

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

**REPORT ON IMPLEMENTATION IN NICARAGUA
OF THE CONVENTION PROVISIONS SELECTED FOR ANALYSIS IN THE FRAMEWORK OF
THE FIRST ROUND¹**

INTRODUCTION

1. Legal-institutional framework

According to its Constitution, Nicaragua is a democratic, participatory, and representative republic. Its form of government is a unitary structure, with territory divided into regions, departments, and municipalities, the latter of which are the basic units of the political and administrative division. Their officials have autonomy in governance and administration, without prejudice to the powers of the central government.

As provided in Article 7 of the Constitution, the organs of government are the legislative branch, the executive branch, the judicial branch, and the electoral branch, which are independent from and coordinate with each other

The legislative branch consists of the National Assembly, composed of 90 deputies and their alternates. Also sitting in the National Assembly, as deputies and alternates, are the country's immediate past popularly elected president and vice-president and the candidates for president and vice president who were runners-up in the last election.

The President, who is the head of State and Government, and the commander-in-chief of the Nicaraguan Armed Forces, heads the executive branch.

The judicial branch is composed of courts, with a unitary system in which the highest tribunal is the Supreme Court of Justice. There are also courts of appeal, district judges, and local judges.

The electoral branch consists of the Supreme Electoral Council and subordinate electoral entities. It has exclusive authority to organize, direct, and monitor elections, plebiscites, and referenda.

The Comptroller General is the highest oversight body in the public administration, responsible for the protection of state property and resources. It is headed by the Superior Council of the Comptroller General, which is composed of five members and three alternates elected by the National Assembly.

As noted in the introduction to its response,² in recent years the Republic of Nicaragua has enacted a series of laws to establish a new administrative structure for the country, including the Law for Regulation of the Administrative Court Jurisdiction; the State Contracting Law; the Organic Law of the Attorney General's Office; the Organic Law of the Solicitor General's Office; and the Law of the Structure, Authority, and Procedures of the Executive Branch and its Rules of Procedure. In addition, as a result of the work of the National Integrity Commission (CNI), there are the Civil Service Ethics Rules; the Amendments and Additions to the Penal Code concerning the definition of new offenses or acts of corruption committed by public officials and citizens against the public administration.

2. Ratification of the Convention and adherence to the Mechanism

¹ This report was prepared by the Committee in accordance with the provisions of Articles 3.g and 26 of its Rules of Procedure, at the plenary session held on July 18, 2003 in the framework of its fourth meeting, held at OAS headquarters in Washington, DC, July 14 to 18, 2003.

² Reply of the Republic of Nicaragua to the questionnaire. At the request of the Republic of Nicaragua, its response to the questionnaire is found published at the following website address:
www.oas.org/juridico/english/corresp.htm#.

According to the official register of the OAS General Secretariat, the Republic of Nicaragua ratified the Inter-American Convention Against Corruption on March 17, 1999 and deposited the instrument of ratification on May 6, 1999.

In addition, the Republic of Nicaragua signed the Declaration on the Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption on June 4, 2001, on the occasion of the OAS General Assembly in San José, Costa Rica. .

I. SUMMARY OF INFORMATION RECEIVED

The Committee wishes to acknowledge the Republic of Nicaragua's cooperation in the entire review process, and especially the assistance of the Executive Director of the Public Ethics Office, which was evident in the response to the questionnaire and the effort to collect and succinctly organize the available information. The Republic of Nicaragua sent the relevant provisions and documents with its reply, as listed in the annex of this report.

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

No document or information was received from civil society within the timeframe established in Article 33. b) of the Committee's Regulations. During an informal meeting on February 10, 2003 between the Committee and the representatives of the respective chapters of the organization "Transparency International" in the countries under review, a verbal report was submitted by the representative of the Nicaragua Chapter of "Transparency International," indicating a desire for such participation on the part of the Nicaraguan government and civil society.

No document or information was received from civil society.³

II. REVIEW OF THE IMPLEMENTATION BY NICARAGUA OF THE PROVISIONS SELECTED

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

1.1 CONFLICTS OF INTEREST

1.1.1 Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

The Republic of Nicaragua has a set of regulations concerning these standards of conduct, consisting of a variety of provisions, among which the following should be noted:

- Provisions of constitutional rank applicable to all public officials, such as those contained in Article 130 of the Constitution, which makes it illegal for them to obtain any concession from the State, to act as agents or representatives of public or private national or international corporations in their contracts with the State, or to appoint persons who are close relatives of the official making or authorizing the appointment.

- Provisions of constitutional rank applicable to specific public officials, such as those in the Constitution's Articles 134, 135, and 138.10 on Deputies; Article 147 on the President and Vice President; Article 152 on Ministers, Deputy Ministers, Presidents or Directors of autonomous and governmental bodies, and

³ During the informal meeting of the Committee members and representatives from the respective chapters of the non-governmental organization "Transparency International," for the countries under review, which was held on February 10, 2003, an oral report was submitted by the head of the Nicaraguan chapter of "Transparency International," indicating the desire for such participation on the part of that country's government and its civil society.

ambassadors; Article 161 on Magistrates of the Courts; and Article 171 on Magistrates of the Supreme Electoral Council.

- Provisions of statutory rank applicable to all public servants, such as those contained in Articles 7, 8, 9, 10, 11, and 12 of the Civil Service Probity Law (438/2002), which sets forth duties, prohibitions, incompatibilities, disqualifications, and infractions of civil servants; and in Article 13 of the State Contracting Law (323/2000), which prohibits civil servants from participating in State tenders when they have certain private interests.

The latter law, as noted in Nicaragua's response,⁴ also contains basic principles to govern State contracting, such as efficiency, publicity and transparency, and free and open competition, and sets forth, among other important provisions, who is not permitted to make bids to or sign contracts with the State (Article 12).

- Provisions of statutory rank applicable to specific public servants, such as those contained in Decree 124/1999, which establishes Civil Service Ethics Rules; the Organic Law of the Solicitor General (411/2001), which in Articles 20, 21, and 22 specifies prohibitions and restrictions applicable to employees of that agency; and the Organic Law of the Comptroller General (Decree Law 86/1979 as amended), which in Articles 23 and 26 prescribes incompatibilities and disqualifications for employees of that body.

The Republic of Nicaragua also has mechanisms to enforce these standards of conduct, among which the following should be noted:

- Article 131 of the Constitution, which provides that public officials and employees are personally responsible for violations of the Constitution, for administrative misconduct, and for any other offense or misdemeanor committed in the course of their duty, and adds that they are also responsible before the State for any damages resulting from abuse, neglect, or omission in the performance of their job.

- Constitution Articles 130.4; 138.10 and 11; and 139, which contain special provisions on the responsibility of senior State officials.

- Constitution Article 154, which states that the Comptroller General is the senior oversight body for the public administration and the property and resources of the State.

- Article 13 of the Civil Service Probity Law (438/2002) which develops the definition of civil servants' responsibilities, stating that they are to be determined by the Superior Council of the Comptroller office provides that criminal responsibility will be determined by the courts; prescribes the administrative and civil responsibilities to be applied in accordance with the provisions of that law and the Organic Law of the Comptroller.

