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

# REPORT ON ITS IMPLEMENTATION IN COLOMBIA OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE CONTEXT OF THE FIRST ROUND[1]

## INTRODUCTION

### 1. Legal and Institutional Regime

According to Article 1 of the Colombian Constitution, "Colombia is a Rule of Law Social State (Estado Social de Derecho) organized as a unitary, decentralized Republic, with autonomous territorial departments, that is democratic, participatory, and pluralist, based on respect for human dignity, work, and the solidarity of its people and the prevalence of the general interest." The preamble of the Colombian Constitution defines certain overarching purposes which, based on the holdings of the Constitutional Court,[2] give meaning to the constitutional provisions, guide the action of the state, and define the course of legal institutions. Those purposes are: "To strengthen the unity of the Nation and ensure its members life, coexistence in community, work, justice, equality, knowledge, freedom, and peace, in a democratic and participatory legal framework that guarantees a just political, economic, and social order, committed to giving impetus to the integration of the Latin American community."

The drafters of the 1991 Constitution indicated in Article 2, as the essential aims of the State: "To serve the community, promote general prosperity, and ensure the effectiveness of the principles, rights, and duties enshrined in the Constitution; to facilitate the participation of everyone in decisions that affect them and in the economic, political, administrative, and cultural life of the Nation; to defend national independence, maintain territorial integrity, and ensure peaceful coexistence in community and the effective observance of a just order. The authorities of the Republic are instituted to protect all persons resident in Colombia in their life, honor, property, beliefs, and all other rights and freedoms, and to ensure performance by the State and private persons of their social duties."

Title II of the Constitution establishes fundamental rights; social, economic, and cultural rights; collective rights and environmental rights, and the mechanisms for protecting and enforcing these rights (custody rights, obligation rights, and class action rights). Article 94, confirming the fundamental orientation of the Colombian constitutional regime towards guaranteeing rights, specifies that "The statement of rights and guarantees contained in the Constitution and in the international agreements in force should not be understood so as to deny other rights, which, being inherent to the human person, are not expressly affirmed in them."

Colombia's political system is structured on the classic democratic principle of the separation of powers, with its respective checks and balances. The supreme authority of the executive branch vests in the President of the Republic, who is Head of State and Government. The National Administration (Gobierno Nacional) is made up of the President of the Republic, the cabinet ministers, and the directors of administrative departments. At the decentralized level, one finds the subnational political-administrative units (mainly departments and municipalities), and the industrial and commercial enterprises of the State, mixed public-private companies, and public establishments, among other entities.

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[1] This report was approved by the Committee, pursuant to the provisions of Article 3(g) and Article 26 of its Rules of Procedure, at the plenary session held on July 18, 2003 in the context of its fourth meeting, held at the headquarters of the OAS, in Washington, D.C., United States, July 14 to 18, 2003.

[2] Constitutional Court of Colombia, Judgment C-479, August 6, 1992.

Articles 121 to 131 are the overriding precepts that regulate the civil service; establish disqualifications, incompatibilities, and prohibitions for public servants, and the forms of public-sector employment. Articles 209 to 211 refer to the administrative function and the principles that govern it (equality, morality, efficiency, economy, celerity, impartiality, and publicity).

The legislative branch is made up of the Congress of the Republic, constituted by the Senate and the House of Representatives. The judiciary is made up of the Constitutional Court, the Supreme Court of Justice, the Council of State, the Superior Council of the Judiciary, the Office of the Attorney General of the Nation, the Tribunals, and the Judges.

In addition to the organs that constitute the different branches of government (which have separate functions but must collaborate harmoniously to pursue the aims of the State), there are other independent autonomous organs for performing all other State functions (Public Ministry – Office of the Solicitor General of the Nation (hereinafter "Office of the Solicitor General") and the Office of the Comptroller General of the Republic (hereinafter "Office of the Comptroller General"), which are oversight organs. In addition, the electoral apparatus is organized as a separate branch of government, made up of the National Electoral Council and the National Registry of Civil Status (Articles 264-266).

### 2. Ratification of the Convention and Adherence to the Mechanism

The Republic of Colombia signed the Inter-American Convention against Corruption on March 29, 1996, and it was adopted by the Congress of the Republic by Law 412 of 1997 (and it was declared consistent with the Constitution by the Constitutional Court in Judgment C-397 of August 5, 1998). According to the official record of the OAS General Secretariat, the Republic of Colombia ratified the Inter-American Convention against Corruption on November 25, 1998, and deposited the respective instrument of ratification on January 19, 1999.

In addition, the Republic of Colombia signed the Declaration on the Implementation of the Inter-American Convention against Corruption on June 4, 2001, at the Thirty-Third Regular Session of the OAS General Assembly, in San José, Costa Rica.

## I. SUMMARY OF THE INFORMATION RECEIVED

### 1. Response from the Republic of Colombia

The Committee kindly appreciates the collaboration given by the Republic of Colombia throughout the review process, and especially from the Presidential Anti-Corruption Program (PPLCC: Programa Presidencial de Lucha contra la Corrupción), as the coordinating unit, which was made clear in its timely response to the questionnaire, and in its positive disposition, at all times, for providing clarifications or additional information in filling it out.

For its review, the Committee took into account the information provided by the Republic of Colombia up to March 13, 2003.

The Republic of Colombia attached to its response various provisions of law and documents, as it deemed appropriate, a list of which is attached to this Report.

### 2. Document submitted by "Corporación Transparencia por Colombia", a civil society organization

The Committee also received two documents sent by the Corporación Transparencia por Colombia,[3] which, according to these documents, is a "non-governmental, non-profit organization, the national chapter of

[3] The documents sent by Corporación Transparencia por Colombia have been incorporated in document SG/MESICIC/doc. 26/02.

Transparency International, and a strategic ally of the Ethics Resource Center." The first document is entitled "Response to the Questionnaire from the Committee of Experts of the Mechanism for Follow-up on Implementation of the Inter-American Convention against Corruption – First Round." The second document contains a list of the provisions that regulate citizen participation and a brief description of them.[4]

## II. REVIEW OF THE IMPLEMENTATION OF THE PROVISIONS SELECTED IN THE REPUBLIC OF COLOMBIA

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

### 1.1 CONFLICTS OF INTEREST

#### 1.1.1 Existence and provisions of a legal framework and/or other measures and mechanisms for their enforcement

The Republic of Colombia has a set of standards, mechanisms, and other measures aimed at preventing conflicts of interest.

In effect, in the Colombian legal order, particularly since the adoption of the 1991 Constitution, several rules with the force of law have been adopted that develop its provisions regarding public- sector employment that regulate the rights, duties, prohibitions, impediments, disqualifications, and incompatibilities of public servants; determine disciplinary infractions and forms of criminal conduct, including the procedures for applying the pertinent sanctions. The objective of these constitutional and statutory provisions is to safeguard public morality and the principles of transparency, legality, morality, equality, impartiality, effectiveness, and efficiency, which should be observed by each public servant in the performance of his or her job, post, or function, as well as private persons when they perform public functions, with respect to these, or when administering state resources.

The provisions aimed at preventing conflicts of interest are part of these sets of rules. These include, first, the following constitutional provisions: (a) Article 126, which prohibits public servants from appointing, as employees, persons with whom they have kinship up to the fourth degree by consanguinity, second degree by affinity, or with whom they are bound by marriage or permanent union; (b) Article 127, which prohibits public servants from entering, on their own behalf, or in representation of someone else, any contract with public entities or with private persons who manage or administer public resources, except as provided by law; (c) Articles 179 to 184, which refer to disqualifications, incompatibilities, prohibitions, conflicts of interest, and grounds for removal of the members of Congress.

Second, special mention should be made of a set of legal provisions directly related to this issue. Accordingly, Law 734, issued on February 5, 2002, but which did not enter into force until May 5, 2002, contains a common or general disciplinary regime, applicable to all public servants, of the various political-administrative levels, as can be inferred from Articles 2, 22, 24, and 25 of that law. The law, also known as the "Single Disciplinary Code" (CDU: Código Disciplinario Único), established the rights and duties of public servants; prohibitions, impediments, disqualifications, incompatibilities, and conflicts of interest (Chapters II to IV of Title IV); disciplinary infractions, sanctions, and the procedure for applying them. In contrast to the CDU contained in Law 200 of 1995, which was the law in force until May 5, 2002, the new disciplinary order introduces, among other important novel features, several provisions governing the disciplinary liability of private persons who perform public functions or administer government resources, and, specifically, it regulates disqualifications, impediments, incompatibilities, and conflicts of interest applicable to such private persons (Book III, Chapter I).

[4] In addition, during an informal meeting with the members of the Committee, the Colombia chapter of the non-governmental organization "Transparency International" gave a presentation on existing mechanisms in Colombia for the participation of civil society in efforts designed to prevent corruption.

Law 489 of 1998 (Statute on the Public Administration) provides that the legal representatives and members of the governing councils or boards of directors of public establishments, the industrial and commercial state enterprises, and the official public services enterprises, are subject to a specific regimen of disqualifications, incompatibilities, and liabilities provided for in Decree 128 of 1976 (Article 102). That law also provides that the legal representatives of the private entities entrusted with performing administrative functions are subjected to the prohibitions and incompatibilities applicable to public servants, in relation to the function conferred on them (Article 113).

This last provision also establishes that the legal representatives and members of the boards of directors or decision-making organs of private juridical persons who have performed administrative functions may not be contractors who carry out decisions in whose regulation and adoption they may have participated.

In the area of government contracts, Law 80 of 1993 regulates, in Article 8, the different grounds for disqualification and incompatibility that bar public servants from participating as bidders in contractor selection processes (public biddings) and from entering into contracts with state entities. These grounds also bar private persons (natural and legal persons) from participating in such selection processes and from entering into contracts with state entities when the public servant at a specific level has ties with them based on kinship or economic interests.

In keeping with the provisions in Articles 179 to 184 of the Constitution, Law 5 of 1992 regulates the disqualifications and incompatibilities of the members of Congress (Articles 279-283). The same law establishes the conflict-of-interest regime applicable to members of Congress (Article 286), and the grounds for removal (Article 296), which include violating the regime governing disqualifications, incompatibilities, and conflicts of interest.

In addition to the provisions set forth in the CDU (Law 734/02), other specific provisions on duties, prohibitions, impediments, disqualifications, and conflicts of interest also apply to judicial branch personnel (Law 270/96 – Statute of the Administration of Justice).

The Republic of Colombia also has mechanisms to enforce the measures for preventing conflicts of interest. Special mention should be made of the following:

The first set of mechanisms in this field has to do with the authorities that have jurisdiction to enforce the standards of conduct, including those related to preventing conflicts of interest. The jurisdiction to initiate disciplinary actions, i.e. to initiate investigations into disciplinary infractions and to apply procedures and sanctions provided for in that law, vests in different authorities, as follows: (a) Internal disciplinary oversight offices in the various public entities; (b) government officials with disciplinary powers in the different branches, organs, and entities of government; and (c) the Disciplinary Chamber of the Superior Council of the Judiciary and the Disciplinary Chambers of the regional councils, in relation to judicial personnel.[5]

As regards the members of Congress, the competent organ for applying the standards on violation of the system of disqualifications, incompatibilities, and conflicts of interest, and, as appropriate, for applying the sanction of removal from office, is the Council of State. Article 184 of the Constitution provides that removal from office shall be decreed by the Council of State, which is the highest court of the contentious-administrative jurisdiction, upon request submitted by the officers of the chamber in question, or by any citizen.

In addition, the law provides that the disciplinary power vests primarily in the Office of the Solicitor General; this entails the possibility of initiating or pursuing any investigation or proceeding over which the internal disciplinary oversight units of public entities have jurisdiction. It can also receive the matter on appeal. This same primary power vests in the offices of municipal and district ombudspersons (*personerías*

[5]Article 2 of the CDU (Law 734/02).

*municipales y distritales*) in relation to public servants who work in the municipal and district governments and entities, respectively.[6]

The second set of mechanisms in this field addresses the systems of administrative or disciplinary sanctions and criminal sanctions in conflict-of-interest cases. In this regard, the response from the Republic of Colombia[7] mentions the provisions that establish such sanctions for violations of the standards of conduct. These mechanisms are said to be reactive and are contained in the provisions of law on criminal responsibility (entering into contracts in violation of the constitutional or statutory disqualifications and incompatibilities) and disciplinary liability for the same cause.[8]

There is another group of mechanisms, which can be summarized as follows:

(a) The Contentious-Administrative Code (CCA: Código Contencioso-Administrativo), contained in Decree-01 of 1984, requires that each public servant declare himself or herself impeded from taking cognizance of a given matter in the presence of one of the conditions which by law is considered to affect negatively the guarantee of impartiality that should prevail in the performance of his or her functions.[9]

(b) Article 1 of Law 190 of 1995 (Anti-Corruption Statute) requires that all candidates to a public post or employment, or for entering into a service related contract with the public administration, fill out and submit the standard-form résumé (Formato Único de Hoja de Vida) in which they must report, among other things, on any fact or circumstance that would trigger a constitutional or statutory disqualification or incompatibility to holding the employment or position to which they aspire. To this end, the Single Personnel Information System was created, entrusted to a central-level entity called the Administrative Department of the Civil Service (Departamento Administrativo de la Función Pública).[10]

(c) Law 190 of 1995, mentioned above, provides that in case of an appointment to or assumption of a public post or employment, or a service contract made with the public administration without meeting the requirements for holding the position or making the contract, its revocation or termination, as the case may be, should be requested as soon as the infraction is noticed (Article 5).

