

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

FINAL REPORT

(Adopted at the September 18, 2009 plenary session)

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

**REPORT ON IMPLEMENTATION IN THE REPUBLIC OF COSTA RICA OF THE
CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE THIRD ROUND, AND
ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY
IN PREVIOUS ROUNDS¹**

INTRODUCTION

1. Contents of the report

[1] This report presents, first, a review of implementation in the Republic of Costa Rica 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 Costa Rica 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: http://www.oas.org/juridico/english/mec_rep_cr.pdf
http://www.oas.org/juridico/english/mesicic_II_rep_cri.pdf

2. Ratification of the Convention and adherence to the Mechanism

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

[4] In addition, the Republic of Costa Rica 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 Costa Rica

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Costa Rica and in particular from the Office of the Prosecutor General, 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 Costa Rica sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at: http://www.oas.org/juridico/spanish/mesicic3_cri_sp.htm

¹ This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on September 18, 2009, at its Fifteenth meeting, held at OAS Headquarters, September 14-18, 2009.

[6] For its review, the Committee took into account the information provided by the Republic of Costa Rica up to April 2, 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.

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 TREATMENT² 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

[7] - The Republic of Costa Rica 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:

[8] - The Code of Tax Laws and Procedures (Law No. 4755 of April 29, 1971), which at Article 5 provides that only the law may grant tax exemptions, reductions or benefits. Article 62 requires that any law that contemplates a tax exemption must specify the conditions and requirements for granting that exemption.

[9] - The Law on Income Tax (Law No. 7092), Article 3 of which sets out those entities that are exempt from the payment of income tax, while Article 6 sets out the types of income that is exempt from tax. Article 7 provides that net income *“is the result produced by deducting from the gross income the appropriate expenses and costs necessary to produce a profit or benefit along with all other outlays expressly authorized by this law.”*

[10] Article 8 lists those expenses that are deductible from income, including 8(b) *“All pay, additional pay, salaries, bonuses, gratuities, royalties, year-end bonuses, gifts, and any other remuneration for individual services actually rendered, provided they are in order and the withholdings and taxes contained in Title II of this Law have been applied.”* Article 8(p) *“The travel and communications expenses, pay, fees, and any other remuneration paid to persons not domiciled in the country.”*^{3 41}

² For the purposes of this report, the MESICIC Committee of Experts defines favorable tax treatment as all exemptions and any deductible items used for the purposes of determining the income tax base, and other treatment that gives rise to favorable reductions in the amount of tax payable by taxpayers.

³ Article 8(u) provides in pertinent part, that “The Tax Administration will accept all deductions considered in this article, with the exception of subparagraph (q), provided that the following requirements are complied with: 1.- That the expenses are necessary to obtain potential or actual income, as provided by this Law. 2.- That the obligation to retain and pay the tax provided by other provisions of this law has been complied with. 3.- That the supporting documents are properly authorized by the Tax Administration. The Tax Administration has the authority to make exception in special cases, which will be provided for by the Regulation to this law.

The Tax Administration has the authority to reject, in wholly or partially, the expenses specified in paragraphs (b), (j), (k), (l), (m), (n), (o), (p), (s), and (t), above, when they are considered excessive or improper or when they are not considered indispensable for obtaining income, according to the studies carried out by the Administration.”

⁴ The country under review presented jurisprudence relating to the interpretation of the tax deductions specified in the Law on Income Tax. This information has been included in end note “i”.

[11]- The Law against Corruption and Illicit Enrichment, Law No. 8422, which at Article 20 establishes the regimen of donations and gifts to public officials, and which establishes that such gifts are property of the state, when their value is above that of a base salary; Article 28, which lists various causes of administrative responsibility, including violations of Article 20 related to donations and gifts; and Article 54, which punishes public officials who appropriate or keep donations or gifts that should be turned over to the state, pursuant to Article 20.

[12] – Article 44bis of the Law against Corruption and Illicit Enrichment in Public Service, which establishes sanctions applicable to legal persons for specified offenses, including those contemplated in Articles 38 and 55 thereof, as well as those included in Articles 340 to 345 of the Criminal Code, including the following: “a) *Closure of the business, its subsidiaries, or locations or the temporary establishment for a period not to exceed five years;* b) *Suspension of the activities of the business for a maximum period of five years;* c) *Cancellation of the concession or the operating permit of the business;* d) *Loss of the tax benefits or the exemptions granted to the business.*”ⁱⁱ

[13]- The Regulation of the Law on Income Tax (Decree No. 18455-H), Article 11 of which provides in pertinent part, that net income “...is determined by deducting from the gross income the necessary and appropriate expenses and costs permitted by law. When expenses, costs, and outlays are made in order to produce both taxed and exempt income indistinctly, only the proportion that corresponds to taxed income should be deducted. When the taxpayer is unable adequately to justify a different proportion, they should deduct the sum that results from the application of the percentage determined by calculating the ratio of taxed income to total income. Costs, expenses, and outlays should be corroborated by authentic receipts. The Tax Bureau has general powers to assess and approve their full or partial deduction; it also reserves the right to reject any unjustified items.”

[14]- The Law Regulating all Exemptions in Force, their Derogation and Exceptions (Law No. 7293), which outlines a procedure whereby the *Dirección General de Hacienda* may revoke, in whole or in part, a previously granted tax exemption (Articles 38 and 39).

