



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

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MEXICO

FINAL REPORT

(Adopted at the September 15, 2016 plenary session)

## SUMMARY

This report contains the comprehensive review of the implementation in Mexico of the recommendations that were made to it in the Second Round in connection with Article III (5) and (8) of the Inter-American Convention against Corruption, in relation, respectively, to systems of government hiring and procurement of goods and services, and systems for protecting public servants and private citizens who, in good faith, report acts of corruption, as well as classification of the acts of corruption envisaged in Article VI thereof, including references, as appropriate, to new developments in the implementation of those provisions.

The report also includes a comprehensive analysis of the implementation in Mexico of Article III (3) and (12) of the Convention, which concerned, respectively, measures to create, maintain, and strengthen instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, and the study of further preventive measures that take into account the relationship between equitable compensation and probity in public service, which were selected by the MESICIC Committee of Experts for the Fifth Round, likewise including references to best practices reported by the state in the 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 it has adopted for conducting on-site visits and for the Fifth Round, including the criteria set out therein for guiding the review based on equal treatment for all state parties, functional equivalence, and the common purpose of both the Convention and the MESICIC of promoting, facilitating, and strengthening cooperation among the state parties in the prevention, detection, punishment, and eradication of corruption.

The review was carried out mainly taking into account Mexico's response to the questionnaire and information gathered during the on-site visit to that state from April 5 to 7, 2016, by representatives of Brazil and Haiti. With the support of the Technical Secretariat of MESICIC, during that visit, the information furnished by Mexico was clarified and supplemented with the opinions of civil society and private sector organizations on the issues under review.

With regard to the implementation of the recommendations that were formulated to Mexico in the report from the Second Round and with respect to which the Committee, in the Third Round report, found required additional attention, based on the methodology for the Fifth Round and bearing in mind the information provided in the response to the questionnaire and during the on-site visit, the Committee made a determination as to which of those recommendations had been satisfactorily implemented, which required additional attention, which should be reframed, and which were no longer valid.

Among the advances in implementing those recommendations, the Committee notes the enactment, on July 2016, of secondary laws of the National Anticorruption System, derived from the Anti-Corruption Amendment to the Constitution, published in the Official Gazette of the Federation in May 2015, as well as the National Development Plan for 2013-2018 published in May 2013 and the Program for Accessible and Modern Government for 2013-2018, published in August 2013. Furthermore, it is relevant to highlight enactment of the General Law on Transparency and Access to Public Information of May 2015, which among other aspects provides the bases and information of public interest which those legally bound to report must disseminate proactively as stipulated by said Law.

Specifically with respect to government hiring systems, it is important to highlight the Professional Career Service Program in the Federal Public Administration for 2016-2018, published in February 2016 and which takes into account, among others, the recommendations made by the Committee in the framework of the Second Round; the September 2007 Regulations for the Law on Professional Career Service in the Federal Public Administration; the Agreement whereby the Provisions on Human Resources and Professional Career Service are issued; the Administrative Handbook of General Application for Human Resources and Organizations; and the Professional Career Service Handbook of July 2010 amended in February 2016.

In addition, the legal actions and other kinds of action that the legislative and judicial branches have undertaken to strengthen their respective hiring systems are also noteworthy, such as the initiatives to standardize the administrative legal framework in terms of human resources promoted by both Houses of the Congress of the Union, and General Agreement 21/2012 of the Plenary of the Federal Judicature Council, on the Judicial Internships Program in the Courts Overseen by the Federal Judicature Council, to cite a few.

Regarding the government procurement systems of goods and services, Mexico has also been advancing with legislative efforts to strengthen this system, among which there are the following: the Federal Public Procurement Anti-Corruption Law of June 2012; the August 2015 Agreement whereby the protocol for public procurement actions and for granting and extending licenses, permits, authorizations, and concessions was issued; the amendments to the Law on Public Sector Purchases, Leases, and Services and to the Law on Public Works and Related Services, as well as the Regulations for both Laws published in July 2010; and the implementation of version 5.0 of the Government Public Information Electronic System—CompraNet in July 2010.

As for the public procurement systems of the legislative and judicial branches of government, the Committee notes the new September 2012 Senate Provisions for Purchasing, Leasing, Services, and Public Works, as well as the September 2008 General Administration Agreement VI/2008 of the Governance and Administration Committee of the Supreme Court of Justice of the Nation and the General Agreement of the Plenary of the Federal Judiciary Council, which sets forth provisions for the administrative activities of the Council itself, published in January 2015.

As for protecting those reporting acts of corruption, the report refers, among other developments, to the Federal Program and Center for the Protection of Persons, established in line with the June 2012 Federal Law for the Protection of Persons Involved in Criminal Proceedings, as well as the applicable provisions of the General Law on Administrative Responsibilities published recently on July 2016.

With respect to acts of corruption as provided for in Article VI of the Convention, the Anti-Corruption Amendment to the Constitution and secondary laws derived from it, are noteworthy, as well as the amendments and additions to the various provisions of the Federal Criminal Code with respect to anti-corruption and the administrative responsibilities of public servants, their obligations, the sanctions applicable to the acts or omissions they commit, and the corresponding responsibilities of private individuals in connection with the above as a result of the above-mentioned Amendment.

Some of the recommendations formulated in the Second and that are still pending are aimed at adopting comprehensive regulations to protect government officials and private individuals who, in good faith, report acts of corruption, including the protection of their identity, in line with the Constitution and the basic principles of Mexico's legal system.

In addition, regarding the new developments in Mexico with respect to implementing the provisions of the Convention selected for the Second Round, the Committee has made recommendations on the following aspects: conducting a review about the reasons why the Federal Public Administration is not attracting suitable, qualified applicants in their public recruitment invitations; holding campaigns promoting and disseminating job opportunities aimed at attracting more applicants and motivating them to apply for a government job; adopting measures and mechanisms to ensure adequate measurement and monitoring that would make it possible to conduct comprehensive periodic assessments about the use and effectiveness of the Federal Law against Corruption in Government Hiring; specifying the systems of exceptions for government bidding processes and regulating with greater accuracy the procedures for directly awarding contracts; and assessing the possibility of eliminating financial compensation for the services provided by social witnesses, among other recommendations.

For the review of the first provisions selected for the Fifth Round that refer to instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, as set out under Article III, paragraph 3, of the Convention, according to the methodology of the present Round, the country under review chose the staff of the Public Service Secretariat, the Chief Audit Office of the Federation, and the Federal Judiciary Council, because it deemed that their institutional and legal development was relevant and representative of the Mexico's public bodies and institutions as a whole.

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

Some of the recommendations made to Mexico for its consideration, regarding the above, are aimed at objectives such as strengthening the publication of information on the implementation and results of training activities, instructions, and programs carried out by these three institutions to ensure that their staff and those of other government bodies adequately understand their responsibilities and the ethical rules governing their activities, as well as designing, developing, and implementing mandatory induction, training, and/or courses, workshops, and/or seminars with respect to the new system of responsibilities and conflict of interest prevention as provided for in the Anti-Corruption Amendment to the Constitution and in the laws and regulations adopted for this purpose.

In accordance with the aforementioned methodology, the review of the second provision selected for the Fifth Round, as set out under Article III, paragraph 12 of the Convention, which refers to the study of preventive measures that take into account the relationship between equitable compensation and probity in the public service, and if objective and transparent criteria has been established for determining the compensation of public servants, the Committee, on the basis of the information it had available, concluded that Mexico has considered and adopted measures aimed at establishing the above-mentioned criteria.

Finally, the best practices about which Mexico provided information refer to the “Corpus Juris regarding Access to Information,” implemented by the National Institution of Transparency, Access to Information, and Protection of Personal Data, which consists of a technology platform available at <http://corpusiuristransparenciadai.ifai.org.mx>, whose principal objective is to make available a categorized compilation of international instruments, precedents, and other types of documents regarding access to information, granting to the user information that is relevant for the right to access to public information, with links to the sites of origin and source documents; the “Model to Evaluate and Assign Substantive Staff,” currently being developed by the Office of the Attorney General of the Republic, aimed at scoring the productivity and performance of the agents of the Federal Prosecution Ministry in order to optimize available human resources and draft the mechanisms needed for their correct assignment to the institution’s strategic areas; and the Institutional Integrity Policy drawn up by the Chief Audit Office of the Federation, which contains various instruments to steer the activities of the staff so that these activities can be undertaken on the basis of strict principles and guidelines of independence, impartiality, and technical rigor, as well as the “Judicial Internship Program” developed by the Federal Judiciary Council, which allows students in a law degree program to carry out legal work within the courts, and to receive financial support for those internships, enabling them to have proximity to the judiciary and its principles of ethics and sense of belonging.

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

**REPORT ON FOLLOW-UP ON IMPLEMENTATION IN MEXICO OF THE  
RECOMMENDATIONS FORMULATED AND PROVISIONS REVIEWED IN THE  
SECOND ROUND, AND ON THE PROVISIONS OF THE CONVENTION SELECTED FOR  
REVIEW IN THE FIFTH ROUND<sup>1/</sup>**

**INTRODUCTION**

**1. Content of the Report**

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

[2] Second, where applicable, it will refer to new developments in Mexico 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 Mexico wished to voluntarily share regarding implementation of the provisions of the Convention selected for the Second and Fifth Rounds.

**2. Ratification of the Convention and adherence to the Mechanism**

[5] According to the official records of the OAS General Secretariat, Mexico ratified the Inter-American Convention against Corruption on May 27, 1997, and deposited the respective instrument of ratification on June 2, 1997.

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1. This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on September 15, 2016, at its Twenty-Seventh meeting, held at OAS Headquarters, September 12 – 15, 2016.
  2. See the Minutes of the 24th Meeting of the Committee, available at: [http://www.oas.org/juridico/docs/XXIV\\_min.doc](http://www.oas.org/juridico/docs/XXIV_min.doc)
  3. Available at: [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_mex.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf)
  4. Available at: [http://www.oas.org/juridico/english/mesicic\\_III\\_rep\\_mex.pdf](http://www.oas.org/juridico/english/mesicic_III_rep_mex.pdf)

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

## I. SUMMARY OF INFORMATION RECEIVED

### 1. Response of Mexico

[7] The Committee wishes to acknowledge the cooperation that it received throughout the review process from Mexico, in particular, from the Secretariat of the Civil Service (hereinafter “SFP”), which was evidenced, inter alia, in its response to the Questionnaire, in the constant willingness to clarify or complete its contents, and in the support for the execution of the *on-site* visit referred to below. Together with its response, Mexico sent the provisions and documents it considered pertinent<sup>5/</sup>.

[8] The Committee also notes that Mexico gave its consent for the *on-site visit*, in accordance with provision 5 of the *Methodology for Conducting On-site visits*<sup>6/</sup>. That visit was conducted from April 5 to 7, 2016, by representatives of Brazil and Haiti, in their capacity as members of the review subgroup, with the support of the MESICIC Technical Secretariat. The information obtained during that visit is included in the appropriate sections of this report, and the agenda of meetings is attached hereto, in keeping with provision 34 of the above-mentioned *Methodology*.

[9] For its review, the Committee took into account the information provided by Mexico 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 their functions in keeping with the *Rules of Procedure and Other Provisions*<sup>7/</sup>; 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*<sup>8/</sup>; and the *Methodology for Conducting On-site visits*.

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

[10] The Committee 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 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.

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5. Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_blv.htm](http://www.oas.org/juridico/spanish/mesicic5_blv.htm)  
6. Available at: [http://www.oas.org/juridico/english/met\\_on-site.pdf](http://www.oas.org/juridico/english/met_on-site.pdf)  
7. Available at [http://www.oas.org/juridico/PDFs/mesicic4\\_rules\\_en.pdf](http://www.oas.org/juridico/PDFs/mesicic4_rules_en.pdf)  
8. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_metodologia\\_en.pdf](http://www.oas.org/juridico/PDFs/mesicic5_metodologia_en.pdf)

## **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 Mexico with respect to the recommendations formulated and measures for their implementation suggested by the Committee in its report from the Second Round<sup>9/</sup>, which the Committee deemed required additional attention in the Third Round report<sup>10/</sup>, 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 Mexico 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.

### **A. COOPERATION OF FEDERAL GOVERNMENT AUTHORITIES WITH AUTHORITIES FROM THE FEDERAL STATES**

Sole recommendation formulated by the Committee, which was satisfactorily considered within the Framework of the Third Round:

Recommendation:

*“...the Committee encourages Mexico to continue to undertake joint with its federal states actions aimed at obtaining information on the implementation of the Convention, and strengthening the cooperation and coordination between the federal government and the federal states for its effective implementation, and at providing them with the technical assistance they may need to that end.”*

[15] The Committee has already noted the satisfactory consideration of the foregoing recommendation in the Third Round Report on Mexico.<sup>11/</sup> Since that report indicates that the recommendation, by its nature, requires a continuation of efforts in its implementation, it trusts that the country under review will report on the actions it takes toward that end in the annual progress reports provided for in Article 32 of the Committee Rules of Procedure.

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9. See note 3 *supra*.

10. See note 4 *supra*.

11. See Report on Mexico from the Third Round, p. 43, note 4 *supra*.

## **B. CONCLUSIONS AND RECOMMENDATIONS AT THE FEDERAL LEVEL**

### **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 recommendations formulated in the Second Round**

###### Recommendation 1.1.1:

*Strengthen the systems for hiring public servants in the federal executive branch.*

Measure (a) suggested by the Committee that requires additional attention within the Framework of the Third Round:<sup>12/</sup>

*Regulate the power that Articles 74 of the Federal Civil Service Career Law (LSPCAPF) and 31 of its Regulations (RLSPCAPF) grants to direct supervisors of areas for which vacancy notices are issued to veto any or all of the finalist candidates in the respective selection process, so that its exercise is subject to predetermined grounds and based on reasons of probity, equity, and efficiency.*

[16] In both its response to the Questionnaire<sup>13/</sup> and during the on-site visit, Mexico presented information and new developments regarding the above measure. Of those, the Committee notes the following as steps that lead it to conclude that the measure has been satisfactorily considered:

[17] The adoption of the *Regulations to the Law on the Professional Career Service in the Federal Public Administration*<sup>14/</sup> (hereinafter “R-LSPC”), published in the Official Journal of the Federation (hereinafter “DOF”) on September 6, 2007, which replaces the Regulations published in the DOF on April 2, 2004, reviewed by the Committee in the Second Round.

[18] According to Article 37 of the R-LSPC currently in force, the veto referred to in Article 74 of the *Law on the Professional Career Service in the Federal Public Administration*<sup>15/</sup> (hereinafter “LSPC”) is to be applied on one occasion only and under the strict responsibility of the hierarchical superior responsible for the vacant position, who will be required to provide due reasoning for his decision in the corresponding minutes. Similarly, Article 38 of the same Regulations states that when the superior has exercised the veto, the Technical Selection Committee<sup>16/</sup> (hereinafter “CTS”) is to select the person to occupy the position from among the remaining finalists.

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12. Ibid, p. 44.

13. See Mexico’s response 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. 37, available at:

[http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_resp.pdf)

14. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_16.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_16.pdf)

15. Available, up to the last amendment published in the DOF on January 9, 2001, at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_2.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_2.pdf)

16. See: Arts. 72 to 75 of the LSPC and Arts. 17 and 18 of the R-LSPC.

[19] In this regard, the *Agreement Issuing Provisions for Human Resources and for the Professional Career Service, together with the General Administrative Manual for Human Resources and Organization and the Manual of the Professional Career Service*,<sup>17/</sup> (hereinafter “RH-SPC Manual”), published in the DOF on July 12, 2010, and its last amendment of February 4, 2016, provides, in paragraph 237, that the minutes to be issued by the CTS on the results of the competition shall specify the finalists for their inclusion in the agency’s pool of candidates, the results obtained by each of them in every stage of the competition, the conclusions of the ruling itself, and, if applicable, the grounded and reasoned vote of the president. The CTS, in compliance with the guiding principles<sup>18/</sup> of the Professional Career Service System, shall clearly indicate the provisions on which its ruling is based and explain, in the minutes of the corresponding session, the conclusions of that ruling, either indicating the reasons for which the winner was selected or declaring the competition void. Those considerations “*shall be reasonable to justify the selection, if applicable, of the best suited candidate, and shall show that the result was reached without granting preferences or privileges to any person, any pre-judgment, or ungrounded opinions.*”

[20] Related to this are jurisprudential interpretations made by the Supreme Court of Justice of the Nation (hereinafter “SCJN”) in connection with the veto referred to in Article 74 of the LSPCAPF and reported by the representatives of the SFP and the Federal Judicature Council (hereinafter “CJF”) during the on-site visit, namely:

PROFESSIONAL CAREER SERVICE IN THE FEDERAL PUBLIC ADMINISTRATION. ARTICLE 74, SECOND PARAGRAPH, OF THE CORRESPONDING LAW, IN PROVIDING THE POWER OF VETO IN ADMISSION PROCEDURES, DOES NOT VIOLATE ARTICLE 5 OF THE CONSTITUTION.<sup>19/</sup>

The rule in question is found in Title Three, “Structure of the Professional Career Service System,” Chapter Nine, “Organizational Structure of the System,” Section Three, “Technical Professionalization and Selection Committees,” of the Law on the Professional Career Service in the Federal Public Administration. It stipulates that the committees shall comprise a career staff member representing the human resources area of the office, a representative of the Civil Service Secretariat, and the Chief Clerk or equivalent, who shall serve as its chair. It also provides that the committee, in dealing with admission procedures, shall serve as a Selection Committee and, replacing the Chief Clerk, the immediate hierarchical superior of the area in which the institutional need or vacancy is to be found shall participate and shall be given the right to vote and to lodge a reasoned veto against selections approved by the other members. Thus, the regulatory provisions, in line with the legal provision in question, establish that the hierarchical superior of the position open to competition may, on one occasion and under his strict responsibility, veto the finalist selected for the position during the decision-making process, providing due reasoning for his decision in the corresponding minutes, and that, in such an instance, the Technical Selection Committee shall select the person to hold the position from among the remaining finalists. In turn, Article 5 of the Constitution of the United Mexican States stipulates that no person shall be prevented from dedicating himself to the profession, industry, trade, or work that he chooses, provided that it is licit, and that that right may only be restricted by a judicial ruling when the rights of third parties are affected, or by a government order issued

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17. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_25.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_25.pdf)

18. See: LSPCAPF, Article 2.

19. Period: Tenth Period; Register: 2004110; Venue: First Chamber; Type of Thesis: Isolated; Source: Judicial Weekly and Gazette of the Federation; Book XXII, July 2013, Vol. 1; Matter(s): Constitutional; Thesis: 1st CCIII/2013 (10th.); Page: 574.

in accordance with the law when the rights of society are abridged. So, contrasting those two provisions leads to the conclusion that there is no violation of the right to work of a candidate affected by the use of veto power at the end of a competition for a public service vacancy, since the cited constitutional provision establishes no absolute and unregulated right of access to any position or post, or to remain therein, since doing so requires compliance with the requirements set by law. Thus, the right to work enjoys less protection among public servants, who do not have an unrestricted right of access to the positions they desire but, instead, must submit themselves to the established requirements of capacity and suitability – a limitation that is grounded in Articles 109 and 113 of the Federal Constitution, which set out the principles of legality, honesty, loyalty, impartiality, and efficiency that all public servants must abide by, given that the State must ensure that those wishing to secure a public post meet the conditions required for compliance with those principles. Consequently, Article 74, paragraph two, of the Law on the Professional Career Service in the Federal Public Administration, which establishes the power of veto of the superior responsible for the vacancy, is not inherently in conflict with Article 5 of the Constitution: interpreted in accordance with its institutional purpose, that veto represents a power that is included in the legal structure of the professional career service in the public administration and that is intended to ensure compliance with the requirements for access to public positions, in that it serves to complement a system of staggered checkpoints that ensure that a person who is unsuitable – by reason of an objective condition that would prevent him from meeting the constitutional principles contained in Articles 109 and 113 – cannot secure a position that is open to competition. (Amparo under review 751/2012. María Concepción Núñez Escobedo. March 20, 2013. Four-vote unanimity. Absent: José Ramón Cossío Díaz. Presented by: Alfredo Gutiérrez Ortiz Mena. Secretary: David García Sarubbi.)

**PROFESSIONAL CAREER SERVICE IN THE FEDERAL PUBLIC ADMINISTRATION. THE EXERCISE OF THE POWER OF VETO ENSHRINED IN ARTICLE 74, PARAGRAPH TWO, OF THE CORRESPONDING LAW IS SUBJECT TO A STANDARD OF STRENGTHENED MOTIVATION.<sup>20/</sup>**

In accordance with that legal precept and the regulatory provisions dealing with it, the power of veto is granted to the immediate hierarchical superior of the area in which the institutional need or vacancy is to be found, who is to chair the Technical Selection Committee, and who may use that power once a majority of the Committee has selected a winner who, in its opinion, has satisfied all the requirements for holding the position and is best suited for filling the post; in other words, the right of veto is intended to prevent the winner of a competition from assuming the position. That veto may only be used once, under the strict responsibility of the hierarchical superior, who must provide due reasoning to justify his decision in the corresponding minutes. Thus, the Committee elects, from among the remaining finalists, the selected candidate. Consequently, as this Supreme Court of Justice of the Nation has found, this act is not restricted to the internal sphere of the government – in other words, between authorities; instead, it has a higher juridical institutional importance, in that society is the recipient of the State's public services and, consequently, has an interest in their being provided by suitable public officials; at the same time, it is of importance for the right of access to public employment under conditions of equality based on merit, against the backdrop of the ban on discrimination enshrined in Article 1 of the Constitution of the United Mexican States. As a result, and based on an interpretation in line with

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20. Period: Tenth Period; Register: 2004111; Venue: First Chamber; Type of Thesis: Isolated; Source: Judicial Weekly and Gazette of the Federation; Book XXII, July 2013, Vol. 1; Matter(s): Constitutional; Thesis: 1st. CCIV/2013 (10th.); Page: 576.

Articles 109 and 113 of the Constitution, in issuing such a veto the guarantees of strengthened grounds and motivation must be met: in other words, the existence of a substantive, objective, reasonable, and not merely formal consideration of the applicable regulation must be present, focused on the principles of legality, honesty, loyalty, impartiality, and efficiency; thus, the requirement of constitutional validity of the hierarchical superior's power of veto is the result of an objective and reasonable motivation of the specific circumstances of the case and it is related substantially to the danger that could exist in connection with the optimization of the principles contained in Articles 109 and 113 of the Constitution to demonstrate that, contrary to the presumption of suitability arising from a victory in a competition, there are objective reasons indicating that the person in question is not suited to the position. To summarize, the power of veto has a dual nature, which requires a strengthened motivation, given that a veto: (a) prevents the winner of a competition from actually being selected, which could endanger the legal objective of ensuring equal opportunities in access to public posts on the basis of merit, and so the decision to veto must take careful account of the circumstances of the specific case and of only those objective reasons related to upholding the constitutional principles; and (b) serves as a control mechanism entrusted to the hierarchical superior in his capacity as the guarantor of the optimal provision of public service, in which society has an interest as the recipient of the State's services, which must also be considered carefully in each case, because vetoing for insufficient cause a person who, *prima facie*, appears suited to the post indirectly harms the provision of the public service rendered to society. (Amparo under review 751/2012. María Concepción Núñez Escobedo. March 20, 2013. Four-vote unanimity. Absent: José Ramón Cossío Díaz. Presented by: Alfredo Gutiérrez Ortiz Mena. Secretary: David García Sarubbi.)

PROFESSIONAL CAREER SERVICE IN THE FEDERAL PUBLIC ADMINISTRATION. THE POWER OF VETO ESTABLISHED IN ARTICLE 74, PARAGRAPH TWO, OF THE CORRESPONDING LAW, MUST BE INTERPRETED IN ACCORDANCE WITH ARTICLES 109 AND 113 OF THE FEDERAL CONSTITUTION.<sup>21/</sup>

The precept in question establishes that the Technical Professionalization and Selection Committees shall be composed of a career staff member representing the human resources area of the office, a representative of the Secretariat of the Civil Service, and the Chief Clerk or equivalent, who shall serve as the chair. In addition, it states that the committee, in discharging admission procedures, shall serve as a Selection Committee and, replacing the Chief Clerk, the immediate hierarchical superior of the area in which the institutional need or vacancy is to be found shall participate and shall be given the right to vote and to lodge a reasoned veto against selections approved by the other members. Thus, the regulatory provisions, in line with the cited legal provision, establish that the hierarchical superior of the position open to competition may, on one occasion and under his strict responsibility, veto a finalist selected for the position during the decision-making process, providing due reasoning for his decision in the corresponding minutes, and that, in such an instance, the Technical Selection Committee shall select the person to hold the position from among the remaining finalists. Now, that power of veto must be interpreted in terms of the constitutional principles of legality, honesty, loyalty, impartiality, and efficiency as set out, respectively, in Articles 109 and 113 of the Constitution of the United Mexican States; those principles are to characterize the activities of the State, since they are to be observed by public servants, since although they are literally referred to in the constitutional text

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21. Period: Tenth Period; Register: 2004112; Venue: First Chamber; Type of Thesis: Isolated; Source: Judicial Weekly and Gazette of the Federation; Book: XXII, July 2013, Vol. 1; Matter(s): Administrative; Thesis: 1st. CCXII/2013 (10th); Page: 577.

as the basis for implementation of models for the administrative responsibility of public servants, it is nevertheless true that as constitutional principles, they must be applicable in the legal order of other related spheres. Thus, those principles must serve to interpret the provisions of the Law on the Professional Career Service in the Federal Public Administration; and on the basis of that premise the procedures that make up the Professional Career Service can be seen as ways to ensure that persons who are to become public servants are suitable for meeting the constitutional principles, since they will be the measure for determining their probable administrative responsibility in the performance of their functions. Based on that, the conclusion is that the power of veto cannot be used in an openly discretionary way, nor can it be understood as an unlimited power; rather, it is a tool for decision-making available to the hierarchical superior of a vacant post for exercising subsequent control over the admission to and continued presence of people in public service, which corresponds to the hierarchical superior on account of his immediate position as the first guarantor in public service; nevertheless, it is a tool that must only be used to objectively establish an exceptional situation – one not covered in the announcement or processing of the competition – that undermines the suitability of the candidate to the vacancy, thereby preventing a selected candidate from securing such a position in spite of there being a negative situation leading to his inability to comply with the guiding principles of public service. (Amparo under review 751/2012. María Concepción Núñez Escobedo. March 20, 2013. Four-vote unanimity. Absent: José Ramón Cossío Díaz. Presented by: Alfredo Gutiérrez Ortiz Mena. Secretary: David García Sarubbi.)

[21] On this point, in its response,<sup>22/</sup> Mexico also states that between 2004 and October 2015, the average number of vetoes used was barely equal to one percent (1%) of the total number of competitions held. This information was also expanded during the on-site visit with the details given below:

Numbers and percentages of cases in which the veto referred to in Article 74 of the LSPC and Articles 37 and 38 of the R-LSPC was used<sup>23/</sup>

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016*	Total
No. of competitions	4,022	7,764	6,581	7,137	6,990	6,808	5,853	7,451	6,113	1,031	59,750
No. of vetoes	38	39	48	149	118	64	69	55	30	7	617
% percentage	0.94	0.50	0.73	2.09	1.69	0.94	1.18	0.74	0.49	0.68	1.03

\* Up to March 31, 2016.

[22] In addition to above, and in order to avoid the arbitrary use of vetoes by superiors, in its response, Mexico emphasizes the power granted to all participants in selection procedures to lodge,

22. See Mexico's response to the questionnaire, p. 37, note 13 *supra*.

23. See: document submitted by the SFP during the on-site visit, available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_84.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_84.pdf)

with the SFP, an appeal for reversal, as provided for in Article 76 of the LSPC, as a way to challenge decisions that could affect their rights in such procedures.<sup>24/</sup>

[23] In connection with this, during the on-site visit, Mexico supplied the following information on the number of appeals for reversal lodged with the SFP, against decisions issued in selection processes from the entry into force of the R-LSPC in 2007 up until March 2016:

Numbers and percentages of appeal for reversals  
brought against decisions adopted in recruitment processes<sup>25/</sup>

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016*	Total
No. of competitions	4,022	7,764	6,581	7,137	6,990	6,808	5,853	7,451	6,113	1,031	59,750
No. of challenges	34	41	49	79	63	89	57	61	58	8	539
% percentage	0.85	0.53	0.74	1.11	0.90	1.31	0.97	0.82	0.95	0.78	0.90

\* Up to March 31, 2016.

[24] Although it fails to identify the nature of the challenged decisions or the procedural status of the appeals lodged, this information allows the Committee to determine that use has been made of the right granted by the LSPC to all participants in a selection process to challenge an official decision deemed to affect their rights, including the use of vetoes, pursuant to the procedure established in the LSPC, in the *Federal Law of Administrative Procedure*, and in the *Law Amparo, Regulating Articles 103 and 107 of the Constitution of the United Mexican States*.

[25] In consideration whereof, although it is true that the current text of Article 37 of the R-LSPC does not establish specific grounds for exercising the power of veto provided for in Article 74 of the LSPC, the Committee takes note of the satisfactory consideration by the country under review of measure (a) of recommendation 1.1.1 from the Second Round, bearing in mind that Article 37 establishes that vetoes were to be used under the strict responsibility of the hierarchical superior and, in addition, stipulates that those superiors are required to provide adequate reasons for their decisions in the corresponding minutes, based on the causes applicable to the specific case and on the precedents set by the SCJN as transcribed above, which state that pursuant to Articles 109 and 113 of the Constitution, "...in issuing such a veto the guarantees of strengthened grounds and motivation must be met: in other words, the existence of a substantive, objective, reasonable, and not merely formal consideration of the applicable regulation must be present, focused on the principles of legality, honesty, loyalty, impartiality, and efficiency."

[26] Irrespective of the foregoing, and recognizing that the veto power granted by Article 74 of the LSPC has been used in less than 1% of all competitions for admission to the Professional Career Service (hereinafter "SPC") held since 2007, the Committee invites the country under review to consider the possibility of eliminating this power granted to hierarchical superiors. With this, the

24. See: Article 16, section II, of the Internal Regulations of the SFP, available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_19.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_19.pdf)

25. See: document presented by the SFP during the on-site visit, note 23 *supra*.

Committee believes, the process for entry into public service would enjoy greater transparency and clarity and levels of public trust would be increased. (See recommendation 1.1.3.1 in section 1.1.3 of Chapter II of this report.)

[27] This is consistent with other recommendations on this issue served to the country under review by other international organizations, such as the Organization for Economic Cooperation and Development<sup>26/</sup> (OECD) and the Inter-American Development Bank<sup>27/</sup> (IDB), that, like the OAS through the MESICIC, seek to help strengthen hiring systems for public officials in Mexico.

Measure (b) suggested by the Committee that requires additional attention within the Framework of the Third Round:<sup>28/</sup>

*Examine the reasons why a considerable number of competitive selection processes have been declared void, in order to adopt the necessary corrective measures.*

[28] Both in its response to the Questionnaire<sup>29/</sup> and during the on-site visit, Mexico presented information and new developments regarding this measure. Of these, the Committee notes the following as steps contributing to progress with its implementation:

[29] The enactment in September 2007 of the R-LSPC, described above, Article 40 of which establishes the following sole reasons for which a competition can be declared void: (i) because no candidates registered for the competition, (ii) because none of the candidates obtained the minimum score required to be considered a finalist, or (iii) because only one finalist reached the decision stage and was either vetoed or failed to secure the majority vote of the members of the CTS.

[30] Based on the foregoing, Mexico indicates that the first two reasons depend solely on the candidates themselves, while the third, which addresses vetoes, must be examined in conjunction with the due reasoning behind the decision of the superior exercising that power, as described above.

[31] In addition, in both its response to the Questionnaire<sup>30/</sup> and the progress reports<sup>31/</sup> presented pursuant to Article 32 of the Rules of Procedure, Mexico stated that the number of voided competitions has been on the decline since the entry into force of the R-LSPC in 2007. Thus, during the on-site visit, statistical data<sup>32/</sup> were furnished, indicating the following:

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26. See: OECD (2011), *Towards More Effective and Dynamic Public Management in Mexico*, OECD Publishing, p. 182. Available at: <http://www.oecd.org/gov/regulatory-policy/48808023.pdf>
  27. See: IDB (2014), *Diagnóstico Institucional del Servicio Civil en América Latina: México*, IDB, p. 53. Available at: <https://publications.iadb.org/handle/11319/6620>
  28. See Report on Mexico from the Third Round, p. 44, nota *supra* 4.
  29. See Mexico's response to the questionnaire, p. 37, note 13 *supra*.
  30. Ibid.
  31. Available at: [http://www.oas.org/juridico/spanish/mec\\_inf\\_avance.htm](http://www.oas.org/juridico/spanish/mec_inf_avance.htm)
  32. See: document presented by the SFP during the on-site visit, note 23 *supra*.

Numbers and percentages of competitions declared void

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016*	Total
No. of competitions	4,022	7,764	6,581	7,137	6,990	6,808	5,853	7,451	6,113	1,031	59,750
No. void	1,752	3,354	2,297	2,147	1,972	1,823	1,589	1,979	1,503	68	18,484
% percentage	43	43	35	30	28	27	27	26	24	.06	31

\* Up to March 31, 2016.

[32] These figures indicate the decline in the number of competitions declared void since the entry into force of the R-LSPC.

[33] In addition, in its response to the Questionnaire,<sup>33/</sup> Mexico states that it has information since 2010 indicating the reasons why competitions were declared void: thus, up to 2013, 97% of the voided competitions were due to the cause established in Article 40, section II, of the R-LSPC – that is, because none of the candidates obtained the minimum score needed to qualify as a finalist – while the remaining 3% were due to the cause set out in section III of the same article, which provides for the veto as described above.

[34] Although this information indicates that Mexico has satisfactorily considered measure (b) of recommendation 1.1.1 from the Second Round as regards the suggestion of “*examin[ing] the reasons why a considerable number of competitive selection processes have been declared void,*” the statistical data given above also indicate that the percentage of such declarations remains above 30% of the total number of competitions organized since the R-LSPC’s entry into force in 2007.

[35] The Committee notes that this percentage, above 30%, is similar to the one identified in the Second Round when the measure under review was formulated. However, although on that occasion, based on the information provided by Mexico, it was concluded that the percentage of competitions declared void was largely due to the cause established in section II of Article 40 of the R-LSPC, the Committee urges the country under review to give additional attention to the second part of measure (b) of recommendation 1.1.1. from the Second Round as regards the adoption of *the necessary corrective measures*.

[36] Related to this is the fact that during the on-site visit, the representatives of the SFP spoke of certain possible factors, chiefly salary in nature, that could be affecting the number of candidates with the necessary skills and abilities for securing the minimum score to qualify as finalists in selection processes registering for public competitions to enter the SPC, which, in turn, would affect the number of competitions declared void.

[37] Bearing this in mind and since the principles of openness, equity, and efficiency enshrined in the Convention, together with that of merit, are essential elements in guaranteeing that personnel recruitment and selection procedures ensure that the most suitable, best trained, and competent candidates enjoy access to public service, the Committee will reformulate measure (b) for the country

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33. See Mexico’s response to the questionnaire, p. 40, note 13 *supra*.

under review to consider conducting an analysis of the reasons why the APF's public competitions are not attracting more suitable and qualified candidates, in order for it to adopt the necessary corrective measures and, *inter alia*, to reduce the significant percentage of competitions declared void, chiefly those voided on the grounds provided for in Article 40, section II, of the R-LSPC. (See recommendation 1.1.3.2 in section 1.1.3 of Chapter II of this report.)

[38] In addition, the Committee believes that it would be beneficial for Mexico to consider organizing promotion and dissemination campaigns about employment opportunities in the APF in order to attract more candidates and encourage them to seek public employment. (See recommendation 1.1.3.3 in section 1.1.3 of Chapter II of this report.)

[39] Related to this topic, during the on-site visit the SFP's representatives described some of the main issues addressed in the methodology and qualification scales for assessing experience and appraising merit to be observed by offices or units responsible for human resources management<sup>34/</sup> and matters related to the preparation and, as applicable, updating of the *position profiles*<sup>35/</sup> being undertaken by the SFP, which constitute the set of requirements for occupying a position listed in the *Catalogue*<sup>36/</sup> and also identify the essential skills, aptitudes, and capacities for occupying and discharging a position in accordance with sections 18 and 20 of the RH-SPC Manual.

[40] Based on the contents of the above documents but without conducting a detailed analysis of them, the Committee recognizes Mexico's efforts to provide tools to support admission to the APF on the basis of merit, equality of opportunities, and impartiality, through objective and transparent evaluations pursuant to the terms of Article 29 of the R-LSPC and, without formulating a specific recommendation on the matter, the Committee invites the country under review to continue taking actions to strengthen and consolidate the SPC, and to improve its planning, admission, professional development, and performance evaluation procedures, among others, in compliance with the Constitution of the United Mexican States<sup>37/</sup> (hereinafter "CPEUM"), the 2013-2018 National Development Plan, the 2013-2018 Close and Modern Government Program, and the 2016-2018 Professional Career Service in the Federal Public Administration Program, about the content and scope of which the Committee learned more during the on-site visit and to which it will refer below.

[41] As part of those actions, it should also be noted that on that same occasion, the representatives of the SFP spoke of the idea that existed within the APF to create, in the future, a public servant training school, the main objective of which would be to strengthen and develop the technical, professional, and ethical capacities of individuals interested in public service.

#### Measure c)

[42] This measure was satisfactorily considered and, therefore, does not require additional attention.<sup>38/</sup>

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34. See: <http://goo.gl/iOxxVP>

35. See: <http://goo.gl/Pk5rs5>

36. See: section 17.1 of the RH-SPC Manual, note 17 *supra*.

37. Available, up to the last amendment published in the DOF on January 29, 2016, at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_1.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_1.pdf)

38. See Report on Mexico from the Third Round, pp. 44 y 45, nota *supra* 4.

Recommendation 1.1.2:

*Strengthen the systems for hiring public servants in the federal legislative branch.*

Measures suggested by the Committee that require additional attention within the Framework of the Third Round:<sup>39/</sup>

- a) *Adopt, through the appropriate authority, a merit-based selection procedure to fill the career staff vacancies in the House of Deputies mentioned in Articles 49 and 51 of the Organic Law of the Congress of the United Mexican States (LOCGEUM) in light of their essentially technical nature, taking into account to that end the principles of openness, equity and efficiency provided in the Convention.*
- b) *Enact, through the appropriate authority and within a reasonable time, the amendments to the Statutes on the Technical and Administrative Organization of the House of Deputies Service Career, bearing in mind to that end the principles of openness, equity and efficiency provided in the Convention.*
- c) *Consider, through the appropriate authority, positions in the areas of parliamentary, administrative, and financial services of the House of Deputies, as included in the House of Deputies Career Service, bearing in mind their essentially technical nature and the provisions contained in Articles 49 and 51 of the Organic Law of the Congress of the United Mexican States (LOCGEUM).*

[43] In its response to the Questionnaire,<sup>40/</sup> the country under review presented no information further to that which the Committee reviewed in the Third Round regarding measures (a), (b), and (c) of recommendation 1.1.2. The Committee therefore reiterates its remarks and conclusions made on this topic in the Second Round Report,<sup>41/</sup> and it urges the country under review to give additional attention to their implementation. (See recommendations 1.1.3.4 to 1.1.3.6 in section 1.1.3 of Chapter II of this report.)

[44] Nevertheless, during the on-site visit, the representatives of the Chamber of Deputies spoke of the process of *redimensioning* the administrative regulations within the federal legislature that the Chamber is currently undertaking as part of the agenda of the 63rd Legislature, specifically as regards the modernization of almost 46 regulations covering different matters.

[45] Thus, they indicated that within its area of authority, the Chamber's General Directorate of Human Resources was updating such regulations as the *General Organization Manual*<sup>42/</sup> and the *Guidelines for the Administration and Oversight of the Human Resources of the Chamber of Deputies*.<sup>43/</sup>

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39. Ibid, p. 45.

40. See Mexico's response to the questionnaire, p. 41, note 13 *supra*.

41. See Report on Mexico from the Second Round, pp. 8, 9, and 36, note 4 *supra*.

42. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_47.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_47.pdf)

43. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_48.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_48.pdf)

[46] One of the main objectives of the amendment of the *Guidelines*, they said, was to bring the provisions governing personnel recruitment into line with such higher ranking provisions as the *Organic Law on the General Congress of the United Mexican States* (hereinafter “LOCGEUM”),<sup>44/</sup> specifically Articles 49 and 51 thereof, which are intended to incorporate career officers into the Parliamentary Services Secretariat and the Administrative and Financial Services Secretariat, respectively, as suggested by measure (c) of recommendation 1.1.2.

[47] In addition, as part of this updating process, the representatives of the Chamber of Deputies explained that steps were currently being proposed to bring the *Statute on the Technical and Administrative Organization of the Career Service of the Chamber of Deputies*<sup>45/</sup> into line with the aforesaid *Guidelines*, bearing in mind that both instruments address such topics as ranks, positions, and vacancies within the Chamber’s Career Service, and that those measures would help attain the objective referred to in measure (b) of recommendation 1.1.2 from the Second Round.

