

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

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REPUBLIC OF PANAMA

FINAL REPORT

(Adopted at the plenary session)

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

**FINAL REPORT ON IMPLEMENTATION IN
THE REPUBLIC OF PANAMA**

**OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE FRAMEWORK OF
THE FIRST ROUND¹**

INTRODUCTION

1. Legal and institutional framework²

The Republic of Panama is a sovereign and independent State in which the Panamanian nation is organized in accordance with the Political Constitution of 1972, as amended by the Reform Acts of 1978, 1983, and 1994. Its government is unitary, republican, democratic, and representative (Article 1, Political Constitution).

Government emanates from the people, and the State exercises it through the legislative, executive, and judicial branches, each of which acts separately in its own sphere, but in harmonious collaboration (Article 2, Political Constitution).

The Government of the Republic of Panama is established as a Constitutional democracy, under a presidential regime, in which the president of the Republic, who directs the executive branch, is both head of state and head of government.

The function of promulgating laws for fulfilling the purposes and exercising the functions of the State falls to the legislative branch, which consists of a single chamber known as the Legislative Assembly, governed by the rules and principles established in the Constitution. Its members, called legislators, are elected by direct popular vote, under a party lists system. Legislators are elected in proportion to the number of inhabitants in the respective electoral constituency, based both on the political and administrative division of districts in each of the nine provinces of the Republic and on the number of inhabitants in the indigenous regions (*comarcas*). Legislators act in the interest of the nation and represent their respective political parties and the voters of their constituency. The current number of legislators is 71, and each legislator has two alternates.

The executive branch consists of the president of the Republic and 13 ministers of state, who are freely appointed and removable by the president, and whose portfolios are created by law. Among other functions, the executive branch coordinates the work of the administration and public establishments; sees to the preservation of public order; approves and promulgates laws, observes them and sees to their precise enforcement; enters into administrative contracts for the provision of services and the execution of

¹ This report was adopted by the Committee, in accordance with Articles 3 (g) and 26 of the Rules of Procedure, at the plenary session held on February 6, 2004, at its fifth meeting, held from February 2 to 6, 2004, at OAS headquarters in Washington, D.C.

² Response of the Republic of Panama to the questionnaire approved on May 24, 2002, and concerning the provisions selected by the Committee of Experts of the Mechanism for Follow-up of Implementation of the CICC for Review in the Framework of the First Round, August 2002, pages 1 and 2, hereinafter *response of the Republic of Panama to the questionnaire*.

public works; directs external relations; decrees pardons for political crimes; reduces penalties and grants conditional release to persons convicted of common crimes; and issues enacting regulations for laws when their proper implementation requires it, while in no case deviating from their letter or spirit. The president of the Republic meets with the two vice presidents of the Republic and the ministers of state in the Cabinet Council, the functions of which are spelled out in the Constitution and in legislation.

The president of the Republic, the two vice presidents, the legislators, the district mayors and members of the municipal councils, known as district (*de Corregimiento*) councilors or representatives, and their respective alternates, are chosen in general elections held on the same date every five years, for a five-year term. To ensure the freedom, honesty and efficiency of public voting, there is the Elections Tribunal, an independent body with its own treasury and nationwide jurisdiction, which exclusively interprets and applies electoral laws.

The Political Constitution recognizes fundamental guarantees as part of the individual rights and duties of persons. The authorities of the Republic are instituted to protect the life, integrity, and property of citizens, wherever they live, and of foreigners under the Republic's jurisdiction, to ensure the effective exercise of individual and social rights and duties, and to carry out and enforce the Constitution and the law (Article 17 of the Constitution).

Individuals are answerable to the authorities only for violation of Constitutional and legal provisions. Public servants are answerable on these grounds and also for exceeding their functions or for omissions in their exercise (Article 18 of the Constitution).

Every person has the right to submit respectful petitions and complaints to public servants on matters of social or private interest and to obtain a prompt resolution. A public servant who receives a petition, query or complaint must return a decision within 30 days, under penalty of the sanctions established by law (Article 41 of the Constitution).

This right is governed by Act 6 of January 22, 2002, which refers, *inter alia*, to access to information, the recourse of *habeas data*, citizen participation in certain State undertakings, and the obligation of entities governed by that Act to adopt their own codes of ethics.

The Panamanian legal system is based on the Civil Law, which predominates in Central and South America. The law is binding both on citizens and on foreign residents or transients in the Republic, and ignorance of the law, once promulgated, is no excuse for nonobservance. No law may have retroactive effect unless its wording declares so expressly, for purposes of public order or social interest, or unless it deals with criminal matters and such retroactivity is of benefit to the accused (Article 43 of the Constitution).

The administration of justice is free, expeditious and uninterrupted (Article 198 of the Constitution) and falls primarily to the judicial branch, consisting of the Supreme Court of Justice, the tribunals and the courts established by law.

Among the powers of the Supreme Court are those of protecting the integrity of the Constitution; exercising jurisdiction in administrative litigation; serving as the final Court of Appeals; and appointing the magistrates of the tribunals.

The work of the judicial branches coordinates closely with that of the Public Ministry or Attorney General's Office (*Ministerio Público*), which is exercised by the attorney general (*Procurador General de la Nación*), the solicitor general (*Procurador de la Administración*), the district and local prosecutors, and other officials designated by law.

The Public Ministry's powers include those of defending the interest of the State or the municipality; enforcing laws, court rulings and administrative provisions; overseeing the official conduct of public servants and ensuring that they fulfill their duties; prosecuting crimes and violations of Constitutional or legal provisions; and providing legal advice to administrative officials (Article 217 of the Constitution).

The supervision, regulation and control of all acts involving administration of public funds and other public assets falls to an independent State agency, the Comptroller General's Office (Article 275 of the Constitution). The functions of that body include those of examining, auditing and confirming the accounts of public servants, entities or individuals that administer, handle or hold public funds or other public assets; undertaking inspections and investigations to determine the propriety of transactions that affect public goods; and, as necessary, filing complaints against, and judging the accounts of, agents or employees who administer such assets when apparent irregularities are detected (Article 276 of the Constitution).

The Ombudsman's Office was created as an independent institution with full functional, administrative and financial autonomy and subject to instruction from no authority, State body or individual. Its responsibility is to enforce the rights enshrined in the Constitution, as well as those protected in international human rights conventions and the law, by overseeing the acts or omissions of public servants and those who provide public services (Article 2, Act 7, of February 5, 1997).

2. Ratification of the Convention and adherence to the mechanism

According to the official records of the OAS General Secretariat, the Republic of Panama ratified the Inter-American Convention against Corruption on July 20, 1998, and deposited its instrument of ratification on August 10, 1998.

Mention should be made here of the interpretive statement and the reservation entered by the Republic of Panama, through the Ministry of Foreign Affairs, when ratifying the Convention. In its interpretive statement, the Republic of Panama indicated "it interprets that the enforcement of the present Convention does not alter its rights as provided for by the Conventions regarding asylum that are currently in force." In its reservation, it points out that "the Republic of Panama does not feel bound to extend actions of confiscation or seizures of goods as provided for by Article XV of the present Convention, since these actions infringe the provisions of Article 30 of the Political Constitution of the Republic, which forbids the confiscation of assets as punishment."³

In addition, the Republic of Panama signed the Declaration on the Mechanism for Follow-up of Implementation of the Inter-American Convention against Corruption on June 4, 2001, during the OAS General Assembly session in San Jose, Costa Rica.

I. SUMMARY OF INFORMATION RECEIVED

1. Response from the Republic of Panama

The Committee wishes to acknowledge the cooperation shown throughout the review process by the Republic of Panama, and, in particular, by the General Secretariat of the Ministry of Economy and Finance, the coordinating unit, which provided a prompt reply by the Republic of Panama to the questionnaire and was constantly available to clarify or supplement the information contained in it.

³ Ministry of Foreign Affairs, Panama City, July 20, 1998.

In its response, the Republic of Panama included provisions and documentation it considered pertinent, the list of which is included as an annex to this report.

In its review, the Committee considered information provided by the Republic of Panama through August 18, 2003, as well as that subsequently provided to the Secretariat and to the members of the review subgroup, for the completion of its duties, in accordance with the Rules of Procedure.

2. Document submitted by civil society

The Committee received, within the time limit adopted by the Committee of Experts in the framework of its third regular meeting,⁴ a document submitted by civil society, which is included as an annex to this report.⁵

II. REVIEW OF IMPLEMENTATION IN PANAMA OF THE PROVISIONS SELECTED

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE THEM (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

As stated in the response to the questionnaire, the Republic of Panama has standards of conduct of Constitutional, legal and regulatory rank, as well as mechanisms and other measures designed to prevent conflicts of interest that might arise in the civil service.

The Panamanian Constitution provides standards on conflicts of interest and incompatibilities in the exercise of public functions in Articles 150, 152, 175, 188, 191, 192, 209 and 298.

Domestic law also establishes systems governing incompatibilities, impediments, disqualifications and prohibitions for the exercise of public functions or the consideration of any matters by senior officials of the judiciary and the Public Ministry, and of the legislative and executive bodies cited by the Republic of Panama in its response.

Chapter II, Title VI, of the Administrative Code, on "Public Administration," contains provisions of a general nature governing the conduct of public servants in order to ensure the correct, honorable and proper fulfillment of public duties. It establishes as a general rule, with specific exceptions, that no one person may hold two or more paid positions (*destinos*) (Articles 894 and following of the Administrative Code).

⁴ Decision entitled "Update of Replies to Questionnaire." This decision was adopted by the Committee of Experts at the meeting of February 13, 2003, in the framework of its third regular meeting, held from February 10 to 13, 2003, at OAS headquarters in Washington, D.C., United States of America.

⁵ During an informal meeting, held on February 2, 2004, of the members of the Committee and representative of the chapters of the nongovernmental organization Transparency International corresponding to the countries under study, an oral report was given by the head of the Panama chapter of Transparency International, showing the willingness of the Government of Panama and its civil society to have such participation.

In addition, Article 33 (paragraphs 3 to 5) and Article 35 of the Commercial Code prohibit certain public servants from engaging in trade or holding positions in commercial companies.

It should also be noted that Act 9 of June 20, 1994, gives effect to Title XI of the Constitution and governs the rights and duties of public servants, especially those in the administrative career service. Articles 137 and following of that Act require such public servants to observe moral and ethical principles and standards as fundamental parameters in the performance of their functions, and to report to their superiors any cases in which a family relationship (to the fourth degree of consanguinity or the second degree of affinity) would disqualify them from handling an administrative process (Article 137, paragraphs 1, 4 and 118).

Similarly, this Act contains rules that disqualify or prohibit public servants from engaging in certain acts or conduct, such as demanding membership in, or resignation from, a given political party in order to seek or remain in public office, or giving preference to related individuals or corporations seeking contracts with the nation, or applying for or operating administrative concessions, or acting as suppliers or contractors (Article 138). Violations of these prohibitions entail penalties, applied progressively in accordance with the severity of the violation (Article 139 and following).

Noteworthy as well is Article 27 of Act 6 of January 22, 2002, which requires that "all dependencies or agencies of the State, including those belonging to the executive, legislative and judicial branches, decentralized, autonomous and semi-autonomous entities, municipalities, local governments and community councils" must promulgate their own codes of ethics "within a period of no more than six months following entry into force of this Act." That Article also identifies the topics that must be covered by those codes, including conflicts of interest.

Resolution 2 of January 7, 1999, establishes Model Internal Rules of Procedure for public-sector institutions. That model is used as a frame of reference in the administration of human resources covered by Act 9 of June 20, 1994. It also contains an adequate list of prohibitions and of offenses of administration or conduct that give rise to conflicts of interest, and establishes penalties according to the severity of such wrongdoing.

The Republic of Panama also has mechanisms for enforcing measures to prevent conflicts of interest, notably the following:

Among the means of punishment defined in the rules, regulations and other special provisions, Article 448 of the Judicial Code refers to the jurisdiction, procedures and penalties for violations of judicial ethics; the "model internal rules of procedure for public sector institutions"⁶ refer explicitly to conduct contrary to institutional interests; and the Criminal Code contains the rules cited by the Republic of Panama in its response.

In the case of institutions that have not adopted the internal rules of procedure described above, Act 38⁷ (which is of generic and supplementary application and also governs mechanisms of investigation, among others) requires that the necessary corrective measures be taken, including punishment of the conduct referred to, and establishes degrees of severity and the corresponding administrative penalties and, when appropriate, referral to the Public Ministry in cases of violations of the Criminal Code (Articles 80 to 88 of Act 38).

⁶ Resolution 2 of the Administrative Career Service Technical Board, approving the Model Internal Rules of Procedure for Public Sector Institutions.

⁷ Act 38 of July 31, 2000, approving the Organic Statutes of the Solicitor General's Office, governs General Administrative Procedures and issues Special Provisions.

The Republic of Panama also mentioned other mechanisms in its response. These include Article 60 of Act 56 of December 27, 1995, which governs public contracting, and renders null and void any public act or contract signed in violation of the Constitution or the law; Article 12, paragraph 2, of the same Act, which establishes that public servants are ineligible to enter into contracts with the entity or agency for which they work when such contracts are for profit or are unrelated to the services they provide; and Articles 760 to 763 and 395 of the Judicial Code, which institute the mechanism of challenge in cases where a judge or magistrate fails to disqualify himself despite a conflict of interest, extending this provision to investigating officers. In addition, Article 448 and following of the Judicial Code establish a procedure for investigating and punishing violations of judicial ethics, including provisions to prevent nepotism and favoritism in the selection of justice officials (administrators and guardians), a prohibition on allowing oneself to be influenced by political party demands, and a prohibition on holding private positions that impede or could impede the proper performance of judicial functions.