(d) The same law also provides for another mechanism for enforcing the rules, which is that if after the act of appointment or assumption some disqualification or incompatibility should arise, the public-sector employee should immediately give notice of it to the entity for which he or she works. If within the subsequent three (3) months the public servant has not put an end to the situation that gave rise to the disqualification or incompatibility, he or she shall be removed immediately, without prejudice to any sanctions that may apply (Article 6).

(e) The response from the Republic of Colombia mentions another mechanism, provided for in the anti-corruption law, whereby one who is appointed to a public post or employment or who undertakes a service contract with the public administration must, when assuming office or signing the contract, show a certificate of disciplinary record issued by the Office of the Solicitor General and a certificate of criminal record issued by the Administrative Security Department (DAS). The records on criminal and disciplinary history guarantee enforcement of the conflict-of-interest rules exclusively with respect to considerations based on criminal and disciplinary sanctions.[11]

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[6]Article 3 of the CDU.
[7]Colombia's response to the questionnaire, p. 4
[8]Criminal Code (Law 599/200. Article 408) and CDU (Law 734/2002. Article 48 sections 17, 30, 46, and 57, and Articles 50 and 55).
[9]CCA (Articles 30 and 76-9).
[10]Colombia's response to the questionnaire, p. 7.
[11]Colombia's response to the questionnaire, p. 6.

Moreover, in addition to the constitutional and statutory provisions, the information received indicates that Colombia has adopted other measures in this field. The main such measure has to do with the various projects and initiatives the Government has been developing through the Presidential Anti-Corruption Program (PPLCC), created by Decree 2405 of 1998, whose objectives include to improve efficiency and transparency in public-sector entities, and to strengthen ethical values in public servants. One of the main instruments sponsored by the PPLCC is the "Ten Commandments of Ethical Conduct or Values," which, based on the "Guide for Strengthening Ethical Values," have been adopted by a large number of national entities. Based on the same information, the PPLCC has also promoted the Transparency Pacts in some departments and municipalities.[12]

In addition, based on the information attached to Colombia's response, USAID/Colombia's Anti-Corruption Program provided support to the Office of the Solicitor General in designing the new Single Disciplinary Code (Law 734/02). Furthermore, an information system is being developed to record disciplinary and criminal sanctions, and other penalties to the exercise of public functions that would be available on-line. Finally, said Program has also given financial resources to the Office of the Solicitor General for acquiring computer equipment, developing software, and training staff to use the new Single Disciplinary Code.[13]

#### 1.1.2 Adequacy of the legal framework and/or other measures

The standards, mechanisms, and measures that the Committee has examined in the area of conflicts of interest, based on the information available to it, are relevant to promoting the purposes of the Convention.

In this respect, one should note that the standards and mechanisms considered seek to prevent conflicts of interest with regard to public servants of all levels, and refer to the various times when they may be noticed or may arise, i.e. prior to the performance of public functions, while performing them, and afterwards. Other measures adopted in Colombia also contribute to preventing conflicts of interest and achieving the purposes referred to in the Convention.

#### 1.1.3 Results of the legal framework and/or other measures

Bearing in mind what is noted in the previous section, and based on the information received, special mention should be made of the results achieved by the authorities in charge of applying the standards, mechanisms, and measures, and the objective information on sanctions.

In the response to questions 1(c) and 2(c) of the questionnaire, on the objective results that have been obtained in applying those standards and mechanisms, attached are statistical tables prepared by the Office of the Solicitor General, the Office of the Comptroller General, and the Office of the Attorney General.[14] Even though the statistics given on proceedings regarding disciplinary, fiscal or monetary, or criminal responsibility show advances in enforcing the mechanisms designed to sanction acts of corruption, the Committee deems it timely to offer some considerations on their scope.

For the purposes of reviewing the implementation of the provision on standards of conduct aimed at preventing conflicts of interest, next are some considerations on the statistical information compiled by the Office of the Attorney General and the Office of the Solicitor General in addition to other information contained in the answers to those questions.

#### 1.1.3.1 Statistical Information of the Office of the Attorney General

[12] Informe de Rendición de Cuentas a la Ciudadanía. PPLCC section (sent electronically).
[13] USAID/COLOMBIA'S ANTI-CORRUPTION PROGRAM, attached to Colombia's response to the questionnaire.
[14] Colombia's response to the questionnaire, p. 6.

As regards the statistical information from the Office of the Attorney General, the Committee wishes to note that, according to it, from December 2000 to April 2002, not only were a large number of investigations begun into crimes against the public administration, but, proportionally, they have been increasing each year. According to the information, it is clear that from the quantitative standpoint, from 2000 to 2002, the Office of the Attorney General has deployed considerable investigative efforts in that field.

Without prejudice to the foregoing, the Committee considers it advisable to offer the following considerations with respect to that statistical information:

(a) As regards implementation of the standards under review, it should be noted that Colombian law provides criminal sanctions for "unlawfully entering into contracts" (Article 408, Law 599/00), and that this conduct can take any of three forms, legally: violation of the system of disqualifications and incompatibilities; unlawful interest in entering into a contract; and contracts entered into without meeting the legal requirements (Articles 408 to 410 of Law 599/00).

According to the statistical information from the Office of the Attorney General, in the year 2000, a total of 1,603 investigations were opened for the crime of "unlawfully entering into contracts"; in 2001, some 1,879 investigations were opened; and as of the date of Colombia's response to the questionnaire,[15] in 2002 some 2,065 investigations had been initiated. Nonetheless, that statistical information does not contain any information that would enable one to determine the number of proceedings that specifically correspond to one of the three forms of said criminal conduct.

(b) In addition, no indication is given on the ratio of processes in which the investigative stage was concluded and an indictment was obtained, or the ratio of such proceedings that have reached the trial stage before the judges with jurisdiction. Nor is there any indication whether detention orders have been issued in those proceedings against the persons allegedly responsible, and whether they have been carried out. Finally, there is no information on the number or percentage of sanctions that have been imposed thus far as a result of those investigations.

(c) Furthermore, the information is broad, and, therefore, does not contain detailed information that would make it possible to determine the percentage of such proceedings that correspond to investigations at the national-, departmental-, or municipal-level of public servants, and also against private persons (who can also perpetrate this criminal offense).

**1.1.3.2 Statistical Information from the Office of the Solicitor General**

As regards the statistical information from the Office of the Solicitor General, the Committee deems it timely to set forth the following considerations:

(a) The statistical document contains only general information on the disciplinary proceedings carried out and in which there were appellate judgments by that agency in the 2001-2002 period. Given that only the type of sanction imposed is mentioned, but not the infraction committed, it is not possible to establish the percentage of those proceedings related directly to the standards of conduct under review.

(b) Additionally, this statistical document does not specify whether it covers public servants at all levels, including those that work with the sub national entities, or whether it refers only to those at the national level. Nor does it contain information on other authorities, which, under Colombian law, also have jurisdiction to investigate and punish disciplinary infractions (e.g. Offices of Internal Disciplinary Review of the various entities, and the offices of district and municipal ombudspersons, in relation to public servants at that level).

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15 The Republic of Colombia submitted its response to the questionnaire on August 30, 2002.

#### 1.1.3.3 Information from the Superior Council of the Judiciary

In the response to question 1(c) of the questionnaire, it is stated that in 2001, the Superior Council of the Judiciary took cognizance of 2,703 cases, which resulted in 2,281 criminal investigations. A total of 1,036 judges were found guilty, and 275 were acquitted. While this information reveals a major effort in terms of the investigations against judicial personnel, this is general information that does not allow for a precise evaluation of results in relation to the specific standards of conduct under review, as it does not include specific information for identifying the types or modalities of conduct that motivated those investigations. In addition, no information is included from the regional Councils of the Judiciary that legally have jurisdiction to pursue disciplinary investigations and impose sanctions on judicial personnel at the sub national level.

#### 1.1.3.4 Information from the Council of State on Removal from Office of Members of Congress

In the answer to question 2(c) of the questionnaire, it is indicated that a total of 312 requests for removal from office of members of Congress were presented to the Council of State of Colombia, the highest-level court in the contentious-administrative jurisdiction, 38 of which was granted. It should be noted that under Article 296 of Law 5 of 1992, removal from office of a member of Congress can occur for violating the conflict-of-interest laws, unlawfully earmarking public monies, and influence-peddling, among other grounds.

The Committee deems it pertinent to note that this is no doubt a very important result in relation to a mechanism aimed at improving political practices and preserving the principles of morality, impartiality, and prevalence of the general interest. Nonetheless, it should be noted that that information is limited for the purposes of reviewing implementation of the specific standards under consideration, given that it does not show a breakdown of the specific grounds that have given rise to the charges made and the sanctions involving removal of members of Congress from office.

#### 1.1.3.5 Single Personnel Information System

Based on the response to question 2(c) of the questionnaire,[16] the Administrative Department of the Civil Service (Departamento Administrativo de la Función Pública), pursuant to the mandate in Law 190 of 1995, has a data base called the "Single Personnel Information System," which records the information contained in the single format résumé of public employees who work with 201 of the 206 national-level government entities. This system is intended to detect possible disqualifications or incompatibilities for holding a post and to exchange information with oversight and investigative agencies. It is indicated that most of the executive-branch entities in the national government, the oversight bodies, and the National Registry of Civil Status should report to the system, and that this enables it to keep updated résumés and to verify documents so that the information is reliable, such that reports can be obtained on active résumés, type of labor relationship, and date of separation from service, among others.

In this respect, however, it should be noted that while from the information provided it is concluded that the system is operating and that it is updated periodically, statistical information has not been provided on cases related to the standards on conflict of interest that have been prevented, detected, or reported with the help of this computer tool.

What was expressed in all the information provided concerning the review of the objective results, among other aspects, shows the utility of the Republic of Colombia's having monitoring systems on the objective results regarding the standards of conduct and the mechanisms for enforcing them in relation to the Convention, and, in this particular case, with respect to the conflict-of-interest laws. Such monitoring systems will make it possible to monitor forward strides in policies, programs, and decisions of the competent authorities in this field. The Committee will make a recommendation in this respect in the final chapter.

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[16] Colombia's response to the questionnaire, p. 7.

#### 1.1.3.6 Training

In accordance with the information provided by Colombia[17], Law 489 of 1998 establishes that "civil servants as determined by the National Government, must participate, as a minimum, in orientation programs at the School for Advanced Government Studies preferably before taking office or during their first month of service"; that said School "will organize and hold orientation seminars on public administration for elected Governors and Mayors to be undertaken between the end of the election period and the official taking of office by said elected officials and that participation in these seminars is a requirement in order to take office to which the person has been elected"; and that "the secretaries' general, deputies, advisors and department heads of legal, personnel, budget, treasury or its ministerial equivalent, administrative departments, superintendents office, and autonomous or decentralized entities must attend and participate in the orientation seminars organized by the School for Advanced Government Studies, within the first one-hundred and twenty days (120) of taking office".

Notwithstanding the adequate nature of the above provisions, the response of Colombia does not report if, in practice, the cited legal mandates are complied with nor do they provide statistical information or other objective information, for example, on training courses, seminars or programs undertaken, when they were held, their content and scope, and the officials –in accordance to law- that have benefited from the training programs. Taking into account this fact, the Committee will offer a recommendation to this respect.

### 1.2 STANDARDS OF CONDUCT AND MECHANISMS TO ENSURE THE CONSERVATION AND ADEQUATE USE OF THE RESOURCES ENTRUSTED TO PUBLIC SERVANTS

#### 1.2.1 Existence and provisions of a legal framework and/or other measures

The Republic of Colombia has a set of standards and mechanisms geared to the conservation and adequate use of the resources entrusted to public servants. In this respect, the following merit special mention.

The following provisions of the Colombian Constitution should be noted: (a) the provision that refers to the institution of "termination of ownership of assets acquired through illicit enrichment or in detriment of the public treasury" (Article 34); (b) the "action for indemnification (*acción de repetición*) against a public servant whose intentional or grossly negligent conduct has caused a property-related judgment to be entered against the State" (Article 90); and (d) those that refer to oversight of fiscal performance in the subnational governments (departments, districts, and municipalities), which rests with the comptroller offices that exist at those levels (Article 272).

Among the legal provisions, mention should be made, among others, of the following: (a) Decree no. 111 of 1986 that compiles the rules that comprise the Organic Budget Statute and establishes liability for violating its provisions, which regulate the programming, preparation, presentation, approval, modification and execution of the budget, the ability to contract, and the social public expenditures and liability for violating the its rules. (b) The new Criminal Code (Law 599 of 2000) maintains the definition of various forms of conduct considered contrary to the proper use of public resources, which, in general, correspond to the different modalities of the crime of embezzlement of public funds (Articles 397 to 400). (c) Law 610 of 2000, which regulates fiscal liability of public employees and private persons when by act or omission and intentionally or with gross negligence they cause harm to the State property.[18] (d) Decree 2170 of 2002,

[17] Colombia's response to the comments of Chile (preliminary review subgroup member) on the draft preliminary report.