[15]- Law No. 4755 also contains various provisions providing for sanctions and criminal penalties, such as Article 92,ⁱⁱⁱ which criminalizes tax fraud (“*defraudación fiscal*”); and Article 81, which provides that “*Taxable persons shall be subject to a penalty, if due to a failure to submit a tax return or through the presentation of inaccurate returns, they fail to declare the requisite taxes within the statutory time limits. For such purposes, inaccuracy is defined as the omission of revenue generated by taxed operations, assets or actions liable to tax, as well as the inclusion of non-existent or overstated costs, deductions, discounts, exemptions, liabilities, tax payments on account, credit, withholdings, part payments, or fiscal benefits and, in general, the inclusion in tax disclosures submitted by taxable persons to the Tax Administration of false, incomplete, or inaccurate data which give rise to less tax or a lower amount payable, or a higher balance in favor of the taxpayer or person responsible, including any arithmetical differences contained in the disclosures presented by taxable persons... Any application for compensation or a refund based on nonexistent sums shall also constitute an inaccuracy.*”

[16]Law No. 4755 also criminalizes various actions related to the payment of taxes, such as Article 98, titled “*Criminal liability of public servants for malicious acts or omissions,*” which punishes public servants who “*collaborate in or otherwise facilitate non-compliance with tax obligations or the inobservance of the formal requirements of debtors,*” or who “*in any way help another to elude*

*investigation by the authority for infringement or evasion of tax obligations, or to avoid the action of such investigations, or who fail to report an offense when they are required to do so...*⁵

[17] Similarly, Article 98 bis of Law 4755, titled “*Criminal liability of public servants for negligent acts or omissions,*” punishes public servants who, “*through imprudence, negligence or inexcusable carelessness in the discharge of their duties, enable or otherwise favor infringement of tax obligations or hinder investigations into such infringement.*”

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

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

[19] Nevertheless, the Committee believes that it would be beneficial for the country under review to consider taking such steps as it deems 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. (See Recommendation 1.4 (a) in Chapter II of this report).^{6, iv}

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

[20] With respect to results in this field, the response of the Republic of Costa Rica to the questionnaire notes that “*In this regard, there is no statistical data.*”⁷

[21] Taking the foregoing into account, the Committee will formulate a recommendation to the country under review so that, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, 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)

1.4. Conclusions and Recommendations

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

⁵ Article 98 of Law 4755 also punishes a public servant who, “*themselves or through another individual or legal person, receives gifts, any advantage or undue benefits of a financial nature or otherwise, or accepts the promise of any kind of reward, in order to carry out or not carry out an act that is part of their duties, to the direct or indirect detriment of timely and proper performance of tax obligations.*”

⁶ In its observations on the draft preliminary report for the third round of review, the country under review noted that: “*In this regard, it is important to note that the powers of the Tax Administration are based on Article 103 and successive articles of the Code of Tax Rules and Procedures, the General Regulations for Tax Management, Control and Collection, Executive Decree N° 29264 of January 24, 2001 and the Ministry of Finance’s Manual of Procedures...*” Both the relevant articles as well as the other comments made by Costa Rica in this regard have been included in end note “iv”.

⁷ See the response of Costa Rica to the questionnaire for the Third Round, at p. 4, available at: http://www.oas.org/juridico/spanish/mesicic3_cri_sp.htm

[23] The Republic of Costa Rica has considered and adopted measures intended to create, maintain and strengthen standards on the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, as described in section 1 of chapter II of this report.

[24] In light of the comments formulated in that section, the Committee suggests that the Republic of Costa Rica consider the following recommendation:

[25] Strengthen the standards 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 Costa Rica could take the following measures into account:

- a. Consider adopting the measures 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 section 1.2 of Chapter II of this report):
 - i. Manuals, guidelines or directives that will guide them in reviewing those applications, so that they are able to verify that the applications 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. The possibility of accessing the sources of information necessary to conduct those verifications and confirmations, including requests for information from financial institutions,
 - iii. Computer programs that facilitate data consultation and cross-checking of information whenever necessary for the purpose of fulfilling their functions.
 - iv. Institutional coordination mechanisms that will provide the timely collaboration needed from other authorities, and such aspects as certifying the authenticity of the documents submitted with the applications;
 - iv. 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 applications.
 - v. Training programs designed specifically to alert officials to the methods used to disguise payments for corruption and to instruct them in ways of detecting such payments in the applications;
 - vi. Channels of communication so that they may promptly report to those who must decide on 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 authorities responsible for processing applications for favorable tax treatment, as well as the other authorities or entities that have responsibility in this area, procedures and indicators, when appropriate and where they

do not yet exist, to analyze the objective results obtained in this regard and to follow-up on the recommendations formulated 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 provisions in the legal framework and/or other measures

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

[27] - The Commercial Code (Law 3284), Article 5 of which defines businesspersons as “(a) *legally eligible persons who pursue, in their own name, commercial undertakings, making them their customary occupation; (b) individual limited-responsibility companies; (c) companies incorporated under the terms of this Code, regardless of the purpose or activity they pursue; (d) foreign corporations and their branches and agencies, that conduct trade in the country, only when acting as distributors of products manufactured by their company in Costa Rica; and (e) arrangements of Central Americans who pursue trade in our country.*”

[28] The Code also contains various provisions related to accounting records, such as the following:

[29] Article 251, which requires businesspersons to maintain accounting records and requires those records be certified by the “*Tributacion Directa*”. Article 251 also specifies that businesspersons shall maintain “*a Balance Book and an Inventory, a Day Book and a Ledger (Libro Mayor) that must be bound and their pages numbered.*” Similarly, it requires the foregoing books to be certified by the “*Directorate General of Direct Taxation.*”

[30] Article 253 requires accounting records to be maintained by a certified accountant, which may be the merchant, and who will be responsible for the contents of those records.

[31] Articles 254 and 264 contain general rules applicable to all accounting records, such as a requirement that entries be made in chronological order, without leaving spaces, with nothing crossed out, and with annotations explaining any errors therein (Article 254); and a prohibition on ripping pages out of books or changing their binding or page numbering (Article 264). In addition, Article 263 requires books to be presented to the Directorate General for Direct Taxation prior to their use, in order for them to be certified in a special register.

