <p><i>Academics and Researchers:</i></p> <ul style="list-style-type: none"> - Prof. Jorge Paladines Rodríguez, Professor of Criminology and Criminal Policy Review, Simon Bolivar Andean University
12:45 p.m. 2:00 p.m.	Lunch
2:00 p.m. 5:30 p.m. <i>José Joaquín de Olmedo Room, Ministry of Foreign Affairs and Human Mobility (MREMH)</i>	Meetings with government officials: categorization of acts of corruption and systems for protecting those who report them
2:00 p.m. -3:30 p.m.	<p><u>Panel 1:</u></p> <ul style="list-style-type: none"> • Follow-up on the recommendation from the second round regarding

	<p>the legal characterization of acts of corruption</p> <ul style="list-style-type: none"> ▪ Progress, new developments and results in implementing the recommendations pending <hr/> <p><u>Participants:</u></p> <p><i>Attorney General's Office</i></p> <ul style="list-style-type: none"> - Ms. Cecilia Armas, Deputy Attorney General - Mr. Wilson Merino, National Director of Criminal Procedure Management - Mr. Pablo Hidalgo, Analyst, Criminal Procedure Management <p><i>National Court of Justice</i></p> <ul style="list-style-type: none"> - Mr. Darwin Aguilar Gordón, Acting Director, Legal Services and International Legal Cooperation. - Mr. Eduardo Paz Almeida, Office of International Legal Cooperation - Ms. Jovanna Garzón Almeida, Office of Legal Services <p><i>National Assembly</i></p> <ul style="list-style-type: none"> - - Ms. Libia Rivas, Secretary General
<p>3:30 p.m. 3:45 p.m.</p>	<p>Break</p>
<p>3:45 p.m. - 5:30 p.m.</p>	<p><u>Panel 2:</u></p> <ul style="list-style-type: none"> • Follow-up on recommendations from the second round regarding protection systems for those who report acts of corruption <ul style="list-style-type: none"> ▪ Progress, new developments and results in implementing the recommendation and measures suggested during the second round. ▪ Difficulties encountered during implementation and technical cooperation needs. <hr/> <p><u>Participants:</u></p> <p><i>Attorney General's Office</i></p> <ul style="list-style-type: none"> - Mr. Maggio Irigoyen, Director, National System of Protection and Assistance for Victims, Witnesses, and Other Participants in Criminal Proceedings (SPAVT)

	<p><i>Office of the Comptroller General</i></p> <ul style="list-style-type: none"> - Ms. Nora Encalada Ojeda, MSc., Director, Ethics, Citizen Participation and Financial Control - Ms. Valentina Zárate, Technical Director, Regulations and Administrative Development. <p><i>Citizen Participation and Oversight Council (CPCCS)</i></p> <ul style="list-style-type: none"> - Mr. Edwin Jarrín Jarrín, Council Member y Vice-President - Mr. Giovanni Bravo, Technical Secretary, Transparency and Fight Against Corruption <p><i>National Secretariat for Public Administration</i></p> <ul style="list-style-type: none"> - Mr. Efrén Roca Álvarez, Technical Secretary, Management Transparency - Mr. Esteban León, Under-Secretary of Investigations
<p>5:30 p.m. 6:30 p.m.</p>	<p>Informal meeting of the representatives of the member states of the subgroup and the Technical Secretariat</p>
<p><u>Wednesday, April 6, 2016</u></p>	
<p>9:00 a.m. 5:00 p.m.</p> <p><i>José Joaquín de Olmedo Room, Ministry of Foreign Affairs and Human Mobility (MREMH)</i></p>	<p>Meetings with government officials on government hiring, training, and remuneration systems</p>
<p>9:00 a.m. 12:30 p.m.</p>	<p><u>Panel 3:</u></p> <ul style="list-style-type: none"> • Follow-up on recommendations from the second round regarding government hiring systems: <ul style="list-style-type: none"> ▪ Progress, new developments and results in implementing the recommendations pending <hr/> <p><u>Participants:</u></p> <p><i>Ministry of Labor (Vice-Ministry of the Civil Service)</i></p> <ul style="list-style-type: none"> - Mr. Diego Bravo, Technical Under-Secretary of Civil Service Strengthening - Mr. Juan Sebastián Proaño, Under-Secretary of Evaluation and Control - Mr. Pablo Proaño Jaramillo, Director, Evaluation and Control of the Public Service.

	<p><i>National Institute of Meritocracy</i></p> <ul style="list-style-type: none">- Ms. Irma Jara, Under-Secretary of Meritocracy <p><i>National Assembly (Office of the Coordinator-General for Human Resources)</i></p> <ul style="list-style-type: none">- Mr. Danilo Granja, General Coordinator, Human Talent- Mr. Germán Portilla, Specialist, Human Talent <p><i>Judicial Council</i></p> <ul style="list-style-type: none">- Mr. Esteban Zavala, Director, Legal Services <p><i>Attorney General's office (Directorate of Human Resources)</i></p> <ul style="list-style-type: none">- Ms. Margarita de la Cueva, National Director, Human Talent- Mr. Ángel Romero, Analyst, Human Talent.
12:30 pm. 2:00 p.m.	Lunch
14:00 hrs. – 5:00 p.m.	<p>Panel 4:</p> <ul style="list-style-type: none">• Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities<ul style="list-style-type: none">▪ Legal framework, programs, competent bodies, and technology use▪ Results▪ Difficulties and technical cooperation needs.
	<p><u>Participants:</u></p> <p><i>National Government Procurement Department (SERCOP)</i></p> <ul style="list-style-type: none">- Ms. Carolina Tenicela Loayza, Director, Human Resources Administration- Mr. Leandro Pérez, Expert, Human Resources Administration <p><i>Judicial Council (Judicial Academy)</i></p> <ul style="list-style-type: none">- Ms. Cristina Lemarie, Acting Director, Human Talent- Mr. Andrés Salazar, Under-Director, Human Talent

