

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

FINAL REPORT

(Adopted in the plenary session)

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

**FINAL REPORT ON THE IMPLEMENTATION IN THE  
REPUBLIC OF COSTA RICA  
OF THE PROVISIONS OF THE CONVENTION SELECTED FOR REVIEW WITHIN  
THE FRAMEWORK OF THE FIRST ROUND<sup>1</sup>**

**INTRODUCTION**

**1. Legal-institutional system<sup>2</sup>**

According to its Political Constitution, the Republic of Costa Rica is a democratic, free and independent Republic. As a constitutional state, The Republic of Costa Rica has divided its state functions in such a way that there is a separate branch to exercise each of the three basic powers: the legislative branch exercises the legislative function, the executive branch exercises the government function, and the judicial branch exercises the judicial function (Article 9 of the Political Constitution).

The Legislative Assembly is, in light of the democratic nature of the Costa Rican State, a representative Assembly elected by popular vote, pursuant to Article 105 of the Constitution.

According to Article 121 (1) of the Constitution the powers of the Legislative Assembly are to enact, amend, repeal and give an authentic interpretation to the laws. The Legislative Assembly also exercises political control. In this respect, sections 3, 13 and 23 of Article 121 establish the powers of the Legislative Assembly to appoint the Justices of the Supreme Court, to question and censure cabinet ministers, and to appoint special commissions of investigation.

The Legislative Assembly also exercises the *budget function*, and consequently authorizes state expenditure. This function may be seen as a variant of the Assembly's political control over the government, which generally prepares the draft budget (Articles 121 (11), 178 and 179 of the Constitution).

The government or executive function is exercised by the executive branch, understood in its broad sense as including the President and the appropriate cabinet minister (Article 140), or in its strict sense as the President alone (Article 139 of the Constitution).

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<sup>1</sup> This report was approved by the Committee in accordance with Articles 3(g) and 26 of the *Rules of Procedure and Other Provisions*, during the plenary session held on July 30th 2004, within the framework of its Sixth Regular Session, held from the 26th to the 30th of July 2004, at OAS headquarters in Washington DC, United States of America.

<sup>2</sup> Response of the Republic of Costa Rica to the Questionnaire approved on May 24, 2002 and related to the provisions selected for review by the Committee of Experts on the Mechanism for Follow-up of Implementation of the Inter-American Convention against Corruption within the framework of the first round. August 2002, pp. 1, 2, and 3, hereafter *Response of the Republic of Costa Rica to the Questionnaire, Response to the Questionnaire or Updated Response to the Questionnaire*.

At the request of the Republic of Costa Rica, its Response to the Questionnaire, including the corresponding appendices and complementary related information, and the documents submitted by civil society, pursuant to the Regulations and Rules of Procedure, has been posted on the following web site: [http://www.oas.org/juridico/spanish/corresp\\_cr.htm](http://www.oas.org/juridico/spanish/corresp_cr.htm).

The executive branch, in its broad sense, exercises the administrative function, the political direction function, and the regulatory function or power, all of which are governed by Article 140 of the Constitution. The only political control function of the President in the Costa Rican Constitution is the Presidential veto, which is exercised in the process of creating laws.

Finally, the judicial function is exercised by the judicial branch (the judicial bodies). The essential characteristic of the judiciary is its independence from the other branches of state, and the independence of each judge in the exercise of the judicial function (Articles 152 to 167 of the Constitution).

In terms of the legal system, judicial acts of the judicial bodies are subject to review in accordance with the procedure corresponding to each matter. This procedure is – generally – embodied in a separate text that spells out which decisions and orders can be challenged. By law, a court ruling or order may be reviewed when an application is filed seeking reversal, appeal, cassation, a finding of procedural error, clarification, elaboration, and so on, all before a higher court. In turn, the chambers of the Supreme Court of Justice are the courts of last recourse for remedies filed in cases, each chamber having its own jurisdiction over certain subject matters. Other remedies are resolved by the jurisdictional authority indicated by law – that is, either by the Procedural Code applicable to the matter in question or by the Organic Law of the Judiciary.

In addition to the above-mentioned branches of State, the Supreme Elections Tribunal is considered a fourth branch, responsible for overseeing the organization, management and supervision of matters pertaining to elections. This Tribunal enjoys independence in the performance of its tasks, and the other electoral bodies report to it (articles 99 and following of the Constitution).

The Republic of Costa Rica has a presidential system of government, in which the President of the Republic is elected by popular vote, is not accountable politically to the Legislative Assembly, and has no power to dissolve the Assembly. The President appoints the ministers of government at his discretion.

The presidential character of the form of government is modified by the fact that the Assembly may question and censure ministers of government, although this does not imply their political responsibility (Article 121.23), and also by the fact that the Assembly may create commissions of investigation to oversee the work of the executive (Article 121.24).

Because the Republic of Costa Rica is a constitutional state, as the supreme expression of the rule of law, judicial control over the legality and constitutionality of all government action is established in Articles 10, 48 and 49 of the Constitution. Article 10 creates the Constitutional Chamber as a Specialized Chamber of the Supreme Court of Justice to oversee the constitutionality of all normative acts of government, and Article 48 gives that Chamber the power to protect the fundamental rights of individuals through the recourse of habeas corpus and appeal for constitutional protection (*amparo*).

Judicial control over the ordinary legality of the administration's activity is established in Article 49 of the Constitution, which gives the judicial branch authority to hear administrative-contentious cases.

The work of overseeing both the legality and the management of the State function falls to the Office of the Comptroller General (*Contraloría General de la República*), created in 1949 by the Constitution as an auxiliary institution of the Legislative Assembly to maintain surveillance of the public finances and to be the senior body of the audit function (Article 183 of the Constitution).

Special note should be made of the role played within the Costa Rican state by the Public Ombudsman's Office (*Defensoría de los Habitantes*), an oversight body that is part of the legislative branch. Its purpose is to ensure that public sector activity is consistent with the legal and moral order, and that the rights and interests of the citizens will be thereby protected. Although it falls under the legislative branch, the office enjoys functional and administrative independence, and independence of opinion. That is to say, it is not subject to the dictates of other bodies in the exercise of its functions but, consistent with the democratic rule of law, it is subject to oversight by other organizations such as the Comptroller General's office and the courts, each within their area of competence.

Politically, the country is divided into seven provinces and 81 cantons or townships. Each canton is administered by a municipality. These are independent and decentralized local governments responsible for the administration of local services and affairs. The senior political body for taking decisions at the municipal level is the Municipal Council, composed of councilors (regidores) or trustees (síndicos) elected by popular vote every four years. The municipal mayor is elected by popular vote, with the functions and obligations spelled out in article 17 of the Municipal Code (Appendix No. 11 of the Draft Report). The most significant mayoral function is that of performing the functions of general administrator and chief of the municipal units, and in so doing ensuring the organization, functioning and coordination of municipal ordinances, the law and regulations in general, and faithful observance thereof.

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

According to the official records of the OAS General Secretariat, the Republic of Costa Rica ratified the Inter-American Convention against Corruption on March 29, 1996, and deposited its instrument of ratification on May 9, 1997.

As well, the Republic of Costa Rica signed the Declaration on the Mechanism for Follow-up on Implementation of the Inter-American Convention against Corruption on June 4, 2001, at the time of the OAS General Assembly in San Jose.

### **I. SUMMARY OF INFORMATION RECEIVED**

#### **1. Response of the Republic of Costa Rica**

The Committee wishes to recognize the cooperation received from the Republic of Costa Rica throughout the process, and in particular by the Office of the Prosecutor General, Criminal Law Directorate. As the body responsible for coordination, it responded promptly to the Questionnaire on behalf of Costa Rica, and has consistently made itself available to clarify or supplement the contents of that response.

In its response, the Republic of Costa Rica submitted the relevant documents and legal provisions, as listed in the Appendix to this report.

In performing its analysis, the Committee considered information provided by the Republic of Costa Rica up to March 8, 2004, as well as the information provided subsequently to the Secretariat and to members of the analytical subgroup, in accordance with the Regulations and Rules of Procedure.

## **2. Document presented by civil society**

The Committee also received, within the time limit established at its Third Regular Meeting,<sup>3</sup> the document submitted by Transparency International Costa Rica TI-CR, as a civil society organization. That document is included as an appendix to this report.<sup>4</sup>

## **II. REVIEW OF THE IMPLEMENTATION BY THE REPUBLIC OF COSTA RICA OF THE PROVISIONS SELECTED**

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

#### **1.1 CONFLICTS OF INTEREST**

##### **1.1.1 Existence and provisions of a juridical framework and/or other measures and mechanisms designed to enforce this framework**

As detailed in its Response to the Questionnaire, the Republic of Costa Rica has a set of standards of conduct for the correct, honorable and proper fulfillment of public functions, intended to prevent conflicts of interest. Within these standards there are provisions at the constitutional, legal and regulatory levels, as well as mechanisms and other measures designed to prevent conflicts of interest.

The Constitution establishes a comprehensive system that explicitly governs and indicates which types of conduct are incompatible with the functions of the senior positions of government (articles 112, 132, 143 of the Constitution).

Among the standards of a general nature, applicable to all public servants, are those found in article 11 of the Constitution, which declares that the public administration is subject to a procedure of evaluation of results and rendering of accounts, and that public officials are personally responsible for the fulfillment of their duties.

The Public Administration Law (LGAP) also contains provisions of a general nature that refer to the principles of propriety and morality that must govern the conduct of public servants.<sup>5</sup>

The Illicit Enrichment of Public Servants Law (LEISP) expressly identifies the professions and the positions of administration, management or representation, in private and public enterprises, that are incompatible with the public function. That law is of general application to all public servants (Law 6872 of June 17, 1983, Articles 22 and 23).

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<sup>3</sup> Decision on "Updating of Responses to the Questionnaire". This decision was adopted by the Committee of Experts at its session of February 13, 2003, during its Third Regular Meeting, which was held between February 10 and 13, 2003, at OAS headquarters in Washington D.C.

<sup>4</sup> This Report was received within the time limit previously established by the Committee. Additionally, during an informal meeting held on July 26, 2004 with members of the Committee and representatives of the respective chapters of the nongovernmental organization Transparency International from some of the countries examined, those reports were presented orally. In the case of the Republic of Costa Rica, the presentation was made by Transparency International Costa Rica Chapter, in evidence of the willingness of the government of that country and of its civil society that there be such participation.

<sup>5</sup> Articles 113 and 114 (2) among others.

When it comes to commercial and administrative contracting matters, there are rules to prevent conflicts of interest in the public function.<sup>6</sup>

It should be noted that, in addition to the general normative framework, Costa Rican legislation defines specific categories reflecting the organizational structure of the state. Thus, there are rules governing the conduct of officials depending on the system to which they belong, for example the executive branch, the legislative assembly, the judiciary, and the municipal system.<sup>7</sup>

The foregoing provisions establish general requirements for entry into the public service and stipulate incompatibilities and prohibitions applicable to public servants, as well as the disciplinary regimes that range from a reprimand to suspension without pay for public servants (article 41 of the Civil Service Statute, among others).

The Republic of Costa Rica also has mechanisms for enforcing measures to prevent conflicts of interest. Among the most important are the following.

With respect to mechanisms of a preventive nature, according to the information provided by Costa Rica, there is a tacit obligation on the part of bodies that have necessary and sufficient power to appoint senior officials to high-ranking positions in public institutions, to ensure that those persons meet the particular requirements of the position, and that they have no incompatibility for the position.<sup>8</sup>

The Civil Service Regime maintains a registry of persons who are disqualified for the public service on the grounds of unlawful conduct. Costa Rica's response to the Questionnaire indicates that this registry is updated and is distributed upon request to the various institutions that form that Regime.<sup>9</sup>

Costa Rican legislation also contains mechanisms governing the civil,<sup>10</sup> criminal,<sup>11</sup> administrative or disciplinary liability of public servants. Some of these mechanisms are of general applicability, and some are specific. With respect to disciplinary liability, this is covered by the rules referred to in the preceding paragraphs. There is a clear system of disciplinary sanctions that includes oral warning, written reprimand, suspension, and revocation of appointment, depending on the gravity of the offense; and criminal liability governed by the criminal code.<sup>12</sup>

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<sup>6</sup> These rules are found in articles 22 to 25 and 95 to 97 of the LCA; 24 and following of the Regulations to the LCA; 122 and 123 of the LAFPP; and 42 7 of the Law on Trade Negotiations and the Administration of Free Trade Treaties, Agreements and Instruments of International Trade.

<sup>7</sup> The relationship between the executive branch and public servants is regulated by the law promulgating the Civil Service Statute; Executive Decree 2-P of May 12, 1998, and Agreement 3 of May 8, 2002, stipulate the types of conduct that are incompatible with positions of trust (President, Vice President, Ministers, Executive Presidents, etc.); officials providing services to the legislative assembly are subject not only to the provisions of that statute and of the Civil Service Regulations, for purposes of recruitment and personnel selection, but are also governed by the Personnel Law of the institution; officials of the judiciary are subject to the provisions of the Judiciary Law and the Code of Judicial Ethics; and municipal employees are subject to the provisions of the Municipal Code.

<sup>8</sup> Response to question 2 in the Note from the Technical Secretariat, dated April 6, 2004.

<sup>9</sup> Expanded Response of the Republic of Costa Rica to the Questionnaire, pages 19 and 20.

<sup>10</sup> Article 1045 of the Civil Code, and Articles 37, 40 and 111 of the Code of Criminal Procedure.

<sup>11</sup> Article 1045 of the Civil Code; 114 of the Public Budget Law and article 332 (dereliction of duty), article 337 (illegal appointments), article 347 of the criminal code (incompatible dealings) and others mentioned by the country in the document expanding its response. Updated Response of Costa Rica to the Questionnaire, pages 9 and 19.

<sup>12</sup> Article 114 of the Public Budget Law and article 332 (dereliction of duty), article 337 (illegal appointments), article 347 of the criminal code (incompatible dealings) and others mentioned by the country in the document expanding its response. Updated Response of Costa Rica to the Questionnaire, pages 9 and 19.

Among the basic general principles set forth in the Public Administration Law is the *duty of obedience to the law*, and the principles of efficiency, equality, free competence and publicity (article 211 LGAP).

Finally, reference must be made to the various state institutions responsible for enforcing measures to create, maintain and strengthen standards of conduct with a view to preventing conflicts of interest. Those institutions include the Ombudsman's Office (*Defensoría de los Habitantes*),<sup>13</sup> the Office of the Public Ethics Prosecutor,<sup>14</sup> the Comptroller General's Office, the Investigative Commissions of the Legislative Assembly, and the Attorney General's office (*Ministerio Público*).<sup>15</sup> In the case of the Attorney General's Office, as noted by the country in its response,<sup>16</sup> two special prosecutors have been established, by Law 8275 of May 6, 2002, to handle offenses involving the public finances and the public service. The purpose is not only to prosecute with greater expertise crimes against the public finances, but also those against the duties of the public service.

### **1.1.2 Adequacy of juridical framework and/or other measures and of the mechanisms designed to ensure their enforcement**

The standards and mechanisms reviewed in the area of conflicts of interest, based on the information made available to the Committee, are pertinent for promoting the objectives of the Convention. However, the Committee has a number of comments with respect to some aspects of these standards and mechanisms, which it will formulate in the final chapter of this report.

The Committee notes that there are a number of general standards and principles of conduct, applicable to all public servants, for the correct, honorable and proper fulfillment of public functions that encompass the principles established in the Convention. This system, as described in the previous section, contains rules for preventing conflicts of interest, expressed primarily in the Constitution, the Public Administration Law, the Illicit Enrichment of Public Servants Law, and in the laws and regulations governing administrative contracting.

There is also broad sectoral legislation, consistent with the organizational structure of the Costa Rican state. Thus, relations between the various public entities that make up the public administration and its servants are regulated depending on the regime to which the public servant belongs. Relations between the executive branch and its servants are governed primarily by the Civil Service Statute, those of employees of the legislative assembly by the Legislative Assembly Personnel Law, and the Internal Working Rules; those of the judiciary by the Organic Law on the Judiciary, etc.