Among mechanisms of a preventive nature, attention should be drawn to the legislation referred to by the Republic of Panama in the annexes to its response, including Act 39,⁸ Article 32 of which requires certain public servants administering public property and those who enter into contracts for the provision of services with the public administration, in certain positions, to complete a Standard Life History Form. Among other things, that form requires a sworn statement to the effect that there exists no fact or circumstance constituting a Constitutional or legal disqualification or incompatibility for occupying the position to which the person has been appointed, or for signing a service contract with the administration. For this purpose, the Unified Personnel Information System has been established under the National Anticorruption Directorate or other organizations established by law (Articles and 32, 33 and 34 of Act 39).

However, *"this format has not been implemented because of the changes underway in the National Anticorruption Directorate."*⁹

Act 39 also provides that, in the case of any appointment or contract for the provision of services with the administration, if the requirements for holding the position or entering into the contract have not been observed, its revocation shall be requested, as applicable, as soon as the violation has been detected (Article 36).

Finally, it is important to highlight the provisions of Agreement No. 364 of October 3, 2002, whereby the Judiciary Auditing Directorate is established, under the plenary of the Supreme Court of Justice, in order to guarantee suitable organization and fulfillment of functions in the judicial area. This Directorate is a support and cooperation unit for the most effective development of disciplinary and judicial ethics processes (Articles 1 and following of the above-mentioned Agreement).

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

The rules and mechanisms concerning conflicts of interest that the Committee has examined, based on the information it had available, are suitable for promoting the purposes of the Convention. Nevertheless, the Committee considers it useful to offer some comments on certain aspects of those rules and mechanisms, on which recommendations are given in the final chapter of this report.

⁸ Act 39 of July 19, 2001, amending and supplementing the provisions of the Criminal Code and the Judicial Code, and issuing rules for the prevention of corruption.

⁹ Document updating the response of the Republic of Panama to the questionnaire, page 3.

The overall system pertaining to all public officials is established in the Administrative Code, Act 9 of June 20, 1994, and Executive Decree 13 of January 24, 1991, governing the administrative career service and the rights and duties of public servants in general in their relations with the public administration.

Mention should also be made of the additional application of Act No. 38 of July 31, 2000, by the Attorney General of Administration, in the absence of internal regulations; the Code of Ethics for public servants, issued by the Technical Board of the Directorate General for the Administrative Career Service; the existence of public careers in addition to the administrative career, as provided in the Constitution (Article 300); and the existence of special systems to govern such careers for which special laws have already been enacted, such as the judicial career (Judicial Code), the diplomatic and consular careers (Act No. 28 of July 7, 1999, by which the Organic Law of the Ministry of Foreign Affairs was issued) and the legislative career.

The system establishes a comprehensive catalogue of rules of conduct for the correct, honorable and proper fulfillment of public duties, intended to achieve the principles established in the Convention.

As noted in the previous section, domestic law provides rules of disqualification, incompatibility, impediment, ineligibility, and prohibition in respect of the exercise of public functions or the consideration of any matter by senior officials of the judiciary and the Public Ministry, and of the legislative and executive bodies mentioned by the Republic of Panama in its response (Articles 150, 152, 175 and 191 of the Constitution). Nevertheless, in regard to those provisions the Committee notes the lack of enforcing regulations defined in a manner that would reflect the specific features and importance of those posts and the necessary mechanisms. On this point, the Committee will offer a recommendation in the final chapter.

With respect to the promulgation and implementation of codes of ethics, the Panamanian Chapter of Transparency International, in its documents submitted to the Secretariat, indicates that "one of the shortcomings in the current public administration, particularly in the executive branch, has been the failure to update the respective codes of conduct to bring them into line with the Transparency Law, or with the new codes of conduct pursuant to that Law."¹⁰

Regarding this, the country under review stated: *"Despite the comments by Transparency International, Panama Chapter, the delay in implementing these Codes of Ethics as required by the Law of Transparency, stems precisely from the conceptual inconsistency in the legal origins of these codes, because the position adopted by the current Public Administration, especially by the Executive Branch, has been to build up and fine-tune existing institutions and standards, rather than to establish a new inconsistent ordering, as observed in the process that was followed for prior assessment and gradual implementation of new institutions, among others, to pave the road and consolidate the groundwork for the implementation of a National Integrity Plan"*.

The Committee notes that the Republic of Panama has pursued efforts to give every State agency or dependency its own code of ethics. These efforts have been reinforced with promulgation and implementation of Law 6 of January 22, 2002. Twelve institutions have now complied with this obligation, as indicated by the Republic of Panama in response to the Secretariat's request for updated information.¹¹ Moreover, according to the Republic of Panama,¹² some institutions already had codes of

¹⁰ Comments from Transparency International, Panama Chapter, to the response to the questionnaire provided by the Republic of Panama, page 18.

¹¹ The following institutions now have such codes: Autoridad de la Región Interoceánica (Resolution N° 078-02, July 25, 2002); Comisión de Libre Competencia y Asuntos del Consumidor (Resolution N° PC-317-02 of July 22, 2002); Comisión Nacional de Valores (Resolution N° CNV-259-02 of June 11, 2002); Ente Regulador de los Servicios

ethics before approval of Law 6 of 2002, as is recognized in the wording of the Law. Nevertheless, it is possible that those earlier ethics codes, which predate Law 6, may not cover all aspects stipulated in that Law, which suggests that they should be reviewed and updated accordingly, on the basis of the criteria provided for by Law No. 6 of 2002.

Considering the number of institutions that have issued such codes and the progress that has been recorded to date, it would be advisable for the Republic of Panama to consider pursuing this process further, to ensure that every State institution required to do so enacts its code of ethics and complies with the requirements of Law 6 of January 22, 2002.

Article 27 of that Law sets minimum standards for the contents of those codes, as follows: declaration of financial assets; conflict of interest; proper use of resources allocated to public functions; obligation to report acts of corruption to a superior; and mechanisms for enforcing these rules.

Nevertheless, in the implementation of these provisions there is a lack of consistency with higher level laws establishing regulations on the subject. In this respect, the Committee feels that greater consistency in the Republic of Panama between these codes and the framework created by applicable laws could help to provide public officials with better guidance in the correct performance of their duties.

It would also be advisable to have not only an institution responsible for compiling the codes, as stipulated in Article 27 of Law 6, but also to have an institution or entity to verify the contents of these codes, to ensure that they meet the requirements of Article 27 of that Law. In the final chapter of this report, the Committee will offer a recommendation on these aspects.

The Committee also observes a lack of legal and regulatory uniformity in the definitions of "public servant" in different institutions. For example, Resolution 2 of January 7, 1999, by the Administrative Career Board declares a public servant to be anyone *"who occupies a position of employment within the governmental structure"*; Law 38 of July 31, 2000, defines a public servant as *"any person who exercises temporary or permanent functions in positions of the executive, legislative or judicial branches, of municipalities, of autonomous and semiautonomous entities, who provides a personal service, individuals who by reason of their position handles public funds and, in general, those who receive remuneration from the State"*; Article 31 of Law 39 of July 19, 2001, uses the definition from Article I of the Convention. Based on the information received, the Committee notes that, with the exception of Article 31 of Law 39 of July 19, 2001, the concept of public servant established in the Convention is not being used. In light of the circumstances, the Committee will offer a recommendation.

With respect to incompatibilities, disqualification and responsibilities, the Committee notes the absence of any special system applicable to certain special categories of public officials. This category includes legislators, the President of the Republic, Ministers, and Vice Ministers. The Committee recognizes the existing Constitutional provisions, including those in Articles 150 and 152 of the Political Constitution. Nevertheless, it would seem appropriate for the Republic of Panama to consider undertaking a thorough review to broaden and regulate those rules to cover the various ways in which incompatibilities, disqualification and liabilities may present themselves in each given case.

Públicos (Resolution N° ADM-178 of July 5, 2002); Tribunal Electoral (Resolution N° 15 of June 19, 2002); Defensoría del Pueblo (Resolution N° 3 of July 19, 2002); Municipio de Panama (Acuerdo N° 107-A of July 23, 2002); Ministerio de Salud (Resolution No. 654 of October 22, 2002); Instituto Panameño Autónomo Cooperativo (Resolution JD No. 11/2003 of May 12, 2003; Cuerpo de Bomberos de Panama; and Instituto de Acueductos y Alcantarillados Nacionales (Resolution No. 50-2003 of May 29, 2003); and Instituto Panameño Autónomo Corporativo (Resolution JD/N.11/2003 of May 12, 2003).

¹² Update to the response of the Republic of Panama to the questionnaire, page 7.

Another mechanism is to be found in Article 37 of Law 39, which requires that if grounds for incompatibility or disqualification should surface after a public servant is appointed or takes office, he must immediately report that fact to the entity for which he is working. If he has not rectified the situation within the following three months, he must be relieved of his duties.

The Committee notes, however, that this system has not been implemented,¹³ and suggests that the Republic of Panama consider doing this to provide effective mechanisms to prevent conflicts of interest and to ensure the proper use of resources entrusted to public servants.

The Committee also notes the absence of regulations governing the activities that public servants may perform subsequent to the exercise of their functions. The Committee believes it advisable for the Republic of Panama to consider having provisions such as those that prohibit a public servant from participating in official matters of which he has had prior knowledge, or in entities with which he has had a recent relationship, and generally stresses the importance of envisaging situations that might imply undue exploitation of a person's status as a former official. The Committee notes the advisability for the Republic of Panama to consider the development of standards that, for example, could limit or prohibit persons who have exercised any public function in the respective supervisory or regulatory body to be appointed to management positions or boards of directors in private institutions subject to State control or regulation, with such prohibition extending for a reasonable period of time following the departure of the public servant.

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

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

As the Republic of Panama indicated in its response, *"by virtue of the different circumstances that can lead to conflicts of interest, and their differing administrative and judicial characteristics, no statistics are available on this issue."*¹⁴

This lack of information makes impossible a comprehensive assessment of the results in this field. In light of the circumstances, the Committee will offer a recommendation.

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 Panama has within its legal system a set of standards and mechanisms designed to ensure the proper conservation and use of resources entrusted to public officials. Chief among these provisions are the following:

Law 9 of 1994¹⁵ establishes the obligation of all public servants to take care of the public goods and assets entrusted to their custody or administration "as a good father would do for his family".

¹³ Update to the response of the Republic of Panama to the questionnaire, page 3.

¹⁴ Response of the Republic of Panama to the questionnaire, page 10.

Persons entrusted with the administration of public property are liable for its monetary value in case of loss or damage caused by negligence or misuse, even when that property was not in the immediate care of the responsible person when the loss or damage occurred. The excuse of having acted on higher orders does not exempt the official from this liability (Fiscal Code, Article 10).

The Internal Government Control Standards establish parameters for risk assessment, supervisory and monitoring activities, and in particular, aspects relating to financial administration, materials and supplies, computer systems, public works and administration of human resources. These rules are binding on all institutions that make up the public administration, as well as on nongovernmental organizations (NGOs) entrusted with public funds.¹⁶

Law 32 of 1984 empowers the Comptroller General of the Republic to audit the use of public funds provided by way of subsidy to nongovernmental associations or entities. A similar purpose is served by the Governmental Audit Rules for the Republic of Panama (Decree 247 of December 13, 1996) and the Special Audits Manual for the Determination of Liabilities, approved in 1996.

The public procurement system requires that all State contracts be in writing and that they comply with the Law and respect the principle of transparency. Any person who participates in any public procurement act is required to instruct his employees and representatives about the civil and criminal liabilities involved in offering or accepting bribes, commissions or rewards of any nature.¹⁷

The Republic of Panama has also made progress in implementing an electronic public procurement system. As part of this system, it has created an electronic purchasing site that contains information on the procurement of institutions within the public sector and reports on the goods and services that the State is seeking.¹⁸

The codes of ethics also contain rules for protecting public property, prohibiting and punishing the improper or wasteful use of such property,¹⁹ and Model Internal Rules of Procedure for public sector institutions,²⁰ which provide for penalties in cases such as unauthorized removal of documents, materials or working equipment.

With respect to codes of conduct, Law 6 of January 22, 2002, includes among the aspects that must be covered by those codes "the proper use of resources entrusted to the performance of a public function" (Article 27).

Law 7 of February 5, 1997 created the Ombudsman's Office, as an independent institution with full functional, administrative and financial autonomy. One of the Ombudsman's powers is to investigate acts

¹⁵ Law 9 of 1994, which establishes and governs the civil service.

¹⁶ Decree 214-DGA of October 14, 1999, of the Comptroller General of the Republic

¹⁷ Executive Decree 19 of January 1996.

¹⁸ Progress report on the actions undertaken by the Republic of Panama, within the framework of the Inter-American Convention on Corruption, Fourth Meeting of the Committee of Experts of the Mechanism for Follow-up of the Implementation of the Inter-American Convention on Corruption, pursuant to Article 30 of the Rules of Procedure of the Committee of Experts during its Fourth Regular Session.

