MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
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REPUBLIC OF COLOMBIA

FINAL REPORT

(Adopted at the March 25, 2010 Plenary Session)

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

REPORT ON IMPLEMENTATION IN THE REPUBLIC OF COLOMBIA OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE THIRD ROUND, AND ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY IN PREVIOUS ROUNDS[1/]

INTRODUCTION

1. Contents of the report

[1] This report presents, first, a review of implementation in the Republic of Colombia of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for review in the third round: Article III, paragraphs 7 and 10, and Articles VIII, IX, X and XIII.

[2] Second, the report will examine follow-up to the recommendations that were formulated to the Republic of Colombia by the MESICIC Committee of Experts in the previous rounds, which are contained in the report on that country adopted by the Committee and published at the following web pages: www.oas.org/juridico/english/mec_rep_col.pdf and www.oas.org/juridico/english/mesicic_II_inf_col_en.doc

2. Ratification of the Convention and adherence to the Mechanism

[3] According to the official register of the OAS General Secretariat, the Republic of Colombia deposited the instrument of ratification of the Inter-American Convention against Corruption on January 19, 1999.

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

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of the Republic of Colombia

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Colombia and in particular from the Presidential Anti-Corruption Program of Modernization, Efficiency and Transparency (*Programa Presidencial de Modernización, Eficiencia, Transparencia y Lucha contra la Corrupción*), which was evidenced, inter alia, in the response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its response, the Republic of Colombia sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at the following web page: www.oas.org/juridico/spanish/mesicic3_col_sp.htm

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[1]. This report was adopted by the Committee in accordance with the provisions of Articles 3 (g) and 25 of the Committee's Rules of Procedure, at the March 25, 2010 plenary session, within the framework of the Sixteenth Meeting of the Committee, held at OAS headquarters in Washington, D.C., from March 22 to 25, 2010.

[6] For its review, the Committee took into account the information provided by the Republic of Colombia up to August 14, 2009, and that furnished and requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and the review Methodology.

2. Documents received from civil society organizations

[7] The Committee also received, within the deadline established in the schedule for the third round, a document from "*Corporación Transparencia por Colombia*", the national chapter of Transparency International, in alliance with "*Fundación Grupo Método*", submitted electronically on August 14, 2009.[2/]

II. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE THIRD ROUND

1. DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT[3] FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)

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

[8] The Republic of Colombia has a set of provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, among which the following should be noted:

[9] - The Constitution, Article 58 of which guarantees rights granted by provisions of law.[4]

[10] - Decree 624 of 1989 (Tax Law), Article 104 of which provides that legally accepted deductions are deemed made upon their effective payment in cash or in kind or when they can no longer be required by any means that legally constitutes payment; Article 107, on general deductions, recognizes as deductible those expenses made during the tax year or period in the pursuit of any income-generating activity, provided that they have a causal link with the income-generating activities and are necessary and proportionate in accordance with each activity. This Article also provides that the need and proportionality of expenses shall be determined according to commercial criteria, bearing in mind those customarily associated with each activity and the limits set down in the articles hereunder.

[11] Articles 108 to 174 of this Law refer to specific deductions.[i] Amongst these provisions, Articles 121 to 124(2) of the Law cover foreign expenditures. Article 121 indicates those which are deductible; [ii] while Article 122 sets limits on their deduction,[iii] and Article 123 sets out the

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[2]. This document is available in Spanish at: www.oas.org/juridico/spanish/mesicic3_col_inf_sc_sp.pdf

[3] For the purposes of this report the MESICIC Committee of Experts has considered favorable tax treatment to be all tax exemptions and any item deductible for determining the tax base for income and other tax, that give rise to reductions in the amount of tax in the taxpayer's favor.

[4] Constitutional Court Judgment C-069 of 1994 cited by Colombia in its response (p. 2) states that "property and, in general, any rights acquired in violation of civil laws, in other words, in the framework of unlawful activities, are also not covered by the State's protection (Constitution, Art 58)." This judgment is available in Spanish at: http://www.oas.org/juridico/spanish/mesicic3_col_sp.htm

requirements for their validity.[iv] Articles 124(1)[v] and 124(2) establish which payments are non-deductible.[vi] The Tax Law also governs the deduction of donations or contributions at Articles 125 to 125(4). Article 125 sets out [vii] the donations that are deductible (depending on the recipients) and the limit on the deduction; Article 125(1) contains[viii] the requirements to be met by beneficiaries of donations; Article 125(2) stipulates[ix] the forms of donations that give rise to eligibility for deduction; Article 125(3) sets out[x] the requirements for recognizing the deduction; and Article 125(4) provides[xi] the requirements for deductions for donations.

[12] The above-cited decree also sets out, at Articles 176 to 177(2), the limitations on both costs and deductions. Article 177(1) provides that for the purposes of determining the taxable income of taxpayers, neither costs nor deductions attributable to revenues that do not constitute either income or irregular income, nor costs and deductions attributable to exempt income, shall be acceptable. This Decree also states at Article 631(d) that, inter alia, the National Tax Authority [*Dirección General de Impuestos Nacionales*] may ask both taxpaying and non-taxpaying persons and entities to provide the full name or trade name and NIT number of each of the beneficiaries of the payments that are eligible for tax deductions,[5] including the category and overall amount per beneficiary; and makes it a requirement at Article 632 for taxpaying and non-taxpaying persons and entities to keep those documents, information, and proof mentioned in said article, for at least five years, counted from January 1 of the year following their preparation, issue or receipt, and to make them available to the tax authority upon request, including the specific information and proof established in the standards in force that entitle deductions or that attest to income, costs, deductions, discounts, exemptions, and other favorable tax treatment.

[13] Furthermore, at Article 647, Decree 624 of 1989 provides a penalty for inaccurate disclosure, stating that it is punishable to omit from tax disclosures income, taxes incurred by taxed operations, and assets or acts liable to tax, as is the inclusion of nonexistent costs, deductions, discounts, exemptions, liabilities, discountable taxes, withholdings or pre-payments, and, in general, the inclusion in tax returns or reports submitted to tax offices of false, erroneous, incomplete, or distorted data or factors, that give rise to a lower tax or balance payable, or a greater balance in favor of the taxpayer or person responsible. This provision also states that the penalty for an inaccurate disclosure shall be equivalent to one hundred sixty percent (160%) of the difference between the balance payable or balance in favor, as appropriate, determined in the official assessment, and that declared by the taxpayer or person responsible. For its part, Article 648 of the aforesaid Decree provides that the foregoing penalty shall be applied without prejudice to other appropriate penalties under the Criminal Code, should the inaccuracy constitute a criminal offence, and adds that if the Director of National Taxes [*Director de Impuestos Nacionales*], administrators or competent officials consider that an inaccurate disclosure constitutes an offence punishable under the Criminal Code, they shall report the case to the authority or judge competent to open the appropriate criminal inquiries.

[14] Furthermore, Article 651 (b) of the aforesaid decree penalizes the disregarding of costs, exempt income, deductions, discounts, liabilities, deductible taxes and withholdings, as appropriate, when persons and entities required to provide tax-related information or those that have been requested to furnish information and evidence on their operations fail to do so within the time limit set for that purpose. In addition, Article 655 imposes a penalty on accounting irregularities, which is applied without prejudice to the rejection of costs, deductions, deductible taxes, exemptions, tax discounts or other items that are not supported in the accounting records or fully proven in accordance with the standards in force.

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[5] *Número de Identificación Tributaria* (NIT) or Tax Number

[15] Finally, Article 684 of Decree 624 of 1989 states that the Tax Authority has comprehensive powers of oversight and investigation for enforcing substantive standards, including the power to verify the accuracy of disclosures and other information when it deems necessary. Article 684(1) states that in investigations and collection of evidence in the framework of assessment procedures, imposition of penalties, disputes, collections, refunds, and compensations, the authorities may use the instruments recognized in the Code of Criminal Procedure and the National Police Code, provided that they do not run contrary to the provisions contained in this Law.

[16] - The Criminal Code, Article 289 of which provides that whomsoever falsifies a private document that could serve as evidence shall be liable, should they use it, to one (1) to six (6) years of imprisonment.[6]

[17] - The Administrative Code, Article 69 of which provides that administrative acts shall be revoked by the officials that issued them or by their immediate superior either ex officio or at the request of a party when, inter alia, they stand in clear opposition to the Constitution or are not compatible with or undermine public interests.

[18] - Administrative Order No. 011 of October 15, 2009, which sets out management, administrative, and technical guidelines, together with the procedures to be followed by the offices in charge of tax audits and assessments.[7]

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

[19] With respect to the provisions governing denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, the Committee notes that, on the basis of the information available to it, they may be said to constitute a set of relevant measures for promoting the purposes of the Convention.

[20] Nonetheless, the Committee believes that it would be beneficial for the country under review to consider adopting the measures it deems appropriate to make it easier for the appropriate authorities to detect sums paid for corruption when such sums are used to obtain favorable tax treatment (see Recommendation 1.4 (a) in Chapter II of this report).

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

[21] With respect to results in this area,[8] the response of the Republic of Colombia to the questionnaire furnishes information on administrative decisions adopted by the National Taxes and Customs Office (DIAN) in the framework of tax audits in 2007 and 2008. This information is displayed in four statistical tables. The first two refer to penalties imposed for violations of Articles

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[6] The Judgment of the Criminal Cassation Chamber of the Supreme Court of Justice in Case 13.231, MP. Fernando Arboleda Ripoll, of November 29, 2000, cited by Colombia on p. 8 of its response, states that "falsification of a document is constituted not only by the alteration of its contents [*falsedad material propia*] or its complete forgery [*falsedad material impropia*], but also by the presentation of facts that have not occurred as true, or the presentation in a particular manner of facts that occurred differently; in other words, misrepresentation of the facts in a document or falsification thereof." This judgment is available in Spanish at: http://www.oas.org/juridico/spanish/mesicic3_col_sp.htm

[7] This provision indicated by Colombia in its comments on the Draft Preliminary Report on Colombia is include in the body of this report, although it was enacted after the date on which Colombia replied to the questionnaire (August 14, 2009), in accordance with the rules set down in Section VI of the methodology adopted by the Committee for the third round review.

[8] Response of Colombia to the questionnaire. pp. 10-12

616(3), 651, 655, and 657 of the Tax Law; the second two concern penalties for inaccurate disclosures in violation of Article 647 of the Law.

[22] The latter two of the aforementioned tables show that in 2007, 340 official review assessments of companies were ordered in connection with the penalty for inaccurate disclosure provided in Article 647 of the Tax Law for "omission of assets, inclusion of liabilities and omission of revenue," and that in 2008, 429 such reviews were ordered. In relation to individuals, the tables show that 239 reviews were ordered in 2007 and 309 in 2008

[23] The Committee finds that the information contained in the foregoing paragraph serves to establish that the country under review has adopted administrative decisions imposing punishments for inaccurate disclosures as provided in Article 647 of the Tax Law. However, that information is not broken down according to the categories "omission of assets, inclusion of liabilities and omission of revenue" so as to show which of the aforesaid administrative decisions refer specifically to favorable tax treatment. Furthermore no other is information provided from which to make an overall assessment of results in this area. Accordingly the Committee will make a recommendation to the country under review that, through the tax authority responsible for the procedures related to favorable tax treatment, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see Recommendation 1.4(b) in Chapter II of this report).

[24] The information included in the first two statistical tables mentioned in the first paragraph of this section and to which the country under review also refers in its response on results in the area of prevention of bribery of domestic and foreign government officials, which is addressed in the second chapter of this report, is examined below in the section that deals with the latter issue.

1.4. Conclusions and recommendations

[25] Based on the review conducted in foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article III (7) of the Convention:

[26] **The Republic of Colombia has considered and adopted measures to create, maintain and strengthen standards on denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, as described in Chapter II, Section 1 of this report.**

[27] In light of the comments formulated in that section, the Committee suggests that the Republic of Colombia consider the following recommendation:

[28] Strengthen the standards and measures for the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws. To comply with this recommendation, the Republic of Colombia could consider the following measures:

a) Consider adopting the measures that deemed appropriate to make it easier for the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining such treatment, such as the following (see Chapter II, Section 1.2 of this report):

i. Continue to develop manuals, guidelines or directives that will guide them in reviewing procedures related to favorable tax treatment, so that they are able to verify that they contain the established requirements, to confirm the truthfulness of the information provided, and to determine the origin of the expenditures or payment on which the claims are based.

ii. Strengthen the possibility of accessing the sources of information necessary to conduct those verifications and confirmations, including requests for information from financial institutions.[9]

iii. Continue to develop computer programs that facilitate data consultation and cross-checking of information whenever necessary for the purpose of fulfilling their functions.[10]

iv. Continue to develop institutional coordination mechanisms that enable them to obtain necessary collaboration from other authorities in a timely manner, such as opinions on the authenticity of documents supplied with the procedures for favorable tax treatment.[11]

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[9] In its comments on the draft preliminary report on Colombia for the third round of review, the State under review reported that the National Tax and Customs Commission (DIAN) now has the mechanisms necessary for accessing the sources of information (including financial information), known as external information, that it allows to verify the information submitted by taxpayers, and that the same agency can consult financial information through this computer system in accordance with the terms of Article 623 of the Tax Law. Additionally, it told the meeting of the review subgroup on July 18, 2010, that the Centralized Information Consultation System (PIJAO) allows the consultation of information held by public and private agencies on individuals and corporations and is a response to the need to integrate sources of information relating to individuals and companies and to streamline studies and investigations for detecting illicit activities in various economic, financial, business, notarial, accounting, corporate, migratory, and vehicular transactions, etc. The information on these computer systems, with which Colombia believes it would be fulfilling this measure suggested by the Committee, has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

[10] As indicated above (see footnote 9), in its comments on the draft preliminary report on Colombia for the third round of round, the State under review reported that the National Tax and Customs Commission (DIAN) now has computer programs that enable it to consult and crossreference information when required to perform its duties and, in accordance with the terms of Articles 623 to 631 of the Tax Law, it has access to external information provided by the entities that are listed in a table of regulated persons and that this information for 2009 was made operative by resolutions 07929 to 07936 of July 28 of that year. Colombia also noted that DIAN – pursuant to the control powers set down in Article 684 of the Tax Law and the provisions contained in Article 631 thereof, which permit the examination or crosschecking of information – conducts automated information crosschecks on information supplied by third parties that enable it to detect inaccuracies in tax disclosures and select and investigate omissions of assets and income, inclusion of liabilities or expenses, and improper benefits. If these acts are not satisfactorily explained by the person being audited, they give rise to penalties. The information on these computer programs, with which Colombia believes it would be fulfilling this measure suggested by the Committee, has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review. The external information referred to can be seen in greater detail at the following link: http://www.dian.gov.co/dian/20dian-virtual.nsf/46e8bcb2eaecce4705256ed100565a1d/823cb9b852982d9e052572ed0079d5e8?OpenDocument

[11] In its comments on the draft preliminary report on Colombia for the third round of review, the State under review reported that the National Tax and Customs Commission (DIAN) now has established interagency coordination mechanisms that enable it to obtain necessary collaboration from other authorities in a timely manner. It also noted that Article 686 of the Tax Law makes it an obligation for nontaxpayers, taxpayers, and entities in general to comply with requests for information and evidence in connection with tax investigations conducted by DIAN whenever necessary to verify a tax situation and that this procedure is carried out under an administrative act known as an "Ordinary Order"

v. Continue to develop training programs specifically designed to alert them about the methods used to disguise payments for corruption and to instruct them on ways of detecting such payments in the procedures related to favorable tax treatment.[12]

vi. Continue implementing channels of communication so that they may promptly report to those with responsibilities for the procedures related to favorable treatment and warn them of the anomalies detected or of any irregularity that could affect the decision.

b. Select and develop, through the tax authority responsible for the procedures related to favorable tax treatment, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow up on the recommendations made in this report in relation thereto (see section 1.3 of Chapter II of this report).

2. PREVENTION OF BRIBERY OF DOMESTIC AND FOREIGN GOVERNMENT OFFICIALS (ARTICLE III (10) OF THE CONVENTION)

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

[29] The Republic of Colombia has a set of provisions related to the prevention of bribery of domestic and foreign government officials, among which the following should be noted:

[30] - The Commercial Code, Article 19 of which establishes an array of obligations for businesspersons, including keeping regular accounts of their business operations in accordance with the provisions of law and preserving in the legally prescribed manner the correspondence and other documents relating to their business operations or activities. Article 50 of the Code states that accounts shall be kept exclusively in Spanish according to the double-entry system in registered books, so as to provide a clear, complete, and accurate account of the businessperson's business affairs. Article 53 provides that all commercial and other operations that could affect the net worth of the businessperson shall be entered in the books in chronological order and include references to the accounting documents that support them. This provision also states that supporting accounting

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[Requerimiento Ordinario]. It added that DIAN has concluded information-sharing agreements with other agencies (some of which it mentioned), which enables it to access reliable information in a timely and reliable manner. The information on these agreements has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

[12] In its comments on the draft preliminary report on Colombia for the third round of review, the State under review reported that the National Tax and Customs Commission (DIAN) now has training programs for the stated purposed. It also noted that part of DIAN's functions is to administer income, sales and national stamp tax, as well as customs and import duties, in matters to related to collection, audit, control, repression, penalization, assessment, discussion, refund, and sanctions. The country said that as part of its oversight work the agency provides training for auditors on the audit and assessment procedure in order to equip them with the necessary expertise and tools to verify the contents of tax disclosures and examine the validity of the tax benefits assessed by the declarant. It added that in 2009 DIAN provided training on the following: tax procedure; audits and computer forensics; official tax assessments; drafting and formal and legal structure of administrative acts and working papers; workshops and case studies; double taxation agreements; tax havens; transfer prices; copyright; criminal liability; conduct for which accountants are investigated and punished; tax refresher course. The information on these training courses has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

documents must be drawn up before the registration of any operation and show the number, date, origin, description and size of the operation, as well as the accounts affected by the entry.