[17] This law repeals the previous law, contained in Law 42 of 1993. Articles 1 and 4 of Law 610 of 2000 provide that the proceedings on fiscal liability, entrusted to the Office of the Comptroller General of the Republic and the offices of the departmental, municipal, and district comptrollers, is strictly property-related, on requiring of public servants and/or private persons that they make reparation for property-related damage caused the state by their intentional or negligent acts or omissions. Article 3 of Law 610 of 2000 provides that fiscal performance is the whole set of economic, legal, and technological activities that are carried out by public servants and those persons of private law who manage or administer public resources

which implements Law 80 of 1993 (General Statute of the Public Administration), establishes citizen participation in government procurement, through citizen review boards, throughout the entire process, as well as convenes said citizen review boards to undertake social vigilance on behalf of the State's entities.

Based on the information reviewed, one can also infer that there are several mechanisms intended to effectively enforce the rules established to ensure the conservation and adequate use of public resources. Among the reactive ones are mainly those that provide for sanctions, contained in the legal provisions on criminal responsibility (mainly criminalization of embezzlement of public funds by appropriation and of illicit enrichment of public servants. Law 599/00, Articles 397 and 412).

Article 36 of Law 190 of 1995 provides that in all proceedings for crimes against the public administration, it will be compulsory for there to be a civil party in representation of the juridical person to public law that has been harmed. It is an additional mechanism to ensure that economic reparation is borne by the person responsible.

In the area of disciplinary liability, Law 734/02 (CDU) contains the following rules: (a) Permanent disqualification when the disciplinary infraction affects State property with an economic value (Article 46). (b) It is a very serious infraction when due to very grave negligence State property is misplaced, lost, or damaged. (c) It is also a very serious infraction to increase one's wealth without justification, or to allow or tolerate another person doing so. (Article 48-3). (d) To invest public resources in conditions that do not guarantee liquidity, security, and profitability of the market (Article 48-27). (e) Participating in the pre-contractual stage or in contractual activity to the detriment of public property interests (Article 48-31). (f) Not bringing an action for indemnification against a public employee due to whose intentional or grossly negligent conduct a property-related judgment has been proffered against the state (Article 48-36). The law provides for the sanctions of general disqualification, removal, and fine for all these forms of conduct (Article 44).

Furthermore, Law 610 of 2000 provides that at any time in the proceeding for fiscal liability carried out by the Office of the Comptroller General of the Republic and of the departmental, district, and municipal comptrollers' offices, precautionary measures can be issued over the assets of the person (liens) allegedly responsible for detriment to the public property interests for an amount sufficient to cover payment for the possible detriment to the treasury. The precautionary measures decreed should be extended and shall be in force until culmination of the process of coercive collection, in the event that there is a ruling that includes fiscal liability.

Likewise, as a preventive matter, Article 5 of Decree 267 of 2000 establishes the so-called "warning control", which in conformity with the Comptroller General's mission must, warn on the execution operations and processes in order to prevent grave risks that undermine State assets and determine the scope that the oversight must maintain of the fiscal administration under said entity.

Additionally, Law 333 of 1996 develops Article 34 of the Constitution on termination of ownership of assets acquired through illicit enrichment, to the detriment of the public treasury, or with grave deterioration of social morality. It is applied to both public employees and private persons.

Another mechanism is that provided for in Law 678 of 2001, which implemented Article 90 of the Constitution on the action for indemnification. It is a property-related action that should be brought against a public servant or former public servant who, as a result of his or her intentional or grossly negligent conduct, has given rise to an economic judicial judgment against the State, or where this same effect adverse to public property interests has been caused by a settlement or other mechanism for ending a

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or funds, aimed at the appropriate and correct procurement, planning, conservation, administration, custody, operation, sale, consumption, adjudication, expenditure, investment, and disposal of public goods, as well as the collection, management, and investment of their revenues with a view to carrying out the essential aims of the state, subject to the principles of legality, efficiency, economy, effectiveness, equity, impartiality, morality, transparency, publicity, and valuation of environmental costs.

dispute, where there has been personal conduct of that same nature. This action should be brought by each entity that finds itself in the situation provided for in that law.

As regards other measures, it should be noted that according to the information provided by Colombia, the Ministry of Finance has started up the "Integrated Financial Information System" (SIIF: Sistema Integrado de Información Financiera), which monitors all records related to the financial information of the agencies that implement the national budget. Each record may be identified (entity in question, date, amount, etc.). This information can be consulted by the oversight bodies, and is updated on line and in real time. According to that information, this system makes it possible to identify specific events that are subject to review so as to adopt corrective measures when activities are detected that could constitute corrupt practices.[19]

### 1.2.2 Adequacy the legal framework and/or other measures

The rules, mechanisms, and measures for the conservation and adequate use of public resources that have been examined by the Committee, based on the information available to it, are relevant to promoting the purposes of the Convention.

In effect, there are criminal, fiscal, and disciplinary legal provisions that describe the infractions or conduct that have a negative impact on public property, the corresponding sanctions for public employees and private persons responsible, and the mechanisms for obtaining reparation or compensation for the property-related harm that such conduct has caused the state. The application of those measures is entrusted mainly to the Office of the Attorney General, the Office of the Comptroller General, including the departmental, district, and municipal comptrollers, and the Office of the Solicitor General, respectively, each within the scope of its jurisdiction.

### 1.2.3 Results of the legal framework and/or other measures

In order to review the objective results in this area, one must refer to the information, which was sent as part of Colombia's response, from the Office of the Solicitor General, the Office of the Attorney General, and, in particular, the Office of the Comptroller General.[20]

#### 1.2.3.1 Statistical Information from the Office of the Solicitor General and the Office of the Attorney General

As regards the information presented by these two institutions, the Committee first refers to the considerations set forth above in sections 1.1.3.1 and 1.1.3.2. In addition, one should bear in mind the criminal and disciplinary provisions cited in the preceding section on preserving and making adequate use of public resources.

In addition, it should be noted that, according to the statistical report from the Office of the Attorney General, the largest number of proceedings[21] are for the crime of embezzlement of public funds; this impacts directly on the review of the results in relation to the standards of conduct and mechanisms to ensure the conservation and adequate use of the resources entrusted to public servants.

In effect, this offense consists of conduct by the public servant who, because of or in the course of exercising his or her functions, administers or has custody of state property, appropriates it, makes unlawful use of it, gives it a different official application, or allows it to be misplaced, lost, or damaged.

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19 CD Informe de Rendición de Cuentas a la Ciudadanía. Informe Sectorial. Ministry of Finance. Attached to Colombia's response to the questionnaire.

20 Response to the questionnaire, p. 8.

21 According to the statistics from the Office of the Attorney General, in the year 2000, 9,461 investigations were initiated; 9,044 were initiated in 2001; and 8,711 in 2002 (as of the date of the response, August 30, 2002).

The Attorney General's statistical information does not contain any information that allows one to establish the percentage of the proceedings initiated that corresponds to each of the modalities that such criminal conduct may take on (embezzlement by appropriation, embezzlement by use, embezzlement by different official use, and negligent embezzlement)[22], which, together with other limitations mentioned above regarding the levels to which this statistical information is broken down, makes it impossible to fully assess the objective results in this area.

Nonetheless, the very fact that the largest number of investigations initiated by the Office of the Attorney General for crimes against the public administration have to do with the crime of embezzlement of public funds makes it necessary to call attention to the need for Colombia to examine the causes that may be at the root of this large number of investigations into the crime of embezzlement of public funds, and to determine the specific measures that should be adopted to prevent its occurrence, and, ultimately, to ensure the conservation and adequate use of the resources entrusted to public employees. The Committee will so recommend in the final chapter of this Report.

#### 1.2.3.2 Statistical information from the Office of the Comptroller General

Colombia's response to the questionnaire includes a document from the Office of the Comptroller General entitled "Objective Results and Benefits of Fiscal Oversight," which contains general information on proceedings for fiscal liability and coercive collection in the period from 1999 to March 2002.

The Committee deems it appropriate to offer the following considerations on that document:

(a) The statistical information refers mainly to the sums involved in the proceedings for fiscal liability ruled on by that organ in the period in question. Nonetheless, it does not include information that makes it possible to review the objective results in relation to the specific rules whose implementation is the subject of review.

(b) The document does not specify whether the information included there refers to public servants at all levels, including those of the subnational government entities, or whether it encompasses only national-level public servants.[23]

(c) The document does not contain information for determining the percentage of those proceedings that corresponds to investigations into high-level officials or public servants from sectors considered particularly critical. No information is included that allows one to establish whether all the rulings of fiscal liability are firm decisions, or whether they are subject to legal challenges that might stand in the way of their enforcement. Nor is any information included on precautionary measures and their amount.

The Committee wishes to add that, based on the results of the "Governance and Anti-corruption" survey,[24] in Colombia a ***survey of perceptions*** was done from February to April 2001 of 3,472 public servants, 3,493

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[22] Articles 397 to 400 of the Criminal Code. Response to the questionnaire, pp. 1 and 2.

[23] Later, each oversight body clarified that the information concerning the rules on fiscal liability proffered by the departmental, district, and municipal comptrollers should be reported to the Office of the Comptroller General, but did not send statistical information on them. This information was sent as part of the response to the communication from the Secretary, which is included in document SG/MESICIC/doc. 26/02, pp.

[24] The results of this survey are included in "*Corrupción, Desempeño Institucional y Gobernabilidad en Colombia*," a publication produced jointly by the Office of the Vice-President of the Republic of Colombia, through the Presidential Anti-Corruption Program, and the World Bank, in March 2002. This publication was sent as an attachment to Colombia's response to the questionnaire.

users of public services, and 1,343 entrepreneurs. It was the result of a joint effort by the Presidential Anti-Corruption Program, the World Bank, and several public, private, and civil society organizations that are part of the "National Anti-Corruption Alliance," "with the aim of obtaining information that makes it possible to identify the main strengths and weaknesses of Colombia's framework of public institutions in the area of integrity and institutional performance." "Colombia faces major challenges as regards corruption" in the area of what are called "budgetary diversions." According to the analysis of the results, "the public servants' responses appear to indicate that approximately 11 percent of the public allocations are being diverted for purposes other than those for which they are lawfully earmarked. This would be equivalent to 2.05 percent of the GDP, or about US$ 1.76 billion."[25]

According to the information in this survey, it was a survey of perceptions, which, as stated by the entity that administered the survey, makes "honesty in the handling of the information very important," and leads to "acknowledging its limitation, still recognizing the importance of its implications." Among those limitations, that entity highlights "the need to take into account that perceptions on corruption are profoundly influenced by the media"[26], which leads, as the World Bank recognized, through its representative, to the statement that "additional empirical and technical analyses are needed."[27]

The lack of objective information or the limited nature of the information provided in the documents mentioned above does not allow one to make an assessment of the objective results in this area. Mindful of the foregoing, in the final chapter the Committee will make a recommendation.

The Committee will also make a recommendation on the need and advisability of evaluating the causes, be they short-term or structural that may be impeding the full effectiveness of the fiscal control agencies in applying the legal framework in this area, and taking corrective measures as appropriate.

## 1.3 MEASURES AND SYSTEMS THAT REQUIRE THAT PUBLIC SERVANTS INFORM THE AUTHORITIES ABOUT ACTS OF CORRUPTION IN THE CIVIL SERVICE THAT COME TO THEIR ATTENTION

### 1.3.1 Existence and provisions of a legal framework and/or other measures

The Republic of Colombia has standards that establish the obligation of every person to report to the competent authority any criminal conduct that comes to his or her attention. In particular, the law imposes this duty on public servants, including the obligation to initiate, without delay, the respective investigation, if vested with authority to do so (Article 21, Code of Criminal Procedure, in Law 600 of 2000). The Constitution establishes an exception to this duty which is that no one may be forced to testify against oneself or against one's spouse, permanent partner, or relatives within certain degrees. The Plenary Chamber of the Supreme Court of Justice has interpreted this exception so as to operate only in criminal proceedings.[28]

Article 417 of the Criminal Code (Law 599 of 2000) imposes a fine and also a two- to four-year prison sentence for public servants who, having learned of specific criminal conduct, do not report it to the competent authority (abuse of authority by failure to report).

The Single Disciplinary Code (CDU) (Law 734 of 2002) also establishes, as one of the duties of public servants, "to report the crimes, breaches, and disciplinary infractions that come to their attention, except as provided by law" (Article 34-24). In addition, Article 24-4 of that law defines as a very gross disciplinary breach failure to investigate or delaying the investigation in very gross infractions or intentional or negligent offenses that can be investigated on the initiative of the authority, based on the post held or

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25 "*Corrupción, Desempeño Institucional y Gobernabilidad en Colombia*," Office of the Vice-President of the Republic of Colombia – Presidential Anti-Corruption Program, and World Bank, March 2002, p. 46. Attachment to Colombia's response to the questionnaire.