¹⁹ These include Resolution 3 of April 16, 1999, of the Administrative Career Board approving the Code of Ethics for Public Servants; Resolution 3 of July 19, 2002, approving the Code of Ethics for Public Servants in the Ombudsman's Office, Article 7(q); and Article 9 of Resolution PC-317-02 of July 22, 2002, of the Competition and Consumer Affairs Commission. Code of Ethics of Public Servants.

²⁰ Resolution 2 of the Administrative Career Board, approving the model internal rules of procedure for public sector institutions.

or omissions of the public administration, including the executive branch, local governments, the police, public servants, and mixed public or private enterprises, individuals or corporations providing public services under State concession or authorization (Articles 1 and 4 of Law 7 of February 5, 1997).

One of the disciplinary mechanisms is found in Cabinet Decree 36 of February 10, 1990, creating the Financial Liability Directorate (*Dirección de Responsabilidad Patrimonial*) within the Comptroller General's Office, and adopting a procedure to decide the financial liability vis-à-vis the State of agents and employees in the handling of public assets and funds. Once proceedings are begun, this Directorate is authorized to take such precautionary measures as it may consider necessary at any time when, in its judgment, there are reasons to fear that the State's claims are being compromised (Article 3, Cabinet Decree 36).

As part of the mechanisms, there should be a reference to the powers granted to the Superior Prosecuting Offices Delegated by the Attorney General's Office of the Republic, referred to as Anticorruption Prosecutor's Office, responsible for the nationwide investigation of crimes against Public Administration and whose powers are set forth in Articles 352 to 359 of the Judicial Code.

Furthermore, it should be pointed out that the National Directorate for Special Investigations of the Comptroller General's Office of the Republic²¹ includes among its functions that of receiving reports on alleged irregularities in the management, care, administration, and use of public funds and assets. This Directorate also has a phone line for "citizen reports" to draw up cases for irregularities committed with state funds and assets.

In a complementary manner, Articles 4 and following of Law 39 of July 19, 2001,²² amending the Criminal Code, define a list of crimes involving public assets, including improper appropriation, theft or embezzlement of public funds, and graft.

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

The rules and mechanisms relating to standards of conduct and the proper conservation and use of resources entrusted to public officials that the Committee has examined, on the basis of information at its disposal, are appropriate for promoting the purposes of the Convention.

In fact, there are criminal, fiscal, disciplinary, and preventive provisions that describe offenses or misconduct affecting public property, and the corresponding penalties for the officials and private individuals responsible, and mechanisms to seek reparations or compensation for the financial damage that such conduct may cause the State. Enforcement of these mechanisms is primarily the responsibility of the Comptroller General's Office, the Financial Liability Directorate, the Administration Attorney General's Office, the judicial branch, and the Attorney General's Office of the Nation, within their respective areas of jurisdiction.

The Committee also considers that the creation of an electronic procurement site, as described above, represents a step forward in implementing the provisions of the Convention.

The Committee notes, however, that there are no programs for sensitizing and instructing public servants in general about these rules of conduct, and for keeping them abreast of changes in those rules.

²¹ Resolution No. 204 of July 13, 1995.

²² Law 39 of July 19, 2001, amending and supplementing the provisions of the Criminal Code and the Judicial Code, and issuing rules for the prevention of corruption.

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

The Republic of Panama has provided statistics from the First and Second Prosecuting Offices Delegated by the Attorney General's Office (anticorruption prosecutors) covering crimes against the public administration.²³ The statistics reveal the number of judgments (convictions and acquittals), hearings and precautionary measures ordered between 1995 and 2002. While it can be assumed from the statistics that the activities of these prosecutors involved enforcing rules of conduct to ensure the proper conservation and use of public assets, it is not possible to identify, on the basis of that information, the standards on which the actions taken have been based. This lack of information, and the limited nature of existing information, makes it not possible to achieve a comprehensive assessment of results in this field. In light of these circumstances, the Committee will offer a recommendation.

The Panamanian response contains statistical information of a general nature on the Financial Liability Directorate within the Comptroller General's Office. One function of that Directorate is to receive reports and complaints on irregularities in the management, safekeeping, administration and use of public funds and goods.

The general nature of this information also prevents a thorough assessment of results in this field. Nevertheless, the Committee was struck by the low number of reports settled for the year 2002 by that Directorate, according to the available data.²⁴ According to the country's response, in that year, of a total of 335 reports, only 37, or 11%, were settled. This represented a significant decline in the number of concluded reports, compared to the previous year (129). In light of these circumstances, the Committee will offer a recommendation.

1.3 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

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

The Republic of Panama has rules requiring public servants to report to the competent authorities any acts of corruption of which they become aware.

Article 342 of the Criminal Code punishes public servants who failed to report to the competent authorities any punishable or prosecutable acts of which they become aware in the exercise of their functions. Article 27 of Law 6 of January 22, 2002, includes, among the aspects that must be covered in the codes of ethics of each public institution, the obligation of public servants to report acts of corruption to their superiors.

Within the internal rules of public institutions that the Committee has examined and that have been presented by the country under review in the response to the questionnaire,²⁵ there are also regulations on this topic, for example, the obligation to report immediately to a superior any act that contravenes the Code of Ethics.

²³ Response of the Republic of Panama to the questionnaire, annex 2.

²⁴ Update to the response of the Republic of Panama to the questionnaire, page 5.

²⁵ Update to the response of the Republic of Panama to the questionnaire

Similar regulations are found in Executive Decree 222;²⁶ Resolution 3 of July 19, 2002, of the Ombudsman's Office;²⁷ Board Resolution 078-02 of July 25, 2002;²⁸ Decree 15 of July 19, 2002, establishing the Code of Ethics for the Elections Tribunal;²⁹ and Municipal Bylaw 107 of the Municipal Council of Panama City, of July 23, 2002.³⁰

Panama's legislation also views as accomplices those public officials who, in the performance of their functions, are aware of customs crimes and do not report them (Articles 33 of Law 30 of November 8, 1984). These crimes refer to criminal jurisdiction but fall within the competence of the administration.

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

The rules and mechanisms that the Committee has examined relating to measures and systems that require public officials to report to the competent authorities any acts of corruption in the public service, of which they become aware, are suitable for promoting the purposes of the Convention.

Within the rules reviewed, the provision of Article 342 of the Criminal Code is particularly important, because it applies to all public servants.

The Committee notes that the provisions referred to relate to punishable acts or deeds of which a public servant becomes aware "by reason of or in the performance of his functions". This definition excludes the situation where a public servant might learn of such deeds or acts by ways other than in the exercise of his duties. The Committee notes the importance of the Republic of Panama's considering an examination of this system, in order to require that public servants report to the competent authorities any acts of corruption in the public service of which they become aware. On this point, the Committee will offer a recommendation.

With respect to codes of conduct, the Committee would repeat the observation in section 1.1.2, referring to the need for the Republic of Panama to consider making further progress in promulgating these codes, recognizing that Article 27 of Law 6 requires them to include "the obligation to report acts of corruption to a superior".

²⁶ This decree indicates, among the duties of public servants, the duty to notify the appropriate bodies of any proven fact that might embarrass damage or cause prejudice to the public administration. Executive Decree 222 of September 12, 1997, regulating Law 9 of June 20, 1994, regulating the administrative career, Article 92 (10).

²⁷ This Resolution contains the obligation to report immediately to a superior officer any act that contravenes the provisions of the code of ethics. Ombudsman's Office, Resolution 3 of July 19, 2002, approving the Code of Ethics for Public Servants of the Office, Articles 14(c) and 23(a).

²⁸ Resolution of the Board of Directors 078-02 of July 25, 2002, Article 22: "...must report to his immediate superior any acts of which he becomes aware by reason of or in the performance of his functions and that could cause prejudice to the Interoceanic Region Authority or constitute a crime or violation of any of the provisions of this code of ethics".

²⁹ Decree 15 of July 19, 2002, establishing the Code of Ethics of the Elections Tribunal: Article 12, establishes: "without prejudice to the laws applicable to the matter, any official of the Elections Tribunal is required to report to his superior, or the corresponding authorities, any conduct or act of which he becomes aware by reason of his functions, or by any other means, and that could cause prejudice to the Elections Tribunal or to the State."

³⁰ Bylaw 107-A, Municipal Council of Panama City, July 23, 2002, Article 27, establishes the obligation of municipal public servants to report to their superiors and the corresponding authorities any acts of corruption of which they become aware by reason of or in the performance of their functions.

Regulation is also insufficient when it comes to facilitating the submission of these complaints and establishing requirements of presentation that do not inhibit potential whistleblowers, such as allowing reports to be made by telephone or other means of communication. As well, there is no mechanism for protecting whistleblowers.

The Committee notes the reference to this point by the Presidential Commission to Combat Corruption, created by Decree 7 of January 22, 2002, in its letter of May 2, 2002, to the President of the Republic. On this point, the commission declared: " it should be noted that in some complaints, we were told that the whistleblowers had been removed from their positions as reprisal for having reported evident acts of corruption".

In light of these circumstances, the Committee will offer a recommendation.

The Committee also notes the lack of regular training and refresher programs with respect to public officials' obligation to report to the corresponding authorities any acts of corruption in the public service of which they become aware. In light of these circumstances, the Committee will offer a recommendation.

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

In its response, the Republic of Panama indicates: *"The statistical registry maintained by the Public Ministry and the judicial branch on crimes against the public administration does not identify those concerning the duty of public servants to report punishable acts that may constitute acts of corruption, and consequently no data are available on this aspect."*³¹

This lack of information and the limited nature of existing information make it not possible to achieve a comprehensive assessment of the results in this field. In light of this consideration, the Committee will offer a recommendation.

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

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

The Republic of Panama has a series of rules and measures concerning the declaration of income, assets and liabilities. The system is established by Article 299 of the Political Constitution and governed by Law 59 of December 29, 1999.

As described by the Republic of Panama in its response, the Political Constitution³² expressly identifies the officials who must submit such declarations, including the President and Vice President of the Republic, magistrates of the Supreme Court of Justice, and of the ordinary and special courts, as well as "employees and agents in subject to the Fiscal Code."³³

Law 59 provides comprehensive regulations for the sworn declaration of income, assets and liabilities, and it identifies those required to submit such declarations. Among the public officials obliged to make these declarations, there are the President and Vice-Presidents of the Republic, the Justices of the

³¹ Response of the Republic of Panama to the questionnaire, page 13.

³² Political Constitution, Republic of Panama, Article 299

³³ Response of the Republic of Panama to the Questionnaire, page 13.

Supreme Court of Justice and the regular and special courts, the Attorney General of the Nation, the Comptroller General and the Deputy Comptroller General of the Republic, and in general “all managerial employees and agents in accordance with the Fiscal Code” (Article 1). These declarations are presented not only at the time of coming into office but also at the time of leaving office (Article 1). The sworn declaration of status of assets should contain the following information, among other: identification of the filing party, income for the last two financial years, securities, shares, personal property, accounts payable to banking and financial institutions (Article 2). The declaration is presented to a Notary Public, who should file it in his records (Article 3). The public official making the declaration must file a copy of his/her declaration with the Comptroller General’s Office of the Republic (Article 3).

Article 4 of Law No. 59 also points out the consequences for failure to meet this obligation, among which stopping payment until the declaration is filed or if failure to file the declaration occurs at the end of his/her term of office, payment of a fine, without detriment to the corresponding criminal charges.

Declarations of income, assets and liabilities must be given before a notary public, who must keep them in his records. The public servant making the declaration must send an authenticated copy thereof to the Comptroller General’s Office (Article 3, Law 59).

2.2 Adequacy of the legal framework and/or other measures

The rules and mechanisms that the Committee has examined, on the basis of information at its disposal concerning systems for the declaration of income, assets and liabilities, covered by Article III (4) of the Convention, are relevant for promoting the purposes of the Convention.

Without going into a detailed analysis of the many existing provisions and measures concerning the registration of income, assets and liabilities, the Committee has the following comments:

The Republic of Panama has a series of provisions clearly establishing the obligation to submit a sworn declaration of financial assets in the case of public servants expressly indicated in Article 299 of the Political Constitution. This is relevant for achieving the purposes of the Convention's standard under examination.

The main provision in this area is Law 59, which, as indicated, governs the various aspects of this matter and represents an important step forward in implementing the Convention.

Nevertheless, the Committee notes that these declarations are not made public, they are not used to prevent conflicts of interest, or to detect cases of illicit enrichment, and these rules are not applied to other types of officials.

On this point, the Committee draws attention to the comments of Transparency International, Panama Chapter, regarding the publication of these financial declarations: "The Civil Code establishes explicitly that the documents held in the offices of the country's notaries public must be accessible to all persons who so request. Nevertheless, in a recent ruling an appeal for *habeas data* that was brought to gain access to the declaration of assets of the then President of the Legislative Assembly of the Republic of Panama was rejected by the Supreme Court of Justice, on the grounds that such a declaration should not be made public unless there were justified grounds for gaining access to it. Since that ruling, and despite the contrary opinion of the Solicitor General, Panamanian citizens have effectively no access to the financial declarations of public officials who are required to register them according to law."³⁴

³⁴ Comments of Transparency International, Panama Chapter, to the response to the questionnaire given by the Republic of Panama, page 20.