[31] Article 57 of the aforementioned Code provides that in the books of account it is prohibited to: 1) Alter the order of entries or the date of the operations to which they refer; 2) Leave spaces that facilitate insertions or additions to or after entries; 3) make between-line entries, scratch out or correct entries - any error or omission shall be rectified by means of a new entry on the date it is noticed; 4) erase or cross out any part of an entry; and, 5) remove pages, alter the order thereof, or mutilate the books. Article 58 provides that anyone who violates the foregoing article shall be liable to a fine of up to 5,000 pesos,[13] which shall be imposed by the chamber of commerce or the Superintendency of Banks or of Corporations, as applicable, whether ex officio or at the request of any person, without prejudice to liability to criminal prosecution where appropriate. This provision adds that books in which these irregularities are committed shall, moreover, lack any legal weight as evidence in favor of the businessperson that keep them.

[32] As regards keeping the aforementioned books and documents, Article 60 of the Commercial Code provides that they shall be kept for at least 10 years counted from the date of closure of the former or from the date of the last entry, document or supporting document. With respect to their confidentiality and exhibition, Article 61 states that no one but their owners or persons authorized to do so may examine them except for the purposes stated in the Constitution and by order of a competent authority. This Article adds that the provisions it contains shall not be an impediment to the legally recognized right of shareholders to inspect the books and papers of commercial companies, or to that of those who perform oversight and audit functions therein. Article 62 states that any statutory auditors, accountants, or persons in possession of the aforesaid books who violate their confidentiality shall be punished in accordance with the provisions contained in the Criminal Code on violation of secrecy and confidentiality, without prejudice to the appropriate disciplinary measures.

[33] For its part, Article 63 of the aforementioned Code provides that the cases in which officials of the judicial and executive branches may order ex officio the presentation or examination of a businessperson's books and papers include those that concern the oversight of lending institutions, publicly held companies and public utility companies, as well as criminal inquiries. Article 100 of the Code says that associations formed to carry out commercial acts or enterprises shall be deemed commercial companies for all legal purposes. This article further states that if the corporate enterprise includes acts that are both commercial and noncommercial the association shall be deemed commercial, and that associations whose corporate purpose does not include commercial acts shall be considered civil associations, and that, nonetheless, regardless of their purpose, both commercial companies and civil associations shall be bound in all things by commercial laws.

[34] Article 203 of the Commercial Code provides that the following shall have a statutory auditor: 1) Stock companies; 2) the branch offices of foreign companies, and 3) companies in which, by law or under the by-laws, management is not in the hands of all the shareholders, when so required by any number of shareholders excluded from the management that account for at least 20% of the equity. Article 207 provides that, among other functions, the statutory auditor shall report in writing in a timely manner to the meeting of the shareholders, board of directors, or manager, as appropriate, any irregularities that occur in company operations and the pursuit of its business

[13] The response of Colombia to the questionnaire (p. 19) notes that "the size of this fine is adjusted according to the general rules on penalties of each entity."

activities; and collaborate with government corporate inspection and oversight agencies, as well as providing them with any relevant or requested information. Article 212 provides that any statutory auditor who knowingly approves balance sheets that contain serious inaccuracies or submits reports that contain such inaccuracies to the meeting of the shareholders shall be liable to the penalties provided in the Criminal Code for fraud in private documents as well as a temporary or permanent ban from the position of statutory auditor.

[35] Finally, it should be noted, that Article 293 of the aforesaid Code states that management and executive officers, statutory auditors, and accountants who furnish information to the authorities or issue attestations or certificates that conflict with the reality of the accounts shall be punished in the manner prescribed at Article 238 of the Criminal Code,[14] and that the commission of fraud in private documents to the detriment of shareholders or third parties shall engage Article 240 of said Code.[15]

[36] - Law 43 of 1990, Article 13, paragraph two of which provides that it is mandatory for all commercial companies, regardless of their nature, to have a statutory auditor, when their gross assets as of December 31 of the immediately preceding year are more than or equal to five thousand times the minimum wage or when their gross income for the immediately preceding year was more than or equal to three thousand times the minimum wage.[16] Article 20 of this law provides that the functions of the Central Accountancy Authority [*Junta Central de Contadores*] include inspection and oversight to ensure that public accountancy is only performed by duly registered public accountants, that those who exercise the profession of public accountant do so in accordance with the provisions of law, and that anyone who violates said provisions are punished. Article 23 sets out the penalties that may be imposed (reprimands, fines, and suspension or cancellation of license).

[37] Article 42 of the aforesaid Law states that public accountants shall refuse to provide their services for acts that run contrary to moral and ethical conduct, or in circumstances that interfere with the free and correct exercise of the profession. For its part, Article 63 states that public accountants have a professional duty to keep in confidence all information to which they are privy in the exercise of their profession except where that obligation is lifted by provisions of law.[17]

[38] - Decree 2469 of 1993, setting out the general accountancy regulations and generally accepted accounting principles or standards in Colombia, Article 1 of which understands by those principles or standards the set of basic concepts and rules to be observed in recording and financial reporting on the affairs and activities of natural and legal persons, and states that on the basis thereof, accounting makes it possible to identify, measure, classify, register, interpret, analyze, evaluate and report on the operations of an economic entity in a clear, full and reliable way.

[39] Article 124 of the above Decree indicates how accounting vouchers should be prepared; Article 125 states how books of account should be organized; Article 126 deals with the registration of said books; Article 127 indicates the place where they should be exhibited; and Article 128 establishes how books of accounts should be kept and what it is prohibited to do in them.

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[14] In the Criminal Code presently in force, documentary fraud offenses are classified under Title IX, Chapter III, Articles 286 to 296.

[15] The offense of fraud in private documents is defined in Article 289 of the Criminal Code currently in the force.

[16] The minimum wage for 2009 was set by Decree 4868 of 2008 at 496,900 Colombian pesos (approximately US$ 250 at the average November 2009 exchange rate).

[17] Article 68 of the Code of Criminal Procedure provides that no is obliged to report information covered by professional confidentiality. Article 383, establishes that everyone is required to submit testimony under oath when required to do so in oral and public proceedings or as preliminary evidence, except where constitutional and legal exceptions provide otherwise. Article 385 recognizes the public accountant-client relationship as one of the exceptions to the obligation to testify.

[40] - Law 190 of 1995 (Anticorruption Law), Article 45 of which says that in keeping with the applicable rules issued by the national government, all legal and natural persons that conform to the conditions set forth in the regulations are required to keep their accounts in accordance with generally accepted principles and that supervised entities shall be required to consolidate their financial statements.[18]

[41] The aforementioned law also provides at Article 45, paragraph 2, that when the requirements are met, the basic financial statements and the consolidated financial statements shall be subjected to a financial audit; the final paragraph of said article provides that the government may issue rules in order to facilitate the detection and disclosure by such audits of situations that constitute practices that violate the provisions or principles to which this law refers.

[42] Finally Article 80 of the above-cited law provides that, without prejudice to other functions contained in laws or bylaws, statutory auditors of legal persons that are awarded contracts by the Colombian government shall: 1. ensure that in obtaining or securing the award of government contracts, the legal persons under their supervision do not make payments or disbursements to, or otherwise reward, government officials; 2. ensure that the financial statements of supervised legal persons reliably reflect the revenues and costs of the contract concerned; 3. collaborate with government officials who supervise, control, or audit the contracts entered upon, by furnishing them with such information as is appropriate or requested of them; 4. Perform such other functions as are stated in legal provisions in this regard.

[43] – Law 222 of 1995, Article 82 of which provides that the President of the Republic shall, through the Superintendency of Corporations, inspect, supervise, and control commercial companies under the terms of the standards in force. This Article also states that the President of the Republic shall inspect and supervise such other entities as the law determines.[19]

[44] Article 83 of the above law states that an inspection is carried out pursuant to the authority of the Superintendency of Corporations to request, confirm and examine at random, in the manner, depth, and terms that it deems appropriate, information that it requests on the legal, accounting, economic, and administrative situation of any commercial company not under the supervision of the Superintendency of Banks or on specific operations thereof. Article 84 indicates that supervision is carried out based on the authority of the Superintendency of Corporations to ensure that associations, whose organization, operations and pursuit of their corporate purpose are not under the supervision of other superintendencies, are in accordance with the law, and that supervision is exercised in a permanent manner. Article 85 says that control stems from the authority of the Superintendency of Corporations to order necessary corrective measures to rectify a critical situation of a legal, accounting, economic, or administrative character in any commercial company not under the supervision of another superintendency, when the Superintendent of Corporations so decides by means of a specific administrative act; its powers include, inter alia, the removal of administrators, the statutory auditor, and employees, whenever irregularities arise that so warrant.

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[18] The opinion of the Public Accountancy Technical Board of February 11, 2009, says, "Given that Title IV of the Commercial Code governs matters concerning commercial books, including accounting records, and that Law 222 of 1995 governs these matters, its provisions are also applicable to the bookkeeping of non-profit entities." Available at: http://www.jccconta.gov.co/consejot/publicaciones/Conceptos-PDF/2009/CTCP%20005.pdf

[19] At p. 22 the response of Colombia to the questionnaire contains a list of the different types of entities which are subject to inspection, control, and supervision by government entities by order of the President of the Republic, who, under Article 189(26) of the Constitution has authority to inspect and supervise institutions of public utility.

[45] - Decree 1080 of 1996, Article 1 of which states that the Superintendency of Corporations is a technical agency attached to the Ministry of Economic Development with legal standing, administrative autonomy, and independent assets, through which the President of the Republic exercises inspection, supervision, and control of publicly held companies, in addition to the powers provided by law in relation to other legal or natural persons. Article 2 provides that the Superintendency's powers include the supervision of any association not under supervision of another superintendency when it determines that the association has committed any of the following irregularities: a) abuses by its executive, management, or oversight bodies that entail a disregard of the rights of the partners or shareholders, or a gross or repeat violation of standards prescribed by the law or by-laws; b) divulgation of false information to the public, the Superintendency, or any other government agency; c) failure to keep accounts in the manner prescribed by law or in accordance with generally accepted accounting principles; d) engagement in operations not covered by their corporate purpose.

[46] The aforementioned Decree also provides, at Article 2, that the functions of the Superintendency of Corporations include the imposition of fines, successive or otherwise, of up to 200 times the monthly minimum wage each time, on any person that fails to comply with the orders of the Superintendency or that violates the law or their own bylaws.

[47] - Decree 624 of 1989 (Tax Law), Article 364 of which provides that non-profit entities are required to keep registered accounting records. Article 654 refers to accounting irregularities and indicates those that incur penalties. Article 655 establishes as a penalty half a percent (0.5%) of either the liquid capital or the net income, whichever is higher, for the year prior to its imposition, not to exceed 20,000 UVT (tax units), without prejudice to the rejection of costs, deductions, deductible taxes, exemptions, tax discounts and other items that are not supported in the accounting records or fully proven in accordance with the standards in force.

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

[48] With respect to provisions related to the prevention of bribery of domestic and foreign government officials, the Committee notes that, on the basis of the information available to it, they may be said to constitute a coherent set of relevant measures for promoting the purposes of the Convention.

[49] Nonetheless, the Committee deems it appropriate to express some comments regarding the advisability for the country under review to consider complementing or adapting certain provisions in this regard.

[50] First, the Committee believes it necessary for the country under review to consider adopting, through such means as it deems appropriate, pertinent measures to ensure that "professional confidentiality" is not an obstacle for public accountants to bring to the attention of the appropriate authorities any acts of corruption that they discover in the course of their work or to collaborate with the authorities when so requested (see Recommendation 2.4(a) in Chapter II of this report).

[51] With respect to the foregoing, the Committee notes that under Article 63 of Law 43 of 1990, public accountants have a professional duty to keep in confidence all information to which they are privy in the exercise of their profession except where that obligation is lifted by provisions of law, which has not been done where charges of acts of corruption are concerned, bearing in mind that Article 68 of the Code of Criminal Procedure provides that no one shall be obliged to report

information covered by professional confidentiality and Article 385 of that Code recognizes the public accountant-client relationship as one of the exceptions to the obligation to testify.

[52] Second, the Committee believes that it would be advisable for the country under review to consider the assignment, through the appropriate means, of the functions that Article 80 of Law 190 of 1995 accords to the statutory auditors of legal persons that contract with the Colombian state, to statutory auditors of publicly held companies and associations of any type which, in the pursuit of their corporate purpose, contract with other states or with foreign entities with state-owned capital. The Committee will formulate a recommendation in this regard (see Recommendation 2.4(b) in Chapter II of this report).

[53] The Committee believes that the measure recommended would contribute to the accomplishment of the purpose of Article III (10) of the Convention, which seeks to ensure that publicly held companies and other types of associations adopt measures to prevent bribery of not only domestic, but also foreign, government officials, given that the functions assigned in the aforementioned provision of law to statutory auditors of legal persons that contract with the Colombian state are directly aimed at preventing the payment of bribes for the award of government contracts, in particular paragraph 1 thereof, which allocates to them the function of "ensuring that in obtaining or securing the award of government contracts, the legal persons under their supervision do not make payments or disbursements to, or otherwise reward, government officials."

[54] Third, the Committee believes that it would be advisable for the country under review to consider holding awareness campaigns that target individuals responsible for the entry of accounting records and for accounting for their accuracy, on the importance of abiding by the standards in force to ensure the veracity of those records and the consequences for their violation, in addition to implementing training programs specifically designed to instruct those who work in the area of internal control in publicly held companies and other types of associations required to keep accounting records, on how to detect corrupt acts through their work (see Recommendation 2.4(c) in Chapter II of this report).

[55] Fourth, the Committee believes that it would be useful for the country under review to consider holding awareness and integrity promotion campaigns that target the private sector and to consider adopting measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption (see Recommendation 2.4(d) in Chapter II of this report).

[56] Fifth, the Committee believes that it would be beneficial for the country under review to consider adopting such measures as it deems appropriate to make it easier for the organs or agencies responsible for the prevention and/or investigation of noncompliance with measures designed to safeguard the accuracy of accounting records to detect sums paid for corruption concealed in those records (see Recommendation 2.4(e) in Chapter II of this report).

[57] It should be mentioned that the report prepared by the civil society organization *Corporación Transparencia por Colombia* in partnership with *Fundación Grupo Método* contains, *inter alia*, the following conclusion in this regard:[20]

[20] Report prepared by the civil society organization *Corporación Transparencia por Colombia* in partnership with *Fundación Grupo Método*. p. 21

[58] "*In Colombia the Commercial Code (Decree 410 of 1971) legally requires commercial companies to keep clear accounting records. According to what was expressed in the interviews conducted, this measure is designed to hamper the payment of bribes since the more rigorous and clear the accounts of a commercial company are, the harder it is for them to make unlawful payments without said expenditures of appearing in the accounting records. In addition, chambers of commerce have been a useful mechanism for persuading commercial companies to record accounting entries in clearly and correctly. (...).*"

[59] Sixth, bearing in mind the multiple government agencies responsible for inspection, control, and oversight over various public-interest entities and institutions, the Committee believes the country under review could consider adopting the measures it deems appropriate in order to have a single register and a centralized mechanism which allow conducting adequate inspection, control, and oversight over those bodies (see Recommendation 2.4(f) in Chapter II of this report).

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

[60] The results section of the response of the Republic of Colombia to the questionnaire contains information on the amount of fines imposed by the Superintendency of Corporations in 2007,[21] 2008, and 2009, as well as on administrative decisions adopted by the National Taxes and Customs Office (DIAN) in the framework of tax audits in 2007 and 2008. This information is displayed in four statistical tables. The first two refer to penalties imposed for violations of Articles 616(3), 651, 655, and 657 of the Tax Law; while the latter two concern penalties for inaccurate disclosures in violation of Article 647 of that Law.

[61] The information on fines imposed by the Superintendency of Corporations in 2007, 2008, and 2009, serves to show that sanctions have been applied by this supervising agency in the country under review. However, it is not yet possible to determine the specific grounds for their imposition since the response broadly mentions that they correspond to fines for violations of the law or of the bylaws of commercial companies.

[62] The first two of the four statistical tables from the DIAN show that in 2007 and 2008 decisions were adopted punishing violations of Articles 616(3), 651, 655 and 657 of the Tax Law, among which should be noted, due to their direct connection with the subject matter examined in this section of the report, those that concern penalties for accounting irregularities (Article 655), of which 39 were issued in 2007 and 63 in 2008; as well as for keeping a double set of books, a double set of invoices, or bills or equivalent documents not recorded in the accounts, of which six were adopted in 2007 and 63 in 2008.

[63] The information contained in the latter two statistical tables provided by the DIAN have been examined in Section 1.3 of this report in view of their direct link to the subject matter analyzed therein.

[64] The Committee finds that the aforementioned information serves to establish that in the country under review, the two above-mentioned entities have issued administrative decisions in exercise of their punitive powers, a fact which deserves recognition. However, owing to the fact that part of the information is not sufficiently broken down and no other is information is available from which to make an overall assessment of results in this area, the Committee will formulate a recommendation to the country under review that, through the organs or agencies responsible for

[21] Response of Colombia to the questionnaire. pp. 24-26.

prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the proper manner, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and follow-up on the recommendations made in this report in relation thereto (see Recommendation 2.4(g) in Chapter II of this report).