The Committee recognizes the advantages of a system of standards similar to the foregoing, particularly if it is based on criteria that adjust the rule of conduct for the correct, honorable and proper fulfillment of public functions to the specific features, rank and requirements of each of the entities that make up the public administration, while maintaining its coherence and consistency as a regime of general application that guarantees equality of treatment in regulating the conduct of public servants.

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<sup>13</sup> The main functions of the institution are: (a) to undertake investigation, at its own initiative or upon request, to clarify actions, acts or omissions in public sector administration; (b) to inspect public offices, without prior notice, and to demand any documentation and information necessary for fulfilling its functions; (c) to report to the Supreme Court or the Judicial Inspector's Office any administrative irregularity attributable to the judiciary; (d) to bring judicial or administrative action as provided by law, at its own initiative or upon request by an interested party.

<sup>14</sup> Its main function is to take the administrative steps necessary to prevent, detect and eradicate corruption and to raise ethical and transparency standards in the public service.

<sup>15</sup> Investigates violations committed either through a crime or an offense, at its own initiative or upon complaint.

<sup>16</sup> Updated Response of Costa Rica to the Questionnaire, page 11.

In analyzing the information at its disposal, the Committee notes a degree of dispersion and differing standards that do not seem to be directly related with the specific features, rank and requirements of each body of the public service: this might suggest that it would be useful to bring all public servants under a horizontal regime with a single set of rules. Such a move might assist public servants as well as the general public in understanding more precisely their rights and duties, in the interests of legal security. It would also unify what is now a disparate field of application of regulations, and it would prevent any harmful effects that might flow from such disparity.

The suggested restructuring could also expand this system by ensuring that it include those officials expressly excluded by article 3 and 5 of the Civil Service Statute (popularly elected officials, among others), who are not covered by any other special regime. This would still allow for the existence of special regimes, consistent with the specific features, rank and requirements of each entity that makes up the public administration, and its employees.

The Committee believes that Costa Rica could benefit from information tending to establish evaluation mechanisms that allow the results in this regard to be verified; for example, the instruments and guides drawn up for this area by the Organization for Economic Cooperation and Development (OECD), as applicable.

In light of the foregoing considerations, the Committee will formulate a recommendation.

The Committee also notes that there are substantive rules governing recruitment to the public administration that include among their general requirements that there be no relationship by blood or marriage with certain public employees, mentioned in the previous section of this report.

Nevertheless, from the information available to it, the Committee notes that there are no mechanisms to permit or help the competent bodies to comply with this duty, when it comes to positions of senior rank. The Committee also notes, as the country mentions in its report,<sup>17</sup> that the appointment of executives and senior officials in public institutions is in each case the prerogative of the bodies empowered to do so, which are responsible for ensuring that the person appointed fulfills the specific requirements of the position, and that there is no incompatibility by reason of a candidate's personal, professional or political status. The Committee recognizes, as expressed by the Republic of Costa Rica in its expanded response to question 2 of the Questionnaire,<sup>18</sup> that there is a tacit obligation in Costa Rican law on the part of appointment bodies to ensure that the persons they appoint meet the particular requirements of the position, and that they have no incompatibility with respect to the position. This obligation flows from article 192 of the Constitution which establishes that the appointment of public servants must be based on their demonstrated suitability, and article 337 of the criminal code, which makes it a crime to nominate or appoint anyone to public office without fulfilling the legal requirements. Nevertheless, despite this tacit obligation, the Committee considers that it would be beneficial if the Republic of Costa Rica were to expressly incorporate the duty of those bodies to enforce the requirements for which they are responsible, and in particular, the regime of incompatibilities and disqualifications of public servants. On this point, the Committee will formulate a recommendation.

Similarly, there does not seem to be any mechanisms of a preventive nature, applicable to all positions in the public service, for detecting, anticipating and avoiding the recruitment of individuals who might have a conflict of interest.

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<sup>17</sup> Updated Response of Costa Rica to the Questionnaire, page 18.

<sup>18</sup> Expanded response to question 2 in the Note from the Technical Secretariat, dated April 6, 2004.



The foregoing suggests that such mechanisms should be created or strengthened, in order to help the competent bodies fulfill their preventive function and in this way guarantee that there will be no appointments to the public administration contrary to the system of disqualifications and prohibitions.

On this point, the Committee will formulate a recommendation.

The Committee also views as pertinent the importance of provisions governing this matter to be supplemented by other mechanisms additional to those for which provision has already been made that, subsequent to a public servant's appointment, make it possible to identify or detect surviving causes that may arise during the exercise of the public function and give rise to possible conflicts of interest.

In addition, the Committee is pleased to note that Article 64 of the Anti-Corruption and Illicit Enrichment of Public Servants bill could amend Article 22 of the Law on Administrative Contracting expressly placing a ban on participation in the hiring process by public servants when the cause arises after the contracting procedure begins but before the contract is awarded.

One instrument that the Republic of Costa Rica might consider is the declaration or registry of interests or activities, for certain positions in the public sector, either as part of the system of declarations of income, assets and liabilities, or as an independent instrument. That instrument could also be periodically updated, and the declarations could be made available electronically for search and consultation. It would be advisable for the Republic of Costa Rica to consider the feasibility and the advantages of such an alternative.

On this point, the Committee will formulate a recommendation.

With respect to the definition of "public servant" in Costa Rican legislation, that definition is very broad, and this constitutes a step forward in implementing the Convention. The Public Administration Law treats the terms public employee, civil servant, public official and other similar terms as equivalents, and applies them to any person providing services to the administration or on its behalf, as part of its organization, by virtue of a valid act of appointment, with full independence of the imperative, representative, remunerated, permanent or public nature of the respective activity (Article 111 of the Public Administration Law).

The Committee notes that the second article of the proposed Law on Corruption and Illicit Enrichment in the Public Service expressly includes in its definition, in addition to the foregoing elements, and for purposes of this law, de facto public officials, (those who perform the same activity as a public servant but without appointment or without a valid and effective appointment), persons working for public enterprises of any kind, and those working for public entities responsible for activities subject to common law, physical persons, attorneys, administrators, managers and legal representatives of juridical persons who hold, administer or exploit funds, goods or services of the public administration, in any capacity.

With respect to senior positions in the administration, the Committee notes that Costa Rican law includes rules and principles governing the system of incompatibilities and disqualifications applicable to them. Those regulations include virtually absolute incompatibility with other public or private activities, with the exception of certain activities provided they do not affect absolute dedication to the position, or its independence, as well as a system of sanctions according to the level of responsibility of those positions (for example, article 112, 132 and 143 of the Constitution referred to earlier in this report). The foregoing represents an advance in implementing the Convention.

The Committee welcomes the system of sanctions described in the preceding section of this report, which covers civil and criminal liability as well as administrative or disciplinary liability. It notes the extension to the statute of limitations, introduced by Law 8004 of June 22, 2000, as stipulated in article 150 of the Constitution, which currently imposes liability on public political officials at the highest level (President and Ministers of Government) for deeds that do not involve a crime, up to four years after they had ceased their functions.

With respect to the activities in which public servants may engage subsequent to the exercise of their functions, the Committee notes the absence of rules in this regard. It believes it would be advisable to make provisions such as prohibiting public servants from participating in the handling of official matters of which they had knowledge, or which are being processed before entities with which they had a recent relationship, and in general, to make provision for situations that could involve taking undue advantage of one's status as a former official.

The Committee is pleased to note that the Article 53 of the Anti-Corruption and Illicit Enrichment of Public Servants Bill establishes penalties for certain conduct by former public servants, and article 64 proposes an addition to the Law on Administrative Contracting, which would bar former civil servants from bidding on contracts offered by institutions subject to that law for a period of up to six months following their departure from public service. Should this bill be enacted, it could be considered a step forward in implementing the CICC.

The Committee suggests that attention be given to developing rules that would restrict or prohibit persons who have occupied positions of administration or management in private institutions, subject to government control and regulation, or who have exercised any public responsibility with respect to the respective supervisory or regulatory agency, from occupying any position of the kind referred to in the preceding paragraph during a reasonable period of time. Such a prohibition should extend for a reasonable length of time after the official has ceased those functions and should not completely curtail the right to work set forth in Article 56 of the Constitution. In this respect, the Committee recognizes the existence of article 53 on "prohibitions subsequent to official service" contained in the draft of the Law on Corruption and Illicit Enrichment in the Public Service, which contains some provisions in this area.

In light of the foregoing observations and comments, the Committee will formulate a recommendation.

The Committee also considers that the Republic of Costa Rica could benefit from implementing new programs of awareness and training, targeted at public servants, concerning the rules of conduct for the correct, honorable and proper fulfillment of public functions, including those relating to conflicts of interest.

As noted by Transparency International, Costa Rican Chapter (TI-CR) there are problems caused by the inadequate training of the public servants who must process matters relating to the system of incompatibilities and disqualifications in the public service.<sup>19</sup> The Committee welcomes efforts that the country has made in this direction, and it notes that article 4 of the law creating the Criminal Jurisdiction of Finance and the Public Service deals with this matter specifically, and makes the Judiciary School responsible for ongoing technical training of officials in that jurisdiction.

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<sup>19</sup> Comments of Transparency International, Costa Rican Chapter (TI-CR) on the Response of Costa Rica to the Questionnaire, pages 20 and 21.

The Committee observes that the rationale for the training of public servants is consistent with general principles that are established in Costa Rican law (article 67 of the Constitution, article 37 (d) of the Public Service Statute).

It would also be useful distinguish more sharply between conflicts of interest, disqualifications and incompatibilities, inasmuch as these concepts, which differ in content and scope relative to regulatory provisions in the Republic of Costa Rica, are sometimes used interchangeably, leading to potential confusion when the time comes to implement and apply enforcement. With this in mind, the Committee will offer a recommendation.

In light of the foregoing considerations, the Committee will formulate some recommendations in the final chapter of this report.

### **1.1.3 Results of the juridical framework and/or of other measures and of the mechanisms designed to ensure their enforcement**

In addition to the control exercised by the Office of the Comptroller General to detect and control conflicts of interest, the Republic of Costa Rica has a registry of persons disqualified from public service, which is the responsibility of the Civil Service Regime.

The Committee notes that the Civil Service Regime, as described in section 1.1.1, is of limited scope, and applies only to officials who are protected by the Civil Service Statute. The Committee considers that the state reviewed could expand and improve the registry and its use so that it could constitute (if it does not already) an effective instrument for preventing and detecting appointments to the public service that might be contrary to the provisions on prohibitions and disqualifications, by establishing a requirement of obligatory consultation of this registry prior to any appointment of civil servants of a given level or rank.

With respect to enforcement of sanctions and the promptness of judicial proceedings, the National Chapter of Transparency International (TI-CR) declared as follows:

*“As we have indicated, ordinary administrative procedures are very slow, but they do achieve an immediate objective, the suspension of the official in question, and a secondary objective, which is the dismissal of any official whose irregular acts are demonstrated, or the resignation of the corresponding executives. The judicial procedures resulting from application of these procedures and rules are so slow that many times the decision is avoided because of the statute of limitations, and in few cases do the proceedings result in a conviction.*

*“There have been studies conducted by the Judiciary that demonstrate the slowness of procedures. Consequently, a comprehensive overhaul of procedures has been proposed. There is a project to reform the Judiciary, prepared with funding from the IDB, which has been operating for several years. Nevertheless, the problems continue. In criminal matters the Prosecutor General, in recent statements to the press, has said that he is subject to pressure, that he does not have sufficient staff, and that the cases he must handle are sometimes extremely complex, and officials do not have the proper preparation to handle them. The most obvious case was the collapse of the Banco Anglo-Costarricense, a State bank, where the prosecutors had to be given special training and support in order to understand the complexities of banking and stock exchange transactions. That case has still not resulted in a definitive ruling, after seven years.”*

On this point, the Committee recognizes, as stated by TI-CR, that administrative procedures do in fact achieve their immediate objective. The Committee also recognizes the progress that the Republic of Costa Rica has made in overcoming the problems relating to the slowness of these procedures, not only through the project to reform the Judiciary, mentioned by Transparency International, but also by creating the Criminal Jurisdiction of Finance and the Public Service (Law 8275 of May 6, 2002) which recognizes and deals definitively with crimes against the duties of the public service.

The Committee encourages the Republic of Costa Rica to continue with the amendments it believes pertinent in the justice administration system in order to speed up judicial procedures pertaining to violations of the standards of conduct for public servants. On this point, the Committee will formulate a recommendation.

The Committee recognizes that the general and limited nature of the information provided does not allow a thorough assessment of results in this field.

Taking these circumstances into account, the Committee will formulate recommendations.

**1.2. STANDARDS OF CONDUCT AND MECHANISMS TO ENSURE THE PRESERVATION AND PROPER USE OF RESOURCES ENTRUSTED TO PUBLIC SERVANTS.**

**1.2.1. Existence and provisions of a juridical framework and/or other measures and mechanisms designed to enforce this framework.**

The rules of conduct and the mechanisms for ensuring the preservation and proper use of resources entrusted to public servants that the Committee has examined, on the basis of the information available, are relevant for promoting the purposes of the Convention.

The Committee notes that Costa Rican law contains rules of a general nature that require public servants to conduct themselves in the public interest, and they provide civil, administrative and criminal liability for those who do not observe the established criteria and principles. Some of these provisions of a general nature were already cited in section 1.1.1 of this report.

In the first place, the Committee must note that article 11 of the Constitution contains the so-called principle of legality in administrative action. Law 8003 of June, 2002 added to that article a second paragraph which provides as follows: *“The public administration in its broad sense shall be subject to a procedure of evaluation of results and rendering of accounts, with the consequent personal liability of officials for the fulfillment of their duties. The law shall indicate the means by which the control of results and rendering of accounts is to operate, as a system covering all public institutions.”*

The Public Administration Law (LGAP) also contains provisions establishing the liability of public servants to third parties, and regulating the internal distribution of these liabilities. It also provides for a disciplinary regime for public servants. Among its provisions, article 199 makes public servants personally liable to third parties if they are guilty of negligence or fraud in the performance of their duties or by virtue of their position, even when they use only the means and opportunities that their position offers; and article 203, which indicates that the administration must fully recover any amounts that it has paid in damages caused to a third-party by the negligence or fraud of a public servant, in light of that servant’s participation, if any, in producing the damage.

The Financial Administration and Public Budget Law (LAFPP) develop the principles of article 11 of the Constitution. With respect to its purposes and parameters of interpretation, that law cites the importance of ensuring that public resources are obtained and applied in accordance with the principles of economy, efficiency and efficacy. It also develops systems to facilitate information on the financial performance of the public sector as support to the decision-making process and the evaluation of management, and it defines the framework of responsibility for participants in the systems governed by that law.

The LAFPP includes a broad range of acts that produce administrative liability in government financial management. Among other provisions, it cites the omission, delay, negligence or imprudence in the preservation and safeguarding of goods or rights of public ownership or fraudulent acts against their protection, regardless of whether there has been damage or injury as a result; the use of public funds over which an official has powers of use, administration, custody or disposal, for purposes other than those to which they are devoted by law, regulation or administrative law, even when those purposes are equally in the public interest or compatible with the purposes of the entity or the agency in question; and the improper release or use of confidential information. As well, it establishes the liability of public servants responsible for adopting or implementing corrective measures, when they facilitate improper use because of a deficiency in internal controls which they should have remedied in a reasonable and timely manner (article 110 LAFPP).

These provisions also refer to feigned or fraudulent acts of administration, and the improper use and safekeeping of public goods or funds, or damage or loss of those goods held in custody by a public servant whose powers allow or require him to be responsible for them (article 110 (h and p) LAFPP).

The disciplinary regime relating to such conduct is provided in article 113 of that law, and includes measures ranging from written reprimand to dismissal without compensation. It also provides for civil liability, understood as the obligation of public servants to pay or repair, at their own expense, any damage caused to the administration through negligence or fraud, whether or not a service relationship exists with respect to them (article 114 and following LAFPP).