[32] With respect to specific accounting records, Article 255 requires the Inventory book to contain an exact description of the “*...money, securities, credits, merchandise, real estate, personal property, and other items making up the assets when operations begin, together with debts and obligations of all kinds that make up the liabilities, and also detailing the resulting net capital. This same book shall record, at the end of each fiscal year, the new inventory at the close of the period...*”

[33] Article 256 provides that the “*Diario*” “*...shall set down, as its first entry, the result of the inventory described in the previous article. In addition, or in auxiliary records, all operations carried out shall continue to be recorded in strict chronological order, with the merchant or individual*

industrialist itemizing cash withdrawals, others intended for personal or family expenses, which shall be kept in a special account.” Similarly, Article 258 specifies the information that must be included in the yearly Balance sheets.

[34] Article 257 provides that to the “Mayor” book, “...records from the daybook or auxiliary records shall be transferred in order. Summarized total transfers of the latter may be made. Entries that can be combined by reason of their affinity and convenience may be grouped together in a single account in the ledger and transferred to the corresponding auxiliary ledger. Each entry recorded in the ledger shall refer to the page in the daybook in which it was recorded or to the summary of the corresponding auxiliary record.”

[35] - With respect to internal controls, Article 26 gives partners the right to inspect the books and other documents that relate to the state of the company; while Article 193 provides that “*The oversight system of anonymous corporations shall be optional and shall be recorded in the articles of incorporation.*” For publicly traded companies, Articles 194 and 195 require this “oversight” to be the responsibility of one or more *fiscales* (“inspectors”). Article 197 charges these inspectors with, inter-alia, “*ensuring that the company prepares a monthly balance of its position, reviewing the annual balance, and examining the accounts and operation liquidation statements at the end of each fiscal year, in general, overseeing freely and at any time the company’s operations, to which end they shall have free access to the company’s books, papers, and cash on hand.*”

[36]- With respect to external oversight, Article 24 of the Constitution provides the following: “*The rights to privacy, liberty and the confidentiality of communications are guaranteed.*

The private documents and written and oral communications of the inhabitants of the Republic shall be inviolable. However, the law shall determine those cases in which the courts of law may order the seizure, registration, or examination of private documents, when absolutely indispensable to clarify matters placed before them. The law shall also determine the cases in which competent officials may examine accounting books and their annexes, when indispensable for inspection purposes.”

Similarly, the Law shall determine those cases in which Tribunals of Justice may order the interception of any form of communication and indicate the crimes, the investigation of which may allow for the use of this exceptional authority and for how long. Similarly, it will also establish the responsibilities and sanctions applicable to officials who illegally apply this exception. The legal rulings based on this provision must be reasonable and may be carried out immediately. Its application and control shall be the responsibility of the judicial authority and may not be delegated.

The law will establish those cases in which the competent officials of the Treasury and the Comptroller General of the Republic may examine the accounting records and their attachments for tax purposes and to manage the correct use of public funds.”

A special law, adopted by two-thirds of the total delegates will determine which other organs of the Public Administration may examine the documents that that law establishes in relation to the fulfillment of its responsibilities with respect to the regulation and supervision for public means. Similarly, it will indicate those cases in which this examination is applicable.

The correspondence and information obtained as a result of the illegal interception of any communication.”

[37] - In a similar sense, Article 265 of the Commercial Code provides that *“No authority may inquire if accounting books are kept correctly, or conduct an investigation or general examination of the accounts. Neither may orders be given for the communication, handing over, or general inspection of books, correspondence, and other papers and documents, except in the event of bankruptcy or liquidation. Other than in those cases, orders for the exhibition of books and documents may only be given by a competent judicial authority, at the request of a legitimate party or on an ex officio basis, when the person to whom they belong has an interest or responsibility in the matter being examined.”* Article 266 of the Code provides that *“The reviews that within the constraints of the law may be performed by the Directorate General of Direct Taxation for tax purposes shall be exempt from the rule set out in the previous article.”*

[38] - The Law against Corruption and Illicit Enrichment in Public Service (Law No. 8422), which at Article 11 provides that *“In pursuit of the powers assigned to the office of the Comptroller General of the Republic, its officers shall be authorized to have access to all the sources of information, records, public documents, statements, accounting books and their annexes, invoices and contracts that persons subject to their oversight hold or possess. - Nevertheless, under Article 24 of the Constitution, the only private documents that the Comptroller’s General’s office may review without the prior authorization of the person involved or his representatives are the accounting books and their annexes, with the sole purpose of overseeing the correct use of public funds.”*

[39] - The Organic Law of the Comptroller General of the Republic, which at Article 13 provides: *“GUARANTEE OF ACCESS TO AND AVAILABILITY OF INFORMATION. Subject to the constitutional and legal provisos for the performance of its tasks, the Office of the Comptroller General shall have access to all information sources or systems, records, documents, instruments, accounts, or declarations of taxpayers in the public sector.*

Subject to constitutional and legal provisos, for the purposes of exercising the control and oversight provided for herein, the Office of the Comptroller General shall have access to the accounting records, correspondence, and, in general, all documents issued or received by private taxpayers.

Only appropriately accredited employees of the Office of the Comptroller General shall be vested with authority to perform the above functions.

All officials, employees, or private citizens shall furnish the information, documents or instruments requested of them for that purpose within the time limit that it sets.”

[40] - The Code of Ethics for Public Accountants, issued by the Board of Directors of the College of Public Accounts of Costa Rica, Article 4 of which provides that public accountants have the obligation to respect the confidentiality of information regarding their clients; and Article 10, which provides that confidential information may only be disclosed in the following cases: *“(a) When expressly authorized by the client or employer, taking into account the possible interests, including third parties that might be affected; (b) When the disclosure is required by a Tribunal or Law, for the presentation of evidence in the course of legal proceedings, and to inform the appropriate public authorities of violations of law that might occur and which should be disclosed; and (c) to protect the professional interest in legal proceedings.”*

[41] In addition, Articles 75 to 77 of the Code of Ethics also provides for disciplinary action to be taken and sanctions applied by the Board of Directors of the College of Public Accountants; while Article 78

requires the Board of Directors to report any actions by a public accountant that might constitute a crime to the Public Ministry, for appropriate action.