2.4. Conclusions and recommendations

[65] Based on the review conducted in foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article III (10) of the Convention:

[66] **The Republic of Colombia has considered and adopted measures to create, maintain and strengthen standards on prevention of bribery of domestic and foreign government officials, as described in Chapter II, Section 2 of this report.**

[67] In light of the comments formulated in that section, the Committee suggests that the Republic of Colombia consider the following recommendation:

[68] – Strengthen the standards and measures for the prevention of bribery of domestic and foreign government officials. To comply with this recommendation, the Republic of Colombia could consider the following measures:

a) Adopt, in accordance with its system of laws and by such means as it deems appropriate, pertinent measures to ensure that "professional confidentiality" is not an obstacle for public accountants to bring to the attention of the appropriate authorities any acts of corruption that they discover in the course of their work or to collaborate with the authorities when so requested (see Chapter II, Section 2.2 of this report)

b) Assign, by the appropriate means, the functions that Article 80 of Law 190 of 1995 accords to the statutory auditors of legal persons that contract with the Colombian state, to statutory auditors of publicly held companies and associations of any type which, in the pursuit of their corporate purpose, contract with other states or with foreign entities with state-owned capital (see Section 2.2. in Chapter II of this report).

c) Continue to develop awareness campaigns that target individuals responsible for the entry of accounting records and for accounting for their accuracy, on the importance of abiding by the standards in force to ensure the veracity of said records and the consequences of their violation, in addition to implementing training programs specifically designed to instruct those who work in the area of internal control in publicly held companies and other types of associations required to keep accounting records, on how to detect corrupt acts through their work (see Chapter II, Section 2.2 of this report).[22]

[22] In its comments on the draft preliminary report on Colombia for the third round of review, the State under review reported that the Superintendency of Corporations – the agency that monitors associations not under the supervision of other superintendencies – has already been holding conferences under the theme, "Managerial Responsibilities," which have increased the awareness of the legal representatives of business corporations about their responsibilities in the management of companies and the consequences of breaking the rules. Similarly, its Corporate Good Governance Guidelines (drawn up by the Superintendency of Corporations) contain a measure that orients entrepreneurs in the sense that companies should

d) Continue to develop awareness and integrity promotion campaigns that target the private sector and consider adopting measures such as production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption (see Chapter II, Section 2.2 of this report).[23]

e) Continue to adopt such measures as it deems appropriate to make it easier for the organs or agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records to detect sums paid for corruption concealed through said records, including the following (see Chapter II, Section 2.2 of this report):[24]

   i. Investigation tactics, such as follow-up on expenditures, crosschecking of information and accounts, and requests for information from financial entities in order to determine if such payments occurred.

   ii. Handbooks, manuals, or guidelines for control organs or agencies that do not yet have them on how to review accounting records in order to detect sums paid for corruption.

   iii. Computer programs that provide easy access to the necessary information to verify the veracity of accounting records and of the supporting documents on which they are based.

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ensure, through documented procedures, that the financial information is in accordance with the applicable accounting standards. This information has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

[23] In its comments on the draft preliminary report on Colombia for the third round of review, the State under review reported that the Superintendency of Corporations is taking different steps to raise awareness and promote honesty; it has drawn up handbooks and guidelines to advise companies on good practices in such matters; and it has organized conferences and campaigns targeting all business owners and managers in the real sector of the economy. It spoke of those held during 2009 and the two documents published that year ("The Colombian Guidelines on Corporate Governance for Closed Stock and Family-owned Companies" and the "Business Practices Form"), together with External Circular 100-04 of October 7, 2009, "which introduced guidelines on prevention of the risk of money laundering and terrorist financing." This information has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

[24] In its comments on the draft preliminary report on Colombia for the third round of review, the State under review reported that in the country acts of corruption fall within the framework of the catalogue of predicate offences for money laundering and, therefore, the same detection and investigative techniques provided for this offense are applicable. It also noted that the powers vested in the Financial Intelligence and Analysis Unit by Law 526 of 1999 for money laundering detection, prevention, and control also permit consolidation of the flow of evidence needed to investigate acts of corruption, thus fulfilling the purpose with which these observations were made. The country also said that the Code of Criminal Procedure provides the following generic investigative techniques that are applicable to cases of corruption: "Article 244**.** Selective database search" (provision which is transcribed); "Article 233. Withholding of correspondence (which provision it transcribes); "Article 236. Recovery of information left from surfing the Internet or other technological media that produce equivalent effects" (provision which is transcribed). The information on Law 526 of 1999 has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

iv. Institutional coordination mechanisms that enable those organs or agencies to easily to obtain timely collaboration needed from other institutions or authorities to verify the veracity of accounting records and of the supporting documents on which they are based or to establish their authenticity.

v. Training programs for officials of organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records, specifically designed to alert them to the methods used to disguise payments for corruption through said records and to instruct them on how to detect them.

f) Consider adopting the measures it deems appropriate for the establishment of a single register and a centralized mechanism for conducting adequate inspection, control, and oversight over public-interest entities and institutions (see section 2.2 of Chapter II of this report).

g) Select and develop, through the organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and for ensuring ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the proper manner, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see Chapter II, Section 2.3 of this report).

3. TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)

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

[69] The Republic of Colombia has the following provision on transnational bribery:

[70] - Criminal Code, Article 443: "TRANSNATIONAL BRIBERY. <Penalties increased by Article 14 of Law 890 of 2004, as of January 1, 2005. The text with the increased penalties is as follows:> Any national or person habitually resident in the country or with companies domiciled therein who offers, either directly or indirectly, a public servant of another state money, an object of pecuniary value, or another advantage in exchange for the performance or omission of any act in the exercise of their duties in connection with an economic or commercial transaction shall be liable to between ninety-six (96) and one hundred eighty (180) months of imprisonment and a fine of between sixty-six point sixty-six (66.66) and one hundred fifty (150) times the statutory monthly minimum wage in force."

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

[71] With respect to the provision by which the Republic of Colombia has criminalized transnational bribery, as provided in Article VIII of the Convention, as a criminal offense, the Committee notes that, on the basis of the information available to it, it may be said to be pertinent for promoting the purposes of the Convention.

[72] Notwithstanding the foregoing, the Committee believes that it would be advisable for the country under review to consider adopting pertinent measures by which to impose the appropriate penalties, subject to its Constitution and the fundamental principles of its legal system, on any

businesses domiciled in its territory that engage in the conduct described in Article VIII of the Convention, irrespective of the penalties applicable to persons linked thereto who are found to have been involved in the commission of acts that constitute said conduct. The Committee will offer a recommendation in this regard to the country under review (see Recommendation 3.4(a) in Chapter II of this report).

[73] The Committee also believes that it would be advisable for the country under review to clarify what should be understood by the expression "public official of another state" for the purposes of enforcement of Article 443 of the Criminal Code, which criminalizes the conduct described in Article VIII of the Convention (see Recommendation 3.4(b) in Chapter II of this report).

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

[74] The results section of the response of the Republic of Colombia to the questionnaire mentions that "no investigations have been opened in connection with this offense."[25]

[75] Bearing in mind the foregoing, the Committee will formulate a recommendation to the country under review so that, through the organs or agencies charged with the investigation and/or prosecution of the offense of transnational bribery, and with requesting and/or providing assistance and cooperation with respect thereto, as provided in the Convention, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see Recommendation 3.4 (c) in Chapter II of this report).

[76] It should be mentioned that the report prepared by the civil society organization *Corporación Transparencia por Colombia* in partnership with *Fundación Grupo Método* contains, *inter alia*, the following observations in this regard:[26]

[77] *"There is no statistical information of a public nature available from the Office of the Prosecutor General or the judiciary with which to respond to this question. (...)."*[27]

3.4. Conclusions and recommendations

[78] On the basis of the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provision contained in Article VIII of the Convention:

[79] **The Republic of Colombia has adopted measures on the offense of transnational bribery as provided in Article VIII of the Convention, as described in Chapter II, Section 3 of this report.**

[80] In light of the comments formulated in that section, the Committee suggests that the Republic of Colombia consider the following recommendations:

a) Adopt pertinent measures by which to impose the appropriate penalties, subject to its Constitution and the fundamental principles of its legal system, on any businesses domiciled

[25] Response of Colombia to the questionnaire. p. 29
[26] Report prepared by the civil society organization *Corporación Transparencia por Colombia* in partnership with *Fundación Grupo Método*. p. 22
[27] See, in connection with this paragraph, footnote 28 in this report.

in its territory that engage in the conduct described in Article VIII of the Convention, irrespective of the penalties applicable to persons linked thereto who are found to have been involved in the commission of acts that constitute said conduct (see Chapter II, Section 3.2 of this report).

b) Evaluate the possibility of clarifying what should be understood by the expression "public official of another state" for the purposes of enforcement of Article 443 of the Criminal Code, which criminalizes the conduct described in Article VIII of the Convention (see Chapter II, Section 3.2 of this report).

c) Select and develop, through the organs or agencies charged with the investigation and/or prosecution of the offense of transnational bribery, and with requesting and/or providing assistance and cooperation with respect thereto, as provided in the Convention, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow up on the recommendations made in this report in relation thereto (see Chapter II, Section 3.3 of this report).[28]

4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

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

[81] The Republic of Colombia has the following provision related to the criminalization of illicit enrichment:

[82] - Criminal Code, Article 412: "ILLICIT ENRICHMENT. <Penalties increased by Article 14 of Law 890 of 2004, as of January 1, 2005. The text with the increased penalties is as follows:> Any public servant who while in government employment,[29] or anyone who has performed public duties and who, in that time or in a period of two years thereafter, obtains for themselves or for another an unjustified increase in wealth shall, provided that the conduct does not constitute another offense, be liable to between ninety-six (96) and one hundred eighty (180) months of imprisonment, a fine of twice the amount of the enrichment without that exceeding fifty thousand (50,000) times the statutory monthly minimum wage in force, and ineligibility from the exercise of rights and public duties for between ninety-six (96) and one hundred eighty (180) months."

[28] In its comments on the draft preliminary report on Colombia for the third round of review, the State under review reported that the Office of the Prosecutor General has several publications that contain statistical results of the agency, and that those publications are distributed to states entities, criminal law libraries, crime researchers, and agency officials. The publications are: the "Statistical Yearbook" (data since 1992); the "Statistical Newsletter" (quarterly since 2002); surveys on "Perception of Direct Users of the Office of the Prosecutor General" (two carried out, most recently in 2007); and the book "Performance Indicators of the Office of the Prosecutor General" (published in 2009). The country noted that all those publications can be consulted on the Prosecutor General's web page at http://fgn.fiscalia.gov.co:8080/Fiscalia/contenido/html/Estadisticas.jsp. This information has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

[29] Article 20 of the Criminal Code provides: "For all criminal law purposes, all members of public corporations, as well as the employees and workers of the State and of its territorially decentralized entities and decentralized service entities are public servants. - By the same token, members of the security forces, private citizens who perform public functions on a permanent or temporary basis, officials and workers of the Banco de la República, members of the National Citizens Commission against Corruption, and persons who administer the resources referred to by Article 338 of the Constitution are also considered public servants."

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

[83] With respect to the provision which criminalizes illicit enrichment, as provided in Article IX of the Convention, the Committee notes that, on the basis of the information available to it, it may be said to be pertinent for promoting the purposes of the Convention.

[84] It should be noted that the report prepared by the civil society organization Corporación Transparencia por Colombia in partnership with Fundación Grupo Método contains, inter alia, the following observations with respect to the criminalization of illicit enrichment in Colombia:[30]

[85] *"... There has been extensive legal debate in this regard from which no straightforward solution has emerged and in connection with which attention has been drawn to the subsidiary nature of the criminal classification in question (Barcenas, 2003,p. 24). Thus, the subsidiary nature of the offense of illicit enrichment is maintained to the extent that "the law makes its application contingent on the condition that the criminal conduct does not constitute another offense possibly committed by the perpetrator." (Barcenas, 2003, p. 26). This means that if, for example, a series of acts constitute illicit enrichment and embezzlement, then the most likely conviction would be for embezzlement."*

[86] With respect to the foregoing, Colombia provided jurisprudence[31] from the Supreme Court of Justice, which, among others, provides as follows:

[87] *"It is important to clarify, as stated by Magistrate Aldana Rozo in the study transcribed by the Delegation, that this subsidiary nature given to the offense, was not done to resolve possible apparent conflict of crimes, as is frequently done by the legislature, but to prevent impunity with respect to the other crimes against the public administration as a result of a lack of precise evidence ("precisión probatoria")" - "That is to say, if it is demonstrated that a public employee unexplainably enriched themselves as a result of their position or the functions related thereto, but the proof does not allow it to be precisely established that the increase in wealth was a result of embezzlement, bribery, or extortion, there would be a need to absolve the person, were it not for the crime of illicit enrichment contained in the [Criminal] Code, which was conceived specifically to make up for this lack of evidentiary precision."*

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

[88] In its response,[32] the country under review mentions in connection with results in relation to the criminal offense of illicit enrichment, that the Prosecutor's Office had 371 active cases as of June 1, 2009. It also provides a statistical table for 2004 to 2009, which describes and quantifies the various proceedings pursued by the Office of the Prosecutor in relation to this offense during that period. Finally, a statistical table from the Superior Council of the Judicature lists all the cases concerning the aforementioned conduct during the periods 2004 to 2008 and January to March 2009, mentioning the number of cases opened and disposed of as well as the number of persons acquitted and convicted.

[89] The Committee finds that the information referred to above serves to demonstrate that in the country under review investigations have been opened, proceedings are underway, and various

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[30] Report prepared by the civil society organization *Corporación Transparencia por Colombia* in partnership with *Fundación Grupo Método*. p. 26

[31] This jurisprudence from the Criminal Appeals Chamber of the Supreme Court of Justice (Appeal Judgment number 25.587), was provided by Colombia at the March 24, 2010 Plenary Session of the Committee.

[32] Response of Colombia to the questionnaire. pp. 32 and 33

measures, acquittals, and convictions have been issued in connection with the conduct of illicit enrichment as described in Article IX of the Convention, which has been criminalized by Colombia in the Criminal Code provision cited in Section 4.1 of this report.

4.4. Conclusion

[90] On the basis of the analysis conducted in foregoing sections, the Committee offers the following conclusion with respect to implementation in the country under review of the provision contained in Article IX of the Convention:

[91] **The Republic of Colombia has adopted measures on the offense of illicit enrichment provided in Article IX of the Convention, as described in Chapter II, Section 4 of this report.**

5. NOTIFICATION OF CRIMINALIZATION OF TRANSNATIONAL BRIBERY AND ILLICIT ENRICHMENT (ARTICLE X OF THE CONVENTION)

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

[92] The Republic of Colombia criminalized transnational bribery, as provided in Article VIII of the Inter-American Convention against Corruption, after the date on which it ratified the Convention but has not yet notified the OAS Secretary General of that criminalization.

[93] The Republic of Colombia also criminalized illicit enrichment, as provided in Article IX of the Inter-American Convention against Corruption, prior to the date on which it ratified the Convention.

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

[94] As regards criminalization of transnational bribery, in its response to the questionnaire the Republic of Colombia mentions that:[33]

[95] *"The offense of transnational bribery was included in Colombia's domestic laws by Article 433 of Law 599 of 2000, as a result of the commitments adopted by the country in its capacity as a state party to the Inter-American Convention against Corruption."*

[96] In its response the country under review did not supply information regarding notification to the Secretary General of the OAS of its criminalization of transnational bribery.

[97] Bearing in mind that the Republic of Colombia criminalized transnational bribery as provided in Article VIII of the Inter-American Convention against Corruption, after the date on which it ratified the Convention, but has not yet notified the OAS Secretary General of said criminalization, in accordance with Article X thereof, the Committee will recommend that it proceed with that notification (see the recommendation in Chapter II, Section 5.3 of this report).

[98] As regards criminalization of illicit enrichment, in its response to the questionnaire the Republic of Colombia mentions that:[34]

[33] Response of Colombia to the questionnaire. p. 34
[34] Response of Colombia to the questionnaire. p. 35

[99] *"Bearing in mind that this offense was criminalized in the Republic of Colombia prior to its ratification of the Inter-American Convention against Corruption on January 19, 1999, it was not deemed necessary to make this notification."*

[100] Bearing in mind that the Republic of Colombia criminalized illicit enrichment as provided in Article IX of the Inter-American Convention against Corruption prior to the date on which it ratified the Convention, the notification provided in Article X thereof is not necessary and, therefore, the Committee will offer no recommendation in that regard.

[101] It should be mentioned that the report prepared by the civil society organization *Corporación Transparencia por Colombia* in partnership with *Fundación Grupo Método* contains, *inter alia*, the following observations in this regard:[35]

[102] *"The Colombian State incorporated the Convention into Colombia's body of laws by Law 412 of 1997. We have no information as to whether or not the Secretary General of the OAS has been notified of this fact. (...)."*

5.3. Conclusion and recommendation.

[103] On the basis of the analysis conducted in foregoing sections, the Committee offers the following conclusion and recommendation with respect to implementation in the country under review of the provisions contained in Article X of the Convention:

[104] **The Republic of Colombia criminalized transnational bribery as provided in Article VIII of the Inter-American Convention against Corruption, after the date on which it ratified the Convention, but has not yet notified the OAS Secretary General of said criminalization, in accordance with Article X thereof. Accordingly, the Committee recommends that it proceed with that notification.**

6. EXTRADITION (ARTICLE XIII OF THE CONVENTION)

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

[105] The Republic of Colombia has a set of provisions related to extradition, among which the following should be noted:

[106] - Article 35 of the Constitution, paragraph 1 of which provides that extradition may be requested, granted, or offered in accordance with public treaties or, in the absence thereof, the law. Paragraph 2 provides that the extradition of Colombian-born nationals shall be granted for offenses committed abroad that are recognized as such under Colombia's criminal laws. Paragraph 3 states that no one shall be extradited for political crimes, while paragraph 4 says that no one shall be extradited for acts committed prior to the promulgation of this provision.[36]

[107] - The Code of Criminal Procedure, Article 492 of which states that the decision to offer or grant extradition is at the discretion of the government but requires a prior favorable opinion from the Supreme Court of Justice. Article 493 of this Code provides that for extradition to be offered or granted it shall also be required that the act that gives rise to it be recognized as a criminal offense in

[35] Report prepared by the civil society organization *Corporación Transparencia por Colombia* in partnership with *Fundación Grupo Método*. p. 28

[36] This provision was promulgated on December 17, 1997.