- The Organic Law of the Comptroller General, which among other provisions includes penalties in the event of administrative liability (Articles 136 and 171); regulates how civil liability is determined (Article 137); and indicates how to proceed in the case of presumed criminal responsibility (Article 138).

The Civil Service Probity Law (438/2002), which provides in Article 15 that violations of the prohibitions, incompatibilities, and disqualifications established therein will be punished in accordance with the Organic Law of the Comptroller General, and specifies for the offenses established in Article 12 specific penalties to be imposed by the maximum authority in the institution involved; failing that, the Superior Council of the Comptroller will impose them.

- The State Contracting Law (323/2000), which provides various measures for dealing with violation of its provisions, among others the penalties in Article 84 for officials who violate its ban on contracting. The Comptroller General is to consider the infraction and take appropriate action.

- Decree 124/1999, which sets forth the Civil Service Ethics Rules for the executive branch states in Article 7 that violations of its provisions will make the civil servant subject to the penalties provided in the laws on the subject .

- Recently, in Decree 67 of July 5, 2002, the executive branch established the Public Ethics Office under the Office of the President. Among its duties are advising the executive branch on the prevention of acts that could be administrative or civil misconduct, or prima facie criminal conduct.

⁴ Reply of the Republic of Nicaragua to the questionnaire. p. 8.

1.1.2 Adequacy of the legal framework and/or other measures and enforcement mechanisms

The constitutional provisions on standards of conduct intended to prevent conflicts of interest and enforcement mechanisms apply to all public officials, and contain provisions to cover special cases, such as those involving senior government officials.

However, the Committee wishes to make some comments on the legal provisions for these standards and mechanisms, and note the provisions of constitutional rank that should be developed to make them effective, taking into account, among other considerations, the country's statements in the introduction to its response:⁵ "Nicaragua is making great efforts to establish the rule of law and correct the weakness of its institutions. For this, one of its fundamental pillars, Public Administration, must be given the necessary legal system, because the rule of law cannot be established without effective laws to implement the principles set forth in the Constitution, many of which remain to be developed and applied."

The legal regulation of greatest importance on standards of conduct to prevent conflicts of interest is the Civil Service Probity Law, of recent date (July 16, 2002), because it covers all civil servants. This law is a clear step toward the creation, maintenance, and strengthening of these standards, as referred to in Article III of the Inter-American Convention against Corruption, and is relevant for the achievement of these purposes and implements the constitutional principles of the Nicaraguan State in the area of responsibility of civil servants, and also deals with the implementation of the Convention provision being reviewed. It therefore represents significant progress. However, the following comments could be made:

- Article 7 of Law 438 on the probity of public servants establishes the general duty of every official to refrain from participating in activities or interests incompatible with his or her duties and to perform public service without discriminating against or providing preferential treatment for anyone and without obtaining additional benefits prohibited by the law. Articles 8 and 10 develop these duties, considering prohibitions and incompatibilities that conceptually constitute conflict of interest situations. In addition, Article 12 f) considers inherently lacking in probity a conflict of interest case such as intervening in decisions in which the public servant has participated as attorney, witness, expert or specialist.

However, Article 15 of this law establishes that violations of the prohibitions (Article 8) and incompatibilities (Article 10) shall be punished in accordance with the Organic Law of the Comptroller General, while failure to comply with Article 12 f) shall be punished with a fine in accordance with the provisions of the Law on Probity itself.

Although the Law of the Comptroller General assigns to this oversight agency the determination of administrative responsibility, a difficulty is inferred from an analysis of this law in terms of clearly establishing the applicability of penalties to specific types of conduct relating to conflicts of interest. Therefore, the Committee will make recommendations in this regard.

- There are no explicit rules to prevent conflicts of interest after leaving public service, such as a ban on dealing with official matters that came under the purview of public employees while employed or with agencies with which they had a recent relationship, and, in general, any situation that could lead to improperly exploiting their situation as an ex-employee.

Another legal regulation directly related to the Convention provision being reviewed is Decree 124/1999, which establishes the Civil Service Ethics Rules for the executive branch. Although of limited scope because it applies only to civil servants in that branch of government, when it was issued it was an advance toward implementation of the Convention. It establishes principles for conduct of the covered persons, as well as duties and incompatibilities relevant for the achievement of the purposes of the Convention, but in reviewing it we must note the comment made by Nicaragua in its response,⁶ "The Decree has no teeth. It does not establish penalties for violation of its rules, and is preventive in nature, merely giving civil servants a framework of provisions that warn them on how they should act in the performance of their functions. However, violation of an ethics rule, depending on its nature and content, may constitute a crime. So too with conduct that constitutes civil or administrative liability." Presumably this statement is based on

⁵ Reply of the Republic of Nicaragua to the questionnaire.

⁶ Reply of the Republic of Nicaragua to the questionnaire. p. 6.

the fact that the Decree, while mentioning penalties in Article 7, does not specifically define them nor expressly indicate which authorities should impose them.

As for the State Contracting Law, although Article III of the Convention deals in a provision not being reviewed here, with systems for procurement of goods and services by the State, the Committee considers it appropriate to note that the Contracting Law's measures for preventing conflicts of interest represent progress in this area and are relevant for the purposes of the Convention.

An important aspect regarding the enforcement mechanisms for the standards of conduct to prevent conflicts of interest is the key role assigned by both the constitutional and legal provisions to the Comptroller General. Although this entity will be discussed in the section of the report on oversight bodies, it should be noted here that in its response⁷ Nicaragua says "It is necessary to reform and update the Organic Law of the Comptroller General." As for the duties it should have for effective enforcement of these standards of conduct, the updating mentioned in the response should include improving procedures for performance of its functions, which are presently focused largely on developing its accounting capability. It is desirable to refocus them to permit rapid development of new duties for enforcing the standards of conduct recently assigned to this body by the Civil Service Probity Law.

The recently established Public Ethics Office has important responsibilities for prevention of conflicts of interest, which as Nicaragua points out in its response⁸ involve the encouragement of honesty, civic spirit, and ethics through education, dissemination, and awareness building regarding the standards of conduct for public employees. Although the purpose indicated in its Article I deals only with the executive branch, owing to the fact that it is part of the Office of the President, the manner in which its functions are structured could give rise to its impact in other areas of government and surely to civil society, which would be an important step in the implementation of the Convention provision under review.

In light of these comments, the Committee will make appropriate recommendations.

1.1.3 Results of the legal framework and/or other measures and enforcement mechanisms

In Nicaragua's response on this point,⁹ it supplies information that indicates the Comptroller General, which is the entity entrusted with ensuring enforcement of the standards of conduct to prevent conflicts of interest, made several audits (financial and compliance, special, and evaluation of internal control); declared administrative liability in some cases, prima facie criminal conduct, and civil responsibility; and imposed a specified number of penalties during 2000 and 2001 and the current year to date.

Although this information and that contained in Nicaragua's Annex I¹⁰ to its response suggests that the activities the Comptroller General undertook involved oversight of these standards of conduct, it cannot be determined on the basis of the Annex which and how many activities are directly related to the standards, because the statistics do not specify which standards were the basis for the measures adopted.