[48] As regards the merit-based selection procedure for filling vacancies in the Chamber of Deputies Career Service suggested in measure (a) of that recommendation, together with the consideration of the jobs included within that service, the representatives of the Chamber of Deputies noted that both topics were also covered by the analysis of the reforms currently underway within the Chamber of Deputies’ General Secretariat, Secretariat of Administrative and Financial Services, and Directorate of Human Resources.

[49] Together with the above, and based on the information gathered during the on-site visit, the Committee was also apprised of other facts related to the system for the hiring of public officials in the legislature that are arising as a result of the entry into force of the constitutional amendment on political and electoral matters<sup>46/</sup> published in the DOF on February 10, 2014, specifically as regards the consecutive reelection of federal representatives<sup>47/</sup> following the amendment of Article 59 of the Constitution.

[50] One of those facts is the suspension, as yet indefinite, of public competitions for filling vacancies within the Chamber of Deputies. While it is true that such vacancies are published on the Chamber’s web site, it is also true that, as indicated during the on-site visit, the Chamber gives preference to those who are already in some way or another working within it and this, it was said, was undermining the principle of equity enshrined in Article III, paragraph 5, of the Convention.

[51] In addition, and as a consequence of the ongoing legal and administrative reorganization referred to above, the Chamber of Deputies also said that although the *Statute on the Technical and Administrative Organization of the Career Service of the Chamber of Deputies* remains in force, its enforcement has also been suspended.

[52] Thus, while not failing to recognize the progress reported by Mexico with updating and modernizing the administrative regulations of the Chamber of Deputies as a part of the process of harmonizing them with higher-level regulations and of reorganizing and amending legal and administrative provisions in connection with the aforesaid constitutional amendment on political and

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44. Available, up to the last amendment published in the DOF on March 4, 2016, at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_3.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_3.pdf)

45. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_49.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_49.pdf)

46. See: <http://goo.gl/2WuF6m>

47. The consecutive reelection of federal representatives will allow, as of the 2018 election, the reelection of both senators and deputies for up to 12 years: in other words, senators may be reelected for a second consecutive term (6 years per term), while deputies may be reelected for up to four consecutive terms (3 years per term).

electoral matters, the Committee will formulate a recommendation for the country under review to consider adopting the relevant measures to reestablish the Chamber of Deputies Career Service and to apply the merit-based hiring system by means of public competitions. In this manner, special procedures are not excessively and unjustifiably used which, in given circumstances, allow the Chamber of Deputies to hire personnel without abiding by that system. (See recommendation 1.1.3.7 in section 1.1.3 of Chapter II of this report.)

[53] Finally, and although in the Second Round no recommendations were issued for the Senate of the Republic in connection with its hiring systems, based on the information gathered during the on-site visit regarding the joint work being carried out by the two Chambers of the federal legislature to standardize their administrative regimes, the Committee believes it would be beneficial for the country under review to consider adopting the relevant measures to harmonize the management of both parliamentary hiring systems, guided by the principles of openness, equity, and efficiency as enshrined in the Convention. (See recommendation 1.1.3.8 in section 1.1.3 of Chapter II of this report.)

Recommendation 1.1.3:

*Strengthen the systems for hiring public servants in the federal judicial branch.*

Measure suggested by the Committee that requires additional attention within the Framework of the Third Round:<sup>48/</sup>

*Adopt, through the appropriate authority, a merit-based selection procedure for judicial career positions other than those of circuit magistrate and district judge, in light of their essentially technical nature, bearing in mind to that end the principles of openness, equity and efficiency provided in the Convention.*

[54] In its response to the Questionnaire,<sup>49/</sup> the country under review gave no additional information regarding the measure suggested in recommendation 1.1.3, further to that which the Committee reviewed in the Third Round. Nevertheless, during the on-site visit, the representatives of the Judiciary, through the Federal Judicature Council (hereinafter “CJF”), spoke of the competence examinations that, under Article 115 of the *Organic Law of the Judiciary of the Federation*<sup>50/</sup> (hereinafter “LOPJF”) and the *General Agreement of the Plenary of the CJF Regulating the Judicial Career and the Conditions of Judicial Officers*,<sup>51/</sup> a candidate must pass in order to be appointed as a clerk or secretary of a district court or circuit court.

[55] In this regard, it should be noted that Article 97 of the Constitution provides that “...magistrates and judges shall appoint and remove the corresponding officers and employees of circuit courts and district courts in accordance with the provisions of the law governing the judicial career.” Thus, the LOPJF (Article 112, Chapter I, Title Seven, “The Judicial Career) states that admission to the categories listed in sections III to X of Article 110 thereof requires passing a

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48. See Report on Mexico from the Third Round, p. 46, nota *supra* 4.

49. See Mexico’s response to the questionnaire, p. 45, note 13 *supra*.

50. Available, up to the last amendment published in the DOF on November 4, 2015, at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_4.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_4.pdf)

51. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_35.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_35.pdf). See also the General Agreement of the Plenary of the CJF amending and adding provisions of various general agreements governing appointments, published on November 26, 2015, available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_86.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_86.pdf)

competence examination, to be organized and held by the Judicature Institute<sup>52/</sup> (hereinafter “IJF”) according to the rules set by the CJF in accordance with the terms of the Law and the corresponding Regulations.<sup>53/</sup>

[56] That having been said, during the on-site visit, the representatives of CJF shared a document<sup>54/</sup> stating that the high level of specialization of the training courses<sup>55/</sup> and of the competence exams taken by candidates for positions as secretaries and clerks allows great certainty about successful candidates having sufficient merit and the skills necessary to correctly perform the duties of those positions. The document also states that the names of those successfully completing the courses given by the IJF and passing the competence examination are placed on a list, which is prepared and maintained by the Institute and published on its web page, among other venues, so that judges and magistrates may, pursuant to the power given by Article 97 of the Constitution, choose those they deem most suitable for the position in question.

[57] On this point, the CJF’s document explains that magistrates and judges offer appointments as secretaries and clerks under their personal responsibility of verifying that the candidates meet the requirements set by law and by the Council’s own general agreements, and that they are required to notify the CJF’s General Directorate of Human Resources for administrative purposes only.

[58] Accordingly, although it acknowledges that access to judicial career job categories other than those of circuit magistrate and district judge referred to in sections III to X of Article 110 of the LOPJF necessarily requires passing the competence exam or completing the relevant courses given by the IJF, as applicable, the Committee repeats its comments and conclusions contained in the Second Round Report,<sup>56/</sup> bearing in mind that judges and magistrates still have the power to make final decisions regarding appointments to those positions. Accordingly, the Committee urges the country under review to give additional attention to its implementation. (See recommendation 1.1.3.9 in section 1.1.3 of Chapter II of this report.)

[59] Similarly, the document presented by the CJF during the on-site visit also indicates that magistrates and judges, under the aforesaid power granted by Article 97 of the Constitution, are to appoint people to fill the only two positions in the courts’ staff that perform administrative and not judicial functions: subject to completion of the corresponding course, for Technical Administrative Coordinators, and subject to passing the corresponding competence exam, for Juridical Analysts of the Comprehensive Case-file Follow-up System (SISE).<sup>57/</sup> Therefore, and in pursuit of the continued strengthening of transparency, impartiality, equality of opportunities, and public trust in access to public service within Mexico’s federal judiciary, the Committee – using the same criteria as it used to formulate recommendation 4.4.1 during the Fourth Round<sup>58/</sup> – urges the country under review to consider adopting, by means of the relevant legal authority and procedures, provisions that establish

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52. See: LOPJF, Article 92 *et seq.*

53. See: LOPJF, Article 115.

54. See: document submitted by the CJF during the on-site visit, available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_85.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_85.pdf)

55. In addition to the competence exams it administers, the IJF also provides three types of training: basic courses, specialization courses, and courses intended for secretaries and clerks. For secretaries, passing the specialization course and the course for secretaries, taught on site, equates to passing the competence exam for secretaries.

56. See: Second Round Report on Mexico, pp. 9 and 36, note 4 *supra*.

57. See: General Agreement of the Plenary of the Federal Judicature Council establishing provisions governing administrative activities within courts, available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_40.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_40.pdf)

58. See: Fourth Round Report on Mexico, p. 42, available at: [http://www.oas.org/juridico/PDFs/mesicic4\\_mex\\_sp.pdf](http://www.oas.org/juridico/PDFs/mesicic4_mex_sp.pdf)

merit-based selection processes for filling the positions within its courts that are not covered by the judicial career regime. (See recommendation 1.1.3.10 in section 1.1.3 of Chapter II of this report.)

[60] In addition, both in the document presented by the CJF and in remarks made during the on-site visit, the representatives of this body noted that, pursuant to the Council's General Positions Manual, administrative officials employed by the courts do not require specialized judicial knowledge to perform their tasks and the occupants of those positions are appointed by the heads of the corresponding courts in accordance with the criteria they deem necessary for those judicial bodies to function correctly. They also added that competence exams were not required for administrative positions, and they noted the absence of standardized procedures for the hiring of staff members of that kind.

[61] Based on the foregoing, and bearing in mind the efforts reported by the country under review both in its response to the questionnaire and during the on-site visit – such as the *Master Plan for Skill-based Training and Administrative Development*,<sup>59/</sup> adopted in 2013, the main objective of which is to set the foundations for the organization and operation of a *professional administrative career service system*<sup>60/</sup> – the Committee will formulate a recommendation for the establishment, within the judiciary, of a suitable administrative career service, taking into account the specific organization and powers of that branch of government. (See recommendation 1.1.3.11 in section 1.1.3 of Chapter II of this report.)

[62] In connection with the foregoing, it should be noted that in both the document they presented and in the remarks made during the on-site visit, the representatives of the CJF noted that all persons appointed as administrative officials can obtain a staff status after being in that position for six months, which provides them with job stability in that they can only be dismissed for cause, in contrast to workers in positions of trust, who do not enjoy that right.

### **1.1.2. New developments with respect to the provision of the Convention on the systems of government hiring**

#### **1.1.2.1. New developments with respect to the legal framework**

##### a) Scope

- Legal provisions applicable to the authorities, entities, organs, and agencies of the legislative, executive, and judicial branches, among others, regarding transparency and access to information:

[63] – The *General Law on Transparency and Access to Public Information*<sup>61/</sup> (hereinafter "LGTAIP"), published in the DOF on May 4, 2015, which, among other objectives, establishes the basis and information of public interest that should be disseminated proactively. In this regard, Article 70 of this Law establishes, among other common transparency obligations for those subject to article 1, to make available to the public and keep updated, through electronic means, the total number of positions of core and trust staff, specifying the total vacancies by job level for each administrative unit, the hiring of professional services by fees, providing the names of the service providers,

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59. See: Document presented by the CJF during the on-site visit, available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_85.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_85.pdf)

60. See Mexico's response to the questionnaire, p. 45, note 13 *supra*.

61. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_7.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_7.pdf)

contracted services, the amount of the fees and the period of contract as well as the convocation notices to fill a public office and the results thereof.

[64] – The *Federal Law on Transparency and Access to Public Information*<sup>62/</sup> (hereinafter “LFTAIP”), published in the DOF on May 9, 2016, which aims to provide what is necessary at the federal level, to guarantee the right of access to public information held by any authority, entity, body or agency of the legislative, executive and judicial branches and others set out in article 1, in the terms provided by the CPEUM and LGTAIP.

- Statutory and other legal provisions applicable to public employees in the APF, such as:

[65] – *The 2013-2018 National Development Plan*<sup>63/</sup> (hereinafter “PND”), drawn up pursuant to Article 26 of the Constitution and published in the DOF on May 20, 2013, which sets five national goals and three crosscutting strategies. The first national goal, styled “*Mexico at Peace*,” includes the strategy of “*combating corruption and increasing the transparency of public actions in the area of justice to regain public trust*,” which includes the line of action “*developing criteria for selection and for evaluating performance and professional skills*.” In turn, the crosscutting strategy styled “*Close and Modern Government*” is intended to promote a government with policies and programs framed by a results-oriented public administration that is efficient, is equipped with evaluation mechanisms to improve its performance, optimizes the use of public resources, simplifies the legal structure and government procedures, renders clear and timely accounts to the public, and uses robust, modern information technologies.

[66] – *The Program for a Close and Modern Government*<sup>64/</sup> (hereinafter “PGCM”), published in the DOF on August 30, 2013, and drawn up pursuant to the terms of the previous paragraph and to Article 6 of the “*Austerity Decree*,” published in the DOF on December 10, 2012, and Article 61 of the *Federal Budget and Fiscal Responsibility Law*, the objectives of which includes improving the public administration in the APF by transforming the operations of its component offices and agencies, through strengthening the professionalization of public servants and through the management of human resource processes, including the SPC, on the basis of skills and merit, among other lines of action.

[67] – *The 2016-2018 Program for the Professional Career Service in the Federal Public Administration*<sup>65/</sup> (hereinafter “PSPC”), published in the DOF on February 11, 2016, and prepared by the SFP, taking into account, among other elements, the recommendations formulated by the Committee in the Second Round. The general objective of this program is “...to strengthen and consolidate the SPC in the agencies and the devolved administrative offices where the system operates, and to foster improvements in the procedures of the subsystems for human resource planning, admissions, professional development, training and skill certification, performance evaluation, separation, and oversight and evaluation.”

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62. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_8.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_8.pdf)

63. See: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_58.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_58.pdf)

64. See: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_59.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_59.pdf)

65. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_26.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_26.pdf)

[68] In addition, based on the PND and the PGCM referred to above, the PSPC sets the following strategies and specific objectives for increasing the efficiency of the SPC System:

National Goal (PGCM)	Objective of the National Goal (PGCM)	Strategies of the Objective of the National Goal	Specific Objectives of the PSPC
Improving public administration in the APF	Strengthening the professionalization of public servants	Strengthening the professionalization of career public servants in the APF	<p><u>Specific objective 1:</u> Managing the SPC's human resource processes, based on skills and merit.</p> <p><u>Specific objective 2:</u> Reviewing regulations to improve the operation of the SPC System in the APF.</p> <p><u>Specific objective 3:</u> Establishing efficient mechanisms for the professional development and mobility of career public servants, for professional improvement.</p>
		Strengthening the planning and oversight of human resources, in line with institutional strategic objectives and goals.	<p><u>Specific objective 4:</u> Making improvements in the SPC's oversight and information mechanisms to allow correct operations and follow-up.</p>

[69] – The R-LSPC,<sup>66/</sup> referred to in the previous section and published in the DOF on September 6, 2007, repealed a series of provisions including those contained in the R-LSPC published in the DOF on April 2, 2004, which was reviewed by the Committee in the Second Round. Based on the information gathered during the on-site visit, the current R-LSPC was drafted in order to decentralize, on behalf of the institutions that make up the APF,<sup>67/</sup> the operations of the SPC and to delegate to the SFP the power to program, direct, coordinate, evaluate, and monitor the System's operations and functioning.

[70] – Specifically, as regards the SPC's Admissions Subsystem, Article 29 of the R-LSPC states that its processes are intended to attract the best candidates to posts within the System,<sup>68/</sup> based on merit and on equality of opportunities, with impartiality, and by means of objective and transparent evaluations. Thus, the institutions of the APF are responsible for implementing the mechanisms necessary to promote the broadest participation and attract the greatest number of participants to the competitions that are published, which, as provided for in Article 32 of the Regulations, are aimed at public servants in general, anyone interested in entering the SPC, and all interested parties on the *reserve list*<sup>69/</sup> for the vacancy's area or position.

66. See note 14 *supra*.

67. At present, the SPC operates in 75 institutions of the centralized APF (14 federal secretariats, the Legal Advice Office of the federal executive branch, and 60 devolved administrative agencies).

68. No position in the System may be occupied unless it is previously registered in the *Catalogue*. (See: R-LSPC, Article 29, and RH-SPC Manual, No. 17.1.)

69. Article 36 of the R-LSPC states that "Finalists who are not selected will be placed on the agency's reserve list, to be considered for vacant posts of the same or adjacent level, with the same or similar profile, and of the same group and grade, or positions at the level immediately below when they have the same or similar profile as the post for which they competed."

[71] The stages of the selection procedure, according to Article 34 of the R-LSPC, cover résumé reviews, knowledge examinations, skill assessments, evaluations of experience, appraisals of merit, interviews, and, finally, the decision, which, as applicable, shall be subject to the terms of Articles 37, 38, and 40 of the Regulations as regards the power of veto and the voiding of competitions as described by the Committee in the previous section. The results of each of those stages are given to the participants, by means of publication in the electronic media chosen by the office in question. If a member of the CTS detects any possible irregularities during the selection process, he will report them to the members for them to be clarified or remedied; if that does not happen, the Committee will suspend the process until the SFP has determined the steps to be taken.

[72] Based on the documents in the corresponding file, the representative of the SFP on the CTS will certify if the selection process was carried out in accordance with the LSPC, the Regulations, and the other applicable provisions, and in accordance with the corresponding competition announcement. Should a dispute<sup>70/</sup> arise during the process, or should the cancellation remedy provided for in Article 76 of the LSPC and Articles 97 and 98 of the Regulations be lodged, the certification will be given once the corresponding resolution has been issued.

[73] As regards exceptions to the SPC, Article 92 of the R-LSPC states that offices may fill positions in the System – either vacancies or newly created posts – without following the recruitment and selection processes in the exceptional situations set out in Article 34 of the LSPC<sup>71/</sup> and in compliance with the Regulations and other applicable provisions. The authorization of the appointment described in Article 34 of the Law grants the person designated to occupy the post in question the status of a public servant and does not confer any right of admission to the System. Within 45 working days following the date on which the appointment is authorized, the position must be opened to competition, based on the description, profile, and appraisal of the post registered in the *Catalogue* prior to that authorization. Those appointments will have the duration determined by the office head or by the Chief Clerk or similar officer, but may in no case exceed ten months. In any event, such appointments will be voided of all effect once a winner is announced in the corresponding competition.

[74] In addition, it should be noted that Articles 27 and 28 of the R-LSPC provide, respectively, that the Technical Professionalization Committees shall be responsible for ensuring that the information on their public servants is included in the Sole Register of the Professional Public Service (hereinafter “RUSP”)<sup>72/</sup> and that it is updated in accordance with the procedures set by the SFP. This Register shall contain information from the *Catalogue* to identify vacancies within the SPC, together with the public servants or other persons who could potentially fill them, either through recruitment and selection procedures or by means of an agreement.

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70. Disputes are the mechanism established by the LSPC for ensuring that actions related to the operation of the SPC are in compliance with its provisions and other applicable regulations, in order for them to be corrected or for the corresponding administrative responsibility procedure to be initiated. (See: R-LSPC, Articles 93 to 96.)

71. Article 34 of the LSPC provides: “In exceptional cases and when there is a threat of a disturbance of public order, public services, health services, security, or the environment in any area or region of the country, as a consequence of disasters caused by natural phenomena, act of God, or *force majeure*, or when circumstances exist that could cause significant losses or additional costs, office heads, Chief Clerks, or similar officers may, under their own responsibility, authorize temporary appointments to a position, a vacancy, or a newly created post, which may be occupied by any public servant, without needing to follow the recruitment and selection procedure described in this law. Such employees shall acquire no rights as regards admission to the System...”

72. See: LSPC, Articles 15 to 20.

[75] – The RH-SPC Manual,<sup>73/</sup> referred to in the previous section, published in the DOF on July 12, 2010, and last amended on February 4, 2016, the main objective of which is to collect, in a single document, the more than 13,000 rules and provisions governing human resource matters that were dispersed prior to its adoption. This Manual is one of nine produced by the SFP to improve the internal administrative regulation of the departments and agencies of the federal administration and to increase their efficiency by standardizing their internal processes and regulations, all pursuant to the *Agreement to Consolidate Zero-Base Regulation*,<sup>74/</sup> published in the DOF on August 10, 2010.

[76] Part one of this document, covering titles one to five, regulates the planning, organization, and administration of human resources at the some 300 departments and agencies that make up the APF, the office of the Attorney General of the Republic (hereinafter “PGR”), and the federal administrative courts in all matters not contravening their specific laws; in particular, the mechanisms for admission to most of those institutions are covered by Chapters I and II of Title Three of the RH-SPC Manual, which basically entail the two stages of recruitment and selection. In the first of those stages, the institutions are to report information on their vacancies to the Secretariat of Labor and Social Welfare, through the channels established by that secretariat, for inclusion in the Employment Portal<sup>75/</sup> electronic system that it manages. In the second stage, which covers evaluations, interviews, document collection, and appointment, the agency in question must ensure, *in its opinion*, that the occupant will be able to assume the functions of the position and be able to resolve the matters inherent to it; the agency must also ensure that the candidate meets the profile of the vacant post and it must handle his admission on the basis of professional skills and capacities, which may entail the use of psychometric evaluations, examinations of general and specific knowledge, the demonstration of skills related to given tools, equipment, languages, and software, interviews involving the public servant under whose authority the candidate would be, and other formalities.

[77] The second part of the RH-SPC Manual, contained in Title Six, sets rules and general criteria, guidelines, and procedures for the administration of the SPC in the around 75 institutions of the Centralized APF that are subject to the SPC. Chapter III of that title gives details on the Admissions Subsystem. It establishes the evaluation tools and the rules for appraisals and the scoring system, recruitment, announcements, the selection procedure, competitions and their stages, when they are to be suspended or canceled, candidate reserve lists, and other provisions.

[78] It should be noted that under Article 6, the provisions and procedures set out in the RH-SPC Manual must be reviewed by the SFP at least once a year so that, when necessary, they can be updated.

- Statutory and other legal provisions applicable to public employees within the judicial branch of the federal government, such as:

[79] – *General Agreement 21/2012 of the Plenary of the Federal Judicature Council, on the Judicial Internships Program in the Courts Overseen by the Federal Judicature Council*,<sup>76/</sup> which allows students in a law degree program or their equivalent to carry out legal work in those agencies and to receive financial support for those internships, provided that certain requirements are met.

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73. See: note 17 *supra*.

74. See: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_87.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_87.pdf)

75. See: [www.empleo.gob.mx](http://www.empleo.gob.mx)

76. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_36.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_36.pdf). See also: General Agreement of the Plenary of the CJF Amending, Expanding, and Repealing Provisions of Agreement 21/2012, available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_37.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_37.pdf)

[80] During the on-site visit, the representatives of the CJF explained that previously the courts and tribunals had “merit positions,” occupied by law students and/or recent graduates who, while not holding an official post, assisted those agencies in their work and thereby acquired theoretical and practical knowledge related to the courts’ activities. They explained that when temporary or permanent vacancies for administrative officers arose, the appointment was generally awarded to the holder of a “merit position,” in the understanding that the holder was already familiar with certain aspects of the Court’s work and the head of the office was familiar with his performance.

[81] With the enactment of this agreement, holders of “merit positions” were prohibited from performing duties inherent to the judicial service without receiving the payment or benefits granted by law. To implement the *Program* and facilitate comprehensive training in the professional, individual, and social development of the beneficiary students, the *Agreement* states that the heads of the jurisdictional agencies will be responsible for recruiting, choosing, and nominating the beneficiary students, and may use the support of the IJF in that; and that economic support will be provided for a non-extendable period of twelve months, provided that the student continues with his studies, with the required grades or the equivalent thereof as provided for in the *Agreement*. The *Agreement* also allows interns to cover temporary vacancies arising within the corresponding court or tribunal.

[82] The representatives of the CJF described the success with the practical implementation of this program, but they noted that it has been constrained by the lack of positions in the courts, which has limited the number of interns per jurisdictional agency to only one. Nevertheless, they said, there were plans to expand the eligible candidates to include not only students, but also unemployed law graduates.

b) Observations

[83] First, the Committee acknowledges the new legal developments introduced by Mexico to continue advancing with the establishment, maintenance, and strengthening of its systems for hiring government officials as referred to in Article III, paragraph 5, of the Convention.

[84] Nevertheless, it believes it would be beneficial to offer some remarks about the usefulness of expanding, developing, and/or amending certain provisions contained in those new developments, without prejudice to the comments offered by the Committee in section 1.1.1 above in connection with the follow-up on the implementation of the recommendations that were formulated for the country under review in the Second Round Report.

- As regards public servants within the APF, the Committee notes the following:

[85] To acknowledge the political will of the country under review to continue to make progress with improving and consolidating the operations of the SPC in terms of the national goal and crosscutting strategy set out in the PND and described above. Accordingly, and bearing in mind the objectives, strategies, and lines of action arising from the PND and set out in both the PGCM and the PSPC, chiefly as regards the strengthened professionalization of public servants, skill- and merit-based management, and the review of regulations to improve the operations of the SPC within the APF, the Committee believes it would be useful for the country under review to consider continuing to develop and implement the actions needed to attain the results proposed in both instruments based on the strategic indicators of the PGCM and the measurement indicators of the PSPC, and it invites it to report thereon in the annual progress reports provided for in Article 32 of the Committee’s Rules of Procedure. (See recommendation 1.1.3.12 in section 1.1.3 of Chapter II of this report.)

[86] In addition, based on the information supplied by Mexico both in its response to the Questionnaire<sup>77/</sup> and during the on-site visit as regards the actions taken in recent years – including, for example, the *Study of the Professional Career Service After 10 Years*,<sup>78/</sup> prepared with the support of the Center for Economic Research and Teaching (CIDE) – to bring the regime established in the LSPC and its Regulations into line with the current national situation, the PSPC, the PGCM, and, as relevant, the *National Anticorruption System* (hereinafter “SNA”) that will be described in sections 2 and 3 of Chapter II of this Report, the Committee will formulate a recommendation for the country under review to consider adapting and/or developing, as applicable, the SPC’s legal regime within the APF in accordance with the principles, objectives, and strategies of the PGCM and the PSPC, and, as appropriate, with the National Anticorruption System provided for in the Constitution, ensuring the principles of openness, equity, and efficiency established in the Convention. (See recommendation 1.1.3.13 in section 1.1.3 of Chapter II of this report.)

[87] Related to this is the information gathered during the on-site visit indicating that although with the enactment of the LSPC in 2003 and the adoption of its first Regulations in 2004, the SPC was designed as a career system, in practice it is more of an *employment system*. This is because the SPC, since the enactment of the current R-LSPC, among other factors, has been facing difficulties that affect its objectives and operations in areas such as promotions, employee scales, salaries, and performance evaluations. Accordingly, and without formulating a specific recommendation on the matter, given that these topics are not a part of the ongoing review into the implementation of Article III, paragraph 5, of the Convention, the Committee believes it would be useful, in complying with the recommendation suggested in the previous paragraph, for the country under review to take those issues into account in order to strengthen and give a new impetus to the career system in the APF.

[88] As regards the R-LSPC enacted in 2007, which decentralized and increased the flexibility of the SPC’s operations within the institutions, the Committee would like to refer to the provisions it contains regarding the exceptional appointments provided for in Article 34 of the LSPC.

[89] Article 5.b of the R-LSPC states that the status of career public servants is to be enjoyed by those appointed in the exceptional cases established in the aforesaid Article 34, for which office heads, Chief Clerks, or their equivalents may authorize temporary appointments without the need to follow a selection process. Similarly, Article 92 of the Regulations states that within 45 working days following the authorization of the appointment, the position must be opened to a competition. Such appointments shall last for the duration determined by the office head, Chief Clerk, or the equivalent thereof, provided that it does not exceed ten months. In any event, such appointments are voided of all effect once a winner is announced in the corresponding competition. Equally, in accordance with Article 92, the same person may be appointed to occupy, under Article 34 of the LSPC, different positions on up to two occasions, for a maximum period of two years. For that person to be considered anew for an appointment, under the cited provision, following that period, at least one year must have passed since the most recent appointment concluded.

[90] Together with the previous regulations, Transitory Article 2 of the R-LSPC repealed several provisions, including the *Agreement to establish criteria to be observed by offices of the Federal Public Administration and their devolved agencies in authorizing the temporary occupation of a vacant or newly created post within the Professional Career Service System, in the exceptional cases*

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77. See Mexico’s response to the questionnaire, p. 86, note 13 *supra*.

78. This study is to be restricted for a period of 2 years as of December 11, 2014, as No. 0914-692, since it is a part of the discussion process for the possible future modification of the SPC regulations. (See PSPC, note 62 *supra*.)

covered by Article 34 of the Law on the Professional Career Service in the Federal Public Administration, published in the DOF on April 11, 2005.

[91] In addition, statistical data<sup>79/</sup> were provided during the on-site visit, indicating that:

Numbers and percentages of public officials hired to occupy career positions through exceptional appointments under Article 34 of the LSPC

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016*	Total
No. of Art. 34 employees	2,480	5,002	3,050	2,926	3,221	3,199	4,427	4,611	2,990	439	32,345
No. of Art. 34 employees who won competitions	168	1,737	1,756	1,498	2,136	1,966	2,150	2,842	2,311	81	16,645
Percentage	0.06	35	58	51	66	61	49	62	77	18	51

\* Up to March 31, 2016.

[92] Although this information indicates compliance with Article 92 of the R-LSPC as regards organizing competitions after making appointments under Article 34 of the LSPC, it does not show that the competition announcements were effectively published within 45 working days following the authorization of the appointment, as required by that same article, and neither does it show whether the more than 30,000 exceptional appointments made following the enactment of the R-LSPC exceeded the limit of ten months duration or remain in effect.

[93] In addition, from the information made available to it and without prejudice to the cited provisions of the R-LSPC, the Committee was unable to identify the existence of objective criteria to clarify the exceptions to the selection process for temporary appointments under Article 34 of the LSPC in order to prevent the repeated and arbitrary use of that hiring mechanism, in addition to the fact that following the enactment of the current R-LSPC that kind of decisions were devolved to the institutions. In the Committee's view, equity, transparency, and merit are essential elements that must be observed in the systems whereby public servants are hired; it therefore believes it would be useful for the country under review to consider developing such criteria, and to publish the appointments made under Article 34 of the LSPC through the relevant channels.<sup>80/</sup> (See recommendations 1.1.3.14 and 1.1.3.15 in section 1.1.3 of Chapter II of this report.)

[94] At the same time, the Committee also acknowledges the efforts made by Mexico to include, in the Manual RH-SPC, the widely dispersed regulations governing human resource planning, organization, and administration in the APF that existed prior to its adoption in 2010. This instrument,

79. See: document presented by the SFP during the on-site visit, note 23 *supra*.

80. On September 9, 2016, the country under review reported that "... in the framework of the First Regular Meeting of the Advisory Council for the Professional Career Service System, held on August 26 last, the Council Members who are the senior officials in each institution have the power to authorize temporary appointments pursuant to Article 34 of the Law on the Professional Career Service in the Federal Public Administration. These officials likewise are responsible for human resources processes in their respective institutions. Thus, said Advisory Council created several working groups with the aim of developing criteria, and analyzing and identifying alternative solutions to address the observations and recommendations made in the Fifth Round of Review of the Committee of Experts of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC)."

as already stated, contains the general admission regulation of the around 300 institutions that make up the Centralized and Parastate APF, as well as general provisions and criteria, guidelines, and procedures for some 75 institutions of the Centralized APF that are subject to the SPC.

[95] Given this broad array of agencies where the RH-SPC Manual applies, during the on-site visit the SFP's representatives spoke of some of the main progress made and challenges remaining with the instrument's implementation, particularly bearing in mind that at present, based on figures provided during the on-site visit, the APF employs a total of approximately 1,471,351 public servants.<sup>81/</sup> Consequently, the representatives said, the challenge remains for the SFP to equip itself with greater mechanisms for verifying the correct and effective observance of the RH-SPC Manual, chiefly as regards the processes for selecting, recruiting, and admitting public servants.

[96] In this connection, and also based on the information furnished by Mexico in the Fourth Round Report indicating that "*some areas still operate as functional silos, a problem that has to be corrected as it inhibits full implementation of the administrative manuals produced by the SFP, leads to shallow analysis and impairs the ability to detect critical junctures and gaps that need to be addressed if administrative functions are to be properly performed,*"<sup>82/</sup> the Committee, following the same criteria that it used in formulating recommendation 1.4.4 in the Fourth Round Report on Mexico, will formulate a recommendation for the country under review to consider adopting, by means of the applicable legal and/or administrative procedures, provisions to strengthen or introduce appropriate oversight mechanisms to ensure strict compliance with the provisions for personnel selection in the APF as set out in the RH-SPC Manual. (See recommendation 1.1.3.16 in section 1.1.3 of Chapter II of this report.)

[97] This, the Committee believes, would make a significant contribution to fulfilling the SFP's obligation, contained in Article 6 of the RH-SPC Manual, of reviewing that manual at least once a year in order to update it, when necessary, and to upholding the principles of efficiency and effectiveness enshrined in the Convention.

[98] Another important aspect – not a new legal development as regards the implementation of the Convention's provision on government hiring systems, but one with a close relationship to the reforms and legislative progress that Mexico is undertaking in connection with the APF's human resources – is that of the legal regime governing *staff workers*.

[99] Thus, although in the Second Round the Committee focused its review of the federal executive branch on the legal regime governing officers subject the SPC, on this occasion it believes it would be useful to offer some comments on the *staff workers*. This is because, as noted previously, the APF in general employs more than 1,471,351 public servants, of whom, according to the information published on the RUSP web site on February 15, 2016,<sup>83/</sup> 71% are *staff workers*, totaling some 1,044,659.

[100] The employment regime of that category of workers is primarily contained in Article 123, section (B), of the Constitution, and in the *Federal Law on Workers at the Service of the State*, which regulates that constitutional provision<sup>84/</sup> (hereinafter "LFTSE"), and which establishes all matters

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81. Ibid.

82. See: Fourth Round Report on Mexico, p. 11 note 4 *supra*.

83. See: [http://www.usp.funcionpublica.gob.mx/rusp/contenido/graficos\\_estadisticos/tipo\\_contratacion.pdf](http://www.usp.funcionpublica.gob.mx/rusp/contenido/graficos_estadisticos/tipo_contratacion.pdf)

84. Available, up to the last amendment published in the DOF on April 2, 2014, at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_88.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_88.pdf)

related to *staff workers'* functions, appointments, work days, salaries, obligations, suspensions, tenure, dismissals, employment scales, collective organization, general working conditions, right to strike, disciplinary measures and other sanctions, and other issues.

[101] However, in both the constitutional provision and the terms of the LFTSE and the RH-SPC Manual, the Committee can find no measures intended to ensure openness, equity, and efficiency in the system for the hiring of the APF's *staff workers*, as required by the Convention, or as required by the current SPC regime for those positions to which it applies. There are therefore two hiring systems in the Mexican civil service, together with an absence of provisions requiring competitions; as a result, the possibility of hiring through direct appointments exists, which, in the Committee's view, contravenes the principle of merit as a general rule for entry into public service.

[102] Regardless of the foregoing, based on the information available to it, the Committee acknowledges the State's intention, during its discussion of the LSPC, of including the APF's *staff workers* in the SPC and subjecting them to the recruitment, selection, and appointment procedures contained in that instrument, although for various reasons that intent was not put into practice. It also acknowledges the most recent efforts taken by Mexico to strengthen all aspects of the public administration, including improving and modernizing its management of human resources, their incomes, and their professionalization, as was noted above in connection with the contents and scope of the PND and PGCM. One example of this is the relatively recent constitutional amendment on education matters and the resulting enactment of the *General Law on the Professional Teaching Service*, published in the DOF on September 11, 2013, the main objectives of which is to include the institutionalization of that service through the establishment of a regime governing the incomes, promotions, recognition, and tenure of teachers, directors, and supervisors in state-provided primary and secondary education.

[103] Thus, and based on the foregoing considerations, the Committee will formulate a recommendation for the country under review to consider adopting, through the corresponding legislative and/or administrative procedures, the pertinent reforms of the current regime for hiring the APF's *staff workers* in order to ensure that they are selected on the basis of merit and in accordance with the principles of openness, equity, and efficiency enshrined in the Convention. (See recommendation 1.1.3.17 in section 1.1.3 of Chapter II of this report.)

- As regards public servants within the legislative branch, the Committee notes:

[104] Notwithstanding the recommendations formulated to the House of Deputies in the Second Round that still require additional attention, as set out in section 1.1.1 of Chapter II of this report, the Committee invites the country under review to consider adapting and/or developing, as appropriate, the legal regime of government hiring in the PLF, in accordance with the SNA as established in the CPEUM and its regulations. (See recommendation 1.1.3.18 in section 1.1.3 of Chapter II of this report.)

- As regards public servants within the federal judiciary, the Committee notes:

[105] The Committee acknowledges the CJF's efforts to support, through its *Judicial Internships Program* described in section (a) above, the inclusion of law students in the courts' work and, possibly, of unemployed law-degree graduates or the equivalents thereof who wish to do so.

[106] Regarding this matter, and based on the information furnished by the CJF during the on-site visit, the Committee invites the country under review to consider continuing to strengthen this program, so that the courts have the spaces needed to comply with the distribution of participants provided for in *General Agreement 21/2012*, and to extend it to unemployed law-degree graduates or the equivalents thereof who wish to join the judicial branch.

[107] On this point, and in the understanding that participation in this program could in some way constitute a form of preliminary admission to the judiciary, the Committee, while not formulating a specific recommendation on the matter, repeats its remarks made in the previous section regarding the importance of filling vacancies not covered by the judicial career regime by means of merit-based selection processes that at all times maintain the principles of openness, equity, and efficiency enshrined in the Convention.

#### **1.1.2.2. New developments with respect to technology**

[108] Regarding developments of this kind, in its response, Mexico refers to the [trabajaen.gob.mx](http://trabajaen.gob.mx) web site as the single portal for receiving and processing applications for admission to the open, public competitions for entry to the SPC within the APF.

[109] Because it has been operating since 2004, that web site is not considered a new technological development under the review methodology for this Round. However, the Committee believes that in the interests of transparency and strengthening public trust in the selection procedures, it would be useful for the country under review to consider publishing, on the [trabajaen.gob.mx](http://trabajaen.gob.mx) web site and/or in the other outlets it deems appropriate, statistical data to identify, *inter alia*, the number of registered candidates, the number of selection procedures carried out, the number of applications received for the different selection processes, the numbers and percentages of selection procedures with winners, the numbers and percentages of selection procedures ruled void, the numbers and percentages of cases in which the veto power described in Article 74 of the LSPC was used, and the numbers and percentages of cancellation remedies lodged against selection process decisions and the procedural status of those filings. (See recommendation 1.1.3.19 in section 1.1.3 of Chapter II of this report.)

[110] In addition, during the on-site visit, the Committee was informed of the on-line publication of the RUSP, which is available at [www.usp.funcionpublica.gob.mx/RUSP](http://www.usp.funcionpublica.gob.mx/RUSP) and which gathers together the information recorded by the institutions regarding public servants holding any position within the APF. The RUSP web page provides a link to *statistical charts* that solely give percentage figures for occupied and vacant positions, age range by gender, contract type, contract type by gender, type of function, and type of function by gender. However, the Committee believes that the statistics on this site would be strengthened if the country under review were to consider including, in addition to the percentages, the number of public servants covered by each percentage figure, together with broken-down information on the numbers and percentages of public servants hired by means of merit-based procedures, the numbers and percentages of public officials hired to fill career positions by means of temporary or provisional appointments, the numbers and percentages of public officials hired to fill career positions by means of exceptional appointments (e.g., as provided for in Article 34 of the LSPC), the numbers and percentages of public officials hired to occupy freely appointable positions, and the numbers and percentages of people hired by the APF by means of service-provision regimes, such as administrative advisory or consultancy contracts; in addition to strengthening both transparency and public trust, this would also allow the identification of challenges and, when

applicable, the adoption of corrective measures. (See recommendation 1.1.3.20 in section 1.1.3 of Chapter II of this report.)

[111] The Committee believes that these measures would assist in attaining the aforementioned objectives, strategies, and lines of action contained in the PND, the PGCM and the PSPC, in that the APF's policies and programs should be framed by results-oriented governance that makes use of new information and communications technologies and promotes transparency and accountability, placing the public at the focal point of its actions and making strategic use of the institutional tools it has available to promote efficient, effective, and accountable governance.

### **1.1.2.3. Results**

[112] Both in its response to the Questionnaire<sup>85/</sup> and during the on-site visit, the country under review presented information on objective results obtained within the APF in connection with the government hiring systems referred to in Article III, paragraph 5, of the Convention and to which the Committee has made reference throughout the preceding sections and has formulated, in each case, the recommendations that it deemed appropriate.

[113] Nevertheless, as regards the legislature and the judiciary, the Committee urges the country under review to consider taking the appropriate steps to strengthen the production, maintenance, and publication, in the outlets it deems appropriate, of statistical information covering such issues as the number of legislative and judicial employment opportunities published, the numbers and percentages of public officials hired through merit-based selection processes, the numbers and percentages of public officials hired through temporary or provisional appointments, the numbers and percentages of public officials hired to occupy freely appointable positions, and the numbers and percentages of people hired by means of service-provision regimes, such as administrative advisory or consultancy contracts, in order to identify challenges and, when applicable, adopt corrective measures. (See recommendations 1.1.3.21 and 1.1.3.22 in section 1.1.3 of Chapter II of this report.)