Colombia punishable by a prison sentence with a minimum term of at least four (4) years and that an indictment or the equivalent thereof has been issued abroad. Article 502 states that the Supreme Court of Justice shall base its opinion on the formal validity of the documentation submitted, demonstration in full of the identity of the individual sought, the principle of double criminality, equivalence of the procedural order issued abroad and, as appropriate, compliance with public treaties.

[108] The above-cited Code also provides, at Article 504, that if prior to the receipt of the request the individual sought has committed a criminal offense in Colombia, the operative resolution granting extradition may defer delivery until they have been tried and served their sentence, or until the proceeding has concluded by estoppel of the preliminary inquiry or acquittal, and that in the circumstances provided for in this article, the judicial official having cognizance or the director of the facility where the prisoner is held shall turn the individual sought for extradition over to the government as soon as the grounds for his imprisonment in Colombia expire.

[109] Article 506 of the aforementioned Code provides that if extradition is granted, the Prosecutor General shall order the arrest of the accused individual, unless they were already in custody, and deliver them to the agents of the country that requests them, and that if the request is rejected the Prosecutor General shall order the detainee placed at liberty. Article 509 adds that the Prosecutor General shall order the arrest of the individual sought as soon as he or she takes cognizance of the formal extradition request, or before that should the requesting state so request in a note expressing the full identity of the individual, the fact there is an outstanding conviction, indictment, or its equivalent against them, and the urgency of such a measure.

[110] - The Criminal Code, Article 16 of which[xii] deals with extraterritoriality and sets out the circumstances in which on the basis thereof Colombian criminal law shall be enforced, inter alia, against anyone who commits abroad a crime against the public administration even though they might have been acquitted or sentenced abroad to a lighter penalty than provided by Colombian law.

[111] - The Convention on Extradition signed in Montevideo in 1933 and adopted by Law 74 of 1935,[37] for which Colombia deposited its instrument of ratification on July 22, 1936.

[112] - Bilateral extradition treaties signed by the Republic of Colombia with states parties to the IACC, including Brazil, Costa Rica, Chile, Mexico, Nicaragua, Peru, El Salvador, Argentina, and Panama.[38]

[113] - Constitutional Court Judgment C- 397 of 1998,[39] which states in relation to the constitutionality of Law 412 of 1997, which adopted the Inter-American Convention against Corruption, that *"(...) it is reasonable to conclude that the standards contained in the Convention with regard to extradition for the commission of conduct classified in our laws as corruption offenses, following the entry into force of the Legislative Act that reformed Article 35 of the Constitution, are consistent with the provisions of our higher system of laws; in other words, extradition is possible of any person charged with or convicted of such crimes, as provided in Article XIII of the instrument under review, in accordance with the provisions of the public treaties that our*

[37] This Convention, to which Colombia is a party along with Argentina, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and United States, is available for consultation at: http://www.oas.org/juridico/mla/sp/col/index.html

[38] These treaties may be consulted at: http://www.oas.org/juridico/mla/sp/col/index.html

[39] This judgment is available at: http://www.oas.org/juridico/spanish/mesicic3_col_sp.htm

country enters upon to that end or, in their absence, the law. Based on the foregoing, the Court finds nothing in the rules on extradition for the commission of corruption offenses contained in the Convention under examination that violates or disavows the provisions of [our] higher system of laws; on the contrary, those rules aid in the design and creation of multilateral cooperation mechanisms designed to counter and prevent the commission of these wrongdoings which, by their nature, undermine not only the public administration and the interests of the community at large, but also the stability of the system and the founding principles of the rule of law in society."

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

[114] With respect to the provisions related to extradition, the Committee notes that, on the basis of the information available to it, they may be said to constitute a set of relevant measures for promoting the purposes of the Convention.

[115] Nevertheless, the Committee believes it necessary, based on the provisions contained in Article III (6) of the Convention, for the country under review to consider adopting pertinent measures to send a report in due course to the requesting state to which it refuses an extradition request for an offense that it has criminalized in accordance with the Convention on the basis of the nationality of the person sought, or because it deems that it has jurisdiction, on the final outcome of the case, which, as a consequence of that refusal, it has submitted to its competent authorities for prosecution (see Recommendation 6.4 (a) in Chapter II of this report).

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

[116] The results section of the response of the Republic of Colombia to the questionnaire contains the following observations in this regard:[40]

[117] *"Upon consulting the information in this regard it was found that as of June 30, 2009, there were no figures for extradition requests received in connection with acts of corruption. As for extradition requests made to other countries, two persons have been sought and transferred for the offenses of embezzlement (2007) and extortion (2008)."*

[118] The country under review then presents a statistical table covering the period 2004 to June 30, 2009, which provides the number of extradition requests received and approved, together with information on the nationality of the persons extradited, the countries to which they were extradited, and the number actually delivered. However, the table does not name the offenses which led to the extradition nor the legal instruments invoked as the grounds for that purpose.

[119] It should be noted that the Report prepared by the civil society organization *Corporación Transparencia por Colombia* in partnership with *Fundación Grupo Método* contains, inter alia, the following observations in that respect:[41]

[120] *"Only in the opinion offered by the Supreme Court of Justice on Case 30367 (See appendix),*[42] *is there an extradition request that cites acts of corruption as the grounds for the request. In another opinion, which corresponds to case 22074, reference is made to Section 1512 of*

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[40] Response of Colombia to the questionnaire. pp. 41 to 43

[41] Report prepared by the civil society organization *Corporación Transparencia por Colombia* in partnership with *Fundación Grupo Método*. p. 29

[42] Available at: http://www.oas.org/juridico/spanish/mesicic3_col_sp.htm

Title 18 of the United States Code, concerning 'corruption of a witness, victim, or informer'; however, this offense is not cited as the grounds for the extradition request. In both opinions, the Supreme Court of Justice of Colombia is in favor of the extradition of the accused and sought individuals. Thus, the search conducted produced no unfavorable opinions toward extradition of individuals charged with corruption offenses, and therefore this response is counterfactual. (…)."

[121] The Committee notes that the information alluded to in this section of the report serves to demonstrate that, as the preceding paragraph mentions, in the country under review the Supreme Court of Justice returned a favorable opinion with respect to the extradition request made in Case 3067, which the requesting state based on an act of corruption. It also serves to show that on two occasions, extradition requests were made for acts of corruption recognized in the Convention and criminalized in Colombian law, namely the offenses of embezzlement and extortion. However, that information is not sufficiently detailed to determine in which cases the country has relied on the Inter-American Convention against Corruption to support its arguments.

[122] Based on the foregoing, the Committee will make a recommendation to the country under review that, through the organs or agencies charged with processing extradition requests sent to and received from other countries, it develop procedures and indicators, when appropriate and where they do not yet exist, by which to present information on the use of the Inter-American Convention against Corruption as the legal basis for extradition requests presented to other states parties and to support decisions on requests that it has received from said states (see Recommendation 6.4(b) in Chapter II of this report).

[123] In addition, the Committee considers that it might be useful for the country under review to consider the utility of the Inter-American Convention against Corruption for extradition purposes in corruption cases. This could consist, among other measures, in the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area. (See recommendation 6.4(c) in Chapter II of this report)

6.4. Conclusions and recommendations

[124] On the basis of the analysis conducted in foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article XIII of the Convention:

[125] **The Republic of Colombia has adopted measures regarding extradition, as provided in Article XIII of the Convention, as described in Chapter II, Section 6 of this report.**

[126] In light of the comments formulated in that section, the Committee suggests that the Republic of Colombia consider the following recommendations:

a) Adopt the measures necessary to inform requesting states in due course when it refuses an extradition request for an offense that it has criminalized in accordance with the Convention, on the basis of the nationality of the person sought, or because it deems that it has jurisdiction, on the final outcome of the case, which, as a consequence of that refusal, it has submitted to its competent authorities for prosecution (see Chapter II, Section 6.2 of this report).

b) Develop procedures and indicators, when appropriate and where they do not yet exist, by which to present information on the use of the Inter-American Convention against Corruption as the legal basis for extradition requests presented to other states parties and to support decisions on requests that it has received from said states (see Chapter II, Section 6.3 of this report).

c) In addition, the Committee considers that it might be useful for the country under review to consider the utility of the Inter-American Convention against Corruption for extradition purposes in corruption cases. This could consist, among other measures, in the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area. (See section 6.3 of chapter II of this report)

III. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN REPORTS FROM PREVIOUS ROUNDS

FIRST ROUND

[127] With respect to implementation of the recommendations issued to the Republic of Colombia in the report from the first round on which it did not supply information with regard to progress in their implementation in its response to Section II of the Questionnaire for the Second Round, or on those for which it supplied information but which the Committee considered in Section IV of the report for that round required additional attention, and on the basis of the information available to it, the Committee notes the following:

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

Recommendation formulated by the Committee which has been satisfactorily considered in the framework of the report from the second round:[43]

Recommendation 1.1.1:

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

[128] The Committee has already noted the satisfactory consideration of the foregoing recommendation by the State under review under the terms provided in the report adopted thereon in the Second Round.[44] Bearing in mind that that report notes that this recommendation, by its nature, requires a continuation of efforts in its implementation, the Committee looks forward to the country

[43] See pp. 46 and 47 of this Report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc
[44] See pp. 46 and 47 of this Report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc

under review furnishing information on measures adopted to that end in the annual progress reports provided for by Article 32 of the Rules of Procedure of the Committee.

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

Recommendation 1.2.1:

Strengthening preventive measures and control systems for ensuring the effective conservation and adequate use of resources assigned to public servants in the performance of their functions.

Measures suggested by the Committee that require further information on their implementation or which required additional attention within the framework of the report from the Second Round:[45]

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

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

[129] In its response,[46] with respect to the first of the measures contained in the foregoing recommendation, the State under review presents additional information to that analyzed by the Committee in the report from the Second Round. In this regard, the Committee notes the following measures as steps which contribute to progress in the implementation thereof:

[130] - The joint studies being carried out by the Office of the Prosecutor General, Office of the Attorney General, and Office of the Comptroller General to identify the most pressing problems that undermine the efficient, effective, economical, and equitable use of funds, which have analyzed issues that have a great impact on the management of public funds, including that of "autonomous assets" used as a new means to misappropriate state funds.

[131] - The observatory which is designing the Presidential Anti-Corruption Program "for shaping anticorruption policies, a mechanism through which to have access to information based on objective data on corruption in the country, periodically analyze information, trigger alarms about issues on which urgent measures are required, yield geo-referenced to information, and conduct regional and sectoral reviews."

[132] - The efforts made to implement information systems "which have introduced transparency and better mechanisms to follow up on management of public funds."

[45] See pp. 46 to 49 of this Report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc
[46] Response of Colombia to the questionnaire, Appendix I, pp. 48 and 49

[133] The Committee takes note of the steps taken by the country under review to advance in its implementation of this first measure of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that the comprehensive evaluation to which it refers is pending and that the observatory of the Presidential Anti-Corruption Program mentioned in the response is still at the design stage.

[134] In its response,[47] with respect to the second of the measures contained in the foregoing recommendation, the State under review presents additional information to that analyzed by the Committee in the report from the Second Round. In this regard, the Committee notes the following measures as steps which contribute to progress in the implementation thereof:

[135] - The steps taken in implementing the new Standard Internal Control Model (MECI), including the holding of five videoconferences on the model in 2008 and four to date in 2009; setting up 100% of the sectional branches of the National Training Service (SENA) thereby achieving nationwide coverage; the holding of 28 training seminars on how to implement the MECI, through local governments in 87.5% of departments, which were attended by representatives of the mayors offices and other municipal entities; and advisory services made permanently available on request to entities by different means, including by telephone, in writing, or in person.

[136] - The annual executive report for fiscal year 2008 on the Internal Control System submitted by national and subnational public-sector agencies in February 2009, which showed 93.95% progress in implementation of the MECI by national-level agencies in the executive, legislative, and judicial branches and 76.34% progress for subnational entities. In that report, these percentages are disaggregated by administrative sectors (at the national level) and by departments (at the subnational level) .

[137] The Committee takes note of the steps taken by the country under review to advance in its implementation of this second measure of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that the comprehensive evaluation to which it refers is pending and that implementation of the new Standard Internal Control Model (MECI) is not yet complete.

[138] The Committee also takes note of the difficulties encountered in the implementation of this second measure of the recommendation which the State under review has mentioned in its response.[48]

[47] Response of Colombia to the questionnaire, Appendix I, pp. 49-52

[48] Response of Colombia to the questionnaire (Appendix I, p. 52). Mention is made of the following: "B) Difficulties. - The Executive Director of the Colombian Municipalities Federation asked the national government to extend the time limit for implementation of the Standard Internal Control Model, mentioning that mayors commenced their term in office on January 1, 2008, which meant that they had not had enough time to implement it. - The Advisory Council on Internal Control Matters examined the request and recommended to the national government that it extend the implementation deadline for the Standard Internal Control Model in municipalities in categories 3, 4, 5, and 6. - The national government agreed to this recommendation and by Decree 4445 of November 25, 2008, the deadline for implementation of the model was extended until June 30, 2009 for all public-sector agencies in municipalities in categories 3, 4, 5, and 6."

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

Recommendation 1.3.1:

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

Measures suggested by the Committee that require further information on their implementation or which required additional attention within the framework of the report from the Second Round:[49]

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

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

Element of the first measure of the foregoing recommendation suggested by the committee that was satisfactorily considered under the terms provided in the report from the Second Round:[50]

[139] The Committee has already noted the satisfactory consideration by the State under review of the element of the first measure in the foregoing recommendation regarding consideration of measures to ensure the effectiveness of the obligation contained in Colombian law requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware, under the terms provided in the report adopted thereon in the Second Round.

[140] In its response,[51] with respect to the first of the measures contained in the foregoing recommendation, the country under review presents additional information to that analyzed by the Committee in the report from the Second Round. In this regard, the Committee notes the following measure as a step which contributes to progress in the implementation of the element thereof as regards facilitation of performance of the duty to report acts of corruption:

[141] - "The Civil Service Administrative Department continues to move forward with the development of components and modules that will become part of the SIGEP information system which, inter alia, will enable employees to put forward suggestions and also report situations that impair the correct performance of activities and functions in the public administration."

[49] See pp. 49 and 50 of this Report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc
[50] See p. 50 of this report, at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc
[51] Response of Colombia to the questionnaire, Appendix I, pp. 52 and 53

[142] The Committee takes note of the step taken by the State under review to advance in its implementation of the above-mentioned element of this first measure of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that in the response reference is made to the "SIGEP" information system whose development has yet to be completed. The Committee also notes the need for the state under review to give additional attention to the other elements of the recommendation that are pending, bearing in mind that it does not refer to them in its response.

[143] In its response,[52] with respect to the second of the above-mentioned measures of the foregoing recommendation, the State under review presents additional information to that analyzed by the Committee in the report from the Second Round. In this regard, the Committee notes the following measure as a step which contributes to progress in the implementation thereof:

[144] - Training provided to public officials "in different areas both directly and indirectly concerned with discharging their obligations in that capacity". "The follow-up report on implementation of training policies and standards in national-level entities covered by Law 909 found that, 'on average, 78% of the entities held induction courses on topics connected with various aspects directly connected with the entity: mission, functions, responsibilities, duties and rights (84.55%), organizational values (75.45%), and rules and regulations in force with respect to the entity and the servant's position (73.64%); approximately 50% of entities provided training on topics connected with the context of the entity and the public servant: the state and public service (54.55%), ineligibility and conflicts of interest (48.18%), and sense of ownership and identification with the organization (50%). The size of the survey sample was as follows: 84 national-level entities in the executive branch and 26 regional autonomous corporations, for a total of 110 entities."

[145] The Committee takes note of the step taken by the State under review to advance in its implementation of this second of measure of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that the training referred to in the response has not yet attained full coverage.

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

Recommendation 2.1:

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

Measures suggested by the Committee that require further information on their implementation or which required additional attention within the framework of the report from the Second Round:[53]

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

[52] Response of Colombia to the questionnaire, Appendix I, p. 53
[53] See pp. 50 and 51 of this Report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc

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

[146] In its response,[54] with respect to the first of the measures contained in the foregoing recommendation, the State under review presents additional information to that analyzed by the Committee in the report from the Second Round. In this regard, the Committee notes the following measures as steps which contribute to progress in the implementation thereof:

[147] - "As regards the construction of the SIGEP tool, progress has been made with the analysis and modeling of the functions that the system's personal history module would have, including the assets and income declaration form, as a ancillary part thereof."

[148] - "Within this process and as a result of the efforts of an interagency working group, a model assets and income declaration form has been developed, for which legal studies are underway to determine the requirements for recording and management of the information that public servants would report to the system."

[149] The Committee takes note of the steps taken by the country under review to advance in its implementation of this first measure of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that the measures mentioned in the response in relation thereto have not yet been completed.

[150] In its response,[55] with respect to the second of the above-noted measures of the foregoing recommendation, the State under review presents additional information to that analyzed by the Committee in the report from the Second Round. In this regard, the Committee notes the following measure as a step which contributes to progress in the implementation thereof:

[151] - "With respect to this issue, based on the Colombian legal system the oversight agencies will have access to the information entered in the system so as to enable them to the perform the follow-up and verifications permitted by law in accordance with their powers."

[152] In the progress report submitted at the fifteenth meeting of the Committee,[56] with respect to the second of the above-noted measures of the foregoing recommendation, the State under review provides additional information to that analyzed by the Committee in the report from the Second Round and to that contained in its response. In this regard, the Committee notes the following measure as a step which contributes to progress in the implementation thereof:

[153] - "The Presidential Anti-Corruption Program is also pursuing a policy of disclosure aimed, through the adoption of decrees, ordinances, and/or decisions, at ensuring publication on the Internet of the assets and income declarations of elected public servants (mayors, governors, councilors, and members of parliament) as well as registration of the private interests of these servants. In addition, a strategic partnership was created with the Online Government program in order to introduce a function on the web page that allows councilors to publish this information."

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[54] Response of Colombia to the questionnaire, Appendix I, p. 54
[55] Response of Colombia to the questionnaire, Appendix I, p. 54
[56] See p. 4 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc

[154] The Committee takes note of the steps taken by the country under review to advance in its implementation of this second measure of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that the measure mentioned in the response in relation thereto has not yet been completed.