26 *Id*., pp. 236 and 237.

27 *Id*., p. 203.

28 Supreme Court of Justice. Judgment of October 17, 1991.

function performed. Article 70 of that law reiterates this obligation entrusted to public employees, including the duty to initiate the respective disciplinary investigation if competent to do so, and otherwise to report it to the competent authority, making available to that authority the evidence of possible offensive conduct.

### 1.3.2 Adequacy of the legal framework and/or other measures

The above-cited provisions of the Criminal Procedure Code and of the Single Disciplinary Code are pertinent for furthering the purposes of the Convention. Specifically, in relation to the provision under review, it is clear that the normative framework described has the specific objective of requiring that public employees inform the competent authorities of acts of corruption in the performance of public functions that come to their attention.

### 1.3.3 Results of the legal framework and/or other measures

In its response to question 4(c) of the questionnaire, inquiring into the objective results that have been obtained in applying those standards and mechanisms, the Government of Colombia cites the statistical tables prepared by the Solicitor General's Office and the Attorney General's Office. In this respect, one should recall that the Committee offered some considerations on the limitations of these statistical documents in sections 1.1.3.1 and 1.1.3.2 of this Report.

As regards the results in relation to the implementation of the standards and mechanisms under review, the statistical document of the Office of the Attorney General reports that in 2000, 1,021 proceedings were initiated for "abuse of authority"; in 2001, 874 proceedings were initiated; and in 2002, 793. Nonetheless, the percentage of those proceedings corresponding specifically to what under Colombian legislation is called "abuse of authority for failure to report," which is specifically related to the standards and mechanisms under review, is not specified.

The statistical document of the Office of the Solicitor General, as noted in section 1.1.3.2 of this Report, does not contain precise information on the infractions that gave rise to the sanctions reported therein. Accordingly, it cannot be stated which of those sanctions were imposed as a result of breach of the duty to report.

According to the information provided, one can infer that most of the investigations initiated were the result of reports by private persons, not public servants. The Presidential Anti-Corruption Program (PPLCC) has a web site (www.anticorrupcion.gov.co ) by which reports by citizens are taken in and followed-up on. It includes a link called "*Colombiemos*," through which a network of citizens has formed to exchange information and offer support for actions involving citizen surveillance of the public administration and public investment. In this respect, it is reported that there had been a 40% increase in reports of administrative corruption through the web site.[29]

Finally, it should be noted that according to the report on the results of the "Governance and Anti-Corruption" survey,[30] 82% of the public employees gave as the main reason for not reporting "the fear of reprisals against those who report"[31]; that "the second cause for failure to report is the perception of the incapacity of the public institutions to carry out the investigations and sanction the persons responsible" and that "the passive and complacent attitude" is adduced by "about 40 percent of public servants."[32] According to the same report, "the implications of the failure to report are disturbing.... In the case of

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29 CD Informe de Rendición de Cuentas a la Ciudadanía. PPLCC section.

30 At the end of section 1.2.3.1 and in the footnote, both of this Report, reference is made to the scope of this ***survey of perceptions***, to which reference is made in the publication "*Corrupción, Desempeño Institucional y Gobernabilidad en Colombia*" (Vice-President of the Republic of Colombia – Presidential Anti-Corruption Program, and World Bank, March 2002), which was included as an attachment to Colombia's response to the questionnaire.

31 *Id*., p. 101.

32 *Id*., p. 102.

public servants, the most direct implication is the perception of a lack of commitment and a failure to accord priority to going after corruption."[33]

Bearing in mind the foregoing information, the Committee wishes to emphasize the utility of Colombia adopting the decisions needed to ensure that, "public employees are required to inform the competent authorities of any acts of public corruption in the performance of public functions that come to their attention"; that the fulfillment of this obligation be facilitated; that they be given the protection they may need depending on the gravity of the acts of corruption reported; and, in the event that they fail to carry out that obligation, the relevant sanctions provided for in Colombian law should be applied. The Committee will make a recommendation in this regard.

In addition, and given the limitations noted above, of the information on objective results provided by the public authorities in the response to the questionnaire, the Committee will make a recommendation.

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

### 2.1 Existence and provisions of a legal framework and/or other measures

The Republic of Colombia has a set of standards and measures for declarations of income, assets, and liabilities.

The Constitution of Colombia establishes, at Article 122(2), that before taking office, upon leaving office, and whenever the competent authority so requests, a public employee must declare under oath the amount of his or her property and income flows. This constitutional provision was implemented by Law 190 of 1995 (Anti-Corruption Statute), which requires, in order to take possession of the post and perform the corresponding functions, that one make a sworn statement identifying his or her assets. In addition, that information must be updated each year and upon stepping down from the post (Articles 13 and 14).

Another requirement for taking office or becoming employed as a public servant is that information be provided on the candidate's private economic activity, including involvement in companies or in any private organization or activity, for-profit or non-profit they might be part of, inside or outside the country (Article 15).

In order to carry out the provisions mentioned, Law 190 of 1995 provides that if there has been an appointment or assumption of a public post or employment without abiding by the pertinent requirements, which include the declaration of income and assets, then one can seek the revocation or termination of said public officer or employee as soon as the violation is noticed (Article 5).

The same law provides that if it is discovered that information was hidden or false documentation provided, without prejudice to the criminal or disciplinary liability, the person responsible shall be disqualified from holding public office or employment for three (3) years.

In addition, as described in Colombia's response,[34] Decrees 2232 of 1995 and 2240 of 1996, as well as Presidential Directive No. 07 of February 19, 1998 refer to actions aimed at upholding morality in the public administration, specifically in relation to the sworn statement.

As regards other measures, the Administrative Department of the Civil Service, in carrying out Law 190 of 1995, started the use of a software called SIDEC (Information System for Control and Monitoring of the Declaration of Assets and Income by Public Employees), a computer tool that enables the entities to

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33 *Id*., p. 102.

34 Document from the Administrative Department of the Civil Service on the "System for the Control and Monitoring of Public Servants' Declarations of Assets and Income" (SIDEC), p. 1. (Attachment to Colombia's response to the questionnaire.)

systematically manage the information from the Single Form Sworn Statement on Assets and Income and Private Economic Activity. This system enables the Administrative Department of the Civil Service to monitor the assets and incomes of public employees, for which that software has a monitoring and control subsystem.

The national-level public entities, the oversight organs, the Office of the Attorney General, and the National Registry of Civil Status have access to the information from the SIDEC system, through which they can process the single form for sworn statement, as well as verify at any time that the statement has been made, the veracity of its contents, and any changes, through the sampling or selection system.[35]

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

The provisions and measures cited above are relevant for furthering the purposes of the Convention. In effect, the normative framework described has the specific objective of establishing systems for the declaration of incomes, assets and liabilities by persons who perform public functions. In addition, the SIDEC information system created by the Administrative Department of the Civil Service for the processing and monitoring of the declarations of income and wealth represents progress towards attaining the purposes of the Convention.

Notwithstanding the above, it is evident that the current structure in Colombia in regard to disclosure of income, assets and liabilities can be subject to substantial reforms and improvements.

The Committee will make a recommendation in the final chapter of this report.

It is worth noting the existence of the Information and Financial Analysis Unit (UIAF), a Special Administrative Unit, of a technical nature, with the function of preventing and detecting practices associated with money laundering, through the compilation, systemization and analysis of information given by those individuals who are obligated to comply with the provisions in the Organic Statute of the Financial System, custom, tax and securities laws, and of all other information that is known by the public and private entities that may be linked with money laundering operations, which could be stored in a database of each entity if it were not necessary to maintain it permanently in the UIAF. Once possible cases associated with this crime are identified, the UIAF contacts the competent authorities to execute action to terminate rights and to evaluate and decide whether they should forward to the Office of the Attorney General the information they obtain in carrying out their role. In addition, the UIAF studies the different forms of money laundering, at the root of which are various crimes, among them crimes associated with administrative corruption, and it disseminates the information obtained in order to promote policies and develop instruments to prevent and control such crimes.

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

According to the information provided by Colombia, "there are no statistics; in those cases in which the indicators showed a warning, the person in charge of the SIDEC in the entity was contacted, for the purpose of clarifying the situation, and it was determined that the most common inconsistencies have to do with: failure to fill in the spaces for income and revenues, records of sums corresponding to one month, diminution in income and rents and net worth."[36]

In addition, Colombia's response did not report on the existence of statistics relating to the number of declarations analyzed in order to detect the occurrence of possible acts of corruption, nor, therefore, on the number of reports, investigations, or proceedings based on such an analysis.

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[35] Colombia's response to the questionnaire, p. 10, and document from the Department of Civil Service on the SIDEC (attachment to the response to the questionnaire).

[36] Supplemental response of the Republic of Colombia

It is felt that the main purposes of the system for submitting financial disclosure statements include both the detection and prevention of conflicts of interest and the detection of possible cases of illicit enrichment. The lack of information on the analysis of sworn statements and on the results obtained should lead the competent authorities to adopt the measures needed to overcome this failing.

That lack of information and the limited nature of what exists render impossible a full assessment of the results in this area. Bearing this in mind, the Committee will make a recommendation.

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

### 3.1 Existence and provisions of a legal framework and/or other measures

As noted above, the Republic of Colombia has a set of provisions and other measures that regulate the organization and operation of oversight organs in relation to selected provisions of the Convention in the context of the first round.

Among those provisions and measures, special mention should be made of those related to the Office of the Solicitor General,[37] the Office of the Attorney General,[38] the Office of the Comptroller General,[39] the Administrative Department of Civil Service,[40] and the Presidential Anti-Corruption Program (PPLCC).[41]

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

Bearing in mind that the review of the oversight bodies in this round is limited to matters having to do with Article III(1), (2), (4), and (11) of the Convention, and based on the information that has been available to it, the Committee observes that the Republic of Colombia has standards and measures for promoting the purposes of the Convention in this area.

Without prejudice to the foregoing, the Committee wishes to highlight that according to the analysis of the results of the "Governance and Anti-Corruption" survey, "the various segments surveyed assign a special role to the oversight organs and the citizen review boards in a possible anti-corruption alliance. This preference would appear to reflect the priority assigned by the various segments to improving accountability mechanisms, both in civil society and within the state bureaucracy."[42] In addition, mindful of this, it is stated that "the need to promote the progressive strengthening of these institutions in terms of both institutional autonomy and professional capacity appears as a clear strategic line, in order to ensure a more effective system of accountability of the political authorities and the State."[43] If this consideration is considered generally valid and appropriate, the same holds for performance of the functions by the oversight organs in relation to the specific standards selected for this round of review.

### 3.3 Results of the legal framework and other measures

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37 Constitution of Colombia, Articles 275 and 277. Law 734 of 2002. <http://www.procuraduria.gov.co>.

38 Constitution of Colombia, Articles 249 to 251. Laws 599 and 600 of 2002. <http://www.fiscalia.gov.co>.

39 Constitution of Colombia. Articles 267 to 268. Law 610 of 2000. <http://www.contraloriagen.gov.co>.

40 Law 190 of 1995. <http://www.dafp.gov.co>.

41 Created by Decree 2405 of 1998. Presidential Directive No. 09 of December 24, 1999. <http://www.anticorrupcion.gov.co>.

42 "*Corrupción, Desempeño Institucional y Gobernabilidad en Colombia*," Office of the Vice-President of Colombia – Presidential Anti-Corruption Program and World Bank, March 2002, p. 98. Attachment to Colombia's response to the questionnaire.

43 *Id*., p. 100.

The considerations set forth in sections 1.1.3.1, 1.1.3.2, and 1.2.3.1 of this chapter of this Report, on the statistical results of the Office of the Attorney General, Solicitor General, and Comptroller General, respectively, are also valid and pertinent in the context of the issue analyzed in this section.

## 4. MECHANISMS TO ENCOURAGE CIVIL SOCIETY PARTICIPATION (ARTICLE III, PARAGRAPH 11)

### 4.1 PARTICIPATION MECHANISMS GENERALLY

#### 4.1.1 Existence and provisions of a legal framework and/or other measures

The Republic of Colombia has a highly diverse set of provisions and measures, in terms of their nature, characteristics, and scope, related to the participation of civil society and non-governmental organizations in public activities.

According to Colombia's response,[44] the 1991 Constitution introduced a substantial change in this area, for the purpose of moving from a representative democracy to a participatory democracy, creating the appropriate normative framework for promoting the active participation of citizens in the exercise of their rights, in decision-making processes, and in keeping a check on the management of public affairs. The preamble and Article 1 of the Constitution explicitly note this purpose. Article 2 establishes as one of the aims of the state to facilitate the participation of all in the decisions that affect them, and in the economic, political, administrative, and cultural life of the nation.

One of the provisions especially relevant in this regard is Article 103 of the Constitution, by which it is established that the state will contribute to the organization, promotion, and training of professional, civic, trade union, community, and youth associations, and non-governmental organizations, without detriment to their autonomy, for the purpose of establishing mechanisms for democratic representation in the various instances of participation, control, and surveillance of the public administration that may be established. In keeping with the foregoing, it is provided that the law will structure forms and systems of citizen participation that will make it possible to oversee public administration (Article 270).