The same organization indicates: "Our foundation, invoking the Transparency Law, presented an application to the Comptroller of the Republic, through Mr. Rafael Perez Jaramillo, to determine whether all public officials required by law to submit declarations of assets had fulfilled this obligation, but the information was not provided to us within the 30 days established by law, and we subsequently filed an appeal for *habeas data*, which the presiding judge, Alvaro Cigarruista, dismissed."³⁵

As noted above, the Committee finds that Law 59 does not cover the public accessibility of these declarations.

This lack of publicity also makes it difficult for ordinary citizens to file complaints about possible unjustified enrichment, because any such complaint, according to Article 7 of Law 59, must be accompanied by presumptive evidence of the possession of assets in excess of those declared -- something that is of course made more difficult if access to financial declarations is denied.

The Committee also notes the existence of a ruling by the Second Chamber of the Supreme Court of Justice, which indicates that the law does not permit the Attorney General's Office to investigate cases of illicit enrichment without a request from the Comptroller General's Office.³⁶

This limitation imposed on the Attorney General's Office will be examined in greater detail in section 3, on senior oversight bodies.

As well, it would be useful for the Republic of Panama to consider establishing systems for auditing the content of these financial declarations, establishing time limits and schedules for doing so, and requiring cooperation between the Comptroller General's Office and other sectors, such as finance and taxation, to facilitate the exchange of information and verification of the contents of these declarations.

In light of these circumstances, the Committee will offer a recommendation in the final chapter of this report.

2.3 Results of the legal framework and/or other measures

With respect to the results of the legal framework and other measures, the response indicates: "*Pursuant to Law 59 of December 29, 1999, there are 534 public officials who must submit a sworn declaration of assets.*"³⁷

As of the date this report was prepared, the number of officials covered by this requirement was 1,168, including the aforementioned managerial employees and agents.

The limited nature of this information and the lack of other information make it not possible to achieve a comprehensive assessment of the results in this field. Bearing the circumstance in mind, the Committee will offer a recommendation.

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

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

³⁵ Comments of Transparency International, Panama Chapter, to the response to the questionnaire, page 23.

³⁶ Comments of Transparency International, Panama Chapter, to the response to the questionnaire page 21.

³⁷ Information provided by the Republic of Panama, page 14.

The Republic of Panama has a series of standards and measures concerning oversight bodies responsible for enforcing the provisions of paragraphs 1, 2, 4 and 11 of Article III of the Convention, consisting of provisions of various kinds.

State oversight bodies include the Comptroller General's Office, an independent technical body, with the mission of supervising, regulating and controlling the movement of public funds and assets, as well as examining, auditing and confirming the accounts relating thereto (Article 1, Law 32).³⁸

One of the principal attributes of the Comptroller General's Office is to conduct inspections to determine the propriety of transactions affecting public property, and to file charges as appropriate. These investigations may be initiated *ex officio*, or in response to a complaint when undertaking an investigation. The Comptroller General may take such steps as necessary to compile evidence for establishing facts, receive testimony, appoint experts, conduct inspections, and other steps instituted by law (Article 11 (4), Law 32).

Executive Decree 99 of September 13, 1999, creates the National Anticorruption Directorate under the direct authority of the Ministry of Economy and Finance and the Deputy Ministers of Economy and Finance (Article 2 of the above-mentioned Decree) and authorizes that Directorate (in Article 4) to create mechanisms to encourage participation by civil society and by nongovernmental organizations in efforts to prevent corruption.

Among the provisions and measures of special note are those relating to the Public Ministry³⁹ and the Ombudsman's Office.⁴⁰ The Comptroller General's Office also includes, in this regard, the Financial Liability Directorate,⁴¹ the Directorate General for Auditing and Internal Monitoring,⁴² the National Directorate for Special Investigations,⁴³ and the Auditing Directorate.⁴⁴

The Ombudsman's Office is an autonomous institution that acts completely autonomously in terms of operation, administration, and finance. Thus the independence of the institution is guaranteed so that it can fulfill its duties without any political intrusion that would undermine its purpose and nature.

The Public Ministry is headed by the Attorney General of the Nation, the Attorney General of Administration, the Prosecuting Attorneys and Officers, and other public officials as determined by the law (Article 216 of the Political Constitution).

The Office of the Attorney General of the Nation is the highest authority within the Public Ministry and has as one of its responsibilities, pursuant to Article 219 of the Political Constitution, the obligation to formally present accusations pertaining to public servants before the Supreme Court of Justice; oversee that the Prosecutors within the Public Ministry fulfill the duties, and that they are held responsible for any violations or crime they may commit.

³⁸ Organic Law of the Comptroller General's Office, November 8, 1984.

³⁹ National Constitution, Article 217. The Public Ministry includes the Attorney General's Office, which also has responsibilities in this area. Law 38 of July 31, 2000, Article 3.

⁴⁰ Law 6 of January 22, 2000, Article 27; Law 7 of February 5, 1997, Article 4.

⁴¹ Response of the Republic of Panama to the questionnaire, page 15.

⁴² Response of the Republic of Panama to the questionnaire, page 15.

⁴³ Resolution 204 of July 13, 1995, Article 1 and following.

⁴⁴ Response of the Republic of Panama to the questionnaire, page 15.

The attributions of the Superior Prosecuting Offices Delegated by the Attorney General's Office of the Republic, referred to as Anticorruption Prosecutor's Offices, should also be emphasized. These Prosecutor's Offices are in charge of investigating crimes against Public Administration, and their powers are described in Articles 352 and 359 of the Judicial Code.

3.2 Adequacy of the legal framework and/or other measures

The standards and mechanisms examined by the Committee with respect to oversight bodies for the selected provisions are suitable, on the basis of the information available, for promoting the purposes of the Convention.

The rules of the Republic of Panama concerning oversight bodies responsible for enforcing the provisions of paragraphs 1, 2, 4 and 11 of Article III of the Convention embrace those provisions. In particular, the Committee recognizes that there exist bodies of a nature and with general or specific powers to ensure such enforcement, which constitutes a step forward in implementing the Convention.

In fact, Article 11 (2, 4 and 17) of Law 32 refers to the powers of the Comptroller General's Office. That body is responsible for supervision, regulation and control over all acts involving public funds and other assets, and any person who handles, holds or administers public funds or assets is accountable to that body. Other agencies involved in the prevention and detection of corruption include the Auditing Directorate and the Directorate General for Auditing in the Comptroller General's Office.

The Public Ministry has powers that include the obligation to defend the State's interest and monitor the official conduct of public officials and ensure that they fulfill their duties; the Solicitor General has the responsibility to receive and deal with complaints against the actions of public servants; the National Anticorruption Directorate has among its functions that of preventing, detecting, reporting and eradicating the acts of corruption described in the Convention; the Ombudsman's Office has among its responsibilities the power to investigate acts or omissions of the authorities and public servants that imply violation of the laws, to investigate the acts or omissions of the public administration, and to report the acts or omissions of public, mixed or private enterprises providing a public service.

As well, citizens can submit complaints to the National Directorate for Special Investigations over irregularities committed with public funds and assets.

As mentioned in the previous section, Executive Decree 99 of September 13, 1999 created the National Anticorruption Directorate. Article 4 of that decree requires the Directorate to create mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption. Nevertheless, the Committee notes that, as indicated by the Republic of Panama in the update to its response to the questionnaire: "The National Anticorruption Directorate of the Ministry of Economy and Finance has not fulfilled this function".⁴⁵

With respect to the National Anticorruption Directorate, the Committee has the following observations.

The Committee recognizes that, as part of the process of redefining the Ministry of Economy and Finance, the General Directorate of Audits and Internal Supervision was created and was given some of the powers that had been granted to the National Anticorruption Directorate by Article 3 of Executive Decree 99 of September 13, 1999, specifically those concerning internal control and financial audits. Nevertheless, the National Anticorruption Directorate retains its other functions. Those other functions, according to Article 3 of Decree 99, refer to "preventing, detecting, reporting and eradicating acts of

⁴⁵ Update to the response of the Republic of Panama to the questionnaire, page 1.

corruption described in the Inter-American Convention against Corruption... provided that those functions have not been allocated by law to another entity or dependency".

With respect to this process, Transparency International, Panama Chapter, has noted the following: "We understand that, while the Directorate was indeed created, its powers were not regulated until November 12, 2002, when Article 14 of Executive Decree 108, issued by the Ministry of Economy and Finance, amended Article 3 of Executive Decree 99 of September 13, 1999, creating that Directorate. The amendment limited the responsibilities of that office to the scope of the Ministry of Economy and Finance."

The Republic of Panama reports, in the update to its response to the questionnaire, that "given the existing limitations, the creation of a new, independent anticorruption office has been recommended at the national level, to take responsibility for aspects of governmental ethics and probity."⁴⁶

From the foregoing, it would seem that the Republic of Panama may wish to consider a comprehensive review of the current functions of the National Anticorruption Directorate is in order, and that it would be appropriate to assess the possibility of creating a new national office of government ethics, as the State suggested in the update to its response, or to make other organizational arrangements to put in place an oversight institution with powers over the Constitutional standards that are the object of this review.

Regardless of whether the National Anticorruption Directorate is maintained, a new entity is created, or other institutional arrangements are made, it would seem desirable for the Republic of Panama to consider giving greater political support to the functions of the oversight institution, and to establish mechanisms for coordinating the activities of other institutions in this area, and for maintaining a continuous evaluation and monitoring of their actions. In light of these considerations, the Committee will offer a recommendation.

3.3 Results of the legal framework and/or other measures

In its response to the questionnaire, the Republic of Panama indicates that "given the broad powers allocated to the institutions responsible for oversight, there is no updated statistical information covering all of them."⁴⁷

The Republic of Panama has contributed a listing containing the type and number of reports made by the Directorate General for Auditing and Internal Monitoring from November 2002 to December. According to this listing, this institution has conducted a total of 70 audits, broken down as follows: 42 for internal monitoring, 9 financial audits, 3 operational audits, 3 financial and operational audits, 12 financial and internal monitoring audits, and 1 financial, operational, and internal monitoring audits.

According to the information presented by the Republic of Panama with its comments on the Preliminary Report, a Judicial Statistics Center has been established as the administrative body of the Judicial Body in charge of establishing and coordinating a statistical system that brings together quantitative information on judicial activities and facilitates the process of planning, decision making, developing activities, and evaluation of results. This Center is attached to the Fourth Chamber of General Affairs of the Supreme Court of Justice (Articles 1 and following of the Official Register No. 24,734 of February 5, 2003). The Committee commends the efforts aimed at having judicial statistics that strengthen the administration of justice.

⁴⁶ Update to the response of the Republic of Panama to the questionnaire, page 2.

⁴⁷ Response of the Republic of Panama to the questionnaire page 15.

The Committee notes that there is no statistical information available on the functions of the oversight bodies such as the Comptroller General's Office, the Attorney General's Office, the Public Ministry and the Ombudsman's Office.

This lack of information makes it not possible to make a comprehensive assessment of the results in this field. Bearing this circumstance in mind, the Committee will offer a recommendation.

The Committee has also noted the data provided by the Republic of Panama in the update to its response, referring to the Financial Liability Directorate of the Comptroller General's Office. As discussed in section 1.2.2 of this report, for the total of 335 complaints received by the institution in 2002, only 37 reports were completed. The Committee also notes the decline in the number of completed reports for that year, in comparison with the previous year (129).

The foregoing suggests that the Republic of Panama may wish to consider strengthening that institution in order to give it greater support in the performance of its functions, especially in light of the importance of those functions for preventing, detecting, punishing and eradicating corrupt practices. In light of the foregoing, the Committee will offer a recommendation.

The Committee also notes the statement of Transparency International, Panama Chapter: "We must point out that the Law does not allow the Attorney General's Office to investigate cases of illicit enrichment of its own accord, but only when the Comptroller General's Office requests that proceedings be initiated. This was confirmed in a recent ruling by the Second Chamber of the Supreme Court of Justice".⁴⁸

The foregoing could represent a limitation on the powers of the Comptroller General's Office as the oversight body, by preventing it from instituting investigations into cases of illicit enrichment, at its own initiative or at the complaint of the citizen. The foregoing suggests the importance of the Republic of Panama's considering strengthening that institution still further, and the advisability of allowing it to investigate cases of illicit enrichment, at its own initiative or upon request. In light of the foregoing, the Committee will offer a recommendation.

4. MECHANISMS TO PROMOTE THE PARTICIPATION OF CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11)

4.1 GENERAL PARTICIPATION MECHANISMS

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

The Republic of Panama has provisions and measures of widely differing nature, characteristics and scope concerning the participation of civil society and nongovernmental organizations in public management, including the following.

As explained in its response, some of these measures have Constitutional status. Article 41 of the Constitution enshrines the right of petition, whereby any person has the right to present petitions and respectful complaints to public servants for reasons of social or private interest, and to obtain a prompt response. This Article also requires any public servant who receives a petition, query or complaint, to deal with it within 30 days. Regarding this, the Law for the Administration Attorney General's Office, which makes it possible to file complaints via Internet and which is received not only by this institution

⁴⁸ Comments of Transparency International, Panama Chapter, to the response to the questionnaire, page 21.

but also by the Ombudsman's Office, as indicated by the Republic of Panama in its comments on the present report, should be emphasized.