As for results in the legal framework and mechanisms contained in the provisions of the Civil Service Probity Law and Decree 67/2002 for establishment of the Public Ethics Office, since they were so recently approved (July 16 and July 5, 2002, respectively) it is not possible to have information that would permit assessment of their results.

This lack of information and the general nature of that available make it impossible to do a comprehensive evaluation of results in this field. In light of this circumstance, the Committee will make a recommendation.

⁷ Reply of Nicaragua to the questionnaire. p. 24.

⁸ Reply of Nicaragua to the questionnaire. p. 7.

⁹ Reply of the Republic of Nicaragua to the questionnaire. p. 9

¹⁰ Annex I. "Data submitted by the Comptroller General." See section "Audits performed by the Comptroller General in the last three years."

1.2 STANDARDS OF CONDUCT AND MECHANISMS TO ENSURE THE PROPER CONSERVATION AND USE OF RESOURCES ENTRUSTED TO GOVERNMENT OFFICIALS

1.2.1 Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

The Republic of Nicaragua has a set of provisions concerning these standards of conduct, including various kinds of provisions, among which the following could be noted:

- Provisions of constitutional rank such as those in Article 131 of the Constitution, which establish the liability of civil servants in the event that their acts or omissions create financial obligations of the State to private parties, or if they cause damages by reason of abuse, negligence, or omission in the performance of their duties.
- Provisions of statutory rank, among which the most important because of their direct correlation with the subject are found in the Organic Law of the Comptroller General (Decree Law 86/1979 as amended), which establishes the System for Control of the Resources of Public Administration (Articles 1, 3, 5, 10, 38, 40, 43, 45, 49, 50, 51, 52, 53, 63, 64, 76, 85, 86, among others).
- There are also provisions of statutory rank in various provisions of the Civil Service Probity Law (Articles 7, 8, 12, 13, 14, 15); the State Contracting Law (Articles 5, 6, 7); and the Penal Code (Articles 405, 406, 415, 417 bis, 418, 421, 422, 435).
- Decrees 124/1999 on Civil Service Ethics Rules in the executive branch, and 67/2002 on establishment of the Public Ethics Office, contain provisions on the subject.
- There is also a series of regulations, among them the Technical Rules for Internal Control and the Technical Rules for Government Audits, which are issued by the Comptroller General pursuant to the provisions of Article 33 of its Organic Law; also the Rules and Procedures for Budgetary Control, which are issued each year by the Ministry of Treasury and Public Credit.

The Republic of Nicaragua also has enforcement mechanisms for these standards of conduct. The mechanisms are basically the same as those used for enforcement of the standards of conduct for prevention of conflicts of interest that were mentioned in the section of this report dealing with that subject. It is thus useful to refer to those mechanisms, emphasizing that the law most directly related to enforcement of the standards intended to ensure the conservation and proper use of public resources is the Organic Law of the Comptroller General.

1.2.2 Adequacy of the legal framework and/or other measures

The standards and mechanisms for conservation and proper use of public resources that the Committee has reviewed, based on the information at its disposal, are relevant for the promotion of the purposes of the Convention. However, the Committee considers it appropriate to comment on some of them.

As already mentioned, the Organic Law of the Comptroller General is the cornerstone instrument of the System of Control for Public Administration Resources. Although a document like this report is not the appropriate place for a detailed analysis of the standards contained in the law, it should be noted that Nicaragua itself, in its response,¹¹ considers it advisable to reform and update the law, and although it does not indicate the subject or portions of the law that need to be modified, it is clear that owing to the changes that have occurred in the country since the law was enacted (September 1979), and the new duties and responsibilities assigned to this oversight body, it would be desirable for Nicaragua to undertake a comprehensive updating of its laws, because it has been the subject of many isolated reforms, which actually make it difficult to understand.

¹¹ Reply of the Republic of Nicaragua to the questionnaire. p. 24.

As for the provisions of Decree 124/1999 on Civil Service Ethics Rules in the executive branch, the comment made with regard to standards intended to prevent conflicts of interest bears repeating, in the sense that according to Nicaragua's own response¹² the decree lacks teeth.

In view of the foregoing comments, the Committee will make the appropriate recommendations.

1.2.3 Results of the legal framework and/or other measures

Nicaragua's response¹³ expressly states on this point "We do not have information." A review of the reply's Annex I¹⁴ shows that the information it contains on the subject under review forms an insufficient basis for evaluation of the results of the legal framework and mechanisms.

Furthermore, regarding the results of the legal framework and mechanisms in the Civil Service Probity Law and Decree 67/2002, which established the Public Ethics Office, since they were so recently adopted (July 16 and July 5, 2002, respectively) there is no information yet to permit assessment of results.

This lack of information makes it impossible to evaluate results in this field. In view of this circumstance, the Committee will make a recommendation.

1.3. MEASURES AND SYSTEMS REQUIRING PUBLIC OFFICIALS TO REPORT TO APPROPRIATE AUTHORITIES ACTS OF CORRUPTION IN THE PERFORMANCE OF PUBLIC FUNCTIONS

1.3.1 Existence of provisions in the legal framework and/or other measures

The Republic of Nicaragua has a set of provisions concerning these standards of conduct and mechanisms, consisting basically of the following:

- The Organic Law of the Comptroller General, which tasks the Internal Auditor of each state agency with reporting acts that could involve administrative or civil liability, or offenses that damage or endanger the economic interests of the entities or organs covered by that law, or, in general, when the acts reflect a lack of probity in management of the interests (Articles 53 to 65).
- The Civil Service Probity Law, which in Article 7 (h), prescribes the duty of all public servants to "Notify their superior or competent authority of acts that could cause damage to the State and of which they become aware by the nature of the functions they perform."
- Decree 124/1999, on Civil Service Ethics Rules in the executive branch, which in Article 3, item 7, sets forth the obligation of civil servants to "Report crimes and infractions of which they become aware to the appropriate authority."

1.3.2 Adequacy of the legal framework and/or other measures

The provisions in the Organic Law of the Comptroller General, which require the Internal Auditor of each institution to report acts involving corruption, are relevant for the promotion of the purposes of the Convention, but it should be noted that they refer to the obligation of a specific official and are not a general requirement for all civil servants.

The provision in Article 7 (h), of the Civil Service Probity Law, which is the broadest obligation to report acts harmful to the State (applicable to all government employees), is an important step forward in the implementation of the Convention. However, the obligation is not considered under misconduct in Article 12, so violation of it cannot be punished in accordance with Article 17.

As for the reporting requirement in Article 3, item 7 of Decree 124/1999 on Civil Service Ethics Rules in the executive branch, the same comment made in connection with standards to prevent conflicts of interest

¹² Reply of the Republic of Nicaragua to the questionnaire. p. 6.

¹³ Reply of the Republic of Nicaragua to the questionnaire. p. 11.

¹⁴ Annex I. "Data submitted by the Comptroller General." See section "Conservation and proper use of resources entrusted to public officials, chapter I, section 3.C"

and ensure the conservation and proper use of public resources is valid, that according to the country's own reply¹⁵, the decree has no teeth.