In addition, the Constitution provides for specific areas in which opportunities for participation should be recognized such as, for example, the participation of users of public services in the management and oversight of the state companies that provide them (Article 369), and citizen participation in the discussion of development plans (participatory planning through the National Planning Council and the regional and local planning councils), Articles 340 and 342.

In carrying out the above-noted constitutional provisions, various laws have been issued in Colombia that seek to encourage and promote citizen participation. Of these, special mention should be made of Law 134 of 1994, on participation mechanisms, and Law 563 of 2000, on citizen review boards, which the Constitutional Court declared unconstitutional due to flaws in its adoption,[45] which does not keep citizens from exercising social oversight over the public administration at any time, as the same Court has recognized.[46] In addition, one can cite Law 489 of 1998 (Statute on the Public Administration), which establishes the obligation of all public entities to perform their functions mindful of the principles of participatory democracy, and the obligation to give all the support required to citizens engaged in activities entailing social oversight of the administration, and it defines certain rules for the exercise of citizen review, access to information, and training of review board members (Articles 32 to 35).

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44 Response to the questionnaire, pp. 13 to 15.

45 The Constitutional Court declared this law unconstitutional due to vices in the way in which it was adopted, which made it necessary to submit a new bill to Congress (Bill no. 149 of 2001) on regulating the citizen review boards. This bill has been approved by Congress but is pending review by the Court so that it can become law. Colombia's response to the questionnaire, p. 14.

46 The exercise of citizen participation provided for in the Constitution does not depend on the existence of special legislation (*ley estatutaria*) for the review boards. Constitutional Court. Judgment T-596 of August 1, 2002.

In the document prepared by Corporación Transparencia por Colombia, called Attachment No. 1, which sets forth the different provisions that regulate citizen participation in Colombia, reference is also made to the following laws: (a) Law 80 of 1993, under which every contract entered into by state entities is subject to citizen oversight and review; (b) Law 87 of 1993, which organizes the internal review system in public entities and establishes, as one of its elements, the obligation to implement the establishment of mechanisms that facilitate citizen review of their efforts; (c) Law 99 of 1993, which regulates public administrative hearings on environmental matters; (d) Law 142 of 1994 (public services regime), which establishes that by initiative of the users of the services of public utilities, Committees for the Development and Social Oversight of the companies that provide such services will be established; (e) Law 136 of 1994 (Modernization of the Municipal Governments), which orders the fiscal review agencies to work with the community in performing their fiscal management tasks, and orders the municipal ombudspersons (*personeros*) to promote the creation and operation of the citizen and community review mechanisms; (f) Law 152 of 1994, which regulates the National Planning Council and the regional and local planning councils as mechanisms of consultation for the "National, Departmental, and Municipal Development Plans"; (g) Decree-law 267 of 2000, which creates the "Office of the Special Comptroller for Citizen Participation."[47]

Recently, the Government of Colombia issued Decree 2170 of September 30, 2002, which, among other specific regulations, included some provisions related to the citizen review boards to perform social oversight over the procedures for public contracts (Chapter II).[48]

### 4.1.2 Adequacy of the legal framework and/or other measures

Based on the information available to it, the Committee observes that the Republic of Colombia has standards and measures such as those described in the previous section on the participation of civil society and non-governmental organizations in public activities, which, in principle, seek to encourage or have the direct or indirect effect of facilitating the prevention of corruption.

Even so, and bearing in mind the classification referred to by the methodology for analyzing the implementation of Article III, paragraph 11[49] of the Convention, in each of the corresponding sections, the Committee will offer some considerations, and in the final chapter it will make specific recommendations in this regard.

### 4.1.3 Results of the legal framework and other measures

As regards the results of the participation mechanisms generally, the State, in its response, highlights those related to various projects and strategies aimed at encouraging and promoting citizen participation and social oversight in different areas of the public administration, and to move forward in their coordination with the oversight organs.

In this connection, mention is made, for example, of the "*Colombiemos*" project of the Presidential Anti-Corruption Program (PPLCC), aimed at forming a network of citizens to defend public interests through a web site, especially in connection with forming groups to exercise social oversight of specific public investments.[50] In addition, special mention is made of the training of review board members in developing

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[47] Document from Corporación Transparencia por Colombia (Attachment No. 1: "Provisions that regulate participation").

[48] This decree enters into force on January 1, 2003, and Presidential Directive No. 12, of October 1, 2002, was issued to support its full implementation; it imparts instructions, guidelines, criteria, measures, and short- and medium-term actions that should be carried out by the public entities to fight corruption in government contracts.

[49] Methodology for analyzing the implementation of the selected Convention provisions in the framework of the first round of review, Chapter V, D

[50] <http://www.anticorrupcion.gov/COLOMBIEMOS>. Responses to the questionnaire, p. 16. CD Informe de Rendición de Cuentas a la Ciudadanía. PPLCC section.

the provision of Law 489 of 1998, through workshops and conferences (National Plan to Train Review Board Members), the design of methodologies for social oversight of public administration (Guide for Citizen Social Oversight), and the creation of the National Anti-Corruption Alliance, made up of public entities, oversight organs, private enterprises, universities, and non-governmental organizations throughout the country.[51]

In addition, reference is made to the strategy of creating mechanisms for inter-institutional coordination, in conjunction with the citizenry, to take in and follow up on reports of corruption and to carry out the respective investigations. In the departmental and municipal government entities, an effort has been made to improve the efficiency and transparency of the local governments, and to strengthen citizen participation and social oversight of the administration through a project called "Transparency Pacts," by which the mayors, governors, and civil society representatives sign ethical agreements aimed at engaging a commitment from the mayors and governors to public accountability, and a commitment from civil society with respect to the effective and ongoing exercise of citizen social oversight. Mention is made, along the same lines, of the Ministry of Finance project called "Transparencia en Línea (TEL)" (Transparency on line), financed by technical cooperation resources (Andean Development Corporation), by which information on projects financed by regional social investment funds (Findeter, Banco Agrario, Incora, Inurbe, DRI, etc.) is published on line.[52] This project is intended to have citizens know about the budgetary implementation of those projects to facilitate accountability and social oversight.[53]

In addition, in a document attached to its response, the State alludes to the different programs that have been undertaken by the Office of the Special Comptroller for Citizen Participation, such as the Public Accountability Hearings, Audits Coordinated with Civil Society Organizations, Citizen Surveillance Committees (CVCs) coordinated with the Office of the Comptroller General, National Training Plan for Social Oversight, and Strategic Alliances for the Promotion of Citizen Oversight.[54]

Even though results of several participation programs and projects mentioned are cited, especially in the CD "Informe de Rendición de Cuentas a la Ciudadanía" (PPLCC section) and in the document from the Special Comptroller for Citizen Participation attached to the response,[55] many of the figures mentioned are general, without specific information on the status or development of the investigations initiated by citizen reports. And while they reveal considerable initiative to encourage the participation of civil society and

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51 *Id*.

52 <http://www.transparencia.gov.co>.

53 A detailed explanation of these actions and projects that seek to promote and encourage citizen participation can be seen in the CD Informe de Rendición de Cuentas a la Ciudadanía. PPLCC section (attached to Colombia's response to the questionnaire).

54 Mecanismos para Estimular la Participación de la Sociedad Civil y de las Organizaciones No Gubernamentales en los Esfuerzos destinados a Prevenir la Corrupción: Document attached to the response to the questionnaire by the Special Comptroller for Citizen Participation.

55 Among the results referred to, mention is made of the following: (a) The PPLCC receives citizen reports, forwards them to the competent authorities, and follows up. It is noted that of 4,135 complaints received, 1,339 became criminal complaints before the Office of the Attorney General, 587 became disciplinary complaints before the Office of the Solicitor General, and 282 before the Office of the Comptroller General, and that the amount in question in these cases, in all, is over $430 billion pesos considering the different national and local entities cited there; (b) The Office of the Special Comptroller for Citizen Participation (CDPC) indicates in the document attached to the response that from 2000 to 2002, 12,935 citizen complaints have been received through the "Transparency Line," a national line that can be dialed free of charge, regarding cases whose total value may come to 170.868 billion pesos; (c) The CDPC mentions 220 audits performed in conjunction with approximately 300 civil society organizations in 2001; (d) The formation of 165 Citizen Surveillance Committees (CVCs) in the various departments of Colombia in relation to regional and local high-impact projects at the urging of the CDPC; and (e) The training of 556 trainers for social oversight of public administration, and the formation of 27 departmental Social Oversight networks, as part of the CDPC's National Training Plan for Social Oversight of the Public Administration.

non-governmental organizations in social oversight activities to prevent corruption, it is apparent that these processes and initiatives have only recently been gaining impetus.

In this connection, the Committee quotes the following conclusion that appears in the "Accountability Report to the Citizenry" of the Presidential Anti-Corruption Program,[56] which was attached to the response:

"Even though there are extensive provisions that give innumerable opportunities to citizens to participate in decision-making on decisions that affect them, and to oversee the work of the public agencies, citizen participation in public affairs is still very low. This low participation is explained by the following: (a) citizens are unaware of their rights and duties with respect to public matters; (b) lack of knowledge of the tools, forums, and mechanisms for citizen participation; and, (c) isolated and disjointed initiatives of possible elements and actors that can strengthen it."

Confirming the foregoing, the response to the questionnaire states as follows: "Participation has not been assimilated or exploited adequately, often due to lack of knowledge, apathy, or fear, such that while it is true that there are provisions and mechanisms for participation, the relationship is still fragile, and there is little social capital. There are results but they are not reflected in centralized statistics."[57] Along the same lines, the Report by the Government of Colombia on "Corruption, Governance, and Institutional Performance" states: "Participation should include introducing real incentives to report and exercise social oversight over corruption."[58]

The document submitted by Corporación Transparencia por Colombia summarizes the question of citizen participation in Colombia in the following terms: "With the entry into force of the new Constitution of 1991, it is clear that the legal advances in the area of citizen participation in Colombia have been significant.... Nonetheless, the country does not have sufficient information to be able to evaluate the results obtained with the specific implementation of the many mechanisms of citizen participation provided for in the laws. Most of the national-level public entities responsible for providing orientation on implementing the mechanisms for monitoring and evaluating participation policies have either not performed these tasks, or have done so sporadically and partially. Little is known about the real conditions that produce scant citizen participation. Some possible explanations have to do with the normative shortcomings that make it difficult to implement them, the lack of information on forums for participation, and the lack of interest and will on the part of the municipal governments when it comes to promoting it."[59]

In addition to the foregoing, the document quoted from Corporación Transparencia por Colombia mentions the armed conflict in Colombia as an exceptional event that has poses significant obstacles to citizen participation. Alongside the violence, reference is also made to another worrisome phenomenon that has the same effect: "citizen monitoring of public affairs and the anti-corruption effort have become an activity that entails a high risk to the life and physical integrity of those who report acts of corruption and/or engage in a review of public property. Many of the review board members interviewed reported that they had been threatened or were being threatened at that time, because of their reports of corruption or their activities generally to keep tabs on the management of public affairs."[60]

The circumstances mentioned above, and the absence of or very limited information available on objective results do not allow one to make an appropriate assessment of the results in this area. Bearing this in mind, the Committee will make a recommendation.

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[56] Informe de Rendición de Cuentas a la Ciudadanía. PPLCC section. Document attached to the response, on CD.

[57] Response to questionnaire, p. 13.

[58] "*Corrupción, Desempeño Institucional y Gobernabilidad en Colombia*," Office of the Vice-President of the Republic of Colombia – Presidential Anti-Corruption Program and the World Bank, March 2002, p. 36 (Executive Summary No. 28, final paragraph). Attachment to Colombia's response to the questionnaire. <http://www.anticorrupcion.gov.co>.

[59] Document from Corporación Transparencia por Colombia, pp. 4 and 6.

[60] *Id*., p. 7.

## 4.2 MECHANISMS TO ENSURE ACCESS TO INFORMATION

### 4.2.1 Existence and provisions of a legal framework and/or other measures

As the State indicates in its response, the Republic of Colombia has a set of standards and measures in the area of access to information. Of special note in this regards are the constitutional provisions that guarantee every person the freedom to impart and receive accurate and impartial information (Article 20), the right to make petitions to the authorities for reasons of general or particular interest (Article 23), and the right to have access to public documents.

The Contentious-Administrative Code (CCA), contained in Decree 01 of 1984, regulates the right to petition in the general and particular interest, and the right to consult documents and obtain a copy of them (Articles 5, 9, 17, and 19). Law 489 of 1998 (Statute of the Public Administration) regulates access to information for review board members, determines the sanction for a public employee who creates obstacles to it, and creates the General System of Administrative Information, so that the entities can put out information on their mission, objectives, and functions, and account for their institutional performance, to facilitate the evaluation of the management of public affairs (Articles 35 to 37).