The Internal Control Law (LGCI), taken together with the CGR Law, requires executives and senior appointees of the public administration to administer and control public funds efficiently and to guarantee the legality and effectiveness of control and management systems. Among their obligations are those of protecting and preserving public property against any loss, waste, misuse, irregularity or illegal law (article 8 LGCI). In turn, those executives have the support, in their oversight duties, of internal audit offices within each institution. These audit offices have full independence and complete liberty to report any irregularity to the corresponding bodies, and to coordinate with them in connection with actions to be taken to consider sanctions for any irregularity.

The LGCI also contains grounds for liability relating to the internal control systems of the CGR. Senior officials and other public employees incur administrative and civil liability when through their actions they undermine the internal control system or fail to take the steps necessary to establish, maintain, improve and evaluate it, and when they obstruct or delay the work of the internal auditors. This law also regulates the system of applicable sanctions (articles 39 to 43 LGCI).

Contracting activity by the main branches of government, the CGR, the Public Ombudsman, the decentralized territorial and institutional sector, nongovernmental public entities, public enterprises, and any other physical or juridical person who uses, in whole or in part, any public resource is regulated by the Administrative Contracting Law (LCA), Law 7494 and its regulations. That law also contains standards for preserving and ensuring the proper use of resources entrusted to public officials in the

performance of their duties, as well as a disciplinary regime for persons who fail to fulfill their responsibilities (articles 93 and following).

Finally, the criminal code has a section on acts of corruption by public servants. It includes the crimes of *cohecho propio* (where the official accepts a bribe to perform or to abstain from any law that is a normal part of his duties),<sup>20</sup> aggravated corruption,<sup>21</sup> extortion,<sup>22</sup> illegal exactions,<sup>23</sup> embezzlement,<sup>24</sup> and fraudulent facilitation of removal of funds.<sup>25</sup>

At the same time, the Office of the Public Ethics Prosecutor, which falls under the Office of the Prosecutor General (PGR), which will be described in section 3 of this report dealing with senior oversight bodies, has the function of reporting and laying charges before the courts against public officials and private persons suspected of illicit acts in areas within the competence of the Criminal Jurisdiction of Finance and the Public Service (Article 3.h) of the Organic Law of the PGR).

Among the mechanisms for enforcing compliance with the foregoing provisions are the following: (i) the principle of rendering of accounts and personal liability of public service for the damage they cause to the administration, established in the Constitution itself and developed further in legal and regulatory texts; (ii) the guarantees offered by the procedure of administrative contracting; (iii) the role played by the CGR, as the main supervisory and oversight body, and other auxiliary bodies with competence in the area; and (iv) the regime of liability of public servants who manage government financial resources, including civil, administrative and criminal liability.

In connection with this, notice should be taken of the regulatory provisions that, as indicated by the Republic of Costa Rica, determine the procedures for obtaining reparations for damages from the assets of the public official responsible.

First, if the public official's conduct that caused the government or a third party to sustain some loss or injury is classified as a crime under the Costa Rican Penal Code, then the applicable law is Article 37 *et seq.* of the Code of Criminal Procedure. Under those provisions, while the criminal case is underway an "Acción Civil Resarcitoria" [civil suit seeking compensatory damages] can also be brought. This remedy can also be brought not only to recover assets, but also to claim compensation for any damages and injury sustained as a consequence of the crime. When the aggrieved party is the Central Government, the Attorney General must file the civil suit; when the aggrieved party is an entity or organ with its own legal personality, a representative of the Attorney General's Office may bring suit. If a third party sustained damage or injury caused by the public official's conduct, then that third party must file the civil suit seeking compensatory damages with the respective court.

Second, if the conduct in question does not rise to the level of the criminal behaviors classified in the Penal Code, Article 308 *et seq.* of the General Law on Public Administration makes provision for what is known as the "administrative proceeding," which *launches* an administrative investigation of the accused public official to determine whether the latter is liable and to identify and quantify the damages or injuries he/she may have caused. If a public official found guilty does not pay for the property or resources damaged or injured, or make good the other categories of damages and injuries, the verdict of

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<sup>20</sup> Criminal Code of the Republic of Costa Rica, Article 341.

<sup>21</sup> *Ibid*, Article 342.

<sup>22</sup> *Ibid*, Article 348.

<sup>23</sup> *Ibid*, Article 349.

<sup>24</sup> *Ibid*, Article 354.

<sup>25</sup> *Ibid*, Article 355.

the administrative proceeding becomes an executive order and the State may collect from the public official either through administrative channels or through the courts.

In its response, the Republic of Costa Rica also mentioned other mechanisms such as the national budget regulations, as an instrument for supervising the use of public resources; and the electronic system of government procurement, known as *Comprared*, by which state purchasing institutions post their requirements for goods, works and services on the Internet.<sup>26</sup>

### **1.2.2. Adequacy of the juridical framework and/or other measures and of the mechanisms designed to ensure their enforcement**

The standards and mechanisms in the area of the preservation and proper use of resources entrusted to public servants, based on the information made available to the Committee, are pertinent for promoting the objectives of the Convention.

In the Costa Rican legal system, these rules are to be found primarily in the Political Constitution, the Financial Administration and Public Budgets Law (Law 8131), the General Law on Internal Control, the Organic Law of the Office of the Comptroller General, the General Law on Administrative Contracting and its regulations, and other supplementary provisions such as those applied to the use of official vehicles.<sup>27</sup>

The Committee has noted that there are legal and regulatory provisions of a civil, administrative and criminal nature that describe offenses or conduct that affect the proper handling of public property, the sanctions provided for the responsible officials and private individuals, and the mechanisms for securing reparations or compensation for property damage that such conduct causes to the state.

On this point, the Committee observes that in recent years there have been significant changes that demonstrate a tendency to reinforce the principles of efficiency, efficacy, transparency and accountability, as essential elements in the management of the public purse. In particular, the Committee wishes to highlight the reforms to article 11 of the Constitution. As described in the previous section of this report, that reform enshrined in the Constitution the concepts of accountability and personal liability for public officials who fail to produce the stipulated management results and who fail to render timely and sufficient accounts. The Committee considers this to be an advance in implementing the Convention.

It is important to note the scope of the grounds that give rise to disciplinary, administrative and criminal liability, as noted in the previous section. The LGCI (Chapter V) adds to the grounds for administrative liability for failure to comply with the various components of the internal control system. It also introduces a reform to article 71 of the CGR law, which extends the statute of limitations relating to administrative responsibility.

With respect to mechanisms for enforcing these rules, the Committee notes that there are bodies and procedures that give effect to them and that make it possible, in the final analysis, to achieve the purposes for which they were adopted.

The Committee suggests that, given the updates and modifications that have been made to the rules and mechanisms governing this area, the Republic of Costa Rica continue implementing

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<sup>26</sup> Updated Response of Costa Rica to the Questionnaire, pages 23 and 24.

<sup>27</sup> Law on Travel over Public Roads, Law 7331 of April 13, 1993; "Manual on Technical Standards of Internal Control Relating to the Use, Control and Maintenance of Vehicles" (published in the Official Gazette of February 2, 1996).

dissemination and training programs aimed at public servants, as well as mechanisms for answering any queries that they may have in this respect. The need for programs of this kind is also noted in the comments of TI-CR on the Response of the Republic of Costa Rica to the Questionnaire.<sup>28</sup>

In light of these considerations, the Committee will formulate a recommendation.

The Committee is pleased to note the work carried out by the training department of the CGR. In the past year, according to information furnished by the State undergoing review, that department has delivered 60 seminars to various institutions in the public sector, about the new internal control system introduced with the General Law on Internal Control. The Committee encourages the Republic of Costa Rica to continue to make progress of that nature. On this point, the Committee will formulate a recommendation.

### **1.2.3. Results of the juridical framework and/or of other measures and mechanisms designed to ensure their enforcement**

As stated in Costa Rica's response to the Questionnaire, there are no results to report on the application of the rules and mechanisms mentioned above.<sup>29</sup>

The Committee notes that one reason for this situation could be the changes in the country's legal system in the last three years, which might make it premature to produce indicators for determining the effectiveness of the system with respect to these new components.

The limited nature of the information available does not allow the Committee to make a comprehensive assessment of the results in this field. Bearing these circumstances in mind, the Committee will formulate a recommendation.

According to figures presented to the Committee by the State undergoing review,<sup>30</sup> over the years 2000, 2001, and 2002, the judicial system admitted the following numbers of cases involving the specified crimes: 0, 4, and 1 cases of acceptance of bribes, respectively; 4, 6, and 4 cases of illicit enrichment; 19, 24, and 28 of malfeasance; and 239, 115, and 161 of embezzlement.

The information furnished also indicates the number of verdicts handed down in connection with those crimes over the same periods. During the year 2000, 27 verdicts were handed down in embezzlement cases (14 convictions and 13 acquittals); during 2001, 34 embezzlement verdicts were given (24 convictions and 10 acquittals), along with one acquittal in a malfeasance case; in 2002, 41 embezzlement verdicts were issued (16 convictions and 25 acquittals), together with three in malfeasance cases (1 conviction and 2 acquittals).

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<sup>28</sup> Comments of Transparency International, Costa Rica Chapter (TI-CR) to the Response of Costa Rica to the Questionnaire, pages 23 and 24.

<sup>29</sup> Response of Costa Rica to the Questionnaire, page 7.

<sup>30</sup> Comments by the Republic of Costa Rica on the Draft Preliminary Report on Implementation in Costa Rica of the Convention Provisions Selected for Analysis in the First Round and on the Comments of the Analysis Subgroup, pp. 9-10.



### **1.3. MEASURES AND SYSTEMS REQUIRING PUBLIC SERVANTS TO REPORT TO APPROPRIATE AUTHORITIES ACTS OF CORRUPTION OF WHICH THEY ARE AWARE IN THE PERFORMANCE OF PUBLIC FUNCTIONS**

#### **1.3.1. Existence and provisions of a juridical framework and/or measures and mechanisms designed to enforce this framework**

The Republic of Costa Rica has a set of standards requiring public servants to report to appropriate authorities any acts of corruption of which they become aware.

The Code of Criminal Procedures provides (Article 281.a) that public servants have the obligation to report prosecutable crimes of which they become aware in the exercise of their functions, to the Public Prosecutor's Office, to a criminal court, or to the Judicial Police.

There are provisions of general applicability that also cover public servants, such as article 6 of the Regulations to the LEISP, referring to the obligation of all persons to report facts of which they become aware that might constitute illicit enrichment.

Within the internal regulations of public institutions that the Committee has examined and that were presented by the country in its response to the Questionnaire,<sup>31</sup> there are also provisions that make it an inherent duty of public servants to report irregular acts or situations of which they become aware in the course of their duties. For example, Article 4 (2) of the Code of Judicial Ethics requires public officials working for the judicial branch to facilitate and channel complaints of acts inconsistent with probity and good conduct committed by other public officials, regardless of their rank and function, and obliges them to report immediately to their superior any act that contravenes internal Codes of Ethics and regulations.

Another relevant provision is found in article 22 of the Code of Criminal Procedure, which allows the Attorney General's office to dispense, wholly or partially, with criminal prosecution, to limit it to certain violations or to some of the persons involved in them, in the case of organized crime, criminal violence, serious offenses, and complicated proceedings, where the accused cooperates with the investigation, provides essential information for preventing the acts from continuing, or others from being committed, helps to clarify the facts, or provides useful information to demonstrate the involvement of other accused persons, provided that person's conduct is less reproachable than the punishable acts whose prosecution he facilitates or whose continuation he avoids.

#### **1.3.2. Adequacy of juridical framework and/or other measures and of the mechanisms designed to ensure their enforcement**

The standards and mechanisms related to the measures and systems that require public servants to report acts of corruption in the public service of which they are aware, as reviewed by the Committee based on the information made available, are relevant for the promotion of the objectives of the Convention.

The Costa Rican legal system gives public officials the obligation to report when they become aware of *noticia criminis*. The Criminal Code expressly supplements that obligation and makes dereliction of duty a crime applicable to any public official who, having the duty to report, does not do so (article 281.a of the Code of Criminal Procedures and Article 332 of the Criminal Code).

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<sup>31</sup> Response of Costa Rica to the Questionnaire, page 26.

The Committee believes that it might be convenient for the Republic of Costa Rica to consider establishing further rules governing this obligation. Such rules could include provisions to facilitate reporting by public servants, and reporting requirements that will not inhibit potential whistleblowers, for example, by maintaining confidential, at the administrative level, the identity of the person reporting.

In this regard, the Committee is pleased to learn that one of the functions of the Office of the Public Ethics Prosecutor is to receive complaints of acts that violate ethics in public service or that constitute acts of corruption. It is also pleased to acknowledge, as stated by the Republic of Costa Rica, that one of the policies enforced by the Prosecutor is to keep the identity of the person who files the complaint confidential, whether that person is a civil servant or a private citizen.

The State undergoing review also reports that the projects on which the Prosecutor's Office has been working include a code of standards of ethical conduct for public servants, together with the interest in including a specific chapter on filing complaints, requirements, and safeguards for the complainant, such as the confidentiality of his/her identity, before administrative bodies.

The Committee urges the Republic of Costa Rica to consolidate those efforts and to take the steps it deems necessary to formalize the practice whereby the identities of individuals making complaints are protected, which would represent progress with the implementation of the CICC.

The Committee welcomes the fact that article 6 of the General Law on Internal Control provides that the CGR, the administration and the internal auditors may protect the identity of citizens, whether they be public servants or not, who present complaints to their offices. This same principle could be further developed and applied more generally to other bodies.

The Committee also notes that there is no effective protection against threats or retaliation that public servants may suffer as a result of submitting reports. On this point, the Republic of Costa Rica declares the following, in the Expansion of its Response to the Questionnaire: *"One aspect that facilitates the reporting by public employees of corrupt acts is the fact that public employees in the Republic of Costa Rica enjoy a high degree of employment security, which means that fear of losing their job is not an obstacle to reporting."*<sup>32</sup>

Bearing this point in mind, the Committee believes that the Republic of Costa Rica might benefit from instituting a whistleblower protection system that, guarantees public servants, in addition to the employment stability referred to in the preceding article (which they now enjoy), that they will not suffer reprisals or other negative consequences from reporting. If it considers this appropriate, the Republic of Costa Rica could also use such a system to provide greater protection to officials who report illegal acts in which their superiors may be involved.

On this point, the Committee will formulate a recommendation.

The Committee recognizes that in the Costa Rican legal system, the procedure to be followed in imposing administrative sanctions guarantees due process of law, the right of self-defense, and the right to appeal decisions before administrative bodies. It also recognizes that the existence of the amparo remedy established in Article 48 of the Constitution and elaborated upon in the Law on Constitutional Jurisdiction constitutes an additional mechanism protecting a civil servant who files a complaint.

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<sup>32</sup> Update to the Response of Costa Rica to the Questionnaire, page 27.

The Committee also sees progress towards the introduction of witness protection in article 22 of the CPP, which empowers the Attorney General's office not to proceed with criminal action in the case of serious crimes where the perpetrator provides information to demonstrate the involvement of other accused persons.

The Committee recognizes that, in accordance with the information submitted by the State undergoing review, "the Office of the Public Ethics Prosecutor is already putting together programs to disseminate and promote the standards that will improve the detection of breaches of standards of conduct and the commission of corrupt acts. One essential issue in all this is the duty of civil servants to report conduct of this type,"<sup>33</sup> and it urges the Republic of Costa Rica to consolidate those programs. Bearing these circumstances in mind, the Committee will formulate a recommendation.

### **1.3.3. Results of the legal framework and/or of other measures and of the mechanisms designed to ensure their enforcement**

In its response, the Republic of Costa Rica presents a statistical table showing, for each category of public servant, the number of applications and complaints admitted by the CGR from January 1 to December 31, 2002. The Committee notes that 33.9% of those reports came from the public sector, 51.8% from the private sector (36.3% from individuals and 15.5% from legal persons), 8.6% were anonymous, and 5.8% were not classified.<sup>34</sup> However, according to information furnished by the State undergoing review, those complaints are against not just public servants but also third parties that have access to public resources.

The foregoing might be an indicator that the public sector, to which public officials belong, is in fact submitting these complaints. The data appear to show that the absence of a fuller system of protection is not a problem for Costa Rican public servants who have knowledge of *noticia criminis*. Nevertheless, the Committee believes that the Republic of Costa Rica could benefit from establishing explicit guarantees to protect these officials.