### **1.1.3. Recommendations**

[114] 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. Consider the possibility of eliminating the veto power provided for in Article 74 of the LSPC, bearing in mind the principles of openness, equity, and efficiency provided for in the Convention, the applicable provisions of the CPEUM, and the jurisprudential criteria issued by the SCJN (See paragraph 26 in section 1.1.1 of Chapter II of this report.)
- 1.1.3.2. Conduct an analysis into the reasons why the public competitions of the APF are not attracting more suitable and qualified candidates, in order to adopt the necessary corrective measures and, *inter alia*, to reduce the percentage of competitions declared void, chiefly those on the grounds provided for in Article 40, section II, of the R-LSPC. (See paragraph 37 in section 1.1.1 of Chapter II of this report.)

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85. See Mexico's response to the questionnaire, pp. 86 to 88, note 11 *supra*, and document submitted by the SFP during the on-site visit, note 23 *supra*.

- 1.1.3.3. Organize promotion and dissemination campaigns regarding the employment opportunities arising in the APF in order to attract more candidates and encourage them to seek public employment. (See paragraph 38 in section 1.1.1 of Chapter II of this report.)
- 1.1.3.4. Adopt, through the appropriate authority, a merit-based selection procedure to fill the career staff vacancies in the House of Deputies mentioned in Articles 49 and 51 of the Organic Law of the Congress of the United Mexican States (LOCGEUM) in light of their essentially technical nature, taking into account to that end the principles of openness, equity and efficiency provided in the Convention. (See paragraph 43 in section 1.1.1 of Chapter II of this report).
- 1.1.3.5. Enact, through the appropriate authority and within a reasonable time, the amendments to the Statutes on the Technical and Administrative Organization of the House of Deputies Service Career, bearing in mind to that end the principles of openness, equity and efficiency provided in the Convention. (See paragraph 43 in section 1.1.1 of Chapter II of this report).
- 1.1.3.6. Consider, through the appropriate authority, positions in the areas of parliamentary, administrative, and financial services of the House of Deputies, as included in the House of Deputies Career Service, bearing in mind their essentially technical nature and the provisions contained in Articles 49 and 51 of the Organic Law of the Congress of the United Mexican States (LOCGEUM). (See paragraph 43 in section 1.1.1 of Chapter II of this report).
- 1.1.3.7. Adopt the relevant measures to reestablish the Chamber of Deputies Career Service and to apply the merit-based hiring system by means of public competitions, so that in practice excessive and unjustified use is not made of special procedures that, in given circumstances, allow the Chamber of Deputies to hire personnel without abiding by that system. (See paragraph 52 in section 1.1.1 of Chapter II of this report.)
- 1.1.3.8. Adopt the relevant measures to harmonize the management by both chambers of the federal legislature of their individual hiring systems for public parliamentary service, guided by the principles of openness, equity, and efficiency enshrined in the Convention. (See paragraph 53 in section 1.1.1 of Chapter II of this report.)
- 1.1.3.9. Adopt, through the appropriate authority and legal procedures, the provisions that would establish a merit-based and objective selection procedure for judicial career positions other than those of circuit magistrate and district judge, in light of their essentially technical nature, bearing in mind to that end the principles of openness, equity and efficiency provided in the Convention. (See paragraph 58 in section 1.1.1 of Chapter II of this report).

- 1.1.3.10. Adopt, by means of the relevant legal authority and procedures, provisions that establish merit-based and objective selection processes for filling the positions within its courts that are not covered by the judicial career regime. (See paragraph 59 in section 1.1.1 of Chapter II of this report.)
- 1.1.3.11. Consider adapting and/or developing, as applicable, laws or other instruments to strengthen the system of hiring support staff of the judiciary through the establishment of a suitable administrative career, taking into account the specific organization and powers of that branch of government, and thereby ensuring merit-based, transparent, and objective selection processes in accordance with the principles enshrined in the Convention. (See paragraph 61 in section 1.1.1 of Chapter II of this report.)
- 1.1.3.12. Continue to develop and implement the actions needed to attain the results proposed in both instruments based on the strategic indicators of the PGCM and the measurement indicators of the PSPC, and to report thereon in the annual progress reports provided for in Article 32 of the Committee's Rules of Procedure. (See paragraph 85 in section 1.1.2.1. (b) of Chapter II of this report.)
- 1.1.3.13. Consider adapting and/or developing, as applicable, the SPC's legal regime within the APF in accordance with the principles, objectives, and strategies of the PGCM and the PSPC, and, as appropriate, with the National Anticorruption System provided for in the Constitution, ensuring the principles of openness, equity, and efficiency established in the Convention. (See paragraph 86 in section 1.1.2.1. (b) of Chapter II of this report.)
- 1.1.3.14. Develop objective criteria to clarify the exceptions to the selection process for temporary appointments under Article 34 of the LSPC in order to prevent the repeated and arbitrary use of that hiring mechanism. (See paragraph 93 in section 1.1.2.1. (b) of Chapter II of this report.)
- 1.1.3.15. Publish, in the outlets it deems appropriate and taking into account the applicable provisions of the LGTAIP and the correlative of the LFTAIP, the temporary appointments made under Article 34 of the LSPC. (See paragraph 93 in section 1.1.2.1. (b) of Chapter II of this report.)
- 1.1.3.16. Adopt, by means of applicable legal and/or administrative procedures, provisions to strengthen or establish appropriate control mechanisms to ensure strict compliance with the rules for personnel selection within the APF provided for in the RH-SPC Manual. (See paragraph 96 in section 1.1.2.1. (b) of Chapter II of this report.)

- 1.1.3.17. Consider adopting, through the corresponding legislative and/or administrative procedures, the pertinent reforms of the current regime for hiring the APF's *staff workers* in order to ensure that they are selected on the basis of merit and in accordance with the principles of openness, equity, and efficiency enshrined in the Convention. (See paragraph 103 in section 1.1.2.1. (b) of Chapter II of this report.)
- 1.1.3.18. Consider adapting and/or developing, as appropriate, the legal regime for the hiring of public servants system in the legislative branch, in accordance with the SNA as established in the CPEUM. (See paragraph 104 in section 1.1.2.1. (b) of Chapter II of this report.)
- 1.1.3.19. Publish, on the *trabajaen.gob.mx* web site and/or in the other outlets it deems appropriate, taking into account the applicable provisions of the LGTAIP and the correlative of the LFTAIP, statistical data to identify, *inter alia*, the number of registered candidates, the number of selection processes carried out, the number of applications received for the different selection processes, the numbers and percentages of selection procedures with winners, the numbers and percentages of selection procedures ruled void, the numbers and percentages of cases in which the veto power provided for in Article 74 of the LSPC was used, and the numbers and percentages of cancellation remedies lodged against selection process decisions and the procedural status of those filings. (See paragraph 109 in section 1.1.2.2 of Chapter II of this report.)
- 1.1.3.20. Publish, on the RUSP's web site and/or in the other outlets it deems appropriate, taking into account the applicable provisions of the LGTAIP and the correlative of the LFTAIP, statistical data to identify, *inter alia*, the numbers and percentages of public servants hired by means of merit-based selection processes, the numbers and percentages of public officials hired to fill career positions by means of temporary or provisional appointments, the numbers and percentages of public officials hired to fill career positions by means of exceptional appointments (e.g., under Article 34 of the LSPC), the numbers and percentages of public officials hired to occupy freely appointable positions, and the numbers and percentages of people hired by the APF by means of service-provision regimes, such as administrative advisory or consultancy contracts; in addition to strengthening both transparency and public trust, this would also allow the identification of challenges and, when applicable, the adoption of corrective measures. (See paragraph 110 in section 1.1.2.2 of Chapter II of this report.)
- 1.1.3.21. Develop, maintain and publish, based on the provisions of LGTAIP, the LFTAIP and other applicable provisions, statistical information of the legislative branch, in order to assess the use and effectiveness of its systems for hiring public officials, in order to identify challenges and, if appropriate, take corrective measures to ensure transparency, openness and efficiency thereof. (See paragraph 113 in section 1.1.3 of Chapter II of this report.)

- 1.1.3.22. Develop, maintain and publish, based on the provisions of LGTAIP, the LFTAIP and other applicable provisions, statistical information of the judicial branch, in order to assess the use and effectiveness of its systems for hiring public officials, in order to identify challenges and, if appropriate, take corrective measures to ensure transparency, openness and efficiency thereof. (See paragraph 113 in section 1.1.3 of Chapter II of this report).

## **1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES**

### **1.2.1. Follow-up on implementation of the recommendations formulated in the Second Round**

#### Recommendation 1.2.1

*Strengthen the systems for government procurement of goods and services in the federal executive branch.*

Measure suggested by the Committee that requires additional attention within the Framework of the Third Round:<sup>86/</sup>

*Adopt the measures necessary to overcome the circumstances preventing the complete implementation of government procurement in electronic format in federal executive branch institutions where that is pending.*

[115] Both in its response to the Questionnaire<sup>87/</sup> and during the on-site visit, Mexico presented information and new developments related to the above measure. Of that, the Committee notes the following as steps that lead it to conclude that said measure has been satisfactorily considered:

[116] – The reforms published in the DOF on May 28, 2009, of both the *Law on Public Sector Purchases, Leases, and Services*<sup>88/</sup> (hereinafter “LAASP”), published in the DOF on January 4, 2000, and the *Law on Public Works and Related Services*<sup>89/</sup> (hereinafter “LOPSRM”), also published in the DOF on January 4, 2000, on the basis of which the SFP, as the institution legally responsible for the administration of the *Electronic System for Public Governmental Information* (hereinafter “CompraNet”), replaced the system’s initial technological platform with the current version, known as CompraNet 5.0, for operations as of June 28, 2010, thereby evolving “...from a system for disseminating information with basic transactional capacities to a completely transactional tool for the start-to-end electronic processing of procurement procedures.”<sup>90/</sup>

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86. See Report on Mexico from the Third Round, p. 46, nota *supra* 4.

87. See Mexico’s response to the questionnaire, pp. 47 to 53, note 13 *supra*

88. Available, up to the last amendment published in the DOF on November 10, 2014, at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_5.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_5.pdf)

89. Available, up to the last amendment published in the DOF on January 13, 2016, at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_6.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_6.pdf)

90. See Mexico’s response to the questionnaire, p. 47, note 13 *supra*

[117] In connection with this, in its response, Mexico notes that since the start of the transition to version 5.0, the SFP has been providing massive and uninterrupted technical training<sup>91/</sup> and certifications in the use of CompraNet 5.0 for both the departments and agencies of the federal administration and for companies. The country's response also indicates that since its launch in 2010, the SFP has given training in its use to more than 14,200 operators from some 4,850 purchasing units at the three levels of government, with more than 6,200 public servants and 9,000 companies trained and/or certified between 2011 and 2015.<sup>92/</sup>

[118] – The *Agreement establishing provisions to be observed in using the Electronic System for Public Governmental Information, known as “CompraNet”*<sup>93/</sup> published in the DOF on June 28, 2011, which states that CompraNet 5.0 must be used for all procurement operations worth more than 300 times the minimum daily wage in force in the Federal District<sup>94/</sup> carried out by departments and agencies of the federal administration, the nation's states, municipalities, and public entities, provided that the operation is charged either partially or in its entirety to federal resources.

[119] – The *Guidelines for the application and monitoring of the measures for the efficient, transparent, and effective use of public resources, for budgetary discipline actions in the exercise of public spending, and for the modernization of the federal public administration*,<sup>95/</sup> published in the DOF on January 30, 2013, which include a procurement policy rule that favors public contracting using electronic channels over in-person or mixed proceedings, in order to minimize contact between the bidders and the officers in charge of procurement departments.

[120] Similarly, Article 27 of the LAASP requires departments and agencies of the federal administration to conduct all their bidding processes by means of CompraNet, except in justified cases as authorized by the SFP. Nevertheless, as indicated by the country under review in its response, potential contractors are allowed to deliver their proposals in person in public works contracts because of the complexity of procurement operations of that kind in accordance with Article 28 of the LOPSRM.

[121] As regards justified cases for exceptions to the use of the system, during the on-site visit, the representatives of the SFP stated that although because of the characteristics and particular features of each bidding process there are no rules that set general objective criteria for authorizing an exception to electronic procurement, since 2006 there have been only six applications for exceptions, and in none of those cases were the justified reasons identified for failing to use CompraNet.

[122] Bearing this in mind, in its response<sup>96/</sup> Mexico provided the following information on the evolution of contract operations using the different procurement mechanisms since the launch of CompraNet 5.0:

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91. See: <https://sites.google.com/site/cnetuc/capacitacion>

92. See Mexico's response to the questionnaire, p. 48, note 13 *supra*

93. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_27.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_27.pdf)

94. In compliance with the resolution of National Minimum Wages Commission published in the DOF on December 18, 2015, as of January 1, 2016, the current minimum wage in force for the entire country is 73.04 pesos (approximately 4.05 U.S. dollars at the May 2016 exchange rate).

95. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_44.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_44.pdf)

96. See Mexico's response to the questionnaire, p. 49, note 13 *supra*.

		Electronic and Mixed	In person	Total
2011	No. <sup>1</sup>	44,833	42,947	87,780
	% by No.	51%	49%	100%
	Amount <sup>2</sup>	\$203,501	\$170,674	\$37,4175
	% by amount	54%	46%	100%
2012	No.	73,077	52,708	125,785
	% by No.	58%	42%	100%
	Amount	\$196,518	\$165,361	\$361,879
	% by amount	54%	46%	100%
2013	No.	69,735	52,690	122,425
	% by No.	57%	43%	100%
	Amount	\$235,963	\$172,005	\$407,968
	% by amount	58%	42%	100%
2014	No.	65,725	63,167	128,892
	% by No.	51%	49%	100%
	Amount	\$307,566	\$260,532	\$568,098
	% by amount	54%	46%	100%
2015	No.	43,051	42,792	85,843
	% by No.	50%	50%	100%
	Amount	\$144,133	\$131,975	\$276,108
	% by amount	52%	48%	100%

<sup>1</sup> Number of contracts registered in CompraNet.

<sup>2</sup> Total amount of contracts expressed in millions of pesos.

[123] Regarding the impact that the implementation of CompraNet 5.0 over the past 5 years, Mexico presented the following information in its response:<sup>97/</sup>

Impact	2011	2012	2013	2014	2015
One out of every three newly registered companies in CompraNet was awarded at least one contract in its registration year.	18,154	9,447	6,759	5,405	2,080
The average number of bids presented in public bidding procedures increased.	3.0	4.68	5.57	5.23	5.51
The percentage of public bidding procedures ruled void decreased.	8%	7%	7%	7%	5.8%
Public bidding procedures and invitations involving at least three electronic and mixed bids still utilized more than bids made in person.	76%	76%	76%	75%	77%
The average number of daily visits to the CompraNet web site increased.	22,630	30,201	36,526	39,199	38,800

97. Ibid.

[124] Finally, in its response, Mexico concludes that the full implementation of electronic mechanisms for public procurement as described in the measure suggested by the Committee has been attained in that all the departments and agencies of the federal administration have used CompraNet for at least one contract. In addition, as indicated in the tables above, the use of CompraNet in public bidding by the executive branch of the federal government accounts for more than 75% of its competitive procedures, together with the fact that in-person procurement procedures are also reported in CompraNet.

[125] In consideration whereof, the Committee recognizes that the country under review has applied satisfactorily the measure suggested in recommendation 1.2.1 from the Second Round. Nevertheless, when examining the CompraNet version 5.0 as a new technological development in the terms set out in the Methodology for the Fifth Round of Review, the comments and observations to be formulated in section 1.2.2.2 by the Committee will be considered new.

Recommendation 1.2.2:

*Strengthen the systems of government procurement of goods and services in the federal legislative branch.*

Measures suggested by the Committee that requires additional attention within the Framework of the Third Round:<sup>98/</sup>

- a) *Enhance, through the appropriate authority, the House of Deputies Procurement, Leasing and Services Law and the House of Deputies Public Works and Related Services Law, with the inclusion of a general provision regarding the need to provide a reasoned decision to employ procurement procedures other than public competitive bidding, in order to promote the principles of openness, equity and efficiency recognized in the Convention.*
- b) This measure was satisfactorily considered and, therefore, does not require additional attention.<sup>99/</sup>
- c) *Enhance, through the appropriate authorities, the House of Deputies Procurement, Leasing and Services Law, the House of Deputies Public Works and Related Services Law, and the Rules on Senate Procurement, Leasing, Service Provision, and Public Works, establishing societal oversight mechanisms to monitor procurement, such as citizen oversight offices, in order to strengthen control of those activities.*
- d) *Enhance, through the appropriate authority, the House of Deputies Procurement, Leasing and Services Law and the House of Deputies Public Works and Related Services Law, by establishing a mechanism for contesting decisions adopted by the Office of the Comptroller General on objections lodged under those Laws, in order to strengthen the effectiveness of challenge mechanisms.*

[126] With respect to measure (a), in its response to the Questionnaire<sup>100/</sup> the country under review indicates that in order to reduce the number of exceptions to competitive bidding and strengthen the openness of procurement procedures, the Chamber of Deputies has been working to update both its

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98. See Report on Mexico from the Third Round, pp. 47 y 48, nota *supra* 4.

99. Ibid, p. 48.

100. See Mexico's response to the questionnaire, p. 41, note 13 *supra*.

*Standard for Purchasing, Leasing, and Services*<sup>101/</sup> (hereinafter “NAASCD”) and its *Standard for Public Works and Related Services*<sup>102/</sup> (hereinafter “NOPSRMCD”), both published in the DOF on February 15, 2006, and examined by the Committee during the Second Round. The response also indicates that the Chamber of Deputies is currently planning a *Procedures Manual* which is expected to include a mechanism to regulate the procedure for authorizing exceptions to competitive bidding similar to the provisions of Article 40 of the LAASP.<sup>103/</sup>

[127] Regarding measure (c), the country under review presented no information further to what the Committee reviewed in the Third Round. Nevertheless, it offered, as a possible mechanism that could promote the suggested social oversight, the information that, under the *General Technical Guidelines*<sup>104/</sup> for the publication, harmonization, and standardization of the information on the obligations established in the LGTAIP, is to be published by the Chamber of Deputies on its web site and on the *National Transparency Platform*,<sup>105/</sup> in addition to the public nature of the Chamber’s events.<sup>106/</sup>

[128] Finally, regarding measure (d), in its response<sup>107/</sup> the country under review indicated that the plan to update the NOPSRMCD includes the incorporation of a chapter on the challenge remedy against bidding and invitation processes, which would include the causes and types of suspension arising from disputes, the guarantees and counter-guarantees as a result of a dispute, the prior, grounded reports arising from a dispute, and the resolution and notification of disputes, with which this suggested measure would be satisfied.<sup>108/</sup>

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101. Available, up to the last amendment published in the DOF on September 4, 2008, at:

[http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_51.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_51.pdf)

102. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_52.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_52.pdf)

103. On August 15, 2016, the country under review reported that: “...the final versions of the General Directorate on Material Resources and Services’ drafts of both the House of Deputies Standard for Purchasing, Leasing, and Services (NAASCD) and the House of Deputies Standard for Public Works and Related Services (NOPSRM) provide for the articles that support the recommendation ...”

104. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_43.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_43.pdf)

105. See: <http://www.plataformadetransparencia.org.mx>

106. On August 15, 2016, the country under review reported that: “...it must be reported that Article 26 ter of the current Law on Public Sector Purchases, Leasing, and Services stipulates that social witnesses shall participate in public bidding processes for amounts over the equivalent of five million days of the general minimum salary in effect in the Federal District (the equivalent in pesos to purchases or services over \$365,200,000), in [public] works for 10 million days of minimum salary (bidding whose amount is over \$730,400,000), and in those cases determined by the SFP given the impact their procurement has on the substantive programs of each institution or entity. The SFP shall be in charge of the public register of social witnesses—i.e., it will call upon, select, and train them. The final versions of the NAASCD and NOPSRM, Articles 18 and 32, respectively, provide for the participation of social witnesses under the procedures and conditions that the Policy Coordination Board or Administration Committee—the sole bodies empowered to designate individuals as social witnesses—authorizes in each case. When this occurs, the abovementioned bodies will have to turn to the SFP so it may, depending on the situation, propose candidates, thus allowing these bodies to make a decision in due course...”

107. See Mexico’s response to the questionnaire, p. 57, note 13 *supra*.

108. On August 15, 2016 the country under review reported that “...Articles 64-105 of the NAASCD and Articles 202-212 of the NOPSRM provide for the intervention of the Office of the Internal Comptroller in procurement processes; in this respect it is important to mention that this final version of the draft standards has yet to be submitted to the consideration of the internal areas, among them, the Office of the Comptroller itself, which is why its content, order, among others, may undergo changes. This final version of the DGRSM addresses the issue of objections, the manner to resolve them, deadlines, etc., notwithstanding the fact that bidders, participants, or parties who object may file an appeal and go before the Federal Tribunal for Fiscal and Administrative Justice regardless of whether they are considered in these draft standards...”

[129] Irrespective of the foregoing, the Committee reiterates its observations and conclusions contained in the Second Round Report<sup>109/</sup> in connection with measures (a), (c), and (d) of recommendation 1.2.2, and it urges the country under review to give additional attention to their implementation. (See recommendations 1.2.3.1 to 1.2.3.3 in section 1.2.3 of Chapter II of this report).

Recommendation 1.2.3:

*Strengthen the systems of government procurement of goods and services in the federal judicial branch.*

Measure suggested by the Committee that requires additional attention within the Framework of the Third Round:<sup>110/</sup>

*Enhance, through the appropriate authorities, General Administrative Decision 6/2001 of the Office of the President of the Supreme Court of Justice of the Nation and General Decision 75/2000 of the Plenary of the Federal Judicature Council, by establishing societal oversight mechanisms to monitor procurement, such as citizen oversight offices, in order to strengthen control of those activities.*

[130] Based on the information available to it, the Committee believes that this suggested measure is no longer valid, given that *General Administration Agreement 6/2001* of the President of the SCJN was repealed as provided for in Transitory Article 2 of *General Administration Agreement VI/2008*<sup>111/</sup> of the SCJN's Government and Administration Committee of September 25, 2008. In addition, *General Agreement 75/2000* of the Plenary of the CJF was repealed pursuant to the terms of Transitory Article 2 of *General Agreement 6/2009*,<sup>112/</sup> published in the DOF on March 30, 2009, which was also repealed by the provisions of Transitory Article 3, section XIX, of the *General Agreement of the Plenary of the Federal Judicature Council establishing provisions for the administrative activities of that Council*,<sup>113/</sup> published in the DOF on January 2, 2015.

[131] In addition, both in its response to the Questionnaire<sup>114/</sup> and during the on-site visit, Mexico presented information related to this measure as regards the establishment of mechanisms to strengthen oversight over contracting within the CJF, which, because it represents new developments in its legal framework, the Committee will examine further in section 1.2.2 below.

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

**1.2.2.1. New developments with respect to the legal framework**

a) Scope

- Constitutional provisions:

[132] – The amendments to Article 134 of the Constitution, published in the DOF on November 13, 2007, on May 7, 2008, and on January 29, 2016, which provides, *inter alia*, that purchases, leases,

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109. See: Second Round Report on Mexico, pp. 8, 9, and 36, note 4 *supra*.

110. See Report on Mexico from the Third Round, pp. 47 y 48, nota *supra* 4.

111. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_41.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_41.pdf)

112. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_38.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_38.pdf)

113. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_40.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_40.pdf)

114. See Mexico's response to the questionnaire, pp. 58 to 60, note 13 *supra*

and divestitures of all kinds of goods, services of any nature, and works contracts will be awarded or processed by means of publicly announced public bidding for the free presentation of solvent bids in closed envelopes, to be opened publicly, in order to assure the State the best conditions available in terms of price, quality, financing, timeliness, and other relevant circumstances. When such procedures are not suitable for ensuring those conditions, the laws will establish the bases, procedures, rules, requirements, and other matters needed to accredit the economy, effectiveness, efficiency, impartiality, and honesty for guaranteeing the State optimal conditions.

- Legal provisions applicable to the authorities, entities, organs, and agencies of the legislative, executive, and judicial branches, among others, regarding transparency and access to information:

[133] – The LGTAIP, published in the DOF on May 4, 2015, and described in section 1.1.2.1 of this report, Article 70 of which establishes, among others, the common obligation of transparency on entities subject to this Law, the publication and updating, in the corresponding electronic media, the results of direct awards, restricted invitations, and bidding processes of all kinds.

[134] In public biddings or restricted invitation procedures, the obligated entities must publish, *inter alia*, the announcements or invitations they issue, and the legal grounds under which they are carried out; the names of the participants or invited bidders; the name of the winner and the reasons for the choice; the requesting area and the person responsible for its execution; the rulings and award decision; the contract and its appendices, if any; the oversight and supervisory mechanisms, including, when applicable, urban and environmental impact studies; the budgetary line item, according to the spending classification, if applicable; the source of funding, specifying whether the resources are federal, state, or municipal in origin, together with the corresponding type of participation or contribution fund; the amending agreements signed, if any, specifying the date and purpose; physical and financial progress reports on the contracted works or services; the conclusion agreement, and the termination release.

[135] In direct awards, the entities subject to the Law must publish, *inter alia*, the proposal submitted by the participant; the legal grounds and justifications for carrying out the procedure; the authorization for the option to be exercised; if applicable, the quotations considered, including the suppliers' names and amounts involved; the name of the person or corporation to whom the contract was awarded; the requesting administrative unit and the person responsible for execution; the number, date, and amount of the contract and the deadline for delivery of the works or services; the oversight and supervisory mechanisms, including, when applicable, urban and environmental impact studies; the progress reports on the contracted works or services; and the conclusion agreement and termination release.

[136] – The LFTAIP, published in the DOF on May 9, 2016, and also described in section 1.1.2.1 of this report, which is intended to establish provisions at the federal level to guarantee the right of access to public information held by any authority, entity, organ, or office of the legislative, executive, and judicial branches and other agencies described in Article 1, pursuant to the terms established in the Constitution and the previous LGTAIP.

- Legal provisions applicable to national and/or foreign individuals and corporations that participate, either directly or indirectly, in federal public procurement operations:

[137] – The *Federal Public Procurement Anticorruption Law*<sup>115/</sup> (hereinafter “LFACP”), published in the DOF on June 11, 2012, which sets the responsibilities and sanctions to be imposed on national and foreign individuals and corporations for violations committed as a part of their participation in the federal public procurement operations to which it applies, as well as those applicable to domestic individuals and corporations for the violations they commit in the international commercial transactions provided for in that law. The LFACP also regulates the procedure for determining responsibilities and applying sanctions, entrusting the competent federal authorities with its interpretation and enforcement.

[138] Article 3, section III, defines federal public procurement operations as all procurement procedures (competitive bidding, invitation to at least three participants, and direct award), their preliminary formalities, and those arising from the signature, execution, and fulfillment of contracts for purchasing, leasing, services, public works, and services related to thereto carried out by the contracting public institutions referred to in section VIII of the same article, in compliance with the legal provisions governing public procurement and independently of the special contracting regime or of the method used to carry it out. Also included are actions and procedures related to competitions, invitations, and competitive bidding for the granting or renewal of federal permits and concessions, as well as any other authorization or formality related to public contracting.

[139] According to the terms of Article 2, the LFACP applies to: (i) national and foreign individuals and corporations with a direct interest in the procurement operation – in other words, those participating as interested parties, bidders, invitees, suppliers, awardees, contractors, permit-holders, concessionaires, or similar; (ii) national and foreign individuals and corporations with an indirect interest in the procurement operation – in other words, those who in their capacity as shareholders, partners, associates, representatives, trustees and principals, proxies, commissioners, agents, advisors, consultants, subcontractors, employees, or in any other capacity are involved in public contracting on behalf of, in the name of, or representing the interests of the persons and corporations identified above; and (iii) nationals directly or indirectly participating in the development of international commercial transactions under the terms set forth in the LFACP. The public servants participating, either directly or indirectly, are subject to the regime of responsibilities contained in Title Four of the Constitution and the *Federal Law on the Administrative Responsibilities of Civil Servants*<sup>116/</sup> (hereinafter “LFRASP”).

[140] In respect to competent authorities, Article 5 of the LFACP provides that the SFP, together with the heads of the internal oversight organs and the heads of those agencies’ complaints and responsibilities areas, is to be the competent authority for investigating, processing, substantiating, and, if applicable, resolving the procedure and remedy provided for in the law, for determining the responsibilities arising therefrom, and for imposing the corresponding sanctions. This is irrespective of the powers invested in other authorities – such as the Congress of the Union, the Federal Court of Fiscal and Administrative Justice, and the SCJN – to interpret and enforce the law in their respective areas of competence.

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115. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_9.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_9.pdf)

116. Available, up to the last amendment published in the DOF on December 18, 2015, at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_10.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_10.pdf)

[141] As regards violations, the subjects identified in Article 2, cited above, incur responsibility when they either directly or indirectly perform one or more of the actions described in Articles 8 and 9 of the Law in question. In turn, according to the LFACP, investigations are to be started on an *ex officio* basis or following a complaint. According to Article 10 of the Law, complaints may be: (i) made via CompraNet; (ii) made by the contracting public institution or by any other authority;<sup>117/</sup> (iii) lodged by private citizens; (iv) lodged anonymously; (v) international complaints.

[142] Chapter Four of the LFACP regulates matters relating to *administrative proceedings for sanctions*, from the identification of sufficient elements to indicate the existence of an offense to the corresponding resolution on the nonexistence of responsibility or on the imposition of sanctions which, for individual persons, consist of a fine equal to between one thousand and fifty thousand times the daily minimum wage<sup>118/</sup> (that maximum amount may be increased by up to fifty percent when there is objective evidence indicating that the benefit secured by the offender was worth more than the maximum fine), together with disqualification from participation in federal public procurement operations for a period of between three months and eight years. For corporate entities, the fine ranges from ten thousand to two million times the minimum wage and also disqualification from participation in federal public procurement operations for a period of between three months and ten years. For permits, concessions, authorizations, or procedures related to federal public procurement or international commercial transactions, the maximum fine may be increased by up to fifty percent when there is objective evidence indicating to the competent authority that the benefit secured by the offender was worth more than the maximum fine.

- Statutory and other legal provisions applicable to the APF's public procurement system, such as:

[143] – The PGCM, which, as described in section 1.1.2.1 of this report on new legal developments in the government hiring systems of the APF, was drawn up in accordance with the federal government's 2013-2018 National Development Plan and published in the DOF on August 30, 2013. Specifically, in connection with systems for the government procurement of goods and services, the PGCM's objectives include improving government public administration in the APF by obtaining better conditions in contracts for goods, services, and public works. To that end, the PGCM sets out a series of lines of action aimed at creating a public procurement system based on transparency, competition, and objective criteria, to promote integrity and prevent corruption, to encourage amendments of the legal framework for improved planning, contracting, and execution of public purchasing, and to encourage the use of electronic channels in contracting processes.

[144] In addition, another line of action set by the PGCM is that of promoting cost reductions in the departments and agencies of the federal administration by means of *consolidated contracting*<sup>119/</sup> for goods and services, in order to attain the goal of promoting the implementation of contracting strategies geared toward securing the maximum value from investments. Thus, No. 20 of the *Guidelines for the application and monitoring of the measures for the efficient, transparent, and effective use of public resources, for budgetary discipline actions in the exercise of public spending*,

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117. Article 11 of the LFACP states that all public servants are obliged to report, in writing, any actions or omissions that could be punishable under this Law of which they become aware in the performance of their duties.

118. In compliance with the resolution of the National Minimum Wages Commission published in the DOF on December 18, 2015, as of January 1, 2016, the current daily minimum wage applicable throughout the country is 73.04 pesos (approximately US\$4.05 at the May 2016 exchange rate).

119. See: R-LAASSP, Article 13.

and for the modernization of the federal public administration (*Austerity Guidelines*),<sup>120/</sup> published in the DOF on January 30, 2013, stipulates that in order to reduce costs and achieve savings, regardless of other contracting and demand-aggregation strategies pursued by the SFP, the contracting of services and the acquisition and leasing of goods shall preferably take place on a consolidated basis.

[145] It should also be noted that these *Guidelines* instruct the departments and agencies of the APF to favor electronic public bidding conducted by means of CompraNet.

[146] In addition, as part of the *institutional policy for transparency, accountability, and combating corruption*, based on both the PND and the *Eight Executive Actions for Preventing Corruption and Avoiding Possible Conflicts of Interest*,<sup>121/</sup> presented by the President of the Republic on February 3, 2015, the SFP, in compliance with executive actions: second (establishment of the UEEPCI), third (issuance of the rules of integrity for the exercise of federal public service), fourth (proposed protocol for actions by public servants in public procurement) and fifth (register of public servants involved in contracting), the SFP achieved the following developments:

[147] –The *Decree whereby various provisions of the Internal Regulations of the Secretariat of the Civil Service are amended, added, and repealed*, published in the DOF on October 20, 2015, which includes in Article 17 bis of the Unit Specializing in Ethics and Prevention of Conflicts of Interest.

[148] – The *Agreement enacting the protocol for action in public procurement, granting and renewing licenses, permits, authorizations, and concessions*,<sup>122/</sup> published in the DOF on August 20, 2015, as amended through publication in the DOF of February 19, 2016<sup>123/</sup>, the purpose of which is to set the guidelines that must be followed in their dealings with private individuals, those public servants of the federal civil service included on the Register kept by the SFP who participate in public procurement and the granting and renewal of licenses, permits, authorizations, and concessions. Likewise, the above-mentioned Agreement provides for the mechanism whereby private citizens can present a statement of their business, employment, professional, personal, and kinship ties or relationships with high-level government officials and with public servants who are participating in said processes.

[149] – The *Agreement to issue the Code of Ethics for public servants in the federal government, the Integrity Rules for the exercise of public functions, and the General Guidelines for fostering the integrity of public servants and for adopting permanent actions to encourage their ethical behavior, through the Committees for Ethics and the Prevention of Conflicts of Interest*, published in the DOF on August 20, 2015, which sets out the principles and values that govern the actions of public servants; and establishes rules of integrity in 12 areas of public duty and specifies some of the actions by public servants that would violate each of those rules. Among the areas it covers are situations when public servants, by reason of their jobs, position, commissions, or functions, or through their subordinates, participate in public procurement. In such cases, they are to act with transparency, impartiality, and legality, aligning their decisions with society's needs and interests and ensuring optimal contracting conditions for the State.

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120. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_44.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_44.pdf)

121. See: <http://www.gob.mx/sfp/acciones-y-programas/acciones-ejecutivas-para-prevenir-la-corrupcion-y-evitar-possibles-conflictos-de-interes>

122. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_30.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_30.pdf)

123. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_110.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_110.pdf)

[150] – The *Register of Public Servants of the Federal Public Administration involved in public procurement procedures, the granting of licenses, permits, concessions, and authorizations, and the divestiture of movable property of the Federal Public Administration and in the assignment and issuing of rulings on appraisals and rent assessments*,<sup>124/</sup> launched on April 30, 2015, through which the public can consult what public servants are involved in those procedures and discover which are involved in the processing, addressing, and resolution of the matters involved when a contract is awarded, a concession, license, permit, or authorization is issued or renewed, movable property is divested, and rulings are given in appraisals.

[151] At the same time, based on the information provided by Mexico both in its response to the Questionnaire<sup>125/</sup> and during the on-site visit, the legal framework governing public procurement has been amended significantly, giving rise to a series of issues that are worthy of note:

[152] – The amendments published in the DOF on September 5, 2007; October 1, 2007; July 2, 2008; November 28, 2008; June 15, 2011; January 16, 2012; August 11, 2014; and November 10, 2014, to the LAASSP, which include: the promotion of the use of *framework contracts* according to Article 17, second paragraph; the inclusion in Article 26-ter of *social witnesses* as a mechanism for citizen participation in public procurement; the use of subsequent discounted bids for the acquisition of movable property or services in the penultimate paragraph of Article 28; and the use of assessments based on points and percentages or on costs and benefits in procurement procedures, pursuant to Article 36, third paragraph, of the LAASSP.

[153] – The amendments published in the DOF on October 1, 2007; November 28, 2008; May 28, 2009; January 16, 2012; April 9, 2012; August 11, 2014; and January 13, 2016, to the LOPSRM, which include the incorporation of the *social witness* mechanism in public bidding processes under Article 27-bis; the obligation of only publishing competitive bidding announcements on CompraNet, per Article 32; the amendments made to competitive bidding procedures and the exceptions to them contained in Chapters 2 and 3, respectively; together with the amendments to Articles 77 to 82 regarding the regime of violations and sanctions and mechanisms for resolving disputes, including the filing of challenges, the conciliation procedure, arbitration, and other mechanisms for dispute resolution and judicial competence, together with other provisions.

[154] Significantly, during the on-site visit, the SFP’s representatives provided a *draft*<sup>126/</sup> of amendments, additions, and modifications to the LOPSRM presented by the federal executive in November 2014. Its purpose was to include in that law new and better mechanisms for evaluating projects and carrying out public works, together with adjustments to the rules governing procurement procedures, contract execution, the substantiation of challenges, sanctions for contractors, conciliation, and other issues.

[155] – The *Regulations to the Law on Public Sector Purchases, Leases, and Services*<sup>127/</sup> (hereinafter “R-LAASSP”), published in the DOF on July 28, 2010, which repealed the Regulations published in the DOF on August 20, 2001, that were reviewed by the Committee in the Second Round, and which, among other provisions, set rules to encourage the timely and strict observance of the LAASSP, such as the regulation of competitive bidding in Articles 35 to 59, including the use of *framework contracts* pursuant to Article 52; the exceptions to bidding in Articles 71 to 79; the *social witnesses*

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124. Available at: <http://reniresp.funcionpublica.gob.mx/>

125. See Mexico’s response to the questionnaire, pp. 88 and 89, note 13 *supra*.

126. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_74.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_74.pdf)

127. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_17.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_17.pdf)

regime in Articles 60 to 70; and the resolution of disputes, including the lodging of challenges and procedures for conciliation and arbitration, in Articles 116 to 137.

[156] – The *Regulations of the Law on Public Works and Related Services*<sup>128/</sup> (hereinafter “R-LOPSRM”), published in the DOF on July 28, 2010, which repealed the Regulations published in the DOF on August 20, 2001, reviewed by the Committee in the Second Round. Among its provisions, Articles 31 to 48 establish the regulations governing competitive bidding processes, announcements, and the dissemination thereof; Articles 49 to 58 deal with the *social witness* mechanism; and Articles 73 to 78 cover exceptions to competitive bidding. In addition, the R-LOPSRM regulates matters relating to the presentation, opening, and evaluation of bids, award decisions, the discarding of bids, the cancellation, revocation, and voiding of public biddings, and it also regulates the contracts referred to in Article 46 of the LOPSRM, along with their guarantees, modifications, and execution. These Regulations also establish, in Articles 185 to 220, the regime for the analysis, calculation, and production of unit prices, direct and indirect costs, works financing, and additional charges. Articles 221 to 232 regulate mixed and lump-sum contracts, while Articles 234 to 248 set out the legal regime for public works associated with infrastructure projects. Finally, Title Five of the R-LOPSRM describes the violations and sanctions regime, while Articles 274 to 295 in Title Seven deal with the resolution of disputes, including the lodging of challenges and conciliation and arbitration procedures.

[157] – The *Agreement establishing provisions to be observed in using the Electronic System for Public Governmental Information, known as “CompraNet,”* published in the DOF on June 28, 2011, referred to in the previous section, the purpose of which is to regulate the use of the System by the parties referred to in Article 1, sections I to VI, of the LAASP and in Article 1, sections I to VI, of the LOPSRM, as well as by bidders, suppliers, and contractors, in accordance with the provisions of those legal instruments.

[158] In addition to this, and based on the information available to it, the Committee identified a range of legal developments in force since the Second Round that are related to the APF’s system for public procurement, including the following:

[159] – The *Guidelines establishing austerity measures in the operating expenses of departments and agencies of the federal public administration*,<sup>129/</sup> published in the DOF on February 22, 2016, the purpose of which is to set rules governing the allocation of domestic and international per diems, traveling expenses, spending on food, cellphone service, congresses, conventions, and other events, to be observed by the departments and agencies of the federal public administration.

[160] The *Agreement issuing the General Administrative Manual for Public Sector Purchases, Leases, and Services*,<sup>130/</sup> published in the DOF on August 9, 2010, and its most recent amendments published on February 3, 2016, intended to establish the processes and guidelines to be observed by the departments and agencies of the federal public administration and by the office of the Attorney General of the Republic to reduce and simplify the applicable administrative regulations, in order to make efficient and optimum use of the resources assigned to those institutions.

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128. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_18.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_18.pdf)

129. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_45.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_45.pdf)

130. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_28.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_28.pdf)

[161] The *Guidelines for the application and monitoring of the measures for the efficient, transparent, and effective use of public resources, for budgetary discipline actions in the exercise of public spending, and for the modernization of the federal public administration*,<sup>131/</sup> published in the DOF on January 30, 2013, which identify the criteria and specific procedures for the enforcement and monitoring of the Decree establishing measures for the efficient, transparent, and effective use of public resources, for budgetary discipline actions in the exercise of public spending, and for the modernization of the federal public administration.

[162] – The *Agreement issuing various guidelines for purchasing, leasing, and services and for public works and related services*,<sup>132/</sup> published in the DOF on September 9, 2010, the purpose of which is to establish rules and criteria to be observed by the parties referred to in Article 1, sections I to V of the LAASSP, and Article 1, sections I to V, of the LOPSRM, and, when applicable, by the states, municipalities, and their public entities, in issuing the policies, bases, and guidelines referred to in those provisions.