In light of these comments, the Committee will make the appropriate recommendations.

1.3.3 Results of the legal framework and/or other measures

As noted by Nicaragua in its response,¹⁶ "The data supplied by the Comptroller General, Annex I, indicate that it is citizen complaints that trigger audits for corrupt acts."

The section of Annex I¹⁷ dealing with the matter under review clearly reports accusations received by the Office for Citizen Accusations of the Comptroller General, with no indication which accusations were received from civil servants.

This lack of information and the limited nature of the information available preclude comprehensive evaluation of results in this field. In view of this circumstance, the Committee will make a recommendation.

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

2.1 Existence of a legal framework and/or other measures

The Republic of Nicaragua has a set of various kinds of provisions on these systems, among which the following should be noted:

- Article 130, paragraph 2 of the Constitution, which stipulates that "All State officials must disclose their assets before assuming office and after leaving it. This should be regulated by law."

- The Civil Service Probity Law, which in Articles 7 (e), 12 (a), (b), (c), and 15 sets forth the duty of all civil servants to submit a sworn declaration, the infraction that occurs due to failure to file or failure to file accurately, reliably and completely the required information, and the consequences and penalties applied; and in Chapter V, Articles 20 to 28, regulate aspects of this subject concerning the persons who must submit the declaration; to whom and when it must be presented; its contents; verification and clarification of the information, access to it, and its retention.

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

The Republic of Nicaragua has a set of provisions that clearly and unequivocally prescribe the requirement for all civil servants to submit a declaration of income, assets, and liabilities, which is relevant for the achievement of the purposes of the convention's provision whose implementation is being reviewed.

The key element of the system is undoubtedly the Civil Service Probity Law, which represents important progress toward implementation of the Convention, and as already mentioned, regulates in great detail the various pertinent aspects of the question, with applicability to all public employees and an explicit reference to senior government officials in all branches and divisions, a breakdown of the data that must be submitted, including assets of family members, and the manner in which the public can access the information.

It should only be noted with regard to the provisions of this law on verification of the content of the information submitted in the declaration (Article 23) and its retention (Article 28), that it would be desirable to develop these provisions to establish systems and deadlines or times for this verification to be done by the responsible authority, and it would be useful to provide for computer databases to facilitate consultation of the data by authorized persons for the stipulated purposes. Taking into account these comments, the Committee will make recommendations on the subject.

¹⁵ Reply of the Republic of Nicaragua to the questionnaire. p. 6.

¹⁶ Reply of the Republic of Nicaragua to the questionnaire. p. 12.

¹⁷ Annex I. "Data supplied by the Comptroller General." See section "Office for Citizen Accusations."

2.3 Results of the legal framework and/or other measures

Nicaragua's response on this subject¹⁸ reports information on the asset declarations received and checked by the Comptroller General during 2000, 2001, and January-July 2002, which are the data provided by that body in the corresponding section of the response's Annex I.¹⁹

Review of the information shows 26 percent of the declarations were checked in 2000, but the figure dropped to 17 percent in 2001.

It is felt that the principal aims of the system for submission of asset declarations include both the detection and prevention of conflicts of interest and the detection of possible cases of illicit enrichment. In view of this, the Committee will make a recommendation.

There are no statistics on the use of the asset declaration as a tool to combat corruption. This lack of information and the limited nature of the information available preclude comprehensive evaluation of results in this field. In view of this circumstance, the Committee will make a recommendation.

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

3.1 Existence of a legal framework and/or other measures

The Republic of Nicaragua has a set of standards on oversight bodies responsible for enforcement of the provisions of items (1), (2), (4), and (11) of Article III of the Convention, consisting of various kinds of provisions, among which the following should be noted:

- Provisions of constitutional rank, such as those in Article 154 of the Constitution, which designates the Comptroller General as the primary oversight body for the public administration and assets and resources of the State.
- Provisions of statutory rank, such as those in the Organic Law of the Comptroller General, which establishes a System for Control of the Resources of the Public Administration (Article 1) and describes the entity as an "Oversight Body" (Title II).
- Provisions of statutory rank that specifically assign oversight bodies responsibility for enforcement of the provisions they contain, such as the Civil Service Probity Law, which in Article 4 gives the Comptroller General this authority.

3.2 Adequacy of the legal framework and/or other measures

The Republic of Nicaragua's set of standards on oversight bodies responsible for enforcement of the provisions in items (1), (2), (4) and (11) of Article III of the Convention satisfy those provisions and represent progress in implementation, taking into account that it is clear that the Comptroller General exercises its oversight functions in each item because it has general authority to do so under the Constitution, and specifically in the Organic Law that regulates it and the laws on these matters, such as the Civil Service Probity Law.

From the above it is clear that, as noted by Nicaragua in its response,²⁰ the Comptroller General is the entity that as an oversight body is responsible for enforcement of these provisions.

Nicaragua's response²¹ also notes, as mentioned above, that "It is necessary to reform and update the Organic Law of the Comptroller General." The Committee considers that the need expressed by the country is a valid one, considering the information in the sections of this report on the adequacy of the legal framework and mechanisms concerning standards of conduct to prevent conflicts of interest and ensure the

¹⁸ Reply of the Republic of Nicaragua to the questionnaire. p. 13.

¹⁹ Annex I. "Data supplied by the Comptroller General. See section "Systems for declaration of income, assets, and liabilities, Chapter II, paragraph 2.C."

²⁰ Reply of the Republic of Nicaragua to the questionnaire. Document SG/MESICIC/doc. 27, p. 14.

²¹ Reply of the Republic of Nicaragua to the questionnaire. Document SG/MESICIC/doc. 27, p. 24.

conservation and proper use of public resources, with regard to the procedures and the need for comprehensive reform in light of the many changes introduced, which make it hard to understand.

The Committee also agrees that it would be considering useful for the Organic Law of Comptroller General to be updated so that this oversight body can be equipped to fully develop the new duties and responsibilities recently assigned to it regarding the abovementioned provisions of the Convention, such as those attributed to it in the Civil Service Probity Law enacted on July 16, 2002, involving standards to prevent conflicts of interest and measures concerning the asset declaration.

It is worth highlighting that although in Article 59 of the Organic Law of the Comptroller General provisions are contemplated that are relative to the independence of the internal auditing units of State institutions, given the importance in guarantying that said independence be effective, by the nature of fiscal operations that are under its charge, it is considered desirable to strengthen said units, in order that they have a certain autonomy and independence that is required for the complete fulfillment of their functions.

Another aspect that requires strengthening of the Comptroller General, taking advantage of the willingness manifested by the Republic of Nicaragua to modernize this oversight body, would be that in regard to the functions that it exercises in relation with asset declarations of civil servants, meaning that its functions would be clearly established for requesting the updating of said declarations when complete fulfillment of said functions so requires it.

In light of these comments, the Committee will make the appropriate recommendations.