According to the information submitted by the State undergoing review<sup>35</sup>: "In the period from April 15 to June 15, 2004, the Office of the Public Ethics Prosecutor received 17 complaints alleging irregularities committed by public servants. Of those 17 cases, 7 were reported by public servants and 10 by private citizens."

In the absence of further and more complete information, the Committee cannot make a comprehensive assessment of the results in this field. Bearing this in mind, the Committee will formulate a recommendation.

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<sup>33</sup> Comments by the Republic of Costa Rica on the Draft Preliminary Report on Implementation in Costa Rica of the Convention Provisions Selected for Analysis in the First Round and on the Comments of the Analysis Subgroup, p. 14.

<sup>34</sup> Update to the Response of Costa Rica to the Questionnaire, Annex 44.

<sup>35</sup> Comments by the Republic of Costa Rica on the Draft Preliminary Report on Implementation in Costa Rica of the Convention Provisions Selected for Analysis in the First Round and on the Comments of the Analysis Subgroup, pp. 9-10.

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

### **2.1 EXISTENCE AND PROVISIONS OF A LEGAL FRAMEWORK AND/OR OF OTHER MEASURES**

As a preventive system to promote morality in the public service, the Constitution of 1949 established the obligation of certain public officials to declare their assets. Subsequently, Law 1166 of June 14, 1950 gave form and content to that obligation, and later laws have developed it further.

The obligation of certain officials to declare their income is currently regulated, by order of ranking, in article 193 of the Constitution, article 42 of the Organic Law of the Comptroller General's Office, articles 7 to 18 of the Law on Illicit Enrichment of Public Servants (LEISP) and articles 10 to 60 of the Regulations to the LEISP.

With respect to the scope of application of the duty or obligation to declare, article 193 of the Constitution makes it one of the duties of the President, Ministers of Government and officials who handle public funds to declare their wealth and holdings. By delegation, the regulations to the LEISP expand this list. Initially the list was restricted to officials responsible for handling public funds. Subsequently, the rule was broadened to include other public servants in positions of senior rank or importance.

The current regulations describe in detail the positions in the public administration that are required to submit these declarations, and it includes a broad spectrum of public servants, regardless of their rank, the form of organization, or the nature of the linkage, category or permanence of their employment. This is consistent with the definition of public servant used in Costa Rican law, as noted in section 1.1.2 of this report. That definition also includes persons providing services to public enterprises (article 2 LEISP and articles 27, 28 and 29 of the regulations to the LEISP).

According to the information provided by the Republic of Costa Rica in its response to the Questionnaire, the list of positions required to submit a declaration of assets amounts to approximately 3900.<sup>36</sup> This does not include deputies of the Legislative Assembly, or the members of Municipal Councils.

These declarations are submitted to the Audit Bureau of the CGR, which records them and verifies that the information is correct, and that it has been presented within illegally established time limits.

The rules for assessing the declarations of income, assets and liabilities are also regulated. In the case of omissions or errors in the data submitted, the CGR will ask the filer to complete or clarify the declaration, within certain time limits (articles 10, 11 and 24 of the regulations to the LEISP).

Costa Rican law requires declarations to be submitted on three occasions. The first declaration is submitted 20 days after the official takes office; that declaration is to be updated each year, showing assets acquired during the year, and filed in the second half of May; a final declaration, showing any changes in assets since the last declaration, must be filed within one month after the official leaves office (articles 12 and 16 of the LEISP, and articles 13, 14 and 15 of the regulations to the LEISP).

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<sup>36</sup> Update to the Response of Costa Rica to the Questionnaire, p. 28.

The CGR may also request an accounting of assets and any increase or use thereof by public servants, who must comply within the established time limits (article 15 LEISP).

As to the contents of the declarations of income, assets and liabilities, article 8 of the LEISP gives the CGR the power to determine by regulation which income and rights must be included in the asset declaration forms. It has been decided that those forms must contain information on property, income, rights and obligations of the public official within and outside the country, and the necessary data for identifying them. In order to facilitate presentation, the CGR provides preprinted forms for the different types of declaration (article 8 LEISP).

Declarations of income, assets and liabilities constitute a sworn statement, which means that they must be made under oath (articles 7, 12 and 16 of the Law on Illicit Enrichment of Public Servants).

Among the powers of the supervisory body, legislation authorizes the CGR to examine and verify in full detail the accuracy and truthfulness of the declarations filed (Article 14 LEISP).

The registry of information from declarations that is kept by the CGR is confidential, without prejudice to the information that may be required by the Attorney General's office, the courts, the interested party or special commissions of the Legislative Assembly. There are also penalties for officials who violate this confidentiality (article 10 of the LEISP and articles 25, 26 and 28 of its regulations).

The LEISP provides two types of penalties for failure to file. The first involves dismissal, for failure to present initial and annual declarations of income, assets and liabilities. The second involves disqualification from reappointment where a departing official has left the service without submitting a final declaration. Failure to submit this final declaration will also trigger a summary investigation by the CGR to determine whether any changes in the former public servant's holdings suggest irregularities that might constitute a crime, in which case the matter is turned over to the Attorney General's office (articles 13, 16 and 17 LEISP).

According to article 27 of the LEISP, the CGR has the power to schedule audits to determine whether an official has engaged in illicit enrichment in the course of his duties. Those audits are generally applied to a preselected sample of public servants.<sup>37</sup>

## **2.2 ADEQUACY OF THE LEGAL FRAMEWORK AND/OR OF OTHER MEASURES**

The standards and mechanisms related to systems for the disclosure of income, assets and liabilities regulated by Article III, Paragraph 4 of the Convention reviewed by the Committee, based on the information made available, are pertinent for the promotion of the objectives of the Convention.

The main provisions in this regard are contained in the LEISP and its regulations which, as pointed out above, regulate the various aspects of this issue. Public servants required to file declarations must do so before the CGR, the state's supervisory and audit body (article 12 LEISP).

The Committee notes that the legislation governing declarations of income, assets and liabilities is appropriate in itself, but this cannot be said of the use that is made of that instrument. The information submitted to the Committee suggests that the system operates in a purely formal manner, and that there is no ongoing, in-depth verification that its objectives are being achieved.

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<sup>37</sup> Update of the Response of Costa Rica to the Questionnaire, page 29.

This assessment seems to be shared by Transparency International, Costa Rican Chapter (TI-CR), which has said: “*Little or no use has been made of this legal instrument for imposing sanctions: the only emphasis has been on timely submission of the declaration.*”<sup>38</sup>

This problem may result from the lack of a clear definition of objectives in the legislation establishing this instrument. That would suggest the need to define the objectives, either as a means to promote greater transparency in the functions of public servants for detecting illicit enrichment or other criminal behavior, or as an instrument for detecting and preventing conflicts of interest.

In light of the foregoing, the Committee will formulate recommendations

The Committee also believes that the country under analysis could benefit from implementing a single instrument (system) covering both the system for the declaration of income, assets, and liabilities, and the system for declaring interest; this is because, from the perspective of administrative efficiency and complementing technologies and logic, both these matters should be addressed by a single system. The Committee will make a recommendation on this point.”

With respect to the scope of application of this instrument, the Committee notes that there is a broad list that includes, among other positions, the President and Vice President of the Republic, Ministers of Government, the Director General of Direct Taxation, Magistrates of the Supreme Court, etc. According to the interpretation given by the CGR in various pronouncements, this list is illustrative and not exhaustive, which means that a position that is not included on the list could be subject to the provisions of the Law because of the functions it performs.<sup>39</sup> The Committee notes, however, that the list does not include other officials occupying positions that, by their nature, could facilitate or generate illicit enrichment or other improper acts against the public interest, for example popularly elected positions such as deputies of the Legislative Assembly.

The Committee is pleased to learn that bills currently before the Legislature include deputies, councilors and mayors among the public officials that must disclose their assets. This is the case with the Anti-Corruption and Illicit Enrichment Bill and the bill titled “Code of Parliamentary Ethics,” which make the declaration of assets mandatory for deputies, councilors and mayors. With reference to this obligation, the Republic of Costa Rica states that it “*will very likely become a legal requirement within a few months.*”<sup>40</sup>

Taking this circumstance into account, the Committee will formulate a recommendation.

Costa Rican legislation regulates and protects the confidentiality of declarations of income, assets and liabilities, with the exceptions noted above. On this point, the Committee observes that, for the purposes of article III (4) of the Convention, state parties have agreed to consider systems “*where appropriate, for making such registrations public*”.

Based on the above provisions, it is suggested that the country under analysis consider incorporating the publication of those declarations, where appropriate.

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<sup>38</sup> Comments of Transparency International, Costa Rican Chapter (TI-CR) to the Response of Costa Rica to the Questionnaire, page 30.

<sup>39</sup> See notices of the CGR 4350 of April 17, 1996, 5683 of June 2, 1998, and 03134 of March 19, 2002.

<sup>40</sup> Comments by the Republic of Costa Rica on the Draft Preliminary Report on Implementation in Costa Rica of the Convention Provisions Selected for Analysis in the First Round and on the Comments of the Analysis Subgroup, p. 15.

Taking into account the above consideration, the Committee will formulate a recommendation.

The Committee also suggests that the Republic of Costa Rica establish time-bound systems for verifying the contents of these declarations. As the country said in its response, *“It is interesting to note that all the reports prepared so far have had to do with failure to present the declaration, or late presentation, and not with the contents of the declaration”*.

It would be useful if the Republic of Costa Rica were to consider giving the CGR greater powers for auditing this process, for example, access to bank accounts, records, invoices, contracts, accounting books etc. of the public official in question. These powers are currently reserved to the Attorney General’s office.

The Committee notes that article 16 of the Law on Illicit Enrichment of Public Servants allows the CGR to schedule audits to determine whether an official has engaged in illicit enrichment. The Committee feels that it would be useful for the Republic of Costa Rica to activate this program and to ensure that it is applied effectively to a representative sample of declarations.

It would also be advisable to provide for collaboration between the CGR and the financial and taxation authorities, to facilitate the exchange of information and the verification of the contents of these declarations. Penalties could also be established for persons who without justification oppose or obstruct this process, as a means of ensuring timely control over the holdings of public servants, through a rigorous audit mechanism. In light of these considerations, the Committee will formulate a recommendation.

In order to make this instrument efficient and effective in practice, the Committee suggests that the Republic of Costa Rica consider strengthening the CGR to ensure that it has the resources necessary to administer the system. In light of these considerations, the Committee will formulate a recommendation.

Finally, with respect to the penalties applicable to former officials, it would be well do improve the system by including other penalties such as a fine in case of failure to file the final declaration, recognizing that the penalty is currently limited to disqualification for reappointment to the public service (article 55 of the LEISP regulations). In light of these circumstances, the Committee will formulate a recommendation in the final chapter of this report.

The Committee believes that the country under analysis, bearing in mind, inter-alia, the complexity of its domestic law in dealing with this issue, could benefit from strengthening its training programs aimed at the public employees responsible for enforcing the current regulations and by designing dissemination mechanisms that emphasize the obligation of complying with the provisions in force that is incumbent on those public employees. With this in mind, the Committee will offer a recommendation.

### **2.3. RESULTS OF THE LEGAL FRAMEWORK AND/OR OF OTHER MEASURES**

The Expanded Response of the Republic of Costa Rica to the Questionnaire reports that *“According to records of the Authorizations and Approvals Unit of the Institutional Development Division of the Comptroller General’s Office, there were 624 initial declarations, 297 final declarations, and 2808 annual declarations submitted in 2001, for a total of 3729 declarations. Of these various kinds of declarations, 94, 120 and 40, respectively, were audited, for a total of 254 audits, resulting in the preparation of 4 official reports. In 2002, there were 779 initial declarations, 539 final declarations, and 2711 annual declarations, for a total of 4029 declarations. Of those, 82, 82 and 146, respectively, were*

*audited, for a total of 310 audits, resulting in 4 official reports. Finally, in 2003, there were 660 initial declarations, 371 final declarations, and 2915 annual declarations, for a total of 3946 declarations. Of these, 43, 161 and 164 were audited, for a total of 368 audits, and 6 official reports were prepared.”<sup>41</sup>*

These data would seem to confirm that formal compliance with the filing of these declarations is satisfactory. For example, they show that more than 75% of public servants required to file declarations have done so. However, the Committee believes that it would be beneficial for the Republic of Costa Rica to make further efforts to optimize and improve the level of compliance with the income, asset, and liabilities declaration presentation requirement by the public servants concerned, taking into account regulatory or other adjustments that may be necessary for this.

The Committee notes, however, that there is no information on the penalties imposed as a result of the audit of these declarations.

The limited nature of the information available to the Committee does not allow a comprehensive assessment of the results in this field.

### **3. OVERSIGHT BODIES IN RELATION WITH THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11 OF THE CONVENTION)**

#### **3.1. EXISTENCE OF A LEGAL FRAMEWORK AND/OR OF OTHER MEASURES**

The Republic of Costa Rica has a series of standards and measures with respect to oversight bodies charged with the responsibility of ensuring compliance with the provisions of paragraphs 1, 2, 4 and 11 of Article III of the Convention, consisting of various types of provisions.

First, there are provisions of constitutional rank referring to the oversight bodies described in subsequent paragraphs, including articles 183 and 184 referring to the CGR. Next, there are legal provisions including the Law Creating the Office of the Public Ethics Prosecutor, the Law Creating the Criminal Prosecutions Office for Finance and the Public Service, the Organic Law of the CGR, and the Organic Law of the Judiciary.

Also among the oversight bodies is the Public Ombudsman’s Office, which is part of the legislative branch and enjoys functional and administrative independence, i.e. it is not subject to the dictates of other bodies in the exercise of its functions. Its purpose is to ensure that public sector activities are consistent with public law and morals, as a means of protecting the rights and interests of the citizens.

The Ombudsman’s office in turn has an Administrative Management Control Department to protect the right to legality and to process any matter relating to the public service, corruption in the administration of public funds, the improper use of public assets by public officials, and administrative irregularities with respect to bidding, permits and concessions in entities other than local governments.<sup>42</sup>

As part of the PGR there is the Office of the Public Ethics Prosecutor, responsible for taking administrative action as necessary to prevent, detect and eradicate corruption and to raise ethical standards and transparency in the public service. It may also report and prosecute before the courts public officials and private individuals suspected of illicit acts of public corruption (Law Creating the Office of the Public Ethics Prosecutor, No. 8242 of April 9, 2002).

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<sup>41</sup> Updated Response of Costa Rica to the Questionnaire, page 29.

<sup>42</sup> Updated Response of Costa Rica to the Questionnaire, page 31.



The Office of the Comptroller General (CGR) is the fundamental constitutional organ of state, auxiliary to the Legislative Assembly in its oversight of the public finances, and the senior body of the legal supervision system. It enjoys full functional and administrative independence in the performance of its duties with respect to all branches, entities and organs of government, and has competence over all organs and entities involved in the public finances. (Organic Law of the CGR, Law No. 7428). Its powers are broadly described in Appendix 46 to the Response of the Republic of Costa Rica to the Questionnaire.

Mention should also be made of the role that the Attorney General's office (*Ministerio Público*) plays within the Costa Rican legal system. All offenses against the duties of public service are prosecutable, for which reason any person who is aware that an official has committed such an offense may report it directly to the Attorney General's office. In 2002 two special prosecutors were established, by Law 8275 of May 6, 2002, to handle offenses involving the public finances and the public service, the purpose of which, as stated in the Response to the Questionnaire, is not only to prosecute crimes against the public finances and the public service more effectively, but also to train judges and prosecutors in these matters.<sup>43</sup>

Finally, mention must be made of the work of the Constitutional Chamber of the Supreme Court of Justice, in enforcing the constitutional jurisdiction through the remedy of *amparo* (constitutional protection) against state bodies and public servants, which is dealt with in greater detail in section 4.2.1 of this report on access to public information.