[42] - Regulation 27 of August 27, 2001, issued by the Board of Directors of the College of Public Accountants, which adopts the International Accounting Standards issued by the International Accounting Standards Board

[43] - Circular No. 06-2005 from the Board of Directors of the College of Public Accountants, which recognizes the International Financial Reporting Standards as the generally accepted accounting principles applicable in Costa Rica. This Circular also provides that any subsequent updates to the Accounting of Financial Reporting Standards issued by the International Accounting Standards Board, will be considered to be automatically incorporated and of mandatory application in Costa Rica.

[44] - The Code of Tax Laws and Procedures (Law 4755 of April 29, 1971), Article 82 of which provides penalties for the following offenses: “*a) Failure to keep books of account when it is mandatory to do so. b) Failure to have books of account notarized when it is mandatory to do so. c) Failure to exhibit books of account or supporting documents for transactions when requested to do so by the authorities. d) Having bookkeeping arrears of more than three months.*”

[45] - The Criminal Code (Law No. 4573), which, at Article 240 criminalizes the publication and authorization of false balances by businesspersons or cooperatives. In addition, Article 231 criminalizes, with respect to bankrupt companies, the stealing, destroying or falsifying of accounting records, or keeping records in such a way that makes a determination of the wealth of the business impossible. Article 360 of the Code establishes the crime of fraudulent misrepresentation, and sanctions “*those who include false statements or cause them to be included in a public or authentic documents, with respect to a fact that the document is to prove, which may result in harm*”; while Article 361 criminalizes the falsification or adulteration of a private document.

[46] In addition, there are also provisions applicable to other types of entities, such as those contained in the Law of Cooperative Associations and the Creation of the National Institute for Encouraging Cooperatives, the Law Regulating Non-Bank Financial Companies (Law No. 5044 of September 13, 1972); the Law Regulating the Insurance Market (Legislative Decree No. 8653); and the Law Regulating the Securities Market (Law No. 7732 of March 27, 1998)⁸; and the Organic Law of the Central Bank of Costa Rica (Law 7558).

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

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

⁸ Article 171 of Law 7732 provides, among the functions of the National Council for Supervision of the Financial System, the following: “...*(ñ) Approve the provisions related to accounting and auditing records, pursuant to generally accepted accounting standards, as well as the frequency of publication and informing external auditors which are required of supervised individuals. In the event of a conflict, these provisions will take precedence over those issued by the College of Public Accountants of Costa Rica; (o) Approve the provisions related to the periodicity, the scope, the procedures and the publication of the reports provided by the external auditors of supervised entities, for the purpose of achieving greater reliability of those audits; (p) Approve the standards applicable to internal audits of those entities supervised by the Superintendence, in order for them to properly execute their functions and strive for them to comply with legal provisions...*”.

[48] Nonetheless, the Committee considers that it might be useful for the country under review to consider complementing or adjusting certain provisions in this area, as follows:

[49] First, and with respect to the Code of Ethics for Public Accountants, the Committee notes that Article 10 thereof specifies the cases where a public accountant may disclose confidential information regarding his or her client. While the Committee notes that Article 10(b) contemplates such a disclosure being made when required by law and in order “*to inform the appropriate public authorities of violations of law that might occur and which should be disclosed*”, the Committee has not found any provision which expressly requires public accountants to make such a disclosure to the relevant authorities when, through their bookkeeping responsibilities, detect anomalies, violations of law or acts of corruption. The Committee will formulate a recommendation in this regard. (See recommendation 2.4(a) in Chapter II of this report)

[50] Second, the Committee believes that it would be beneficial for the country under review to consider the adoption of such measures as it deems appropriate to make it easier for the organs and 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 (b) in Chapter II of this report.)

[51] Third, the Committee also considers that the country under review may wish 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)

[52] 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).

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

[53] With respect to results in this field, the response of the Republic of Costa Rica to the questionnaire notes that “*There is no statistical data.*”⁹

[54] Taking the foregoing into account, the Committee will formulate a recommendation to the country under review so that, through the organs and agencies responsible for 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 appropriate 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 to follow-up on the recommendations made in this report in relation thereto. (See recommendation 2.4(e) in Chapter II of this report)

⁹ See the response of Costa Rica to the questionnaire for the Third Round, at p. 9, available at: http://www.oas.org/juridico/spanish/mesicic3_cri_sp.htm

2.4. Conclusions and recommendations

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

[56] The Republic of Costa Rica has considered and adopted measured intended to create, maintain and strengthen provisions for the prevention of the bribery of domestic and foreign government officials, as described in section 2 of chapter II of this report.

[57] In light of the comments formulated in that section, the Committee suggests that the Republic of Costa Rica consider the following recommendation:

[58] Strengthen the standards for the prevention of bribery of domestic and foreign government officials. To comply with this recommendation, the Republic of Costa Rica could take the following measures into account:

- a. Adopt, in accordance with its legal framework, and by such means as it deems appropriate, pertinent measures to ensure that “professional secrecy” is not an obstacle for professionals whose activities are governed by the Code of Ethics of the College of Public Accountants of Costa Rica to bring to the attention of the appropriate authorities any acts of corruption that they discover in the course of their work (see Chapter II, Section 2.2 of this report).
- b. Consider adopting the measures it deems appropriate to facilitate the work of the organs or bodies responsible for preventing or investigating noncompliance with measures for safeguarding the accuracy of accounting records, and to help them detect amounts paid for corruption that are concealed in those records, such as the following (see section 2.2 of Chapter II of this report):
 - i. Review methods, including account inspections and analysis of periodically requested information, by which to detect anomalies in accounting records that could indicate the payment of sums for corruption;
 - ii. 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;
 - iii. Manuals, guidelines or directives on the manner in which accounting records should be reviewed to detect sums paid for corruption;
 - iv. Computer programs that allow ready access to the information needed to verify the truthfulness of accounting records and their substantiating documentation, and the possibility of obtaining information from financial institutions for this purpose;