3.3 Results of the legal framework and/or other measures

Although there is some information in Annex I²² of Nicaragua's response on increased quantitative and qualitative productivity of the Comptroller General as a collective body, which may be valid in accordance with the way the data are interpreted in that document, note should also be taken of the comments on statistics on verification of asset declarations in the section of this report on results in that area, and other information in Annex I that could indicate the need to strengthen that oversight body, such as the statement that "The percentage of coverage by the Comptroller General of all units subject to audit is 1.8 percent in 2000 and 1.9 percent in 2001, which shows limited coverage ability for the responsibilities of the Comptroller General."²³

The foregoing does not imply failure to recognize other indicators in Nicaragua's response and its Annex I that show efforts are being made to strengthen this important oversight body, but it is additional justification to support the need expressed therein for introducing reforms for updating the institution, which according to the response²⁴ is already under way with the drafting of legislation on the subject.

It would be necessary to have additional information beyond that provided in order to make a comprehensive assessment of the specific results of the oversight functions carried out by the Comptroller General concerning the abovementioned provisions of the Convention. In light of this circumstance, the Committee will make a recommendation.

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

4.1 GENERAL PARTICIPATION MECHANISMS

4.1.1 Existence of a legal framework and/or other measures

The Republic of Nicaragua has a set of rules regarding these mechanisms, consisting of a variety of provisions, among which the following should be noted:

²² Annex I. "Data supplied by the Comptroller General." See section "Oversight Bodies, Chapter III, section 3.B."

²³ Annex I. "Data supplied by the Comptroller General." See section "Information requested by the Inter-American Development Bank (IDB)."

²⁴ Reply of the Republic of Nicaragua to the questionnaire. p. 24.

- Provisions of constitutional rank, such as those in Constitution Article 7, which describes Nicaragua as representative and participatory democratic; Article 48, which in one section establishes the State's obligation to eliminate constraints on equality among Nicaraguans and their effective participation in the country's political, economic, and social life; Article 50, which proclaims the right of citizens to participate equally in public affairs and the management of government, which is to be guaranteed by law in both national and local spheres; Article 52, which provides that citizens have the individual and collective right to lodge petitions, denounce irregularities, and make constructive criticism to the branches of government or any authority, and to receive prompt satisfaction or response and to receive an answer within the time prescribed by law.

- Provisions of statutory rank, such as those in the Law on Municipalities (40/1988), some of whose provisions refer to popular participation in management and defense of the interests of their residents and the nation (Article 1); to the right of inhabitants and residents to denounce irregularities in municipal management and to make suggestions for action (Article 16, item 4); and to the formation of Municipal Councils made up of residents so they can learn about, constructively criticize, and contribute ideas to local government (Articles 36 and 37).

- There are also provisions to regulate a citizens' right to propose initiatives for laws as provided in article 140.4 of the Constitution and in the Law on Citizen Initiatives for Laws (269/1997).

- Recently, through Decree 67 of July 6, 2002, the executive branch established the Public Ethics Office, which has among its functions those of supporting actions to promote citizen participation in transparency in public management and to develop the National Integrity Policy in consultation with the executive branch or civil society organizations.

4.1.2 Adequacy of the legal framework and/or measures

The constitutional provisions on the subject matter under review are appropriate for a State that identifies itself in its Constitution as democratic, participatory, and representative, and are relevant for the achievement of the purposes of the Convention.

Although the provisions in the Law on Municipalities partially develop some of the constitutional principles on citizen participation, establishing important rights and mechanisms for this purpose, and are therefore considered relevant for the achievement of the purposes of the Convention, their impact is logically limited to the municipal sphere.

The Law on Citizen Initiatives for Laws can be considered another step toward achievement of the purposes of the Convention, but its important provisions are likewise only a partial development of the constitutional provisions on participation.

It is evident that important constitutional principles that form the basis for a broader legal framework on the subject of participation by civil society and nongovernmental organizations in efforts to prevent corruption still remain to be developed, as Nicaragua recognizes in its response,²⁵ mentioning in the introduction that many constitutional principles remain to be developed and implemented.

It should be noted that Nicaragua's reply²⁶ also voices the need to "Establish systematic mechanisms so that civil society and nongovernmental organizations can participate directly in the prevention of corrupt practices."

However, it is necessary to recognize the efforts being made to develop these constitutional principles, because as also noted in Nicaragua's response²⁷ on the subject under review, the legislative branch in Nicaragua is already considering a bill for a Citizen Participation Law and a preliminary draft Law on Freedom of Information.

Establishment of the Public Ethics Office is further evidence of these efforts, and another step toward achievement of the purposes of the Convention to encourage participation by civil society and

²⁵ Reply of the Republic of Nicaragua to the questionnaire.

²⁶ Reply of the Republic of Nicaragua to the questionnaire. p. 24.

²⁷ Reply of the Republic of Nicaragua to the questionnaire. p. 16.

nongovernmental organizations to prevent corruption, considering the important duties assigned to that office in this area.

In light of the previous comments, and in accordance with the classification of mechanisms for participation prescribed in the methodology for review of the implementation of Article III, paragraph 11 of the Convention,²⁸ the Committee will make specific recommendations on the subject.

4.1.3 Results of the legal framework and/or other measures

In Nicaragua's response²⁹ on this point it expressly states "We have no information." As for results of the provisions of Decree 67/2002 establishing the Public Ethics Office, since it is so new (July 5, 2002) it is not possible to have data that would permit evaluation of results.

This lack of information precludes a comprehensive assessment of results in this field. In light of this circumstance, the Committee will make a recommendation.

4.2 MECHANISMS TO ENSURE ACCESS TO INFORMATION

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

Nicaragua's response on the subject³⁰ expressly notes "There are no such mechanisms; the legal instruments, as we said above, are in the legislative pipeline."

The Committee notes that Nicaragua attached to its response a document entitled "Preliminary Draft Law on Freedom of Information," which could be considered progress toward implementation of the Convention, and can be evaluated when it becomes law.

4.2.2 Adequacy of the legal framework and/or other measures

Considering what was noted in the previous section, the Committee cannot comment on the adequacy of the measures. It will make appropriate recommendations for the Republic of Nicaragua to have mechanisms for access to information.

4.2.3 Results of the legal framework and/or other measures

Absent both mechanisms on the subject and information on results in this field, it is not possible to evaluate them. In light of this circumstance, the Committee will make a recommendation.

4.3. CONSULTATIVE MECHANISMS

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

Nicaragua's response³¹ on this question expressly states "The Constitution and Law on Municipalities provide for citizen involvement as one of the public's civil rights for participation; it is a consultative mechanism available to officials who want to determine public opinion as well as to society. However, there are no regulations or specific procedures for systematic citizen consultation (Constitution Articles 48, 49, 50, 52, 53, 54 and 55; Law 40 Articles 3, 16, 36 and 37)."

The constitutional and legal norms mentioned in the previous point, as noted in the section of this report concerning mechanisms for general participation, constitute a legal framework with Constitutional provisions of general application for citizen participation, and legal provisions limited to local application because they are in the Law on Municipalities. As stated in the previous response, these provisions are a consultative mechanism available to officials who want to sound out public opinion and to society, so it can be said that Nicaragua has provisions on this subject.