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

Recommendation 3.1:

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

Element of the above recommendation that was satisfactorily considered under the terms provided in the report from the Second Round:[57]

[155] The Committee has already noted the satisfactory consideration by the State under review of the element of the foregoing recommendation regarding optimization of coordination among oversight bodies, under the terms provided in the report adopted thereon in the Second Round. Bearing in mind that in said report it says that this recommendation, by its nature, requires a continuation of efforts in its implementation, the Committee hopes that the country under review will furnish information on measures adopted to that end in the annual progress reports provided for in Article 32 of the Rules of Procedure of the Committee.

Elements of the above recommendation for which information is pending as regards their implementation or that require further attention under the terms provided in the report from the Second Round:[58]

Strengthen the oversight bodies with respect to the functions they perform in overseeing effective compliance with the provisions set out in paragraphs 1, 2, 4, and 11 of the Convention (...) providing them with the resources needed to fully discharge their functions; ensuring that they have greater support from policy makers and society; and establishing mechanisms to allow continuous evaluation and follow-up.

[156] In its response,[59] the State under review presents additional information to that analyzed by the Committee in the report from the Second Round with respect to the foregoing elements of the above-noted recommendation. In this regard, the Committee notes the following measures as steps which contribute to progress in the implementation thereof:

[157] - The efforts to improve conditions for fiscal oversight officials, as reflected in the increase in the budget of the Office of the Comptroller General (CGR) and in the additional appropriation to level their pay.

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[57] See p. 51 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc
[58] See p. 51 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc
[59] Response of Colombia to the questionnaire, Appendix I, pp. 54-56

[158] - The progress in the implementation of the Standard Internal Control Model (MECI), which is to be adopted by all state agencies (including oversight and investigation bodies), as regards the Office of the Prosecutor General (95.8% complete as of December 8, 2008) and the Office of the Comptroller General; the results for these two oversight organs are specifically mentioned in the response.

[159] - The Inter-Administrative Agreements signed in 2008 by the National Planning Department with the Office of the Comptroller General and with the Office of the Attorney General. The purpose of these technical cooperation agreements are to pool efforts and share available information on the use of royalty funds and any irregularities that come to light as a result of violations of the rules in force. The information is accessed according to the technical mechanisms and procedures set out in the agreements.

[160] In the progress report submitted at the fifteenth meeting of the Committee,[60] with respect to the foregoing elements of the above-noted recommendation, the State under review provides additional information to that analyzed by the Committee in the report from the Second Round and to that contained in its response. In this regard, the Committee notes the following measure as a step which contributes to progress in the implementation thereof:

[161] - The results achieved in the implementation of the Standard Internal Control Model (MECI), including the construction and introduction of the Code of Ethics and Good Governance; risk management in all entities' processes and subprocesses; design and implementation of monitoring and self monitoring tools; and documentation and strengthening of process information flows and communication channels.

[162] The Committee takes note of the steps taken by the country under review to advance in its implementation of the elements for which additional attention is pending in the foregoing recommendation as regards provision of resources to oversight bodies and introduction of mechanisms for evaluation and monitoring of their actions. The Committee also notes the need for the country to continue to give attention to those elements, bearing in mind, in relation to the former, that the response only refers to one oversight body (Office of the Comptroller General) and, with respect to the latter, that implementation in the oversight bodies of the Standard Internal Control Model (MECI) is not yet complete. The Committee also notes the need for the State under review to give additional attention to the element of the recommendation that concerns making sure that those oversight bodies have greater political and social support for the complete development of their functions, bearing in mind that it does not refer to this element in its response.

[60] See p. 4 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc

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

4.1. Mechanisms for access to information

Recommendation suggested by the Committee that require further information on their implementation or which required additional attention within the framework of the report from the Second Round:[61]

Recommendation 4.1.1:

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

[163] In its response,[62] with respect to the foregoing recommendation the State under review presents additional information to that analyzed by the Committee in the report from the Second Round. In this regard, the Committee notes the following measures as steps which contribute to progress in the implementation thereof:

[164] - The awareness events and training courses on different aspects of Online Government implemented by the Connectivity Agenda Program of the Ministry of Communications in 2008 and from January 1 to April 30 in 2009, which targeted public servants and government contractors at the national and subnational level, on which information is provided in the response.

[165] - The review, design and execution of a communications strategy which will use mass and direct media and continue over the rest of 2009 and in 2010, in order to raise awareness about the Online Government Strategy and promote its use by members of the public, entrepreneurs, and public-sector entities.

[166] In the progress report submitted at the fifteenth meeting of the Committee,[63] with respect to the foregoing recommendation, the State under review provides information additional to that analyzed by the Committee in the report from the Second Round and to that contained in its response. In this regard, the Committee notes the following measure as a step which contributes to progress in the implementation of the recommendation:

[167] - "The national government has issued new guidelines for the Online Government Program through Decree 1151 of 2008, which aims to contribute to the construction of a more efficient, transparent, and participatory state that provides better services to the public and businesses by harnessing information and communication technologies."

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[61] See pp. 52 and 53 of this Report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc
[62] Response of Colombia to the questionnaire, Appendix I, pp. 56 and 57
[63] See p. 5 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc

[168] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that the Online Government Strategy has not yet been fully implemented.

Recommendation that was satisfactorily considered under the terms provided in the report from the Second Round:[64]

Recommendation 4.1.2:

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

[169] The Committee has already noted the satisfactory consideration of the foregoing recommendation by the State under review under the terms provided in the report adopted thereon in the Second Round.[65] Bearing in mind that that report notes that this recommendation, by its nature, requires a continuation of efforts in its implementation, the Committee looks forward to the country under review furnishing information on measures adopted to that end in the annual progress reports provided for by Article 32 of the Rules of Procedure of the Committee.

4.2. Mechanisms for consultation

Recommendation suggested by the Committee that require further information on their implementation or which required additional attention within the framework of the report from the Second Round:[66]

Recommendation 4.2.1:

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

[170] In its response,[67] with respect to the foregoing recommendation the State under review presents additional information to that analyzed by the Committee in the report from the Second Round. In this regard, the Committee notes the following measures as steps which contribute to progress in the implementation thereof:

[171] - "A number of surveys have been carried out to evaluate the progress of the accountability policy. The last of these was prepared with information collected from May 19 to 30,[68] 2008, from 157 entities through an online application designed to feed data into the Uniform Personnel Information System (SUIP). Based on this report it is fair to say that the progress made by public entities at the national level in terms of regular accountability reporting to the public has been satisfactory. - In addition, the total number of citizens who took part in the public hearings of the entities that responded to the survey represents 96% of the persons who attended these events. It is significant for the democratization process in the public administration that 350,000 citizens should

[64] See pp. 52 and 53 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc
[65] See pp. 52 and 53 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc
[66] See pp. 53 to 55 of this Report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc
[67] Response of Colombia to the questionnaire, Appendix I, pp. 58 and 59
[68] The response of Colombia to the questionnaire contains a link to this survey on page 59 (appendix I).

have taken part in public hearings, either in person, or by means of teleconferences or videoconferences. The foregoing suggests great interest on the part of the public in participating in these exercises. Based on the data provided it is fair to say that a culture of accountability has been achieved on the part of public administration entities at the national level, which is channel through public hearings on Colombia."

[172] - "(…) a new handbook for public sector entities on rating public accountability exercises through public hearings is soon to be published."

[173] In the progress report submitted at the fifteenth meeting of the Committee,[69] with respect to the foregoing recommendation, the State under review provides additional information to that analyzed by the Committee in the report from the Second Round and to that contained in its response. In this regard, the Committee notes the following measure as a step which contributes to progress in the implementation of the recommendation:

[174] - "(…) the Presidential Anti-Corruption Program is encouraging the adoption of decrees, ordinances and/or decisions aimed at introducing accountability rules for elected public servants (mayors, governors, councilors, and members of parliament)."

[175] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that the measures noted both in the response and in the progress report only refer to accountability hearings open to the public.

Recommendation that was satisfactorily considered under the terms provided in the report from the Second Round:[70]

Recommendation 4.2.2:

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

[176] The Committee has already noted the satisfactory consideration of the foregoing recommendation by the State under review under the terms provided in the report adopted thereon in the Second Round.[71] Bearing in mind that that report notes that this recommendation, by its nature, requires a continuation of efforts in its implementation, the Committee looks forward to the country under review furnishing information on measures adopted to that end in the annual progress reports provided for in Article 32 of the Rules of Procedure of the Committee.

[69] See p. 6 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc
[70] See pp. 53 and 55 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc
[71] See pp. 53 to 55 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc

4.3. Mechanisms to encourage participation in public administration

Recommendation suggested by the Committee that require further information on their implementation or which required additional attention within the framework of the report from the Second Round:[72]

Recommendation 4.3.1:

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

[177] In its response,[73] with respect to the foregoing recommendation, the country under review presents additional information to that analyzed by the Committee in the report from the Second Round. In this regard, the Committee notes, as steps which allow it to conclude that it has been satisfactorily considered, the following:

[178] - The follow-up on the implementation of the public administration democratization program with, inter alia, the following results:

[179] "According to the consolidated information in the progress report on the Administrative Development System (SISTEDA), the mean sectoral progress rate in implementation of the public administration democratization program is 96.23%."

[180] "(…) there has been 97.2% progress in implementation and strengthening of public information and communication channels aimed at stimulating greater public interest in matters involving the public administration. Public interaction forums have also been strengthened in order to have first-hand knowledge about the expectations and suggestions of both members of the public and interested parties."

[181] "In addition, oversight is exercised through citizen watchdogs, internal and external audits at entities, management self-assessments and performance audits, and quality audits."

[182] "Another administrative development initiative which concerns the importance of public relations with entities is the Quality Program, for which the mean progress in implementation across all sectors is 96.39%. As of April 30, 2009, 190 entities at the national and subnational level were certified under Quality Standard NTCGP 1000: 2004 by agencies accredited with the Superintendency of Industry and Trade, thus: (…)."[74]

[183] - "From July 2008 to May 2009, the Presidential Anti-Corruption Program has promoted visible follow-up on 232 projects. Of these, 64 have been satisfactory delivered to the community and 163 are still being monitored.- Through its Visible Audits the Program has reached 30 departments and 87 municipalities and, working alongside the community, protected approximately 1.5 billion pesos and benefited more than 8 million Colombians."

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[72] See pp. 55 and 56 of this Report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc
[73] Response of Colombia to the questionnaire, Appendix I, pp. 61 to 63
[74] Page 62 of the response of Colombia to the questionnaire (Appendix I) mentions the certifying agencies and the number of certified entities.

[184] The Committee takes note of the satisfactory consideration by the country under review of the above recommendation, which, by its nature, requires a continuation of efforts.

4.4. Mechanisms to encourage participation in the follow-up of public administration

Recommendations suggested by the Committee that require further information on their implementation or which required additional attention within the framework of the report from the Second Round:[75]

Recommendation 4.4.1:

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

Elements of the above recommendation that were satisfactorily considered under the terms provided in the report from the Second Round:[76]

[185] The Committee has already noted the satisfactory consideration by the State under review of the elements of the foregoing recommendation regarding: consolidation and expansion of dissemination programs of participatory mechanisms for monitoring the management of public affairs; education and training of civic leaders to give impetus to their use; and creation of citizen awareness on the importance of denouncing acts of public corruption, under the terms provided in the report adopted thereon in the Second Round. Bearing in mind that that report notes that those elements of the recommendation, by their nature, require a continuation of efforts in their implementation, the Committee looks forward to the country under review furnishing information on measures adopted to that end in the annual progress reports provided for by Article 32 of the Rules of Procedure of the Committee.

Elements of the above recommendation for which information is pending as regards their implementation or that require further attention under the terms provided in the report from the Second Round:[77]

(...) include in basic and secondary education programs content concerning the prevention of corruption and the fulfillment of civic duties;(...) and offer the necessary protection to those who report them (referring to acts of corruption).

[186] In its response,[78] the State under review presents additional information to that analyzed by the Committee in the report from the Second Round with respect to the foregoing elements of the above-noted recommendation. In this regard, the Committee notes the following measures as steps which contribute to progress in the implementation thereof:

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[75] See pp. 55 and 56 of this Report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc
[76] See pp. 56-59 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc
[77] See pp. 56 to 59 of this report, at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc
[78] Response of Colombia to the questionnaire, Appendix I, pp. 63-65

[187] - The National Training Plan for Societal Oversight: "Through the National Training Plan for Societal Oversight of Public Administration new training modules have been designed in order to consolidate and expand dissemination programs on participatory mechanisms for monitoring the management of public affairs, educating and training civic leaders."[79]

[188] - Culture of Lawfulness Program: "In September 2007, at a meeting between the management of the Presidential Program and the team from the subdivision for improvement (citizen competencies program) of the MEN the following municipalities were selected for inclusion in the 2008 expansion phase: Apartadó, Buenaventura, Soacha, Yopal, Santa Marta, and Soledad, as well as the Department of Guianía, which would support the capital municipality of Puerto Inirida since the Municipal Education Secretariat lacked education quality certification. However, it was not possible to commence teacher training in these municipalities for implementing the Culture of Legality Program until 2009."

[189] - The public information and education programs for citizen oversight of public administration implemented by the Office of the Comptroller General through the Office of Citizen Participation, the results of which are noted in the response.[80]

[190] - The projects to strengthen training of civic and student leaders to increase awareness of the need to protect public funds and fight corruption, which are being carried out with the support of cooperation from Germany (Program *En la Escuela nos vemos*) and Holland (*Fighting Corruption in Colombia through Citizen Participation*), whose results, which correspond to the first two phases, are contained in the response.[81]

[191] - The "Oversight Heroes" strategy, also designed by the Office of the Comptroller General, "which is designed to create a new culture and construct a new mentality of morality by involving children and young people all over the country in citizen fiscal oversight programs. This initiative comes in response to a fundamental objective drawn up by the Office of the Comptroller General aimed at the implementation of mechanisms to enable the public to participate actively in oversight of the public administration."

[192] - The measures implemented under the tripartite Agreement between the Office of the Prosecutor General, Office of the Attorney General and Office of the Comptroller General, in the framework of Extension No.3 of Agreement 0002 of November 7, 2007, signed on April 17, 2009 by these oversight organs, as a result of which "progress has been made in the production of a poster to facilitate filing complaints with these three agencies. A poster on the institutions' powers on crimes against the public administration has been scheduled for public distribution in the second half of the year in all 26 municipalities targeted by the Agreement."

[193] - The system implemented by the Office of the Comptroller General "which enables members of the public to make and follow up on complaints. It should be mentioned that if an individual believes that their safety could be at risk they can submit their complaint anonymously."

[194] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation and of the need for it to continue to give attention

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[79] Information on the Plan may be consulted via the link on p. 63 (Appendix I) of the response of Colombia to the questionnaire.
[80] See p. 64 (Appendix I) of the response of Colombia to the questionnaire.
[81] See pp. 64 and 65 (Appendix I) of the response of Colombia to the questionnaire.

thereto, bearing in mind that some of the measures noted in the response have not yet been completed and that according to the response difficulties have been encountered in implementing the National Training Plan for Societal Oversight.[82]

[195] The Committee also takes note of the difficulties encountered in the implementation of this recommendation which the State under review has mentioned in its response.[83]

Recommendation 4.4.2:

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

[196] In its response,[84] with respect to the foregoing recommendation, the State under review presents additional information to that analyzed by the Committee in the report from the Second Round. In this regard, the Committee notes the following measure as a step which contributes to progress in the implementation thereof:

[197] - "On the initiative of the Senate Ethics Committee, with the participation of the Office of the Comptroller General, Office of the Attorney General, Higher School of Public Administration, Colombian Municipalities Federation, Office of the Prosecutor General, Presidential Anti-Corruption Program, the United Nations and other institutions, efforts were made in 2009 to set up an "Interagency Anticorruption Panel."

[198] The Committee takes note of the step taken by the State under review to advance in its implementation of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that although the response refers to efforts made as regards the creation of an Interagency Anticorruption Panel, no information is provided with respect to measures adopted in connection with the National Commission for Moralization as mentioned in the recommendation.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

Recommendations suggested by the Committee that were satisfactorily considered under the terms provided in the report from the Second Round:[85]

Recommendation 5.1:

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

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[82] Response of Colombia to the questionnaire. Appendix I, p. 65

[83] Response of Colombia to the questionnaire (Appendix I, p. 65). The country offers the following observations: "B) Difficulties. - "One of the difficulties that we could mention in the implementation of the National Training Plan for Societal Oversight is the high turnover of staff trained to act as multiplier agents to impart educational methodologies for reaching the public. An important need in order to move forward with the consolidation of this plan is technical assistance on teacher education that takes into account the diversity of target groups that comprise the public, as well as education and training funds."

[84] Response of Colombia to the questionnaire, Appendix I, p. 66

[85] See pp. 56-59 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc

Convention and institutions or financial agencies engaged in international cooperation to seek the technical cooperation it needs.

Recommendation 5.2:

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

Recommendation 5.3:

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

Recommendation 5.4:

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

[199] The Committee has already noted the satisfactory consideration of the foregoing recommendations by the State under review under the terms provided in the report adopted thereon in the Second Round.[86]

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

[200] The Committee did not formulate recommendations on this provision of the Convention to the State under review, because it found that the Republic of Colombia had complied with Article XVIII of the Convention by deciding to rely on the central authorities provided for in relevant treaties (Office of the Prosecutor General and Ministry of Justice and Law), for the purposes of the assistance and international cooperation provided for in the Convention, which is in keeping with paragraph 1 of the aforementioned article, and by appointing the Colombian International Cooperation Agency as the central authority for the purposes of the mutual technical cooperation provided for in the Convention.