In developing this Constitutional precept, a number of laws have been enacted seeking to stimulate and encourage citizen participation. These include Law 6 of January 22, 2002, chapter II of which covers access to information, and Executive Decree 124 of May 21, 2002, regulating that Law.

Law 6 governs the details of requests for information, including: costs (in principle there is no charge for such information, but the cost of reproducing it must be borne by the applicant (Article 4)); the formal requirements that must be met (Articles 5 and 6); the time limit within which applications must be handled (Article 7); the obligation of the State to provide information on its functioning and activities to any person who so requests (Article 8); the obligation of public institutions to keep printed copies of listed documents and policies, and to make them available at Internet sites (Article 9); and Articles dealing with the restricted or privileged nature of certain information (Articles 13 to 16).

For purposes of enforcing this right, there is legal provision for motions of *habeas data*. This recourse may be invoked when the official responsible for supplying the information fails to do so, or provides inadequate or inaccurate information (Article 17). Article 20 provides penalties for officials who fail to provide information under a court order of *habeas data* (Article 20).

There are also internal rules in specific areas in which the right of public participation is recognized, and these will be discussed in section 4.3 on consultation mechanisms.

Attention should also be drawn to the "Portal of the Panamanian State" (<http://www.e-Panama.gob.pa>) which is intended to facilitate relationships between the State and the citizenry and "to promote and facilitate participation by ordinary citizens as owners or shareholders of State institutions".⁴⁹

A web site has also been created (<http://www.e-compras.gob.pa>) dealing with government procurement, "which will permit standardization of the process through mechanisms of monitoring and control, keep statistical and historical records on government purchases, and in general provide for full accountability to society."⁵⁰

4.1.2 Adequacy of the legal framework and/or other measures

The rules and mechanisms that the Committee has examined with respect to participation in general, based on the information available, are suitable for promoting the purposes of the Convention. These rules and measures will be taken into account in reviewing each of the participation mechanisms indicated in the classification provided in the methodology and for reviewing implementation of Article III (11) of the Convention.

The Committee welcomes the efforts that have been made to provide a modern set of rules in this area, as reflected in Article 4 (2 and 3) of Law 6, which allows for the use of digital tools in the processing of public information. In particular, paragraph 3 requires that, in order to facilitate Internet access, institutions must provide a consultation office equipped with the necessary electronic means for offering high-quality access. That same Law also allows for information to be provided at "information kiosks".

⁴⁹ Report of Panama at the Third Meeting of the Committee page 3.

⁵⁰ Report from Panama at the Fourth Regular Session of the Committee, page 7.

The Committee believes it is important for the Republic of Panama to consider making concrete progress in implementing this regulation, recognizing however that the absence of significant progress may be because the legislation has only recently been passed.

In light of the foregoing considerations, the Committee will offer specific recommendations, in accordance with the classification of participation mechanisms provided in the methodology⁵¹.

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

In its response, the Republic of Panama notes, with respect to the specific results of participation mechanisms in general: "Pursuant to the task assigned by the national government to the Presidential Commission to Combat Corruption, a final report was issued containing recommendations from that group of civil society representatives, suggesting institutional, Constitutional and legal amendments to eradicate situations that could generate acts of corruption".

The general nature of existing information, and the lack of indicators in this area, makes it not possible to arrive at a comprehensive assessment of the results in this field. In light of these circumstances, the Committee will offer a recommendation.

4.2 MECHANISMS FOR ACCESS TO INFORMATION

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

The Republic of Panama has a series of provisions concerning various kinds of mechanisms of access to information, including the following.

In addition to the provisions of Law 6, described in the previous section, paragraphs 11 and 12 of Article 1 of that Law establish the principles of public access and publicity. In terms of the principle of public access, every person has the right to request and receive truthful and timely information in the possession of government authorities or any other institution mentioned by the Law. As to the principle of publicity, any information emanating from the public administration is deemed to be public in nature, which implies that the State must organize an information system that offers effective access to the citizens, and allows dissemination through the media.

Chapter I (VI) of Law 38 governs the submission of petitions, queries, denunciations and complaints to the public administration. Those provisions include the requirements that such petitions must meet (Article 74); the obligation to transmit the petition if it affects the rights of third parties (Article 75); and the time limit for rectifying defective applications (Article 76).

Law 39 of July 19, 2001 gives every citizen the right to be regularly informed of the activities of public and private entities that perform public functions or administer State resources (Article 38); guarantees access, protection and support to the communications media (Article 39); and makes it a violation of the duties of public servants to obstruct, delay or deny access by the public and the media to documents within their control, unless there are grounds for doing so (Article 40).

When it comes to public procurement, as the State noted in its response, Law 56 of December 27, 1995, guarantees access for bidders to all files, reports and actions relating to the act in question.

⁵¹ Methodology for Reviewing Implementation of the Convention Provisions for Review in the Framework of the First Round, Chapter V, D (SG/MESICIC/doc. 21/02).

Mention should also be made of the Electronic Public Contracting System of Panama, referred to in section 1.2.1, an initiative of the Comptroller General's Office and the Ministry of Economy and Finance, which combines the necessary human and financial resources to create a computerized system for implementing the electronic public contracting system.⁵²

4.2.2 Adequacy of the legal framework and/or other measures

The rules concerning access to information that the Committee has examined, on the basis of the information available, are relevant for promoting the purposes of the Convention.

Nevertheless, the Committee wishes to remind the Republic of Panama of the importance of its considering having the various State bodies institute special offices for managing and implementing the Internet information system referred to in Article 4 of Law 6 of January 22, 2002, and of creating the consultation offices or information kiosks referred to in that Article. On this point, the Committee will offer a recommendation in the final chapter of this report.

The Committee also notes the restrictive definition of the term "interested person" contained in Article 8 of Executive Decree 124 of May 21, 2002, regulating Law 6. Article 11 of Law 6,⁵³ in fact, requires that information on contracting, appointment of officials, payrolls, representation expenses, travel costs and others be made "public" and "freely accessible" to "interested persons". Nevertheless, Article 8 of that decree declares that "for purposes of Article 11, an interested person is one who has a direct personal interest in the information requested."

The Committee also observes that, according to the information received by the Special Rapporteur for Freedom of Expression on various court rulings, "of the 65 appeals filed, only ten were decided in the plaintiff's favor. One of the court rulings that went against the plaintiff was the October 22, 2002 ruling in the case that attorney Guillermo Cochez filed with the Supreme Court. Mr. Cochez had requested information concerning the trips taken by President Mireya Moscoso, but a Minister with the Office of the President denied the request. The Supreme Court ruled against Mr. Cochez, on the grounds that he had failed to show that he was an "interested person" as defined in the Law on Transparency."⁵⁴

The Committee believes it would be appropriate for the Republic of Panama to consider revising the concept of "interested person" in order to give the broadest possible application to Article 11 of Law 6, regardless of whether the person seeking the information has "a direct personal interest" in it. Such an amendment would also be consistent with the definition of the "right to information" contained in Article 1 of Law 6, according to which it is "the right of any person to obtain information on matters in process, in the archives, in documentary files, records, administrative decisions, or information in any other form held by the institutions covered by the Law" (emphasis added).

The Committee also notes that, pursuant to Article 5 of Executive Decree 124, taken together with Law 9 of June 20, 1994, information concerning the compensation of public servants is considered confidential. This provision could contravene Article 11 of Law 6, which declares that information on contracting, appointment of officials, payrolls, representation expenses, travel costs, per diem allowances and other payments to public officials at any level, or to other persons performing public functions, must be made

⁵² Report of Panama Third Meeting of the Committee, pages 6 and 7.

⁵³ Law 6 of January 22, 2002.

⁵⁴ Report of the Special Rapporteur for Freedom of Expression on the Situation of Freedom of Expression in Panama, 2003, page 21.

public and freely accessible to interested persons. The provision cited could also contravene Article 14 of Law 6, which expressly identifies the information that must be considered confidential or restricted.

Considering an amendment of this provision is especially important given the frequency of acts of corruption in the areas covered by Article 11 of Law 6 -- contracting, appointment of officials, payrolls, representation expenses, travel costs. On this point, the Committee will offer a recommendation in the final chapter of this report.

The foregoing does not imply that the Committee considers Decree 124 to the contrary to Panamanian Law, a matter on which it is not the business of the Committee to pronounce itself, but it does point to the possible need to strengthen the guarantees for exercise of a right that, because of its importance, deserves to be legally regulated in its essential aspects, as well as those concerning limitations. In light of these considerations, the Committee will offer a recommendation.

The Committee also welcomes the fact that various codes of ethics include society's right to information on the activity of every institution, as an integral component of the principle of transparency that must characterize the public service.⁵⁵

4.2.3 Results of the legal framework and/or other measures

According to the State's response, "with the recent application of Law 6 of January 22, 2002, documentation is being compiled on the number of requests for information granted and denied by various public institutions, and pursuant to Article 26 of that Law this information will be included in the annual reports that all institutions must submit to the Legislature."⁵⁶ The lack of information on objective results in this field makes it not possible to assess them. In light of these circumstances, the Committee will offer a recommendation on the need for statistical information in this field.

The Committee also wishes to cite the information received from Transparency International, on the low number of *habeas data* appeals that have been accepted: "of 75 appeals for *habeas data* filed with the Supreme Court Justice to April 2003, only 10 were granted".⁵⁷ On this point, the Committee will offer a recommendation.

4.3 CONSULTATIVE MECHANISMS

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

The Republic of Panama has provisions and mechanisms that allow public officials to consult civil society and nongovernmental organizations on matters concerning activities within their competence. These measures include the following.

There are internal rules in specific areas where public participation is recognized. Thus, State institutions are required to permit public participation in all public administrative acts that may affect the interests and rights of groups of citizens, through the procedures established by law. Those acts include infrastructure

⁵⁵ Resolution 3 of July 19, 2002, approving the Code of Ethics of Public Servants in the Ombudsman's Office, Article 9 (a, b and c), and Bylaw 107 of the Municipal Council of Panama City of July 23, 2002, adopting the Code of Ethics for Municipal Employees, Article 16.

⁵⁶ Response of the Republic of Panama to the questionnaire, page 19.

⁵⁷ Comments of Transparency International, Panama Chapter, to the response to the questionnaire given by the Republic of Panama, page 23.

construction, assessment rates, zoning and the setting of charges and tariffs for services (Article 24, Law 6).

Citizen participation mechanisms include public hearings that may be held by the Public Services Regulatory Entity; public hearings for changes to electric utility charges; the appointment of the Presidential Commission to Combat Corruption, composed of outstanding members of civil society, among others, as the Republic of Panama mentioned in its response.⁵⁸

On environmental issues, there are specific forms of participation. Law 41 of July 21, 1998, provides for advisory committees at the national, provincial, regional and district levels, in which civil society participates in taking decisions, examining issues, making recommendations and observations on significant environmental matters. The Republic of Panama also described other means of participation in its response.

4.3.2 Adequacy of the legal framework and/or other measures

The rules and mechanisms governing consultation that the Committee has examined, on the basis of available information, are suitable for promoting the purposes of the Convention.

Nevertheless, some of those mechanisms appear not to be part of any comprehensive, structured and permanent system. Such a system could include measures such as holding public hearings in areas beyond those already covered and other mechanisms that would allow public officials to seek and receive feedback from civil society and NGOs during the decision-making process, and the establishment of penalties for violating those rules.

Consideration could also be given to increasing the publishing and publicizing of draft legal provisions, and holding transparent proceedings to allow, when appropriate, for consulting interested sectors during the preparation of laws, decrees and resolutions by the executive, similar to what the Legislative Assembly already does through its web page.

The Republic of Panama might also consider it beneficial to design and implement programs for publicizing consultation mechanisms, and where appropriate, for training and facilitating civil society, NGOs, and public employees and officials in the use of those mechanisms.

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

4.3.3 Results of the legal framework and/or other measures

As noted above, the Committee received no information on the results of consultation mechanisms.

On this point, the Republic of Panama explained in its response to the questionnaire: "with approval of Law 6 of January 22, 2002, public institutions are required to include in their annual reports to the Legislature a list of issues open to citizen participation, with a report on observations received and the final decisions taken, and complete statistical data should therefore be available by the end of this year."⁵⁹

This lack of information makes impossible a comprehensive assessment of results in this field. In light of this information, the Committee will offer a recommendation.

⁵⁸ Response of the Republic of Panama to the questionnaire page 17.

⁵⁹ Response of the Republic of Panama to the questionnaire page 19.

4.4 MECHANISMS TO ENCOURAGE ACTIVE PARTICIPATION IN PUBLIC ADMINISTRATION

4.4.1 Existence of provisions in a legal framework and/or other measures

The Republic of Panama has a series of provisions concerning mechanisms to encourage active participation in public administration, including the following mechanisms.

In its response to the questionnaire, the Republic of Panama cited Law 6 of January 22, 2002, which contains the participation mechanisms referred to in previous sections.

That response also mentions the mechanisms used by the Legislative Assembly for the adoption of legislation: the "dialogue forums" on issues concerning education and economic activity "which have been included in the Laws of the Republic"⁶⁰, and it adds that "the national government has made it State policy to combat corruption, and in cooperation with civil society it is engaged in identifying the causes of this phenomenon"⁶¹ through the creation of a presidential commission.

4.4.2 Adequacy of the legal framework and/or other measures

The rules and mechanisms for encouraging active participation in public administration that the Committee has examined, on the basis of available information, are suitable for promoting the purposes of the Convention.