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

²⁸ Methodology for the Review of the Implementation of the Provisions of the Inter-American Convention Against Corruption Selected Within the Framework of the First Round, Chapter V, D (Document SG/MESICIC/doc.21/02).

²⁹ Reply of the Republic of Nicaragua to the questionnaire. p. 16.

³⁰ Reply of the Republic of Nicaragua to the questionnaire. p. 17.

³¹ Reply of the Republic of Nicaragua to the questionnaire. p. 18.

With regard to the standards of constitutional rank, would be desirable for Nicaragua to develop consultative mechanisms, especially considering Nicaragua's comments in its response, that there are no regulations or specific procedures for systematic consultation of citizens.

As for the standards of statutory rank, which as noted are limited to the municipal sphere, they offer important provisions for encouraging citizen participation and therefore constitute progress in the implementation of the Convention, but it would be advisable to supplement them in the matter of consultative mechanisms, taking into account Nicaragua's statement about the lack of regulations or specific procedures on the subject.

In light of these comments, the Committee will make recommendations on the issue.

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

Nicaragua's response³² on this point expressly notes "We have no information." This lack of information precludes a comprehensive evaluation of results in this field. In light of this circumstance, the Committee will make a recommendation.

4.4. MECHANISMS TO ENCOURAGE ACTIVE PARTICIPATION IN PUBLIC ADMINISTRATION

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

On this matter Nicaragua's response³³ says that there are mechanisms to facilitate, encourage, and obtain active participation by civil society and nongovernmental organizations in the process of public policy and decision-making, and mentions two kinds of mechanisms, calling the first "structured," such as the so-called Economic and Social Planning Council (CONPES)³⁴, and the second "unstructured," because they are not structured by the national government but rather arise from the need of civil society organizations to intervene in public administration.

4.4.2. Adequacy of the legal framework and/or other measures

As for the "structured" mechanisms, which according to Nicaragua's response³⁵ "...are basically advisory bodies with no decision-making authority, whose main characteristic is that they are structured, regulated, and convened by the central government," mentioning the example of the CONPES, established by Decree 15/1999, as the President's advisory body for the country's economic and social policy, the Committee feels that if these mechanisms are effectively used for the purposes of the Convention provision under review of linking civil society and nongovernmental organizations to efforts intended to prevent corruption, they could in that sense be relevant for the achievement of the Convention's purposes and constitute progress in its implementation.

Other examples of "structured" mechanisms, as mentioned by Nicaragua during the meeting with the review subgroup held in Washington, D.C. on February 6, 2003, include the Municipal Development Committees, among which can be cited those in the municipalities of Esteli, Masatepe, Nagarote and Ciudad Sandino. The statement in the above paragraph would also apply to these committees.

As for the "unstructured" mechanisms, according to Nicaragua's response³⁶ they "...are circumscribed to the general legal framework in which they were created and are constitutional, but most of the advisory bodies set up by the State lack a specific legal framework to guarantee their existence and operation, which leaves them at the whim of the authorities in power and the political changes that occur in the country."

In light of these comments, the Committee will make recommendations on the subject.

³² Reply of the Republic of Nicaragua to the questionnaire. p. 18.

³³ Reply of the Republic of Nicaragua to the questionnaire. p. 18.

³⁴ In accordance with Decree No. 15/99, the council is comprised of representatives from business, labor, community, political and NGO organizations.

³⁵ Reply of the Republic of Nicaragua to the questionnaire. pp. 18, 19.

³⁶ Reply of the Republic of Nicaragua to the questionnaire. p. 19.

4.4.3. Results of the legal framework and/or other measures

Nicaragua's response³⁷ on this point expressly notes "We have no information." This lack of information precludes a comprehensive evaluation of results in this field. In light of this circumstance, the Committee will make a recommendation.

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

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

Nicaragua's response³⁸ expressly notes "There are mechanisms, but they are not specific. For example, an appropriate mechanism for citizen follow-up will be the Integrated Financial Management System for Administration and Audit (SIGFA). This program will computerize the financial records of publicly budgeted agencies and give citizens access to these records on the Internet. Unfortunately, to date the program has not been made available to the public, although it is working with real time on-line data for the National General Budget at the central level and in 30 state agencies."

In view of this statement, it could be said that the existence of the mechanisms being reviewed depends on how they are implemented, because they are not specific, and in the case cited as an example, their existence will be measured by the degree to which they are actually put in service for the public.

It is worth highlighting, that in accordance with that manifested by Nicaragua in the preliminary review sub-group meeting held in Washington D.C., February 6, 2003, and with that stated in a document presented in said meeting, entitled "Proyecto de Reforma a la Administración Financiera, Administrativa y Auditoría (SIGFA) Logros y Avances", many important steps have occurred in its development. In the legal and normative sphere, Law 290 of June 3, 1998, established that the Ministry of Revenue and Public Credit is its superior body. Among its progress, it is worth mentioning that in 2002 "it has implemented an information system comprised of all the divisions of the Ministry of Revenue and Public Credit, 12 Ministries, 4 Branches of Government, INIFOM, the Comptroller General, the Office of the Attorney General, the Office of the President and Vice-President, the Technical Secretariat of the Presidency, and the National Police".³⁹

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

As noted above, it will not be possible to comment on the effectiveness of the mechanisms mentioned in the response until there is sufficient information about them to permit it. However, taking as a reference the mechanism cited by way of example, it could be said that to the degree that its implementation gives rise to effective citizen follow-up there will be relevant mechanisms for public participation in monitoring public administration.

In light of this circumstance, the Committee will make recommendations on the subject.

4.5.3 Results of the legal framework and/or other measures

Nicaragua's response⁴⁰ on this point expressly notes "We have no information." This lack of information precludes a comprehensive evaluation of results in this field. In light of this circumstance, the Committee will make a recommendation.

5. ASSISTANCE AND COOPERATION

5.1. MUTUAL ASSISTANCE

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

³⁷ Reply of the Republic of Nicaragua to the questionnaire. p. 19.

³⁸ Reply of the Republic of Nicaragua to the questionnaire. p. 19.

³⁹ "Proyecto de Reforma a la Administración Financiera, Administrativa y Auditoría (SIGFA) Logros y Avances", pag. 2

⁴⁰ Reply of the Republic of Nicaragua to the questionnaire. p. 19.

Nicaragua has a set of provisions on this subject, consisting of extradition treaties it has signed with various States, which it lists in its response,⁴¹ and legal provisions on mutual assistance in the case of the crimes of drug trafficking and laundering of money and assets obtained from illegal activities, contained in Law 285/1999 (Reform Law and Amendments to Law 177).

5.1.2 Adequacy of the legal framework and/or other measures

The treaties listed by Nicaragua in its response can contribute to the achievement of the purposes of the Convention by encouraging and facilitating mutual assistance among the States Parties, and can serve for its specific objectives regarding investigation and prosecution of corrupt acts to the extent they are used for this purpose.

With regard to the standards of statutory rank contained in Law 285/1999, the Committee considers that they are relevant for the purposes of mutual assistance established in the Convention, also to the extent that they are used for this purpose.

It should also be noted that Nicaragua said in its response⁴² that “in the framework of the Convention, Nicaragua has not made nor received any requests for mutual assistance as provided in the Convention.”