- v. Institutional coordination mechanisms to facilitate timely collaboration from other institutions or authorities as necessary to perform such verification or to establish the authenticity of the substantiating documentation;
 - vi. Training programs for their employees, designed specifically to alert them to the methods used to disguise bribes in accounting records, and to instruct them on ways of detecting such payments
- c. Hold awareness campaigns targeted at persons responsible for keeping accounts and verifying their accuracy, as to the importance of observing the rules issued to guarantee the truthfulness of those records and the consequences of violation, and implement training programs designed specifically for internal comptrollers in publicly held companies and other types of associations who are required to keep accounts, to instruct them in ways of detecting acts of bribery in the course of their work (see section 2.2 of Chapter II of this report).
- d. Consider holding awareness and integrity promotion campaigns that target the private sector and consider adopting measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption (see section 2.2 of Chapter II of this report).
- e. Select and develop, through the authorities responsible for preventing and/or investigating violations of measures designed to safeguard the accuracy of accounting records and protect their contents, as well as the other authorities or entities that have responsibility in this area, procedures and indicators, when appropriate and where they do not yet exist, to analyze the objective results obtained in this regard and to follow-up on the recommendations formulated in this report in relation thereto. (See section 2.3 of chapter II of this report)

3. TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)

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

[59] The Republic of Costa Rica has a set of provisions related to transnational bribery, among which the following should be noted:

[60] - Article 55 of the Law against Corruption and the Illicit Enrichment in Public Service, which provides that *“A prison term of between two and eight years shall apply to anyone who offers or gives to an official of another state, irrespective of the level of government or public agency or company in which he is employed, or to an officer of an international organization or entity, directly or indirectly, any gift, reward, or undue benefit, be it for the official or for another person, for that official, in the use of his position, to make, delay, or omit to perform any action or to unduly bring to bear the influence derived from his position with respect to any other official. The punishment shall be between three and ten years if the bribe is given for the official to perform an action contrary to his duties. - The same punishment shall apply to anyone who requests, accepts, or receives such a gift, reward, or benefit.”*

[61] In this regard, the response of the country under review notes that “...*the Costa Rican State’s legal system considers transnational bribery an act of corruption.*”¹⁰

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

[62] With respect to the provisions related to the criminalization of transnational bribery as provided for by Article VIII of the Convention, the Committee notes that based on the information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

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

[63] With respect to results in this field, the response of the Republic of Costa Rica to the questionnaire notes that “*The offense of transnational bribery was only recently incorporated into Costa Rican law: it is covered by the Law against Corruption and Illicit Enrichment in Public Service, which came into force in 2005 and so, to date, there have been no criminal proceedings instituted in connection with the offense.*”¹¹

[64] Taking the foregoing into account, the Committee will formulate a recommendation to the country under review so that, through the organs and 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 strengthening the existing procedures and indicators, to analyze objective results obtained in this area. (See recommendation 3.4(a) in Chapter II of this report)

3.4. Conclusions and recommendation

[65] 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 VIII of the Convention:

[66] The Republic of Costa Rica 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.

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

- a. Strengthen the existing procedures and indicators used by the organs and 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, to analyze the objective in this area. (See section 3.3 of chapter II of this report)

¹⁰ See the response of Costa Rica to the questionnaire for the Third Round, at p. 9, available at: http://www.oas.org/juridico/spanish/mesicic3_cri_sp.htm

¹¹ See the response of Costa Rica to the questionnaire for the Third Round, at p. 12, available at: http://www.oas.org/juridico/spanish/mesicic3_cri_sp.htm. In its observations on the draft preliminary report for the third round of review, the country under review noted that “*there is no statistical parameter on the subject of transnational bribery that allows the results of the statutory offence to be evaluated, there has been no case in our system in which such a statutory offence has been applied. However, the Supreme Court of Justice has a department dedicated to this type of statistical analysis and the Planning Department publishes on its website data on the statistics obtained: www.poder-judicial.go.cr/planificaci3n/*”

4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

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

[68] The Republic of Costa Rica has a set of provisions related to illicit enrichment, among which the following should be noted:

[69] - Article 45 of the Law against Corruption and Illicit Enrichment in Public Service, which provides “*Illicit Enrichment. A prison term of between three and six years shall apply to any person who, making illegitimate use of a public office or the safekeeping, exploitation, use, or administration of public funds, services, or goods, under any title or type of management, by himself or through another person or corporate body, increases his net worth, acquires goods, enjoys rights, pays off debts, or extinguishes obligations affecting his net worth or that of corporate bodies in the equity of which he has a participation either directly or through other corporate bodies.*”^{12, v}

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

[70] With respect to the provisions related to the criminalization of illicit enrichment as provided for by Article IX of the Convention, the Committee notes that based on the information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

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

[71] With respect to results in this field, in its response, Costa Rica included a chart which lists the “cases of illicit enrichment registered with the Public Prosecution Service” (MP between 2001 and 2007).¹³ In this regard, the Committee notes that this allows for a determination that investigations have been carried out and that cases have been brought in connection with the offense of illicit enrichment. However, the Committee also observes that no information has been presented which indicates the results of judicial procedures related to illicit enrichment, nor of the final disposition of those cases.

[72] In the absence of further information presented in a manner that would allow it to make an overall assessment of results in this area, 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 illicit enrichment, it consider strengthening the existing procedures and indicators, to analyze objective results obtained in this area. (See recommendation 4.4(a) in Chapter II of this report)

¹² In its comments on the draft preliminary report for the third round of review, the country under review noted the following “*On this point it is necessary to clarify that, in accordance with all of the above articles, the criminal nature of Illicit Enrichment is not limited – as suggested by the Committee – since this type of crime, in the case of the Criminal Code, is included in crimes committed by public officials, and in the case of the Law against Corruption and Illicit Enrichment in Public service, as the law itself indicates, it is a crime of illicit enrichment in public service – an essential requirement to qualify as a crime of that nature – and also that, in the case of the illicit enrichment of a public official in the exercise of his functions, there has to be a relationship with an unlawful advantage taken by a public servant in the exercise of his functions. This results from the breach of the duty of probity by endangering the trust placed in the public official, when the rules of good management and service are violated.*

The other comments and legislation cited by the country under review have been included in en note “v”.