Law 57 of 1985 specifically regulates the publicity of official acts and documents and the applicable constitutional or statutory exceptions. The provisions of this law modified the relevant provisions of the Contentious-Administrative Code (Decree 01 of 1984), and, therefore, are incorporated in this statute. Law 190 of 1995 establishes that it will be grounds for a finding of misconduct if a public employee hinders, delays, or refuses, without motive, to give access to citizens generally or to the communications media, in particular, to the documents in the offices under their charge, and a request for which has been submitted in keeping with the legal requirements. That law provides, as well, that the decision to refuse access to public documents shall always be reasoned, based on statutory or constitutional mandate that it be kept under seal.

The document on civil society participation submitted by Corporación Transparencia por Colombia notes that "official documents that must be kept under seal are the exception; this limitation must be provided for by law. Records of judicial investigations and any documents that may endanger national sovereignty are to be kept under seal."[61]

Moreover, Law 80 of 1993 and Law 190 of 1995 establish rules on publishing information on government contracts.

Law 594 of 2000 (General Law on Archives) establishes the right of citizens to gain access to the public archives, except as provided by law (Article 4).

Other measures in this area include the Connectivity Agenda, established in February 2000, which "seeks to augment the use of information technologies to increase the competitiveness of the productive sector**,** modernize government institutions, and socialize access to information.... The fundamental strategy for attaining this objective is called On-Line Government (Gobierno en Línea), which contains programs aimed at creating a government Intranet, within which would be the portal with government information and services."[62]

Presidential Directive No. 02 of August 28, 2000, developed that Connectivity Agenda and indicated the obligations of the national-level executive branch entities as regards the use of information technologies "to attain effects of efficiency, transparency, improvement of the delivery of public services, and citizen access to the information they produce."[63]

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61 *Id*. (p. 8).

62 Colombia's response to the questionnaire, p. 18. The Internet address referred to is: <http://www.agenda.gov.co>.

63 To this end, it is reported that the portal <http://www.gobiernoenlinea.gov.co> can be used. Colombia's response to the questionnaire, p. 18

In this respect, it is reported that at present 201 entities that constitute the central level of the state have a presence on the web site, and that a single portal was created to facilitate citizen access to all the web sites of those entities (http://www.gobiernoenlinea.gov.co). "At the web sites of the public entities, one finds information on the institution, the laws and regulations that govern its operations, its budget, staff, plans and programs, and services for citizens; reports on performance; and complaints and claims from citizens are received through the web site."[64]

In the document submitted by Corporación Transparencia por Colombia, a report from the Ministry of Communications from July 2002 is cited on progress in implementing the Connectivity Agenda, in which it is stated that 496 state entities have addresses at that portal, 250 of which are departmental, district, and municipal entities. Nonetheless, in the evaluation done in March and April 2002, based on the information available on the web sites of 88 public entities, only central-level executive branch entities and the entities that make up the legislative and judicial branches and the oversight organs were taken into account.[65] From this evaluation, it was concluded that the best performance was by the executive branch, and "that the results for the entities of the legislative and judicial branches were not positive."[66]

### 4.2.2 Adequacy of the legal framework and/or other measures

The standards and mechanisms that the Committee has examined regarding access to information, based on the information that has been available to it, are relevant for promoting the purposes of the Convention.

Nonetheless, the Committee wishes to note that the progress in connectivity and the use of information technologies that one observes in the national entities does not appear to be happening similarly, as would be desirable, in the departmental and municipal ones, as can be inferred from the state's response, which alludes to the Connectivity Agenda only at the central level of the administration.

### 4.2.3 Result of the legal framework and other measures

In relation to this aspect, Colombia's response states: "We are certain that there are objective results from the foregoing mechanisms, but no centralized statistics are available."[67]

In addition, the document from Corporación Transparencia por Colombia states "despite the broad normative framework that establishes the principle of publicity in state affairs and the right of persons to gain access to public information, in practice it is common for public employees to hide it, or to impose hindrances to access." As a result of the foregoing, that document states that in response to such conduct on the part of public employees, it is common for citizens to have to recur to filing an injunction (special constitutional remedy) to seek protection for the fundamental right of petition in connection with the right of access to information.[68]

Special mention should be made of progress in the use of new technologies to facilitate citizen access to the information on the different public entities through what is known as the "Connectivity Agenda," whose developments are also highlighted by the Corporación Transparencia por Colombia.[69]

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64 In addition, it is mentioned that as a result of Phase 2 of the Connectivity Agenda, citizens can find, on the Internet, 726 procedures that can be done on line, and, as part of Phase 3, "On-line Contracting," policies and standards were adopted for implementing public contracting procedures on line. In this area, reference is made to the "System of Information on State Contracting (SICE), whose Internet address is <http://www.sice.cgr.gov.co>. Colombia's response to the questionnaire, p. 18.

65 Document from Corporación Transparencia por Colombia, pp. 10-11.

66 *Id*., p. 11.

67 Colombia's response to the questionnaire, p. 18.

68 Document of Corporación Transparencia por Colombia, pp. 8-9.

69 *Id*., p. 10. Document SG/MESICIC/doc. 26/02, pp.

Notwithstanding the existence of an adequate normative framework for access to information, the lack of information on objective results in this area keeps one from making an assessment of them. Mindful of this circumstance, the Committee will make a recommendation.

## 4.3 CONSULTATIVE MECHANISMS

### 4.3.1 Existence and provisions of legal framework and/or other measures

The Republic of Colombia has provisions and mechanisms for consultation. In this respect, Colombia's response emphasizes Law 134 of 1994, by which constitutional mandates on the subject are developed, and all aspects related to the regime of the referendum, plebiscite, popular consultation, and town meeting, as mechanisms of consultation and participation are regulated.[70]

In addition to the foregoing, mention should be made of the following provisions specifically related to mechanisms of consultation in the context of the public administration:

(a) Decree 2130 of 1992 (decree with the force of law), which provides that it is a responsibility of the Ministers and all other high-level directors of administrative entities and agencies of the *national executive branch* "to indicate the draft decisions of a general nature which because of their implications should be made known to the citizens and stakeholder groups so as to hear their opinions beforehand"; "to order that the possible stakeholders be informed publicly, by the means it deems adequate, as to the basic content, purpose, and scope of draft administrative decisions of a general nature" and that "the period within which their observations may be presented" be established; and "order that a public record be made of those observations and of the responses that the entity may have given to those presented by persons who represent significant sectors of the community and non-governmental organizations that work in furtherance of the public interest." Mindful of its scope as a mechanism of consultation, the decree provided that "in every case the administrative authority shall autonomously made the decision which in its view best serves the general interest."

(b) Law 489 of 1998, at Articles 32 and 33, which provides for the possibility of calling public hearings "in which aspects related to the design, implementation, or evaluation of policies and programs of the entity will be discussed, and especially when collective rights or interests may be at stake." The same law provides for the possibility of holding such hearings as a result of a request by the community and civil society organizations "without the request or conclusions of the hearings being binding on the administration. In any event, an explanation shall be provided to those organizations of the reasons behind the decision made." In this respect, it is provided that "in the notice for the hearing, the respective institution shall define the methodology to be used."

### 4.3.2 Adequacy of the legal framework and/or other measures

The provisions and mechanisms for consulting the citizenry that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

### 4.3.3 Results of the legal framework and/or other measures

Based on the information provided, along with the State's response, in Colombia the mechanisms of consultation referred to in Law 134 of 1994 have been used (referendum, plebiscite, popular consultation, and town meeting) for very different purposes. Nonetheless, from that information it does not appear that

[70] Colombia's response to the questionnaire, p. 19

one can deduce that those mechanisms have been used, at least directly, in efforts aimed specifically at preventing corruption.[71]

Furthermore, no information has been received about their implementation or objective results, in relation to the mechanisms of consultation specifically related to the public administration, reference to which is made in Decree 2130 of 1992 and Law 489 of 1998 (Articles 32 and 33).

The limited nature of the information available on the objective results, of the existing measures and consultative mechanisms, in terms of the specific measure of the Convention under review does not permit assessment of the results in this area. Mindful of this circumstance, the Committee will make a recommendation.

## 4.4 MECHANISMS TO ENCOURAGE ACTIVE PARTICIPATION IN PUBLIC ADMINISTRATION

### 4.4.1 Existence and provisions of the legal framework and/or other measures

The Republic of Colombia has provisions and mechanisms to encourage participation in the management of public affairs. Among these, Colombia's response mentions those provided for in public utilities (Articles 340 and 342 of the Constitution), and public hearings for the awarding of government contracts (Article 273 of the Constitution). In addition, reference is made to the popular legislative initiative, which allows a group of citizens to introduce proposed constitutional amendments and proposed legislation to the Congress, as well as proposed changes to local statutory and regulatory provisions (Article 2 of Law 134 of 1994). In addition, the *revocatoria del mandato*, or mechanism for revoking the mandate, is referred to as a right that allows citizens to consider whether the mandate conferred upon a governor or mayor should be revoked-(Article 6, Law 134 of 1994).[72]

### 4.4.2 Adequacy of the legal framework

The provisions and mechanisms for encouraging active participation in the management of public affairs that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

### 4.4.3 Results of the legal framework and other measures

With respect to the mechanisms provided in Law 134 of 1994, in its response the State attached a statistical report prepared by the National Registry of Civil Status describing the cases in which those mechanisms have been used thus far, and the results. For example, the *iniciativa popular* has been used on 16 occasions in different municipalities for the most diverse purposes. The *iniciativa legislativa* has been used twice, and both times the time period expired for obtaining the support of 5% of the electorate, as required by law, which is why they did not go forward. In addition, two cases of constitutional referenda were reported,

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[71] In the statistical appendix prepared by the National Registry of Civil Status, mention is made of the various popular consultations held in different municipalities to answer local questions in various matters such as: "Do you reject violence and are you in agreement with turning Aguachica into a municipality that is a model of peace?" "Would you like the Sierra Nevada de Santa Marta to be preserved as a natural world heritage site?" "Do you want the municipality of Galapa to become part of the metropolitan area of Barranquilla?" In addition, various referenda were mentioned aimed at amending the Constitution that did not go forward due to failure to meet the requirements, as well as various referenda for creating municipalities. Colombia's response to the questionnaire, p. 19.

[72] Colombia's response to the questionnaire, p. 20.

which also failed to go forward for failure to satisfy the legal requirements, particularly regarding the minimum percentage of support from citizens required by law.[73]

According to the Corporación Transparencia por Colombia: "The mechanisms of participation enshrined in Law 134 have been used very precariously.... In the view of the Office of the Human Rights Ombudsman (Defensoría del Pueblo), the main problem that has arisen in using the mechanisms are the many requirements that have been established for invoking ~~it~~ them."[74]

The foregoing opinion agrees with the State's response according to which "participation has not been assimilated or taken advantage of adequately, often due to lack of knowledge, apathy, or fear, such that while it is true that there are rules and mechanisms for participation, the relationship is still fragile and the social capital is scarce."[75]

Bearing in mind the foregoing, the Committee will make a recommendation on the need to evaluate the current mechanisms for encouraging participation in the management of public affairs and to adopt the corrective measures considered appropriate, in the context of the purposes of the Convention, and to provide for instruments that will make it possible to monitor the objective results of implementing such measures.

## 4.5 PARTICIPATION MECHANISMS IN THE FOLLOW-UP OF THE ADMINISTRATION

### 4.5.1 Existence and provisions of the legal framework and/or other measures

The Republic of Colombia has provisions and mechanisms for participation in monitoring the management of public affairs. In this respect, special mention should be made of Law 489 of 1998, "Statute of the Public Administration," especially its Chapter VIII on "Democratization and social oversight of the public administration," which, among others, establishes the obligation, entrusted to the Administrative Department of the Civil Service, to design and promote the National Plan for the Training of Review Board Members, in coordination with the Escuela Superior de Administración Pública (School for Advanced Studies in Public Administration), "*aimed at training citizens in exercising social oversight*."[76]

Colombia's response to the questionnaire refers to the legal initiative, already approved by the Congress, regarding the regime of citizen review boards, the purpose of which is to enable the citizens or the different community organizations "to exercise oversight of the management of public affairs with respect to the administrative, political, judicial, electoral, and legislative authorities and oversight organs, as well as the summonsing of the public or private entities, and national or international non-governmental organizations operating in the country entrusted with carrying out a program, project, contract, or with providing a public service."[77]

In addition, mention is made of the different programs the Office of the Special Comptroller for Citizen Participation (CDPC) has been carrying out, and which are cited in a document attached to Colombia's response.[78] In that document, the CDPC alludes to the performance of 220 "audits coordinated" with

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[73] In this respect, the Constitutional Court holds that the 1991 Constitution did not provide for the possibility of a constitutional referendum originating by popular initiative without prior legislative approval to convene it. Constitutional Court Judgment SU-1122 of 2001.

[74] Document of Corporación Transparencia por Colombia, p. 13.

[75] Colombia's response to the questionnaire, p. 13.

[76] Colombia's response to the questionnaire, p. 20.