The Committee wishes to stress the importance of applying the mutual assistance treaties signed by the Republic of Nicaragua and the Inter-American Convention Against Corruption to concrete cases of acts of corruption, which can only happen if those responsible for applying them are thoroughly familiar with their provisions.

In view of these comments, the Committee will make recommendations on the subject.

5.1.3 Results of the legal framework and/or other measures

Nicaragua’s response⁴³ reports positive results from an extradition request for a corruption offense that another State Party to the Convention made to its government; from a similar request that its government made to the same State, which is in process; and from the “positive and effective” cooperation that another State Party to the Convention has been providing in another case. The Committee considers that these attitudes are in the spirit of mutual assistance that the Convention seeks to encourage, although they are not a direct consequence of invoking that treaty.

5.2 ASSISTANCE AND COOPERATION

5.2.1 Existence of a legal framework and/or other measures

Since Nicaragua’s response⁴⁴ expressly notes on this point that “The Country has no mechanisms that would permit mutual technical cooperation with other States Parties on the most effective ways and means of preventing, detecting, investigating, and punishing acts of corruption, including exchanges of experiences by way of agreements and meetings between competent bodies and institutions, and the exchange of information on methods and procedures of citizen participation in the fight against corruption,” the Committee will make recommendations on the subject.

Although there is no legal instrument to support it, the fact that Nicaragua has experience with exchange of mutual technical cooperation with other States Parties on the best ways and means to prevent, detect, punish, investigate and punish corrupt acts, as noted elsewhere in its response,⁴⁵ can be considered as progress toward implementation of the Convention, which will be helpful for planning the mechanisms.

5.2.2 Adequacy of the legal framework and/or other measures

In light of the comments in the previous section, it is not possible to assess the adequacy of the framework and measures. The Committee will make the appropriate recommendations for Nicaragua to have mechanisms to develop mutual technical cooperation as prescribed in the Convention.

⁴¹ Reply of the Republic of Nicaragua to the questionnaire. p. 20.

⁴² Reply of the Republic of Nicaragua to the questionnaire. p. 21.

⁴³ Reply of the Republic of Nicaragua to the questionnaire. p. 21.

⁴⁴ Reply of the Republic of Nicaragua to the questionnaire. p. 21.

⁴⁵ Reply of the Republic of Nicaragua to the questionnaire. p. 23.

5.2.3 Results of the legal framework and/or other measures

Absent both mechanisms on the subject and information on results in this field, it is not possible to evaluate them. In light of this circumstance, the Committee will make a recommendation.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

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

As stated in its response, Nicaragua already designated its central authority for the purposes of channeling mutual assistance and mutual technical cooperation contemplated in the Convention. It is the Public Ethics Office established by Decree 67 of July 5, 2002.

However, since the OAS General Secretariat has not received the prescribed notification of the designation, the Committee will make a recommendation on the point.

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

Article 3, item 11 of the abovementioned Decree 67/2002 specifies that one of the functions of the Public Ethics Office is to make and receive requests for mutual assistance and technical cooperation called for in the Convention, which can be considered relevant for the purposes of the Convention in this area.

Furthermore, since the country's response⁴⁶ notes that "the Public Ethics Office has been recently established. Within a reasonable timeframe it will have the resources it needs to make and receive requests for assistance and cooperation," the Committee will make a recommendation on the subject.

6.3 Results of the legal framework and/or other measures

Given the recent establishment of the Public Ethics Office (July 5, 2002), and the statement in Nicaragua's response⁴⁷ that "it has not received any requests for assistance or cooperation as envisioned in the Convention," it is not possible to comment on results. In light of these circumstances, the Committee will make a recommendation.

III. CONCLUSIONS AND RECOMMENDATIONS

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

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

1.1 Standards of conduct intended to prevent conflicts of interest and enforcement mechanisms

The Republic of Nicaragua has considered and adopted measures to establish, maintain, and strengthen standards of conduct intended to prevent conflicts of interest and enforcement mechanisms, among them the Civil Service Probity Law (438/2002) and the establishment of the Public Ethics Office, as outlined in this report in Chapter II, section 1.1.

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

- 1.1.1. Strengthening implementation of laws and regulatory systems concerning conflicts of interest so that they permit practical and effective application of the public ethics system.

⁴⁶ Reply of the Republic of Nicaragua to the questionnaire. p. 22.

⁴⁷ Reply of the Republic of Nicaragua to the questionnaire. p. 23.

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

- Ensure the applicability of sanctions to public servants who violate the norms that govern conflicts of interests, in accordance with the aims of the Civil Service Probity Law (see section chapter II, section 1.1.2).
- Regulate certain eventualities that may encompass conflicts of interest and that due to its importance it would be convenient to treat with greater detail and specificity (see section chapter II, section 1.1.2).
- Establish adequate restrictions for those public servants who have recently leave their public positions (see section chapter II, section 1.1.2).
- Designing and implementing mechanisms to publicize and provide training on the standards of conduct, including those involving conflicts of interest, to all government officials and employees, and to provide further training or periodic updating regarding them.

1.2. Standards of conduct and enforcement mechanisms to ensure proper conservation and use of resources entrusted to public officials in the performance of their duties

The Republic of Nicaragua has considered and adopted measures intended to establish, maintain, and strengthen standards of conduct to ensure the conservation and proper use of resources entrusted to public officials in the performance of their functions, as indicated in Chapter II, section 1.2 of this report.

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

1.2.1. Strengthening control systems within the public administration.

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

- Modernize or introduce a legal reform to the Organic Law of the Comptroller General in order to establish, among other things, simple procedures for application of penalties to violators of these standards of conduct and for obtaining restitution to the State for damages for which the violators may be liable.
- Making public, where appropriate, the reports of the Comptroller General of the Republic, as the oversight body of the cited standards of conduct.
- Designing and implementing mechanisms to publicize and provide training on the standards of conduct to all government officials and employees, and to provide further training or periodic updating regarding them.

1.3 Standards of conduct and mechanisms concerning measures and systems requiring officials to report to appropriate authorities acts of corruption in the performance of public functions

The Republic of Nicaragua has considered and adopted measures to establish, maintain, and strengthen standards of conduct and mechanisms concerning measures and systems requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware, as noted in section 1.3 of Chapter II of this report.

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

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

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

- Applying effectively to those who violate this obligation, the sanctions provided in the corresponding punishment regimes (see chapter II, section 1.3.2).
- Training public officials concerning the existence and purpose of their responsibility to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

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

The Republic of Nicaragua has considered and adopted measures intended to establish, maintain, and strengthen systems for registration of income, assets, and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public, as noted in section 2 of Chapter II of this report.

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

- 2.1. Improving the systems for verification and use of the content of sworn financial declarations.

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

- Establishing systems for verifying the content of the sworn declaration by the competent authority (see chapter II, sections 2.1 and 2.2).
- Designing systems that facilitate access to the information contained in the sworn declarations by those who are authorized to do so.
- Optimize the systems for analyzing the content of asset declarations for the purpose of detecting and preventing conflicts of interest as well as for detecting possible cases of illicit enrichment

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

The Republic of Nicaragua has considered and adopted measures to establish, maintain, and strengthen oversight bodies for effective compliance with the provisions selected for analysis in the first round (Article III, paragraphs (1), (2), (4), and (11) of the Convention), as noted in section 3 of Chapter II of this report.