¹³ See the response of Costa Rica to the questionnaire for the Third Round, at p. 15, available at:

http://www.oas.org/juridico/spanish/mesicic3_cri_sp.htm

4.4. Conclusions and recommendation

[73] 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 IX of the Convention:

[74] The Republic of Costa Rica has adopted measures regarding the offense of illicit enrichment as provided in Article VIII of the Convention, as described in Chapter II, Section 4 of this report.

[75] In light of the comments formulated in that section, the Committee suggests that the Republic of Costa Rica consider the following recommendation:

- a. Strengthen the existing procedures and indicators used by the organs and agencies charged with the investigation and/or prosecution of the offense of illicit enrichment, and with requesting and/or providing assistance and cooperation with respect thereto, to analyze the objective results obtained in this area. (See section 4.3 of chapter II 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

[76] The Republic of Costa Rica criminalized transnational bribery as provided in Article VIII of the Inter-American Convention against Corruption, after the date on which it ratified the Convention and notified the OAS Secretary General of that criminalization by a communication dated January 8, 2009.

[77] The Republic of Costa Rica 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

[78] Bearing in mind that the Republic of Costa Rica criminalized transnational bribery as provided in Articles VIII of the Inter-American Convention against Corruption, after the date on which it ratified the Convention and has notified the OAS Secretary General of said criminalization, in accordance with Article X thereof, the Committee shall not offer any recommendation in that respect.

[79] The Committee notes that Costa Rica criminalized illicit enrichment prior to the enactment of the Convention. However, the Committee also observes that the particular paragraph of Article 346 of the Criminal Code, which addresses the offense, was repealed by the Law against Corruption and Illicit Enrichment in Public Service, which was enacted subsequent to the Convention. In this regard, Costa Rica's response to the questionnaire notes that "*Even before our country's ratification of the Inter-American Convention against Corruption, Costa Rican law criminalized the offense of illicit enrichment... Later, in 2004, following the enactment of the Law against Corruption and Illicit Enrichment, the definition of this offense was expanded to include ...*"¹⁴

¹⁴ See the response of Costa Rica to the questionnaire for the Third Round, at p. 14, available at: http://www.oas.org/juridico/spanish/mesicic3_cri_sp.htm

5.3. Conclusions

[80] Based on the review conducted in the sections 5.1 and 5.2 above, the Committee concludes that Costa Rica has complied with the provisions of Article X of the Convention.

6. EXTRADITION (ARTICLE XIII OF THE CONVENTION)

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

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

[82] – Article 31 of the Constitution, which provides in pertinent part that “...*Extradition shall be regulated by law or by international treaties, and shall never be admissible in cases of political crimes or related offenses, according to the Costa Rican definition thereof.*” In addition, Article 32 provides that “*No Costa Rican can be compelled to abandon the national territory.*”

[83] – The Extradition Law (Law No. 4795 of July 16, 1971, as amended by Law No. 5497 of March 21, 1971 and Law No. 5991 of November 1976, which provides at Article 1, that “*In the absence of treaties, both the conditions for and the procedure and effects of extradition shall be determined by this law, which shall also apply as regards all considerations not covered by the treaties.*”

[84] Article 3(a) of the Extradition Law provides that extradition will not be granted “*When at the time the punishable action was committed, the person sought was a Costa Rican national by birth or naturalization. Such cases shall be judged by the domestic courts...*” Article 3(b) provides that extradition will not be granted when the request is based on crimes committed by persons who are being tried or sanctioned in Costa Rica for the same crimes, or when those persons have been absolved or pardoned, or have served their sentence, while Article 3(d) provides that extradition will not be granted when the offense is not a crime pursuant to Costa Rican law, or when the statute of limitations under Costa Rican law has expired.

[85] Article 7 of the Extradition Law, which provides in pertinent part that “*Extradition may be requested through any form of communication, provided a warrant exists for the person sought and an undertaking to meet the requirements set for the procedure has been given. In this case the documents referred to in Article 9 shall be submitted to the Costa Rican embassy or consulate no more than ten days after the arrest of the person sought... If the provisions set herein are not met, the detained person shall be released and his or her extradition may not be sought anew through this summary procedure.*”

[86] Article 9(b) of the Extradition Law provides that the requested person shall be detained for up to two months during the processing of a request for extradition. In addition, Article 9(c) specifies the information that must be provided by the requesting state.

[87]- The bilateral extradition treaties¹⁵ entered into between Costa Rica and Colombia, Mexico, Nicaragua, Panama, and the United States, respectively, and which require,¹⁶ that in those cases where

¹⁵ These treaties may be consulted at: <http://www.oas.org/juridico/MLA/en/cri/index.html>

¹⁶ With the exception of the Treaty between Costa Rica and Nicaragua, which does not contain this notification requirement.

Costa Rica refuses to extradite its own nationals, the matter shall be submitted to the competent local authorities for processing, and that the requesting state is to be notified of the result.

[88] - The Law to Strengthen Anti-Terrorism Legislation, No. 8719 of March 4, 2009, which adds a new paragraph (4) to Article 6 of the Criminal Code, which provides in pertinent part: "*ARTICLE 6. - Action may be brought for punishable offences committed abroad, requiring the application of Costa Rican legislation when: 4) They were committed by a Costa Rican.*"

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

[89]With respect to provisions related to the extradition, the Committee notes that based on the information available to it, they can be said to constitute a set of pertinent measures for promoting the purposes of the Convention.

[90]The Committee nevertheless deems it appropriate to express the following comments:

[91]The Committee notes that pursuant to the Extradition Law, extradition is not conditional on the existence of a treaty between Costa Rican and the requesting state. In addition, the Committee observes that Costa Rica's Constitution prohibits the extradition of Costa Rican citizens. The Committee further observes that in those cases where extradition of a person is denied on the basis of their Costa Rican citizenship, the Extradition Law requires the person be tried in the local courts.