	<ul style="list-style-type: none"> - Ms. Nancy Herrera, Under-Director, Human Talent Management <p><i>State Oil and Gas Enterprise (EP PETROECUADOR)</i></p> <ul style="list-style-type: none"> - Mr. Gustavo Ocampo Andrade, Acting Corporate Chief, Development and Training - Ms. Yomar Álvarez, Specialist, Social Responsibility <p><i>Ministry of Labor (Vice-Ministry of the Civil Service)</i></p> <ul style="list-style-type: none"> - Mr. Diego Bravo, Technical Under-Secretary of Civil Service Strengthening
<p>5:00 p.m. 6:00 p.m.</p>	<p>Informal meeting of the representatives of the member states of the subgroup and the Technical Secretariat</p>
<p><u>Thursday, April 7, 2016</u></p>	
<p>9:00 a.m. 5:30 p.m.</p> <p><i>José Joaquín de Olmedo Room, Ministry of Foreign Affairs and Human Mobility (MREMH)</i></p>	<p>Meetings with government officials on systems for government procurement of goods and services and general recommendations.</p>
<p>9:00 a.m. – 12:30 p.m.</p>	<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 <ul style="list-style-type: none"> ▪ Progress, new developments and results in implementing the recommendations pending ▪ Difficulties observed in implementation processes ▪ Technical cooperation needs <p><u>Participants:</u></p> <p><i>National Government Procurement Department (SERCOP)</i></p> <ul style="list-style-type: none"> - Ms. Carolina Tenicela Loayza, Director, Human Resources Administration - Mr. Leandro Pérez, Expert, Human Resources Administration <p><i>Office of the Comptroller General</i></p> <ul style="list-style-type: none"> - Ms. Nora Encalada Ojeda, MSc., Director, Ethics, Citizen Participation and Financial Control

	<ul style="list-style-type: none"> - Ms. Valentina Zárate, Technical Director, Regulations and Administrative Development. <p><i>Citizen Participation and Oversight Council (CPCCS)</i></p> <ul style="list-style-type: none"> - Mr. Edwin Jarrín Jarrín, Council Member y Vice-President - Mr. Giovanni Bravo, Technical Secretary, Transparency and Fight Against Corruption
12:30 p.m. 2:00 p.m.	Lunch
2:00 p.m. -3:30 p.m.	<p><u>Panel 6:</u></p> <ul style="list-style-type: none"> • Study of prevention measures that give due consideration to the relationship between equitable remuneration and probity in public service <ul style="list-style-type: none"> ▪ Study or studies carried out ▪ Objective and transparent guidelines for determining public servant remunerations <p><u>Participants:</u></p> <p><i>Ministry of Labor (Vice-Ministry of the Civil Service)</i></p> <ul style="list-style-type: none"> - Mr. Juan Carlos Almeida Pozo, Under-Secretary of Policies - Mr. Diego Bravo, Technical Under-Secretary of Civil Service Strengthening - Mr. Eduardo Molina, Director
3:30 p.m. 4:30 p.m.	Informal meeting of the representatives of the member states of the subgroup and the Technical Secretariat.
4:30 p.m. 5:30 p.m.	Final meeting ¹⁵⁶ of the representatives of the country under review, the member states of the subgroup, and the Technical Secretariat

¹⁵⁶ . The third paragraph of provision 20 of the *Methodology for Conducting On-Site Visits* states: “...At the end of the on-site visit, a meeting shall be held, to be attended by the Subgroup experts, the Technical Secretariat, and the Lead Expert of the country under review and/or the official appointed in his or her place in accordance with provision 10, second paragraph, of this Methodology. That meeting shall identify, if necessary, the information that, exceptionally, the country under review is still to submit through the Technical Secretariat and the deadline by which it is to do so, and it shall also coordinate any other pending matters arising from the on-site visit.”

**CONTACT AUTHORITY OF THE COUNTRY UNDER REVIEW FOR COORDINATION
OF THE ON-SITE VISIT AND REPRESENTATIVES OF THE MEMBER STATE OF THE
PRELIMINARY REVIEW SUBGROUP AND THE MESICIC TECHNICAL SECRETARIAT
WHO PARTICIPATED:**

COUNTRY UNDER REVIEW:

ECUADOR

Carmita Idrovo Correa

Lead Expert of Ecuador on the MESICIC Committee of Experts
Analyst, International Instruments
General Coordination of International Relations
Citizen Participation and Oversight Council (CPCCS)

Estefanía E. Terán Valdez

General Coordinator of International Relations
Citizen Participation and Oversight Council (CPCCS)

MEMBER STATE OF THE PRELIMINARY REVIEW SUBGROUP:

GUATEMALA

Carlos Rodriguez

Lead Expert of Guatemala on the MESICIC Committee of Experts
Private Secretary of the Vice-President of the Republic

MESICIC TECHNICAL SECRETARIAT

Luiz Marcelo Azevedo

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