[86] See pp. 59 and 60 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc

7. GENERAL RECOMMENDATIONS

Recommendations suggested by the Committee that require further information on their implementation or which required additional attention within the framework of the report from the Second Round:[87]

Recommendation 7.1:

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

[201] In its response,[88] with respect to the foregoing recommendation, the country under review presents additional information to that analyzed by the Committee in the report from the Second Round. In this regard, the Committee notes the following measures as steps which lead it to believe that it has been satisfactorily considered:

[202] - "The new National Education and Training Plan for public servants was introduced by Decree 4665 of November 2007, which sets out the conceptual and methodological guidelines for the development of job skills in public servants and thematic guidelines for implementing training programs. These guidelines include as core themes government contracting and the fight against corruption."

[203] - "An induction program was held in November 2007 for all 1099 mayors and 32 governors who were elected for the 2008-2011 period. The aforesaid program adopted an agenda designed to highlight Colombian state policies that concern their performance as new public administrators. - It should be noted that this induction program was carried out in coordination with several state entities and included guidelines on aspects for prevention of corruption and the need for transparency and good management of public resources, giving particular emphasis to their great responsibility as community leaders and representatives of citizens' interests."

[204] The Committee takes note of the satisfactory consideration by the country under review of the above recommendation, which, by its nature, requires a continuation of efforts.

Recommendation 7.2:

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

[205] In its response,[89] with respect to the foregoing recommendation, the State under review presents additional information to that analyzed by the Committee in the report from the Second Round. In this regard, the Committee notes the following measure as a step which contributes to progress in the implementation thereof:

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[87] See p. 61 of this Report at: http://www.oas.org/juridico/english/mesicic_II_inf_col_en.doc
[88] Response of Colombia to the questionnaire, Appendix I, pp. 68 and 69
[89] Response of Colombia to the questionnaire, Appendix I, p. 69

[206] - "Colombia, through the Presidential Anti-Corruption Program, has designed a matrix table, a copy of which accompanies this report, in order to follow up on the recommendations put forward in the MESICIC First and Second Review Rounds. This has enabled governmental agencies to understand and more easily access the information they need on the issue."

[207] The Committee takes note of the step taken by the State under review to advance in its implementation of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that the matrix table referred to in its response does not contain indicators by which to follow up on the recommendations made in the report from the First Round.

SECOND ROUND[90]

[208] The Committee offers the following observations with respect to the implementation of the recommendations formulated to the Republic of Colombia in the report from the Second Round, based on the information available to it:

1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)

1.1. Systems of Government Hiring

Recommendation 1.1.1.:

Strengthen government hiring systems in the Executive branch and territorial entities.

Measures suggested by the Committee:

a) Continue to take the appropriate steps to bring the various career service systems in line with the general system, so that the specific and special systems created by law do not become fragmented from the general government career service, notwithstanding the cases expressly prescribed in the Political Constitution, informed by the principles of openness, equity and efficiency prescribed by the Convention.

b) Continue to move forward with implementation of the competitive selection process initiated by Call for Candidates 001 of 2005 to fill civil service positions occupied on a provisional and temporary basis, and to complete it.

[209] In its response, the State under review presents information with respect to the implementation of measure *a)* of the foregoing recommendation.[91] In this regard, the Committee notes the following measures as steps which contribute to progress in its implementation:

[210] - The measures that the National Civil Service Commission has been adopting,[92] on the selection procedures of different agencies with specific career systems, such as the National Prisons

[90] The references to sections that appear in parenthesis in the recommendations and measures transcribed in italics herein, refer to the report from the Second Round of Review.

[91] Response of Colombia to the questionnaire, Appendix II. pp. 70-75

[92] On pages 70 and 71 of its response the State under review said, "Based on the rules and regulations in force in this area and in order to harmonize the career systems, in Rulings C-1230 of 2005 and C-175 of 2006 the Constitutional Court gave the National Civil Service Commission the task of administering and supervising the specific and special career services created by law. Thus the special and specific career systems were harmonized with the general system. Prior to the rulings

Institute (INPEC), National Taxes and Customs Office (DIAN), and Administrative Security Department (DAS), as well as on vacancy announcements for teachers and Afro-Colombian and Raizal teachers, as are mentioned in its response.[93]

[211] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *a)* of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that some of the measures noted in the response have not yet been completed.

[212] In its response, the State under review presents information with respect to the implementation of measure *b)* of the foregoing recommendation.[94] In this regard, the Committee notes the following measures as steps which contribute to progress in its implementation:

[213] The measures carried out since 2008 in connection with the first four applications to implement the competitive selection process initiated by Call for Candidates 001 of 2005, the results of which are mentioned in the response.[95]

[214] - The plans for implementing applications five and six of the aforementioned competitive selection process at the end of 2009 and in 2010.

[215] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *b)* of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that the competitive selection process initiated by Call for Candidates 001 of 2005 has yet to be completed.

[216] The Committee also takes note of the difficulties encountered in the implementation of measure *b)* of this recommendation which the State under review has mentioned in its response and in its progress report submitted at the fifteenth meeting of the Committee.[96]

Recommendation 1.1.2:

Strengthen government hiring systems in the legislative branch.

Measure suggested by the Committee:

Adopt the relevant law to enact the Legislative Branch Civil Service Statutes, guiding itself to that end by the principles of openness, equity, and efficiency as provided for in the Convention, without

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the role of the Commission with respect to these systems was one of supervision, but once the rulings were issued it assumed their administration. Accordingly, the Commission must carry out the necessary selection procedures to fill any vacancies that arise in entities with specific systems." In this respect, the Commission is moving forward with the selection procedures for filling any vacancies that arise in entities with these special systems. (…)."

[93] See pp. 75 to 77 of the response of Colombia to the questionnaire (Appendix II).

[94] Response of Colombia to the questionnaire, Appendix II. pp. 75-78

[95] See pp. 70 to 75 of the response of Colombia to the questionnaire (Appendix II)

[96] Response of Colombia to the questionnaire, (Appendix II. pp. 78 and 79). Here the country mentions difficulties connected with the enactment of Legislative Act 01 of December 26, 2008, which adds Article 125 to the Constitution. This, as noted on p. 11 of the aforesaid progress report, led to the suspension of all procedures connected with the competitive selection process for professionals' and advisors' positions covered by Call for Candidates 001 of 2005 held by employees temporarily under the protection of extraordinary registration, who had already sat the Phase II examinations. However, as noted below on the same page of that report, toward the end of August 2009 the Constitutional Court ruled that the aforementioned legislative act was unenforceable and therefore the procedures connected with the suspended public competitive selection processes must be resumed.

prejudice to the application of the general civil service rules in force for the Executive branch, subject to their compatibility, until said Statutes are adopted, as provided at article 384 of Law 5 of 1992.

[217] In its response, the State under review presents information with respect to the implementation of the sole measure of the foregoing recommendation.[97] In this regard, the Committee notes the following measure as a step which contributes to progress in its implementation:

[218] - "Bill 121 of 2006, Chamber of Representatives, "Establishing the Legislative Branch Administrative Career System" and Bill 166 of 2006, Chamber of Representatives, "Issuing the specific norms on the Administrative Career for Legislative Branch Employees and other provisions" were set aside at the third reading before the Seventh Committee of the Senate. The issue was taken up again in Bills 022 of 2008, Chamber of Representatives, and 023 of 2008, Chamber of Representatives, which are due for their second reading before the Plenary of the Chamber."

[219] The Committee takes note of the steps taken by the country under review to advance in its implementation of the sole measure of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that the parliamentary bills connected with its implementation have not yet passed into law.

Recommendation 1.1.3:

Strengthen government hiring systems in the judicial branch.

Measures suggested by the Committee:

a) Enact the statute governing the judicial career system referred to in Article 204 of Law 270 of 1996, guiding itself to that end by the principles of openness, equity, and efficiency as provided for in the Convention.

b) Adopt, through the appropriate authority, the necessary measures to complete the selection processes for "Employees of the Executive Judicial Administration Board" and "Employees of the Administrative Chamber of the Superior Judicature Council".

[220] In its response, the State under review presents information with respect to the implementation of measure *a)* of the foregoing recommendation.[98] In this regard, the Committee notes the following measures as steps which contribute to progress in its implementation:

[221] - "… since 2008 the Superior Judicature Council has been working with a group of lawyers to draft a law that governs the judicial career system and set out regulations on administration of the employment situation of judicial officials and employees. When the group of lawyers joined the study for the preparation of the draft law, it was pointed out that the Justice Administration Statute (Law 270 of 1996), in keeping with Articles 256 and 257 of the Constitution, granted the Administrative Chamber of the Superior Judicature Council rule-making authority specifically in relation to selection and evaluation processes for career officials and employees in the judicial branch. It comprehensively exercise this authority and sets out rules that govern in full every selection and evaluation process in keeping, inter alia, with the principles of openness, equity, and

[97] Response of Colombia to the questionnaire, Appendix II. p. 79
[98] Response of Colombia to the questionnaire, Appendix II. pp. 79 and 80

efficiency. - Thus the reform of Decision 1392/02 regulating the evaluation system for officials was addressed and is at present 80% complete. A review was also undertaken of Decision 1581/02 which regulates the transfer system, and this is 70% complete. The process of introducing rules on judicial oversight bodies was also begun and is 90% complete. All these decisions are expected to be issued in the second half of 2009. - In addition to the foregoing, rules were issued on the new judicial official selection processes through Decisions PSAA07-4132 of 2007 and PSAA08-4528 of 2008, which are currently being applied."

[222] - "… the matters and provisions are being defined that necessarily require the development of legislation but not regulations in order to come up with a bill to be put before Congress."

[223] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *a)* of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that some of the measures noted in the response have not yet been completed.

[224] In its response, the State under review presents information with respect to the implementation of measure *b)* of the foregoing recommendation.[99] In this regard, the Committee notes the following measures as steps which contribute to progress in its implementation:

[225] - "As regards the selection process for employees of the Executive Judicial Administration Board, resolution 436 of 2007 was adopted creating the registry of persons eligible to fill such positions. The relevant lists of eligible candidates were later drawn up, against which the respective appointments have been checked. - In carrying out this selection process 165 lists of candidates have been prepared and referred to the appointing authority, which, in turn, has named more than 312 incumbents. This has led to more than 32 takings of office. In order fully to complete this process all that remains is to prepare 19 lists which has been scheduled for the months of August and September 2009. For its part, the appointing authority is making the necessary appointments, which entails an additional process of informing the appointee, who may accept or refuse the appointment. In the event of the latter the process continues with the next person on the list, and so on, until it is exhausted."

[226] - "… the selection process for employees of the Administrative Chamber required the confirmation of a number of registrations, in particular those positions which for one reason or another were eliminated or transferred; in other words, the procedure provided in Decisions 1586/02 and 4156/07 was carried out. Once this step was completed, resolution PSAR08-434 of 2008 (October 27) created "*the Registries of Eligible Candidates for positions as career employees of the Administrative Chamber of the Superior Council of the Judicature as a result of the merit-based competition announced under Decision 346 of 1998;*" which, in exercise of the principle of disclosure and the right to contest decisions, was the subject of a number of appeals for reconsideration that have since been settled (resolutions PSAR09-226 to 237 of June 2, 2009). Accordingly, the vacancy announcement phase is at present underway with a view to the preparation of lists of eligible candidates and subsequent appointment and taking of office, which is scheduled for the months of August, September, October, and November 2009."

[227] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *b)* of the foregoing recommendation and of the need for it to continue to

[99] Response of Colombia to the questionnaire, Appendix II. pp. 80-82

give attention thereto, bearing in mind that some of the measures noted in the response have not yet been completed.

Recommendation 1.1.4:

Strengthen government hiring systems in the Office of the Prosecutor General.

Measures suggested by the Committee:

a) Set, through the appropriate authority, a time limit on any provisional appointment made to fill a permanent vacancy, in order for the vacancy to be filled through competition in accordance with the rules in force for that purpose.

b) Adopt, through the appropriate authority, the measures pertinent to advance and complete the merit-based competition to staff the career service of the Office of the Attorney General of the Nation.

[228] In its response, the State under review presents information which it believes related to the implementation of measure *a)* of the foregoing recommendation.[100] The Committee notes the need for the State under review to give further attention to implementation of this measure.

[229] In its response, the State under review presents information with respect to the implementation of measure *b)* of the foregoing recommendation.[101] In this regard, the Committee notes the following measures as steps which contribute to progress in its implementation:

[230] - The steps taken to carry out the selection process for various positions in the Office of the Prosecutor General through a merit-based competition announced in September 2007, which are mentioned in the response.[102]

[231] - "The merit-based competition which is being held for the Administration and Finance area, a process in which elimination tests were applied and 40,117 out of 171,141 invitees took part . - A timetable has been prepared for continuing with this competition that provides for the publication of the definitive roll of eligible candidates on December 2, 2009."

[232] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *b)* of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that some of the measures noted in the response have not yet been completed.

1.2. Government Systems for the Procurement of Goods and Services

Recommendation 1.2:

Strengthen systems for the procurement of goods and services by the government.

Measures suggested by the Committee:

[100] Response of Colombia to the questionnaire, Appendix II. p. 82
[101] Response of Colombia to the questionnaire, Appendix II. pp. 82-84
[102] See pp. 83 and 84 of the response of Colombia to the questionnaire (Appendix II)

a) Progress with reviewing the basis and relevance of the special contracting regimes, and with adopting appropriate measures to ensure the requisite harmony for the management of diverse procurement systems, informed by the principles of openness, equity, and efficiency as provided for by the Convention.

b) Amend Article 13 of Law 80 (1993) to require that if contracts or agreements financed with funds from agencies providing international cooperation, assistance or aid mostly involve public funds from state entities, the provisions that refer to said entities in the General Procurement Statute shall be applied.

c) Amend Article 24 (c) of Law 80 of 1993, limiting direct procurement, where inter-agency contracts are concerned, to cases in which the object of the contract to be entered on between the state entities is directly connected with the functions entrusted to them.

d) Amend Article 24 (g) of Law 80 of 1993, to provide that when a tender or competition is declared void, a new process other than direct contracting shall be followed, one that will also guarantee the principles of openness, equity, and efficiency enshrined in the Convention.

e) Amend Article 24 (h) of Law 80 of 1993, ordering that new tender or competition process, not a direct procurement procedure, shall be held when no bid is presented or none of the bids satisfy the list conditions or terms of reference, or, in general, when there is a lack of will to participate, without prejudice to introducing in said process such modifications as may be deemed appropriate to ensure the effective participation of bidders therein.

f) Amend Article 27 of Law 80 of 1993 to include such provisions as may be necessary, such as a determination as to the risks that give rise to compensation, in order to prevent said provision becoming the basis for a claim against a state entity for profits lost due to contingencies that are part and parcel of the unpredictable nature of business, in spite of what the latter might have agreed to as consideration in the respective contract.

g) Abolish Article 20 of Decree 855 of 1994, which provides that in direct procurement operations not provided for in said decree, the contract may be concluded on the basis of market prices without the need first to obtain bids or publish invitations to contract.

h) Adopt pertinent measures, through the appropriate authority, to precisely define the guidelines for the objective selection of contractors, guiding itself to that end by the principles of openness, equity, and efficiency contained in the

i) Abolish the paragraph in Article 11 of Decree 2170 of 2002 that provides that when the value of the contract to be entered on is equal to or less than 10% of the small contract amount referred to in Article 24, section 1(a) of Law 80 of 1993, entities may enter upon said contract taking market price as the sole consideration, without the need first to obtain several bids.

j) Continue with the actions necessary to consolidate the standards on government procurement in a single, concise and well-defined text, in order to make it easier to apply for the officials required to do so, and clearer and more comprehensible for everyone involved in government procurement as well as for the citizenry at large.

k) Adopt pertinent measures, through the appropriate authority, to ensure that direct procurement is employed as a consequence of the strict application of the exceptions provided in the Law.

l) Conduct a comprehensive evaluation to determine the objective reasons for the commission of irregularities in the area of procurement with respect to investment of funds from royalties and, based on its findings and without prejudice to such measures as the oversight agencies in the country under review might be required to adopt against such irregularities, design and consider the adoption of specific measures to prevent their occurrence.

m) Take the steps necessary to incorporate into the Single Contracting Portal those state agencies that are not already covered by it. (See section 1.2.3 of Chapter II of this report.)

n) Continue with the actions necessary to implement the Electronic Procurement System.

[233] In its response, the State under review presents information with respect to the implementation of measure *a)* of the foregoing recommendation.[103] In this regard, the Committee notes the following measure as a step that leads it to conclude that it has been satisfactorily considered:

[234] - "Article 13 of Law 1150 of 2007 provides that government entities with a legally established contracting regime different from that of the General Statute for Government Procurement shall, in carrying out their contracting activities in accordance with their special legal regime, observe the principles that inform the administrative function and fiscal management contained in Articles 209 and 267 of the Constitution, respectively as applicable. Accordingly, they shall be subject to the rules on ineligibility and conflict of interests that apply by law to government contracting."

[235] The Committee takes note of the satisfactory consideration by the State under review of measure *a)* of the foregoing recommendation.

[236] In its response, the State under review presents information with respect to measure *b)* of the foregoing recommendation.[104] In that regard, the Committee highlights the following measure as a step that leads it to conclude that it has been satisfactorily considered:

[237] - "Article 32 of Law 1150 of 2007 expressly repealed Article 13(4) of Law 80 of 1993, which provided that contracts with foreign persons were excluded from the contracting regime. - In addition, Article 20 of the aforementioned Law states that contracts with agencies that supply international cooperation, assistance, or aid are subject to the procedures set forth in Law 80 of 1993 except where 50% or more of the value of the contract is financed with international cooperation, assistance, or aid funds, in which case they may be governed by those entities' rules of procedure."

[238] The Committee takes note of the satisfactory consideration by the State under review of measure *b)* of the foregoing recommendation.