[92]The Committee has found no provision that requires Costa Rica to inform the requesting state of the disposition of those cases where an extradition request is denied on the basis that Costa Rica has jurisdiction over the offense. The Committee will formulate a recommendation in this regard. (See recommendation 6.4(a) in Chapter II of this report)

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

[93] With respect to results in this field, the response of Costa Rica notes that the Office of the Prosecutor General is responsible for processing extradition requests from other states, while each Judicial Chamber, together with the Public Ministry, is responsible for handling Costa Rican extradition requests to other states. In this connection, the response further notes that "*Consequently, this State Office only has statistics related to extradition cases in which Costa Rica is the requested party, and as regards the offenses contained in the Inter-American Convention against Corruption, in the past five years there have been no cases involving such offenses.*"

[94]In the absence of further information presented in a manner that would allow it to make an overall assessment of results in this area, the Committee will formulate a recommendation to the country under review so that, through the organs or agencies with responsibility for processing incoming and outgoing extradition requests, respectively, 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. The Committee will formulate a recommendation in this regard. (See recommendation 6.4(b) in Chapter II of this report)

[95]In addition, the Committee considers that it might be useful for the country under review to consider adopting the appropriate measures in order to benefit from a greater use of the Inter-American Convention against Corruption in extradition cases. This could consist, among other measures, in the

implementation of training programs regarding 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

[96] 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:

[97] The Republic of Costa Rica has adopted measures regarding extradition as provided in Article VIII of the Convention, as described in Chapter II, Section 6 of this report.

[98] In light of the comments formulated in that section, the Committee suggests that the Republic of Costa Rica consider the following recommendations:

- a. Continue adopting the measures necessary for the requesting state to be informed in a timely manner with respect to the disposition of cases where extradition is denied based on Costa Rica exercising jurisdiction over the offense in question. (See section 6.2 of chapter II of this report)
- b. Select and develop, through the competent organs or agencies, procedures and indicators, when appropriate and where they do not yet exist, to verify the follow up to the recommendations formulated in this report with respect to this area; and to analyze objective results obtained in relation to requests for extradition formulated to other States Parties to the Convention, for the investigation or prosecution of the crimes that have been criminalized pursuant thereto and the steps that have been taken to respond to similar requests from other States Parties. (See section 6.3 of chapter II of this report)
- c. Consider adopting the appropriate measures in order to benefit from a greater use of the Inter-American Convention against Corruption in extradition cases, which could consist of, among other measures, 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 FOR PREVIOUS ROUNDS

FIRST ROUND

[99] With respect to the implementation of the recommendations issued to the Republic of Costa Rica 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 required additional attention in

Section IV of the report for that round, and on the basis of the information available to it, referring to progress in their implementation subsequent to that report, the Committee notes the following:

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

1.1. Standards of conduct to prevent conflict of interest and mechanisms to enforce them

Recommendation 1.1

Consider strengthening the implementation of laws and regulatory systems related to conflicts of interest, in order to permit the effective and practical enforcement of a system of public ethics.

Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:¹⁷

- a. *Consider the possibility of bringing all public servants under a general regime with a single set of rules, which would assist public servants as well as the general public to understand more accurately their rights and duties, and overcome the existing disparity. Such a move should be without detriment to regimes governing specific sectors that by their nature may require specialized treatment or the establishment of more restrictive rules.*
- c. *Consider the possibility of incorporating into the legal system a rule that limits participation by former public servants, including those of senior rank, in the management of certain acts and in general in situations that could involve taking undue advantage of one's status as a former public servant, within a reasonable period of time and without resulting in an absolute restriction on their constitutional right to work. (See section 1.1.2 of this Report).*
- f. *Continue designing and implementing mechanisms for making all public servants aware of the rules of conduct, including those relating to conflicts of interest, and continue to provide training and periodic refresher courses on those rules.*
- g. *Compile information on cases of conflicts of interest so as to establish mechanisms of evaluation for verifying results on this issue (see section 1.1.3 of this Report).*
- h. *Analyze the possibility of inserting the necessary clarifications in the relevant regulatory framework to ensure a clear differentiation between conflicts of interest and disqualifications and incompatibilities, where appropriate.*

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:¹⁸

- b. *Strengthen the system of recruitment into the public administration and the existing rules governing incompatibility and disqualification, taking into account the following aspects, in light of the scope of legislation and the positions identified by law:*

¹⁷ See the report for Costa Rica from the Second Round, at p. 38, available at:

http://www.oas.org/juridico/english/mesicic_II_rep_cri.pdf

¹⁸ Ibid.

- i. *Supplement the rules of entry into the public service by strengthening the preventive mechanisms that facilitate detection of possible conflicts of interest that might impede such entry, including senior public positions.*
 - ii. *Develop other mechanisms to identify or detect any unexpected cause that could occur in the performance of public duties which could give rise to a conflict of interest.*
 - iii. *Consider the possibility of implementing measures as appropriate to establish and put into effect systems and mechanisms of a preventive nature for detecting conflicts of interest in the public service. Among other alternatives, consideration could be given to the feasibility of creating instruments such as the declaration or registry of interests or activities for certain public posts, either as part of the system of declarations of income, assets and liabilities, or as an independent instrument, and of having that instrument periodically updated, as well as creating and maintaining databases for search and consultation by the competent organs.*
- d. *Maintain duly up-to-date, expand and improve the registry of persons disqualified for public service under the Civil Service Regime, so that it may constitute, if it is not already, an effective instrument for preventing and detecting appointments to the public service that might be contrary to the provisions on prohibitions and disqualifications. Consider the possibility of requiring consultation of this register prior to the appointment of public servants of specified rank and category.*
- e. *The Committee urges the Republic of Costa Rica to continue with the amendments that it believes pertinent in the justice administration system, in order to speed up judicial procedures pertaining to violations of the standards of conduct for public servants.*

[100] The Committee notes that the country under review did not refer to measure (b)(i), above, in its response to the questionnaire. Accordingly, the Committee reiterates the need for the country to pay additional attention to its implementation.