### **3.2. ADEQUACY OF THE LEGAL FRAMEWORK AND/OR OF OTHER MEASURES**

The standards and mechanisms in the area of oversight bodies in relation to the selected provisions that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

The series of standards that the Republic of Costa Rica has in the area of oversight bodies responsible for functions relating to compliance with the provisions contained in paragraphs 1, 2, 4 and 11 of Article III of the Convention, cover said provisions. This is particularly true if we take into account that there are bodies of this nature with general or specific jurisdiction to monitor that compliance, such as the Comptroller General's Office and the Office of the Public Ethics Prosecutor, which constitute progress in implementing the Convention.

With respect to the CGR, the Committee refers to its comments and observations in section 2.1 of this report on the need to strengthen that body so that it can properly fulfill the functions noted in the Committee's comments and recommendations on declarations of income, assets and liabilities.

With respect to the Office of the Public Ethics Prosecutor, the main functions of which, as noted above, are to take administrative action as necessary to prevent, detect and eradicate corruption and to raise ethical standards and transparency in the public service, as well as to report and prosecute before the courts public officials and private individuals suspected of illicit acts of public corruption, the Committee believes that it would be beneficial for the Republic of Costa Rica to continue strengthening this agency, in the understanding, however, that it could perform an important role in enforcing the provisions of the Convention examined in this round.

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<sup>43</sup> Updated Response of Costa Rica to the Questionnaire, page 11.

The Committee considers that the general strengthening of these bodies with respect to enforcing compliance with articles 1, 2, 4 and 11 of the Convention could bring greater efficiency to that task. It also considers that it would be advisable to improve the mechanisms for institutional coordination among them. On this point, the Committee will formulate a recommendation.

### **3.3. RESULTS OF THE LEGAL FRAMEWORK AND/OR OF OTHER MEASURES**

In its response to the Questionnaire, the Republic of Costa Rica refers to the number of complaints received by the CGR. It indicates that in 2001 and 2002, respectively, there were 202 and 224 audit reports prepared; 46 and 26 “*statements of facts*”; 36 and 13 complaints from deputies about irregularities in the handling of the public finances; 305 and 536 citizen complaints about irregularity in the management of those resources.<sup>44</sup>

The State also presents a table with statistical data referring to the Division of Operations and Evaluations Audit dealing with “*main results of ex-post audit*”, issued in 2002. It indicates that 224 audit reports were issued; 26 statements of facts, of which 19 were, as of February 2004, under investigation, and seven had been resolved; and 478 complaints were examined for admissibility.<sup>45</sup>

There is also a statistical table showing a breakdown, by category of plaintiff, of applications and complaints admitted by the CGR from January 1 to December 31 of 2002, as referred to in section 1.3.3 of this report.

The limited nature of this information does not allow the Committee to make a comprehensive assessment of the objective results in this field. Taking this into account, the Committee will formulate a recommendation.

## **4. MECHANISMS TO ENCOURAGE THE PARTICIPATION OF CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ART. III, PARAGRAPH 11)**

### **4.1. MECHANISMS FOR PARTICIPATION IN GENERAL**

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

The Republic of Costa Rica has provisions and measures of varying nature, characteristics and scope with respect to the participation of civil society and nongovernmental organizations in public activities, among them the following.

The Constitution enshrines certain principles, rights and individual guarantees that permit, facilitate or protect such participation. Among these are the right to freedom and secrecy of communication (article 24); the rights to freedom of association and assembly (articles 25 and 26); the right to submit petitions and receive a prompt response (article 27); the right to freedom of expression (article 28 and 29); the right of free access to administrative departments for purposes of seeking information on matters of public interest (article 30); and the right to protection of the law and prompt and full justice (article 41).

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<sup>44</sup> Updated Response of Costa Rica to the Questionnaire, annex 39.

<sup>45</sup> Updated Response of Costa Rica to the Questionnaire, annex 40.

The Constitution also establishes the duty of the administration to publish its laws, instructions and circulars, and it enforces compliance with this obligation by making nonconforming acts absolutely null and void (articles 125, 240 and 361 of the LGAP).

Article 105 of the Constitution also instituted the referendum as the power of the people to approve or repeal laws and partial reforms to the Constitution (article 105).

There are also specific special laws and presidential decrees that recognize areas of participation by civil society. These include the Organic Law on the Environment, the Law on Community Development, the Law on Administrative Boards and Boards of Education, the Law on Urban Planning, and the Law Regulating the Public Services, the *Law on the National Women's Institute*, the *Law on Decentralization of Hospitals and Clinics in the Costa Rican Social Security System*, and *Decree 31768-MIDEPLAN, of March 26, 2004*, where provision is made for the establishment of citizen oversight committees, consultative bodies, and public hearings.

The Municipal Code makes it a general principle to encourage active, conscious and democratic public participation in local government decisions and in popular consultations (plebiscites, "town hall meetings" and referendums).

Article 48 of the Constitution establishes appeal procedures (*amparo*) for guaranteeing these rights.

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

The standards and mechanisms in the area of participation by civil society in general that the Committee has examined, based on the information available, are relevant to promoting the purposes of the Convention. These standards and measures will be taken into account when analyzing each of the participation mechanisms indicated in the classification provided in the methodology<sup>46</sup> for review of the implementation of Article III, paragraph 11 of the Convention (hereinafter "methodology").

Notwithstanding the above considerations, and taking into account the classification referred to in the methodology for analyzing the implementation of article III (11) of the Convention<sup>47</sup>, in each of its corresponding sections, the Committee will offer some considerations, and in the final chapter will formulate specific recommendations in this regard.

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

In its response to the Questionnaire, the Republic of Costa Rica declares that it has no information on the results of participatory mechanisms in general.<sup>48</sup>

This lack of information does not allow a comprehensive assessment of results in this field. Bearing in mind this circumstance, the Committee will formulate a recommendation.

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<sup>46</sup> Methodology for the review of the implementation of the provisions of the Convention selected within the framework of the first round, Chapter V, D (Document SG/MESICIC/doc.21/02).

<sup>47</sup> Methodology for the review of the implementation of the provisions of the Convention selected within the framework of the first round, Chapter V, D (Document SG/MESICIC/doc.21/02).

<sup>48</sup> Updated Response of Costa Rica to the Questionnaire, page 32.

## 4.2. MECHANISMS FOR ACCESS TO INFORMATION

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

The Republic of Costa Rica has a series of mechanisms for providing access to information, consisting of various types of provisions, notably the following.

The Costa Rican Constitution recognizes the right of every person to submit petitions, individually or collectively, to any public official or official body. It also guarantees free access to administrative departments for purposes of information on matters of public interest, and establishes the principle that the public administration is accountable (articles 11, 27 and 30 of the Constitution).

The requirement to publish laws, instructions and circulars is also fully established, and any law that ignores that requirement is null and void (articles 125, 240 and 361 of the LGAP).

Any refusal by a public institution to provide information contained in public documents must be substantiated, and is subject to appeal (article 274 LGAP).

With respect to the public finances, the Law on Financial Administration indicates that the public budget is governed by the principle of publicity, which means that it must be accessible to the public by the available electronic means. Article 71 of that Law requires that notice be published in the Official Gazette before any payment is made on behalf of the State.

There are also other provisions for informing the public about specific governmental activities, such as the obligation of the Central Bank of Costa Rica to publish reports on the measures it takes for the external and internal stability of the national economy (articles 14, 15 and 16 of the Organic Law of the Central Bank of Costa Rica).

When it comes to restrictions on access to information, the LGAP includes items from files, the disclosure of which could compromise state secrets or confidential information, or would confer an improper advantage or opportunity to cause illegal damage to the administration, to the counterparty, or to third parties (article 273 LGAP).

With respect to mechanisms for giving effect to the right of access to information, the citizens enjoy constitutional protection through the recourse of *amparo* against government agencies or public servants. This recourse is applicable against any provision, order or resolution and in general against any unjustified law or omission by a public servant or a public agency that violates or would violate any of the rights and fundamental freedoms enshrined in the Constitution, and the human rights recognized by those portions of international law that are valid in Costa Rica. The recourse of *amparo* may also be used against legitimate acts or omissions based on erroneous interpretation or application, and not only against arbitrary acts of the administration (article 30 and following of the Law on Constitutional Jurisdiction).

When a motion for *amparo* refers to the right of petition and prompt response, and when there is no time limit established for providing a response, article 32 of the Law on Constitutional Jurisdiction sets a limit of 10 working days from the date the application is received.

In this respect, Costa Rica has also established “Departmental Comptrollers” (*Contralorías de Servicios*) within each public institution, tasked with organizing and coordinating mechanisms of information on services offered to the public, as a means of meeting the goals of efficiency and quality in the public service (article 3.e of Executive Decree 23721).

Taking into account that one of the functions of the Office of the Public Ethics Prosecutor is to enforce transparency in public service, it might be a suitable office for providing some type of instruction in the proper application of the provisions that protect access to information and guidance to public servants.

Another mechanism that the Costa Rican state uses, according to its response, is the information on administrative affairs that is posted on the government's web page, as a means of facilitating public access to information.<sup>49</sup>

#### **4.2.2. Adequacy of legal framework and/or of other measures**

The standards with respect to access to information that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

Costa Rican law contains a series of provisions that guarantee the public right to information on the activities of the public administration, a right that may be exercised with respect to any type of entity or person handling public funds.

This right is enshrined in the Constitution and reflected in various laws, such as those mentioned in the preceding section. These provisions allow the citizens broad access to public information in the hands of the State.

The only matters that are excluded are those relating to state secrecy and information of a personal nature that is held by the state. This would seem to be reasonable limitation on the exercise of this right.

The Committee also welcomes the fact that there is a reasonable time limit set for delivering information to the public, as set forth in article 32 of the Law on Constitutional Jurisdiction.

The Committee also notes that there are criminal and administrative penalties that can be applied to officials who deny, obstruct, delay or impede access to the information requested.

On the issue at hand, the Committee believes it appropriate to quote the statement of Transparency International, Costa Rica Chapter: "*In principle, public information is accessible to any person. However, in practice, public officials tend to limit this access for their own reasons, imposing requirements for requesting information, or setting subjective restrictions. There have been many cases decided by the Constitutional Chamber in which it has been found that public officials have limited access to information*".<sup>50</sup>

The Committee considers that one of the reasons that might contribute to this negative attitude on the part of public servants could be their failure to appreciate the existing legal framework, and in particular the rules governing this public right, its exceptions and limitations. The Committee suggests, as part of the solution to this problem, offering training and refresher programs for public servants so that they can duly and properly apply the provisions that protect access to information, and understand clearly the limits on that right, and the consequences that may flow from unjustified refusal of information.

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<sup>49</sup> Updated Response of Costa Rica to the Questionnaire, attachment 47.

<sup>50</sup> Comments of Transparency International, Costa Rica Chapter (TI-CR) on the Response of Costa Rica to the Questionnaire, page 32.

The Committee notes that one of the functions of the Departmental Comptrollers is to foster the creation, coordination, monitoring and evaluation of specific programs of information and guidance to public servants. This could constitute a channel for the training suggested in the preceding paragraph (article 3.e of Executive Decree 23721).

According to the data provided by the Republic of Costa Rica in its expanded response to the question from the Secretariat, there has been progress in establishing the Departmental Comptrollers in each public institution, in accordance with article 3 of Executive Decree 23721. Those data show that of the 150 institutions required to establish such offices, 50 have already done so. The Committee believes that it would be advisable to press ahead with the creation of these offices, to equip them with the necessary human, technical and financial resources for their functioning, and to publicize the system and the services they offer, as suggested in a study conducted by Costa Rica.<sup>51</sup> On this point, the Committee will formulate a recommendation.

The Committee considers that the Republic of Costa Rica could benefit from promulgating and systematizing, within a single legal text, all the provisions relating to public access to information. This would recognize the importance of guaranteeing this right in a modern society, and the need to have it widely appreciated both by the citizens and by public servants. An instrument of this kind could foster better understanding and application, by citizens and by public servants alike, of the right to information, and could make treatment of this matter more systematic and comprehensive. It could also help to reduce the number of legal appeals (such as *amparo*) against public servants who, through ignorance, have unjustifiably denied public access to information. It would also make for more efficient use of time and resources both for government and for the citizens. In light of these considerations, the Committee will formulate a recommendation.

The Committee also considers that the Republic of Costa Rica could further strengthen the mechanisms that guarantee the exercise of this right, by creating and regulating a procedure exclusively designed for protecting it. This could include such aspects as procedures for receiving applications and providing prompt responses; requirements of admissibility, and the consequences of failure to observe them; valid reasons for rejecting a request; the manner of communicating the decision to the applicant; expeditious and specialized remedies for appealing the unjustified withholding of information; and an increase in the number of existing sanctions, in order to cover a broader spectrum of acts that might impede, delay or nullify the exercise of this right. In light of the foregoing, the Committee will formulate a recommendation.

With respect to mechanisms for giving effect to the right of access to public information, the Committee notes that the citizenry has almost unlimited protection under the Constitutional appeals procedure, a summary process that seeks to guarantee Constitutional principles and standards and the human rights enshrined in the international treaties that the Republic of Costa Rica has signed.

This appeal procedure may be used against the acts or omissions of agencies and public servants. It applies not only to arbitrary acts but also to legitimate acts or omissions resulting from erroneous interpretation or application, and it would seem to constitute an effective measure in favor of the public.

On this point, the Committee notes with satisfaction the statement by Transparency International, Costa Rica Chapter, with respect to the Chamber of the Supreme Court Justice responsible for hearing these matters: *“The Chamber has been clear in ruling that information must be delivered to the applicant, and it has allowed the exception of state secrecy to be applied only in a restricted manner and in a few cases. It is important to note that, in Costa Rica, any citizen may appeal directly, without intermediaries*

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<sup>51</sup> Response to question 2 in the Note from the Technical Secretariat, dated April 6, 2004.

*or formalities, to the Constitutional Chamber when he considers that his Constitutional rights have been violated.”*<sup>52</sup>

The Committee is also pleased to note the broad spectrum of information sources available in Costa Rica, via the Internet, and that they provide access to a great deal of public information, including the texts of laws, regulations, legal background etc., and it urges the Republic of Costa Rica to continue strengthening these public information systems. On this point, the Committee will formulate a recommendation.

#### **4.2.3. Results of the legal framework and of other measures**

According to the state’s response, the degree of public access to the web pages can be illustrated in the statistics kept by the Ministry of Finance, according to which from May to September 2003 there were a monthly average of 280,695 visits to the Ministry’s web site, equivalent to 9,330 visits a day.<sup>53</sup>

Also noteworthy is the National System of Laws Currently in Force (SINALEVI), the institution in charge of compiling the laws enacted and in force, keeping the collection up to date, adding relevant jurisprudence and other information needed to clarify the sense and meaning of the legislation enacted, and providing that information to the State’s public institutions and private parties free of charge. Since September 2003, SINALEVI’s website has received 182,208 visits.

Apart from the foregoing, the lack of information on results in this field does not allow a comprehensive assessment. Bearing this in mind, the Committee will formulate a recommendation.

### **4.3. MECHANISMS FOR CONSULTATION**

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

The Republic of Costa Rica has provisions and mechanisms that enable those who carry out public functions to consult with civil society and nongovernmental organizations on matters relating to the activities within their competence. They include the following.

In its response to the Questionnaire, the Republic of Costa Rica indicates that *“during its consideration of draft legislation, it is normal for the legislative committee responsible for the initiative to consult civil society organizations or to receive visits from interested individuals to hear their opinions.”*

The Constitution allows a referendum to be called in order for the people to approve or repeal laws and partial reforms to the Constitution, where this is requested by at least 5% of the citizens (article 105). It also provides for a plebiscite, in the specific case of creating or breaking up a province (article 168).

There are also internal rules in specific areas that make provision for public consultation, including those described below.

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<sup>52</sup> Comments of Transparency International, Costa Rica Chapter (TI-CR) on the Response of Costa Rica to the Questionnaire, page 32.

<sup>53</sup> Updated Response of Costa Rica to the Questionnaire, attachment 47.

The Organic Law of the Environment contains a chapter on promoting citizen participation in decisions and actions taken to protect and improve the environment. It calls for the establishment of regional committees and a system of public hearings when environmental impact studies are being conducted (article 6 and following).

The Urban Planning Law (article 17) requires municipalities to hold public hearings before implementing a regulatory plan in whole or in part. Such hearings are to consider the project and allow neighbors or interested parties to submit oral or written observations.