[239] In its response, the State under review presents information with respect to the implementation of measure *c)* of the foregoing recommendation.[105] In that regard, the Committee

[103] Response of Colombia to the questionnaire, Appendix II. pp. 84 and 85
[104] Response of Colombia to the questionnaire, Appendix II. p. 85

highlights the following measure as a step that leads it to conclude that it has been satisfactorily considered:

[240] - "Article 32 of Law 1150 entirely abrogated Article 24(1) of Law 80, including subparagraph c). - In addition, Article 2(4)(c) of the aforementioned law provides that direct procurement is permitted, inter alia, where inter-agency contracts are concerned; however, this provision makes such procurement conditional on the requirement that the obligations under the contract be directly connected with the purpose of the implementing agency as stated in the law or its regulations, except in the case of construction, supply, trust commission and public trust contracts when the implementing agency is a state higher-learning institution. The aforesaid provision adds that these contracts may be executed by the same, provided that they participate in public competitive bidding or abbreviated selection processes."

[241] The Committee takes note of the satisfactory consideration by the State under review of measure *c)* of the foregoing recommendation.

[242] In its response, the State under review presents information with respect to the implementation of measure *d)* of the foregoing recommendation.[106] In that regard, the Committee highlights the following measure as a step that leads it to conclude that it has been satisfactorily considered:

[243] - "Article 32 of Law 1150 of 2007 completely does away with Article 24(1) of Law 80, including subparagraph g), to which this recommendation refers. Law 1150 of 2007 introduces at Article 2(2) the figure of abbreviated selection, which is the objective selection method provided for those cases in which, based on the characteristics of the thing to be contracted, the circumstances of the contract, or the value or proposed use of the property, construction, or service, simplified processes can be carried out in order to ensure efficiency in the management of the contract. Pursuant to Article 2(2)(d) of the above law, abbreviated selection is applicable, inter alia, when a public tender has been declared void, in which case the entity shall commence the abbreviated selection process within four months after the annulment of the initial process. - The so-called "abbreviated selection" process provided in Law 1150 makes it possible to carry out selection procedures which, based strictly on government procurement principles, leads to prompt adoption of selection decisions."

[244] The Committee takes note of the satisfactory consideration by the State under review of measure *d)* of the foregoing recommendation.

[245] In its response, the State under review presents information with respect to the implementation of measure *e)* of the foregoing recommendation.[107] In this regard, the Committee notes the following measure as a step that leads it to conclude that it has been satisfactorily considered:

[246] - "Article 32 of Law 1150 of 2007 completely abolished Article 24(1) of Law 80 of 1993, including subparagraph h) . - In turn, Article 2(4) of the aforementioned Law provides that the direct procurement method of selection shall only be permitted in the cases mentioned in the same article, which do not include the situation that the recommendation in question concerns."

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[105] Response of Colombia to the questionnaire, Appendix II. pp. 85 and 86
[106] Response of Colombia to the questionnaire, Appendix II. p. 86
[107] Response of Colombia to the questionnaire, Appendix II. p. 87

[247] The Committee takes note of the satisfactory consideration by the State under review of measure *e)* of the foregoing recommendation.

[248] In its response, the State under review presents information with respect to the implementation of measure *f)* of the foregoing recommendation.[108] In that regard, the Committee highlights the following measure as a step that leads it to conclude that it has been satisfactorily considered:

[249] - "Article 32 of Law 1150 of 2007 repealed a paragraph of the second section of Article 3 of Law 80 of 1993, which established a profit guarantee for the contractors and replaces it with an adequate distribution of risk in which the bidders participate. - In turn, Article 4 of Law 1150 of 2007 on "Risk distribution in government contracts" provides that lists of conditions or the equivalent thereof shall include the estimates, definitions, and allocation of the foreseeable risks involved in the contract. It also states that in public tenders the lists of conditions of government entities shall indicate the moment at which, prior to the submission of bids, the bidders and the entity shall review the allocation of risks in order to determine their final distribution."

[250] The Committee takes note of the satisfactory consideration by the State under review of measure *f)* of the foregoing recommendation.

[251] In its response, the State under review presents information with respect to the implementation of measure *g)* of the foregoing recommendation.[109] In this regard, the Committee notes the following measure as a step that leads it to conclude that it has been satisfactorily considered:

[252] - "Decree 066 of 2008 containing the implementing regulations of Law 1150 of 2007 expressly abolished Decree 855 of 1994. In turn, Article 2(4) of Law 1150 of 2007 sets out the grounds for direct procurement established by exception for situations in which a public call for bids is not possible."

[253] The Committee takes note of the satisfactory consideration by the State under review of measure *g)* of the foregoing recommendation.

[254] In its response, the State under review presents information with respect to the implementation of measure *h)* of the foregoing recommendation.[110] In this regard, the Committee notes the following measure as a step that leads it to conclude that it has been satisfactorily considered:

[255] - "Article 5 of Law 1150 of 2007 sets out much more specific guidelines with regard to the issue of objective selection. In this regard, the aforementioned Law provides that a selection is objective when the choice made corresponds to the offer most favorable to the entity and the ends that it pursues, without consideration given to factors of affection or personal interest and, in general, any kind of subjective motivation. Consequently, this Law provides that the selection and grading factors that entities establish in lists of conditions or the equivalent thereof shall take the following guidelines into account: 1. The legal capacity and conditions as regards experience, financial capacity, and organization of bidders shall be verified as qualifying factors to be met in order to

[108] Response of Colombia to the questionnaire, Appendix II. p. 87
[109] Response of Colombia to the questionnaire, Appendix II. p. 88
[110] Response of Colombia to the questionnaire, Appendix II. pp. 88 and 89

participate in the selection process and shall not be assigned a score. Such conditions must be appropriate and proportional to the nature of the contract to be signed and to its value. Documentary verification of the aforementioned conditions shall be performed by chambers of commerce and the appropriate certification issued accordingly. 2. The most favorable bid shall be that which, based on the technical and economic selection factors and on the precise and detailed weighting thereof contained in the list of conditions or their equivalent, is the most advantageous for the entity without that favorability being constituted by factors other than those contained in said documents. In public construction contracts the shortest delivery time shall not be evaluated. The entity shall perform the necessary comparisons by appraising the bids received and consulting the market prices or conditions as well as the studies and deductions of the entity or the consultants or advisory agencies designated for that purpose. 3. In the lists of conditions for contracts for the purchase or supply of widely used goods and services with uniform technical characteristics government entities shall include the lowest price bid as the only evaluation factor. In selection processes for consultants grading factors shall be used designed to appraise the technical aspects of the bid or project. Subject to the conditions contained in the rules of procedure, the specific experience of the bidder and the work team in the field concerned may be used as criteria. In no circumstances shall the price be considered as a factor in the selection of consultants."

[256] The Committee takes note of the satisfactory consideration by the State under review of measure *h)* of the foregoing recommendation.

[257] In its response, the State under review presents information with respect to the implementation of measure *i)* of the foregoing recommendation.[111] In this regard, the Committee notes the following measure as a step that leads it to conclude that it has been satisfactorily considered:

[258] - "Article 83 of Decree 066 of 2008, which sets out the implementing regulations for Law 1150 of 2007, abolished Decree 2170 of 2002 except Articles 6, 9, and 24 thereof. - In this regard, Article 46 of the above Decree 066 of 2008, which regulates Law 1150 of 2007, provides that when the value of the contract to be entered on is less than 10% of the small contract amount (minimum amount), the process shall be governed by the entity's procurement guidelines without forgetting that in all cases the principles that govern the performance of public functions shall be observed."

[259] The Committee takes note of the satisfactory consideration by the State under review of measure *i)* of the foregoing recommendation.

[260] In its response, the State under review presents information with respect to the implementation of measure *j)* of the foregoing recommendation.[112] In this regard, the Committee notes the following measures as steps which contribute to progress in its implementation:

[261] - "As regards government procurement, in spite of the fact that there has been progress and a full inventory made of the relevant standards, it should be mentioned that the regulation of Law 1150 of 2007 is not yet complete. It has been deemed pertinent to wait until this process concludes before seeing to the publication of a consolidated decree on government procurement. - Inasmuch as this process concerns the consolidation of the procurement standards contained in Laws 80 of 1993 and 1150 of 2007, Article 30 of the latter recognizes the power of the government to prepare a compilation of standards without altering their wording or content and to organize their numbering,

[111] Response of Colombia to the questionnaire, Appendix II. p. 89
[112] Response of Colombia to the questionnaire, Appendix II. pp. 89 and 90

with which the expectation was to have in place the General Statute for Government Procurement. However, the Constitutional Court, in Judgment C-259-08 ruled that said provision was unconstitutional on the grounds that in order to compile the standards contained in Laws 80 of 1993 and 1150 of 2007 it was necessary, under Article 150(10) of the Constitution, for extraordinary powers to be granted since this concerned the adoption and enactment of a set of standards with force of law and, as such, required the delegation of that authority. In addition to the foregoing, the high tribunal found that the powers conferred by Article 30 of Law 1150 of 2007 fall within the definition of a code for which extraordinary powers cannot be granted under the terms of Article 150(10) of the Constitution. - In conclusion, in this matter which concerns the legal system, the constitutional prohibition is an obstacle to implementing the recommendation. Nevertheless, the country continues to move toward the consolidation of the regulatory standards."

[262] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *j)* of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that the measures noted in the response have not yet been completed and that, with respect to the constitutional obstacle mentioned therein, the country under review could consider and alternative measure to that suggested by the Committee, as provided in the standard form approved by the Committee to supply information on the implementation of recommendations, so as to allow the accomplishment of the purpose of the recommendation of facilitating the comprehension and application of government procurement standards, such as publishing said standards in a single body or compendium.

[263] In its response, the State under review presents information with respect to the implementation of measure *k)* of the foregoing recommendation.[113] In this regard, the Committee notes the following measure as a step which contributes to progress in its implementation:

[264] - "The sense of the recommendation is exactly the same as that of the new provisions contained in Law 1150 of 2007 since the new rules have clearly recognized exceptional circumstances in which direct procurement is possible and sets out the penalties for violating those rules. Indeed, Law 1150 of 2007 established the cases in which no other procedure is possible and sets out for all other situations the rules for procurement by means of calls for bids."

[265] The Committee takes note of the step taken by the State under review to advance in its implementation of measure *k)* of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that the recommendation is based on the objective results mentioned in section 1.2.3 of the report from the Second Round, which reflect considerable use of exceptional procurement mechanisms and is aimed at the adoption, in addition to provisions of a legal nature, of measures that ensure that in practice those mechanisms are used on a strictly exceptional basis and that that be reflected in objective results that show that to be the case.

[266] In addition, with respect to implementation of this recommendation, the report prepared by the civil society organization *Corporación Transparencia por Colombia* in partnership with *Fundación Grupo Método* mentions, *inter alia*, the following:[114]

[267] *"Although the results of the 2007-2008 Transparency Index for public-sector entities confirm the importance of the enactment of Law 1150 of 2007 (a legislative stride that the Colombian state*

[113] Response of Colombia to the questionnaire, Appendix II. p. 90

[114] Report prepared by the civil society organization *Corporación Transparencia por Colombia* in partnership with *Fundación Grupo Método*. pp. 42 and 43

reported in its last progress report to MESICIC in June 2008), questions have arisen about the need to introduce further adjustments to deal with the new challenges in the area of procurement in Colombia. The value of contracts awarded via exceptional methods in 2007 came to more than 3.6 billion. These mechanisms require neither openness nor a plurality of bidders (...)."[115]

[268] In its response, the State under review presents information with respect to the implementation of measure *l)* of the foregoing recommendation.[116] In this regard, the Committee notes the following measures as steps that lead it to conclude that it has been satisfactorily considered:

[269] - "In the framework of the agreement on Project COL 99/030 signed by the Republic of Colombia and the United Nations Development Programme (UNDP), the Royalties Office of the National Planning Department (DNP) requested that a risk map be commissioned. The UNDP, therefore, initiated public tender 90101 of 2009 in order to commission a consultancy project for the preparation of a risk map. The process concluded on June 4, 2009, and made it possible to identify risk factors with a view to the introduction of government policies and measures aimed at eradicating irregularities in procurement. - By reviewing the irregularities database it will be possible to identify patterns of behavior in the management of royalty and compensation funds by which to design preventive warning signals for averting the occurrence or recurrence of irregularities in the management of royalty and compensation funds by subnational entities and regional autonomous corporations."

[270] - "Furthermore, in keeping with the oversight and control functions of the Royalties Office, the DNP is empowered to carry out, either directly or through third parties, administrative and financial audits to verify the correct use of said funds. Through administrative and financial audits the DNP detects alleged irregularities in the use of funds, which may constitute purely administrative faults that give rise to the application of preventive or corrective measures and, simultaneously or independently, disciplinary, fiscal, and/or criminal offences whose investigation and punishment falls to the relevant control agencies (Office of the Attorney General and Office of the Comptroller General) and the Office of the Prosecutor General. When this occurs, the DNP is required to report the alleged irregularity to the appropriate agency so that the relevant entity can institute the applicable proceedings."

[271] - "As an immediate mechanism, in 2008 and up to May 2009, the Royalties Office implemented a training plan consisting of 43 activities which mainly targeted officials in various subnational entities, the Office of the Comptroller General, Office of the Attorney General, members of the Royalties Investment Monitoring Committee (CSIR), and community leaders that exercise societal oversight; in all, 2,327 individuals took part in the country as a whole."

[272] The Committee takes note of the satisfactory consideration by the State under review of measure *l)* of the foregoing recommendation, which, by its nature, requires a continuation of efforts.

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[115] On p. 43 (footnote 35) of the report from the aforementioned civil society organization there is a link where the results of the 2007-2008 Transparency Index for public-sector entities can be consulted.
[116] Response of Colombia to the questionnaire, Appendix II. pp. 90 and 91

[273] In its response, the State under review presents information with respect to the implementation of measure *m)* of the foregoing recommendation.[117] In this regard, the Committee notes the following measure as a step which contributes to progress in its implementation:

[274] - "As regards measures adopted by the Connectivity Agenda Program, the online government strategy of the Ministry of Communications[118] for incorporating agencies into the Single Contracting Portal (www.contratos.gov.co), a number of negotiation, linkage, dissemination, and training activities have been carried out with the following results:"

	January 1 to December 31, 2008	**January 1 to April 30, 2009**
No. entities registered on the portal.	2,271	2,314
Annual number of entities publishing information on their contracting procedures on the portal.	1,548	1,301
Annual number of monthly visits on average	453,402	491,153
Annual number of contracting procedures published	99,455	30,979
Annual value of contracting procedures published (US$ mn)	28,906,255	16,542,394

[275] The Committee takes note of the step taken by the country under review to advance in its implementation of measure *m)* of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that according to information contained in section 1.2.3 of the report from the Second Round the total number of entities is 3,285 and according to the information supplied in the table above, as of April 30, 2009, 2,314 were registered.

[276] In addition, with respect to implementation of this recommendation, the report prepared by the civil society organization *Corporación Transparencia por Colombia* in partnership with *Fundación Grupo Método* mentions, *inter alia*, the following:[119]

[277] *"In a bid to unify publicity criteria and have all government procurement processes carried out in the country in one place, the national government adopted Decree 2434 of 2006 which requires all agencies to publish on the Single Contracting Portal detailed information on each stage of all procurement processes. In the 2007-2008 period the index evaluated the information published by each entity on the portal. Although the results show progress, only 62% of the agencies evaluated publish all their procurement information on the portal. (...)."*

[278] In its response, the State under review presents information with respect to the implementation of measure *n)* of the foregoing recommendation.[120] In this regard, the Committee notes the following measures as steps which contribute to progress in its implementation:

[279] - "The following measures have been carried out in connection with the Electronic Procurement System (SECOP): In accordance with the provisions of Law 1150 of 2007 and its regulating decrees, the following progress has been made in connection with the Electronic

[117] Response of Colombia to the questionnaire, Appendix II. p. 92
[118] Has since been renamed the "Ministry of Information Technology and Communications."
[119] Report prepared by the civil society organization *Corporación Transparencia por Colombia* in partnership with *Fundación Grupo Método*. p. 43
[120] Response of Colombia to the questionnaire, Appendix II. pp. 92 and 93

Procurement System (SECOP), which can be used to manage procurement processes entirely online: • Phase 1, 100% developed: public tender, small-contract abbreviated selection, contracts awarded using electronic signatures; • Phase 2, 97% developed: electronic auction, call for prices, direct procurement, and reporting on multilateral processes - A review was conducted to determine the infrastructure necessary for the installation of Phase 1 of the system, and the installation was carried out at the data center. - As regards the definition of the governing body for government procurement, the national government continues its efforts to that end. - As for the operation of the system, the firm responsible has been hired and the entire system obtained. - The implementation and operation of Phase 1 of the system has been initiated. As part of the implementation the software associated with the mechanisms of public tender, small-contract abbreviated selection, and contracts awarded using electronic signatures have been legally validated. In due course system validation exercises will be carried out with the collaboration of pilot agencies, together with any necessary software adjustments, with a view to initiating widespread implementation. At the same time the same exercise will be carried out for Phase 2."

[280] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *n)* of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that some of the measures noted in the response have not yet been completed.

2. SYSTEMS FOR PROTECTING PUBIC SERVANTS AND PRIVATE CITIZENS WHO, IN GOOD FAITH, REPORT ACTS OF CORRUPTION (ARTICLE III(8) OF THE CONVENTION)

Recommendation 2.1:

Strengthen systems to protect public servants and private citizens who in good faith report acts of corruption.

Measures suggested by the Committee:

a) Expand, through the appropriate authority, the regulations on the "Program for Protection of Witnesses, Victims, and Persons Involved in Disciplinary Proceedings," in order expressly to include persons who report acts of corruption among the beneficiaries of that program (see Chapter II, Section 2.2 of this report).

b) Adopt, through the appropriate authority, measures pertinent to ensure the operations of the "Program for Protection of Witnesses, Victims, and Persons Involved in Disciplinary Proceedings," (see Chapter II, Section 2.2 of this report).

c) Adopt, through the appropriate authority, comprehensive regulations on the protection of public servants and private citizens who in good faith report acts of corruption, including protecting their identities, in accordance with its Constitution and the basic principles of its domestic legal system, which could include, among others, the following aspects:

i. Mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it.

ii. Additional protection measures to protect not only the physical integrity of whistleblowers and their families, but also to provide protection in the workplace, especially when the person is a public official and the acts of corruption involve superiors or co-workers.