- Legal and other provisions applicable to the system for public procurement in the federal legislature, including:

[163] The *Senate Provisions for Purchasing, Leasing, Services, and Public Works*,<sup>133/</sup> published in the DOF on September 21, 2012, and its amendments<sup>134/</sup> published on December 31, 2012, which regulate the actions of the Senate's public servants in contracts they enter into for purchases of goods, leases, services of any nature, and public works contracts, using the Senate's budget, in accordance with the criteria of economy, efficiency, effectiveness, impartiality, and honesty enshrined in Article 134 of the Constitution.

[164] Article 20 of these Provisions states that purchases, leases, the provision of services, and public works will generally be awarded through the competitive bidding procedure described in Articles 45 to 66, or through the reverse electronic auction described in Articles 76 to 96, to ensure for the Senate the best conditions available in terms of price, quality, financing, timeliness, and other circumstances as provided for in those Provisions. Nevertheless, when competitive bidding or reverse electronic auctions are not suitable for ensuring those conditions, such purchases, leases, the provision of services, and public works may be awarded by means of the invitation procedures set out in Articles 67 to 73 or through the direct award process set out in Articles 74 and 75, as established in each of the sections listed in Article 21, while not neglecting the conditions of economy, effectiveness, efficiency, impartiality, and honesty that ensure the best possible conditions for the Senate.

[165] Chapter Five of the Provisions regulates matters related to contracts, the awarding and formalization thereof, advances, price and cost adjustments, and the reception of goods, services, and works. In addition, Articles 137 to 140 of Chapter Seven establish the challenges regime and the conciliation process.

[166] The *Senate Manual of Provisions for the Acquisition and Divestiture of Federal Real Estate*,<sup>135/</sup> published in the DOF on August 27, 2009, which aims to regulate such procedures carried out by the Senate on behalf of the Federation, in the exercise of the powers established in Article 23 of the

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131. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_44.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_44.pdf)

132. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_29.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_29.pdf)

133. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_53.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_53.pdf)

134. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_89.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_89.pdf)

135. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_90.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_90.pdf)

*General Law on National Property*, in accordance with the criteria of economy, efficiency, effectiveness, impartiality, and honesty enshrined in Article 134 of the Constitution.

- Legal and other provisions applicable to the system for public procurement in the federal judiciary, including:

[167] *General Administration Agreement VI/2008* of the SCJN's Government and Administration Committee, dated September 25, 2008, referred to in the previous section and which repealed *General Administration Agreement 6/2001* that the Committee reviewed in the Second Round, which is intended to regulate the various actions and procedures carried out by the SCJN under the terms of Article 134 of the Constitution to contract for the acquisition or use of goods, public works, and services, and for the administration and divestiture of goods. Article 43 stipulates that the SCJN's procurement procedures shall use competitive bidding or competitions by public invitation, where awards shall be made by means of public announcements for the free presentation of solvent bids in closed envelopes, to be opened publicly; however, this shall not apply when such procedures are not suitable by reason of price, quality, financing, timeliness, and other relevant circumstances, in which cases restricted bidding invitations, summary public competitions, or direct award shall be used. The same article also establishes the procedures for such procurement operations.

[168] Article 44 states that procurement procedures must offer equal conditions and access to information to all participants. Unforeseen circumstances with the substantiation and resolution of the procurement procedures regulated by this General Agreement are to be resolved in accordance with the principles set out in Article 134 of the Constitution, with the understanding that the rulings adopted thereby must strictly abide by the principles of legality and legal security. Similarly, Article 51 states that undertakings related to the award procedures referred to in this General Agreement may be *attended by third parties* who express an interest and by bidders whose proposals were rejected during the procurement procedure.

[169] Article 52 stipulates that in accordance with Articles 57, 58, and 60, the SCJN shall organize public biddings by means of their publication in the DOF, a broadly distributed newspaper, and electronic media, and that all interested parties may participate by publicly presenting solvent proposals. The SCJN is to select the supplier, service provider, or contractor who offers the best conditions in terms of price, timeliness, quality, financing and/or service, and other relevant circumstances, ensuring observance of the criteria of economy, efficiency, effectiveness, equal competition, and honesty. Noteworthy are the provisions of Article 54 as regards the potential participation in competitive bidding procedures and in any other process regulated by the Agreement General of *social witnesses* – individuals belonging to governmental or nongovernmental nonprofit organizations who accredit their specialization and knowledge of matters related to purchasing, leasing, works, and related services, as applicable – to observe the process from the viewpoint of the citizenry.

[170] Article 78 states that the competition by invitation process may be public or by means of restricted invitation to at least three suppliers or contractors, and that it will take place when the amount involved is classified as intermediate or lower, when a competitive bidding process has been declared void, or when the Committee so orders. This procedure is to be authorized by the competent body in accordance with the levels indicated on the table in Article 42 of the General Agreement and it will involve the stages identified in Article 78. Contracts classified as lower or minor may be awarded in accordance with the authorization levels contained in Article 42 of the General

Agreement, through the procedure called summary public competition, which is also described in Article 82.

[171] Similarly, under Article 91, direct award applies in procurement operations in which the amount is classified as minimal or when, by reason of their particular circumstances and regardless of the amount involved, they are classified as urgent or special, in cases involving the acquisition or use of real property or contracts with public institutions under the terms of Article 133 of the General Agreement.

[172] Contracting for and the execution of public works, together with the purchasing and use of real property, are covered by Title Five, Chapter II, of the General Agreement. Finally, the regime for disputes and conciliation proceedings is provided for in Title Eight, Chapters I and II, of the General Agreement.

[173] - The *General Agreement of the Plenary of the Federal Judicature Council establishing provisions for the administrative activities of that Council*, referred to in the previous section and published in the DOF on January 2, 2015, which repealed General Agreement 6/2009, published in the DOF on March 30, 2009, which in turn repealed General Agreement 75/2000 of the Plenary of the CJF that the Committee reviewed in the Second Round.

[174] This Agreement establishes, among other administrative activities carried out by the CJF, the rules and procedures to be followed by the Council in its contracts for purchases, leases of movable property, the provision of services of any kind, public works and related services, using the Budget of the Judiciary of the Federation, in order to abide by the criteria set in Article 134 of the Constitution.

[175] Thus, Article 288 of the Agreement states that purchases, leases, and the provision of services and public works are to be awarded by means of the competitive bidding procedure described in Articles 308 to 333, in order to ensure the best conditions in terms of price, quality, financing, timeliness, and other characteristics of interest to the Council. When competitive bidding is not suitable for ensuring those conditions, the Agreement provides that contracts are to be awarded by the invitation procedure, issued to at least three suppliers or contractors, as provided by Articles 334 to 340; by summary public competition, as described in Articles 356 and 357; by direct award, under Articles 341 to 343; or by inverse auction, as provided for in Articles 344 to 355. The Committee will determine the usefulness of using the inverse auction mechanism, either on-site or on-line, in the other award procedures provided for in this Agreement. Procurement procedures must set the same requirements and conditions for all participants, and they must provide all interested parties with equal access to information related to those procedures. The CJF is responsible for procedures to contract the purchases, leases, public works, and services it requires to perform its duties, and so in no circumstances may third parties be hired to issue those contracts on its behalf or in its name. Thus, no trusts shall be created or mandates granted that could evade the terms of this instrument.

[176] It is important to note that this Agreement regulates the *social witness*<sup>136/</sup> mechanism (Article 7, section XV, and Articles 253 to 259), empowering the Comptroller's Office to accredit, as *social witnesses*, persons meeting the requirements set in Article 256 of the Agreement, and to prepare the *Register of Social Witnesses*. In addition, Article 253 covers the *third-party attendance mechanism*, whereby, given that formalities related to procurement procedures are public, they may be attended by third parties with an interest in doing so, as well as by bidders whose proposals were rejected

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136. According to Article 7, section XV, of the 2015 General Agreement, a social witness “acts as an honorary representative of society and, with his presence, gives testimony that a given fact is true.”

during the procedure. This is dependent on their previously registering for the activity in question, respecting the established timetables, identifying themselves, accrediting their power of proxy if attending on behalf of a corporation, and refraining from intervening in the proceedings in any way.

[177] The third section of this General Agreement regulates matters relating to contracts and the awarding, formalization, and types thereof, together with advances and price and cost adjustments. For public works, the sixth section establishes the regime whereby work is to be carried out, goods are to be received, and contracts are to be concluded and terminated.

[178] The provisions of the seventh section cover such matters as the sanctions regime for noncompliance with obligations acquired by suppliers or contractors in contracts, while the ninth section regulates the admissibility and substantiation of challenges.

[179] Significantly, Articles 541 to 557 of this General Agreement constitute a chapter titled *Anticorruption in Public Procurement*, which empowers the CJF to enforce the provisions of the LFACP and, consequently, to issue the administrative provisions for their due observance in its public procurement operations. For that purpose, the Agreement provides for the initiation of investigations into alleged violations of the LFACP's terms and describes the stages thereof; it also sets out the punitive administrative proceedings to be undertaken and resolved in accordance with that law and this chapter.

[180] – *The General Agreement 29/2012 of the Plenary of the Federal Judicature Council, that amends, adds and repeals several provisions of the General Agreement 6/2009, which establishes the basis for acquisitions, lease of goods, services, public works and services related thereto, complying with the criteria set out in Article 134 of the Constitution of the United Mexican States*<sup>137/</sup>, published in the DOF on October 16, 2012, which, according to the new institutional needs and, in order to strengthen procurement procedures from its preparation, strengthens *market research* as a basic tool to determine the procedures by which the Council will contract goods, products, services, real estate, public works and related services, as well as strengthens the regulation of *reverse auction*, as a stand-alone method for contracting, in order to optimize and strengthen the use of such contracting means by providing the opportunity to carry it out through remote means of communication, which represents a technological advance.

b) Observations

[181] First, the Committee acknowledges the new legal developments introduced by Mexico to continue to make progress with the creation, maintenance, and strengthening of its systems for the government procurement of goods and services as referred to in Article III, paragraph 5, of the Convention, primarily the legislative and administrative reforms, amendments, and additions undertaken in compliance and in line with the principles enshrined in Article 134 of the Constitution, together with the enactment of the LFACP.

[182] Nevertheless, it believes it would be beneficial to offer some remarks about the usefulness of expanding, developing, and/or amending certain provisions in those new developments, without prejudice to the comments offered by the Committee in section 1.2.1 above in connection with the follow-up on the implementation of the recommendations that were formulated for the country under review in the Second Round Report.

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137. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_39.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_39.pdf)

- As regards the legal provisions applicable to national and/or foreign individuals and corporations that participate, either directly or indirectly, in federal public procurement operations:

[183] The Committee takes note of the enactment of the LFACP in June 2012, which indicates Mexico's commitment toward the continued development of provisions and mechanisms to invest processes for the procurement of goods and services with greater certainty.

[184] That legislation, as described in section (a) above, creates different mechanisms for combating corruption in public procurement, such as the definition of violations, the regulation of investigation procedures, administrative sanctions, and preventive measures. However, as was noted during the on-site visit, its practical effectiveness and efficiency cannot yet be documented on account of its relatively recent enactment.

[185] Thus, although the SPF's representatives noted during the on-site visit that around 20 investigation procedures a year are brought before it under the LFACP, the Committee believes that it would be useful for the country under review to consider adopting suitable measuring and monitoring measures and mechanisms in order to conduct regular, comprehensive evaluations of the use and effectiveness of the LFACP, including for the collection of penalties and the recovery of illegally obtained assets, and, based on the results thereof, to define and adopt the measures deemed relevant to ensure the efficiency of that legislation.<sup>138/</sup> (See recommendation 1.2.3.4 in section 1.2.3 of Chapter II of this report)

[186] Related to this is the fact that the second transitory article of the LFACP states that it is to be enforced with the human, material, and budgetary resources allocated to the SFP, to the departments and agencies of the federal administration, to the office of the Attorney General of the Republic, and to the other authorities empowered to enforce it, and it therefore entails no additional spending. Nevertheless, given the importance of the timely and effective enforcement of the legal framework for combating corruption provided for in this law, the Committee invites the country under review to consider strengthening the agencies identified in that article, by providing them with the human, material, and budgetary resources necessary for due compliance with the functions and responsibilities that the LFACP assigns to them.<sup>139/</sup> (See recommendation 1.2.3.5 in section 1.2.3 of Chapter II of this report)

[187] In addition, based on the information provided during the on-site visit by both the country under review and the representatives of civil society organizations and the private sector, the Committee advises the country under review to consider strengthening the promotion and dissemination of the reach, nature, and tools provided for in the LFACP for combating corruption in public procurement in order to bring about greater participation and awareness among the different stakeholders involved therein. Consequently, the Committee will formulate a recommendation on that point.<sup>140/</sup> (See recommendation 1.2.3.6 in section 1.2.3 of Chapter II of this report)

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138. On August 15, 2016, the country under review reported that pursuant to publication in the DOF of the laws that make up the SNA, the LFACP is to be repealed in keeping with the Third Transitory Article of the Decree whereby the General Law on Administrative Responsibilities, among others, has been issued. The foregoing should be taken into consideration for the follow-up on said recommendations. (See section 3.2.1. in Chapter II of this Report.)

139. Ibid.

140. Ibid.

- As regards the legal and other provisions applicable to the APF's public procurement system:

[188] The Committee, as it did in reviewing the new legal developments with government hiring systems in the APF, again acknowledges the political will of the country under review to continue making progress with improving and strengthening the public administration based on the provisions of the 2013-2018 PND and the PGCM derived from it.

[189] Accordingly, and bearing in mind the objectives, strategies, and lines of action set out in the PGCM, chiefly as regards securing optimal conditions in the APF's contracts for goods, services, and public works through the establishment of a public procurement system based on transparency, competition, and objective criteria that promotes integrity and seeks to prevent corruption, the pursuit of amendments to the legal framework to help improve the planning, contracting, and execution thereof, the establishment of indicators, monitoring mechanisms, and results-based controls, in addition to favoring procurement operations using electronic channels, among other initiatives, the Committee believes it would be useful for the country under review to consider continuing to develop and implement the actions needed to attain the results proposed in this instrument based on its strategic indicators, and it invites it to report thereon in the annual progress reports provided for in Article 32 of the Committee's Rules of Procedure. (See recommendation 1.2.3.7 in section 1.2.3 of Chapter II of this report)

[190] In addition, based on the information presented by Mexico during the on-site visit regarding the actions taken in recent years, including, for example, the *draft decree* that would amend, add, and repeal various provisions of the LOPSRM, presented to the Chamber of Deputies by the federal executive on November 4, 2014, to adapt the public procurement regime to the infrastructure and economic growth that the country currently needs, to the 2013-2018 PND, to the PGCM, and to the relevant aspects of the SNA that will be addressed in section 3 of Chapter II of this report, the Committee will formulate a recommendation for the country under review to consider continuing the efforts to implement the principles, objectives, and strategies of the PGCM, including adapting and/or developing, as applicable, the legal regime governing the APF's procurement of goods and services, in accordance as appropriate, with the National Anticorruption System provided for in the Constitution, ensuring the principles of openness, equity, and efficiency established in the Convention. (See recommendation 1.2.3.8 in section 1.2.3 of Chapter II of this report)

[191] In connection with this, the country under review could also take into account, among other elements, the *proposal for regulatory reforms regarding public procurement to strengthen transparency and impartiality*,<sup>141/</sup> to which the Committee had access and which was drawn up by the SFP and published on February 2, 2016. *Inter alia*, this document proposes amending the R-LAASSP and R-LOPSRM to continue consolidating the APF's public procurement system as one based on transparency, competition, impartiality, and efficiency, as provided for in the PGCM's strategies and lines of action for the optimization of resources and the improvement of the public administration.

[192] Without prejudice to the comments on the CompraNet 5.0 system that will be formulated when it is reviewed as a new technological development, the Committee notes that public biddings may be held over electronic channels as provided for in Article 27 of the LAASSP, with their use being obligatory when the contract – be it through competitive bidding, an invitation to at least three people, or direct award – is worth 300 times or more the current minimum daily wage as provided for in the

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141. See: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_92.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_92.pdf)

*Agreement* establishing provisions to be observed in the use of that System as described in section (a) above.

[193] Although this information represents a legislative advance favoring the use of electronic channels for the State's purchasing, leasing, and service-provision operations of all kinds, the Committee notes, on the basis of the statistical data furnished by Mexico in its response to the Questionnaire,<sup>142/</sup> that over the past five years 55% of public biddings were both *electronic* and *mixed* and accounted for 54% of the total amount thereby assigned during the same period.

[194] In addition, as regards public works contracts, the Committee also notes from the response to the Questionnaire<sup>143/</sup> that it is possible to submit bids in person rather than through CompraNet, on account of the complexity of this type of contracting and in accordance with Article 28 of the LOPSRM.

[195] In the Committee's view, electronic systems for public contracting, such as Mexico's CompraNet, are suitable tools for strengthening transparency and efficiency in government procurement processes, they facilitate procedures and reduce the cost of operations, and, in addition to other benefits, by preventing contact between public servants and potential contractors, and they prevent possible acts of corruption and arbitrary decisions. Accordingly, and in addition to the lines of action provided for this topic by the PGCM, the Committee urges the country under review to consider adopting the relevant legislative and administrative measures to require the use of transactional technology systems, such as CompraNet, in all public contracting procedures and modalities, including the submittal of bids in processes for the awarding of public works contracts, and to define clear, concrete, and objective criteria to justify exceptions to their use. (See recommendation 1.2.3.9 in section 1.2.3 of Chapter II of this report)

[196] In line with the foregoing, the Committee gives the utmost importance on the recognition, contained in Article 134 of the Constitution, of competitive bidding as the general rule for the State's purchases, leases, and divestitures of goods of all kinds, services of all kinds, and the contracting of works. Accordingly, the Committee highlights the grounds for exceptions to biddings provided for in both the LAASSP and the LOPSRM following their amendments published in the DOF on May 28, 2009.

[197] First, both laws<sup>144/</sup> empower the departments and agencies of the federal administration to choose, under their own responsibility, to avoid competitive bidding procedures and enter into contracts through invitations sent to at least three persons or through a direct award. Although both laws state that exceptions must be duly grounded and motivated, according to the particular circumstances of each case, by the criteria of economy, effectiveness, efficiency, impartiality, honesty, and transparency, the Committee is concerned that given that the APF comprises some 300 departments and agencies, the provisions of the two laws establish many different procedures for exceptions to competitive bidding and that neither the LAASSP, the LOPSRM, or their respective regulations clearly and expressly identify the cases in which exceptional use may be used of either invitations to at least three persons or a direct award.

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142. See Mexico's response to the questionnaire, p. 49, note 13 *supra*.

143. *Ibid*, p. 48.

144. See: Article 40 of the LAASSP and Article 41 of the LOPSRM.

[198] Second, Article 41 of the LAASSP and Article 42 of the LOPSRM establish, respectively, the cases in which the departments and agencies of the federal administration can contract by means of invitations to at least three persons or a direct award for purchases, leases, and services, and public works or services related to thereto. However, a reading of those two articles does not identify which grounds apply to each form of contracting: in other words, the cases in which exceptions to competitive bidding are allowed in both articles apply to both invitations to at least three persons and to direct awards.

[199] In this regard it is relevant to note that both the LAASSP and the LOPSRM contain provisions that govern solely procedures involving invitations to at least three persons, which are conducted in a manner similar to biddings, in that the invitations are published through CompraNet and on the web site of the department or agency, and although the presentation and opening ceremonies may forgo the presence of the bidders, the internal oversight organ will always be invited. In contrast, the Committee was unable to identify in either those laws or their corresponding regulations any specific provisions governing contracting by direct award.

[200] Accordingly, and in light of the comments made above, the Committee urges the country under review to consider specifying the regime of exceptions to public bidding in order to clarify the special circumstances that allow the use of invitations to at least three persons and the special circumstances that allow the use of a direct award, bearing in mind that the international standards establish, as the main grounds for justifying direct contracting, the existence of a single supplier of the good or works sought, the urgent need to enter into a contract by reason of a risk to national security, the existence of a state of emergency through uncontrollable or unforeseen circumstances, and contracts involving minimal amounts.<sup>145/</sup> (See recommendation 1.2.3.10 in section 1.2.3 of Chapter II of this report)

[201] In addition, in order to ensure greater transparency and legal certainty in direct awards, the Committee believes it would be useful for the country under review to consider expanding the legal regime of the APF's public procurement system with provisions that more clearly define direct award procedures based on the principles of openness, equity, and efficiency enshrined in the Convention. (See recommendation 1.2.3.11 in section 1.2.3 of Chapter II of this report)

[202] Related to this are the grounds for exception provided for in Article 41, section XX, of the LAASSP, which states that contracts may be entered into without following the competitive bidding procedure when they involve the signing of specific contracts derived from a *framework contract*.

[203] Framework contracts “*are a contracting strategy based on an agreement of wills entered into by a department or agency with one or more possible suppliers, which establish the technical and quality specifications, scope, prices, and conditions that will regulate the acquisition or leasing of*

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145. On August 15, 2016, the country under review reported that, “...This paragraph has to do with the international standards that establish that, in procedures for the awarding of public contracts that Mexico conducts on the basis of external credit granted to the Federal Government by the International Bank for Reconstruction and Development [World Bank] or with the Inter-American Development Bank [IDB], there must be a series of Harmonized Standard Documents taking into account the policies of said financial institution with respect to fraud and corruption. These documents highlight the need, in procedures of this kind, to meet the highest ethical standards during the contract awarding process, as well as in the implementation of the contract, and to establish what penalties would be taken into account if a corrupt practice or fraud were to be found in the implementation of these procedures, including on this basis fulfillment of one of the purposes set forth in the Convention, which is to prevent, detect, punish, and eliminate acts of corruption in the exercise of government office and the acts of corruption specifically involving procedures for awarding public contracts as carried out by Mexico.”

*movable property or the provision of services.*<sup>146/</sup> Article 17 of the LAASSP states that under the terms of the Law's regulations, the SFP may pursue *contracts* of this kind, subject to determining the technical and quality characteristics agreed to with the departments and agencies, under which they are to acquire goods, leases, and services through the signing of specific contracts. Similarly, Article 14 of the R-LAASSP, which sets the requirements for contracts of this kind, states that *framework contracts* are not to be subject to the procurement procedures provided for in the LAASSP; nevertheless, in entering into them, the principles of economy, effectiveness, efficiency, impartiality, and honesty must be upheld to ensure optimal conditions for the State and must be set down in the specific contracts entered into pursuant to the aforesaid section XX of Article 41 of the Law.

[204] In connection with this, and based on the information gathered during the on-site visit and on other information made available to it, the Committee notes the advantages that the framework contract mechanism offers for the APF, suppliers, and society in general. However, given that, although the specific contracts derived from them are subject to the procedures of inviting at least three persons and direct awards, in accordance with Article 40 section XX of the LAASSP, in framework contracts, priority is given to direct awards. The Committee believes it would be useful for the country under review to continue the actions initiated to adopt, as a preferential selection procedure for specific contracts stemming from framework contracts, the invitation of at least three persons and for this purpose to consider strengthening the legal framework governing framework contracts to ensure that, according to their size, the specific contracts derived from them are entered into in accordance with the principles of openness, equity, and efficiency enshrined in the Convention. (See recommendation 1.2.3.12 in section 1.2.3 of Chapter II of this report)

[205] Related to this are some of the remarks and concerns expressed at the meeting with the civil society organizations and private sector representatives invited to participate during the on-site visit, which referred to certain cases in which potential abuses had occurred or inappropriate advantages had been taken in the awarding of contracts of this kind. For that reason, the Committee believes that the recommendation offered above would also help discourage and prevent possible inappropriate and/or arbitrary use being made of framework contracts.

[206] On another issue, the Committee, as it did during the Second Round, notes the existence of the *social witness*<sup>147/</sup> mechanism for social oversight of the APF's contracting activities. Accordingly, based on the amendments of the LAASSP and the LOPSRM published in the DOF on May 28, 2009, the Committee respectfully formulates the following considerations:

[207] Based on the terms of Article 26-ter of the LAASSP and Article 27-bis of the LOPSRM, *social witnesses* must participate in public purchasing, leasing, and services bidding processes when the amount involved is greater than five million times the current general daily minimum wage, and in public bidding for public works and services related thereto when the amount involved is greater than ten million times the current general daily minimum wage, as well as in such cases as the SFP may

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146. See: <http://www.gob.mx/cms/uploads/attachment/file/2821/que-son-los-contratos-marco.pdf>

147. Social witnesses are individuals who may or may not belong to nongovernmental organizations, or nongovernmental organizations themselves, duly registered with the SFP, who, at the request of departments and agencies, on their own initiative, or at the request of the Secretariat itself, may participate with the right to speak in contracting operations carried out by departments and agencies and, at the end their participation, give public testimony on the proceedings. (See: *Agreement establishing the guidelines that regulate the participation of social witnesses in contract operations carried out by departments and agencies of the federal public administration*, published in the DOF on December 16, 2004, available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_91.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_91.pdf)).

determine, in consideration of the impact the contracts would have on the substantive programs of the department or agency.

[208] In addition, under the terms of Article 63 of the R-LAASSP and Article 52 of the R-LOPSRM, in addition to participating in public biddings in excess of the amounts indicated in the previous paragraph, *social witnesses* are also to participate in operations involving smaller amounts or in invitations to at least three persons and direct awards when the SFP so determines, provided that the contract has a significant impact on the substantive programs of the department or agency in question.

[209] The SFP is responsible for the public register<sup>148/</sup> of *social witnesses*, who are to participate in all stages of the competitive bidding procedures referred to in both laws, with the right to speak, and who are to issue testimony at the end thereof, including their comments and, if any, recommendations, which will be published on the web site of the department or agency and on CompraNet and will be included in the corresponding case file. *Social witnesses* are selected by means of a public invitation,<sup>149/</sup> issued by the SFP, which accredits as social witnesses those persons meeting the requirements set forth in section III of Article 26-ter of the LAASSP and Article 27-bis of the LOPSRM, respectively.

[210] Among the functions they perform, social witnesses are to propose, to the departments and agencies and to the SFP, improvements for strengthening transparency, impartiality, and legal provisions related to purchasing, leasing, and services, together with public works and related services; they are to monitor the implementation of the actions recommended as a result of their participation in contracting procedures; and they are to issue, at the end of their participation, the corresponding *testimony*, a copy of which they are to present to the SFP and which is to be published on the web page of the department or agency in question. In discharging their functions, *social witnesses* are to abide by the provisions set forth in Article 67 of the R-LAASSP and Article 55 of the R-LOPSRM.

[211] Should *social witnesses* detect irregularities in the procurement procedure, they are to present their testimony to the complaints area of the internal oversight organ of the department or agency involved and/or to the Oversight Committee of the federal Chamber of Deputies. In addition, the participation of *social witnesses* may be dispensed with in contracting procedures that involve classified or confidential information that could endanger, national security, law and order, or the defense of the nation pursuant to the terms of the applicable legal provisions.

[212] Once a *social witness* has been appointed by the SFP, he is *contracted* by the department or agency in accordance with the terms of the LAASSP, the LOPSRM, and their corresponding regulations. The *social witnesses*' contracts are to be open and shall contain, *inter alia*: identification of the contracting procedure in which the social witness is to participate; the minimum and maximum number of hours of service to be contracted for; the unit price per hour of service; mechanisms for covering the traveling, food, and accommodation costs, if any, required for the provision of those services; the way and times in which social witnesses will be called upon by departments and agencies to participate in the contracting procedures, including their participation at *accompaniment panels*<sup>150/</sup>; the obligation of observing due secrecy and confidentiality should they be given access to

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148. See: Articles 60 and 61 of the R-LAASSP, and Articles 49 and 50 of the R-LOPSRM. In addition, the public register of *social witnesses* may be seen at: <http://www.funcionpublica.gob.mx/unaopsf/tsocial/tsocial.htm>

149. See: Article 62 of the R-LAASSP and Article 51 of the R-LOPSRM.

150. See: The *General Guide* to regulate the preventive accompaniment program in contracting by departments and agencies of the federal administration, available at:

classified information under the terms of the LFTAIP during their participation, together with the obligation of issuing the corresponding reports and testimonies.<sup>151/</sup>

[213] The SFP is to assess the performance of *social witnesses* in procurement procedures in accordance with Article 69 of the R-LAASSP and Article 57 of the R-LOPSRM. In addition, removal from the public register will occur should social witnesses trigger any of the situations described in Article 70 of the R-LAASSP and Article 58 of the R-LOPSRM.

[214] Based on the foregoing, and bearing in mind the remarks made by the representatives of civil society organizations and of the private sector invited to participate in the on-site visit, the Committee acknowledges the benefits to legality and transparency that the *social witness* mechanism has brought to public procurements within the APF.

[215] However, based on various remarks on the topic made during the on-site visit, the Committee calls attention to the payment that *social witnesses* receive for the work they carry out, bearing in mind that safeguarding the principles of legality, openness, equity, efficiency, and transparency in all contracting procedures is, above all, an obligation of all contracting public entities.

[216] In the Committee's view, the payment given to *social witnesses* could lead to repercussions such as the following: First, the increase – on occasions, considerable – in the contract amount, given that the *social witness's* payment is in proportion to that amount.<sup>152/</sup> For example, in a public works contract, the remuneration given to the *social witness* could represent a major cost. Second, since this is an activity paid for with public funds, the appointment of a *social witness* should abide by the rules and principles of competitive bidding given that it represents a contract for the provision of services. Third, an interest in being appointed a *social witness* might be driven more by the pay received than by the effective oversight of legality in contracting. In addition, given the ongoing professionalization among the individuals and corporations registered as *social witnesses*, it could be that public institutions or departments recurrently favor the appointment of a given *social witness*; in addition to a possible conflict of interest, this could lead to the undermining of the effective and objective oversight of a contracting procedure by that *social witness*.

[217] Therefore, and reiterating its acknowledgment of the benefits reported by Mexico regarding the scope and nature of the *social witness* mechanism in procurement procedures, the Committee believes that in order to bolster public trust in public purchases of goods, works, and services, it would be useful for the country under review to consider assessing the possibility of eliminating the payments made to *social witnesses* for the services they provide, or, alternatively, to subject their hiring to the rules of competitive bidding in order to maintain the principles of openness, equity, and efficiency enshrined in the Convention. (See recommendation 1.2.3.13 in section 1.2.3 of Chapter II of this report)

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[http://www.funcionpublica.gob.mx/unaopspf/doctos/comunes/guia\\_ap.pdf](http://www.funcionpublica.gob.mx/unaopspf/doctos/comunes/guia_ap.pdf)

151. See: Article 68 of the R-LAASSP and Article 56 of the R-LOPSRM.

152. See: Deeds Nos. UNCP/309/BMACP/TI-0720/2014 and UNCP/309/BMACP/TI-0721/2014, both dated August 29, 2014, regarding the payment amounts to be given to social witnesses, available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_94.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_94.pdf) and [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_95.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_95.pdf)

[218] Regardless of the foregoing, the Committee notes the lack of proportion between the number, for example, of public biddings held by the APF, which total some 133,500 per year (excluding contracts issued by invitations to at least three persons and direct award)<sup>153/</sup> and the 19 *social witnesses* registered in the list currently published on CompraNet (5 corporate bodies and 14 individuals). In the Committee's view, this imbalance in the number of currently registered *social witnesses* entails an impairment of the importance and effectiveness of this social oversight mechanism that is intended to ensure strict compliance with the principles of legality and transparency in public procurement procedures. Accordingly, the Committee urges the country under review to consider adopting the measures necessary to expand the register of *social witnesses*: for example, by issuing a greater number of calls for their selection and by strengthening the mechanisms for promoting and disseminating those calls among the public, as well as the corresponding training workshops.<sup>154/</sup> (See recommendation 1.2.3.4 in section 1.2.14 of Chapter II of this report)

[219] Finally, and taking into consideration that the scope of *social witnesses*' participation concludes with the signature of the contract awarded, the Committee will formulate a recommendation to strengthen citizen oversight of the APF's systems for the procurement of goods, works, and services through the adoption of mechanisms to encourage participation and social oversight during the execution phase of contracts for purchases, leases, services, and public works and services related thereto.<sup>155/</sup> (See recommendation 1.2.3.15 in section 1.2.3 of Chapter II of this report)

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153. See: Document submitted by the SFP's Public Procurement Policy Unit during the on-site visit, available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_78.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_78.pdf)

154. On August 15, 2016, the country under review reported that "...in accordance with what is provided for in the fourth transitory provision of the "Decree whereby various provisions of the Law on Procurement, Leases, and Services of the Government Sector, of the Law on Public Works and Their Related Services, of the Federal Law on Administrative Responsibilities of Public Services, and of the Federal Criminal Code are amended, added, and repealed," published in the Official Gazette of the Federation on May 28, 2009, the SFP is instructed to implement the measures or actions that are needed to extend the coverage of social witnesses, in order to guarantee total coverage in public procurement within ten years as of the entry into force of said laws, that is, by 2019. Therefore, along this order of ideas, taking into account that, until September 2013, there was a total of 37 social witnesses registered in the Public Registration List of Social Witnesses, that is, 32 natural persons and 5 legal entities, and in order to increase the registry of social witnesses, the SFP issued the following 2 public invitations for the selection of natural persons and legal entities to register in the Public Registration List of Social Witnesses: The first was published in the CompraNet system on September 11, 2013, and as a result of this invitation, the SFP, through the UNCP, granted two social witness registrations to 2 natural persons to become part of the Public Registration List of Social Witnesses. The second was published in the above-mentioned system on March 15, 2016, as a result of which the SFP, through the UNCP, granted 6 social witness registrations, that is, 4 natural persons and 2 legal entities. With the previous actions, this led to a total of 45 social witnesses, of which 38 are natural persons and 7 legal entities."

155. On August 15, 2016, the country under review reported that "...taking into account that the Mexican legal system is governed by substantive law, therefore the observance of this law presupposes the existence of a standard which, after a formal process of creation, becomes binding and therefore mandatory for those to whom observance is addressed, the mechanism of the social witness has a regulatory limit according to the legal reasoning set forth in both Article 68 of the R-LAASSP and Article 56 of R-LOPSRM, because in both cases it is indicated that: "The participation of the social witness in the contracting procedure shall come to an end with the signing of the respective contract or the issuance of a decision declaring that the procedure is null and void or that it has been annulled..." as a result of which the participation of the social witness cannot be extended up to the implementation of the contract. Because of the above, prior to adopting social control mechanisms in the implementation of the contracts being referred to, including the mechanism of social witness, these mechanisms must be added to the proposed initiatives for amendments to both the R-LAASSP and the R-LOPSRM, so as to benefit from the conditions to implement the above-mentioned recommendations."

- As regards the legal and other provisions applicable to the federal legislature's system for public procurement:

[220] First, and without prejudice to the recommendations formulated for the Chamber of Deputies in the Second Round that are still pending compliance as stated in Section 1.2.1 of Chapter II of this report, the Committee invites the country under review to consider adapting and/or developing, as applicable, the legal regime for the procurement of goods and services in the federal legislature, as pertinent, in accordance with the National Anticorruption System provided for in the Constitution. (See recommendation 1.2.3.16 in section 1.2.3 of Chapter II of this report)

[221] Second, the Committee takes note of the updating of its public procurement system carried out in 2012 by the Senate of the Republic, chiefly as regards the publication and amendment of its *Provisions for Purchasing, Leasing, Services, and Public Works*, described above. Nevertheless, in line with the remarks given in section 1.2.1 of Chapter II of this report as regards hiring systems for public servants in that branch of government, and based on the information gathered during the on-site visit regarding the joint efforts underway in both chambers to standardize their administrative regimes, the Committee believes it would be useful for the country under review to also consider adopting the measures needed to harmonize the management of both systems for purchases, leases, service provision, and public works, guided by the principles of openness, equity, and efficiency enshrined in the Convention. (See recommendation 1.2.3.17 in section 1.2.3 of Chapter II of this report)

[222] In addition, during the on-site visit, the need was identified to create and implement an electronic system for conducting the contracting operations of both chambers of the federal legislature, bearing in mind that such systems are suitable tools for strengthening transparency and efficiency in contracting procedures and that they facilitate formalities, reduce the costs in such operations, and also prevent possible acts of corruption and arbitrary decisions, among other benefits. Thus, the Committee believes it would be useful for the country under review to consider adopting the relevant legislative, administrative, and technological measures so that the federal legislature can participate in CompraNet and conduct its procurement procedures for goods, works, and services through that system. (See recommendation 1.2.3.18 in section 1.2.3 of Chapter II of this report)

- As regards the legal and other provisions applicable to the federal judiciary's system for public procurement:

[223] First, the Committee took note of the efforts made by both the SCJN and the CJF to update their respective administrative legal frameworks with respect to public procurement, which is evident in the *General Administration Agreement VI/2008* of the Governance and Administration Committee of the SCJN of September 25, 2008, as well as in the *General Agreement of the Plenary of the Federal Judicature Council establishing provisions for the administrative activities of that Council* published in DOF on January 2, 2015, both cited above. Nevertheless, along the same line it has suggested for the APF and the federal legislative branch, the Committee invites the country under review to consider adjusting and/or developing, as applicable, the legal structure of the system for the procurement of goods and services in the federal judicial branch, in whatever is deemed relevant, in accordance with the National Anti-Corruption System provided in the CPEUM. (See recommendation 1.2.3.19 of section 1.2.3. of the chapter II of the present report.)

[224] Without detriment to the above and the contents of the General Agreements cited, the Committee indicates that both the SCJN and the CJF have strengthened public monitoring over their public procurement procedures by including the modalities of *third-party assistance* to procedural actions, as well as the *social witness* as a representative of society contributing to the legality and transparency of said procedures. It should be noted, in terms of this last modality, that it started being considered among procurement procedures as of 2007, as a result of the signing of a *General Collaboration Agreement*<sup>156/</sup> between the SCJN, the CJF and the civil society organization Transparencia Mexicana for the purpose of strengthening transparency in the management of the supreme court's budget, therefore mainstreaming this modality. Nevertheless, as it occurs in the sphere of the APF described above, the Committee observed that the scope of *third-party assistance*, as well as *social witness*, is limited until the signing of the contract awarded, which indicates that, as a result, there are no direct social monitoring mechanisms that would include contract implementation stage, because of which the Committee shall be making a recommendation about this.<sup>157/</sup> (See recommendation 1.2.3.20 of section 1.2.3. of chapter II of the present report.)

[225] Likewise, reiterating the considerations regarding the modality of *social witness* in the sphere of the APF, the Committee deems it advisable that, in order to strengthen public trust in the government procurement of goods, projects, and services by the federal judicial branch, consideration be given by the country under review to evaluate, in the legal and administrative system of this branch of government, the possibility of eliminating financial compensation for the services provided by *social witnesses* or, failing that, requiring them to be hired on the basis of the public contracting rules that would ensure observance of the principles of openness, equity, and efficiency as provided for in the Convention. (See recommendation 1.2.3.21 of section 1.2.3 of chapter II of the present report).

[226] Likewise, regarding the publication that, by mandate of the above-mentioned General Agreements, both the SCJN and the CJF must issue regarding the registration lists or rosters of *social witnesses*, the Committee, despite the information published in the CompraNet portal,<sup>158/</sup> was not able to identify the respective links in the corresponding Internet pages of these judicial institutions, for which a recommendation shall be made along this line. (See recommendation 1.2.3.22 of section 1.2.3 of chapter II of the present report.)

[227] As for procurement by electronic media, during the on-site visit, the representative of the CJF pointed out that it is currently working on developing structures similar to the one existing in the APF, notwithstanding that, on one occasion, the CompraNet platform was used in a pilot trial. However, the decision, traditionally pertaining to the federal judicial branch, is to develop and administer its own technology-based platforms. In that regard, reiterating the benefits in terms of transparency that electronic procurement provides, the Committee urges the country under review to

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156. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_61.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_61.pdf)

157. On September 9, 2016, the country under review reported that “the concept of social witnesses in the CJF is in the process of being updated and enhanced. In this regard... the financial compensation for social witnesses was regulated in order to prevent subjective behavior that could undermine the virtues of this concept, and therewith the principles of openness and transparency in public procurement. In this regard, Article 259 of the General Agreement of the Plenary of the Federal Judiciary Council regulating administrative activity stipulates, “Article 259. The contract with social witnesses shall be open and shall contain: I. Identification of the procurement procedure in which they will intervene; II. The minimum and maximum number of hours of their service to be hired, which may not exceed 120 hours, unless expressly authorized by the Administration Commission, subject to the Committee’s approval; ; III. The unit price per hour of service and the minimum and maximum total to be covered by the Council;”

158. See: <http://www.funcionpublica.gob.mx/unaopspf/tsocial/tsocial.htm>

consider the creation and implementation of computer platforms and/or systems to carry out the procurement activities of the federal judicial branch, so that goods, public works and services procurement processes can be developed via these media. (See recommendation 1.2.3.23 of section 1.2.3 of chapter II of the present report).

### 1.2.2.2. New developments with respect technology

[228] In both its response to the questionnaire<sup>159/</sup> and during its on-site visit, the country under review submitted information regarding this type of development, among which the Committee highlights, first of all, version 5.0 of CompraNet, which has been operating since June 2010.