The Committee considers that, for achieving the purposes of Article III (11) of the Convention, the mechanisms established by Law 6 of January 22, 2002, are highly relevant, in particular the regulation that requires State institutions to allow public participation in certain acts that may affect the interests and rights of groups of citizens,⁶² the public hearings that can be held by the Public Services Regulator⁶³; the procedures of hearings for amending electric utility charges;⁶⁴ the advisory commissions;⁶⁵ and other mechanisms described in the previous sections, and those included by the Republic of Panama in its response to the questionnaire.

The Committee notes the importance of the Republic of Panama's considering making further progress in institutionalizing and regulating mechanisms such as those described above, in a comprehensive and permanent manner.

As part of the strengthening of these mechanisms, it would also be useful for the Republic of Panama to consider giving real effect to the function of the National Anticorruption Directorate, pursue into Article 4 of Executive Decree 99 of September 13, 1999, which authorizes it to create mechanisms to encourage civil society and nongovernmental organizations to participate in efforts to prevent corruption. The Committee notes, however, as indicated by the Republic of Panama in the update to its response to the questionnaire, "the National Anticorruption Directorate of the Ministry of Economy and Finance has not fulfilled this function."⁶⁶

⁶⁰ Response of the Republic of Panama to the questionnaire page 20.

⁶¹ Response of the Republic of Panama to the questionnaire page 20.

⁶² Law 6 of January 22, 2002, Article 24.

⁶³ Law 26 of January 29, 1996, Article 19 (18).

⁶⁴ Response of the Republic of Panama to the questionnaire page 17.

⁶⁵ Law 41 of July 21, 1998.

⁶⁶ Update to the response of the Republic of Panama to the questionnaire, page 1.

Strengthening the mechanisms to encourage participation in public administration by civil society and nongovernmental organizations could also include the publication of proposed official acts of a general nature, where their importance so warrants, to allow the public to submit observations and recommendations, within certain time limits, for evaluation by the competent authorities. Consideration could also be given to programs to foster public awareness of the problem and to explain the mechanisms for public participation, and how to use them.

These strengthening efforts could also include the design and implementation of programs to publicize the mechanisms for encouraging public participation and, as appropriate, to provide the necessary tools and training in how to use them, for civil society and nongovernmental organizations, as well as public officials and employees.

On the basis of information collected by the Secretariat, the Committee also notes that the current Panamanian laws penalizing contempt and offensive statements aimed at public officials, known as *desacato* laws, could limit or inhibit public participation in efforts to prevent corruption.

Those laws could create a disincentive to such participation, because they carry with them the threat of imprisonment or fines for persons who insult, contradict or fail to obey a public official. It is likely that, in some cases, the fear of such punishment may inhibit or discourage the public from participating in government efforts to root out corruption.

On this point, Article 33 of the Constitution establishes that: "The following may impose sanctions, without first going to trial, in the circumstances and under the terms that the law prescribes: 1. Public servants who exercise command and jurisdiction, who may impose fines or arrest, when offended or treated with disrespect while performing the functions of their office or by reason of such functions."

There is also special legislation containing rules similar to those cited above. For example, the Special Rapporteur of the Inter-American Commission on Human Rights (IACHR) for Freedom of Expression has cited "Article 202 of the Judicial Code, which authorizes magistrates and judges to have anyone who is disrespectful of them arrested for five days", as well as "Article 393 (former 386) of the Judicial Code, which provides that agents of the Public Ministry may arrest those who disobey them or fail to show them the proper respect. The Attorney General and the Solicitor General can fine an individual up to 50 *balboas* or have that person placed under arrest for up to 8 days."⁶⁷

The Committee also notes the existence of other rules similar to the above. These include Article 827 of the Administrative Code on Correctional Punishments, which authorizes the President of the Republic, provincial governors, and district mayors to impose correctional penalties on anyone who disobeys them or fails to show them the proper respect.

The Special Rapporteur for Freedom of Expression indicated in his 2003 report on the situation of freedom of expression in Panama that his office had "received information to the effect that various public officials have sometimes used these laws to silence criticism of them or to oust their critics from the political debate."⁶⁸

⁶⁷ Report of the Special Rapporteur for Freedom of Expression on the Situation of Freedom of Expression in Panama, 2003, page 7.

⁶⁸ Report of the Special Rapporteur for Freedom of Expression on the Situation of Freedom of Expression in Panama, 2003, page 8.

In light of these problems, it would be advisable for the Republic of Panama to consider examining and reviewing these provisions, to prevent them from becoming an obstacle that inhibits public participation in efforts to prevent corruption.

In light of the circumstances, the Committee will offer recommendations.

4.4.3 Results of the legal framework and/or other measures

The Committee recognizes that progress has been made in implementing Article III (11) of the Convention as a result of public participation in the preparation of anticorruption laws, such as Law 39 of July 19, 2001, amending and expanding the provisions of the Criminal Code and the Judicial Code, and Law 6 of January 22, 2002, mentioned in the response to the questionnaire.

Apart from the foregoing, the lack of further information on objective results makes it not possible to assess them thoroughly.

4.5 PARTICIPATION MECHANISMS IN THE FOLLOW-UP OF PUBLIC ADMINISTRATION

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

The Republic of Panama has a series of provisions concerning mechanisms for monitoring public administration, including the following.

As part of the provisions concerning the mechanisms for participating in monitoring public administration, in its response to the questionnaire, the Republic of Panama mentions that a great number of autonomous and semiautonomous entities, such as the Interoceanic Region Authority, the Panama Canal Authority, the Social Insurance Fund, and the Panamanian Autonomous Cooperative Institute have as members of their Board of Directors representatives of civil society or of groups with an interest in their activities.

That response also cites as examples of such mechanisms the National Dialogue on Economic Revival, which resulted in adoption of Law 6 of June 19, 2002, as well as the National Dialogue on Education.⁶⁹

4.5.2 Adequacy of the legal framework and/or other measures

The rules and mechanisms concerning participation in monitoring public administration that the Committee has examined, on the basis of the available information, are suitable for promoting the purposes of the Convention.

Nevertheless, those mechanisms appear to be somewhat isolated and limited to certain specific themes. In light of this, the Committee will offer a recommendation.

The Committee also notes the lack of programs for publicizing mechanisms to encourage participation in public administration, and, as appropriate, to provide the necessary tools and training in how to use them, for civil society and nongovernmental organizations, as well as public officials and employees.

In light of these circumstances, the Committee will offer a recommendation.

⁶⁹ Response of the Republic of Panama to the questionnaire page 21.

4.5.3 Results of the legal framework and/or other measures

According to the response of the Republic of Panama to the questionnaire, and the update thereto, "because of the scope of the requirements of the Transparency Law, mechanisms of civil participation, within the framework of Law 6 of January 2, 2002, and special legislation, are currently being compiled."⁷⁰ Apart from the foregoing, the absence of further information makes it impossible to assess thoroughly the results achieved in this field.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

5.1 MUTUAL ASSISTANCE

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

The Republic of Panama has a series of provisions and measures for mutual legal assistance, as referred to in Article XIV (1) of the Convention, including Law 39 of July 9, 2001⁷¹ and Law 41 of October 2, 2000,⁷² as well as a number of treaties in this area, a list of which was attached to the State's response to the questionnaire.⁷³

It should be noted that, as indicated by the Republic of Panama in its response, "international judicial assistance may only be provided in cases where it can be demonstrated that such assistance will not disrupt the public order of the State."⁷⁴

It is also useful to note what the Republic of Panama stated in its instrument of ratification of the Convention, with respect to the application thereof and to actions of confiscation and forfeiture. With respect to the first, it indicated: "The Republic of Panama interprets the application of this Convention as not altering its rights under existing conventions concerning asylum."

With respect to confiscation and forfeiture, the State declared: "The Republic of Panama does not feel obligated to extend actions of confiscation or forfeiture of goods contemplated in Article XV of this Convention, where such actions would contravene Article 30 of the Political Constitution of the Republic, which prohibits the confiscation of goods as punishment."

5.1.2 Adequacy of the legal framework and/or other measures

The rules and mechanisms concerning mutual assistance that the Committee has examined, on the basis of the information at hand, are relevant for promoting the purposes of the Convention.

From its examination of these provisions, the Committee concludes that, overall, the laws cited by the Republic of Panama are relevant for promoting the purposes of the Convention.

⁷⁰ Response of the Republic of Panama to the questionnaire page 21.

⁷¹ Law 39 of July 9, 2001, amending and expanding the provisions of the Criminal Code and the Judicial Code and issuing rules for the prevention of corruption.

⁷² Law 41 of October 2, 2000, adding Chapter VI, "money-laundering" to title XII, and title XIII, "final provisions", to Book II of the Criminal Code, and making other provisions.

⁷³ Response of the Republic of Panama to the questionnaire, page 22.

⁷⁴ See the decision of December 9, 1997, of the Fourth Chamber of the Supreme Court Justice, and the Decisions of October 13, 2000, of March 2, 2000, of September 3, 1998, of December 9, 1997, of September 13, 1996, of August 8, 1995 of the Fourth Chamber of General Affairs of the Supreme Court of Justice, as indicated on page 9 of the update to the response of the Republic of Panama to the questionnaire.

The Committee wishes to point out that, according to the country's response,⁷⁵ "the judiciary has the necessary resources to provide international mutual assistance as required by the Convention."

The Committee considers that the Republic of Panama could benefit from the design and implementation of a comprehensive program of publicity and training targeted specifically at the competent authorities, in order to ensure that they understand and are able to apply, in cases that come to their attention, the provisions of the Inter-American Convention against Corruption relating to mutual legal assistance, and those of other treaties that Panama has signed.

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

5.1.3 Results of the legal framework and/or other measures

In its response, the Republic of Panama has presented results on requests for mutual legal assistance, active as well as passive, that it has handled involving investigations of corruption.⁷⁶ It reports that "Peru has submitted four requests, of which two have been declared partially viable and two have been declared nonviable. Ecuador and Costa Rica have presented two requests that have been declared nonviable and partially viable, respectively".⁷⁷

On this point, Transparency International has indicated that "according to data provided by the Directorate of International Affairs of the Public Ministry (Mercedes de Leon), during the Year 2003 Panama received 11 requests for judicial assistance from other States. Nicaragua made three requests, Ecuador one, the United States two, Peru two and Guatemala three, but only those requests made by Guatemala invoked the Convention."⁷⁸ This information would seem to conflict with that provided by the Republic of Panama, reflecting perhaps the disaggregated nature of the information provided by the State, and the use of a different source for the information.

As part of the objective results in this field, it should also be noted that, through the Attorney General's Office, the Republic of Panama has begun proceedings with another State party, seeking the extradition of a former official of a State bank who was convicted for crimes against the public administration.⁷⁹

5.2 MUTUAL TECHNICAL COOPERATION

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

The Republic of Panama has a series of provisions and measures for exchanging mutual technical cooperation with other States parties to the Convention, pursuant to Article XIV (2) of the Convention.

The response of the State indicates that "the Fourth Chamber of General Affairs of the Supreme Court of Justice is the body responsible for coordinating international technical cooperation on issues covered by the Convention."⁸⁰

⁷⁵ Response of the Republic of Panama to the questionnaire page 24.

⁷⁶ Response of the Republic of Panama to the questionnaire page 23.

⁷⁷ Response of the Republic of Panama to the questionnaire, page 22.

⁷⁸ Comments of Transparency International, Panama Chapter, to the response of the Republic of Panama to the questionnaire, pages 33 and 34.

⁷⁹ Response of the Republic of Panama to the questionnaire, page 22, and Comments of Transparency International, Panama Chapter, to the response of the Republic of Panama to the questionnaire, page 34.

⁸⁰ Response of the Republic of Panama to the questionnaire page 23.

According to the State's response, the Republic of Panama has neither received nor issued any requests in this sense.⁸¹

On this point, the Committee notes the information provided by Transparency International, Panama Chapter, indicating certain aspects of technical cooperation that, while not referring to requests issued by Panama to another State, or conducted in the name of the Convention, appear relevant. These include the inter-American seminar on "Investigation of Cases of Public Corruption" held January 27-31, 2003, at the initiative of the United States Department of Justice through the American Embassy in Panama, and the informal exchange of information between the First Anticorruption Prosecutor's Office and the Department of Homeland Security's office in the American Embassy.⁸²

5.2.2 Adequacy of the legal framework and/or other measures

The rules and mechanisms regarding mutual technical cooperation that the Committee has examined, on the basis of available information, are suitable for promoting the purposes of the Convention.

The Committee notes that the designation of the Fourth Chamber of General Affairs of the Supreme Court of Justice as the entity responsible for coordinating international technical cooperation on issues covered by the Convention is appropriate for promoting the purposes of the Convention.

It is important to note the experience that has been gained in the exchange of mutual technical cooperation with other States parties on more effective ways and means of preventing, detecting, investigating and punishing acts of corruption, as mentioned in the previous section, which may be considered as progress in implementing the Convention.

Nevertheless, the Committee considers it important to identify specific areas in which the Republic of Panama may need or could use technical cooperation to prevent, detect, investigating and punish acts of corruption. Such an exercise could facilitate the design and implementation of a comprehensive strategy for turning to other States, whether or not they are parties to the Convention, and to international agencies and institutions involved in international cooperation, to secure the necessary technical cooperation.