The Law establishing the Public Services Regulatory Authority, the institution responsible for authorizing the extension or reduction of these services, also provides for public hearings in which anyone with a legitimate interest may participate. Among the issues that may be considered are the regular setting of tariffs and prices for public services, and the formulation or revision of pricing and tariff-setting models (article 36 and 37).

There are also regulations at the municipal level that give effect to the general principle of fostering active, conscious and democratic public participation in local government decisions and in public consultation, including the plebiscite, referendum and “town hall meeting” (article 5 and following of the Municipal Code).

#### **4.3.2. Adequacy of legal framework and/or of other measures**

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

The Committee notes that the Costa Rican legal system provides opportunities for citizen participation in the various phases of the process of adopting laws. During discussions in the subcommittees, committees and plenary session of the Legislative Assembly, deputies are able to invite members of civil society to present their opinions and viewpoints. However, these instances exist at the discretion of the deputies, who may offer them or not.

The Committee considers that the Republic of Costa Rica could benefit from a system that would allow broader participation by civil society in the process of preparing legislation. Such a system could create greater opportunities for people to express their opinion during the process. The Legislative Assembly could also be required to offer opportunities for participation when discussing certain matters of particular interest to or impact on civil society. At the same time, there must be a balance between the need to foster participation and the need not to protect the efficiency with which the legislative branch must operate.

In the Committee’s view, this would make it possible to take greater account of the interests of social groups when it comes to creating, amending or abolishing a given legal provision. The resulting decision would also enjoy greater social support and would give the community a stronger sense that it can influence the decision-making process when it comes to adopting or amending legislation. On this point, the Committee will formulate a recommendation.

The Committee also notes that the municipal system provides for plebiscites, referendums and town hall meetings (*cabildos*). Nevertheless, the plebiscite and the town hall meeting are designed as instruments of local participation and are not applied to questions of national policy, as is the referendum, pursuant to article 105 of the Constitution. With respect to the plebiscite and the town hall meeting, these are convened by the municipal council and not at citizen initiative. On this point, the Committee believes it would be beneficial for the Republic of Costa Rica to consider applying these mechanisms at the



national level and making it possible to convene them by popular initiative, at both local and national levels, for certain matters.

With respect to these mechanisms, it would seem appropriate to incorporate into the Costa Rican legal system other measures that could help to strengthen, enhance, and further develop the existing consultation mechanisms, particularly at the municipal level, in order to promote greater citizen participation in the initiatives and decisions that bear on their collective interests.

Thus, consideration could be given, within the framework of the existing laws, to the possibility of formulating specific provisions that, on the one hand, would promote the creation and recognition of bodies representing civil society organizations and institutions at the municipal level, authorized to review and to propose public policies in specified areas and, in addition, would incorporate, organize, and recognize urban community institutions (neighborhood councils or committees) with the authority and right to present initiatives and requests for municipal works and services for their neighborhoods.

The foregoing would constitute a major advance in strengthening policies for giving civil society greater opportunities and mechanisms to participate in public affairs. This would not only reinforce the political system but would also create a closer relationship between the exercise of state power and the real needs of the community. The Committee will formulate recommendations in this respect.

The Republic of Costa Rica also has consultation instruments relating to specific areas, such as the environment, urban planning, and others mentioned in the preceding section of this report. The Committee considers that the Republic of Costa Rica could benefit from applying these consultative instruments in other areas as well. The Committee will formulate a recommendation in this respect.

In considering the variety of provisions that govern this area, and that have been recently promulgated, the Republic of Costa Rica could also benefit from designing and implementing awareness programs about these consultation mechanisms, and providing training and facilities for civil society, nongovernmental organizations, and public officials and employees, where needed, for making use of these mechanisms.

Bearing this circumstance in mind, the Committee will formulate recommendations.

#### **4.3.3. Results of the legal framework and of other measures**

As stated by the Republic of Costa Rica in its response to the Questionnaire, there is no information on results from these consultation mechanisms.

This lack of information does not allow a comprehensive assessment of results in this field. Bearing this in mind, the Committee will formulate a recommendation.

#### **4.4. MECHANISMS TO ENCOURAGE PARTICIPATION IN PUBLIC ADMINISTRATION**

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

The Republic of Costa Rica has a series of different types of provisions on mechanisms to encourage active participation in public administration. The following provisions are to be noted.

Article 11 of the Constitution establishes the principle of accountability, declaring that the public administration is subject to a procedure of evaluation of results and rendering of accounts and that public officials are personally responsible for the fulfillment of their duties.

In its response to the Questionnaire, the Republic of Costa Rica mentions the work of the *Office of Popular Initiative*, created to provide greater opportunity for citizen participation in the Legislative Assembly's work and to promote better communication between the public and the Assembly. It is the institutional channel for providing information to the general public and to public institutions on the status of draft bills and other legislative matters. This information can be provided by telephone, through a toll-free line (800-674-6466), by e-mail, or in person.

This office has also been sponsoring "*citizen participation days*" to publicize its functions and services. A chat system has also been implemented, whereby citizens can engage in remote dialogue with the Deputies. This office also accepts suggestions, proposals and draft bills submitted by any inhabitant. Such initiatives are periodically brought to the attention of Deputies so that, if the proposals are interesting, they can be taken up and placed on the agenda.

The Republic of Costa Rica also mentions, in its response to the Questionnaire, the work of the *National Directorate for Community Development*, which has been facilitating and promoting community participation in public management since its creation in 1967.

That response also mentions Law 8281 of May 28, 2002, which approved amendments to the Constitution instituting the popular referendum for approving or repealing laws and promoting partial amendments to the Constitution.

As well, there are other mechanisms for civil society participation in public management, such as the committees, councils and governing boards that various public institutions have instituted.<sup>54</sup>

During the process of approving laws, there are a number of instances in which civil society may participate. For example, any individual can attend legislative sessions, which are also broadcast by radio. The various bodies involved in this process (subcommittees, committees and plenary) provide opportunities for civil society participation.

There are also other mechanisms to facilitate citizen participation, consistent with the rule of law, such as the publication of laws in the official Gazette, as well as the possibility of protesting to the administration against acts that contravene or in any way violate citizen rights, and of appealing to the courts to defend those rights.

The Departmental Comptrollers also represent a mechanism through which the citizens can make the administration aware of their opinions, observations or complaints about the services they receive.

Citizens also have the constitutional right to participate in national politics, by creating and supporting political parties.

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<sup>54</sup> See Article 164 of the Municipal Code, which provides for Cantonal Sports Committees in which representatives of sporting and recreation associations work together with the municipalities; the Regional Environmental Councils, decentralized bodies under the Ministry of Environment and Energy that, pursuant to article 7 of the Organic Law on the Environment, involve civil society participation. As well, some institutions have governing boards such as the National Governing Board of the Banco Popular (Article 30, Organic Law of the Banco Popular y de Desarrollo Comunal).

The Office of the Public Ombudsman is another institution that encourages and facilitates citizen participation in public management.

#### **4.4.2. Adequacy of legal framework and/or of other measures**

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

The Committee observes that some decentralized institutions, such as the state universities and the Costa Rican Social Security Fund, have representatives of civil society on their governing bodies.

There are also provisions in specific legislation for mechanisms of public participation in an advisory capacity, as indicated in section 4.3.1 of this report. However, the Committee considers that Costa Rican legislation could be improved by incorporating additional mechanisms that would strengthen civil society participation in public management, and especially in efforts to prevent corruption. On this point, the Committee will formulate a recommendation.

The Committee also notes that some of these mechanisms of citizen participation were created only recently. It also notes that insufficient consideration is given to the result of that participation in the decision-making process. In this regard, it would be desirable for the Republic of Costa Rica to consider the possibility of defining that contribution as an indispensable part of that process.

The Committee also observes that the Republic of Costa Rica is willing to advance further in this direction: in addition to existing provisions which in the case of referendums involve a constitutional reform, it is promoting offices and institutions that foster citizen participation in public management, such as the Office of Popular Initiative and the Departmental Comptrollers. With respect to the latter, the Committee refers to its comments and observations in section 4.2.2 of this report. On this point, the Committee will formulate a recommendation.

Considering that some of the existing mechanisms are of recent creation, the Committee believes that the Republic of Costa Rica could benefit from the design and implementation of programs to publicize those mechanisms and, as appropriate, provide civil society, nongovernmental organizations, and public officials and employees with training and facilitative tools for using them.

In light of these circumstances, the Committee will formulate recommendations.

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

In its response to the Questionnaire, the Republic of Costa Rica indicates that since its creation, the *Office of Popular Initiative* has received 349 legislative proposals. Of these, 31 initiatives have been converted into draft laws, three are now the law of the land, and one is in the final legislative stage.

It also provides tabulated information from 1999 to the present, with a breakdown of consultations handled by that office: telephone calls received, personal visits, e-mail messages, and initiatives presented. The Committee notes that the number of consultations rose from 1,059 in 1999 to 12,123 in 2003.

The Republic of Costa Rica also indicates that “*the ‘citizen participation days’ have established important contact with the communities that have been visited to date. As a result, the Office of Popular Initiative has received 53 draft bills on various topics, dealing with local and national issues*”.<sup>55</sup>

The enthusiasm with which citizens have participated in these forums would seem to demonstrate the importance they attach to them, and the Committee therefore urges the Republic of Costa Rica to pursue and to strengthen initiatives of similar scope.

Apart from the foregoing, the lack of information on objective results does not allow a comprehensive assessment. Taking this into account, the Committee will formulate a recommendation.

#### **4.5. PARTICIPATION MECHANISMS IN THE FOLLOW-UP OF PUBLIC ADMINISTRATION**

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

The Republic of Costa Rica has a series of provisions relating to mechanisms for follow-up of public administration, consisting of various types of provisions. The following are to be noted.

In its response to the Questionnaire, the Republic of Costa Rica mentions the work of the departmental comptrollers as a mechanism that allows users to participate in monitoring public management. One function of the departmental comptrollers, according to Article 3.a of Decree 23721 of October 6, 1994, is to receive, process and forward complaints from users, as a means of guaranteeing the rights of the citizens.<sup>56</sup>

According to the Constitution, the executive branch, ministers and the CGR are obliged to submit an annual report to the Legislative Assembly (articles 140 (11), 144, 184 (3) of the Constitution).

The Committee also notes the existence of horizontal and vertical controls over public management. Among the former are the Departmental Comptrollers and the National Budget Bureau, which are responsible for evaluating the government’s budgetary performance; among vertical controls, there is the political control of the Legislative Assembly, which it exercises through its special investigation committees, as well as the work of the CGR and the role of the Public Ombudsman’s Office.

The recall of public officials is provided for in only one case, that of mayors, as stipulated in article 19 of the Municipal Code. That rule allows the calling of a plebiscite, upon a motion signed by one-third of council members and approved by at least three-quarters of them, to decide whether a municipal mayor should be removed from office.

##### **4.5.2. Adequacy of legal framework and/or of other measures**

The standards and mechanisms in the area of participation in the follow-up of public administration that the Committee has examined, based on information available to it, are relevant for promoting the purposes of the Convention.

On this point, the Committee notes the existence of instruments of general participation that allow civil society to monitor public management. These include the right of petition and a time limit of 10 days within which time the administration must respond to citizen requests, as well as the participation of

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<sup>55</sup> Updated Response of Costa Rica to the Questionnaire, page 36.

<sup>56</sup> Updated Response of Costa Rica to the Questionnaire, page 36.

different sectors of society on the management boards of public institutions (Costa Rican Social Security Fund, Banco Popular, etc.).

The Committee also notes the existence of controls over public management, both horizontal and vertical, as referred to in the preceding section of this report.

Another mechanism established by the Constitution is the obligation of the executive branch, ministers and the CGR to submit an annual report to the Legislative Assembly (articles 140 (11), 144, 184 (3) of the Constitution). According to the information provided by Costa Rica, that obligation is fully respected.<sup>57</sup>

With respect to the Departmental Comptrollers, the Committee recognizes their potential value as a mechanism of the administration at the service of civil society for facilitating the presentation of requests and complaints, and it urges the country to continue strengthening institutions of this nature, and to generalize their use. On this point, the Committee refers to its statement in section 4.4.2 of this report.

The Committee also recognizes that one of the mechanisms available to civil society in the Republic of Costa Rica for monitoring public management is the remedy of *amparo*, the virtues of which the Committee has already noted in other parts of this report.

The Constitution establishes the public responsibility of government employees and elected officials. Only in the case of municipal mayors is there provision for recall of public officials. The Committee notes that in this case a plebiscite may not be called by popular initiative, but instead requires that the request be submitted to the municipal council, and that it be signed by one-third of the council members and approved by at least three-quarters of them.

On this point, the Committee considers that the country could benefit by implementing additional forms of participation to enable and encourage civil society organizations to monitor public management.

The rules governing these forms of participation could incorporate, inter alia and within the existing legal framework, the advisability of establishing mechanisms authorizing citizens to oversee and exercise social control over municipal works and services and the use of resources budgeted and allocated for that purpose.

The Committee will draw up recommendations in light of the above comments.

The Committee also notes the existence of programs for publicizing mechanisms to encourage participation in public management, including training and facilitation for civil society, nongovernmental organizations, and public officials and employees in the use of such mechanisms. However, it would be advisable for the Republic of Costa Rica to continue progressing with and improving those efforts by promoting programs in addition to those that already exist. Bearing in mind the circumstances, the Committee will formulate a recommendation.

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<sup>57</sup> Response to question 4 in the Note from the Technical Secretariat, dated April 6, 2004

### **4.5.3. Results of the legal framework and of other measures**

According to the Response of the Republic of Costa Rica to the Questionnaire, “*there are no statistical data on the results from applying the above participatory mechanism for monitoring public management*”.<sup>58</sup>

This lack of information does not allow a comprehensive assessment of the results in this field.

## **5. ASSISTANCE AND COOPERATION (ART. XIV)**

### **5.1. MUTUAL ASSISTANCE**

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

The Republic of Costa Rica has a set of provisions and measures that refer to the mutual legal assistance outlined in Article XIV, Paragraph 1, of the Inter-American Convention Against Corruption. These include the Law on Extradition (No. 4795 of July 16, 1971), the Law on Narcotics, Psychotropic Substances, Unauthorized Drugs, Money-laundering and Related Activities (No. 8204 of December 26, 2002) and articles 705, 706, 707 and 708 of the Code of Civil Procedures, as well as a number of treaties, mentioned by the Republic of Costa Rica in its response to the Questionnaire.<sup>59</sup>

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

The standards and mechanisms on mutual assistance reviewed by the Committee, based on the information made available, are pertinent for the promotion of the objectives of the Convention.

The Committee observes that article 31 of the Constitution of the Republic of Costa Rica indicates that extradition shall be governed by law or by international treaties, and is excluded only in cases of political or related crimes, as defined in Costa Rican legislation.

On this point, the Constitutional Chamber has interpreted article 31 of the Constitution to mean that extradition is possible only for foreigners.<sup>60</sup> Article 3 of the Law on Extradition, No. 4795, establishes other grounds for excluding extradition.

In this regard, the Committee considers that the Republic of Costa Rica could benefit even more from determining and prioritizing specific areas in which technical cooperation with other states parties is required, in order to strengthen its capacities to prevent, detect, investigate and punish acts of corruption. The Committee also urges the country to continue its efforts to exchange technical cooperation with other states parties on the most effective ways and means for preventing, detecting, investigating and punishing acts of corruption. On this point, the Committee will formulate a recommendation.

As regards technical cooperation initiatives with other states, the Committee notes those negotiated by the Republic of Costa Rica in recent months with the United Mexican States as Project 309CR101, Exchange of information, documents and materials between Mexico and Costa Rica on aspects of the anti-corruption effort as it pertains to the link between government and society,” and with

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<sup>58</sup> Response of Costa Rica to the Questionnaire, page 36.

<sup>59</sup> Update to the Response of Costa Rica to the Questionnaire, pages 36 and 37.

<sup>60</sup> Resolution of the Constitutional Chamber No. 6780-94, 15:09 hrs, on November 22, 1994.

the Republic of Colombia, under the aegis of the bi-national program that begins in July of this year, which has defined corruption as one of the topics that the two countries would like to work on together.