[229] According to information provided by Mexico, some of the advantages of this version are the possibility of carrying out procurement procedures completely via electronic media, guaranteeing the *traceability* of these procedures; its operational implementation via Internet is easy to access and user-friendly for both suppliers and buyers, and it is also accessible to the general public; it makes it possible to send messages online to enterprises that have productive ties with business opportunities that government agencies and entities are interested in purchasing; it facilitates compliance with the legal framework, promoting transparency in procurement; in addition it creates useful and necessary information for the comprehensive planning, programming, budgeting, and evaluation of these contracts.

[230] In addition to the above, for its complete implementation, various modules and information have been incorporated into CompraNet 5.0 to facilitate its use by both government agencies and entities and the potential suppliers participating in procurement procedures as follows:

[231] – *Annual Programs for Purchases, Leases, Services, and Public Works*<sup>160/</sup> that make it possible for potential bidders and the general public to learn, in an orderly, timely, and up-to-date manner, about the procurement intentions of APF agencies and entities as a result of the publication of the annual procurement schedule.

[232] – *Consolidated Public Competitive Bidding Classifier*<sup>161/</sup> which integrates and classifies APF goods, leases, public works, and services in accordance with public spending classification.

[233] – *RUPC*<sup>162/</sup> which makes it possible for the procurement units to learn about the performance of suppliers and contractors with regard to fulfillment of previous contracts; the *Registry of Sanctioned Suppliers*<sup>163/</sup> which facilitates access to data of legal entities and physical persons that have been sanctioned by comptrollers in APF agencies and entities, the periodicity of which is subject to disqualification time-limits or the procedural stage it keeps in case of challenge, as well as the *Roster of Social Witnesses*<sup>164/</sup> already described in previous sections.

[234] – Information about *framework contracts*<sup>165/</sup> that are in force and entered into and their corresponding files for each one of the implementation stages of these contracts, as well as

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159. See Mexico's response to the *questionnaire*, pp. 90 to 92, note *supra* 13.

160. See: <http://compranet-pa.funcionpublica.gob.mx/programas/programas.jsf>

161. See: <https://sites.google.com/site/cnetcuop>

162. See: <https://sites.google.com/site/cnetrupc/rupc>

163. See: [http://www01.funcionpublica.gob.mx:8080/SanFicTec/jsp/Ficha\\_Tecnica/SancionadosN.htm](http://www01.funcionpublica.gob.mx:8080/SanFicTec/jsp/Ficha_Tecnica/SancionadosN.htm)

164. See: <http://www.funcionpublica.gob.mx/unaopspf/tsocial/tsocial.htm>

165. See: <http://www.gob.mx/sfp/documentos/contratos-marco-de-la-apf>

information about *consolidated procurement contracts*<sup>166/</sup> which includes the listing of goods, leases, and services that APF agencies and entities wish to contract in a consolidated fashion during the year under way.

[235] – The module of *Subsequent Discount Bids* used in electronic bidding so that the bidders, after submittal and opening of the technical and economic bid envelopes, can make one or more bids that improve the price that was initially offered, although it does not mean that it would be possible to change the specifications or characteristics originally contained in their technical proposal; as well as the module of *Market Information and Intelligence for Government Procurement*<sup>167/</sup> which administers and uses the information contained in CompraNet and in the annual contracting programs aimed at managing the planning, contracting, monitoring, and follow-up of government procurement and the services associated with this procurement, on the basis of timely, reliable, and automated information via indicators, reports, statistics, control boards, and other tools.

[236] – The module of *Electronic Complaints*<sup>168/</sup> for remote presentation, as well as a link to the *Portal for Complaints and Whistleblowing*<sup>169/</sup> for alleged misconduct by civil servants or physical persons or legal entities who participate in federal government procurement contracts.

[237] The current homepage of the website of CompraNet also provides information about on-site training courses for operators of the procurement and bidding units, among other links of interest for users and the general public.

[238] Likewise, recent improvements have been incorporated into CompraNet, among which there is the “*portfolio password*” which makes it possible to identify the registration password that the Investment Unit of the Secretariat of Finance and Public Credit grants to investment programs and projects, as well as the new modality for the request to register domestic and foreign physical persons and legal entities on the basis of the validation of data incorporated into the system against those data contained in the electronic signature with which they are identified.

[239] CompraNet 5.0 benefits from comprehensive technical support to administer the volume of information contained in its database, which guarantees 99.5% platform availability, the optimization of response times for the browsers searching for procurement procedures available to the public, in addition to facilitating the timely assessment of any failure or problem identified by ongoing monitoring.

[240] On the basis of the above, the Committee acknowledges, and takes note of, Mexico’s efforts to strengthening and updating CompraNet, as well as the technological advantages that it provides in terms of the possibility of undertaking electronic procurement procedures and the follow-up on procurement processes by broadening available information. Nevertheless, on the basis of the information gathered during the on-site visit, the Committee learned about certain difficulties that the platform might have in its transactional component, especially with respect to *uploading* and *downloading* electronically *heavy* documents. In that respect, in order to ensure its optimal functionality, the Committee shall make a recommendation so that this component can be assessed and, if appropriate, relevant measures adopted. (See recommendation 1.2.3.24 of section 1.2.3 of chapter II of the present report.)

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166. See: <http://goo.gl/W3p9tv>

167. See: <https://compranetim.funcionpublica.gob.mx/CompranetIMindex.html>

168. See: <http://inconformidades.compranet.gob.mx/inconforweb/index.jsp>

169. See: <http://quejas.funcionpublica.gob.mx/PortalOD-web/xhtml/queja/capturarQueja.jsf>

[241] Likewise, on the basis of the information that it had at its disposal, the Committee takes note of the initiative recently launched by the Mexican Government with respect to the concept of *open contracting*, which means, among other developments, in the publication of the pilot phase of the portal <http://contrataciones.datos.gob.mx> on the basis of program *Data Analytics for Procurement* developed by the World Bank, whose purpose is to present, in a relevant and user-friendly way, the information that is available on CompraNet for both citizens and civil servants of the government.

[242] This initiative responds to the commitments announced by the state which were examined on the occasion of the 2015 Open Government Partnership Global Summit held in Mexico City in October 2015, as well as more recently at the Anti-Corruption Summit held on May 12, 2016 in London, where Mexico, along with Colombia, France, Ukraine, and the United Kingdom, established the *Open Contracting Partnership 5 (C5)* aimed at effectively implementing the Open Contracting Data Standard (OCDS)<sup>170/</sup> to put an end to corruption in public competitive bidding processes.

[243] As part of the efforts to promote OCDS, Mexico is implementing this standard in the present administration's most important infrastructure projects: the new International Airport for Mexico City and the Shared Telecommunication Network.

[244] Taking into account the above and recognizing the importance of this initiative being spearheaded by Mexico, the Committee urges the country under review to consider, subject to the principle of openness envisaged in the Convention, continuing its promotion of the system of *open contracting* by strengthening and updating, as appropriate, its technological platforms, mainly CompraNet. (See recommendation 1.2.3.25 of section 1.2.3 of chapter II of the present report.)

[245] Finally, without formulating a recommendation in this regard, the Committee invites Mexico to consider the possibility of having their state enterprises use a system such as CompraNet, given their need to make purchases with the deftness required of private businesses, as well as the fact that their contracts involve very high amounts and demand greater dynamism in their routine procurement. Systems like CompraNet provide greater transparency and effectiveness to procurement processes, inasmuch as these types of systems have begun to show themselves to be extremely expeditious and effective while respecting the strict processes required under general procurement laws.

### 1.2.2.3. Results

[246] In addition to the information already presented in section 1.2.1 of the present report, in its response<sup>171/</sup> to the questionnaire, Mexico notes, as information on the results obtained on some of aspects of the government procurement systems for goods and services referred to in Article III, paragraph 5 of the Convention, that CompraNet has information, publicly and freely available for consultation, on 448,340 procurement processes and 473,558 contracts for a total amount of 1.48 trillion Mexican pesos, and that 1,191 procurement units from the three branches of government have been allowed to use it and, at the same time, 5,197 public servants from Procurement Units have been allowed to operate said System. This information makes it possible for the Committee to conclude and recognize that Mexico has been consolidating the use of electronic tools in its public competitive bidding processes.

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170. See: <http://datos.gob.mx/redcompartida>

171. See Mexico's response to the questionnaire, pp. 93 and 94, note *supra* 13.

[247] Likewise, as a result of the on-site visit, the country under review provided the following information<sup>172/</sup> about the number, amount, and type of procurement procedures carried out between 2010 and 2015:

Year	Type of contracting	Public competitive bidding process		Call for bids to at least 3 persons		Direct awarding of contract		Total	
		Number	Amount	Number	Amount	Number	Amount	Number	Amount
2010	Goods and services	176	1,509	137	71	3,729	7,888	4,042	9,468
	Public works	24	170	25	25	251	684	300	879
	Total	200	1,679	162	95	3,980	8,572	4,342	40,346
	Percentage	5%	16%	4%	1%	92%	83%	100%	100%
2011	Goods and services	10,568	90,711	6,232	6,157	53,080	63,985	69,880	160,853
	Public works	3,775	59,085	3,096	7,228	4,037	7,350	10,908	73,663
	Total	14,343	149,796	9,328	13,386	57,117	71,335	80,788	234,517
	Percentage	18%	64%	12%	17%	71%	30%	100%	100%
2012	Goods and services	17,858	127,068	10,840	21,721	79,097	83,536	107,795	232,325
	Public works	4,729	75,851	4,296	13,237	5,326	9,924	14,351	99,012
	Total	22,587	202,919	15,136	34,958	84,423	93,460	122,146	331,337
	Percentage	18%	61%	12%	11%	69%	28%	100%	100%
2013	Goods and services	16,978	136,599	11,789	17,759	80,867	94,515	109,634	248,872
	Public works	4,346	71,366	5,146	19,971	4,799	18,030	14,291	109,367
	Total	21,324	207,965	16,935	37,729	85,666	112,545	123,925	358,239
	Percentage	17%	58%	14%	11%	69%	31%	100%	100%
2014	Goods and services	18,268	172,347	11,796	21,028	90,011	120,551	120,075	313,926
	Public works	5,088	159,660	6,425	28,771	4,843	22,862	16,356	211,293
	Total	23,356	332,007	18,221	49,799	94,854	143,414	136,431	525,220
	Percentage	17%	63%	13%	9%	70%	27%	100%	100%
2015	Goods and services	19,624	176,870	11,083	27,760	107,342	138,491	138,049	343,121
	Public works	3,993	86,112	4,852	18,677	4,492	7,280	13,337	112,069
	Total	23,617	262,982	15,935	46,437	111,834	145,771	151,386	455,190
	Percentage	16%	58%	11%	10%	74%	32%	100%	100%
2010 2015	Goods and services	83,472	705,104	51,877	94,496	414,126	508,966	549,475	1,308,566
	Public works	21,955	452,244	23,840	87,909	23,748	66,130	69,543	606,283
	Overall Total	105,427	1,157,348	75,717	182,405	437,874	575,096	619,018	1,914,849
	Percentage	17%	60%	12%	10%	71%	30%	100%	100%

**Considerations:**

1. Information referring to contracts registered on CompraNet 5.0 (as of June 28, 2010), pertaining to APF agencies and entities.
2. Amounts in millions of Mexican pesos.
3. Percentages calculated by the Technical Secretariat of MESICIC.

172. See document submitted by SFP during the on-site visit, available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_78.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_78.pdf)

[248] Regarding the information above, the Committee observes that, on the basis of its review, it can be inferred that, although Article 134 of the CPEUM expressly provides that, for the procurement, leasing, and disposal of all kinds of goods and services, as well as public works, contracts shall be awarded or carried out through public competitive bidding processes, in practice direct awarding of contracts has been the procurement bidding process most widely used by APF during the period to which the information refers. Bearing in mind this observation, the Committee, in addition to reiterating its consideration that it would be advisable to specify the system of exceptions to the public competitive bidding process so that there would be greater clarity about what special circumstances would make it possible to resort to the procedure of issuing calls for bids to at least three persons and what special circumstances would make it possible to resort to direct awarding of contracts, shall make a recommendation to the country under review that it should supplement measures that have been implemented and adopt those relevant measures to ensure the effective use of public competitive bidding as a general rule for government procurement, so that, in practice, no exceptional procedures for the selection of contractors be resorted to on a regular basis. (See recommendation 1.2.3.26 of the section 1.2.3 of chapter II of the present report.)

[249] Likewise, as a result of the on-site visit, the country under review provided information<sup>173/</sup> making it possible to demonstrate the use of the module of *Electronic Complaints* referred to above. As for the result that would make it possible to highlight the use and processing of the appeal filing a complaint and conciliation procedures set forth in the legal framework described in the sections above, the Committee refers to the information contained in the Third Report of Activities of the SFP for 2014-2015 to which it had access and on the basis of which the following is inferred:

[250] – Between September 1, 2014 and July 22, 2015, 526 conciliation proceedings were processed: of these, 137 cases were able to reach a mutual agreement (26.1%); in 85 cases, the rights of the parties were safeguarded (16.2%); in 177 cases, the merits were not examined because of referrals, lack of jurisdiction, or withdrawals (33.6%); and in 127 cases, a resolution was pending (24.1%). Of the 222 case files that were substantiated, 61.7% of the cases were able to reach a mutual agreement. The amount of the contracts in the conciliation requests, received in SFP, amounted as a whole to 15,703.56 million pesos; and of this amount 4,371.52 million pesos pertained to contracts formalized on the basis of LOPSRM, and 11,332.04 million pesos pertained to contracts formalized under the safeguard of LAASSP.<sup>174/</sup>

[251] Between September 1, 2014 and July 22, 2015, SFP received 1,394 complaints, of which 668 challenged procurement procedures: 52 public complaints regarding procurement (47.9%); 500 regarding services (35.9%); 215 regarding public works (15.4%); and 11 regarding leases (0.8%). Out of the total complaints filed, in 1,065 cases, the action of bid submission and opening and the award decision were challenged (76.4%); in 245 cases, the call for a bidding process and meeting for clarification (17.6%); in 21 cases, actions or omissions by those issuing the calls which prevented the formal signing of the corresponding contract (1.5%); and in 63 cases, other actions were challenged (4.5%). During the same period, 1,148 case files were settled. Of these, 439 pertained to complaints that were dismissed (38.2%); in 432 cases the reasons behind the complaint were declared groundless (37.7%); and in 277 cases the action being challenged was declared either partially or totally null and void because it was determined that an action was contrary to the legal framework on the question at hand (24.1%). The average time for settling case files on complaints amounted to 93.8 working days.

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173. See document submitted by the SFP during the on-site visit, available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_79.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_79.pdf)

174. See p. 51 of the Third Report of SFP Activities for 2014-2015, available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_96.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_96.pdf)

Taking into consideration the various means for filing a challenge that questioned the rulings on complaints issued by SFP, in 87.5% of the cases, these determinations were upheld.<sup>175/</sup>

[252] As for the sanctions imposed on bidders, suppliers, and contractors for alleged infringement of the provisions, on the basis of the Report referred, it was concluded that, between September 1, 2014 and July 22, 2015, the SFP issued 381 rulings, of which 201 involved penalties (52.8%). The total amount of the fines levied was for 117.8 million pesos. Between September 1, 2014 and July 22, 2015, the rulings of the SFP to deal with administrative penalty proceedings were upheld by the authorities having jurisdiction to hear them in 92.7% of the total challenges ruled upon by various entities, filed by individual persons to question determinations (sanctions) imposed by the SFP in that period as well as previous ones (appeals for review, proceedings for nullification, and request for constitutional safeguards).<sup>176/</sup>

[253] The Committee believes that the above information highlights that, in Mexico, in the sphere of the AFP, a legal framework has been implemented that governs the procurement activities system for bidders, suppliers, and contractors in the in this sector, during the time period referred to in the information provided.

[254] Likewise, as part of the efforts made by the SFP to promote a culture of legality and respect for accountability under the *Policy of Transparency of Socially Useful Information or Focused Transparency of the Government of the Republic*,<sup>177/</sup> the Committee takes note of the statistical information about government procurement, as well as the major savings created as a result of the Federal Government's contracting strategies, available on said Secretariat's official website.<sup>178/</sup>

[255] As for the results obtained on new developments associated with the systems for the procurement of goods and services by the federal legislative branch, although the country under review did not provide information about this in its response, the Committee, with respect to the Senate, takes note of the bidding reports and calls for bids for 2015, both published in the administrative information section of its official website<sup>179/</sup> and, with respect to the House of Representatives, also took note of the information contained in the Procurement Portal of Congress<sup>180/</sup> where, among other aspects, data can be consulted on the type of proceedings and amounts of the contracts entered into by said House of Representatives between 2011 and 2016.

[256] Although on the basis of the above-mentioned information it could be inferred that both houses of the federal legislative branch repeatedly use public competitive bidding processes, this information does not enable the Committee to conduct a comprehensive review of the objective results in this matter which are being examined and, as a result, it shall make a recommendation taking into account, among other aspects, the information which, according to the *General Technical Guidelines*<sup>181/</sup> for the publication, harmonization, and standardization of the information of the obligations set forth in the LGTAIP, both legislative houses must disseminate on their websites and

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175. Ibid.

176. Ibid.

177. See: <http://www.gob.mx/sfp/documentos/transparencia-focalizada-proyectos>

178. See: <http://www.gob.mx/sfp/documentos/contrataciones-publicas-16141>

179. See: <http://www.senado.gob.mx/admin/licitaciones.php>

180. See: <http://www5.diputados.gob.mx/index.php/camara/Transparencia/Informacion-Finaciera/Contrataciones>

181. See note *supra* 102.

on the *National Transparency Platform*.<sup>182/</sup> (See recommendation 1.2.3.27 of section 1.2.3 of chapter II of this report.)

[257] In the same respect, although the country under review did not provide information on the results obtained regarding new developments associated with the systems for the procurement of goods and services by the federal judicial branch, the Committee also identified that, on the official website of SCJN, in its section on transparency,<sup>183/</sup> monthly reports are published on purchases, services, and other works contracted by this supreme court, which can be consulted by subject, as well as by type of contract. In addition, in this section, it is possible to consult annual programs for the implementation of purchases, leases, and service delivery, as well as associated public projects and services, in addition to certain information related to complaints filed in the procurement procedures and on suppliers and contractors leading to a case of encumbrance, among other aspects.

[258] As for the CJF, in compliance with the provisions of Article 70 of the LGTAIP on common obligations for transparency, it publishes, in its section on transparency<sup>184/</sup> on its official website, monthly reports on contracts entered into by said Council, which can also be consulted by subject and type of contract award process. Regarding this, it is necessary to point out that, during the on-site visit, the representative of CJF referred to the work that it is doing to create a *microsite* that makes it possible to improve and ensure the update of information associated with government procurement contracts that have been implemented, except for those deemed confidential.

[259] The Committee deems that the above information can be useful to indicate that, in the SCJN, as well as in the CJF, publicity is given to the procurement, to the bidding processes and to the calls for bids, but the information, as it is now published, does not make it possible to comprehensively review the objective results of said entities on the subject that is being examined. Because of that, the Committee shall make a recommendation to them regarding that, using the same criteria as those used for the recommendation made previously with respect to the federal legislative branch. (See recommendation 1.2.3.28 of section 1.2.3 of chapter II of the present report.)

### **1.2.3. Recommendations**

[260] In view of the observations made in sections 1.2.1 and 1.2.2 of chapter II of the present report, the Committee suggests that the country under review consider the following recommendations:

- 1.2.3.1 Enhance, through the appropriate authority, the House of Deputies Procurement, Leasing and Services Law and the House of Deputies Public Works and Related Services Law, with the inclusion of a general provision regarding the need to provide a reasoned decision to employ procurement procedures other than public competitive bidding, in order to promote the principles of openness, equity and efficiency recognized in the Convention. (See paragraph 129 in section 1.2.1 in Chapter II of this report)

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182. See: <http://www.plataformadetransparencia.org.mx>

183. See: [https://www.scjn.gob.mx/Transparencia/Paginas/trans\\_adq\\_ser\\_obr\\_des.aspx](https://www.scjn.gob.mx/Transparencia/Paginas/trans_adq_ser_obr_des.aspx)

184. See: <http://www.cjf.gob.mx/transparencia/index.htm>

- 1.2.3.2 Consider the possibility of supplementing the legislation passed by both Houses of Congress on the approval of government contracts, so that they include a social oversight mechanism for all government procurement contracts, through to their execution. (See paragraph 129 in section 1.2.1 in Chapter II of this report)
- 1.2.3.3 Enhance, through the appropriate authority, the House of Deputies Procurement, Leasing and Services Law and the House of Deputies Public Works and Related Services Law, by establishing a mechanism for contesting decisions adopted by the Office of the Comptroller General on objections lodged under those Laws, in order to strengthen the effectiveness of challenge mechanisms. (See paragraph 129 in section 1.2.1 in Chapter II of this report)
- 1.2.3.4 Adopt adequate measurement and monitoring measures and mechanisms that would make it possible to conduct comprehensive periodical evaluations about the use and effectiveness of LFACP, including for the collection of penalties and the recovery of illegally obtained assets, and, on the basis of their results, prepare and adopt the measures that are deemed relevant to ensure the efficiency of said regulations. (See paragraph 185 in section 1.2.2.1 (b) in Chapter II of this report)
- 1.2.3.5 Endow SFP, the agencies and entities of APF, the PGR, and the other authorities qualified to implement the LFACP, on the basis of available resources, with the human, technical, and financial resources needed to fully discharge the duties and functions that this involves, establishing mechanisms that would enable institutional coordination of their actions and an ongoing assessment and follow-up of these actions. (See paragraph 186 in section 1.2.2.1 (b) in Chapter II of this report)
- 1.2.3.6 Adopt measures and mechanisms that would boost the promotion and dissemination of the scope, nature, and tools provided for in the LFACP, so as to broaden participation and raise awareness to combat corruption in public competitive bidding processes of the various stakeholders involved in these processes. (See paragraph 187 in section 1.2.2.1 (b) in Chapter II of this report)
- 1.2.3.7 Continue developing and implementing the actions needed to achieve the results proposed in the PGCM on the basis of its strategic indicators, mainly to secure the best conditions in APF's procurement of goods, services, and public works and to report about this in the annual progress reports as stipulated by Article 32 of the Committee's Rules of Procedures. (See paragraph 189 in section 1.2.2.1 (b) in Chapter II of this report)
- 1.2.3.8 Continue the efforts of applying the principles, objectives, and strategies of the PGCM, including adjusting and/or developing, as appropriate, the legal system for the purchase of goods and services in the APF complying, wherever relevant, with the National Anti-Corruption System provided in the CPEUM, ensuring principles of openness, equity, and efficiency as set

forth in the Convention. (See paragraph 190 in section 1.2.2.1 (b) in Chapter II of this report)

- 1.2.3.9 Consider adopting the corresponding legislative and administrative measures that require the mandatory use of technology-based transactional systems, such as Compranet, in all public procurement processes and modalities, including the submittal of bids in procurement processes for public works, defining clear, concrete, and objective criteria that can substantiate any exception to their use. (See paragraph 195 in section 1.2.2.1 (b) in Chapter II of this report)
- 1.2.3.10 Specify the system of exceptions to public competitive bidding provided for in the LAASSP and LOPSRM, so that there is clarity about what special circumstances would permit resorting to the procedure of calling for bids to at least three persons and what special circumstances would make it possible to resort to a direct awarding of a contract. (See paragraph 200 in section 1.2.2.1 (b) in Chapter II of this report)
- 1.2.3.11 Consider adopting the corresponding legislative and administrative measures that would supplement the legal system of APF's public competitive bidding structure with provisions governing with greater precision the procedures for direct awarding of a contract on the basis of the principles of openness, equity, and efficiency as set forth in the Convention. (See paragraph 201 in section 1.2.2.1 (b) in Chapter II of this report)
- 1.2.3.12 Continue actions undertaken so that specific contracts stemming from framework contracts whose purpose are the procurement of goods or services for which there is a competitive market shall be awarded on the basis of the procedure of inviting at least three persons to bid and not by direct award, in order to strengthen the legal framework governing framework contracts so that, by virtue of their magnitude, it can be ensured that the specific contracts stemming from them and entered into observe the principles of openness, equity, and efficiency as set forth in the Convention. (See paragraph 204 in section 1.2.2.1 (b) in Chapter II of this report)
- 1.2.3.13 Assess in APF's legal and administrative system, the possibility of eliminating the financial compensation for services provided by *social witnesses* or, failing that, requiring they be hired on the basis of public competitive bidding rules that can guarantee the principles of openness, equity, and efficiency as set forth in the Convention. (See paragraph 217 in section 1.2.2.1 (b) in Chapter II of this report)
- 1.2.3.14 Adopt the measures needed to strengthen the registration list of *social witnesses* through, for example, the issuance of a larger number of calls to select these witnesses, strengthening the mechanisms to promote and disseminate them among the public, as well as the corresponding training

workshops (See paragraph 218 in section 1.2.2.1, (b) in Chapter II of this report)

- 1.2.3.15 Adopt mechanisms that promote participation and social monitoring during the stage of implementation of the contracts awarded for purchases, leases, and services, as well as for public works and related services in the sphere of the APF. (See paragraph 219 in section 1.2.2.1 (b) in Chapter II of this report)
- 1.2.3.16 Consider adjusting and/or developing, as appropriate, the legal system of the goods and services procurement system in the federal legislative branch, where relevant, so that it is in line with the National Anti-Corruption System as set forth in the CPEUM. (See paragraph 220 in section 1.2.2.1, (b) in Chapter II of this report)
- 1.2.3.17 Adopt the relevant measures that would harmonize management, by both houses of the federal legislative branch, of their corresponding systems for purchases, leases, service delivery, and public works, guided for this purpose by the principles of openness, equity, and efficiency as set forth in the Convention. (See paragraph 221 in section 1.2.2.1 (b) in Chapter II of this report)
- 1.2.3.18 Consider adopting the respective legislative, administrative, and technological measures so that the federal legislative branch can participate in CompraNet and carry out its procedures for the procurement of goods, public works, and services through said system. (See paragraph 222 in section 1.2.2.1 (b) in Chapter II of this report)
- 1.2.3.19 Consider adjusting and/or developing, as appropriate, the regulatory system of the goods and services procurement system in the federal judicial branch, where relevant, so that it is in line with the National Anti-Corruption System as set forth in the CPEUM. (See paragraph 223 in section 1.2.2.1 (b) in Chapter II of this report)
- 1.2.3.20 Adopt mechanisms that promote participation and social monitoring during the contract implementation stage for purchases, leases, and services, as well as those public works and related services, in the sphere of the federal judicial branch. (See paragraph 224 in section 1.2.2.1 (b) in Chapter II of this report)
- 1.2.3.21 Evaluate, in the legal and administrative system of the federal judicial branch, the possibility of eliminating financial compensation for the services provided by *social witnesses* or, failing that, requiring that they be hired on the basis of the public contracting rules that can ensure the principles of openness, equity, and efficiency as set forth in the Convention. (See paragraph 225 in section 1.2.2.1 (b) in Chapter II of this report)

- 1.2.3.22 Publish the registration lists or rosters of *social witnesses* on the official websites of the SCJN and CJF. (See paragraph 226 in section 1.2.2.1 (b) in Chapter II of this report)
- 1.2.3.23 Create and implement computer platforms and/or systems to carry out the procurement activities of the federal judicial branch, so that goods, public works and services procurement processes can be carried out using these means. (See paragraph 227 in section 1.2.2.1 (b) in Chapter II of this report)
- 1.2.3.24 Conduct a review of the operational implementation and capacity of CompraNet's transactional component, in order to adopt, when appropriate, the adjustments and modifications that will ensure its optimal functionality. (See paragraph 240 in section 1.2.2.2 in Chapter II of this report)
- 1.2.3.25 Continue promoting the system of *open contracting* in the APF by strengthening and upgrading, wherever appropriate, its technology platforms, mainly CompraNet. (See paragraph 244 in section 1.2.2.2 in Chapter II of this report)
- 1.2.3.26 Complement the measures that that have been implemented and adopt relevant ones in order to effectively ensure the use of the public competitive bidding process as a general rule for public procurement of the APF, so that, in practice, exceptional procedures for selecting contractors are not mainly resorted to unless they are justified. (See paragraph 248 in section 1.2.2.3 of chapter II of the present report.)
- 1.2.3.27 Prepare, maintain, and publish, on the basis of what is provided for in the LGTAIP, the LFTAIP and other applicable provisions, statistical information of the federal legislative branch that would make it possible to evaluate the use and effectiveness of its government procurement systems in order to identify challenges and, if appropriate, to adopt corrective measures that would ensure transparency, openness, and efficiency of these systems. (See paragraph 256 in section 1.2.2.3 in Chapter II of this report)
- 1.2.3.28 Prepare, maintain, and publish, on the basis of what is provided for in the LGTAIP, the LFTAIP, and other applicable provisions, statistical information of the federal judicial branch that would make it possible to evaluate the use and effectiveness of its government procurement systems in order to identify challenges and, when appropriate, to adopt corrective measures that would ensure transparency, openness, and efficiency of these systems. (See paragraph 259 in section 1.2.2.3 in Chapter II of this report)

## **2. SYSTEMS TO PROTECT PUBLIC SERVANTS AND PRIVATE CITIZENS WHO IN GOOD FAITH REPORT ACTS OF CORRUPTION (ARTICLE III, PARAGRAPH 8 OF THE CONVENTION)**

### **2.1. Follow-up on the implementation of the recommendation made in the Second Round**

#### Recommendation:

*Strengthen the systems for protecting public servants and private citizens who in good faith report acts of corruption.*

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

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

- a) *Additional measures of protection for those who report acts of corruption that may or may not be defined as criminal offenses, but which could be subject to judicial or administrative investigation.*
- b) *Additional measures of protection, targeting not just the protection of the physical integrity of whistleblowers and their families, but also the protection of their positions of employment, particularly for public officials and when the acts of corruption could involve their superiors or coworkers.*
- c) *A simplified whistleblower protection application process.*
- d) *Additional mechanisms for the protection of witnesses, providing them with the same guarantees as for whistleblowers.*
- e) *Mechanisms to facilitate international cooperation in the above areas, when appropriate.*

[261] In both its response to the questionnaire<sup>185/</sup> and during the on-site visit, the country under review submitted information regarding the measure referred to above. In this regard, the Committee notes, as steps that contributes to progress in the implementation of the measure, the following:

[262] – The *Decree whereby various provisions of the Political Constitution of the United Mexican States regarding combating corruption are amended, added, and repealed*<sup>186/</sup> (Constitutional Amendment against Corruption), published in the DOF on May 27, 2015, on the basis of which, among other aspects, the federal legislative branch is enabled to issue, among others, “... *the general laws that can turn the fight against corruption into an area of concurrent jurisdiction, that is, it enables all authorities and levels of government to have jurisdiction to conduct actions against this phenomenon. Thus a cooperative federal system is being established where the bodies and branches*

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185. See Mexico’s response to the questionnaire, pp. 60 to 67, note *supra* 13.

186. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_21.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_21.pdf)

*of the federation contribute actions, in the framework of their jurisdiction, to prevent and eliminate corruption.”<sup>187/</sup>*

[263] – The Decree *whereby various provisions of Articles 94, 103, 104, and 107 of the Political Constitution of the United Mexican States are amended, added, and repealed*<sup>188/</sup> and the Decree *whereby the name of Chapter I of the First Section is changed and various articles of the Political Constitution of the United Mexican States are amended*<sup>189/</sup> (Constitutional Amendments in the area of Protection and Human Rights) published in the DOF on June 6 and 10, 2011, respectively.

[264] According to the response to the questionnaire, the amendment in the area of human rights “... broadened the catalogue of human rights set forth in the Constitution, also incorporating those recognized in international treaties signed by Mexico. The principles of universality, interdependence, and indivisibility, as well as the *pro homine* principle interpretation, were established as the core guidelines for human rights. This amendment abandoned the concept of “individual guarantees” to pave the way for a terminology that guarantees the new way of viewing human rights at both the national and international level, thus calling themselves “About Human Rights and Their Guarantees.”

[265] As for the amendment to the Law on Constitutional Protection (Amparo), the country under review points out “...it supplemented the change of constitutional paradigm, enabling direct safeguard of the rights enshrined in international treaties, and also included the protection of the legitimate interest in defending economic, social, and cultural rights. This amendment constituted a measure of the utmost importance not only to provide comprehensive protection for the human rights of persons under the jurisdiction of the Mexican State, but also, as a result of broadening the catalogue of rights, to ensure that all authorities in the framework of their respective jurisdictions are required to prevent, investigate, punish, and redress human rights violations. In that respect, it can be construed that, since constitutional standards are self-enforceable, that is, they are mandatory in themselves and available for enforcement by all authorities, the fact that there is no single specific regulation to protect those reporting acts of corruption does not constitute an impediment to exercising constitutional protection, because a constitutional review, on the basis of the terms of which the jurisprudence of the Inter-American Court of Human Rights—as the supreme court of the OAS in this matter—and the Supreme Court of Justice of the Nation has been consolidated in the matter, could well provide and enlarge the protection envisaged in the set of laws previously referred to. Regarding this, it is worth stressing that other OAS bodies have deemed the constitutional amendment as highly positive, in the framework of the on-site visit to Mexico that took place from September 28 to October 2, 2015.

[266] Along the same line, the constitutional amendment of matters pertaining to constitutional protection (amparo), together with its regulatory law, ended up consolidating guarantees for the exercise of rights enshrined in international treaties, expanding the powers of the federal judicial branch to also provide constitutional protection for the rights safeguarded in the international Corpus Juris. It can be deemed that the above results in an indirect protection mechanism for the benefit of whistleblowers, because the mere fact of broadening the safeguarding of rights such as

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187. See Mexico’s response to the questionnaire, pp. 63 and 64 note *supra* 13.

188. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_22.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_22.pdf)

189. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_23.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_23.pdf)

*personal integrity and life on the basis of international standards bolsters their enforceability in the judiciary.*”<sup>190/</sup>

[267] – The *Law for the Protection of Human Rights Defenders and Journalists*,<sup>191/</sup> published in the DOF on June 25, 2012, whose purpose is to establish cooperation between the Federation and the Federal Entities in order to implement and operate the urgent preventive measures of protection to guarantee the life, integrity, freedom, and security of persons who are at risk because they are defending or promoting human rights and the exercise of the freedom of expression and journalism. Regarding this legal framework, the state points out that “...*the term “report” from Article III of the Inter-American Convention against Corruption should be construed broadly to mean that said measure guarantees the useful effect that governs the international treaty because, in exercising their right to freedom of expression, journalists make public non-judicial reports on acts and facts of corruption, for which they may be threatened and intimidated and that of itself would require protection.*”<sup>192/</sup>

[268] – The *National Code of Criminal Proceedings*<sup>193/</sup> (*Código Nacional de Procedimientos Penales*, hereinafter CNPP), published in the DOF on March 5, 2014, which in its Article 22 provides a rule of jurisdiction for criminal proceedings for security reasons. Likewise, Article 137 provides for the power of the Prosecution Service to apply suitable protection measures when it deems that the person charged represents an imminent risk for the security of the victim or offended person. Likewise, Article 170 of the CNPP points out that the protection that must be provided to the victim or offended person, the witnesses, or the community shall be established on the basis of the appraisal, carried out by the judge having jurisdiction, of the circumstances of the incident and the specific conditions that these subjects are living, on the basis of which it can be inferred that they run a substantiated risk that actions might be perpetrated against them to undermine their personal integrity or put their life in jeopardy.

[269] The CNPP also provides for special measures aimed at protecting the physical and psychological integrity of the witness and his/her next of kin, and these measures can be renewed as often as deemed necessary. It also provides for the establishment of precautionary measures by the judicial authority to guarantee the safety of the victim or offended person or witness or to prevent proceedings from being obstructed, among which there is the prohibition to live together with, come close to, or communicate with certain persons, with the victims or offended persons, or the witnesses, as long as the right to defense is not undermined.

[270] – The *Federal Law for the Protection of Persons Involved in Criminal Proceedings*<sup>194/</sup> (*Ley Federal para la Protección a Personas que Intervienen en el Procedimiento Penal*, hereinafter LFPPIPP), published in the DOF on June 8, 2012, whose purpose is to establish the measures and procedures that can guarantee protection and safeguards for persons involved in criminal proceedings when they are at risk or in danger because of their participation in, or as a result of, these proceedings.

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190. See Mexico’s response to the questionnaire, pp. 64 and 65, note *supra* 13.

191. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_12.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_12.pdf)

192. See Mexico’s response to the questionnaire, p. 65, nota *supra* 13.

193. Available up to its latest amendment published in DOF on January 12, 2016, at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_15.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_15.pdf)

194. Available up to its latest amendment published in DOF on March 12, 2015, at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_11.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_11.pdf)

[271] Article 13 of this legal framework provides for the establishment of the so-called *Federal Program for the Protection of Persons (Programa Federal de Protección a Personas)*, which shall be applicable exclusively to those cases involving persons at risk because of their direct or indirect involvement in criminal proceedings that have to do with severe crimes, organized crime, or when the provisions of international treaties to which Mexico is a party expressly establish the obligation of providing this protection. Pursuant to Article 15, said *Program* is applicable to the victims, offended persons, witnesses, collaborating witnesses<sup>195/</sup>, experts, police, prosecution service, judges and members of the judicial branch, who have collaborated effectively in the investigation or the proceedings, as well as other persons whose relationship, whether as next of kin or close friend, with those indicated above and because of the collaboration or participation of those in the criminal proceedings might lead to imminent situations of threat and risk.

[272] According to Article 16, the protection measures provided by the *Program* could involve assistance and/or security measures. As for the former, Article 17 indicates, among others, psychological, medical, health, legal, and economic assistance, and/or whatever other measure that needs to be adopted for the purpose of guaranteeing physical and psychological assistance to the person. As for the latter, Article 18 establishes that, in addition to those provided for in other legal frameworks, protection measures can be granted such as the safeguarding of personal integrity, police protection, relocation of household, and in those case that justify it, a change of identity for the person being protected. Likewise, during the criminal proceedings, the confidentiality of identity can be ensured, and methods preventing the visual or auditory identification of the person can be used, such as distance and remote participation and others that might be considered suitable to guarantee his/her safety.

[273] Chapter III of the LFPPIPP provides for the establishment of the *Federal Center for the Protection of Persons* as a decentralized and specialized body of the PGR with technical and operational autonomy for the application of protection measures.

[274] It must be pointed out that, on the basis of the provisions of Article 41 of the LFPPIPP and for the purpose of guaranteeing the security and protection of persons, the country under review must contribute to the efforts made by other states in this area, pledging to provide mutual assistance for achieving the purpose of this Law, both in terms of implementing measures of protection for persons and in terms of applying jurisdictional procedures, such as mutual assistance, technical cooperation, and the exchange of experiences.

[275] In view of the above, the Committee takes note of the steps taken by the country under review to progress in implementing the recommendation made above and the measure that was suggested, mainly in terms of the *Constitutional Amendments against Corruption and in the area of Constitutional Protection and Human Rights* as described above, as well as in terms of the

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195. On June 17, 2016, there was the publication in the DOF of the *Decree amending, adding to, and repealing different provisions of the National Code of Criminal Procedure; the Federal Criminal Code; the General Law on the National Public Security System; the Federal Law for the Protection of Persons Involved in Criminal Proceedings (LFPPIPP); the General Law to Prevent and Punish Kidnapping-related Crimes, Regulating Subparagraph XXI of Article 73 of the Constitution of the United Mexican States (CPEUM); the Amparo Appeal Law, Regulating Articles 103 and 107 of the CPEUM; the Basic Law of the Federal Judicial Branch; the Federal Law on the Office of the Public Defender; the Federal Fiscal Code, and the Law on Credit Institutions*. Said Decree is essential given that among the laws that it amends is the LFPPIPP, in which the concept of “collaborating witness” has been reformulated, bringing it more into line with the nature of said concept as well as making it broader, inasmuch as it provides for dimensions related to crimes of corruption. (Available at: [http://www.dof.gob.mx/nota\\_to\\_doc.php?codnota=5441762](http://www.dof.gob.mx/nota_to_doc.php?codnota=5441762)).

establishment of the *Federal Program for the Protection of Persons* on the basis of the sanction of the LFPPIPP, which is applicable exclusively to those cases involving persons who are at risk because of their direct or indirect involvement in a criminal proceeding. The Committee also takes note of the provisions described in both the *Federal Law for the Protection of Human Rights Defenders and Journalists* such as the CNPP, although a reading of the above does not make it possible to identify the express obligation to provide protection to public servants and private citizens reporting acts of corruption.

[276] In that regard, the Committee reiterates its considerations and conclusions appearing in the Report for the Second Round<sup>196/</sup> which led to the adoption of the recommendation above and the measure that was suggested. Bearing in mind the information and above-mentioned new constitutional and legal developments, it deems it would be advisable to reformulate said recommendation and suggested measure so that the country under review would consider adopting a comprehensive regulation on the protection of public servants and private citizens who in good faith report acts of corruption, including the protection of their identity, in accordance with its Constitution and the fundamental principles of its domestic legal system, focusing additional attention on implementing the aspects identified in subparagraphs a) to e) of the measure suggested in the Second Round. To this end, the Committee invites Mexico to consider, among other aspects, the criteria set forth in the *Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses* which is available on the Anti-Corruption Portal of the Americas.<sup>197/</sup> (See recommendations 2.3.1 to 2.3.6 of section 2.3. of chapter II of the present report.)