5.2.3 Results of the legal framework and/or other measures

The absence of information in this field makes it not possible to achieve a comprehensive assessment of the results of the legal framework and other measures. In light of these circumstances, the Committee will issue a recommendation on the final chapter of this document.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

6.1 EXISTENCE OF PROVISIONS IN THE LEGAL FRAMEWORK AND/OR OTHER MEASURES

As reported by the Republic of Panama in its response, the government has designated the Fourth Chamber of General Affairs of the Supreme Court of Justice, by means of Law 39 of July 19, 2001,⁸³ as the central authority for purposes of international assistance and cooperation under the Convention.

⁸¹ Response of the Republic of Panama to the questionnaire page 23.

⁸² Comments of Transparency International, Panama Chapter, to the response to the questionnaire given by the Republic of Panama, document submitted to the Secretariat pursuant to Article 33 (b) of its rules of procedure, pages 34 and 35.

⁸³ Law 39 of July 19, 2001, Article 30.

6.2 ADEQUACY OF THE LEGAL FRAMEWORK AND/OR OTHER MEASURES

The rules and mechanisms concerning to central authorities that the Committee has examined, on the basis of available information, are suitable for promoting the purposes of the Convention.

In particular, the Committee notes the designation of the Fourth Chamber of General Affairs of the Supreme Court of Justice as the central authority for purposes of international assistance and cooperation under the Convention.

6.3 RESULTS OF THE LEGAL FRAMEWORK AND/OR OTHER MEASURES

The lack of information on results in this field makes it not possible to achieve a comprehensive evaluation of the results of the legal framework and other measures. In light of these circumstances, the Committee will offer a recommendation in the final chapter of this document.

III. CONCLUSIONS AND RECOMMENDATIONS

Based on the review contained in Chapter II of this report, the Committee offers the following conclusions and recommendations with respect to implementation in the Republic of Panama of the provisions of Convention Articles III. 1 and 2 (standards of conduct and mechanisms for enforcement); III. 4 (systems for the disclosure of income, assets and liabilities); III. 9 (oversight bodies, with respect only to their functions in relation to fulfillment of the provisions contemplated in paragraphs 1, 2, 4 and 11 of Article III of the Convention); III. 11 (mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption); XIV (assistance and cooperation); and XVIII (central authorities), which were selected in the framework of the first round.

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE THEM (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 Panama has reviewed the applicability of and adopted measures to establish, maintain and reinforce standards of conduct with respect to preventing conflicts of interest, as well as mechanisms for enforcing them, as described in section 1.2 of Chapter II of this report.

In light of the comments provided in said section, the Committee suggests that the Republic of Panama consider the following recommendation:

- 1.1.1 Strengthen the implementation of laws and regulatory systems concerning conflicts of interest, so as to permit the practical and effective application of a system of public ethics.

In meeting this recommendation, the Republic of Panama could consider the following measures:

- a. Consider the possibility of amending existing legislation to reflect a uniform concept of public servant or official, consistent with the definition of that term provided by the States Parties in Article I of the Convention.
- b. Establish rules governing the system of incompatibilities, impediments, disqualification, and prohibitions with respect to the positions referred to in Articles 150, 152, 175, and 191 of the Political Constitution (in order: legislators and their alternates, President and Vice President of the Republic, and Ministers of State), recognizing the importance and the special features of those provisions, and providing mechanisms for enforcing them.

- c. Give effect to the provisions of Article 27 of Law 6 of January 22, 2002, which requires "*all State dependencies or agencies, including those belonging to the executive, legislative and judicial branches, the decentralized, autonomous, and semiautonomous entities, municipalities, local governments, and community councils*" to promulgate their codes of ethics.
- d. Review and examine the possibility of achieving and ensuring greater consistency with respect to the applicable legal framework in the content of the codes of ethics, in order to guide public officials in the correct performance of their duties.
- e. Consider the possibility of implementing the Single Curriculum Vitae Form for public servants as regulated by Law No. 39, Article 32 and concordant articles.
- f. Implement effective mechanisms for preventing conflicts of interest and ensuring the proper use of resources entrusted to public servants, pursuant to Article 37 of Law 39, which requires that, if grounds for incompatibility or disqualification should arise after a public servant is appointed or takes office, he must immediately report that fact to the entity for which he is working. (See section 1.1.2 of Chapter II of this report).
- g. Implement mechanisms for monitoring and enforcing compliance with Article 298 of the Political Constitution, as well as articles 894 and following of the Administrative Code (prohibiting public servants from earning two or more salaries paid by the State, except in special cases determined by law), in such a way as to include officials under contract.
- h. Ensure that penalties are applicable to public servants who violate the rules governing conflicts of interest.
- i. Review and examine the possibility of incorporating rules and regulations to limit or prohibit participation by former officials in certain government matters, and in general to assist in preventing situations that could lead to inappropriate exploitation of a person's status as a former official. (See section 1.1.2 of this report).
- j. Design and implement mechanisms to disseminate, and train all public servants in, standards of behavior, including rules governing conflicts of interest, and provide periodic further training and refresher courses in respect of those standards.
- k. Gather information regarding cases of conflicts of interest (see section 1.1.3 of this report), with a view to establishing evaluation mechanisms that will make it possible to verify results in this area.
- l. Consider the possibility of giving new impetus to the National Integrity Plan with broad social participation.

1.2 Standards of conduct and mechanisms to ensure the conservation and proper use of resources entrusted to public officials

The Republic of Panama has considered the applicability of and adopted measures aimed at creating, maintaining, and reinforcing standards of conduct to ensure the conservation and proper use of resources entrusted to public officials in the performance of their functions, as described in section 1.2 of Chapter II of this report.

In light of the considerations discussed in said section, the Committee suggests that the Republic of Panama consider the following recommendations:

- 1.2.1 Strengthen the Government Property Directorate (*Dirección de Responsabilidad Patrimonial*) of the Office of the Comptroller General and other competent bodies in this sphere so that they can fulfill their duty in processing complaints of irregularities in the management, safekeeping, administration, and use of public funds and assets, as discussed in section 1.2 .3.

1.2.2 Design and implement mechanisms to disseminate, and train all public servants in, the standards of behavior referred to in this section, and to respond to their queries regarding them, and provide periodic further training and refresher courses in respect of those standards

1.3 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

The Republic of Panama has considered the applicability of and has adopted measures aimed at creating, maintaining, and strengthening rules of conduct and mechanisms in respect of the measures and systems that require government officials to report to appropriate authorities acts of corruption in the performance of public office of which they may become aware, as described in section 1.3 of Chapter II of this report.

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

1.3.1 Strengthen existing mechanisms in the Republic of Panama for requiring government officials to report to the competent authorities any acts of corruption in the performance of public office of which they may become aware. In meeting this recommendation, the Republic of Panama could consider the following measures:

- a. Issue regulations to facilitate such reporting, and establish requirements that will not inhibit potential whistleblowers. Regulate and implement mechanisms for protecting those who report acts of corruption.
- b. Facilitate such reporting through the use of appropriate electronic and other means of communication they deem appropriate.
- c. Train government officials in their responsibility to report to the competent authorities any acts of corruption in the performance of public office of which they may become aware.

1.3.2 Take the necessary decisions to expand the existing rules, and make it an explicit, punishable offense for public servants to fail to report to the competent authorities acts of corruption in the performance of public office of which they become aware. Ensure that the scope of this obligation refers not only to punishable acts of which they become aware by reason of, on the occasion of, or in the exercise of public office, but also acts of corruption of which they become aware even without such exercise.

1.3.3 Continue with the promulgation of codes of ethics, taking into account, pursuant to Article 27 of Law 6, that they must at a minimum include, among other aspects, "the obligation to report acts of corruption to a superior", as discussed in section 1.1.1.

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

The Republic of Panama has considered the applicability of and has adopted certain measures designed to create, maintain, and strengthen systems for the disclosing of income, assets, and liabilities by persons who perform public functions in certain posts specified by law, as discussed in section 2.1 of Chapter II of this report.

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

- 2.1 Create and establish a mechanism for publication of declaration of income, assets and liabilities.

In meeting this recommendation, the Republic of Panama could consider the following measure:

- a. Issue regulations governing the conditions, procedures, and other appropriate aspects of public disclosure, where necessary, of sworn statements of income, assets, and liabilities.
- 2.2 Take the necessary decisions to ensure that the obligation of public officials pursuant to Article 299 of the national Constitution and Law 59 of December 29, 1999, regulating those declarations, as well as the enforcement mechanisms established in Article 3 and following of that Law, are applicable to other important officials; or that provisions similar to those of Article 299 of the National Constitution are established, and that they cover all persons performing public functions, together with effective mechanisms for punishing violations.
 - 2.3 Establish systems for effectively and efficiently reviewing the content of sworn statements of income, assets, and liabilities, establishing the relevant deadlines and circumstances, and measures for overcoming obstacles to access to the sources of information required; and take the necessary decisions to ensure cooperation between the Comptroller General's Office and other sectors, such as the financial and taxation sectors, so as to facilitate the exchange of information for verifying the contents of such statements.
 - 2.4 Make use of sworn statements of income, assets, and liabilities to detect and punish illicit acts.
 - 2.5 Use the sworn statements of income, assets, and liabilities to detect and avoid conflicts of interest, as well as to detect illicit enrichment.
 - 2.6 Install a registry of those required to present a sworn statement of income, assets, and liabilities, ensuring that there are mechanisms for periodically updating it.
 - 2.7 Implement the procedures needed for effective monitoring of compliance, in accordance with item 2.6.
 - 2.8 Implement an appropriate set of sanctions and penalties for those who fail to comply with this obligation; including, furthermore, the possibility of punishing failure to comply with this obligation by a former civil servant, whose failure to comply with obligations established occurs after he has left office.

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

The Republic of Panama has considered the applicability of and has adopted measures designed to create, maintain, and strengthen oversight bodies for enforcement of the provisions selected for review within the framework of the first round (Article III, paragraphs 1, 2, 4 and 11 of the Convention), as discussed in section 3 of Chapter II of this report.

Taking into account the considerations discussed in said section, the Committee suggests that the Republic of Panama consider the following recommendations:

- 3.1 Strengthen the oversight bodies, and, as appropriate, harmonize and coordinate their functions with respect to monitoring effective enforcement of the provisions of paragraphs 1, 2, 4 and 11 of the Convention.
- 3.2 Conduct a comprehensive assessment of the functions currently performed by the National Anticorruption Directorate, and consider creating a new national office of governmental ethics, as the State mentioned in the update to its response, or making other regulatory or institutional

arrangements to ensure that there is an oversight body with competence to enforce the standards of the Convention selected for review in the first round.

- 3.3 Ensure that the National Anticorruption Directorate (or its successor institution), the Ombudsman's Office, the Public Ministry, the Comptroller General's Office and its Government Property Directorate, and the Attorney General's Office have, where appropriate, greater support in the performance of their duties, and establish, in appropriate cases, mechanisms for the coordination and continuing assessment and monitoring of their efforts to develop modern mechanisms for preventing, detecting, punishing, and eradicating corrupt practices.
- 3.4 Draw up information about the functions performed by oversight bodies, with a view to establishing evaluation mechanisms in this area.

4. MECHANISMS TO PROMOTE THE PARTICIPATION OF CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11)

4.1. General participation mechanisms

Design and put in place programs to disseminate mechanisms for participating in monitoring public administration and, where appropriate, providing training to civil society, nongovernmental organizations, and government officials and employees, along with the tools they need to use those mechanisms. Included in these programs would be education and training of civic leaders to boost the use of those mechanisms and generate public awareness of the importance of reporting acts of corruption in the public sector.

4.2. Mechanisms for access to information

- 4.2.1 Institute legal rules and measures to support access to public information.

In meeting this recommendation, the Republic of Panama could consider the following measures:

- a. Develop procedures for receiving requests, for responding to them in a timely manner, and for handling appeals in cases where such requests are denied, and establish penalties for failure to observe the obligation to provide information, while making more general use of consultation offices and so-called *information kiosks*.
- b. Introduce a broader definition of active legitimization for the subjective scope of application of Law 6 of January 22, 2002. Consider eliminating the restrictive definition of the term "interested person" contained in Article 8 of Executive Decree 124 of May 21, 2002, recognizing: the importance of providing citizens with the broadest possible access to information; the apparently restrictive rule of Article 11 of that decree; the juridical supremacy of a law over a decree; and the frequency of acts of corruption with respect to "*information on the contracting and appointment of public officials, payrolls, representation expenses, travel costs, per diem and other allowances or payments to public officials at any level, or to other persons performing public functions,*" covered by Article 11.
- c. Consider revising the provision of Article 5 of Executive Decree 124, whereby the remuneration of public servants is considered privileged information, to bring it into line with Law 6, in Article 11 which characterizes as public, and provides free access to persons interested in, "*information regarding the hiring and designation of public officials ... payment for per diem subsistence allowances and others of public officials regardless of their rank...*" and Article 14, which expressly defines which information must be considered confidential or restricted, as discussed in section 4.2.2.
- d. Strengthen the guarantees for exercising the right to public information, so that access to such information cannot be denied for reasons or criteria other than those stipulated by law.

- e. Conduct a comprehensive assessment of the use and effectiveness of the recourse of *habeas data*, identifying the reasons why so few appeals are accepted, and, in light of that assessment, adopt measures to promote, facilitate, consolidate or ensure the effectiveness of that recourse.