[77] Proposed Law No. 149 of 2001 (House) and 022 of 2001 (Senate). Article 1 (document attached to the response). This bill is currently under review before the Constitutional Court as a requirement before it can be adopted, published, and enter into force, as provided for in the Constitution for special legislation known as *leyes estatutarias*.

[78] Mecanismos para Estimular la Participación de la Sociedad Civil y de las Organizaciones no Gubernamentales en los Esfuerzos Destinados a Prevenir la Corrupción. (Contraloría Delegada para la

approximately 300 civil society organizations in 2001; the establishment of 165 Citizen Surveillance Committees (CVCs) in the various departments with respect to high-impact regional and local projects; and the National Training Plan for Social Oversight of the Public Administration," under which 556 trainers have been trained for social oversight of public administration and 27 departmental social oversight networks have been formed.

### 4.5.2 Adequacy of the legal framework and/or other measures

The provisions and mechanisms for participation in monitoring the public administration that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

### 4.5.3 Results of the legal framework and/or other measures

Colombia's response states as follows: "As we have explained, there are no statistics, but examples of citizen review boards, or more precisely, of social oversight until the new law is adopted, are known, that have played an important role in terms of reporting and surveillance, such as those formed for the choice of justices of the high judicial courts, the constitutional reform of 1996, and in relation to members of Congress and complaints seeking their removal from office. In this last example, from 1996 to 2001, 39% of the cases whereby members of Congress have been removed from office have been due to reports by the Network of Citizen Review Boards."[79]

Bearing in mind that, according to the information available, the Constitutional Court of Colombia has argued that the exercise of citizen participation provided for in the Constitution does not depend on the existence of an enacting law for the citizen review boards,[80] it should be noted that the lack of such a law does not stand in the way of creating a monitoring system in this field. This is especially so considering that, as the State indicates in its response, citizen review boards have been organized for several purposes whose specific results, except for the case cited by the Network of Citizen Review Boards, are not specifically known.

Nonetheless, from a general perspective, Corporación Transparencia por Colombia holds that "despite the scant knowledge of this mechanism among the citizenry, the exercises of citizen review carried out have performed an important role reporting acts of corruption in the country, and have helped make public information visible."[81]

In addition, Law 489 of 1998, cited by the State in its response,[82] provides for the obligation on all public servants not to hinder access to information by the review board members, under threat of sanction, which confirms the need to have a monitoring system in this field, independent of the fact that at present the enacting legislation on citizen review boards has not been adopted.

Furthermore, in the area of training for social oversight of the public administration, special mention is made of the National Training Plan for Social Oversight of the Public Administration, being carried out by the Administrative Department of the Civil Service in developing the provisions of Law 489 of 1998.[83]

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Participación Ciudadana, CDPC). Document attached to Colombia's response. The CDPC was created by Decree-law 267 of 2000.

79 Colombia's response to the questionnaire, p. 21. These same examples of citizen review boards are cited in the document on civil society participation sent by Transparencia por Colombia (p. 21).

80 Constitutional Court. Judgment T-596 of August 1, 2002.

81 Document of Corporación Transparencia por Colombia, p. 21. Document SG/MESICIC/doc. 26/02, p.

82 Colombia's response to the questionnaire, p. 17.

83 According to the document of Corporación Transparencia por Colombia, the most important results of the Plan are: the training of 800 trainers through five workshops, with coverage of 29 departments, p. 24. Colombia's response to the questionnaire, p. 20.

In the document on civil society participation, Corporación Transparencia por Colombia states: "despite the broad array of mechanisms for monitoring, surveillance, oversight, and citizen control, provided for by law, the information available shows that citizens generally are not familiar with them. According to the study by Sudarsky, the mechanisms for monitoring and oversight of the public administration are the least known, and even when known, are the least used."[84]

In the same document from Corporación Transparencia por Colombia, special note is made of citizens' lack of knowledge of the citizen review boards as a mechanism of surveillance, monitoring, and oversight of the public administration. In addition, a study from year 2000 is cited that summarizes the main obstacles the review board members face in carrying out their work, including: (a) The existence of "public institutions closed to citizen participation and in particular to social oversight." (b) "The review board members lack the preparation needed to perform their work." (c) "The criminal, disciplinary, and fiscal proceedings, in many cases the result of citizen oversight and complaints, generally take a long time. This requires that the review boards have time, financial resources, and human resources if the results of their actions are to be monitored." (d) "Citizens are not aware of the tools for exercising social oversight." (e) "The armed conflict and human rights violations make those who perform social oversight unsafe."[85]

In the document it submitted, Corporación Transparencia por Colombia also reports that the Citizen Anti-Corruption Commission, "the most important mechanism of citizen participation at the national level," created by Law 190 of 1995 (Anti-Corruption Statute) "was never convoked by the Government." In Decree 1681 of 1997, that Commission became the National Commission for Moralization, and its composition was regulated. "After the sectors were convoked to constitute it, and asked to nominate candidates, none were ever selected by the Government."[86]

Mindful of all these elements, and having considered that the lack of further information makes it impossible to assess the objective results in this area, the Committee will make a recommendation in this connection in the final chapter of this Report.

## 5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

### 5.1 MUTUAL ASSISTANCE

#### 5.1.1 Existence and provisions of a legal framework and/or other measures

The Republic of Colombia has a series of provisions and measures for mutual legal assistance, discussed in Article XIV(1) of the Convention, including Law 600 of 2000 (Code of Criminal Procedure), Decree 2282 of 1989 (Code of Civil Procedure), and several treaties in this area to which Colombia is a Party.[87]

The Colombian authorities, through the Office of the Attorney General, provide legal assistance to foreign authorities when requested. These foreign authorities may commission Colombian judicial authorities for the execution of the acts requested. Likewise, the Attorney General may authorize foreign judicial authorities in executing requests within the Colombian territory, with the assistance of a Colombian judicial authority and a representative of the District Attorney's Office. The Law establishes that under no circumstance will a legal assistance request be denied for the reason that that the conduct being investigated is not a crime under Colombian Law, except if it is notoriously against the Colombian Constitution.

#### 5.1.2 Adequacy of the legal framework and/or other measures

From analyzing Law 600 of 2000, Decree 2282 of 1989 and the treaties signed by Colombia in this field, one deduces that they are appropriate for promoting the purposes of the Convention.

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84 Document from Corporación Transparencia por Colombia, p. 18.
85 *Id*., pp. 20-21.
86 *Id*., p. 24.
87 Colombia's response to the questionnaire, Chapter 5, p. 22.

### 5.1.3 Results of the legal framework and other measures

In its response to the requests for mutual legal assistance (as requesting or requested party), the Republic of Colombia stated: "No information is on record, either with the Office of the Attorney General, or with the Ministry of Justice and Law."[88] Colombia later submitted information on the subject (Note: see document SG/MESICIC/doc.50/03).

According to this response, there is, however, no disaggregated information regarding the requests for mutual assistance under the Convention. The absence of disaggregated information does not permit an assessment of the objective results. Mindful of this circumstance, the Committee will make a recommendation.

## 5.2 ASSISTANCE AND COOPERATION

### 5.2.1 Existence and provisions of a legal framework and/or other measures

The Republic of Colombia has provisions and measures for providing mutual technical cooperation with the States Parties to the Convention, in keeping with the provisions of Article XIV(2) of the Convention. In the State's response, some agreements and cooperation activities are mentioned[89] that have been developed with the United States, Chile, and Paraguay.

### 5.2.2 Adequacy of the legal framework and/or other measures

One can deduce from analyzing them as a whole that the agreements signed and mutual technical cooperation activities undertaken by Colombia are appropriate for promoting the purposes of the Convention.

### 5.2.3 Results of the legal framework and/or other measures

Colombia's response mentions some agreements and mutual technical cooperation activities undertaken with States Parties to the Convention. Some general results of the Basic Technical and Scientific Cooperation Agreement signed with the Republic of Chile in 1991, to exchange information on procurement systems, programs to improve the public administration, internal auditing, and legislative development for probity are cited. In addition, in the document attached to the response on USAID/Colombia's anti-corruption program[90] some general results are mentioned on strengthening systems for citizen control and participation.

The response also mentions the technical cooperation received from international organizations such as the United Nations, UNDP, World Bank, European Union, and Andean Development Corporation.

## 6. CENTRAL AUTHORITIES (ARTICLE XVIII)

### 6.1 Existence and provisions of a legal framework and/or other measures

The Republic of Colombia answered that it has not designated a central authority for the specific purposes of channeling the mutual assistance provided for under the Convention. For the time being, it is deemed advisable to use the central authorities set forth in the treaties that the country has entered into, i.e., for the requests from other States, the Office of the Attorney General or the Ministry of Justice and Law.[91] According to the same response, the central authority for the purposes of channeling the mutual technical

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88 *Id*., p. 23.

89 *Id*., p. 24.

90 Document USAID/COLOMBIA'S ANTI-CORRUPTION PROGRAM. Attachment to Colombia's response to the questionnaire.

91 Colombia's response to the questionnaire, p. 25.

cooperation provided for under the Convention is the Colombian International Cooperation Agency (ACCI: Agencia Colombiana de Cooperación Internacional), which is under the Ministry of Foreign Relations.

### 6.2 Adequacy of the legal framework and/or other measures

Considering that to channel the mutual assistance provided for under the Convention, the Republic of Colombia has decided to use the central authorities provided for in the treaties entered into (Office of the Attorney General and Ministry of Justice and Law), it should be noted that this decision is in keeping with the provisions of Article XVIII (1) of the Convention. The decision that the Colombia International Cooperation Agency (ACCI) is the central authority for the purposes of channeling mutual technical cooperation is deemed appropriate for furthering the purposes of the Convention.

In relation with the resources assigned to the Central Authorities in order to prepare and receive assistance and cooperation requests as set forth in the Convention, while there are no specific resources are assigned to this task, Colombia informs that the general resources assigned by the Law of Budgets to the distinct organs which act as Central Authorities, are in fact sufficient in complying with the Convention's provisions.

Based on the foregoing, it can be affirmed that the Republic of Colombia has the Central Authorities and mechanisms necessary to provide the cooperation referred to in the Convention.

Finally, and despite the existence of the legal framework and other elements necessary to serve the purposes of the Convention, there has not been enough practical experience to determine how effectively the mechanisms and Central Authorities operate, since at the time the report was issued by the Republic of Colombia, no requests had been received or made by the Central Authorities.

### 6.3 Results of the legal framework and/or other measures

As mentioned in section 5.1.3 of this chapter of this Report, there is no information whatsoever on objective results in the area of mutual assistance. Even so, based on the information provided in Colombia's response, the central authorities have general resources for carrying out the cooperation commitments referred to in the convention, in the following terms: (a) Ministry of Justice and Law: National Budget, "Current transfers" account, "Transfers abroad" sub-account. (b) Office of the Attorney General: General resources of the National Budget allocated for financing the entity and other agencies that collaborate in judicial assistance (National Police, Administrative Security Department, and Technical Investigations Unit). (c) The Colombian International Cooperation Agency (ACCI) has a special account called International Cooperation and Assistance Fund, created by Law 318 of 1996, whose objective is "*to support the technical and non-reimbursable financial cooperation actions and international assistance that Colombia earmarks to other developing countries*."[92]

## III. CONCLUSIONS AND RECOMMENDATIONS

Based on the review in Chapter II of this report, the Committee offers the following conclusions and recommendations regarding implementation in the Republic of Colombia of the provisions of the Convention selected in the framework of the first round, which are Article III, paragraphs 1, 2, 4, 9 and 11 (Preventive Measures), Article XIV (Assistance and Cooperation) and Article XVIII (Central Authorities).

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

### 1.1 Standards of conduct geared to preventing conflicts of interest and mechanisms to enforce compliance

92 *Id*., p. 26.

**The Republic of Colombia has considered and adopted measures aimed at establishing, maintaining, and strengthening standards of conduct intended to prevent conflicts of interest and mechanisms for their enforcement. Said standards include Law 190 of 1995, Law 5 of 1992, and Law 734 of 2002 (CDU), in keeping with what is stated at Chapter II, section 1(1), of this Report.**

In light of the comments made in that section, the Committee suggests that the Republic of Colombia consider the following recommendation:

1.1.1 That the Republic of Colombia, taking into account the provisions of Law 489 of 1998 and other pertinent provisions, continue undertaking and strengthening, as a permanent State policy, training programs for civil servants when they first assume their positions and periodically thereafter. Such programs should include courses on conflicts of interest and, in general, on standards of conduct and mechanisms to enforce them as referred to in Article III, paragraphs 1 and 2 of the Inter-American Convention against Corruption.

### 1.2 Standards of conduct and mechanisms to ensure the conservation and adequate use of resources entrusted to public servants

**The Republic of Colombia has considered and adopted measures aimed at establishing, maintaining, and strengthening standards of conduct aimed at ensuring the conservation and adequate use of the resources entrusted to public servants in the performance of their functions, in keeping with Chapter II, section 1(2) of this Report.**

In light of the comments made in that section, the Committee suggests that the Republic of Colombia consider the following recommendations:

1.2.1 Strengthening preventive measures and control systems for ensuring the effective conservation and adequate use of resources assigned to public servants in the performance of their functions and utilizing effectively the information generated during audits.