[277] Without detriment to the above, the Committee also wishes to recognize the efforts made by Mexico to have a comprehensive legal framework on the protection of those reporting acts of corruption, which are evident in what the country has indicated in its response to the questionnaire, where it points out that “...initiatives have been submitted by various parliamentary groups of the Senate to give life to the National Anti-Corruption System and, specifically, one of them proposes establishing protection measures for the so-called whistleblowers, as well as administrative and judiciary processes that support the implementation and temporariness of these measures...”<sup>198/</sup>. On the basis of the information at its disposal, the Committee commends the fact that some of these initiatives are following the parameters set forth by the *Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses* endorsed by the Committee itself in March 2013 in the framework of its Twenty-First Meeting.

[278] Finally, with respect to this issue, some of the civil society and private sector organizations invited to participate in the on-site visit referred, in their interventions, to the need for a legal system that effectively protects public servants and private citizens who report acts of corruption. To this end, they noted that the absence of such a system inhibits potential whistleblowers from informing relevant authorities of acts of corruption of which they are aware, for fear of receiving reprisals, especially public servants who fear losing their job.

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196. See Mexico’s Report for the Second Round, pp. 27 to 29 and 38, note *supra* 3.

197. Available at: [http://www.oas.org/juridico/PDFs/model\\_law\\_reporting.pdf](http://www.oas.org/juridico/PDFs/model_law_reporting.pdf)

198. See Mexico’s response to the questionnaire, p. 64, nota *supra* 13.

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

### **2.2.1. New developments regarding the legal framework**

#### a) Scope

[279] – The *Constitutional Amendment against Corruption*, indicated in the preceding section, which, in addition to establishing the SNA, enables the federal legislative branch to issue laws “...that can turn the fight against corruption into an area of concurrent jurisdiction, that is, it enables all authorities and levels of government to have jurisdiction to conduct actions against this phenomenon.”<sup>199/</sup>

[280] – The *Constitutional Amendments in the area of Protection and Human Rights*, indicated in the preceding section, which broaden the catalogue of human rights established in the CPEUM, incorporating as well those recognized in international treaties to which Mexico is a party, expanding the powers of the federal judicial branch to provide constitutional protection as well for the rights safeguarded in these treaties, which can be viewed as indirect mechanisms to protect those reporting acts of corruption.

[281] - The *Law for the Protection of Human Rights Defenders and Journalists*, indicated in the preceding section, which establishes urgent preventive and protection measures to guarantee the life, integrity, freedom, and security of persons who are at risk because they defend or promote human rights and exercise their right to freedom of expression and journalism.

[282] – The CNPP, indicated in the section, which establishes a rule for jurisdiction in criminal proceedings for security reasons, the power of the Prosecution Service to apply suitable protection measures when it deems that the person charged represents an imminent risk for the security of the victim or offended person; the protection that must be provided to the victim or offended person, the witnesses, or the community on the basis of the appraisal, carried out by the judge having jurisdiction, of the circumstances of the incident and the specific conditions that these subjects are living, on the basis of which it can be inferred that they run a substantiated risk that actions might be perpetrated against them to undermine their personal integrity or put their life in jeopardy, as well as special measures aimed at protecting the physical and psychological integrity of witnesses and their next of kin, among other protection measures.

[283] – The LFPPIPP, indicated in the preceding section, which establishes measures and procedures tending to guarantee the protection and safeguarding of persons involved in a criminal proceeding when they are at risk or in jeopardy because of their involvement in, or as a result of, the proceedings, the *Federal Program for the Protection of Persons*, as well as the establishment of the *Federal Center for the Protection of Persons*.

[284] – The *General Law on Administrative Responsibilities*<sup>200/</sup>, published in the DOF on July 18, 2016, provides in Article 22 thereof that the design and supervision of the mechanisms referred to in Article 21 of the same shall consider the best international practices on controls, ethics, and integrity in business, in addition to including measures that thwart irregular conduct, which guide partners,

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199. See Mexico’s response to the questionnaire, pp. 60 to 67, note *supra* 13.

200. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_108.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_108.pdf)

senior managers, and employees of businesses on compliance with the integrity program and contain tools for filing reports and protecting whistleblowers. Additionally, Article 64 of the Law provides that public servants responsible for the investigation, substantiation, and determination of administrative offenses shall commit obstruction of justice when: I. they carry out any act during their investigation that endeavors to give the appearance of a minor offense to acts or omissions defined as serious under this law and other applicable provisions; II. Do not initiate the corresponding proceedings before the competent authority within 30 calendar days of becoming aware of any conduct that would constitute a serious administrative offense, offenses by private citizens, or an act of corruption, and III. Reveal the identity of an anonymous whistleblower protected under the precepts set forth in this Law. For purposes of sub-paragraph III above, the public servants that report a serious administrative offense or offenses by private citizens, or are witnesses in proceedings may request reasonable protection measures. The request is to be evaluated and addressed in a timely manner in the public entity where whistleblowers provide their services. Furthermore, Article 91 of the aforementioned Law stipulates that “the reports may be anonymous” and “in that case, investigative authorities may keep the identity of the individuals reporting the alleged offenses secret.”

b) Observations

[285] The Committee wishes to acknowledge the new legal developments achieved by Mexico to continue advancing in establishing, maintaining, and strengthening systems to protect public servants and private citizens who, in good faith, report acts of corruption, as referred to by Article III, paragraph 8 of the Convention, headed by the provisions of the LFPPIPP.

[286] Nevertheless, mainly on the basis of information gathered during the on-site visit, the Committee deems it is time to refer to certain considerations about the advisability of supplementing these new developments, without prejudice to the observations made in section 2.1 above, with respect to follow-up on implementation of the recommendation made to the country under review in the report of the Second Round.

[287] First, regarding the *Federal Center for the Protection of Persons* established pursuant to the provisions of chapter III of the LFPPIPP as a decentralized and specialized body of the PGR with technical and operational autonomy to apply protection measures envisaged in said system, the representative of the PGR, during the on-site visit, specified that, although the LFPPIPP refers only to measures of protection for persons involved in criminal proceedings, said Center would, to a certain extent, include those reporting acts of corruption who need protection. Nevertheless, although the above-mentioned Center is legally established on the basis of the provisions in the LFPPIPP, its physical infrastructure still needs to be developed, according to information provided during the on-site visit. In that respect, bearing in mind the importance of its duties and responsibilities, the Committee shall make a recommendation for the country under review to consider providing the *Federal Center for the Protection of Persons* with the physical infrastructure needed to discharge the duties under its jurisdiction as set forth in the LFPPIPP, especially those that might relate to the protection of whistleblowers of acts of corruption. (See recommendation 2.3.7 of section 2.3. of chapter II of this report.)

[288] Second, with respect to mechanisms promoting the reporting of acts of corruption, although this subject pertains to the review conducted in other rounds, during the on-site visit, the representatives of the SFP and the PGR referred to some of the mechanisms that are available.

[289] Regarding the SFP, it noted the possibility for all citizens to file a complaint or report about irregularities perpetrated by federal public servants in the discharge of their duties with the Internal Monitoring Body of the agency or entity to which they are attached. If the complaint or report is against some public servant attached to the SFP or against the heads of the Internal Monitoring Bodies, it shall be the Internal Comptroller's Office of the SFP that will process the complaint. These complaints and reports can also be filed via email, by regular postal mail, personally at the SFP itself, or by telephone, as well as through the *Portal of Complaints and Reports* administered by the Secretariat itself. As for the complaints and reports against acts of corruption perpetrated by federal public servants attached to the PGR, in the framework of the *National Agreement for Security, Justice, and Legality*,<sup>201/</sup> the SFP along with the PGR established a microsite on the Internet to make it possible to file complaints electronically, including the possibility of doing so anonymously.

[290] As mentioned above, although the mechanisms to promote the reporting of acts of corruption have been the subject of review in other rounds, the Committee, without making any specific recommendations on the matter, invites the country under review to continue developing and implementing tools and mechanisms that promote, facilitate, and simplify the filing of this type of complaint using computer formats and media that encourage both public servants and private citizens in general to file these complaints. An example of this is the recently established *Comprehensive System for Citizen Complaints and Reports (Sistema Integral de Quejas y Denuncias Ciudadanas—SIDECA)*,<sup>202</sup> developed by the SFP in accordance with the *Guidelines for Processing, Investigating, and Settling Complaints and Reports*,<sup>203/</sup> published in the DOF on April 25, 2016, which makes it possible, according to information provided during the on-site visit, to conduct a targeted online follow-up, with up-to-date information, on citizen complaints, reports, and petitions that any person can make in the framework of the LFRASP and LFACP.

### **2.2.2. New developments with respect technology**

[291] In both its response to the questionnaire and during the on-site visit, the country under review did not provide any information about this type of development.<sup>204/</sup>

### **2.2.3. Results**

[292] Notwithstanding that the country under review did not provide any information regarding objective results with respect to the implementation of the provision of the Convention that examines this section, the enactment of LFPPIPP is highlighted, in Mexico's response to the questionnaire, as the new principal legal development associated with the protection of those reporting acts of corruption.

[293] In that respect, since the LFPPIPP is relatively recent, the Committee shall make a recommendation to the country under review so that it might consider designing and implementing mechanisms to perform comprehensive periodical evaluations that would make it possible to appraise the use and effectiveness of the *Federal Program for the Protection of Persons* that was established in said legal framework and, on the basis of the results of this review, where appropriate, to prepare

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201. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_98.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_98.pdf)

202 See: <https://sidec.funcionpublica.gob.mx/SIDEC/gobMx.seam?view=formPortalDenuncia>

203. Available at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5434315&fecha=25/04/2016](http://www.dof.gob.mx/nota_detalle.php?codigo=5434315&fecha=25/04/2016)

204. On September 9, 2016, the country under review reported that it is developing, *inter alia*, the *National Digital Platform of the National Anti-corruption System*, in keeping with the provisions of Article 49 of the General Law on the National Anti-corruption System published in the DOF on July 18, 2016.

and adopt measures deemed relevant to ensure their efficiency. (See recommendation 2.3.8 of section 2.3. of chapter II of the present report.)

### **2.3. Recommendations**

[294] In view of the observations made in sections 2.1 and 2.2 of chapter II of the present report, the Committee suggests that the country under review consider the following recommendations:

- 2.3.1 Consider adopting a comprehensive regulation on the protection of public servants and private citizens who in good faith report acts of corruption, including protecting their identity, in accordance with the CPEUM and the fundamental principles of its domestic legal order, bearing in mind the criteria set forth in the “Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses.” (See paragraph 276 in section 2.1 in Chapter II of this report)
- 2.3.2 Develop measures of protection for those who report acts of corruption that may or may not be defined as criminal offenses, but which could be subject to judicial or administrative investigation. (See paragraph 276 in section 2.1 in Chapter II of this report)
- 2.3.3 Develop measures of protection targeting the protection of the physical integrity of those reporting corruption and their families, but also the protection of their positions of employment, particularly for public officials and when acts of corruption might involve their superiors and/or coworkers. (See paragraph 276 in section 2.1 in Chapter II of this report)
- 2.3.4 Develop simplified applications for protection for those reporting corruption. (See paragraph 276 in section 2.1 in Chapter II of this report)
- 2.3.5 Develop additional mechanisms for the protection of witnesses, experts and victims, providing them with the same guarantees as for those reporting corruption. (See paragraph 276 in section 2.1 in Chapter II of this report)
- 2.3.6 Develop mechanisms to facilitate international cooperation in the area of protecting those reporting corruption, when appropriate. (See paragraph 276 in section 2.1 in Chapter II of this report)
- 2.3.7 Provide the *Federal Center for the Protection of Persons*, on the basis of available resources, with the same physical infrastructure needed to discharge the duties that come under its jurisdiction, according to the terms of the LFPPIPP, especially those that might relate to the protection of whistleblowers of acts of corruption. (See paragraph 287 in section 2.2.1 (b) in Chapter II of this report)
- 2.3.8 Design and implement mechanisms to perform comprehensive periodical evaluations that would make it possible to appraise the use and effectiveness of the *Federal Program for the Protection of Persons* that was established in said legal framework and, on the basis of the results of this review, where appropriate, to prepare and adopt measures deemed relevant to ensure their efficiency. (See paragraph 293 in section 2.2.3 in Chapter II of this report)

### **3. ACTS OF CORRUPTION (ARTICLE VI, PARAGRAPH 1, OF THE CONVENTION)**

#### **3.1. Follow-up on implementation of the recommendations made at the Second Round**

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

*Evaluate the need to modify the definition of the crime of bribery provided for by Article 222, section II of the Federal Criminal Code, insofar as it refers to the element of spontaneity, in light of what is provided for by paragraph (b) of Article VI.I of the Convention.*

[295] On the basis of information that the Committee had available, it confirms that the *Decree whereby various Federal Criminal Code provisions on the subject of combating corruption are amended and added*<sup>205/</sup> was published in the DOF on July 18, 2016.

[296] Regarding this, among other aspects, this Decree amends and adds section II of Article 222 referred to in the recommendation indicated above, eliminating the element of “spontaneity” so that it now reads as follows: “*Article 222. The crime of bribery is committed by... II. Whoever gives, promises, or provides any gain to any of the persons mentioned in Article 212 of the present Code, so that said person will carry out or fail to carry out an act in connection with his/her employment, job, or commission, and...*”

[297] Likewise, although section II of Article 222 indicated above does not envisage that this criminal offense can be established on the basis of the participation of a third party, Article 212 of said Code, which was also amended and supplemented, continues to provide in its second paragraph that “*the same penalties set for the crime involved shall be imposed upon any person participating in the perpetration of any of the crimes indicated for in this section or the following.*”

[298] In that regard, the Committee takes note of the satisfactory consideration, by the country under review, of the previous recommendation made at the Second Round.

#### **3.2. New developments with respect to the provision of the Convention on acts of corruption**

##### **3.2.1. New developments with respect to the legal framework**

###### a) Scope

[299] – The *Anti-Corruption Amendment to the Constitution* published in the DOF on May 27, 2015, which amends, adds, and repeals various provisions of the CPEUM on anti-corruption in order to consolidate the SNA.

[300] In terms what is provided for in Article 73 of the Constitution as amended by the above-mentioned *Amendment*, the PLF shall issue the laws governing the organization and powers of the Chief Audit Office of the Federation and the others regulating the management, monitoring, and assessment of the Union’s branches of government and federal public bodies, as well as the general law establishing the bases for coordination of the SNA referred to in Article 113 of the CPEUM.

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205. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_104.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_104.pdf)

[301] Likewise, the PLF shall issue the law establishing the Federal Court of Administrative Justice, provided it with full autonomy to issue rulings, and establishing its organization, operation, and the remedies to challenge its rulings. This new Court shall be responsible for settling disputes arising between the APF and private individuals and shall also be the body having jurisdiction to impose penalties on public servants for those administrative liabilities the law determines are serious and on private individuals who participate in actions associated with said responsibilities, as well as ordering those responsible for the payment of monetary compensation and penalties arising from damages to the Federal Public Treasury or the assets of federal public bodies.

[302] Likewise, it shall issue the general law that distributes jurisdictions among the branches of government to establish the administrative responsibilities of public servants, their obligations, penalties applicable to acts or omissions that the latter might commit and those pertaining to private individuals in connection with serious administrative offenses provided for the purpose, as well as procedures for their enforcement.

[303] As for Article 1090 of the Constitution, also amended on the basis of this *Amendment*, it prescribes a new system of penalties for public servants and private individuals who are held liable with respect to the State. Specifically, on the basis of the information submitted by the country under review in its response to the Questionnaire, “...*jurisdictions are empowered so that acts of corruption can be heard by the Prosecutor Specializing in Fighting Corruption, and administrative offenses shall be heard on the basis of a standard of gravity. Those offenses deemed serious shall come under the jurisdiction of the Federal Court of Administrative Justice, as well as its counterparts in the federal bodies, whereas those administrative offenses that do not meet the requirement of gravity shall be investigated and substantiated by internal monitoring bodies. Regarding this, it is noteworthy to point out that the Constitution requires the Congress of the Union and local legislatures to fulfill the mandate of providing remedies to challenge the qualification of an administrative offense as not serious.*”

[304] *It is necessary to point out that the initiative that led to amending to anti-corruption provisions deemed that administrative offenses must be examined under the phenomenon of corruption, because even when the breach of administrative service does not constitute corrupt conduct, the fact of removing it from the jurisdiction of Internal Monitoring Bodies exerts an impact that inhibits both impunity and other practices contrary to the principles of public administration. Likewise, amendment in this field, grants powers to the Federal Court of Administrative Justice, as well as local courts, to punish private individuals who in the administrative sector perpetrate acts of corruption. The above took place as a consequence of a global study of the phenomenon, where it is recognized that breaches of administrative services can arise from the behavior of certain private individuals.”<sup>206/</sup>*

[305] Another significant aspect of the *Amendment to the Constitution* being commented on, is the establishment of the SNA which, on the basis of the provisions of Article 113, is designated to be the body coordinating all authorities of all branches of government having jurisdiction to prevent, detect, and punish administrative responsibilities and acts of corruption, as well as to audit and monitor public resources.

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206. See Mexico’s response to the *Questionnaire*, pp. 95 and 96, note *supra* 13.

[306] To achieve its objective, the SNA shall have a Coordinating Committee comprised of the heads of the Chief Audit Office of the Federation, the Prosecution Service Specializing in Fighting Corruption; the Federal Executive Secretariat in charge of internal monitoring; the president of the Federal Court of Administrative Justice; the president of the guaranteeing body as established by Article 6 of the Constitution, as well as a representative of the CJF.

[307] The SNA's Coordinating Committee shall also be comprised of one representative from the Public Participation Committee, which must be comprised of five citizens noteworthy for their contribution to ensuring transparency, accountability, or the fight against corruption, who shall be designated on the basis of the terms determined by law.

[308] With respect to the above, Mexico points out, in its response, that “...it is a major step forward in the fight against corruption, because all authorities who are members of the Coordinating Committee are participating in the exercise of government office and are therefore responsible for steering preventive measures to eliminate corruption. Likewise, the System is comprised of authorities of autonomous constitutional bodies and a Public Participation Committee, which creates the machinery that is indispensable to fight corruption on the basis of the contemporary structure for a Democratic State governed by the Rule of Law; as well as the inclusion of public participation in the Constitution. In fact, in no other area regulating the distribution of jurisdictions in the Constitution do we find such a forceful adherence to the power of the public as a democratic institution fulfilling the prime objectives of the state.

[309] *Without doubt, the Constitution deemed that the fight against corruption was not the exclusive domain of the state's branches of government and its institution, but rather it is a concurrent responsibility of citizens as well. The above guarantees, at the same time, the useful impacts of the objectives pursued by the Constitution, because the State of Mexico deems that there can be no true fight against corruption unless the citizenry is included as representatives on the same footing for the adoption of preventive measures.*<sup>207/</sup>

[310] Regarding its duties, the SNA's Coordinating Committee must establish mechanisms for coordination with local anti-corruption systems; it shall draft and promote comprehensive policies for the auditing and monitoring of public resources and the prevention, control, and deterrence of administrative offenses and acts of corruption, especially about the causes leading to these offenses and acts; it shall determine the mechanisms for the supply, exchange, systematization, and update of information about these matters that is gathered by the institutions having jurisdiction in the branches of government; it shall establish the bases and principles for the effective coordination of the authorities of the branches of government regarding the auditing and monitoring of public resources; it shall prepare an annual report focusing on the advances and results of the exercise of its duties and the implementation of policies and programs in the matter; and as a result of this report, it will be able to make non-binding recommendations to authorities so they will adopt measures aimed at institutional capacity building to prevent administrative offenses and acts of corruption, as well as to improve their performance and internal monitoring, for which the authorities for whom the recommendations are made shall report to the Committee about how these recommendations are being implemented.

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207 Ibid, p. 96.

[311] Article 113 of the Constitution also provides that the federal bodies shall also establish local anti-corruption systems for the purpose of coordinating local authorities having jurisdiction in preventing, detecting, and punishing administrative liabilities and acts of corruption.

[312] In that regard and in accordance with the provisions of the second transitory clause of the decree whereby the above-mentioned *Amendment* was published, on July 18, 2016, among other provisions, the *Decree that amends and adds various provisions of the Basic Law on Federal Public Administration in the matter of internal monitoring of the Federal Executive Branch of Government*;<sup>208/</sup> the *Decree whereby the Law of Auditing and Accountability of the Federation was issued and Article 49 of the Fiscal Coordination Law and Article 70 of the General Government Accounting Law were amended*;<sup>209/</sup> the *Decree whereby the General Law on the National Anti-Corruption System, the General Law on Administrative Responsibilities, and the Basic Law of the Federal Court of Administrative Justice were issued*;<sup>210/</sup> the *Decree whereby various provisions of the Basic Law of the Office of the Attorney General of the Republic were amended and added*;<sup>211/</sup> and the *Decree whereby various provisions of the Federal Criminal Code on the subject of fighting corruption were amended and added*<sup>212/</sup> were published in the DOF.

[313] Regarding the previous regulations and provisions, with respect to the subject being examined in the present section, the Committee takes the liberty of highlighting the following:

[314] – The *Decree whereby various provisions of the Federal Criminal Code on the subject of fighting corruption were amended and added* quoted in the previous section, envisaging a series of aggravating factors and assumptions that will have to be taken into consideration by the judge depending on who is committing the crimes of corruption, differentiating between public servants and private individual citizens.

[315] On the basis of these amendments, the term “improper” is replaced by “illegal” as envisaged in Chapter II of the above-mentioned Code, where its name is changed for that of “illegal exercise of public service,” as well as in Article 2002 where it is established that a public servant commits the crime of misuse of public functions when, in the performance of his employment, job, or commission, he/she directly or by means of an intermediate person illegally grants contracts, concessions, permits, licenses, authorizations, franchises, or exemptions or carries out purchases or sales or undertakes any legal action that leads to financial earnings for the benefit of the public servant him/herself, his/her spouse, descendant or ascendant, relatives by consanguinity or affinity up to the fourth degree, any third party with whom he/she has emotional or financial ties or ties involving direct administrative dependence, partners or joint stock companies which the public servant or the above-mentioned persons are members of.

[316] Likewise, Article 222 establishes that a public servant commits the crime of bribery when he/she directly, or by an intermediary person, illegally requests or receives for him/herself or for another money or any other gain or accepts a promise to carry out or refrain from carrying out an action pertaining to his/her duties inherent to his/her employment, job, or commission.

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208. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_100.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_100.pdf)

209. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_106.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_106.pdf)

210. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_108.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_108.pdf)

211. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_109.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_109.pdf)

212. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_104.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_104.pdf)

[317] As for amended Article 223, it points out that a public servant commits the crime of embezzlement when he/she illegally uses public funds or grants any of the acts referred to in Article 217 on the illegal use of duties and powers for the purpose of promoting the political or social image of his/her person, that of his superior or that of a third party, in order to disparage someone.

[318] Likewise, it is observed that the catalogue of crimes arising from acts of corruption such as those provided for in section IX of Article 215 which provides that public servants commit the crime of misuse of authority when they obtain, demand or request without any legitimate right or cause whatsoever, for themselves or for any other persons, part of the salary or compensation of one or more of their subordinates, gifts, or other goods or services.

[319] The amendment also includes harmonization with the provision in terms of calculating the amount of the fines, where using *units of measure and discount* is expected, on the basis of which the criterion for the amounts is confirmed.

[320] Furthermore, a new criminal offense is envisaged, Article 217 bis, which provides for a prison sentence ranging from three months to nine years and a fine of thirty to one hundred days, if as a contractor, license holder, assignee, holder of a concession for the provision of a public service for the production, exploitation or use of assets owned by the Federation, for the purpose of obtaining a gain for him/herself or for a third party, generates or uses false or altered information regarding the yields or gains he/she obtains and, when legally obliged to deliver information to an authority about the yields or gains that he/she obtains, conceals it instead.

[321] Section III of Article 222 also envisages the crime for federal lawmakers who, in the exercise of their duties or powers and in the framework of the process of adopting the respective budget of outlays, takes steps to or requests the allocation of resources for the benefit of a public body, requiring or obtaining, for themselves or for a third party, a commission, gift or compensation, in cash or in kind, different from the one pertaining to them because of the exercise of their duties, the granting of public works or services contracts for the benefit of certain natural persons or legal entities. The same sentence will be applicable to any person who takes steps or requests, on behalf or as representative of the federal lawmaker, the allocation of resources or the awarding of contracts as referred to in paragraphs a) and b) of this article.

[322] Section IV of Article 221 is added: it provides that a private individual commits the crime of influence peddling when he/she, without being legally authorized to participate in a government business negotiation, asserts he/she can exert influence on public servants authorized to take decisions in these business negotiations and intervene with them to promote the illicit outcome of these negotiations in exchange for gains for him/herself or for a third party.

[323] According to its first transitory article, this Decree shall enter into force when the Senate of the Republic appoints the Chief of the Prosecution Service specializing in crimes associated with acts of corruption, as established in accordance with the second paragraph of the Decree's Eighteenth Transitory Article whereby various provisions regarding political-electoral matters of the Political Constitution of the United Mexican States are amended, added, and repealed, as published in the Official Gazette of the Federation on February 10, 2014. This is undertaken on the basis of Agreement A/011/14, whereby the Prosecution Service specializing in crimes associated with acts of corruption is established and its duties are set forth, as published in the Official Gazette of the Federation on March 12, 2014.

[324] – The *General Law on Administrative Responsibilities*<sup>213/</sup>, published in the DOF on July 18, 2016, which assigns the competences among the branches of government to establish administrative responsibilities for public servants, their obligations, the penalties applicable for their acts or omissions, and the penalties pertaining to private individuals involved in serious administrative offenses, as well as the procedures for their application.

[325] With respect to the topic under review in this section, Chapter II of said Law establishes serious administrative offenses, for which public servants are to refrain from committing them, whether by deed or omission, otherwise they shall be subject to the system of penalties set forth in Articles 78, 79, and 80 of this legal framework, which provides for the suspension or dismissal from the employment, job, or commission; financial penalties and/or temporary disqualification from holding an employment, job, or commission in a government administration and to participate in government procurement, leases, services or projects.

[326] Chapter II of the third section of the Law sets forth the following serious administrative offenses for public servants:

[327] • Article 52. *A public servant shall commit bribery when he/she requires, accepts, obtains, or intends to obtain by himself or by means of third parties, on the basis of his duties, any gain not included in his/her compensation as a public servant, which may consist of money; assets; real estate property or movables, including by means of sale or disposal at a notably lower price than what would be obtained on the market; donations; services; jobs; and other improper gains for him/herself or for his/her spouse, blood relatives, civil relatives or for third parties with whom she/her has professional, working, or business ties, or for partners or joint stock companies to which the public servant or the above-mentioned persons belong.*

[328] • Article 53. *A public servant commits the offense of embezzlement when he/she authorizes, requests, or carries out acts for the use or appropriation, for him/herself or for the persons referred to in the preceding paragraph, of public resources, whether material, human, or financial, without any legal grounds or in breach of applicable laws.*

[329] • Article 54. *A public servant shall be held liable for misappropriation of public funds when he/she authorizes, requests, or carries out acts aimed at allocating or diverting public resources, whether material, human, or financial, without any legal grounds or in breach of applicable laws.*

[330] • Article 55. *A public servant shall be guilty of wrongful use of information when he/she obtains for him/herself or the persons referred to in Article 52 of this Law, real estate property, movable assets or values that could increase his/her assets or, in general, improve his/her conditions, as well as obtain any private advantage or gain, as a result of the privileged information of which he might have been apprised.*

[331] • Article 56. *For the purposes of the preceding article, confidential information is viewed as any information obtained by the public servant on the basis of his/her duties and which is not in the public domain. The restriction provided for in the preceding article shall be applicable even when the public servant has retired from his employment, job or commission, for up to one year thereafter.*

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213. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_108.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_108.pdf)

[332] • Article 57. *A public servant shall be guilty of abuse of his/her office when he/she discharges duties that were not given to him/her or when he/she acts as if he/she had them so that he/she can carry out or lead to arbitrary acts or omissions to create a gain for him/herself or for the persons referred to in Article 52 of this Law or to cause damage to someone or to the civil service.*

[333] • Article 58. *A public servant shall be guilty of acting on the basis of a conflict of interest when he/she intervenes, on the basis of his/her employment, job, or commission in any way whatsoever, for the handling, processing, or settling of matters in which she/her has a conflict of interest or legal impediment. When learning about the matters mentioned in the preceding paragraph, the public servant shall inform his/her immediate superior or the body deciding upon the provisions applicable to government institutions of said situation, requesting that he/she be excused from participating in any way in handling, processing, or settling these matters. His/her immediate superior shall be required to decide and contact the public servant, 48 hours before the deadline set to handle the matter at hand, about those cases where it is not possible to refrain from intervening in the matters, as well as set forth instructions in writing for the impartial and objective handling, processing or settling of these matters.*

[334] • Article 59. *A public servant shall be held liable for wrongful hiring when he/she authorizes any kind of hiring, as well as selection, appointment, or designation, of any person who is legally forbidden or disqualified, by a ruling of the authority having jurisdiction, from holding an employment, job, or commission in public administration or ineligible to enter into contracts with government institutions, as long as, in the case of disqualifications, at the time of the authorization, they are registered in the national system of public servants and private individuals who have been penalized on the National Digital Platform.*

[335] • Article 60. *A public servant shall be guilty of undisclosed enrichment or concealing a conflict of interest when he/she fails to speak the truth when submitting his/her statements of assets or interests, aimed at hiding, respectively, the increase in his/her assets or the use and enjoyment of goods and services that cannot be explained or justified or a conflict of interest.*

[336] • Article 61. *A public servant shall be guilty of influence peddling when he/she uses the position that his/her employment, job, or commission gives him to induce another public servant to carry out, delay, or omit the implementation of any action under his/her jurisdiction, to secure any gain, profit, or advantage for him/herself or for any of the persons referred to in Article 52 of the present Law.*

[337] • Article 62. *A public servant shall be held liable for cover-up when, in the discharge of his/her duties, he/she happens to observe acts or omissions that could be viewed as administrative offenses and deliberately carries out some kind of conduct to conceal these acts or omissions.*

[338] • Article 63. *A public servant shall be held liable for contempt when he/she provides false information, fails to give any response, or deliberately delays without justification the provision of information, although he/she has been urged on the basis of measures of urgency in accordance with applicable provisions, when dealing with orders or rulings of auditing, internal monitoring, judicial, electoral or human rights defense or any other authority having jurisdiction.*

[339] • Article 64. *Public servants responsible for investigating, hearing, and settling administrative offenses shall be guilty of obstructing justice when: i. they carry out any act that simulates non-serious conducts during the investigation of acts or omissions qualified as serious in the present Law and other applicable provisions; ii. they do not file the relevant proceeding with the authority having*

*jurisdiction within the time-limits of 30 calendar days, as of the time they become aware of any conduct that might constitute a serious administrative offense, offenses by private individuals, or an act of corruption; and iii. they disclose the identity of an anonymous whistleblower protected on the basis of principles provided for in the present Law. For the purposes of the preceding section, public servants who report a serious administrative offense or offenses by private individuals, or who are witnesses in the proceedings, may request protection measures that are reasonable. The request must be assessed and handled on a timely basis by the public institution where the whistleblower is providing his/her services.”*

[340] Furthermore, Chapter III of the same section III of the *General Law on Administrative Responsibilities* establishes the system for the acts of private individuals involved in serious administrative offenses, which shall be punished on the basis of the terms set forth in Articles 81 to 89 of the Law. These acts are indicated below:

[341] • Article 66. *A private individual shall be guilty of bribery when he/she promises, offers, or provides any improper gain referred to by Article 52 of the present Law to one or various public servants, directly or via third parties, so that said public servants will carry out or refrain from carrying out an action involving their duties or involving those of another public servant or else they misuse either their true influence or their alleged influence for the purpose of obtaining or upholding, for themselves or for a third party, a gain or advantage, regardless of the acceptance or reception of the gain or the outcome obtained from the above.*

[342] • Article 67. *A private individual shall be guilty of illicit participation in administrative proceedings when he/she carries out acts or omissions in order to participate in the above, whether they are federal, local, or municipal, although by law or a ruling by an authority having jurisdiction they are prevented or disqualified from doing so. A private individual shall also be guilty of illicit participation in administrative proceedings when he/she intervenes on behalf of him/herself but for the interest of another person or other persons who are prevented or disqualified from participating in federal, local, or municipal proceedings so that the latter can secure, either totally or partially, the gains stemming from said proceedings. Both private individuals shall be punished on the basis of the terms of the present Law.*

[343] • Article 68. *A private individual shall be guilty of influence peddling to induce an authority when he/she uses his/her influence, economic or political power, whether real or fictitious, over any public servant, for the purpose of securing for him/herself or for a third party a gain or advantage or to cause damage to any person or public service, regardless of the acceptance by the public servant or servants or the outcome obtained from the above.*

[344] • Article 69. *A private person shall be guilty of using false information when he/she presents documentation or information that is untrue or altered or pretends to meet requirements or comply with rules set forth in administrative proceedings, for the purpose of securing an authorization, a gain, or an advantage or of doing damage to someone. Likewise, a private individual shall be guilty of obstructing investigative powers when he/she provides false information, deliberately and unjustifiably delays the provision of said information, or fails to provide any answer to the request or rulings of authorities conducting investigations, holding hearings, or issuing rulings, as long as urgent measures have been previously imposed him/her in line with applicable provisions.*

[345] • Article 70. *A private individual shall be guilty of collusion when he/she carries out, with one or more private individuals, in the matter of public contracts, actions that entail or are aimed at or have the effect of obtaining an improper gain or advantage in federal, local, or municipal public contracts. Collusion will be deemed to have taken place when the private individuals agree upon or enter into contracts, agreements, arrangements, or cartels among competitors, whose purpose or effect will be to secure an improper gain or to cause damage to the State Treasury or to the assets of government institutions. When the infringement has taken place through an intermediary so that the private individual can secure some gain or advantage from the public contract involved, both shall be punished on the basis of the terms of the present Law. The offenses referred to in the present Article shall be applicable with respect to international trade transactions. In the latter cases, the Public Administration Secretariat shall be the authority having jurisdiction to conduct investigations that are relevant and can request authorities having jurisdiction their technical opinion as referred to in the preceding paragraph, as well as the information it requires from a foreign state for the investigation and substantiation of the proceedings referred to by the present Law, on the basis of the terms provided for in the international instruments to which both states are party and other applicable regulatory structures. For the purpose of the present Article, international trade transactions mean the acts and procedures involved in contracting, implementing, and fulfilling contracts involving acquisitions, leases, services of any kind, public works or services related to the latter; the acts or proceedings associated with the granting and extension of permits or concessions, as well as any other authorization or proceeding involved in said transactions, which is carried out by any government body or organization of a foreign state or that involves the participation of a foreign public servant or in which Mexican natural persons or legal entities participate either directly or indirectly.*

[346] • Article 71. *A private individual shall be held liable for the misuse of public resources when he/she carries out acts whereby he/she appropriates, uses wrongfully, or diverts the purpose for which the public resources are being provided, whether they are material, human, or financial resources, when for any circumstance he/she manages, receives, administers, or has access to these resources. The failure to ensure accountability by ratifying the purpose granted to these resources shall also be considered a misuse of public resources.*

[347] • Article 72. *A private individual shall be held liable for wrongful hiring of former public servants when he/she hires someone who has been a public servant the previous year and who possesses confidential information that has been directly gained because of his/her employment, job, or commission in the public service and directly enables the contractor to benefit from this on the market or gives him/her advantages over his/her competitors. In this case, the former public servant hired shall also be punished.”*

[348] – The *Basic Law on the Federal Court of Administrative Justice*<sup>214/</sup>, published in the DOF on July 18, 2016, which determines the integration, organization, duties, and operation of this Court as a jurisdictional body with the autonomy to issue its own judgments with full jurisdiction, which is part of the SNA subject to Article 113 of the CPEUM, in the General Law of the SNA and in the present legal framework.

[349] As for the topic under review in this section, the Federal Court of Administrative Justice, on the basis of the provisions of Article 4 of its Basic Law, is the body having jurisdiction to hear the administrative responsibilities of public servants and private individuals involved in serious offenses

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214. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_108.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_108.pdf)

being processed by the SFP and the Internal Monitoring Bodies of federal public institutions or by the ASF, and to impose penalties on the basis of the terms of the provisions of the above-mentioned *General Law on Administrative Responsibilities*, as well as to ensure that those responsible will pay the monetary compensation and penalties stemming from the damages affecting the Federal State Treasury or the assets of federal public institutions. In accordance with the provision of this same article, under no circumstance shall it be construed that this Court's power to impose penalties on private individuals for acts or omissions involving serious administrative offenses shall oppose or undermine the power that any government institution might have to impose penalties on private individuals on the basis of the terms of the applicable legislation.

[350] The *Decree whereby various provisions of the Basic Law on the Office of the Attorney General of the Republic are amended and added*<sup>215/</sup>, published in the DOF on July 18, 2016, which, regarding the topic under review in this section, establishes, in a new Article 10 bis, the structure of the Prosecution Service specializing in crimes involving acts of corruption as a body with technical and operational autonomy to investigate and prosecute events that the law views as crimes of corruption, whose duties are listed in Article 10 ter.

[351] Finally, Mexico presents, in its response to the questionnaire, other provisions, as of November 10, 2006, that it deems to be of the utmost importance with respect to acts of corruption,<sup>216/</sup> among which the following are noteworthy:

[352] – The LFACP, published in the DOF on June 11, 2012, which has been referred to in section 1.2 of the present report, which sets the responsibilities and penalties that must be imposed upon persons participating in federal public procurement procedures and who are guilty of the infringements provided for in the present Law.

b) Observations

[353] First, the Committee wishes to recognize the *Anti-Corruption Amendment to the Constitution* described above as an important legal development so that Mexico can continue moving forward in promoting and strengthening its mechanisms to prevent, detect, punish, and eliminate corruption.

[354] Likewise, with reference to the new provisions of the *Federal Criminal Code* on the acts of corruption provided for in Article VI, paragraph 1, of the Convention, including the systems of serious administrative offenses committed by public servants and the acts of private individuals involved in these offenses as provided for in the *General Law on Administrative Responsibilities*, the Committee observes that they constitute a series of relevant measures to promote the purposes of the Convention.

[355] Regarding the new Prosecution Service Specializing in crimes involving acts of corruption and its duties, the first transitory Article of the *Decree whereby various provisions of the Basic Law on the Office of the Attorney General of the Republic are amended and added*, provides that it shall enter into force when the Senate appoints its head on the basis of the terms set forth in paragraph 2 of the eighteenth transitory Article of the *Constitutional Amendments in Political-Electoral Matters through Agreement A/011/14*<sup>217/</sup> published in the DOF on March 12, 2014.

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215. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_109.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_109.pdf)

216. See Mexico's response to the *Questionnaire*, pp. 97 to 99, note *supra* 13.

217. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_33.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_33.pdf)

[356] Regarding this, on the basis of the information it had available, the Committee indicates that, at the time of the present report, the Senate has not made any appointment, as a result of which the Special Prosecution Service has not yet begun to function.

[357] The Committee stresses the importance for the states to have specialized units or prosecution services that will enable them to tackle the growing sophistication of acts of corruption and the resulting complexity involved in investigating and prosecuting them. In the case of Mexico, establishing this Specialized Prosecution Service is of even greater importance, since, in addition to the duties under its jurisdiction in accordance with Articles 10 bis and 10 ter of the *Basic Law on the Office of the Attorney General of the Republic*, the *Anti-Corruption Amendment to the Constitution* includes it as one of the institutions on the SNA's Coordination Committee, among other duties.

[358] Taking into account the foregoing, the Committee shall make a recommendation to the country under review so that it will consider adopting the measures needed to appoint as quickly as possible the head of the Prosecution Service Specializing in crimes involving acts of corruption, by the Senate, on the basis of the terms provided for in the eighteenth transitory article of the decree whereby the *Constitutional Amendments in Political-Electoral Matters* were published and to provide, within available resources, the human capacity and necessary materials so that it can carry out its functions properly. (See recommendation 3.3.1 of section 3.3 of Chapter II of the present report.)

### 3.2.2. New developments with respect to technology

[359] Both in its response to the questionnaire and during its on-site visit, the country under review did not provide any information about this kind of development.<sup>218/</sup>

### 3.2.3. Results

[360] In its response to the questionnaire,<sup>219/</sup> the country under review presents a series of advances and results with respect to the *Eight Executive Actions to Prevent Corruption and Avoid Potential Conflicts of Interest*,<sup>220/</sup> submitted by the head of the federal executive branch of government on February 3, 2015, some of which the Committee has already referred to in previous sections of the present report.

[361] Since the amendments and additions of various provisions of the *Federal Criminal Code* with respect to combating corruption and the new frameworks for serious administrative offenses by public servants and the acts of private individuals associated with the latter as provided for in the *General Law on Administrative Responsibilities* have recently been enacted, the Committee deems it advisable for the country under review to consider selecting and developing procedures and indicators, whenever appropriate and because they do not as yet exist, that would make it possible to review the objective results being achieved by the application of these provisions and frameworks, principally with respect to acts of corruption as provided for in Article VI, paragraph 1, of the Convention. (See recommendation 3.3.2 of section 3.3 of Chapter II of the present report.)