As well, the Republic of Costa Rica should determine and prioritize requests for mutual assistance in investigating or prosecuting cases of corruption. In light of the foregoing, the Committee will formulate a recommendation.

### **5.1.3. Results of the legal framework and/or of other measures**

In its response, the Republic of Costa Rica indicates that “*It is not possible to determine whether the government of the Republic of Costa Rica has formulated or received requests for reciprocal assistance under the Convention, because the bodies responsible for processing such requests do not keep records from which such information can be obtained.*”<sup>61</sup>

The foregoing suggests that it could be useful for the Republic of Costa Rica to consider, design and implement a program of information for permanently tracking requests of this nature, particularly those that refer to acts of corruption covered by the Convention. On this point, the Committee will formulate a recommendation.

As well, the Committee considers that, as a way of ensuring effective application of the provisions governing mutual legal assistance in the Inter-American Convention against Corruption and in other relevant treaties that the Republic of Costa Rica has signed, the country could benefit from designing and implementing a comprehensive program of dissemination and training targeted specifically at the competent authorities, to ensure that they understand and can apply those provisions in specific cases that come to their knowledge.

On this point, the Committee will formulate a recommendation.

In its Expanded Response to the Questionnaire, the Republic of Costa Rica mentions a Draft Law on Corruption and Illicit Enrichment in the Public Service, which is intended to apply the commitment contained in Article XIV (1) of the Convention.<sup>62</sup> Article 13 of that draft Law, entitled *International Cooperation*, expressly authorizes the Comptroller General’s office to request international assistance and cooperation in obtaining evidence and conducting investigations through the Central Authority referred to in article XVIII of the Convention. The Committee considers that measures of a scope similar to that mentioned here constitute progress in implementing the Convention.

This bill was approved by the Legislative Assembly in the first round of debate, and the consultation of the Constitutional Chamber of the Supreme Court for an examination and opinion of its constitutionality has been completed.

## **5.2. MUTUAL TECHNICAL COOPERATION**

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

The Republic of Costa Rica has a set of provisions and measures for enabling mutual technical cooperation with other States party to the Convention, as established in Article XIV (2) of the Convention.

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<sup>61</sup> Updated Response of Costa Rica to the Questionnaire, page 37.

<sup>62</sup> Ibid.

According to the subsequent response of the State, “*At this time there are no mechanisms that directly allow for mutual technical cooperation with other states parties regarding the most effective ways and means of preventing, detecting, investigating and punishing acts of public corruption.*”<sup>63</sup>

However, the information furnished by the State undergoing review indicates a number of efforts whereby specific activities have been carried out. In particular, mention could be made of those carried out, with support from the IDB and the OAS, in order to implement and disseminate the CICC. Notable among these was the National Workshop entitled Dissemination and implementation of the CICC,” organized in 1997 by the National Committee for the Enhancement of the Administration of Justice (CONAMAJ) and the General Secretariat of the OAS and reported in the book of the same name, which was distributed to many public officials and to the various entities and institutions comprising the public administration in Costa Rica.

More recently, in 2001, another activity was conducted, also related to the Convention’s implementation. This one was titled “Building Transparency: Model Legislation for Preventing Corruption.” Like the workshop described in the previous paragraph, this project was organized and financed by the OAS and by the National Committee for the Enhancement of the Administration of Justice. It was also reported in a book that was also sent to many public officials and to various entities and agencies in Costa Rican public administration.

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

The standards and mechanisms on mutual technical cooperation reviewed by the Committee, based on the information made available, are pertinent for the promotion of the objectives of the Convention.

The Committee also believes that it would be useful for Costa Rica, in terms of strengthening its capacity to prevent, detect, investigate and punish corrupt acts, to determine and prioritize specific areas in which it would be helpful to receive technical cooperation, either from other States or from institutions and funding agencies involved in providing international technical cooperation in the required areas; and to continue its efforts to exchange technical assistance with other states on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption.

On this point, the Committee will formulate recommendations.

The Committee is pleased to learn that the Office of the Public Ethics Prosecutor has been designated to serve as coordinator of international technical cooperation on the topics covered in the Convention. The appointment was made by the Government of Costa Rica and will be finalized, in the coming days, with the publication of the corresponding executive decree, according to information given to the Committee by the State undergoing review.

#### **5.2.3. Results of the juridical framework and of other measures**

The Committee notes the concrete results from Costa Rica’s participation in the SICA for the purpose of standardizing rules for the preparation of judicial assistance requests. Those results include ratification of a series of treaties, including *the Treaty on Mutual Legal Assistance in Criminal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama*, ratified on December 18, 1997; the Framework Treaty for Democratic Security in Central America,

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<sup>63</sup> Updated Response of Costa Rica to the Questionnaire, page 38.



ratified on December 26, 1997; and other treaties mentioned by the Republic of Costa Rica in its response to the Question in the Note of the Technical Secretariat dated April 6, 2004.

In the last of those documents, the Republic of Costa Rica also mentioned its participation in the following institutions: the Central American Commission to Eradicate the Production, Trafficking, Consumption and Illegal Use of Narcotics or Psychotropic Substances; the Regional Center for Juridical Development and Cooperation in Central America, and the others mentioned in its response to the note of the Technical Secretariat.

The foregoing mechanisms are adequate for implementing the Convention, and constitute progress in its implementation.

The limited nature of the information available to the Committee does not allow a comprehensive assessment of the results from the legal framework and other measures. Bearing this in mind, the Committee will formulate a recommendation on the final chapter of this report.

## **6. CENTRAL AUTHORITIES (ART. XVIII)**

### **6.1. EXISTENCE AND PROVISIONS OF A LEGAL FRAMEWORK AND/OR OF OTHER MEASURES**

The Republic of Costa Rica has designated the Office of the Public Ethics Prosecutor as the central authority for the objectives of international assistance and cooperation provided for in the Convention.

According to information provided by the state under review, this designation “was made by executive decree, which will be published in the Official Gazette *La Gaceta* shortly”<sup>64</sup> and, as a result, has not yet been reported to the OAS General Secretariat in compliance with the established formalities. The Committee will make a recommendation in this regard.

### **6.2. ADEQUACY OF THE LEGAL FRAMEWORK AND/OR OF OTHER MEASURES**

The designation of the Office of the Public Ethics Prosecutor to channel the mutual assistance provided for in the first paragraph of article XIV of the Convention and the mutual technical cooperation provided for in the second paragraph of article XIV is appropriate for promoting the objectives of the Convention. Since this appointment “was made by an executive order, which will be published in the Official Gazette *La Gaceta* shortly”<sup>65</sup> and, as a result, has not been reported to the OAS General Secretariat in compliance with the established formalities, the Committee will issue a recommendation.

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<sup>64</sup> Comments by the Republic of Costa Rica on the Draft Preliminary Report on Implementation in Costa Rica of the Convention Provisions Selected for Analysis in the First Round and on the Comments of the Analysis Subgroup, p. 22.

<sup>65</sup> Comments by the Republic of Costa Rica on the Draft Preliminary Report on Implementation in Costa Rica of the Convention Provisions Selected for Analysis in the First Round and on the Comments of the Analysis Subgroup, p. 22.

The Committee notes that the Republic of Costa Rica has complied with Article XVIII of the Convention by adopting measures regarding the appointment of the Office of the Public Ethics Prosecutor as the central authority for the purposes of assistance and international cooperation provided for in the Convention.

The Committee also suggests that the Republic of Costa Rica consider the possibility of giving that authority, once it is designated, sufficient resources for performing its task.

In light of the circumstances, the Committee will formulate a recommendation.

### **6.3. RESULTS OF THE LEGAL FRAMEWORK AND OF OTHER MEASURES**

The lack of information on the results in this area does not allow for a comprehensive assessment of the results of the legal framework and of other measures. Taking into account this circumstance, the Committee will formulate a recommendation in the final chapter of this report.

## **III. CONCLUSIONS AND RECOMMENDATIONS**

Based on the review carried out in Chapter II of this report, the Committee makes the following conclusions and recommendations with respect to the implementation, in Costa Rica, of the provisions contained in Articles III, 1 and 2 (standards of conduct and mechanisms to enforce these standards); III, 4 (systems for the disclosure of income, assets and liabilities); III, 9 (oversight bodies, only insofar as it concerns the exercise by these bodies of functions related to compliance with the provisions contained in Paragraphs 1, 2, 4 and 11 of Article III of the Convention); III, 11 (mechanisms to stimulate the participation of civil society and non-governmental organizations in efforts to prevent corruption); XIV (assistance and cooperation); and XVIII (central authorities) of the Convention, which were selected for review within the framework of the first round.

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

#### **1.1. Standards of conduct designed to prevent conflicts of interest and mechanisms to enforce these standards**

**The Republic of Costa Rica has considered and adopted measures to establish, maintain and strengthen standards of conduct with respect to the prevention of conflicts of interest and enforcement mechanisms, as described in Chapter 2, Section 1.2 of this report.**

In view of the comments made in the above section, the Committee suggests that the Republic of Costa Rica consider strengthening the implementation of laws and regulatory systems related to conflicts of interest, in order to permit the effective and practical enforcement of a system of public ethics. To comply with this recommendation, the Republic of Costa Rica could take into account the following measures:

- a. Consider the possibility of bringing all public servants under a general regime with a single set of rules, which would assist public servants as well as the general public to understand more accurately their rights and duties, and overcome the existing disparity. Such a move should be without detriment to regimes governing specific sectors that by their nature may require specialized treatment or the establishment of more restrictive rules.

- b. Strengthen the system of recruitment into the public administration and the existing rules governing incompatibility and disqualification, taking into account the following aspects, in light of the scope of legislation and the positions identified by law:
  - i) Supplement the rules of entry into the public service by strengthening the preventive mechanisms that facilitate detection of possible conflicts of interest that might impede such entry, including senior public positions.
  - ii) Develop other mechanisms to identify or detect any unexpected cause that could occur in the performance of public duties which could give rise to a conflict of interest.
  - iii) Consider the possibility of implementing measures as appropriate to establish and put into effect systems and mechanisms of a preventive nature for detecting conflicts of interest in the public service. Among other alternatives, consideration could be given to the feasibility of creating instruments such as the declaration or registry of interests or activities for certain public posts, either as part of the system of declarations of income, assets and liabilities, or as an independent instrument, and of having that instrument periodically updated, as well as creating and maintaining databases for search and consultation by the competent organs.
- c. Consider the possibility of incorporating into the legal system a rule that limits participation by former public servants, including those of senior rank, in the management of certain acts and in general in situations that could involve taking undue advantage of one's status as a former public servant, within a reasonable period of time and without resulting in an absolute restriction on their constitutional right to work. (See section 1.1.2 of this report).
- d. Maintain duly up-to-date, expand and improve the registry of persons disqualified for public service under the Civil Service Regime, , so that it may constitute, if it is not already, an effective instrument for preventing and detecting appointments to the public service that might be contrary to the provisions on prohibitions and disqualifications. Consider the possibility of requiring consultation of this register prior to the appointment of public servants of specified rank and category.
- e. The Committee urges the Republic of Costa Rica to continue with the amendments that it believes pertinent in the justice administration system, in order to speed up judicial procedures pertaining to violations of the standards of conduct for public servants.
- f. Continue designing and implementing mechanisms for making all public servants aware of the rules of conduct, including those relating to conflicts of interest, and continue to provide training and periodic refresher courses on those rules.
- g. Compile information on cases of conflicts of interest so as to establish mechanisms of evaluation for verifying results on this issue (see section 1.1.3 of this report).
- h. Analyze the possibility of inserting the necessary clarifications in the relevant regulatory framework to ensure a clear differentiation between conflicts of interest and disqualifications and incompatibilities, where appropriate.

**1.2. Standards of conduct designed to ensure the preservation and proper use of resources entrusted to public servants in the performance of their duties, and mechanisms to enforce these standards.**

**The Republic of Costa Rica has considered and adopted measures designed to establish, maintain and strengthen standards of conduct to ensure the preservation and proper use of resources entrusted to public servants in the performance of their duties, as mentioned in Chapter 2, Section 1.2 of this report.**

In view of the comments made in the above-mentioned section, the Committee suggests that the Republic of Costa Rica consider the following recommendations:

- 1.2.1. The Committee recognizes with satisfaction that the Republic of Costa Rica has rules of conduct and mechanisms for ensuring the preservation and proper use of resources entrusted to public servants in the performance of their duties, and it welcomes the efforts that have been made in recent years to improve its public legal system and the principles of efficiency, efficacy, transparency and accountability as essential elements of public management. It encourages the Republic of Costa Rica to continue improving those rules and mechanisms.
- 1.2.2. Continue designing and implementing mechanisms for making all public servants aware of the rules of conduct, and for answering any questions with regard to the same, including those relating to conflicts of interest, and continue providing training and periodic refresher courses on those rules.

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

**The Republic of Costa Rica has considered and adopted measures designed to establish, maintain and strengthen standards of conduct and mechanisms related to measures and systems that require public servants to report to the appropriate authorities acts of corruption in the public service of which they are aware, in accordance with the comments in Chapter 2, Section 1.3 of this report.**

In light of the comments made in the above section, the Committee suggests that the Republic of Costa Rica strengthen existing mechanisms that require public servants to report to the appropriate authorities acts of corruption in the public service of which they are aware. To comply with this recommendation, the Republic of Costa Rica could consider the following measures:

- a. Regulate the presentation of these reports, facilitating even more their presentation and establishing requirements for presentation that do not inhibit potential informers. Implement mechanisms for protecting public servants who report acts of corruption, including the confidentiality of the identity of informers.
- b. Assess the relevance of offering greater protection to civil servants who report acts of corruption, especially in cases where their hierarchical superiors are involved in the acts being reported.

- c. Facilitate the presentation of reports by using the most appropriate means of communication, including electronic means.
- d. Advance, even further, in efforts intended to train civil servants as to the existence and purpose of their responsibility to report acts of corruption of which they are aware to the appropriate authorities, including the system for protecting witnesses in these cases and to urge the Republic of Costa Rica to consolidate progress already made in this direction by the Office of the Public Ethics Prosecutor.

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

**The Republic of Costa Rica has considered and adopted measures designed to establish, maintain and strengthen systems for the disclosure of income, assets and liabilities of persons who perform public functions in certain posts as specified by law, in accordance with the comments in Chapter 2, Section 2.1 of this report.**

In view of the comments made in the above-mentioned section, the Committee suggests that the Republic of Costa Rica improve the systems for supervising and evaluating the contents of declarations of income, assets and liabilities, and regulate their publication. To comply with this recommendation, the Republic of Costa Rica could consider the following recommendations:

- a. Define clearly the objective of this instrument, either as a means to promote greater transparency in the functions of public servants as a way of detecting illicit enrichment or other criminal behavior, and as an instrument for detecting, preventing and punishing conflicts of interest.
- b. Implement a system for the declaration of capital and other assets, liabilities and interests for use in detecting, avoiding, and punishing conflicts of interest, illicit enrichment, and other illicit acts.
- c. Continue to take the decisions necessary to ensure that the obligation to file a declaration, and the mechanisms for enforcing this obligation, can be extended to other public servants who hold positions that may, by their nature, facilitate or generate illicit enrichment or other illegal acts against the public interest, for example some of the popularly elected positions that are not covered by the current rules.
- d. Regulate the conditions, procedures and other aspects relating to the public disclosure, as appropriate, of declarations of income, assets and liabilities, subject to the Constitution and the fundamental principles of law.
- e. Establish systems for the effective and efficient verification of the contents of sworn declarations of income, assets and liabilities, establishing occasions and time limits for such verifications, strengthening the powers of the CGR for scheduling verifications, ensuring that the verification applies to a representative number of declarations, and establishing actions to overcome obstacles to required sources of information; and take the necessary decisions to ensure cooperation between the CGR and other sectors, such as the financial and taxation authorities, to facilitate the exchange of information for verifying the contents of these declarations.