[281] In its response, the State under review presents information with respect to the implementation of measure *a)* of the foregoing recommendation.[121] In this regard, the Committee notes the following measure as a step which contributes to progress in its implementation

[282] - "A consultancy project financed by PROGECO and the EU was approved in 2008 in order to move forward with the provision of protection services for persons involved in disciplinary proceedings ."

[283] The Committee takes note of the step taken by the State under review to advance in its implementation of measure *a)* of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that the steps proposed in said measure have yet to be carried out.

[284] In its response, the State under review presents information with respect to the implementation of measure *b)* of the foregoing recommendation.[122] In this regard, the Committee notes the following measure as a step which contributes to progress in its implementation:

[285] - "A new set of standards was issued on protection that include the activities of an evaluation committee and advisory services through which to consolidate assistance and protection measures for those witnesses, victims, and persons involved in disciplinary proceedings that might require them, prior to their incorporation in a National Protection and Assistance System. - The System will function in conjunction with other institutions so that based on an evaluation of requests for temporary protection and assistance made to a committee, the appropriate measures can be studied and, as necessary, permanent measures arranged with the National Police, DAS, or Office of the Prosecutor General based on studies of the levels of risk. - The program will examine, with a view to approval, the expenses that could be incurred in providing the necessary protection and assistance measures through the program, with a view to processing them through General Secretariat of the Office of the Attorney General and charging them to a special item in the Program budget."

[286] The Committee takes note of the step taken by the State under review to advance in its implementation of measure *b)* of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that the regulatory provisions to which the preceding paragraph refers have not yet been adopted.[123]

[287] In its response, the State under review presents information with respect to the implementation of measure *c)* of the foregoing recommendation.[124] In this regard, the Committee notes the following measures as steps which contribute to progress in its implementation:

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[121] Response of Colombia to the questionnaire, Appendix II. p. 93
[122] Response of Colombia to the questionnaire, Appendix II. pp. 93 and 94
[123] In its response of November 27, 2009, to the request of the Technical Secretariat to forward this set of standards, the country under review explained that the Office of the Attorney General had said that these standards "have not yet been issued but the preparations for their issue are at a very advanced stage and they are expected to be adopted very soon."
[124] Response of Colombia to the questionnaire, Appendix II. pp. 94 and 95

[288] - "As regards comprehensive regulations on the protection of public servants and private citizens, the Office of the Prosecutor General adopted a number of voluntary commitments with regard to the creation of a national protection system under the coordination and leadership of the Office of the Vice President of the Republic. These commitments were discharged in full by the entity's Office of Protection and Assistance."

[289] - "A bill is also being drawn up for the reform of the Protection and Assistance System of the Office of the Prosecutor General; however, this bill has yet to initiate its passage through the legislature."

[290] - "The principles, consistent with international standards and the case law of the Constitutional Court, with respect to protection of the fundamental rights to life, physical integrity, and personal safety of servants of the Office of the Prosecutor General, persons involved in regular criminal proceedings, and victims and witnesses of Justice and Peace proceedings were set down in resolution 05101 issued by the Prosecutor General on August 15, 2008."

[291] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *c)* of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that one of the measures noted in the response corresponds to a proposed law whose processing with a view to its enactment into law has not yet been completed.

[292] In its response, the State under review presents information which it considers is related to the implementation of measure *c) (i)* of the foregoing recommendation.[125] The Committee notes the need for the State under review to give further attention to implementation of this measure.

[293] In its response, the State under review presents information which it considers is related to the implementation of measure *c) (ii)* of the foregoing recommendation.[126] The Committee notes the need for the State under review to give further attention to implementation of this measure.

3. ACTS OF CORRUPTION (ARTICLE VI(1) OF THE CONVENTION)

Recommendation 3:

Consider continuing to adopt, through the appropriate authority, the measures pertinent to avoid preclusion of the preliminary investigation due to the running of the statute of limitations in cases that involve the offences of contracting with improper interest, embezzlement by appropriation, and embezzlement by use, pursued in accordance with the procedure contained in Law 600 of 2000.

[294] In its response, the State under review presents information with respect to the implementation of the foregoing recommendation.[127] In this regard, the Committee notes the following measures as steps that lead it to conclude that it has been satisfactorily considered:

[295] - "In February 2008 the National Prosecution Directorate issued internal memorandum 007 in which it urges unit coordinators to carry out preventive follow-up on the procedural time limits of assigned investigations without referring exclusively to those being pursued for offences against the public administration. The memorandum also recalled the procedural consequences as well as the

[125] Response of Colombia to the questionnaire, Appendix II. p. 95
[126] Response of Colombia to the questionnaire, Appendix II. pp. 95-97
[127] Response of Colombia to the questionnaire, Appendix II. pp. 97 and 98

implications in terms of the disciplinary measures and criminal proceedings to which officials could be liable if in the course of an investigation they allowed the time limits for proceeding on the cases assigned to them to lapse."

[296] - "In March of that same year the office in question instructed unit coordinators and chiefs to hold meetings with their working groups and analyze, inter alia, the need to set up technical and legal committees made up of prosecutors and investigators in order to identify difficulties that might hamper the effectiveness of investigations. The possibility was also included, in complex cases, of calling on the guidance of Supreme Court prosecutors, who are the prosecutors with the greatest professional and teaching experience in the Institution."

[297] The Committee takes note of the satisfactory consideration by the State under review of the above-transcribed recommendation, which, by its nature, requires a continuation of efforts.

4. GENERAL RECOMMENDATIONS

Recommendation 4.1:

Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, standards, measures and mechanisms considered in this Report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.

[298] In its response, the State under review presents information with respect to the implementation of the foregoing recommendation.[128] In this regard, the Committee notes the following measures as steps that lead it to conclude that it has been satisfactorily considered:

[299] - "The new National Education and Training Plan for public servants was issued by Decree 4665 of November 2007,[129] which sets out the conceptual and methodological guidelines for public servants to perform their professional duties as well as thematic guidelines for the implementation of training programs; these guidelines include Government Procurement and Fight against Corruption as core themes."

[300] - "In November 2007 an induction program was held for all 1099 mayors and 32 governors in the country who were elected for the 2008-2011 term. The aforesaid program adopted an agenda designed to highlight Colombian state policies that concern their performance as new public administrators. - It should be noted that this induction program was carried out in coordination with several state entities and included guidelines on aspects for prevention of corruption and the need for transparency and good management of public resources, giving particular emphasis to their great responsibility as community leaders and representatives of citizens' interests."

[301] - "At the same time the oversight bodies and several executive branch agencies have implemented a large-scale intensive training program on government procurement for public servants at all levels (national, departmental and municipal), with particular attention to dissemination of the amendments introduced in the Statute on Government Procurement (Law 80 of 1993) by Law 1150 of 2007 and the provisions that contain implementing regulations thereon, especially Decree 2474 of 2008. This training program has included on-site events throughout the country, videoconference

[128] Response of Colombia to the questionnaire, Appendix II. pp. 98 and 99

[129] This Decree was promulgated on November 29, 2007, and, therefore, comes after the Response of Colombia to the questionnaire in the Second Round, which was received on May 25, 2007, within the time limit set by the Committee.

courses through the Office of the Comptroller General's network with coverage in 25 departmental seats, and teleconference courses through the Institutional Television Network with nation-wide coverage. These conferences are permanently available for consultation online by all public servants at the conference page of the Office of the Comptroller General through its Web Cast system."

[302] - "In the framework of Extension No. 3 of Agreement 0002 of November 7, 2007, signed on April 17, 2009, by the Office of the Prosecutor General, Office of the Attorney General, Office of the Comptroller General and the USAID operator, MSI Colombia Foundation (the objective of which is to support these entities through the *Cimientos* [Foundations] program to strengthen anti-corruption efforts), from August to December 2008 a joint training program was held for governors, mayors, public servants, and the general public in municipalities with severe governance problems. The three core topics were: 1. Offences against the public administration in the management and execution of royalty and General Participation System (SGP) funds. 2. Preemptive control of government procurement, management of royalty and SGP funds, as well as conduct and disciplinary powers. 3. Fiscal oversight and accountability on royalty and SGP funds."

[303] The Committee takes note of the satisfactory consideration by the State under review of the above-transcribed recommendation, which, by its nature, requires a continuation of efforts.

Recommendation 4.2:

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

[304] In its response, the State under review presents information with respect to the implementation of the foregoing recommendation.[130] In this regard, the Committee notes the following measure as a step which contributes to progress in its implementation:

[305] - "Colombia, through the Presidential Anti-Corruption Program, has designed a matrix table, a copy of which accompanies this report, in order to follow up on the recommendations put forward in the MESICIC First and Second Review Rounds. This has enabled governmental agencies to understand and more easily access the information they need on the issue."

[306] The Committee takes note of the step taken by the State under review to advance in its implementation of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that the matrix table referred to in its response does not contain indicators by which to analyze results of the systems, standards, measures and mechanisms covered in the report from the Second Round and to follow-up on the recommendations made therein.

[130] Response of Colombia to the questionnaire, Appendix II. pp. 99 and 100

ENDNOTES

[i] These deductions correspond to sums paid in salaries (Articles 108 to 108(3)); social security benefits in connection with terminations of employment and retirement and disability pensions (Articles 109 to 113); contributions to the Colombian Family Welfare Institute and the National Training Service (SENA) (Article 114); deductible taxes (Article 115); taxes, royalties and contributions of decentralized agencies (Article); interest (Articles 117 to 119); adjustments for currency exchange differences (Article 120); deduction of foreign expenditures (Articles 121 to 124(2)); donations and contributions (Articles 125 to 126(4)); depreciation (Articles 127 to 141); repayment of investments (Articles 142 to 144); delinquent or write-off loans (Articles 145 to 147); losses (Articles 148 to 156); special deductions for investments (Articles 157 to 171); deductions for investments in reforestation plantations (Article 173); and deductions for sums paid as life annuities (Article 174).

[ii] ARTICLE 121. DEDUCTION OF FOREIGN EXPENDITURES Taxpayers shall be entitled to deduct any expenses made abroad that have a causal link to income from sources within the country, provided that the appropriate withholding has been made at source when the payment constitutes taxable income in Colombia for its beneficiary. - The following are deductible without withholding being necessary: a. Payments to commission agents abroad for the purchase or sale of merchandise, raw materials, or any other type of property not exceeding the percentage of the value of the operation in the tax year set by the Ministry of Finance and Public Credit; - b. Interest on short-term loans connected with the import or export of merchandise or on bank overdrafts not exceeding the percentage of the value of each loan or overdraft set by the Banco de la República.

[iii] ARTICLE 122. LIMITS ON COSTS AND DEDUCTIONS. <As amended by Article 84 of Law 223 of 1995. The new text is as follows:> The costs or deductions for expenditures made abroad in order to obtain income from a domestic source may not exceed fifteen percent (15%) of the taxpayer's taxable income before deduction of such costs or deductions, except where the following payments are concerned: a. Those for which a withholding at source is mandatory. - b. Those referred to in paragraphs a) and b) of the preceding article. - c. Those recognized in Article 25. - d. Payments or deposits on account for the purchase of any tangible property. - e. Costs and expenditures capitalized for their subsequent amortization in accordance with generally accepted accounting standards, or those which must be activated under such standards. - f. Those incurred pursuant to a legal obligation, such as customs certification services.

[iv] ARTICLE 123. VALIDITY REQUIREMENTS. If the beneficiary of the income is a foreign individual or a succession of foreigners not resident in the country, or a foreign company or other entity not resident in Colombia, then the amount paid or deposited on account is only deductible if the payment of the tax withheld at source on the income or remittances, as appropriate, are attested and the foreign exchange rules in force in Colombia are met.

[v] ARTICLE 124(1). OTHER NON-DEDUCTIBLE PAYMENTS. <Added by Article 15 of Law 49 of 1990. The new text is as follows:> Interest is non-deductible, as are other financial costs or expenses, including the exchange difference, on any of the debts that agencies, branch offices, affiliates or companies that operate in the country have with their foreign parent companies or agencies, branch offices or affiliates thereof domiciled abroad, with the following exceptions: a. Those originating from the debts of financial entities under the supervision of the Banking Superintendency. - b. Those generated by short-term debts arising from the purchase of raw materials and merchandise in which foreign parent companies or agencies, branch offices or affiliates thereof domiciled abroad act as direct suppliers. PARAGRAPH. (...).

[vi] Article 124(2). PAYMENTS TO TAX HAVENS. <Added by Article 3 of Law 863 of 2003. The new text is as follows:> Payments or deposits on account shall not constitute costs or deductions when made to individuals, corporations or any other type of agency established, located, or operating in tax havens and which have been classed as such by the Colombian government, unless the appropriate income and remittance tax withholding has been made source.

[vii] ARTICLE 125. DEDUCTION FOR DONATIONS. <Replaced by Article 31 of Law 488 of 1998. The new text is as follows:> Those income tax payers that are required to submit income and other disclosures in the country are entitled to deduct from their income the value of the donations made in the course of the tax year or period to: 1. The entities mentioned in Articles 22 and 2. Nonprofit associations, corporations and foundations whose founding purpose and activity concern the advancement of health, education, culture, religion, sport,

scientific and technological research, ecology and environmental conservation, protection and promotion of human rights, and access to justice or social development programs, provided they are of general interest. The value to be deducted in that connection shall in no case exceed thirty percent (30%) of the taxpayer's taxable income before deduction of the value of the donation. This limit shall not be applicable in the case of (…).

[viii] ARTICLE 125(1) REQUIREMENTS FOR BENEFICIARIES OF DONATIONS. <Article added by Article 3 of Law 6 of 1992. The new text is as follows:> When the entity benefiting from a donation that gives rise to eligibility for deduction is one of the entities mentioned in section 2 of Article 125 it shall meet the following conditions: 1. They are recognized as a non-profit legal persons and their operations are subject to official oversight. - 2. They have fulfilled the obligation to submit a declaration of revenue and net worth or of income, as appropriate, for the year immediately prior to the donation. - 3. They manage income in donations as deposits or investments in authorized financial institutions.

[ix] ARTICLE 125(2) FORMS OF DONATIONS. <Article added by Article 3 of Law 6 of 1992. The new text is as follows:> Donations that give rise to eligibility for deduction must take the following forms: 1. When money is donated, payment shall be made in the form of a check, by credit card, or through a financial intermediary. - 2. <Section modified by Article 27 of Law 383 of 1997. The new text is as follows:> When securities are donated they shall be valued at market prices according to the procedure prescribed by the Securities Superintendency. When other assets are donated their value shall be determined by the purchase cost adjusted for inflation* at the date of the donation, less accumulated depreciation at that date.

[x] ARTICLE 125(3) REQUIREMENTS FOR RECOGNIZING THE DEDUCTION. <As amended by Article 11 of Law 633 of 2000. The new text is as follows:> For a deduction to be recognized as a donation, a certificate signed by a statutory auditor or accountant is required from the recipient entity recording the form, amount and use of the donation, in addition to which the conditions mentioned in the preceding articles must be met. - In no case shall donations be recognized as deductible when they take the form of shares of stock, proportional shares or holdings, securities, rights or credits possessed in entities or companies.

[xi] ARTICLE 125(4) REQUIREMENTS FOR DEDUCTIONS FOR DONATIONS. <Article added by Article 86 of Law 223 of 1995. The new text is as follows:> Deductions for donations recognized in special provisions shall be granted under the terms provided in Article 125 of the Tax Law. - For the purposes of section 2 of Article 125 of this Law, donations made to political parties or groups approved by the National Electoral Council shall also be included.

[xii] The full text of Article 16 of the Criminal Code is as follows: "EXTRATERRITORIALITY Colombian criminal law shall be enforced against: 1. <Paragraph amended by Article 22 of Law 1121 of 2006. The new text is as follows:> Persons who commit abroad a crime against the existence and security of the state, against the constitutional system, against the economic and social order -with the exception of the conduct defined in Article 323 of this Code-, against the public administration, or who forge national currency or commit the crime of terrorist financing and management of resources connected with terrorist activities, even though they might have been acquitted or sentenced abroad to a lighter penalty than provided by Colombian law. In all cases, any time that they might have been deprived of liberty shall be deemed time served on their sentence. 2. Persons who are in the service of the Colombian state, enjoy immunity recognized by international law, and commit an offense abroad. 3. Persons who are in the service of the Colombian state, do not enjoy immunity recognized by international law, and commit an offense abroad different from those mentioned in paragraph 1, when they have not been prosecuted abroad. 4. Nationals in circumstances other than those provided in the preceding paragraphs who are in Colombia after having committed an offense on foreign soil which is punishable under Colombian law by a prison sentence with a minimum term of at least two (2) years and which they have not been prosecuted abroad. Where the penalty is lighter, they shall only be prosecuted under a criminal complaint lodged by one of the parties or a petition from the Prosecutor General. 5. Foreigners in circumstances other than those provided in paragraphs 1, 2, 3, who are in Colombia after having committed an offense abroad to the detriment of the Colombian state or a national thereof, which is punishable under Colombian law by a prison sentence with a minimum term of at least two (2) years and for which they have not been prosecuted abroad. In such instances they shall only be prosecuted under a criminal complaint lodged by one of the parties or at the request of the Prosecutor General. 6. Foreigners who have committed abroad an offense to the detriment of a foreign person, provided that the following conditions are met: a) they are on Colombian soil; b) the offense is punishable in Colombia by a prison sentence with a minimum term of at least three (3) years; c) the offense is

not a political one; and, d) their extradition has been sought but not granted by the Colombian government. If extradition is not accepted a criminal proceeding may be instituted. In the circumstances to which this paragraph refers proceedings shall only be instituted under a criminal complaint or at the request of the Prosecutor General and provided that the persons concerned have not been prosecuted abroad."