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218. On September 9, 2016, the country under review reported that it is developing, *inter alia*, the *National Digital Platform of the National Anti-corruption System* in keeping with the provisions of Article 49 of the General Law on the National Anti-Corruption System published in the DOF July 18, 2016.

219. See Mexico's response to the *Questionnaire*, pp. 99 and 99, note *supra* 13.

220. See: <http://www.gob.mx/sfp/acciones-y-programas/acciones-ejecutivas-para-prevenir-la-corrupcion-y-evitar-possibles-conflictos-de-interes>

[362] As for the new Prosecution Service specializing in crimes involving acts of corruption, once it begins operating, the Committee also believes it is advisable for the country under review to consider gathering information about the performance of said Specialized Prosecution Service, mainly regarding its duty to investigate and prosecute acts that the law views as crimes of corruption, especially those provided for in Article VI, paragraph 1, of the Convention. (See recommendation 3.3.3 of section 3.3 of Chapter II of the present report.)

[363] Finally, keeping in mind the purpose of MESICIC to “*follow up on the commitments made by the States Parties to the Convention and to study how they are being implemented*” according to the *Report of Buenos Aires*, and recognizing the *Anti-Corruption Amendment to the Constitution* as the principal legal framework development to promote and strengthen mechanisms to prevent, detect, punish, and eliminate corruption in Mexico, the Committee invites the country under review to consider reporting, in the annual progress reports provided for in Article 32 of the Regulations, the actions undertaken with respect to the implementation and operation of SNA and, whenever relevant, the objective results obtained from its application. (See Recommendation 3.3.5 of Section 3.3.4 of Chapter II of the present report.)

### **3.3. Recommendations**

[364] In view of the observations made in sections 3.1 and 3.2 of Chapter II of the present report, the Committee suggests that the country under review take into consideration the following recommendations:

- 3.3.1. Appoint as soon as possible the head of the Prosecution Service Specializing in crimes involving acts of corruption, by the Senate of the Republic, on the basis of the terms provided for in the eighteenth transitory article of the decree whereby the *Constitutional Amendments in Political-Electoral Matters* were published and to provide, within available resources, the human capacity and necessary materials so that it can carry out its functions properly. (See paragraph 358 of section 3.2.1, subparagraph b), of Chapter II of the present report.)
- 3.3.2. Prepare and, when appropriate, put into practice the methodologies, indicators, and policies referred to by the General Law on the National Anti-Corruption System to examine the objective results being obtained from applying the reforms and additions to the various provisions of the *Federal Criminal Code* in the fight against corruption and the systems for serious administrative offenses committed by public servants and the acts of private individuals involved in these offenses as provided for in the *General Law on Administrative Responsibilities*, principally with respect to the acts of corruption indicated in Article VI, paragraph 1, of the Convention. (See paragraph 361 in section 3.2.3 of Chapter II of the present report.)
- 3.3.3. Prepare, when relevant, statistical information about the duties given to the Prosecution Service Specializing in crimes involving acts of corruption in terms of its investigations to make it possible to clearly establish the following: how many investigations have been suspended; how many have expired; how many have been archived; how many are under way; and how many have been referred to the area having jurisdiction for a ruling, in order to identify challenges and, if relevant, adopt corrective measures. (See paragraph 362 in section 3.2.3 of Chapter II of the present report.)

#### 4. GENERAL RECOMMENDATIONS

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

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

[365] Both in its response to the questionnaire<sup>221/</sup> and during the on-site visit, the country under review submitted information and new developments with respect to the recommendation above. Nevertheless, for the review of its implementation, the Committee will refer to the conclusions and recommendations made in section III of Chapter II of the present report, keeping in mind that, in said section, an up-to-date and detailed examination will be conducted of the implementation of the provision set forth in paragraph 3 of Article III of the Convention, which refers to the “[i]nstruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities,” which is closely connected to the matter referred to in the recommendations previously indicated.

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

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

[366] Both in its response to the questionnaire<sup>222/</sup> and during the on-site visit, Mexico presented additional information and new developments with respect to the above recommendation. In this regard, the Committee notes the following as steps that lead it to conclude said recommendation has been satisfactorily considered:

[367] As for the systems, provisions, measures, and mechanisms relative to the hiring of public officials, Mexico has the *strategic indicators* of the PGCM and the *indicators for measuring* the PSPC, described above in Section 1.1 of Chapter II of the present report, for which the agencies and entities of the APF must apply, among other guidelines, the *technical criteria*<sup>223/</sup> drawn up by the SFP for follow-up of the PGCM with respect to organization, professional development, and human resources.

[368] The *Comprehensive Evaluation Model for the Professional Career Development Service* (hereinafter referred to as MideSPC), developed and administered by the SFP as a computer tool that makes it possible for various stakeholders to participate in the SPC, self-evaluate their progress in implementing and operating the System, and obtain clear and objective quantitative information, is also noteworthy.

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221. See Mexico’s response to the *Questionnaire*, pp. 68 to 75, note *supra* 11.

222. *Ibid.*, pp. 75 to 81.

223. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_67.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_67.pdf)

[369] Although this Model has been considered in previous Rounds, on this occasion, on the basis of the information gathered during the on-site visit, the Committee reports that the MideSPC has been strengthened with 15 indicators with targets set at 95% achievement, which are agreed upon every year among the more than 70 institutions of the APF subject to SPC and SFP. The actions for follow-up and evaluation of the targets that were set are carried out jointly with the internal monitoring bodies of each entity and said Secretariat, either on a monthly or a yearly basis, depending on the nature of each indicator. At the end of the annual exercise, there is a global result available, by institution and by indicator, which makes it possible for the SFP to make recommendations for improvement to the institutions to motivate achievement of all the indicators by each one of the subsystems comprising the SPC System.

[370] As for the systems, provisions, measures, and mechanisms relative to government hiring, Mexico also has the *strategic indicators* from the PGCM, as described in section 1.2 of Chapter II of the present report, as well as the indicators relative to the same section with respect to the use and operation of CompraNet, including the market information and intelligence module that brings together more than 60 indicators grouped into 10 categories that make it possible to conduct more complex analysis for a better understanding of the behavior of government hiring.

[371] Likewise, according to its response to the questionnaire,<sup>224/</sup> Mexico, through the SFP, is developing new indicators to measure more broadly its government hiring system. For this purpose, there currently is an interaction with international organizations such as the OECD and the Inter-American Government Procurement Network, aimed at benefiting from experiences and know-how in international best practices regarding this.

[372] Finally, during the on-site visit, the SFP itself made a presentation<sup>225/</sup> on the preliminary draft for the management and performance indicators for follow-up on the evaluation of government hiring of the APF, which it is now implementing in order to “...*benefit from the information that is needed for strategic decision making that will contribute to ensuring the best conditions for the state, in line with the principles of efficiency, effectiveness, economy, transparency, impartiality, and honesty.*”<sup>226/</sup>

[373] In view of the above, as well as on the basis of the information examined in sections 1, 2, and 3 of Chapter II of the present report on systems, provisions, measures, and mechanisms referred to in recommendation 4.2 above, the Committee takes note of the satisfactory consideration given by the country under review to the recommendation.

Recommendation 4.3 suggested by the Committee that requires additional attention within the Framework of the Third Round:

*Design and implement public awareness campaigns in transparency, targeting the public and those who take part in political activities, with respect to the issues referred to in this report.*

[374] Both in its response to the questionnaire<sup>227/</sup> and during the on-site visit, Mexico submitted additional information and new developments with respect to the recommendation above. In this regard, the Committee notes the following as steps that lead it to conclude said recommendation has been satisfactorily considered:

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224. See Mexico's response to the *Questionnaire*, p. 80, note *supra* 13.

225. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_80.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_80.pdf)

226. See Mexico's response to the *Questionnaire*, p. 81, note *supra* 13.

227. *Ibid.*, pp. 75 to 81.

[375] As indicated in the previous sections, on May 4, 2015 the regulatory LGTAIP of Article 6 of the Constitution was published. Among other aspects, it requires the state's branches of government, autonomous bodies, political parties, trust funds, and government funds, as well as any natural person, legal entity or union that receive and handle public resources or carry out acts of authority to ensure the transparency of the public information they possess.

[376] In order to support the application of said instrument and guarantee an orderly and coordinated transparency policy, during the on-site visit, the SFP presented its model for acting to conduct efficiently and in a coordinated fashion the actions that would make it possible to fulfill the provisions set forth in the LGTAIP, by the agencies and entities of the APF through the following four areas of action:

[377] The *Regulatory Area*, aimed at incorporating the new general provisions for transparency and access to public information in the specific legal framework governing APF. The *Functional and Procedural Area* to upgrade instruments and /or procedures that the federal executive branch of government uses to handle requests for access to information, fulfill the obligations of transparency, disseminate of targeted information and develop open government strategies. The *Area of Training and Culture of Legality* to turn transparency into a daily practice in government administration, effectively and comprehensively meeting the citizenry's needs for information and ensuring legality on the part of the public servants of the APF. And the *Area of Inter-Institutional Ties* to strengthen synergies with the National Institute for Transparency, Access to Information, and Personal Data Protection (Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales, hereinafter INAI), to design and implement projects that create value for society, as well as for the implementation of best practices nationwide.

[378] As for the first *Area*, on March 3, 2016, the *Agreement aimed at issuing general provisions with respect to archives and transparency for the Federal Public Administration and its Single Annex*<sup>228/</sup> was published in the DOF for the purpose of establishing administrative policies, actions, and procedures that must be observed in these areas in the Federal Government.

[379] As for the second *Area*, on May 4, 2016, the *General Technical Guidelines* were published in the DOF, for the publication, homologation, and standardization of information on the obligations set forth in the LGTAIP, which must disseminate those subjects legally bound to report on the Internet portals and *National Transparency Platform*.<sup>229/</sup> Likewise, as part of its duties and pursuant to the applicable legal framework, the SFP, in the framework of the PGCM, has been designing, coordinating, and evaluating the *Targeted Transparency Policy*<sup>230/</sup> of the Government of the Republic to promote, in the agencies and entities, actions aimed at achieving the targeted transparency objectives that appear in the contents of the above-mentioned Agreement, as well as in the PND and the PGCM.

[380] On the basis of the response to the questionnaire, "*currently this policy is applicable to 267 agencies and entities of the APF. The dissemination of said information is aimed reducing risks or solving public problems, reducing information disparities, protecting and promoting human rights, facilitating the access to both public and private goods and services, and ensuring transparency in the use of public resources. At October 2015, APF agencies and entities disseminate to their strategic*

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228. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_32.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_32.pdf)

229. See: <http://www.plataformadetransparencia.org.mx>

230. See the 2016 Targeted Transparency Guide (Guía de Transparencia Focalizada 2016), available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_99.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_99.pdf)

*audiences and the general population, through their institutional portal on Internet and other media apart from ICTs (working meetings, consultative councils, television, radio, printed matter, etc.), 1,344 topics with socially useful or targeted information. The above accounts for a 12.46% rise in topics compared to 2014, a 32% rise compared to 2013, and a 46% rise compared to 2012. On the basis of these actions, a new generation of transparency in Mexico is trying to be consolidated, one where public policies on this matter strive to foster public trust, interest, and participation, as well as build closer collaborative ties between government and society.”<sup>231/</sup>*

[381] Regarding the third Area, on August 20, 2015, the Agreement aimed at issuing the Code of Ethics for public servants of the Federal Government, the Rules of Integrity in the exercise of public functions, and the General Guidelines to promote the integrity of public servants and to implement permanent actions favoring ethical behavior, through the Ethics and Conflict of Interest Prevention Committees.<sup>232/</sup>

[382] On the basis of the response to the questionnaire, “said instruments highlight transparency as a value that every public servant must put ahead of everything else when discharging his/her duties, and it refers to public information as one of the rules of integrity, highlighting those acts that, regarding access to information and transparency, undermine this citizen right.

[383] Likewise, jointly with INAI, in September and October, a specific training strategy focusing on the LGTAIP was implemented, aimed at the public servants of the Liaison Units and Information Committees of the Agencies and Entities of Federal Public Administration. There were 16 courses delivered to 247 institutions, attended by 1,016 public servants. Furthermore, in Mexico, through the INAI, a series of 90 introductory training sessions are being implemented, for the purpose of raising awareness of the members of the Transparency Committees and Units of the subjects legally bound to report. It is also important to mention that Article 115 of the General Law on Transparency provides that confidentiality cannot be invoked when the information involves acts of corruption in accordance with applicable laws.<sup>233/</sup>

[384] Finally, with respect to the fourth Area, on December 10, 2015, the SFP and INAI signed an Agreement of Collaboration to Strengthen Transparency, Access to Information, Government Openness, and Personal Data Protection<sup>234/</sup> for the purpose of promoting the implementation of policies in these areas, coordinating activities and strategies, and drafting dissemination, investigation, and training programs for public servants of the APF, among other aspects.

[385] Likewise, it is necessary to point out that, on May 5, 2016, the members of the National System for Transparency, Access to Public Information, and Personal Data Protection as provided for in the LGTAIP, that is the INAI, the General Archive of the Nation, the Chief Audit Office of the Federation, the National Statistics and Geography Institute and the 32 bodies in charge of ensuring transparency and accountability of the federal agencies of the country under review presented the National Transparency Platform,<sup>235/</sup> as a unique world technological tool that makes it possible to gain access to information on more than 850 subjects legally bound to report in the federal sector and more than 6,600 legally bound subjects nationwide to comply with the LGTAIP using easy and certified procedures.

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231. See Mexico’s response to the *Questionnaire*, p. 83, note *supra* 13.

232. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_31.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_31.pdf)

233. See Mexico’s response to the *Questionnaire*, p. 83, note *supra* 13.

234. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_62.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_62.pdf)

235. See: <http://www.plataformadetransparencia.org.mx>

[386] In view of the above, as well as the information about transparency that was examined in sections 1, 2 and 3 of Chapter II of the present report, the Committee takes note that the country under review has satisfactorily taken into consideration General Recommendation 4.3, which was formulated in the Second Round.

### **III. REVIEW, CONCLUSIONS, AND RECOMMENDATIONS OF IMPLEMENTATION BY MEXICO OF THE CONVENTION PROVISIONS SELECTED FOR THE FIFTH ROUND**

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

[387] In accordance with the Methodology adopted by the Committee for the Fifth Round regarding the implementation of Article III, paragraph 3 of the Convention, which refer to measures that intended to establish, maintain and strengthen “*instruction[s] to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities,*” the country under review selected the APF staff, through the SFP; PFL staff, through the Chief Audit Office of the Federation (Auditoría Superior de la Federación, hereinafter ASF); and PJF staff, through the CJF, because it felt their institutional and legal developments were relevant and representative of Mexican government bodies and institutions as a whole.

[388] The following is a brief description of the three bodies selected by the country under review that are to be examined in this section:

[389] – The SFP is the APF body responsible for overseeing the performance of federal public servants, establishing the Federation’s procurement policy, auditing the spending of federal resources, and coordinating the internal monitoring bodies in each agency and entity of the Federal Executive Branch of Government, as well as providing instructions to the staff of APF about the responsibilities and ethical rules governing their activities. The basis of the duties of the SFP are granted to it by Article 37 in correlation with the second transitory clause of the *Decree whereby various provisions of the Basic Law on Federal Public Administration are amended, added, and repealed*,<sup>236/</sup> published in the DOF on July 18, 2016, and as established in its *Internal Regulations*,<sup>237/</sup>

[390] – The ASF, on the basis of the provisions in Article 74, sections II and VI, and Article 79 of the CPEUM and in the *Law on Auditing and Accountability of the Federation*,<sup>238/</sup> is the supporting body of the House of Representatives that is responsible for overseeing, externally, the use of federal public resources in the three branches of government of the Union; the autonomous constitutional bodies; the states and municipalities; and in general any entity, natural person or legal entity, whether public or private, that has taken, collected, administered, managed, or handled federal public resources. To fulfill this mandate, the ASF promotes the strategic orientation of public action, boosts the trust of citizens in the state’s institutions, and contributes to consolidating a governmental culture of legality, transparency, and accountability. For the training of its staff, the ASF has the Advanced Auditing

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236. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_100.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_100.pdf)

237. Available up to the latest amendment published in the DOF on October 20, 2015, at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_19.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_19.pdf)

238. Available up to the latest amendment published in the DOF on June 18, 2010, at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_13.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_13.pdf)

Training and Development Institute (Instituto de Capacitación y Desarrollo en Fiscalización Superior, hereinafter ICADEFIS).

[391] – The CJF, in terms of the provisions of Article 94, paragraph 2, and Article 100, paragraphs 1 and 8, of the CPEUM, as well as Articles 68 and 81, sections II and V, of the LOPJF, is the body in charge of the administration, oversight, discipline, and professional career stream in the judiciary of the circuit and district Courts, and it has technical and managerial autonomy to issue its own rulings; in addition, it is entitled to enter into general agreements to adequately discharge its duties. For the training of its staff, the CJF has the Federal Judiciary Institute (Instituto de la Judicatura Federal, hereinafter IJF), referred to in previous sections of the present report.

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

[392] Mexico has a series of provisions and/or measures aimed at giving instructions to government personnel to ensure they have an adequate understanding of their responsibilities and the ethical rules governing their activities, among which the following are noteworthy:

- Statutory and other legal provisions applicable to the personnel of the APF, through the SFP, among which the following should be noted:

[393] – The *RH-SPC Handbook* published in the DOF on July 12, 2010, which incorporates into Chapter II of its third section a series of provisions related to the development of human capital in the APF, including a series of activities so that the staff can acquire, develop, upgrade, and increase the know-how and capacities they need to discharge the duties of their position, as well as to assess their performance, and contributing to improvement in the quality of services.

[394] For these purposes, it provides that the APF's institutions must permanently include, in their training programs, among other actions, those geared to strengthening the vocation for public service, and, in their case, the professional skills aimed at developing leadership and managerial abilities; to developing conduct aimed at observing ethical principles and values, the rules of integrity in public services, the prevention of conflicts of interest and the fight against corruption, and to promoting knowledge about, and respect for, human rights, non-discrimination and gender equity, and when appropriate whistleblowing against those carrying out practices that breach these rights.

[395] The annual training programs of each institution must consider actions that make it possible to induce, upgrade, develop, and strengthen the performance of public servants and, whenever appropriate, contribute to certifying professional capacities.

[396] Training can be provided with on-site teaching, distance learning, or a combination of both, and shall be evaluated on the basis of the instruments or mechanisms drawn up by the institutions to learn about the participants' perception of the various elements comprising the training for the purpose of improving, transforming, and orienting decision making, appraising the knowledge, skills, aptitudes, and, when appropriate, the attitudes that the participants have about the subject in connection with achieving the goal proposed for the training action being provided, as well as to determine if any of these actions provided the expected impact on the participants or on the positions, areas, or institutions to which they belong.

[397] The evaluations must determine to what extent the learning goals of the training carried out in the institution are being achieved, as well as provide useful information for detecting training needs and providing information that certifies that the public servants have upgraded their profile and

knowledge, skills, aptitudes, and, when appropriate, the attitudes required for performing their duties in their respective jobs.

[398] As for the staff of the APF subject to the SPC, the Handbook, in Chapter V of its sixth section, develops, among other aspects, the Subsystem for Capacity Training and Certification for this category of staff, which, according to section IV of Article 13 of the LSPC, shall establish the professional development models for career public servants that would enable them to acquire basic knowledge about the institution where they are working and the APF as a whole; specialization, refresher training, and formal education in the job being performed; aptitudes and attitudes needed to hold other positions with the same or greater responsibilities; the possibility of ensuring greater institutional, professional, and personal development in the institution; and the skills needed to certify the professional skills that are gained, as well as the objective conditions to promote equal opportunities for men and women, all of the above in compliance with Chapter III of the third section of the above-mentioned Handbook.

[399] Specifically, the LSPC points out that the Technical Committees for Professional Development and Selection of each institution, on the basis of the needs it detects, shall establish job and administrative development and quality training programs for public servants. These programs can be developed by one or more agencies in coordination with the SFP and must contribute to improving the quality of the goods and services that are provided. The Committees must register their annual training plans with the SFP, which can recommend adjustments on the basis of the System's needs.

[400] Training shall be aimed at developing, complementing, fine-tuning or refreshing the knowledge and skills needed to ensure the efficient performance of career public servants in their jobs; preparing them for duties involving greater responsibilities or of a different nature; and certifying them in the professional skills they have acquired. Likewise, the training programs shall be comprised of required and elective courses as set forth by the Committees in coordination with the SFP.

[401] Career public servants will be able to request their admission into various training programs for the purpose of developing their own professional profile and secure, in the future, various positions in the System or in public or private institutions with which agreements are entered into, as long as it pertains to their career development plan. Regarding this, professional career public servants must be tested to certify their professional skills on the basis of terms decided upon by the SFP at least every five years. The testing must certify that the public servant has developed and kept his/her profile up-to-date, including the aptitudes required for the discharge of his/her duties. This certification shall be the requirement that is indispensable for remaining in the System and in his/her job.

[402] Nevertheless, when the test results fail to provide the certification required, the applicant must take the test again. In no case can this test be given earlier than 60 calendar days or more than 120 days after the notification has been given of said result. The institution to which the public servant belongs must provide him/her the training needed before the following test. If he/she does not pass the latter test, the APF will proceed to dismiss the career public servant.

[403] Regarding the ethical rules governing its activities, first of all, the LFRASP, quoted in the previous sections, sets forth the responsibilities and obligations to which every public servant must adjust themselves in the performance of their duties, jobs, or commissions in order to safeguard the principles of legality, honesty, loyalty, impartiality, and efficiency governing public service.

[404] Likewise, as indicated earlier, on February 3, 2015, the head of the Federal Executive Branch ordered, for the purpose of strengthening legality and prevent opportunities for corruption, *Eight Executive Actions to Prevent Corruption and Avoid Conflicts of Interest*. In that respect, the latter, which is connected with the provision that is being examined in the present section, establishes the creation in SFP of the Unit Specializing in Ethics and Conflict of Interest Prevention (Unidad Especializada en Ética y Prevención de Conflictos de Interés, hereinafter UEEPCI), which, on the basis of the provisions in Article 17 bis of the Internal Regulations of this Secretariat, is responsible for, developing policies, guidelines and strategies on ethics, integrity and prevention of conflicts of interest; serving as an advisory and consultative body in such matters; providing opinions on the update of conflicts of interest of public servants, as well as coordinate the activities of the Ethics and Conflicts of Interest Prevention Committees of each body or sector of the APF.

[405] As for the third executive action, which is also connected with this subject, it provides that rules of integrity must be issued for the discharge of federal public functions that will broaden and enhance the ethical codes currently in force and ensure they are in line with the new challenges to be tackled in the fight against corruption.

[406] As a result of the above, on August 20, 2015, the SFP published in the DOF the *Agreement that is aimed at issuing the Code of Ethics for the public servants of the Federal Government, the Rules of Integrity in the exercise of public functions and the General Guidelines to promote the integrity of public servants, and to implement permanent actions for the benefit of their ethical conduct, through the Ethics and Conflict of Interest Prevention Committees*, also already quoted throughout the present report.

[407] As for how the staff is apprised of their responsibilities and duties in their job, on the basis of the response of the country under review to the questionnaire, every public servant, when becoming part of the APF, pledges to learn about the obligations set forth in Article 8 of the LFRASP, as well as the applicable legal framework for the discharge of his/her duties, because they can only perform those acts or duties that the law itself assigns to them. Regarding this, depending on the form of hiring to which they are subject, the public officials of the SPC shall be apprised, as soon as the position that is involved is published in the DOF; the staff hired under the system of professional fees shall be apprised of their duties as of the signing of the services contract; whereas those who are freely appointed shall be apprised when they are incorporated into their jobs.

[408] Added to the above, the country under review specifies in its response that all staff attached to the APF has the legal framework specifying their functions in the performance of their job, such as, for example, the internal regulations of the body or entity, the guidelines for acting or handbooks of the organization and procedures, where the duties to be discharged are described in accordance with the profile of the position. The organizational and procedures handbooks available for all public servants on SFP's intranet site are an example of this.

[409] Regarding when the staff are apprised of their responsibilities and duties pertaining to their job, the APF's induction actions are coordinated by SFP's General Human Resources Department in collaboration with the administrative units to which the public servant is attached, and they shall be provided within the first three months after position is taken. Whereas the actions relative to the job's induction shall be the responsibility of the immediate superior, who with support from the above-mentioned Department shall provide it within the 15 working days after the instatement or change of position of the public servant.

[410] As for the existence of induction programs and courses, training, or instruction to the staff about how to appropriately discharge their responsibilities and duties and especially how to raise their awareness about the risks of corruption inherent to their performance, without detriment to the induction that is granted to public servants in each body or entity, the General Human Resources Department of the SFP provides training courses to the staff of various agencies of the APF, regarding their liabilities, in accordance with the LFRASP. The SFP also has a portal for registering for courses, to which the entire staff have access so that they can be informed of the subjects of the training that will be provided, the time and calendar for these courses, and depending on their functions, they can choose among a range of options, available at <http://sisexa.funcionpublica.gob.mx>

[411] Regarding the existence of entities to which the staff can go to obtain information or address concerns about how to appropriately discharge the responsibilities and duties pertaining to their job, Article 79, section XIII, of the SFP's Internal Regulations establishes that the heads of the Internal Monitoring Bodies are responsible for implementing the specific programs aimed at checking fulfillment of the obligations of public servants of bodies, entities, and the PGR, in line with the guidelines issued by the SFP. In addition, according to Article 8, section VIII, of the LFRASP, every public servant shall be required to report in writing to the head of the body or entity where he/she provides his/her services any substantiated doubts arising from the orders he/she receives that might entail violations of the above-mentioned Law or any other legal or administrative provision. As for the duties that public servants must discharge, the responsibility of applying the provisions issued by the SFP, subparagraph 3, paragraph 2, of the *RH-SPC Handbook* indicates that it pertains to high-ranking officials or their equivalents to enforce them.

[412] As for the existence of a leading body, authority, or body in charge of defining, steering, advising or supporting how the staff must be apprised of their responsibilities and duties and supervising that this is done thoroughly and the measures or actions that they can take to enforce the provisions and/or measures that govern this matter, the *RH-SPC Handbook* which the SFP is in charge of interpreting when there are unforeseen cases and can, at the request of the institutions, provide orientation and advisory services in any of the matters or sections provided for in said instrument. Likewise, regarding the responsibilities of public officials, the General Coordination of Surveillance and Monitoring Bodies of the SFP acts as an authority in charge of steering and advising the Internal Monitoring Bodies and the performance of their duties in accordance with Article 9 of the SFP's Internal Regulations, regardless of whether or not the matters were channeled to the Central Administrative Units, either because of the kind of case or matter involved, as for example if it involves a case regarding responsibilities, which will be addressed by the SFP's General Department for Responsibilities and Asset Situation, or because it pertains to a case being handled in the investigation stage, which shall be channeled to the General Department of Whistleblowing and Investigations of the Secretariat itself.

[413] As for how personnel are informed of the ethical rules governing their activities, indicating whether this is done verbally or in writing and if there is a record of it, the broadcasting and dissemination of the *Code of Ethics of Public Servants of the Federal Government*, the *Rules of Integrity in the Exercise of Public Functions*, and the *General Guidelines* to promote the integrity of public servants and to implement permanent actions that foster their ethical conduct, are carried out through the Ethics and Conflict of Interest Prevention Committees. At the same, internal communication campaigns are carried out, using, among other media, institutional emails and training programs organized by the human resources areas.

[414] For these purposes, APF bodies and entities have their own respective Ethics and Conflict of Interest Prevention Committees to promote integrity among public servants and implement ongoing actions that favor their ethical conduct. Every Committee is comprised of eleven regular members with voice and vote, one of whom shall participate on a permanent basis and ten shall be elected for a temporary period. To discharge its duties, the Committee is entitled to set up whatever permanent or temporary subcommittees or commissions it deems necessary and shall regulate their operation and functioning on the basis of their *terms of reference*. It should be pointed out that the authority in charge of establishing actions in terms of ethics and integrity is the UEEPCI, on the basis of the duties granted to it by Article 17 bis of the SFP's Internal Regulations.

[415] Finally, during the on-site visit, the SFP's representative presented the developments that, in the framework of a technical cooperation agreement, it was implementing with support from the General Secretariat of the OAS, aimed at adopting a *protocol for the integrity of the public servant in the exercise of public duties*, for which the reviews, conclusions, and recommendations adopted by the present Committee are deemed to be one of the principal inputs to achieve this.

- Statutory and other legal provisions applicable to the personnel of the PLF, through the ASF, among which the following should be noted:

[416] – The *Internal Regulations of the Chief Audit Office of the Federation*,<sup>239/</sup> published in the DOF on April 29, 2014, which point out the sphere of jurisdiction and organization of the staff of the above-mentioned institution, which in their Article 39 establish the duties of the ICADEFIS attached to the ASF's General Administration Unit.

[417] – The *Handbook for the Organization of the Chief Audit Office of the Federation*<sup>240/</sup> published in the DOF on February 7, 2014, which establishes the corresponding legal framework; the organizational structure of the institution, the organizational charts, the duties, and responsibilities of the ASF's administrative units and the duties and responsibilities of their staff.

[418] On the basis of the instruments indicated above, with respect to how the staff are apprised of the responsibilities and duties of their job, the new staff entering the ASF receives a mandatory training called *Institutional Induction Course*, where the staff is apprised of all relevant information, including the legal framework, on which the performance, duties, and functions of the administrative units and corresponding staff are based. Thus, Article 39, section VII of the Internal Regulations of the ASF indicated above points out the following as a duty of the ICADEFIS: “*to deliver the induction course to new staff so that they can be mainstreamed into their workplaces with the knowledge that is indispensable for the performance of their duties.*”

[419] Regarding this, every head of the administrative units is responsible for settling concerns about the performance, responsibilities, and duties of every public servant under his/her responsibility in the ASF. Likewise, the direct superior of every newly appointed public servant shall verbally indicate the line of command, as well as the corresponding responsibilities, duties, and functions he/she must take up. Furthermore, the newly appointed public servant shall fill out the job induction document where he/she is asked about the implementation of these activities by his/her direct superior, whose results are reported to the General Administration Unit of the ASF.

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239. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_20.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_20.pdf)

240. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_54.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_54.pdf)

[420] In that respect, the ASF shall specify to the staff the responsibilities and duties pertaining to their job when they start up their functions, that is, when they are newly incorporated into the institution, and during the institutional induction course as well. Likewise, when the duties of a staff member change and/or when there are changes in his/her position and/or area, the respective process is carried out in the human resources area, specifying to the public servant his/her new duties and responsibilities. Furthermore, ASF public servants can consult their duties and responsibilities in the ASF's Internal Regulations and Organizational Handbook, which are available to all public servants on the institution's website.

[421] As the area responsible for promoting the development of the technical and managerial skills of its public servants, ICADEFIS develops training on technical know-how, but also fosters the development of individual, group, and institutional management skills, including attitudes, abilities, and values as well. As part of its *Institutional Training Program*, which is carried out every year, and in addition to institutional induction, quality management, and improving performance, ICADEFIS includes training on the *ASF Integrity Policy*, which raises awareness about institutional values and risks involved in undermining the integrity pertaining to the ASF and inherent to its duties, in conformity with the topics connected with the *ASF Code of Ethics* and its principles, the *ASF Code of Conduct*, the *ASF Guidelines to Prevent Conflicts of Interest*, and the Committee on Integrity and Whistleblowing, among others.

[422] Also, on the basis of the above-mentioned *Institutional Training Program*, ICADEFIS also provides courses on *Internal Monitoring: Key Principles*, which explains the structure, components, principles, and elements of an internal monitoring system under international best practices and standards, and the course on *Responsibilities of Public Servants*, aimed at raising the awareness of participants about the legal duties and responsibilities of public servants, as well as disciplinary actions and the procedures for their application in connection with the actions promoted by ASF.

[423] Furthermore, in conformity with what is set forth in the *Organizational Handbook*, the General Department for Auditing and Evaluating Internal Monitoring Systems, as part of its duties, provides advisory services to all ASF units with respect to internal monitoring, risk management, ethics and preventing and combating corruption, to suggest actions tending to strengthen transparency and accountability.

[424] These training activities and courses to apprise the staff about the responsibilities or duties pertaining to their job and to steer them toward suitable performance of their duties are conducted on the basis of a structure governed by effectiveness and efficiency in the use of resources, taking advantage of available information and communication technologies, using distance learning approaches to providing these courses, on the basis of what is established in the *Institutional Training Program*. To this end, ICADEFIS has a virtual campus available at <http://asofisprofis.auditoriasuperior.gob.mx>; in addition, ASF public servants can consult their responsibilities and duties in the *Internal Regulations* and the *Organizational Handbook* on the institution's website, as mentioned earlier.

[425] Likewise, according to what is established in the *Organizational Handbook*, in the Special Audit Office for Information, Communication, and Monitoring Technologies, there are proposals for standards to administer and take better advantage of the operational environment of information and communication technology systems, and criteria and provisions are proposed aimed at upgrading and boosting the use and development of the resources allocated to ASF's information and communication technology systems.

[426] With respect to the existence of entities to which the staff can resort in order to obtain information or resolve doubts about how to perform their responsibilities and functions properly, in accordance with the *Organizational Handbook* itself, the General Administration Unit is the body in charge of administering human, technical, and material resources that are required by the institution's administrative units to adequately fulfill their responsibilities and duties in the framework of an authorized budget and applicable legal and administrative provisions. Nevertheless, each head of an administrative unit is responsible for answering concerns about the performance, responsibilities, and duties of every public servant under his/her command.

[427] Likewise, inside the ASF, the Management Review and Follow-up Coordination is the unit in charge of supporting the executive management area, by conducting reviews, follow-ups, and improvements of institutional management, in order to check and promote, in coordination with the administrative units, the establishment of actions that contribute to boosting their levels of quality and to discharging their duties, in addition to participating jointly, within the scope of their jurisdiction, with the Evaluation and Monitoring Unit.

[428] The latter unit is the technical body of the ASF Oversight Committee of the House of Representatives, in charge of overseeing strict compliance with the duties of ASF public servants, as well as the other duties expressly entrusted to it by the *Law on the Chief Audit Office of the Federation*, for the purpose of proposing actions to boost the quality of its work, contribute elements improve the chief auditing process, fine-tune the applicable legal framework, and in its duties as comptroller ensure that its public servants behave on the basis of the terms provided in the above-mentioned *Law on Audit* and other applicable legislation.

[429] As for how personnel is informed of the ethical rules governing their activities, the ASF prepared and disseminated among its staff the document entitled *ASF Institutional Integrity Policy*,<sup>241/</sup> which is aimed at guaranteeing the highest probity and reliability of ASF public servants.

[430] This *Institutional Policy* has various instruments to steer the activities of its staff so that they can perform on the basis of strict principles and guidelines of autonomy, impartiality, and technical rigor. The contents of this *Policy* have been developed in accordance with international best standards and practices with respect to internal auditing and government sector auditing, and they are drawn on the basis of the principle of ongoing performance, addition, and improvement. In this regard, the *ASF Institutional Integrity Policy* is comprised of the *Ethics Code*, the *Code of Conduct*, and the *Guidelines to Prevent Conflicts of Interest*.

[431] The above-mentioned *Policy* is provided in writing in a publication to newly appointed staff, without exception. In addition, with this, the staff is requested to read it and sign the “*statement of no conflict of interest*,” where the ASF public servant, in addition to accepting that he/she received said publication, pledges to report on a timely basis and in writing any impediment or conflict of interest of a professional or contract nature, and to not request, accept, or receive any money, objects, donations, employment, job, or commission from any natural person or legal entity that would entail a conflict of interest.

[432] It must be pointed out, as a contribution made by the ASF to the public sector, that through its Special Auditing Office for Information, Communication, and Monitoring Technologies, this institution drew up and makes available to all public sector institutions of the three branches of government the document entitled *Integrity and Corruption Prevention in the Public Sector: Basic*

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241. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_60.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_60.pdf)

*Implementation Guide*,<sup>242/</sup> which shows the steps that must be taken to establish a *Program to Promote Integrity and Corruption Prevention* based on international best practices in the matter, which is certified and systemic with the necessary methodological rigor to identify, prevent, evaluate, and deter potential acts of corruption, as well as to punish those responsible and ensure better use of government resources, promote transparency and accountability, and reach higher levels of efficiency in the government's performance.

[433] Added to the above, the ASF drew up the *Guide for Self-Evaluation of Integrity in the Public Sector*,<sup>243/</sup> which is aimed at providing a roadmap based on international best practices, for the purpose of contributing to achieving the goals of the *National Auditing System*<sup>244/</sup> and making it applicable in all public sector institutions, in order to contribute to the fulfillment of its goals and targets with due safeguarding and use of public resources. Likewise, the ASF drew up the *Guide for Self-Evaluation of Risks in the Public Sector*,<sup>245/</sup> which is structured to be applied to all kinds of government bodies from any of the three branches of government of the Union and government levels, without breaching its mandate or its specific features, because it contains the key principles for effective risk management and is drawn up on the basis of applicable domestic law, as well as on the basis of international best practices in the matter.

[434] As a part of other contributions to the public sector in terms of integrity, the ASF also prepared the *Technical Study to Promote the Culture of Integrity in the Public Sector*,<sup>246/</sup> which is aimed at examining and describing international best practices in the area of integrity and installing anti-corruption controls, so that government institutions are able to prepare an *Institutional Integrity Program* with the prime elements for strengthening a culture of transparency, probity, and accountability in the discharge of their duties.

[435] Finally, as an example of inter-institutional cooperation to strengthen internal monitoring in the public sector, the ASF and SFP drafted, in 2014, the *Integrated Internal Monitoring Framework*,<sup>247/</sup> which provides a general model to establish, maintain, and improve the internal institutional monitoring system, providing various elements to fulfill the categories of institutional objectives (operation, information, and compliance). This Framework is designed as an internal monitoring model that can be adopted and adapted by federal, state, and municipal government institutions.

[436] As for the existence of bodies to which the staff can resort to obtain information or resolve doubts about the scope or interpretation of the ethical rules governing their activities, at the Third Regular Meeting of the Board of Directors of the ASF, held in 2013, it was agreed that an *Integrity Committee* would be established as the collegiate, multidisciplinary body that would involve various administrative units of the institution in charge of proposing to the Chief Auditor of the Federation strategies, lines of action, institutional policies, internal communication campaigns, and various measures to promote the *Institutional Integrity Policy* and safeguard its principles. Thus an

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242. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_63.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_63.pdf)

243. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_65.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_65.pdf)

244. The National Auditing System is comprised of the inter-institutional coordination mechanisms between those entities in charge of the government auditing activities at the various levels of government for the purpose of maximizing the coverage and impact of auditing throughout the state, on the basis of a strategic vision, the application of similar professional standards, capacity building, and the effective exchange of information, without any overlapping or omissions. Likewise, the National Auditing System is registered as a consolidated and autonomous subsystem but operating as core hub and essential pillar of the SNA.

245. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_64.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_64.pdf)

246. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_66.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_66.pdf)

247. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_101.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_101.pdf)

institutional assessment group on integrity was established to promote better performance of public servants, in charge of overseeing measures to prevent, detect, deter, investigate, and punish acts of corruption that undermine institutional integrity.

[437] ASF staff can resort to this Committee to obtain information or settle concerns about the scope and interpretation of the *Institutional Integrity Policy*. Likewise, the staff can submit their reports using a free phone system called *Ethical Whistleblowing Phone Line* (Línea Ética de Denuncia—LED), and said reports are channeled to the Integrity Committee and assessed by it.

[438] Likewise, inside the ASF, the Management Review and Follow-up Coordination is responsible, as part of its duties, to ensure that activities carried out in its installations of the areas under its jurisdiction comply with the *Institutional Integrity Policy*. Thus, it receives information about any failure to comply with this Policy and oversees compliance with the guidelines to prevent conflicts of interest, by conducting periodic assessments with a preventive approach. Likewise, it is the body in charge of settling concerns in this area.

- Statutory and other legal provisions applicable to the personnel of the PJF, through the CJF, among which the following should<sup>2</sup> be noted:

[439] – The LOPJF, quoted in previous sections, which in its Articles 88 and 92 provides that, for its adequate functioning, the CJF shall benefit from the IJF, among others, as an auxiliary body to investigate, train, educate, and update the members of the PJF and those who aspire to belong to it, whose functioning and duties shall be governed by the standards decided upon by the CJF in the respective regulations.

[440] It must be pointed out that, on the basis of the *General Agreement of the Plenary of the Federal Judiciary Council that amends, adds, and repeals the provisions of various general agreements*, published in the DOF on March 20, 2015, it was established that, as of April 2015, the IJF is the only body that provides training to public servants of the CJF.