In meeting this recommendation, the Republic of Colombia may wish to take into account the following measures:

- Undertaking a comprehensive evaluation to determine the objective causes that give rise to the investigations into the crime of embezzlement of public funds and, based on the results, define and adopt specific measures as may be required in order to prevent the occurrence of this crime, and, ultimately, to ensure the conservation and adequate use of the resources entrusted to public servants.

- Undertaking a comprehensive evaluation that makes it possible to determine the objective causes that are impeding or limiting the effectiveness of the internal control systems and the fiscal control systems to avoid "budgetary and other resource deviations" and that, based on the results, the specific measures needed be defined and adopted, so as to prevent such deviations and ensure the conservation and adequate use of public resources.

### 1.3 Standards of conduct and mechanisms in relation to the measures and systems that require public servants to inform the competent authorities of acts of corruption in the performance of public functions that come to their attention

**The Republic of Colombia has considered and adopted measures aimed at creating, maintaining, and strengthening standards of conduct and mechanisms related to the measures and systems that**

**require that public servants inform the competent authorities of acts of corruption in the performance of public functions that come to their attention, in keeping with the provisions of section 1(3) of Chapter II of this Report.**

In light of the comments made in that section, the Committee suggests that the Republic of Colombia consider the following recommendation:

1.3.1 Strengthening the mechanisms that Republic of Colombia has for requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

In meeting this recommendation, the Republic of Colombia may wish to take into account the following measure:

- Considering measures to ensure the effectiveness of the obligation that public servants are required under the Colombian law to report to appropriate authorities acts of corruption in the performance of public functions; the performance of this duty be facilitated; they be given the protection they need in keeping with the seriousness of the corrupt acts reported; and, if they fail to carry out that obligation, the sanctions provided for in the Colombian legal order for such situations will be applied.

- Training public officials concerning the existence and purpose of their responsibility to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

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

**The Republic of Colombia has considered and adopted measures aimed at creating, maintaining, and strengthening systems for declaring income, assets, and liabilities by persons who perform public functions in posts as provided by law, and for the publication of such declarations as appropriate, as described in Chapter II, section 2 of this Report.**

In light of the comments made in that section, the Committee suggests that the Republic of Colombia consider the following recommendation:

2.1 Improving the systems for control and evaluation of the content of the financial disclosure reports and regulating their disclosure.

In meeting this recommendation, the Republic of Colombia may wish to take into account the following measures:

- Optimizing the systems for analysis of the content of the financial disclosure reports for the purpose of detecting and preventing conflicts of interest as well as detecting possible cases of illicit enrichment.

- Regulating the conditions, procedures and other aspects that are considered appropriate in relation to the publishing of the declarations on assets, income and liabilities from civil servants, subject to the Constitution and the basic tenets of Colombia's legal system.

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

**The Republic of Colombia has considered and adopted measures aimed at creating, maintaining, and strengthening superior oversight organs that perform function related to the actual implementation**

**of the selected provisions to be analyzed in the context of the first round (Article III(1), (2), (4), and (11) of the Convention), in keeping with what is indicated in chapter II, section 3 of this Report.**

In light of the comments made in that section, the Committee suggests that the Republic of Colombia consider the following recommendation:

3.1 Strengthening the oversight bodies through coordination of their functions for control of effective compliance with the provisions in Article III, paragraphs 1, 2, 4, and 11 of the Convention, and optimizing their coordination as established by the Colombian legal system, providing them with necessary legal instruments and resources for the complete development of their functions; and making sure that they have greater political and social support; and establishing mechanisms that will allow continued evaluation and monitoring of their actions

## 4. CIVIL SOCIETY PARTICIPATION (ARTICLE III, PARAGRAPH 11)

**The Republic of Colombia has considered and adopted measures aimed at creating, maintaining, and strengthening mechanisms to encourage the participation of civil society and non-governmental organizations in the efforts to prevent corruption, in keeping with what is stated in chapter II, section 4 of this Report.**

In light of the comments made in this section, the Committee suggests that the Republic of Colombia consider the following recommendations:

### 4.1 Mechanisms to ensure access to information

4.1.1 Considering measures for having the advances made to date in "connectivity" and use of the information technologies in the national-level entities and started at the territorial level with decree 2170 of 2002, consolidated and extended to the departmental, district, and municipal entities, and, accordingly, that the institutions that perform public functions at the departmental and municipal levels would also be under an obligation to disseminate information in their possession or under their control.

4.1.2 Considering strengthening existing mechanisms so that public employees and officials will be more compliant in meeting their obligation to make information available to citizens.

### 4.2 Consultative Mechanisms

4.2.1 Undertaking comprehensive evaluation of the use and effectiveness of the mechanisms of consultation in Colombia as instruments for preventing corruption, and that, as a result of that evaluation, consider the adoption of measures to promote, facilitate, and consolidate or ensure their effectiveness.

4.2.2 That, in relation to the mechanisms of consultation and the public hearings, in the context of the public administration, referred to by decree 2130 of 1991 and Law 489 of 1998 (Articles 32 and 33), considering measures to extend their application to the departmental and municipal levels be given

### 4.3 Mechanisms to encourage active participation in public administration

4.3.1 Undertaking an evaluation on the use and effectiveness of the mechanisms of active participation in the management of public affairs existing in Colombia, as instruments to prevent corruption and that, as part of that evaluation, consider the adoption of measures to promote, facilitate, and consolidate or assure their effectiveness with that aim.

### 4.4 Participation Mechanisms in the follow-up of the public administration

4.4.1 Considering measures to consolidate and expand the dissemination programs of the participatory mechanisms for monitoring the management of public affairs,; educate and train civic leaders to give impetus to their use; include in basic and secondary education programs content concerning the prevention of corruption and the fulfillment of civic duties; create citizen awareness on the importance of denouncing acts of public corruption; and offer the necessary protection to those who report them.[93]

4.4.2 Considering the adoption of the appropriate measures in relation with mechanisms like the National Commission for Moralization provided for in Decree 1681 of 1997.

## 5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

**The Republic of Colombia has adopted decisions and measures regarding mutual assistance and mutual technical cooperation, in keeping with Article XIV of the Convention, as described and analyzed in chapter II, section 5 of this Report.**

In light of the comments made in this section, the Committee suggests that the Republic of Colombia consider the following recommendations:

5.1.1 Reviewing comprehensively the specific areas in which the Republic of Colombia might need or could usefully receive mutual technical cooperation to prevent, detect, investigate, and punish acts of corruption; and that based on this review, a comprehensive strategy be designed and implemented that would permit the Republic of Colombia to approach other States Parties and non-parties to the Convention and institutions or financial agencies engaged in international cooperation to seek the technical cooperation it needs.

5.1.2 Continuing the efforts of technical cooperation exchange with other State Parties on the effective ways and methods to prevent, detect, investigate and sanction acts of corruption, taking advantage of the experience the Republic of Colombia has had in this field.

5.1.3 Defining and implementing a program for dissemination and training directed specifically to competent authorities (in particular to, judges, magistrates, state attorneys and other authorities with judicial investigative functions), in order to strengthen knowledge and application, in those concrete cases of which they have knowledge, of the provisions on mutual assistance and other related treaties signed by the Republic of Colombia, and may apply then to concrete cases.

5.1.4 Developing information mechanisms to allow Colombian authorities to follow up requests for mutual assistance relating to crimes associated with corruption and particularly those crimes contemplated in the Inter-American Convention against Corruption."

## 6. CENTRAL AUTHORITIES (ARTICLE XVIII)

**The Committee wishes to recognize with satisfaction that the Republic of Colombia has complied with Article XVIII of the Convention having decided to use the central authorities provided for in the relevant treaties (Office of the Attorney General and Ministry of Justice and Law) to channel the international assistance under the Convention, which is in harmony with the provisions of Article XVIII(1) thereof. In addition, the**

[93] In the State's response, mention is made, as an example of this type of program, of the National Plan to Train Review Board Members, referred to in Law 489 of 1998, and which is being carried out by the Administrative Department of the Civil Service and the Escuela Superior de Administración Pública (ESAP). This Plan is referred to in the Informe de Rendición de Cuentas a la Ciudadanía (PPLCC section) which the State attached to its response on a CD. Reference is also made to this Plan in the document on the participation of civil society sent by the Corporación Transparencia por Colombia (p. 24).

**Colombian International Cooperation Agency (ACCI) has been designated the central authority for the purposes of channeling the mutual technical cooperation provided for under the Convention. These authorities are operating, based on the information provided by the State in its response.**

## 7. GENERAL RECOMMENDATIONS

In light of comments made throughout this report, the Committee suggests that the Republic of Colombia consider the following recommendations:

7.1 Developing procedures to ensure that the public servants who are responsible for implementing the systems mentioned in this report receive the training they need to effectively perform their duties.

7.2 Selecting, developing and reporting to the Technical Secretariat of the Committee indicators, where appropriate, that will make it possible to verify follow-up of the recommendations established in this report. For this purpose, the Technical Secretariat of the Committee will publish on the OAS website a list of more generalized indicators applicable within the Inter-American system that may be available for selection by the State under review.

## 8. FOLLOW-UP

The Committee will consider the periodic reports from the Republic of Colombia on its progress in implementing the above recommendations in the framework of the Committee's plenary meetings, as prescribed in Article 30 of the Rules of Procedure.

It is further recommended that the Committee review the progress made in implementing the recommendations contained in this report, as provided in Articles 31 and, if and when appropriate, Article 32 of the Rules of Procedure.

The Committee wishes to note the Republic of Colombia’s request, made through a written communication directed to the President of the Committee on July 18, 2003, that this report be published on the Mechanism's Internet website or by any other means of communication, pursuant to Article 25 (g) of the Rules of Procedure.

**APPENDIX TO THE REPORT ON IMPLEMENTATION IN COLOMBIA OF THE CONVENTION PROVISIONS SELECTED FOR ANALYSIS IN THE FRAMEWORK OF THE FIRST ROUND**

Together with its response, the Republic of Colombia sent the following appendices:

## I. APPENDICES ON ELECTRONIC MEDIA:

1. Constitution
2. Single Disciplinary Code – Law 734 of 2002
3. Penal Code – Law 599 of 2000
4. Code of Criminal Procedure – Law 600 of 2000
5. Law on Fiscal Liability – Law 610 of 2000
6. Anti-corruption Station – Law 190 of 1995
7. Administrative Contracting Statute – Law 80 of 1993
8. Statute on the Public Administration – Law 489 of 1998
9. Statute on the Administration of Justice – Law 270 of 1996
10. Regulation of Congress – Law 5 of 1992
11. Presidential Directive No. 09 of 1999
12. Termination of Ownership – Law 333 of 1996
13. Action for Indemnification – Law 678 of 2001
14. Administrative Career – Law 443 of 1998
15. Popular Actions – Law 472 of 1998
16. Action to Enforce – Law 393 of 1997
17. General Law on Archives – Law 594 of 2000
18. Organization of the Comptroller General of the Republic – Decree 267 of 2000
19. Organization of the Office of the Solicitor General of the Nation – Decree 262 of 2000
20. Organization of the Office of the Attorney General of the Nation – Decree 261 of 2000
21. Citizen Participation Mechanisms – Law 134 of 1994

## II. APPENDICES IN HARD COPY:

1. Values Training Guide; Code of Excellence of the Office of the President of the Republic; and other documents published by the Presidential Anti-Corruption Program for Transformation of Public Administration (8 documents and 1 code)
2. Presidential Directive No. 09 of 1999 and Presidential Directive No. 10 of August 20, 2002
3. Instructive Primer on Action for Indemnification
4. Document prepared by the Office of the Solicitor General of the Nation
5. Document prepared by the Office of the Comptroller General of the Nation
6. Document prepared by the Office of the Attorney General of the Nation
7. Document on the System for Declaring Assets and Income, prepared by the Administrative Department of the Civil Service
8. Documents prepared by the Office of the District Inspector – Mayor's Office of Bogota (2 documents)
9. "Manual for Participating" (5 volumes)
10. Document on Social Oversight – "Superfigures on Users" prepared by the Superintendency of Residential Public Services
11. Draft law for regulating citizen inspectorates
12. Instructive primer "The Way – Toward Strengthening Citizen Inspection"
13. Document on Citizen Participation prepared by the Office of the Comptroller General of the Republic
14. Document on the State Contracting Information System (SICE) prepared by the Office of the General Comptroller of the Republic
15. Document prepared by the National Registry of Civil Status
16. Document prepared by the Administrative Department of the Civil Service
17. "Accountability Report to the Citizenry on Combating Corruption."

18. Code of Civil Procedure, Articles 35, 193, 222, 223, 495, 497, 696, 697.
19. Law 318 of 1996 and Decree 1320 of 1999 and 2105 of 2001.
20. Document prepared by USAID in Colombia regarding the Anti-corruption program and its results.
21. Memorandum of Understanding.
22. Copy of the document "Corruption, Institutional Performance and Governability in Colombia, based on results from the survey."
23. CONPES document 3186 "A Government Policy for Efficiency and Transparency in Public Contracting."