- 4.2.2 Observe with satisfaction that various Codes of Ethics include among their provisions standards concerning society's right to information and to be duly informed about the activities carried out by each institution.

4.3 Consultative mechanisms

- 4.3.1 Establish procedures, as appropriate, to allow for public consultation prior to the approval of new legal measures.

In meeting this recommendation, the Republic of Panama could consider the following measures:

- a. Increase the publication and dissemination of draft legal measures, and institute transparent proceedings for consulting interested sectors of society during the preparation of draft laws, decrees, and resolutions of the executive branch.
- b. Hold public hearings or use other suitable mechanisms for obtaining public feedback in other areas than those already covered.

4.4 Mechanisms to encourage participation in public administration

- 4.4.1 Strengthen and continue to implement mechanisms that encourage civil society and nongovernmental organizations to participate in public administration.

In meeting this recommendation, the Republic of Panama could consider the following measures:

- a. Give effect to Article 4 of Executive Decree 99 of September 13, 1999, which empowers the National Anticorruption Directorate to create mechanisms for encouraging participation by civil society and nongovernmental organizations in efforts to prevent corruption.
- b. Order the publication of draft official acts, where their importance so warrants, prior to their adoption, so that, within a specified time limit, civil society and nongovernmental organizations may make comments and recommendations, which must be evaluated by the competent authorities.
- c. Establish mechanisms for strengthening participation by civil society and nongovernmental organizations in efforts to prevent corruption and to develop a public awareness of the issue.
- d. Design and implement programs to publicize mechanisms for encouraging participation in public administration and, when appropriate, provide the necessary facilitation tools and training in their use to civil society and nongovernmental groups, as well as public officials and employees.
- e. Bearing in mind the problems referred to in section 4.4 with respect to "*desacato*" laws, make any necessary decisions in order to analyze and amend those provisions to prevent them from posing an obstacle or inhibition to participation by civil society and nongovernmental organizations in efforts to prevent corruption.

4.5 Mechanisms for participation in the follow-up of public administration

- 4.5.1 Strengthen and continue implementing measures to encourage civil society and nongovernmental organizations to participate in the follow-up of public administration.

In meeting this recommendation, the Republic of Panama could consider the following measures:

- a. Provide means whereby persons performing public functions can enable, facilitate, or help civil society and nongovernmental organizations to participate in monitoring their management of public affairs.
- b. Implement dissemination programs for civil society and nongovernmental organizations regarding the matters addressed in sections 4.1 to 4.5.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

The Republic of Panama has adopted measures for reciprocal assistance and mutual technical cooperation, pursuant to Article XIV of the Convention, as described in section 5 of Chapter II of this report.

In light of the comments provided in said section, the Committee suggests that the Republic of Panama consider the following recommendations

- 5.1 Identify and prioritize specific areas in which the Republic of Panama feels it needs technical cooperation from other States Parties for strengthening its capacities to prevent, detect, investigate, and punish acts of corruption.

In addition, the Republic of Panama could identify and prioritize requests for reciprocal assistance in the investigation and prosecution of corruption cases.

- 5.2 Design and implement a comprehensive program of familiarization and training targeted specifically at competent authorities, to ensure that they understand and can apply, in the investigation and prosecution of corruption cases, the provisions concerning mutual legal assistance found in the Convention and other treaties that Panama has signed.

In addition, it would be advisable to train the officials competent in this sphere in order to elicit the broadest possible mutual technical and legal cooperation in preventing, detecting, investigating, and punishing acts of corruption.

- 5.3 Design and implement an information program that would enable authorities of the Republic of Panama to permanently follow up on requests for legal assistance regarding acts of corruption and in particular those acts envisaged in the Inter-American Convention against Corruption.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

The Republic of Panama has complied with Article XVIII of the Convention by appointing the Fourth Chamber of General Affairs of the Supreme Court of Justice as the central authority for purposes of international assistance and cooperation under the Convention.

7. GENERAL RECOMMENDATIONS

Taking into account the comments made in the course of this report, the Committee suggests that the Republic of Panama consider the following recommendations:

- 7.1 Design and implement, when appropriate, training programs for public servants responsible for applying the systems, standards, measures, and mechanisms considered in this report, in order to ensure that they are thoroughly understood and properly applied.
- 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, as well as the recommendations contained in this report.

8. FOLLOW-UP

The Committee will consider the periodic reports of the Republic of Panama on its progress in implementing the above recommendations, in the framework of the Committee's primary meetings, in accordance with the provisions of Article 30 of the rules of procedure.

The Committee will also examine progress in implementing the recommendations contained in this report, as stipulated in Article 31 and, as appropriate, 32 of the rules of procedure.

The Committee wishes to place on record the Republic of Panama's request that the Secretariat publish this report on the Mechanism's web site, or by any other means of communication, pursuant to Article 25 (g) of the Rules of Procedure.

**APPENDIX TO THE PRELIMINARY DRAFT REPORT
ON THE IMPLEMENTATION IN THE ORIENTAL REPUBLIC OF PANAMA OF THE PROVISIONS
OF THE CONVENTION SELECTED FOR REVIEW WITHIN THE FRAMEWORK OF THE FIRST
ROUND**

Together with its response to the questionnaire, the Republic of Panama submitted annexes containing the following provisions and documents:

- Political Constitution of the Republic of Panama (Articles 2, 17, 18, 37, 41, 43, 98, 131, 150, 152, 192, 205, 209, 217, 275, 276, 295, 298, 300 and 304).
- Criminal Code (Articles 322, 349 and 350)
- Law 39 of July 19, 2001, amending and adding provisions to the Criminal Code and the Judicial Code and issuing standards for the prevention of corruption.
 - Agreement 46 of September 27, 1991, of the Supreme Court Justice.
 - Resolution ADM-178 of July 5, 2002, of the Public Services Regulator.
 - Article 10 of the Fiscal Code.
 - Administrative Code (Book II, Title VI, Chapter I and VIII, and Articles 2121 and 2127).
 - Judicial Code (Articles 46, 48, 49, 53, 54, 150, 152, 187, 188, 226, 345, 395, 447, 448 and following, 619, 621, 760 to 763, 2026 and 2571).
 - Elections Code (Articles 25, 26, 126, 181, 186 and 187).
 - Cabinet Decree 36 of February 10, 1990, creating the Financial Liability Directorate within the Comptroller General's Office of the Ministry of Government and Justice.
 - Executive decree 204 of September 3, 1997, issuing disciplinary regulations for the National Police of the Ministry of Government and Justice.
 - Executive decree 69 of June 19, 2002, designating the Commission for Follow-up to the Agreements of the National Dialogue for Economic Reactivation.
 - Executive Decree 7 of January 22, 2002 designating the Presidential Commission to Combat Corruption.
 - Decree 214-DGA of October 8, 1999 of the Comptroller General's Office, Issuing Standards of Internal Governmental Control for the Republic of Panama.
 - Decree 247 of December 13, 1996, of the Comptroller General's Office (Government Audit Standards for the Republic of Panama).
 - Cabinet Decree 38 of February 10, 1990, organizing the police forces.
 - Executive Decree 13 of September 1999, creating the National Anticorruption Directorate.
 - Decree 15 of July 19, 2002, of the Elections Tribunal, establishing the Code of Ethics for the Elections Tribunal.

- Resolution 3 of July 19, 2002, approving the code of ethics for public servants of the Ombudsman's Office.
- Bylaw 107-A of July 23, 2002, adopting the code of ethics for municipal public servants.
- Law 16 of July 9, 1991, approving the Act creating the Judicial Technical Police within the Public Ministry.
- Cabinet Decree 42 of February 17, 1990, reforming and supplementing Cabinet Decree 38 of February 10, 1990.
- Executive Decree 19 of January 25, 1996, issuing regulations to Article 16 of Chapter III of Law 56 of December 27, 1995, establishing the principle of transparency in public procurement.
- Executive decree 98 of May 29, 1991, implementing Article 16 of Cabinet Decree 38 of February 10, 1990.
- Executive Decree 124 of May 21, 2002, issuing regulations to Law 6 of January 22, 2002.
- Decree 90-LEG of April 9, 2002, of the Comptroller General's Office, amending the decree of January 25, 2002, and issuing a single text of model instruments of surety to be constituted to guarantee the fulfillment of obligations contracted with public entities and corporations or bodies in which the State holds economic participation or effective control, and in general, any person who handles public funds or assets.
- Law 17 of May 1, 1997, implementing Article 283 of the Political Constitution and establishing the special cooperatives system.
- Law 18 of June 3, 1997, the National Police Act
- Law 26 of January 29, 1996, creating the regulatory entity for public services.
- Law 29 of February 1, 1996, issuing standards for the protection of competition and adopting other measures.
- Law 30 of December 26, 1991, amending Decree Law 14 of August 27, 1954, establishing the Social Insurance Fund.
- Decree Law 14 of August 27, 1951, amending Law 134 of April 27, 1943, creating the Social Insurance Fund.
- Decree Law 32 of November 8, 1984, adopting the Comptroller General Act.
- Law 38 of July 31, 2000, approving the statutes of the Administration Attorney General's Office (*Procuraduría de la Administración*), regulating general administrative procedures and issuing special provisions.
- Law 39 of July 13, 1995, approving the treaty of mutual legal assistance in criminal matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, signed in Guatemala City on October 29, 1993.

- Law 4 of February 10, 1978, establishing the Elections Tribunal and the Electoral Prosecutor's Office.
- Law 40 of June 30, 1998, approving the treaty of mutual legal assistance in criminal matters between the Government of Panama and the Government of the United Mexican States, signed in Mexico City, July 29, 1997
- Law 42 of July 1, 1998, approving the Inter-American Convention against Corruption, signed in Caracas, Venezuela, on March 29, 1996.
- Law 41 of July 1, 1998, the Environment Act of the Republic of Panama.
- Law 41 of October 2, 2000, implementing Chapter VI, "Money-laundering", of Title XI and Title XII, "Provisions".
- Law 42 of October 2, 2000, establishing measures to prevent the crime of money-laundering.
- Law 42 of July 14, 1995, approving the agreement on legal assistance and mutual judicial cooperation between the Government of Panama and the Government of Colombia, signed in Panama City on November 18, 1993.
- Law 45 of November 27, 2000, amending Articles 70 and 201 of Book II of the General Administrative Procedures of Law 38 of 2000.
- Law 5 of February 25, 1993, creating the Interoceanic Region Authority of Panama and adopting measures concerning reverted assets.
- Law 52 of October 17, 2001, regulating public contracting and issuing other provisions.
- Law 56 of December 27, 1995, regulating public contracting and issuing other provisions.
- Law 59 of December 29, 1999, issuing regulations to Article 299 of the Political Constitution and issuing other provisions against administrative corruption.
- Law 6 of January 22, 2002, issuing standards for transparency in public administration, establishing the recourse of *habeas data* and issuing other provisions.
- Law 67 of September 19, 1978, regulating the exercise of the journalistic profession in the Republic of Panama.
- Law 7 of March 7, 1995, amending and supplementing certain Articles of Law 5 of 1993, creating the Interoceanic Region Authority of Panama and adopting measures on reverted assets.
- Law 7 of May 3, 1999, approving the agreement between the Republic of Panama and the Kingdom of Spain on legal assistance and judicial cooperation in criminal matters, signed in Madrid, Spain, on October 19, 1998.
- Law 9 of June 20, 1994, establishing and regulating the administrative career.

- Resolution PC-317-02 of July 22, 2002, of the Competition and Consumer Affairs Commission (code of ethics for public servants of the commission).
- Executive decree 222 of September 12, 1997, regulating Law 19 of June 20, 1994, establishing and regulating the administrative career.
- Resolution JD-3233 of March 5, 2002, of the Public Service Regulator Entity, approving the procedure for public hearings for amending the tariff schedule of electric utility services.
- Board of Directors Resolution 078/02 of July 25, 2002, of the Interoceanic Region Authority, approving the code of ethics which shall be binding on all employees of the Authority (ARI).
- Resolution 7 of January 1999 of the Administrative Career Board, approving the model internal regulations for public sector institutions.
- Resolution 204 of 1995, Directorate for Special Investigations and Financial Liability Directorate, creating the Directorate for Special Investigations.
- Resolution 3 of April 16, 1999, of the Administrative Career Board, approving the code of ethics for public servants.
- Resolution CNV-259-02 of June 11, 2002, of the National Securities Commission, approving the code of ethics of public servants of the National Securities Commission.
- Resolution 1446 of September 13, 1991, Ministry of Government and Justice (Directorate for Coordination and Implementation of the Treaty of Mutual Legal Assistance in the Ministry of Government and Justice).
- Resolution 94 of April 12, 1995, of the Ministry of Government and Justice, stipulating that the Directorate for Coordination and Implementation of the Treaty of Mutual Legal Assistance shall hereafter be called "National Directorate for the Execution of Treaties of Mutual Legal Assistance and International Cooperation".
- Law 7 of February 5, 1997, creating the Ombudsman's Office.
- Law 30 of November 8, 1984, issuing measures against contraband and Customs fraud and adopting other provisions.
- Decree 2 of January 1991, adopting measures on the import and sale of arms, ammunition, accessories, and non-lethal defensive Articles, and issuing other provisions.