[441] According to Article 95 of the same legal system, the programs provided by IJF shall be aimed at ensuring that the members of the PJF or those who wish to become a part of it can strengthen the knowledge and skills needed for the adequate performance of the judicial branch of government. For this purpose, the IJF shall establish programs and courses aimed at developing practical knowledge about procedures, paperwork, and proceedings that are part of the processes and matters coming under the jurisdiction of the PJF; fine-tuning the skills and techniques for preparing and implementing judicial proceedings; strengthening, updating, and enhancing knowledge about the domestic legal system, doctrine, and jurisprudence; providing and developing techniques for analysis, lines of argument, and interpretation that make it possible to correctly appraise the facts and evidence provided in the proceedings, as well as adequately drafting judicial proceedings and rulings; disseminating techniques for the organization of the jurisdictional function; contributing to the development of a vocation for the service, as well as the exercise of ethical values and principles inherent to the judicial branch of government; and promoting academic exchanges with higher education institutions.

[442] As for how and when personnel are informed of the responsibilities and duties pertaining to their job, as indicated in section 1.1 of Chapter II of the present report, the LOPJF in its Article 112 establishes that, in order to gain access to the categories indicated in sections III to X of Article 110 of this Law, an aptitude test will have to be passed, to be held and organized by the IJF, on the basis

of which, during the on-site visit, the representative of the CJF shared a document,<sup>248/</sup> which indicates the high degree of specialization of the induction and training courses<sup>249/</sup> to which the candidates are subject, which can be consulted in the IJF's virtual classroom available at: <http://aulavirtual.ijf.cjf.gob.mx>.

[443] As for the existence of bodies to which the staff can resort to obtain information or resolve doubts about how to perform their responsibilities and functions properly, also during the on-site visit, the CJF's representative pointed out that, without detriment to consulting first of all their immediate superior, those interested can resort either to the CJF's General Department for Innovation, Planning, and Institutional Development, as the body responsible for defining, steering, advising, or supporting how public servants can be apprised of their responsibilities and duties, or to the Legal Affairs Unit of the Council itself or the Comptroller's Office of the PJJ.

[444] As for the ethical rules governing the activities of the staff working for the PJJ, the representative of the CJF, during the on-site visit, first of all referred to the existence of the *Code of Ethics of the Judicial Branch of Government of the Federation*,<sup>250/</sup> adopted in August 2004 by the plenaries of the SCJN and the Council itself and by the Higher Chamber of the Electoral Court of the PJJ, as well as the observation conducted by the *Ibero-American Code of Judicial Ethics*,<sup>251/</sup> amended in April 2014 in Santiago, Chile, on the occasion of the 17th Plenary Meeting of the Ibero-American Judicial Summit.

[445] Regarding this, he specified that, from August 2006 to September 2014, there was the *Jurisprudential Research and Judicial Ethics Promotion and Dissemination Institute* of the SCJN, which, for the time it functioned, had as one of its objectives the promotion and dissemination of judicial ethics. The above-mentioned institute became the current *Constitutional Studies Center* which is in charge of conducting comparative studies in the realm of judicial ethics, on the jurisprudence established by the constitutional courts of other nations and upheld by this supreme court, as well as promoting jurisprudential research and internal and external promotion and dissemination actions so they can be sources of information in the matter, added to the subjects that the IJF teaches in its basic courses on ethical principles in the judicial branch of government.

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

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

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

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248. See the document submitted by the CJF during the on-site visit, available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_85.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_85.pdf)

249. In addition to the aptitude tests that are applicable, the IJF also provides three types of training modalities, namely: basic courses, specialization courses, and courses aimed at secretaries and clerks. In the case of secretaries, certification of the specialization and course for secretaries, which is provided on-site, is given after passing the aptitude test for secretaries.

250. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_56.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_56.pdf)

251. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_57.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_57.pdf)

- With respect to the provisions and/or other measures applicable to the personnel of the APF, through the SFP, the Committee notes the following:

[448] On the basis of the information presented by Mexico in its response to the questionnaire, as well as the information gathered during the on-site visit, the Committee is aware of and recognizes the work in training and instruction that the SFP has been carrying out, principally through its Human Resources Policy and the recently established UEEPCI, to make sure that its staff and the that of other public bodies comprising the APF adequately understand their ethical responsibilities and the standards governing their activities. Nevertheless, in order to strengthen transparency and public knowledge about these activities, the Committee highlights the need to provide greater dissemination and publicity for the implementation and results of these activities, principally through the official portals on Internet.<sup>252/</sup> (See recommendation 1.4.1 in Chapter III of the present report.)

[449] Furthermore, for the purpose of updating the scope and contents of the annual training programs of the bodies and agencies comprising the APF, the Committee, on the basis of the new system established in the SNA stemming from the *Anti-Corruption Amendment to the Constitution*, believes it would be advisable for the country under review to considering starting up, as soon as possible, the activities it deems are relevant to design, develop, and implement mandatory induction, training and/or instruction courses, workshops and/or seminars aimed at APF staff, principally about the new system of responsibilities and conflict of interest prevention as provided for in the above-mentioned Amendment and in the laws and regulations that are adopted for that purpose. (See recommendation 1.4.2 in Chapter III of the present report.)

- With respect to the provisions and/or other measures applicable to the personnel of the PLF, through the ASF, the Committee notes the following:

[450] As for how the ASF informs the personnel of their responsibilities and duties, the Committee recognizes the efforts this institution has been making to benefit from up-to-date provisions about the matter, such as the *Internal Regulations*, the *Organizational Handbook*, and the *ASF Institutional Integrity Policy* describes in the previous section and, in addition, recognizes the activities that the ASF, through ICADEFIS, has been carrying out to support the state's various institutions in terms of on-site and online training of public servants about the standards and provisions of government monitoring systems, as well as their documentary contributions to establish institutional public sector integrity promotion and institutional corruption prevention programs, among other important developments. Nevertheless, just as in the APF, the Committee deems it is important to consider strengthening the publication and dissemination of all of these activities being carried out by the ASF in its official portal on Internet and in other media deemed suitable to strengthen transparency and public knowledge about them. (See recommendation 1.4.3 in Chapter III of the present report.)

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252. On August 15, 2016, the country under review reported that "...it should be noted that the various dependencies and units post the following documents on their websites: Code of Conduct; List of Ethics and Conflict of Interest Prevention Committees; Annual Work Program; and Annual Activities Report. In addition, the UEEPCI posts on gov.mx the list of dependencies and units that have an Ethics and Conflict of Interest Prevention Committee. Furthermore, UEEPCI's findings in its first 10 months will be published in the SFP Activities Report for 2015-2016."

- With respect to the provisions and/or other measures applicable to the personnel of the PJF, through the CJF, the Committee notes the following:

[451] The IJF, according to what is indicated in the previous section, was established for the purpose of ensuring that the members of PJF or those wishing to become a part of it could strengthen the knowledge and skills needed for the adequate performance of the judicial branch of government.

[452] Nevertheless, as was also indicated, the actions carried out by the Institute are aimed principally at the staff of the judicial career stream or those who wish to belong to it, and that is why the Committee deems it would be advisable for the CJF, through the IJF, to consider developing permanent induction and training courses or programs for all those who, without belonging to the judicial career stream, provide services to the PJF to make sure they have an adequate understanding of their ethical responsibilities and the standards governing their activities and, in particular, to raise their awareness about the risks of corruption and eventual conflicts of interest inherent to the performance of their duties. (See recommendation 1.4.4 in Chapter III of the present report.)

[453] Precisely, regarding the ethical rules governing the activities of the staff working for this branch of government, the Committee observes that measures to ensure their ongoing dissemination and knowledge are insufficient, and that there are no bodies having jurisdiction for their enforcement and supervision to which they can resort to obtain information or settle concerns about said standards, as a result of which it shall make a recommendation in that direction. (See recommendation 1.4.5 in Chapter III of the present report.)

[454] Finally, similar to what is happening with the APF and ASF, on the basis of available information, the Committee observes that publicity and dissemination of training actions, instructions, and/or programs being carried out by IJF so that civil society and the general public can obtain information on their implementation and results are insufficient, as a result of which it shall make a recommendation in that direction. (See recommendation 1.4.6 in Chapter III of the present report.)

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

[455] In both its response to the questionnaire and during the on-site visit, the country under review presented the following results that have been obtained with respect to the application of the provisions and measures in connection with the instructions to the staff of the selected public entities to make sure they adequately understand the ethical responsibilities, duties, and standards governing their activities, namely:

[456] – Regarding the SFP, during the period from October 2014 to June 2015, 132,693 training actions were provided to 1,405,437 participants, and of these 5.8% are attached to institutions subject to the SPC. These actions were aimed at providing induction for newly appointed staff, strengthening and updating the knowledge and skills required for their jobs, personal development, and in some cases certification of skills.

[457] Regarding the application of the provisions and/or measures about instructions to the staff to ensure adequate understanding of the ethical rules governing their activities, on the basis of the 2011 implementation of the course on *Culture of Legality* at the APF on October 30, 2015, training was provided to 4,646 public servants of the SFP and to 2,181 participants from other institutions, for a total number of 6,827 persons trained. Regarding this, without detriment to due recognition for this training effort by SFP, the Committee, bearing in mind that the universe of public servants in the APF

amounts to more than one million persons, urges the country under review to redouble its efforts and to consider developing and implementing further training and instruction actions aimed at making sure that a larger percentage share of the staff working for the APF adequately understands the ethical rules governing their activities and, especially, to raise their awareness about the risks of corruption inherent to the performance of their duties. (See recommendation 1.4.7 in Chapter III of the present report.)

[458] – As for the ASF, the information presented by the country under review does not enable the Committee to conduct a comprehensive review of the objective results of said institution with regard to the matter that is being examined. Given the foregoing, it shall make a recommendation about it. (See recommendation 1.4.8 in Chapter III of the present report.)

[459] – As for CJF, the country under review did not provide any information about the results achieved by said institution with regard to the matter being examined. Nevertheless, during the on-site visit, it provided certain data in connection with the contents of the ethical subjects of the basic training and preparation courses of the PJF Secretariats provided by the IJF, as well as courses and workshops on ethics and/or values provided by said Institute between March 2011 and March 2016.

[460] Regarding this, the Committee first highlights the importance of State Parties to respond completely to the questions of the questionnaire regarding the results and, second, because it does not have information about the CJF that would enable it to conduct a comprehensive review of the results of said institution in this matter, it shall make a recommendation to the CJF about this. (See recommendation 1.4.8 in Chapter III of the present report.)

[461] Finally, the Committee believes it would be beneficial for the selected and other government institutions have guides, guidelines, or other types of instruments that steer public servants on how to perform their responsibilities and functions properly and for making them aware of the risks of corruption and eventual conflicts of interest inherent in the performance of those functions, as well as the scope and interpretation of the ethical rules governing their activities and the consequences stemming from any failure to observe them for both the government civil service and for those breaching these standards. (See recommendation 1.4.9 in Chapter III of the present report.)

#### 1.4. Conclusions and recommendations

[462] Based on the review conducted regarding the implementation of by the country under review of Article III, paragraph 3 of the Convention, the Committee offers the following conclusions and recommendations:

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

[464] In view of the comments made in this section, the Committee suggests that the country under review take into consideration the following recommendations:

- 1.4.1. Strengthen dissemination, on the SFP's website and in other media deemed advisable, of information about the implementation and results of the training activities, instructions, and programs implemented by the SFP to make sure their staff and the staff of other government institutions of the APF adequately understand their responsibilities and the ethical rules governing their activities. (See paragraph 448 in section 1.2 of Chapter III of the present report.)

- 1.4.2. Design, develop, and implement mandatory induction, training and/or instruction courses, workshops, and/or seminars aimed at the staff of the APF, in terms of the new system of responsibilities and conflict of interest prevention as provided for in the Anti-Corruption Amendment to the Constitution and in the laws and regulations that have been adopted for this purpose. (See paragraph 449 in section 1.2 of Chapter III of the present report.)
- 1.4.3. Publish, on ASF's website and in other media deemed advisable, information about the implementation and results of the training activities, instructions, and programs carried out by ASF and ICADEFIS aimed at making sure that their staff and that of other institutions of the public sector adequately understand their responsibilities and the ethical rules governing their activities. (See paragraph 450 in section 1.2 of Chapter III of the present report.)
- 1.4.4. Develop, by the CJF through the IJF, ongoing induction and training courses or programs for all those who, although they may not belong to the judicial career stream, provide services to the PJF to make sure they adequately understand their responsibilities and the ethical rules governing their activities and, in particular, to raise their awareness about the risks of corruption and eventual conflicts of interest inherent to the performance of their duties. (See paragraph 452 in section 1.2 of Chapter III of the present report.)
- 1.4.5. Adopt measures that ensure continuous dissemination and knowledge about the ethical rules governing the activities of the staff working for the PJF, as well as the establishment of bodies having jurisdiction for their enforcement and monitoring and to which said staff can resort to obtain information and settle concerns about said standards. (See paragraph 453 in section 1.2 of Chapter III of the present report.)
- 1.4.6. Publish, on CJF's website and other media deemed advisable, information about the implementation and results of the training activities, instructions, and programs carried out by the IJF aimed at making sure their staff and those of other courts and bodies of the PJF adequately understand their responsibilities and the ethical rules governing their activities. (See paragraph 454 in section 1.2 of Chapter III of the present report.)
- 1.4.7. Develop and implement further training and instruction actions to make sure a higher percentage share of the staff working for the APF adequately understand the ethical rules governing their activities and, in particular, to raise their awareness about the risks of corruption that are inherent to the discharge of their duties. (See paragraph 457 in section 1.2 of Chapter III of the present report.)
- 1.4.8. Develop statistical information from the ASF through ICADEFIS, as well as from CJF through IJF, on the basis of data that make it possible to learn about the number of induction, training, or instruction courses that are carried out and that ensure an adequate understanding of the responsibilities and ethical rules governing the activities of the staff working for them and the staff of both the legislative branch and executive branch of government, their periodicity or frequency they are delivered, the number of public servants attending them, the use of technology

tools for these purposes, and the activities carried out to check if the purpose of understanding these responsibilities and standards was achieved. (See paragraphs 458 and 460 in section 1.3 of Chapter III of the present report.)

- 1.4.9. Prepare guides, guidelines, or other types of instruments that steer public servants from the SFP, the ASF, and the CJF on how to perform their responsibilities and functions properly and for making them aware of the risks of corruption inherent in the performance of those functions, as well as about the scope and interpretation of the ethical rules governing their activities and the consequences stemming from any failure to observe them for both the government civil service and for those breaching them. (See paragraph 461 in section 1.3 of Chapter III of the present report.)

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

### **2.1. STUDY ON PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE**

[465] In its response to the questionnaire, Mexico points out that, in the sphere of the SFP and CJF, no studies have been conducted about the topic being examined herein.<sup>253/</sup>

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

#### **2.2.1. Existence of a legal framework and/or other measures**

[466] Mexico has a series of provisions aimed at establishing objective and transparent criteria for determining the compensation of public servants, among which the following are noted:

[467] – The CPEUM, which in its Article 127 provides that the public servants of the Federation, federal entities, municipalities, and territorial limitations of Mexico City, their entities and agencies, as well as of their parastatal or paramunicipal administrations, public trust funds, institutions, and autonomous bodies, and any other public entity, shall receive adequate and inalienable compensation for the discharge of their duties, employment, job, or commission, which must be proportional to their responsibilities.

[468] Said compensation shall be determined every year and equitably in the corresponding spending budgets on the basis of the following: I. Compensation or remuneration is considered to be any cash or in-kind payment, including subsistence allowances, bonuses, gratuities, prizes, awards, subsidies, incentives, commissions, compensations or any other, except those subsidies and expenses subject to substantiation pertaining to the implementation of the work itself and travel expenditures for official activities. II. No public servant will be able to receive any remuneration, in terms of the above, for the discharge of his/her duties, employment, job, or commission that is higher than that set for the President of the Republic in the corresponding budget. III. No public servant will be able to receive compensation that its equal to or greater than his/her hierarchical superior, unless the surplus stems

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253. See Mexico's response to the *Questionnaire*, pp. 32 and 33, note *supra* 13.

from holding various government jobs or the remuneration is the outcome of the job's general conditions stemming from qualified technical skills or specialization in his/her duties; and the sum of said compensation cannot exceed half of the remuneration set for the President of the Republic in the corresponding budget. IV. No retirement payments, pensions, or retirement assets, or settlements for services rendered, or loans or credits can be granted or paid for unless they are allocated by law, legislative decree, collective bargaining, or general working conditions. These items shall not be part of the compensation. This excludes security services that public servants might require because of the job they hold. V. The compensations and their calculation shall be made public and must specify and differentiate the full amount of their fixed and variable elements not only in cash but also in kind. VI. The Congress of the Union and the legislatures of the federal entities, in the sphere of their jurisdictions, shall issue laws to ensure the effective application of the contents of Article 127 and other related constitutional provisions and to provide criminal and administrative penalties for conducts involving the failure to comply with, or avoid by circumvention, the provisions appearing in the same Article 127.

[469] – The *Federal Budget and Treasury Responsibility Law*<sup>254/</sup> (*Ley Federal de Presupuesto y Responsabilidad Hacendaria*, hereinafter LFPRH), published in the DOF on March 30, 2006 and the regulations of Articles 74 section IV, 75, 126, 127, and 134 of the CPEUM, which in its Article 65, section II, provides that the payments for personal services shall be subject to salary scales established on the basis of the terms provided for in the general applicable conditions, as a result of which public servants shall receive adequate and inalienable compensation for the discharge of their duties, job, or commission, which must be proportional to their responsibilities; and no one can receive any compensation that is higher than that set for the President of the Republic in the Budget of Expenditures of the Federation.

[470] Furthermore, Article 66 of the same legal framework provides that the SHCP and SFP, in the sphere of their respective jurisdictions, shall issue the handbook on compensations for public servants of bodies and entities, which shall include a regular salary scale and the rules for its application, in line with the compensations authorized in the Budget of Expenditures. The legislative and judicial branches of government and the autonomous bodies, via their respective administrative units, shall issue their compensation handbooks, including the salary scale and corresponding rules, in line with what is indicated above. The handbooks that the present article is referring to must be published every year in the DOF on the last working day of May at the latest.

[471] In compliance with the above, the SFP, through the APF Human Resources Policy Unit, along with the SHCP, specifically publishes every year the *Agreement whereby the Handbook on the Compensations for Public Servants of Federal Public Administration Bodies and Entities is issued*,<sup>255/</sup> which points out objective and transparent criteria that the bodies and entities must take into consideration with respect to compensations and benefits for their application to APF public servants.

[472] Articles 40, 41, and 42 of the *Agreement* pertaining to 2016 include a section on the subject of transparency, and they point out, respectively, that the information of each one of the salary levels relative to regular and special compensation payments, both in cash and in kind, authorized pursuant to the Handbook on Compensations, must be subject to what is established in the law with respect to transparency and access to information and in other applicable provisions. The bodies and entities

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254. Available up to its latest amendment published in the DOF on December 30, 2015 at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_14.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_14.pdf)

255. See the Agreement published in the DOF on May 31, 2016, available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_34.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_34.pdf)

must publish, on the corresponding transparency portal, the inventory or schedule of jobs and vacancies, including the positions and authorized salary levels benefiting from a budget entry, in line with the authorized occupation structure. The compensations and scales for the salaries and wages pertaining to each salary level shall be made public and must specify and differentiate the totality of their fixed and variable elements, in both cash and in-kind.

[473] According to the provisions of the current Handbook on Compensations, on the basis of the salary and wage scales, the monetary values are represented, according to which the amounts for salaries and wages in monthly or yearly terms are identified, applicable to a given job or category, depending on the authorized group, grade, level, or code, as appropriate, according to the different types of staff. To determine the group and grade, the *Job Appraisal System* is used, and it is on that basis that the amount of the positions is set, where said value is obtained from the information and characteristics of these positions, in order to establish comparative criteria that help to set a salary policy that is competitive in terms of the labor market and equitable within the APF.

[474] Regarding this, it must be pointed out that SFP issued a series of *technical criteria*<sup>256/</sup> to validate the appraisal of the jobs in the APF for the purpose of steering the organizational structures permanently towards equitable compensations based on the contents of the jobs, for which it developed the *Appraisal and Salary Scale Validation System*, called SIVAL, which consists of an automated tool that makes it possible to take, validate, and issue the online response for the appraisals and salary scale level of the jobs that are newly established or that are subject to changes in their duties or profiles on the scale, so that APF institutions can secure an effective response time and a reliable validation mechanism.

[475] Likewise, in compliance with the provisions of Article 66 of the LFPRH, as well as Article 23 of the *Budget of Expenditures of the Federation for Fiscal Exercise 2016*,<sup>257/</sup> among other provisions, on February 24, 2016, the *Handbook on Compensations for Senators and High-Ranking Public Servants*<sup>258/</sup> was published in the DOF and on the following February 29, the *Agreement of the Administration Committee authorizing publication of the Handbook regulating compensations for Federal Congresspersons, High-Ranking Public Servants, and Counterparts of the House of Representatives for fiscal exercise 2016* was also published in the DOF.<sup>259/</sup> Furthermore, on the basis of the same principles, on February 29, 2016, the *Handbook regulating the compensations of public servants of the Chief Audit Office of the Federation*, was published; it indicates that, for the establishment of said compensations, the criteria of efficiency, effectiveness, economy, austerity, rationality, honesty, and transparency in public management are strictly observed so as to contribute to the consolidation of the principles of legality and transparency with respect to compensations for public servants.

[476] Finally, on the basis of the constitutional and legal provisions indicated, as well as in the LOPJF, on February 26, 2016 the *Agreement authorizing publication of the Handbook regulating the compensations of Public Servants of the Federal Judicial Branch for the 2016 fiscal exercise in the Federal Official Gazette*,<sup>260/</sup> which, in one of its sections, refers to the System of Payments specifying the entries that comprise the totality of the monetary earnings, allowances, and benefits received by public servants on the basis of their corresponding levels in the hierarchy and degree of responsibility.

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256. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_102.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_102.pdf)

257. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_55.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_55.pdf)

258. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_50.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_50.pdf)

259. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_42.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_42.pdf)

260. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_mex\\_ane\\_103.pdf](http://www.oas.org/juridico/PDFs/mesicic5_mex_ane_103.pdf)

### **2.2.2. Adequacy of the legal framework and/or other measures**

[477] With respect to the provisions that refer to the establishment of objective and transparent criteria for determining the compensation of public servants, that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

### **2.2.3. Conclusions and recommendations**

[478] Based on the review conducted in the above sections regarding the implementation of by the country under review of Article III, paragraph 12 of the Convention, the Committee offers the following conclusions and recommendations:

**[479] Mexico has considered and adopted measures intended to establish objective and transparent criteria for determining the compensation of public servants, as described in Chapter III, Section 2 of this report.**

[480] The Committee did not formulate any recommendations in this section.

## **III. BEST PRACTICES**

[481] 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 with Article III, paragraphs 5 and 11 of the Convention:

[482] – **Corpus Juris regarding Access to Information**,<sup>261/</sup> implemented by the INAI, which consists of a technology platform available at <http://corpusiuristransparenciadai.ifai.org.mx>, whose principal objective is to make available a categorized compilation of international instruments, precedents, and other types of documents regarding access to information, granting to the user information that is relevant for the right to access to public information, with links to the sites of origin and source documents.

[483] This practice was developed as a result of the need to have an instrument that would bring together the criteria regarding access to information which would somehow be related to Mexico's legal context or else to the inter-American context and which would be of use for both private individuals for specific uses and public servants in the discharge of their duties. The situation at the time, before building the tool being described, was that of legal uncertainty in terms of the existence of standard-setting and jurisprudential instruments, among others, that regulated the exercise and scope of the right to access to information.

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261. See standard form attached to Mexico's response to the *Questionnaire*, pp. 104 to 106, note *supra* 13.

- In relation with Article III, paragraphs 5 and 9 of the Convention:

[484] – The **Model for the Evaluation and Assignment of Substantive Staff**,<sup>262/</sup> currently being developed by the PGR, aimed at scoring the productivity and performance of the agents of the Federal Prosecution Ministry in order to optimize available human resources and draft the mechanisms needed for their correct assignment to the Institution's strategic areas.

[485] It is viewed as a best practice because the evaluation being planned shall take into consideration the work being performed by substantive staff, with special attention focused on efficiency and productivity of the matters under their responsibility, as well as the development of their duties in integrating matters in the framework of the federal criminal process. The above shall take place on the basis of statistical information making it possible to correctly and objectively assess the rate of effectiveness of each staff member of the Federal Prosecution Ministry, as well as the discharge of his/her duties, in order to detect areas of risk, as well as to address the challenges being faced by the institution throughout the full range of associated delegations and district attorney offices comprising the Ministry.

- In relation Article III, paragraph 3 of the Convention:

[486] – The **Institutional Integrity Policy**<sup>263/</sup> developed by ASF, which contains various instruments to guide the activities of the staff so that these activities can be undertaken on the basis of strict principles and guidelines of independence, impartiality, and technical rigor.

[487] This Policy constitutes a best practice because it does not allow for the fragmentation of actions to strengthen integrity; on the contrary it coordinates these actions as the core elements to prevent, identify, assess, and discourage acts of corruption from taking place, as well as to correct the structural failings that are detected to avoid a relapse in the irregularities already committed. Its application requires raising the awareness of the higher echelons of the staff, as well as the entire staff, with respect to ethics and integrity, motivating executive management to endorse it, as well as the implementation of activities, among which dissemination and signatures of pledges to promote values and strengthen the culture of integrity.

- In relation to Article III, paragraph 5 of the Convention:

[488] – The **Judicial Internship Program**<sup>264/</sup>, contained in the General Agreement 21/2012 of the CJF Plenary, which allows students in a law degree program or its equivalent to carry out legal work within the courts, and to receive financial support for those internships, provided that certain requirements are met.

[489] Such Program is considered to be a best practice, as the potential advantage of this judicial position tends to provide for best conditions and stimulates professional, individual and social development of Law students, enabling them to have proximity to the judiciary and its principles of ethics and sense of belonging.

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262. Ibid, pp. 107 and 108.

263. Ibid, pp. 109 to 112.

264. See subparagraph a) of section 1.1.2.1 Chapter II of this report.

**ANNEX**  
**AGENDA**  
**FOR THE ON-SITE VISIT TO MEXICO**

**Monday, April 4, 2016**

15:00 – 16:00 <i>Host hotel</i>	<b>Coordination meeting among the representatives of the member states of the Subgroup and the Technical Secretariat</b>
16:00 – 17:00 <i>Host hotel</i>	<b>Coordination meeting among the representatives of the country under review, the member states of the Subgroup and the Technical Secretariat</b>

**Tuesday, April 5, 2016**

09:00 – 13:00 <i>SRE headquarters</i>	<b>Meetings with civil society organizations and/or, among others, with private-sector organizations, professional associations, academics, or researchers</b>
	<b>Topics:</b> <ul style="list-style-type: none"><li>• <u>New national anti-corruption initiatives</u></li><li>• <u>Systems for hiring government officials</u></li><li>• <u>The new legal and technology framework for government hiring</u></li></ul>
	<b>Participants:</b> <p><u>Transparencia Mexicana</u> - Eduardo Bohórquez, President of Transparencia Mexicana</p> <p><u>Iztapalapa Industrial Unit</u> - Salvador Ortega López, Corporate Ombudsman - Roberto Ríos Hernández, Advisor to the Corporate Ombudsman</p> <p><u>International Chamber of Commerce (ICC – Mexico)</u> - Dr. Roberto Hernández García, Chair of the Anti-Corruption Commission - Fernanda David González, Manager of Commissions and Working Groups</p> <p><u>Corporate Coordination Council</u> - Luis Miguel Pando Leyva, Chair of the Legislative Liaison Commission</p> <p><u>Secretariat of the Civil Service</u> - Teresa Gómez del Campo Gurza, Director of the Transparency Policies and International Cooperation Unit - Jaime Abraham Cerdio Moisés, Deputy Director General for Transparency and Accountability Studies and Policies</p>

13:00 – 14:00	Lunch
14:00 – 18:00 <i>SRE headquarters</i>	<b>Meetings with government authorities: definition of the crimes of acts of corruption and systems for the protection of whistleblowers reporting said acts</b>
14:00 – 16:30	<p><b>Panel 1: <u>Acts of corruption</u></b></p> <ul style="list-style-type: none"> <li>• Follow-up on the recommendation of the Second Round</li> <li>• New developments with respect to implementation of Article VI of the Convention</li> </ul> <p><b>Participants:</b></p> <p><u>Secretariat of the Civil Service</u></p> <ul style="list-style-type: none"> <li>- Teresa Gómez del Campo Gurza, Director of the Transparency Policies and International Cooperation Unit</li> <li>- Jaime Abraham Cerdio Moisés, Deputy Director General for Transparency and Accountability Studies and Policies</li> <li>- Javier Delgado Parra, Deputy Director General for Institutional Legal Support</li> <li>- Natalia Medina Núñez, Deputy Director General for Criminal Affairs</li> <li>- Norma Gisela López Calva, Deputy Director General for Responsibilities</li> <li>- Grecia Sinaí García Alcántara, Director of Land Registry</li> <li>- Gabriela Patricia Chávez Vera, Deputy Director of Land Registry</li> </ul> <p><u>Office of the Attorney General of the Republic</u></p> <ul style="list-style-type: none"> <li>- Dr. Rubén Martín Olvera y Aguilar, Joint Coordinating Prosecutor</li> <li>- Rafael Beltrán Ramos, Director of Transparency and Corruption Prevention in the Office of the Investigator General</li> <li>- Luis Arturo Guzmán López, Deputy Director of Multilateral Cooperation</li> </ul> <p><u>House of Representatives (Cámara de Diputados)</u></p> <ul style="list-style-type: none"> <li>- María Eugenia López Bustamante, Director General for Auditing</li> <li>- Alfonso Arroyo Rodríguez, Technical Director for Administrative and Regulatory Modernization</li> <li>- María Fernanda Hernández Enríquez, Advisor to the Secretariat of Parliamentary Services</li> <li>- Israel Saldívar Leos, Advisor to the General Secretariat</li> </ul>
-	Break

16:45 – 18:00	<p><b>Panel 2: <u>Systems to protect public officials and private citizens who, in good faith, report acts of corruption</u></b></p> <ul style="list-style-type: none"> <li>• Progress, new developments, and their results in the implementation of the recommendation made and measure suggested in the Second Round</li> </ul> <p><b>Participants:</b>  <u>Office of the Attorney General of the Republic</u></p> <ul style="list-style-type: none"> <li>- Dr. Rubén Martín Olvera y Aguilar, Joint Coordinating Prosecutor</li> <li>- Rafael Beltrán Ramos, Director of Transparency and Corruption Prevention in the Office of the Investigator General</li> <li>- Andrea López Saldívar, Director of Studies and Projects for Criminal Legislation in liaison with the Senate</li> <li>- Luis Arturo Guzmán López, Deputy Director of Multilateral Cooperation</li> </ul> <p><u>Secretariat of the Civil Service</u></p> <ul style="list-style-type: none"> <li>- Antonio Mejía Medina, Deputy Director General for Investigations</li> <li>- Valentina Valdez Jasso, Director for Anti-Corruption Conventions</li> </ul>
18:00 – 18:30	<p><b>Informal meeting among representatives of member states of the Subgroup and Technical Secretariat</b></p>

**Wednesday, April 6, 2016**

09:00 – 18:00 <i>SRE headquarters</i>	<p><b>Meetings with government authorities: systems for hiring government officials, their training and compensation</b></p>
09:00 – 13:00	<p><b>Panel 3: <u>Systems for hiring government officials</u></b></p> <ul style="list-style-type: none"> <li>• Progress, new developments, and their results in the implementation of the recommendation and measures suggested at the Second Round and whose fulfillment is pending</li> <li>• New developments with respect to the implementation of Article III, paragraph 5, of the Convention regarding systems for hiring government officials</li> </ul>

	<p><b>Participants:</b></p> <p><u>Secretariat of the Civil Service</u></p> <ul style="list-style-type: none"><li>- Teresa Gómez del Campo Gurza, Director of the Transparency Policies and International Cooperation Unit</li><li>- Jaime Abraham Cerdio Moisés, Deputy Director General for Transparency and Accountability Studies and Policies</li><li>- César Antonio Osuna Gómez, Director of the Federal Public Administration Human Resources Policy Unit</li><li>- Alejandra Díaz Aguirre, Director General for Human Development and Professional Career Service</li></ul> <p><u>House of Representatives</u></p> <ul style="list-style-type: none"><li>- Antonio Hernández Legaspi, Coordinator of Advisors to the Administrative and Financial Services Secretariat</li><li>- Dr. Patricia Villasana Rangel, Advisor to the General Human Resources Department</li></ul> <p><u>Federal Judiciary Council</u></p> <ul style="list-style-type: none"><li>- Circuit Court Magistrate Francisco Javier Cárdenas Ramírez, Executive Secretary for Surveillance, Information, and Evaluation</li><li>- Magistrate Dalila Quero Juárez, Director General for Human Rights, Gender Equity, and International Affairs</li><li>- Héctor del Castillo Chagoza Moreno, Commission Technical Secretary</li></ul>
13:00 – 14:00	Lunch
14:00 – 16:30	<p><b>Panel 4:</b> <u>Instructions to staff of government institutions so they can understand their responsibilities and the ethical rules governing them</u></p> <ul style="list-style-type: none"><li>• Legal and institutional framework</li><li>• Induction, training, or instruction programs and/or courses and their results</li></ul>

	<p><b>Participants:</b></p> <p><u>Secretariat of the Civil Service</u></p> <ul style="list-style-type: none"><li>- Blanca Vélez Gallegos, Director for the Settlement of Ethics, Public Integrity, and Conflict of Interest Disputes</li><li>- Raúl Balmaceda Valdez, Director of Implementation of Ethics, Public Integrity and Conflict of Interest Prevention Policies</li><li>- César Antonio Osuna Gómez, Director of the Federal Public Administration Human Resources Policy Unit</li><li>- Grecia Sinaí García Alcántara, Director of the Land Registry</li><li>- Gabriela Patricia Chávez Vera, Deputy Director of the Land Registry</li><li>- Valentina Valdez Jasso, Director for Anti-Corruption Conventions</li></ul> <p><u>Chief Audit Office of the Federation</u></p> <ul style="list-style-type: none"><li>- Dr. Haime Figueroa Neri, Director General of the Advanced Auditing Training and Development Institute</li><li>- Gabriel Alberto Benavides Ramírez, Coordinator of Management Review and Follow-up</li><li>- Adrián Fernando Rangel Aguilar, Deputy Director of National Relations in the Technical Secretariat of the Chief Audit Office of the Federation</li></ul> <p><u>Federal Judiciary Council</u></p> <ul style="list-style-type: none"><li>- Circuit Court Magistrate Francisco Javier Cárdenas Ramírez, Executive Secretary for Surveillance, Information, and Evaluation</li><li>- Héctor del Castillo Chagoya Moreno, Commission Technical Secretary</li></ul>
16:30 – 16:45	Break
16:45 – 18:00	<p><b>Panel 5:</b> <u>The study of preventive measures that take into account the relationship between equitable compensation and probity in public service</u></p> <ul style="list-style-type: none"><li>• Legal framework and other measures</li></ul>

	<p><b>Participants:</b></p> <p><u>Secretariat of the Civil Service</u></p> <ul style="list-style-type: none"> <li>- César Antonio Osuna Gómez, Director of the Federal Public Administration Human Resources Policy Unit</li> <li>- Rodrigo Baños Zavala, Director General for Federal Public Administration Organization and Compensations</li> <li>- César Augusto Priego Dionisio, Director of Organization and Compensations</li> <li>- Valentina Valdez Jasso, Director for Anti-Corruption Conventions</li> </ul> <p><u>Chief Audit Office of the Federation</u></p> <ul style="list-style-type: none"> <li>- Gabriel Alberto Benavides Ramírez, Coordinator of Management Review and Follow-up</li> <li>- Adrián Fernando Rangel Aguilar, Deputy Director of National Relations in the Technical Secretariat of the Chief Audit Office of the Federation</li> </ul> <p><u>Federal Judiciary Council</u></p> <ul style="list-style-type: none"> <li>- Circuit Court Magistrate Francisco Javier Cárdenas Ramírez, Executive Secretary for Surveillance, Information, and Evaluation</li> <li>- Miguel Francisco González Canudas, Director General for Legal Affairs</li> <li>- Héctor del Castillo Chagoya Moreno, Commission Technical Secretariat</li> </ul>
18:00 – 18:30	<p><b>Informal meeting</b> among the representatives of the member states of the Subgroup and the Technical Secretariat</p>

**Thursday, April 7, 2016**

08:30 – 09:00 <i>SFP headquarters</i>	<p><b>Meeting between the Secretary of the Civil Service and the representatives of the member states of the Subgroup and the Technical Secretariat</b></p>
10:00 – 17:30 <i>SRE headquarters</i>	<p><b>Meetings with public authorities: systems of government hiring and procurement of goods and services and general recommendations</b></p>
10:00 – 14:00	<p><b>Panel 6:</b> <u>Systems of government hiring and procurement of goods and services</u></p> <ul style="list-style-type: none"> <li>• Breakthroughs, new developments, and their results in the implementation of the recommendations made and measures suggested at the Second Round and whose fulfillment is pending</li> <li>• New developments with respect to implementation of Article III, paragraph 5, of the Convention regarding systems of government hiring and procurement of goods and services.</li> </ul>

	<p><b>Participants:</b></p> <p><u>Secretariat of the Civil Service</u></p> <ul style="list-style-type: none"> <li>- Teresa Gómez del Campo Gurza, Director of the Transparency and International Cooperation Policies Unit</li> <li>- Alejandro Luna Ramos, Director of the Government Hiring Policy Unit</li> <li>- Ángel Osvaldo Ubaldo Núñez, Deputy Director General for the Real Estate Property and Government Hiring Support Regulatory Framework</li> <li>- Gisela del Carmen Anzaldo Montalvo, Deputy Director General for the Procurement Regulatory Framework</li> <li>- Eduardo de la Luz García, Deputy Director General for Sanctions</li> <li>- Blanca Vélez Gallegos, Director for the Settlement of Ethics, Public Integrity, and Conflict of Interest Disputes</li> <li>- Raúl Balmaceda Valdez, Director for Implementation of Ethics, Public Integrity, and Conflict of Interest Prevention Policies</li> <li>- César Antonio Osuna Gómez, Director of the Federal Public Administration Human Resources Policy Unit</li> <li>- Alejandra Díaz Aguirre, Director General for Human Development and Professional Career Services</li> </ul> <p><u>House of Representatives</u></p> <ul style="list-style-type: none"> <li>- Leonardo Manuel Álvarez Lerma, Director of Procurement</li> </ul> <p><u>Federal Judiciary Council</u></p> <ul style="list-style-type: none"> <li>- Circuit Court Magistrate Francisco Javier Cárdenas Ramírez, Executive Secretary for Surveillance, Information, and Evaluation</li> <li>- Magistrate Dalila Quero Juárez, Director General for Human Rights, Gender Equity, and International Affairs</li> <li>- District Court Judge Francisco Gorka Migoni Goslinga, Director General for the Office of the President</li> <li>- Miguel Francisco González Canudas, Director General for Legal Affairs</li> <li>- Héctor del Castillo Chagoya Moreno, Commission Technical Secretary</li> </ul>
14:00 – 15:00	Lunch
15:00 – 17:30	<p><b>Panel 7:</b> <u>General recommendations made at the Second Round</u></p> <ul style="list-style-type: none"> <li>• Breakthroughs, new developments, and their results in the implementation of the general recommendations of the Second Round whose fulfillment is pending</li> </ul>

	<p><u>Secretariat of the Civil Service</u></p> <ul style="list-style-type: none"><li>- Alejandro Luna Ramos, Director of the Government Hiring Policy Unit</li><li>- Abraham Antonio Polo Pérez, Deputy Director General for Government Hiring Policy</li><li>- César Antonio Osuna Gómez, Head of the Federal Public Administration Human Resources Policy Unit</li><li>- Alejandra Díaz Aguirre, Director General for Human Development and Professional Career Services</li><li>- Juan Carlos Granados Lugo, Deputy Director General for Evaluation and Follow-up</li><li>- Javier Delgado Parra, Deputy Director General for Legal Support</li><li>- Jaime Abraham Cerdio Moisés, Deputy Director General for Transparency and Accountability Studies and Policies</li><li>- Sendy Karen Hernández Camarillo, Director of Transparency Programs</li></ul> <p><u>Office of the Attorney General of the Republic</u></p> <ul style="list-style-type: none"><li>- Dr. Rubén Martín Olvera y Aguilar, Joint Coordinating Prosecutor</li><li>- Emilio Zacarías Gálvez, Director General for Professional Training</li></ul> <p><u>House of Representatives</u></p> <ul style="list-style-type: none"><li>- Dr. Patricia Villasana Rangel, Advisor to the General Human Resources Department</li></ul> <p><u>Federal Judiciary Council</u></p> <ul style="list-style-type: none"><li>- Circuit Court Magistrate Francisco Javier Cárdenas Ramírez, Executive Secretary for Surveillance, Information, and Evaluation</li><li>- Magistrate Dalila Quero Juárez, Director General for Human Resources, Gender Equity, and International Affairs</li><li>- District Court Judge Francisco Gorka Migoni Goslinga, Director General for the Office of the President</li><li>- Miguel Francisco González Canudas, Director General for Legal Affairs</li><li>- Héctor del Castillo Chagoya Moreno, Commission Technical Secretary</li></ul>
17:30 – 18:00	<p><b>Final meeting</b> of the representatives of the country under review, the member states of the Subgroup, and the Technical Secretariat</p>

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

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