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

- 3.1. Strengthening the Comptroller General, as the oversight body that undertakes the functions related to the effective compliance with paragraphs (1), (2), (4) and (11) of Article III of the Convention.

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

- Strengthening the Office of the Comptroller General, giving the office the necessary legal instruments and resources needed for compliance with the new responsibilities that have been assigned to it, in relation with the oversight provisions of the Convention.
- Guaranteeing the autonomy and independence of the internal audit units, and strengthening fulfillment of their responsibilities in the detection and prevention of illegal administrative activities.
- Making sure that the Comptroller General of the Republic has greater political and social support; and establishing mechanisms that will allow coordination and continued evaluation and monitoring of its actions.

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

The Republic of Nicaragua 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 Nicaragua consider the following recommendations:

4.1 Mechanisms to ensure access to information:

4.1.1. Instituting legal norms supporting public access to government information.

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

- Developing and issuing regulations on procedures for acceptance of requests for information, for response to requests in a timely fashion, for appeal procedures in the case of denials, and for penalties concerning failure to comply with obligations to provide information.

4.2 Consultative mechanisms

4.2.1. Instituting procedures, where appropriate, that provide an opportunity for consultation prior to the design of public policies and to the approval of legal norms.

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

- Publishing and disseminating the drafts of legal norms, and developing transparent processes in order to allow the consultation of interested sectors in relation to the drafting of laws, decrees and resolutions within the executive branch.
- Develop suitable mechanisms to allow for public consultation in areas other than those already considered.

4.3 Mechanisms to encourage active participation in public administration

4.3.1. Strengthening and further implementing mechanisms that encourage civil society and nongovernmental organizations to participate in public administration.

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

- Establishing mechanisms to encourage civil society and nongovernmental organizations to participate in efforts to prevent corruption and to develop public awareness of the problem; and promoting awareness of the mechanisms established for participation and explaining their use.

4.4 Participation Mechanisms in the Follow-up of the public administration:

- 4.4.1. Strengthening and further implementing mechanisms that encourage civil society and nongovernmental organizations to participate in monitoring public administration.

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

- Promoting additional ways, where appropriate, to allow, facilitate, and assist civil society and nongovernmental organizations in developing activities to monitor public administration.
- Designing and carrying out programs to publicize mechanisms for participation in monitoring public administration; and, where appropriate, training and enabling civil society and nongovernmental organizations to have the necessary tools to use the said mechanisms.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

The Republic of Nicaragua has adopted measures dealing with mutual assistance and technical cooperation, in accordance with the provisions of Article XIV of the Convention, and has experience in mutual technical cooperation, as noted and reviewed in section 5 of Chapter II of this report.

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

- 5.1 Determining and prioritizing specific areas in which the Republic of Nicaragua feels it needs technical cooperation from other States Parties in order to strengthen its ability to prevent, detect, investigate and punish corrupt acts.

In addition, the Republic of Nicaragua should determine and prioritize the requests for reciprocal assistance to investigate or adjudicate cases of corruption.

- 5.2 Continuing the efforts of technical cooperation exchange with other State Parties on the effective ways and methods to prevent, detect, investigate and sanction acts of corruption, taking advantage of the experience the Republic of Nicaragua has had in this field.
- 5.3 Designing and implementing an integral program for dissemination and training directed specifically to competent authorities (in particular to, judges, magistrates, state attorneys and other authorities with judicial investigative functions), in order to ensure that they are knowledgeable of the provisions on mutual legal assistance and other related treaties signed by Nicaragua, and may apply then to concrete cases.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

The Committee wishes to recognize with satisfaction that the Republic of Nicaragua has complied with Article XVIII of the Convention by designating the Public Ethics Office as the central authority for purposes of the international assistance and cooperation prescribed in the Convention.

In light of the comments made in section 6 of Chapter II of this report, the Committee suggests that the Republic of Nicaragua consider the following recommendations:

- 6.1. Notify the OAS General Secretariat of the designation of the central authority, pursuant to the prescribed formalities.

6.2 Give the central authority sufficient resources to properly perform its duties.

7. GENERAL RECOMMENDATIONS

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

7.1 Design and implement training programs for public servants who are responsible for implementing the systems, norms, measures and mechanisms considered in this report, in order to ensure that they are adequately known, managed and applied.

7.2 Select, develop and report to the Technical Secretariat of the Committee procedures and indicators, where appropriate, that allow for verifying follow-up of the recommendations established in this report. For this purpose, the Technical Secretariat of the Committee will publish on the OAS website a list of more generalized indicators applicable within the Inter-American system that may be available for selection by the State under review.

8. FOLLOW-UP

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

In addition, the Committee will review the progress made in implementing the recommendations contained in this report, as provided in Articles 31 and, when appropriate, Article 32 of the Rules of Procedure.

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

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

Together with its response, the Republic of Nicaragua sent appendices corresponding to the following provisions and documents:

1. Appendix I. Data Provided by the Comptroller General of the Republic.
2. Appendix II. Organic Law of the Comptroller General of the Republic.
3. Technical Rules for Internal Control for Government Oversight.
4. Decree No. 124-99.
5. Constitution of Nicaragua.
6. Penal Code of the Republic of Nicaragua.
7. Law 285. Law Amending and Adding to Law 177, the Law on Narcotics, Psychotropic Drugs and Controlled Substances.
8. Law 177. Law on Narcotics, Psychotropic Drugs and Controlled Substances.
9. Law 40. Law on Municipalities.
10. Decree 15.99 Creating the National Economic and Social Planning Council.
11. Framework Law on Implementation of Constitutional Reforms.
12. Law 330. Law on Partial Reform of the Constitution of the Republic of Nicaragua.
13. Law on Citizen Initiatives for Laws.
14. Presidential Agreement No. 91-99. Creation of Monitoring and Evaluation Committees.
15. Government Auditing Standards of Nicaragua.
16. Law 419. Law Amending and Adding to the Penal Code of the Republic of Nicaragua.
17. Decree Creating the National Citizen Participation Commission.
19. Law 411. Organic Law of the Attorney General's Office of the Republic.
20. Annual General Budget Law of the Republic.
21. Rules and Procedures for Budgetary Execution and Oversight 2002.
22. Civil Service Probity Law.
23. State Contracting Law.
24. Law 290. Law of the Structure, Authority, and Procedures of the Executive Branch and its Rules of Procedure.
25. Decree 67-2002. Creation of the Public Ethics Office.

26. Preliminary Draft Law on Citizen Participation.
27. Preliminary Draft Law on Freedom of Information.
28. Extradition Treaty between the Republic of Nicaragua and the Kingdom of Spain.
29. Extradition Treaty between the Republic of Nicaragua and the United Mexican States.
30. Extradition Treaty between the Republic of Nicaragua and the Republic of Chile.
31. Treaty on Mutual Legal Assistance on Penal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.