- f. Strengthen the CGR, as necessary, to ensure that it has the material and human resources needed to perform its work of managing the system of sworn declarations of income, assets and liabilities.
- g. Expand the current system of penalties and violations applied to former public officials who fail to fulfill the requirements in this respect upon leaving office.
- h. Strengthen existing programs, or implement new ones, to train public servants in the provisions governing application of the system for declarations of income, assets and liabilities; design and introduce mechanisms to disseminate the system among the public servants who are required to enforce it, to ensure their thorough familiarity with the applicable provisions.
- i. Make best efforts to optimize and improve compliance with the income, asset and liabilities declaration requirement by the public servants concerned, taking into account regulatory or other adjustments that may be necessary for this.

### **3. OVERSIGHT BODIES IN RELATION TO THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 and 11 OF THE CONVENTION)**

**The Republic of Costa Rica has considered the applicability of and has adopted measures designed to create, maintain and strengthen oversight bodies to develop functions with respect to effective compliance with the provisions selected for review in the context of the first round (Article III, paragraphs 1, 2, 4 and 11 of the Convention), as stated in Chapter II, section 3 of this report.**

Taking into account the considerations expressed in that section, the Committee suggests that the Republic of Costa Rica consider the following recommendations:

- 3.1. Strengthen the Offices of the Comptroller General, the Public Ethics Prosecutor, the Ombudsman, and the Attorney General as oversight bodies, in their functions relating to enforcement of articles 1, 2, 4 and 11 of the Convention, in order to ensure that such control is effective; give them greater support and the resources necessary to carry out their functions; and establish mechanisms for coordinating their activities, as appropriate, and for their continuous evaluation and monitoring.
- 3.2. Compile information on their functioning so that evaluation mechanisms can be implemented.

### **4. MECHANISMS FOR ENCOURAGING THE PARTICIPATION OF CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ART. III, PARAGRAPH 11).**

**The Republic of Costa Rica has considered and adopted measures to establish, maintain, and strengthen mechanisms to promote the participation of civil society and nongovernmental organizations in efforts to prevent corruption, as noted in section 4 of Chapter II of this report.**

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

#### **4.1. Participation mechanisms in general**

Based on the methodology adopted by the Committee, no recommendations are considered in this section.

#### **4.2. Mechanisms for access to information**

4.2.1. Institute legal standards and measures to support access to public information. To comply with this recommendation, the Republic of Costa Rica could consider the following measures:

- a. Institute training and refresher programs to ensure that public officials understand and can apply, in a proper and timely manner, the rules and provisions protecting access to public information, and that they recognize the consequences, both for the administration and for themselves, when they deny such access without justification.
- b. Consider the advisability of integrating and systematizing in a single regulatory text the provisions that guarantee access to public information.
- c. Continue to create and to strengthen the Departmental Comptrollers' Offices, giving them the necessary human, technical and financial resources and publicizing the system and the services it offers, consistent with the study that the country conducted.
- d. Strengthen the mechanisms that guarantee the right of access to public information, so that it cannot be denied for reasons other than those determined by law, or on the basis of rules other than those established, establishing for this purpose, among other aspects, the following: i) procedures for accepting requests and responding to them on a timely basis; ii) requirements on admissibility and consequences when such requirements are not met; iii) reasons why a request may be denied; iv) method for communicating with the applicant; v) prompt and specialized administrative remedies for appealing a decision made by a public servant who improperly denies access to the information requested; and vi) increase the number of sanctions so as to cover a broader spectrum of circumstances that could hamper, delay or prevent the exercise of this right and that involve the conduct of public servants.
- e. Continue strengthening and expanding information systems in the form of institutional web pages, as an effective means of publicizing the management of government affairs. The Committee recognizes the wide spectrum of electronic resources that the Republic of Costa Rica is developing to permit broad public access to information.

4.2.2. The Committee welcomes the work of the Constitutional Chamber of the Supreme Court of Justice, in which the recourse of *amparo* offers an open, dynamic and effective remedy for protecting the right of free access to public information,

#### **4.3. Consultation mechanisms**

Supplement existing consultation mechanisms, establishing, as appropriate, procedures that will offer greater opportunities to hold public consultations before designing public policies and approving legal provisions. To comply with this recommendation, the Republic of Costa Rica could consider the following measures:

- a. Create greater opportunities within the Legislative Assembly for civil society to express an opinion during debate and approval of legislation, and make such hearings mandatory when the matters discussed are sufficiently important or sensitive, with due regard to maintaining a proper balance between the need to encourage such participation and the need to maintain the efficient functioning of the Legislature.
- b. Applying at the national level, consultation instruments similar to those of the Municipal Regime, and allowing those instruments to be convened, locally and nationally, by popular initiative, for issues where this is considered useful.
- c. Using instruments similar to those already in place in specific areas, such as the environment and urban planning, for consultation in other matters, or develop other suitable mechanisms for consultations in further areas.
- d. The possibility of formulating specific provisions within the current constitutional and legal framework to promote the creation and recognition of bodies representing civil society organizations and institutions at the municipal level, authorized to review and to propose public policies in specified areas, establishing at the same time the right to obtain information as appropriate.
- e. The possibility of formulating specific provisions within the current constitutional and legal framework to incorporate, organize, and recognize urban community institutions (neighborhood councils or committees) with the authority and right to present initiatives and requests for municipal works and services for their neighborhoods.

#### **4.4. Mechanisms to encourage active participation in public administration**

4.4.1. Strengthen and continue implementing mechanisms to encourage civil society and nongovernmental organizations to participate in public administration. To comply with this recommendation, the Republic of Costa Rica could consider the following measures:

- a. Establish additional mechanisms that strengthen the participation of civil society organizations in public management and especially in efforts to prevent corruption, and promote awareness of those mechanisms and their use.
- b. Determine that the result derived from the exercise of these mechanisms be considered a vital contribution to the decision-making process.
- c. Continue to promote and strengthen programs with objectives similar to those of the Office of Popular Initiative created by the Legislature.
- d. Design and implement programs to disseminate mechanisms for encouraging participation in public management and, as appropriate, provide training and the necessary tools to civil society, and nongovernmental organizations, and public officials and employees for using those mechanisms.



#### **4.5. Participation mechanisms in the follow-up of public administration**

Strengthen and continue implementing mechanisms that encourage civil society and nongovernmental organizations to participate in the follow-up of public administration. To comply with this recommendation, the Republic of Costa Rica could consider the following measures:

- a. Promote additional methods, when appropriate, that will allow, facilitate and assist civil society organizations in the development of activities for the follow-up of public administration.
- b. Consider the implementation of awareness and training programs, in addition to those that already exist, directed at civil society and nongovernmental organizations on the aspects dealt with in sections 4.1 to 4.5 of this report.
- c. The possibility of including specific provisions within the existing legal framework authorizing civil society institutions created and organized at the municipal level to oversee and monitor the allocation and use of public resources.
- d. The convenience of establishing mechanisms within the existing legal framework, which grant civil and urban communities that are created and organized at the provincial level, functions and powers to monitor municipal works and services for the neighborhood, and the use of resources budgeted and allocated for that purpose.

### **5. ASSISTANCE AND COOPERATION (ART. XIV)**

**The Republic of Costa Rica has adopted measures in relation to mutual technical cooperation and mutual assistance, in accordance with the provisions of Article XIV of the Convention, as described and reviewed in Chapter II, Section 5 of this report.**

In view of the comments made in the above-mentioned section, the Committee suggests that the Republic of Costa Rica consider the following recommendations:

- 5.1. Determine those specific areas in which the Republic of Costa Rica sees the need for technical cooperation with other States party in order to strengthen its capacities to prevent, detect, investigate and punish acts of corruption. As well, the Republic of Costa Rica needs to determine and prioritize requests for mutual assistance in investigating or prosecuting cases of corruption.
- 5.2. Continue efforts to exchange technical cooperation with other States party on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption.
- 5.3. Design and implement a comprehensive information and training program for responsible authorities and officials, with the objective of ensuring that they are aware of and can apply mutual assistance provisions for the investigation or prosecution of acts of corruption provided for in the Convention and in other treaties subscribed by Costa Rica.
- 5.4. Design and implement an information program with which the Costa Rican authorities can ensure follow-up to requests for legal assistance relating to acts of corruption and, in particular, those covered by the Inter-American Convention against Corruption.

## **6. CENTRAL AUTHORITIES (ART. XVIII)**

**The Committee notes that, according to the information provided by the Republic of Costa Rica in its response, a central authority has been designated for the purposes of international assistance and cooperation outlined in the Convention. However, as this designation was made by an executive order that has not yet met the formal requirement of publication in the Official Gazette of the state reviewed and, in consequence, has not yet been reported to the OAS General Secretariat, the Committee suggests that the Republic of Costa Rica consider the following recommendations:**

- 6.1 Conclude the formalities necessary to finalize the appointment of the Office of the Public Ethics Prosecutor as the Central Authority described in Article XVIII of the Convention for the purposes of the international technical assistance and cooperation set forth therein.
- 6.2 Inform the General Secretariat of the OAS of the appointment of the Office of the Public Ethics Prosecutor as the central authority, in accordance with established formalities.
- 6.3 Ensure that, once the authority is designated, it has the resources necessary to fulfill its functions.

## **7. GENERAL RECOMMENDATIONS**

Taking into account the comments made throughout this report, the Committee suggests that the Republic of Costa Rica consider the following recommendations:

- 7.1. Design and implement, when appropriate, training programs for public servants in charge of applying the systems, standards, measures and mechanisms considered in this report, with the objective of guaranteeing adequate knowledge, handling and implementation of the above.
- 7.2. Select and develop procedures and indicators, as appropriate, which enable verification of the follow-up to the recommendations contained in this report, and communicate the results of this follow-up to the Committee through the Technical Secretariat. With this in mind, consider taking into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee; as well, consider information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.
- 7.3. Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, and the recommendations contained in it.

## **8. FOLLOW-UP**

The Committee will consider the periodic update reports submitted by the Republic of Costa Rica concerning progress in implementing the above recommendations, within the framework of the plenary meetings of the Committee, and in accordance with the provisions of Article 30 of its Rules of Procedure.

The Committee will also analyze progress in implementing the recommendations formulated in this report, in accordance with article 31 and, as appropriate, article 32 of its Rules of Procedure.

The Committee wishes to place on record the request made by the Republic of Costa Rica to the Secretariat to publish this report on the Mechanism's Web page and by any other means of communication, in accordance with the provisions of Article 25(g) of the Rules of Procedure.

**APPENDIX TO THE DRAFT FINAL REPORT ON THE IMPLEMENTATION BY THE  
REPUBLIC OF COSTA RICA OF THE PROVISIONS OF THE CONVENTION SELECTED  
FOR REVIEW WITHIN THE FRAMEWORK OF THE FIRST ROUND**

The Republic of Costa Rica appended a series of provisions and documents to its Response, as follows:

- Appendix N° 1.** Political Constitution November 7, 1949
- Appendix N° 2.** Organic Law of the Office of the Comptroller General, Law No. 7428, September 7, 1994
- Appendix N° 3.** Organic Law on Internal Control, Law No. 8292, July 31, 2002
- Appendix N° 4.** General Law on Public Administration, Law No. 6227, May 1, 1978
- Appendix N° 5.** Civil Service Statute, Law No. 1581, May 30, 1953
- Appendix N° 6.** Ethical Standards for Public Servants in Positions of Trust, Executive Decree NC 2-P, May 12, 1998
- Appendix N° 7.** Rules Applicable to the President, the Vice President, Ministers, Vice Ministers, Executive President, Senior Officials, General Secretariat of the Council of Government, and all their officers and employees in positions of trust, *Acuerdo* NC 3-P. —San José. May 8, 2002
- Appendix N° 8.** Organic Law of the Judiciary, Law No. 7333, May 5, 1993
- Appendix N° 9.** Code of Judicial Ethics, Session No. 09-00, February 28, 2000, article XXXIV
- Appendix N° 10.** Legislative Assembly Personnel Law, Law No. 4556, April 29, 1970
- Appendix N° 11.** Municipal Code, Law N° 7794, April 30, 1998
- Appendix N° 12.** Regulations to the Civil Service Statute, Executive Decree No.21, December 14, 1954
- Appendix N° 13.** Independent Service Statute of the Office of the Ombudsman, Reglamento No. 600, December 20, 2001
- Appendix N° 14.** Independent Service Regulations of the Ministry of Finance, Decree No. 25271-H, June 12, 1996
- Appendix N° 15.** Independent Service Statute of the Office of the Comptroller General. Resolución N° 4-DRH-96, May 3, 1996
- Appendix N° 16.** Civil Code, Law No. 30, April 19, 1885
- Appendix N° 17.** Criminal Code, Law No. 4573. May 4, 1970
- Appendix N° 18.** Creation of the Criminal Jurisdiction Of Finance and the Public Service, Law N° 8275. May 6, 2002
- Appendix N° 19.** Law On Administrative Contracting, Law No. 7494, May 2, 1995
- Appendix N° 20.** Regulations on Administrative Contracting, Executive Decree No. 25038, March 6, 1996
- Appendix N° 21.** Law on Illicit Enrichment of Public Servants, Law N° 6872, June 17, 1983
- Appendix N° 22.** Month Financial Administration and Public Budgets, Law N° 8131, September 18, 2001
- Appendix N° 23.** Manual of General Standards of Internal Control for the Office of the Comptroller General and Entities and Organs Subject to its Supervision, May 30, 2002
- Appendix N° 24.** Code of Criminal Procedures, Law No. 7594, April 10, 1996
- Appendix N° 25.** Code Of Civil Procedures, Law No. 7130, August 16, 1989
- Appendix N° 26.** Law Establishing the Office of the Public Ombudsman, N° 7319, November 17, 1992
- Appendix N° 27.** Electoral Code, Law No. 1536, December 10, 1952
- Appendix N° 28.** Organic Law of the Office of the Prosecutor General, Law NO. 6815, September 27, 1982
- Appendix N° 29.** Law on Travel over Public Roads, Law No. 7331, April 13, 1993

- Appendix N° 30.** Regulations on the Use of State Vehicles, Executive Decree NO. 19135, July 15, 1989
- Appendix N° 31.** Regulations to the Law on Financial Administration and Public Budgets, Executive Decree 30058-H-MP-PLAN, December 19, 2001
- Appendix N° 32.** Regulations for Organization of the General Directorate of the National Budget, Executive Decree No. 31003-H+
- Appendix N° 33.** Registry of State Property, Executive Decree No. 2487 –H, August 23, 1972
- Appendix N° 34.** Regulations for the Registry and Control of Property of the Central Administration, Executive Decree No. 30720, August 26, 2002
- Appendix N° 35.** Treaty of Extradition and Mutual Assistance in Criminal Matters with Mexico
- Appendix N° 36.** Regulations to the Law on Illicit Enrichment of Public Servants, Executive Decree No. 24885-MP, December 4, 1995
- Appendix N° 37.** Regulations on Abstentions for Officials of the CGR
- Appendix N° 38.** Number of complaints received by the office of the Comptroller General
- Appendix N° 39.** Division of Operations and Evaluation Audits, Main Ex-post Audit Products Issued in 2002
- Appendix N° 40.** Results obtained from application of its mechanisms of the Civil Service Régime
- Appendix N° 41.** How the “*Comprared*” works
- Appendix N° 42.** Audit process of the Comptroller General’s office for combating corruption
- Appendix N° 43.** Comptroller General’s Office. Division of operations and evaluation audits. Classification by applicant of requests and complaints admitted from 1 Jan to 31 Dec 2002.
- Appendix N° 44.** Central American Treaty on Mutual Legal Assistance in Criminal Matters, Law No.7469, December 20, 1994
- Appendix N° 45.** Main powers of audit and oversight of the Comptroller General’s office for combating corruption
- Appendix N° 46.** Results obtained from the web page: [www.hacienda.go.cr](http://www.hacienda.go.cr)
- Appendix N° 47.** Law N° 8281 Reforming Articles 105, 123, 124 (first para), 129 (last para), 195 (first para.) and Adding Articles 102 and 195 of the Political Constitution (May 28, 2002 )
- Appendix N° 48.** Legislative Assembly. Services provided by the Office Other Popular Initiative during 1999-2003
- Appendix N° 49.** Law on Community Development, N° 3859, April 7, 1967.