[101] With respect to measure (b)(ii) above, in its response, the Republic of Costa Rica presents information additional to that analyzed by the Committee in the Report from the Second Round.¹⁹ In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[102] - The registry of those public officials who have been sanctioned and which is sent to the heads of human resources in the different Ministries within the Executive branch.

[103] The Committee takes note of the step taken by the country under review to progress with the implementation of measure (b)(ii), and reiterates the need for it to continue to give attention thereto.

[104] With respect to measure (b)(iii), above, in its response, the Republic of Costa Rica presents information additional to that analyzed by the Committee in the Report from the Second Round.²⁰ In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

¹⁹ See the response of Costa Rica to the Questionnaire for the Third Round, at p. 23, available at: http://www.oas.org/juridico/spanish/mesicic3_cri_resp_sp.pdf

²⁰ Ibid, at p. 24.

[105] - The plan of the Comptroller General of the Republic, to implement a project in 2009, to detect facts that could lead to administrative responsibility in relation to the regime of incompatibilities and prohibitions in the area of public procurement.

[106] The Committee takes note of the step taken by the country under review to progress with the implementation of measure (b)(iii), and reiterates the need for it to continue to give attention thereto.

[107] With respect to measure (d) above, in its response, the Republic of Costa Rica presents information additional to that analyzed by the Committee in the Report from the Second Round.²¹ In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[108] - The Disqualification Registry maintained by the Directorate General of the Civil Service, which, as noted by Costa Rica, is submitted to the Heads of Human Resources of the ministries for their confidential use.

[109] The Committee takes note of the step taken by the country under review to progress with the implementation of measure (d), and reiterates the need for it to continue to give attention thereto.

[110] With respect to measure (e), above, in its response, the Republic of Costa Rica presents information additional to that analyzed by the Committee in the Report from the Second Round.²² In this regard, the Committee notes, as a step which leads to a determination that the measure has been satisfactorily considered, those taken with respect to:

[111] - The passage of the Law on the Protection of Victims, Witnesses, and other Persons Involved in Criminal Proceedings, which, according to the country under review, “...creates an expedited procedure for in flagrante crimes that simplifies procedures and reduces the timeframes for their duration, with guarantees of due process and the right of defense. Corruption cases requiring investigation are processed in accordance with the regular criminal procedure, and in particularly complex cases the timeframes are extended by means of a procedure specifically established for such circumstances.”²³

[112] The Committee takes note of the satisfactory consideration by Costa Rica of measure (e) of the foregoing recommendation, without entering into an in-depth analysis of the content of the Law.

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

Recommendations suggested by the Committee that were satisfactorily considered within the Framework of the report for the Second Round:²⁴

Recommendation 1.2.1

²¹ Ibid, at p. 25.

²² Ibid.

²³ Ibid.

²⁴ See the report for Costa Rica from the Second Round, at p. 39, available at:

http://www.oas.org/juridico/english/mesicic_II_rep_cri.pdf

The Committee recognizes with satisfaction that the Republic of Costa Rica has rules of conduct and mechanisms for ensuring the preservation and proper use of resources entrusted to public servants in the performance of their duties, and it welcomes the efforts that have been made in recent years to improve its public legal system and the principles of efficiency, efficacy, transparency and accountability as essential elements of public management. It encourages the Republic of Costa Rica to continue improving those rules and mechanisms.

Recommendation 1.2.2

Continue designing and implementing mechanisms for making all public servants aware of the rules of conduct, and for answering any questions with regard to the same, including those relating to conflicts of interest, and continue providing training and periodic refresher courses on those rules.

[113] The Committee notes that recommendation 1.2.1 and 1.2.2, above, were deemed to have been satisfactorily considered within the framework of the report for the Second Round. Nonetheless, taking into account that that report noted that these recommendations, due to their nature, are continuous in nature, the Committee looks forward to the country under review reporting on actions developed in this regard, in the annual progress reports provided for by Article 32 of the Rules of Procedure.

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

Strengthen existing mechanisms that require public servants to report to the appropriate authorities acts of corruption in the public service of which they are aware.

Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:²⁵

- a. Regulate the presentation of these reports, facilitating even more their presentation and establishing requirements for presentation that do not inhibit potential informers. Implement mechanisms for protecting public servants who report acts of corruption, including the confidentiality of the identity of informers.*
- c. Facilitate the presentation of reports by using the most appropriate means of communication, including electronic means.*
- d. Advance, even further, in efforts intended to train civil servants as to the existence and purpose of their responsibility to report acts of corruption of which they are aware to the appropriate authorities, including the system for protecting witnesses in these cases and to urge the Republic of Costa Rica to consolidate progress already made in this direction by the Office of the Public Ethics Prosecutor.*

Measures suggested by the Committee that require information on their implementation or which required additional attention, within the Framework of the Second Round.²⁶

²⁵ See the report for Costa Rica from the Second Round, at p. 38, available at:

http://www.oas.org/juridico/english/mesicic_II_rep_cri.pdf

²⁶ Ibid, at p. 40.

- b. *Assess the relevance of offering greater protection to civil servants who report acts of corruption, especially in cases where their hierarchical superiors are involved in the acts being reported.*

[114] With respect to measure (b), above, in its response, the Republic of Costa Rica presents information additional to that analyzed by the Committee in the Report from the Second Round.²⁷ In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[115] - The Law on the Protection of Victims, Witnesses, and other Persons Involved in Criminal Proceedings.

[116] The Committee takes note of the step taken by the country under review to progress with the implementation of this measure, and reiterates the need for it to continue to give attention thereto.

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

Recommendation 2.1

Improve the systems for supervising and evaluating the contents of declarations of income, assets and liabilities, and regulate their publication.

Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:²⁸

- a. *Define clearly the objective of this instrument, either as a means to promote greater transparency in the functions of public servants as a way of detecting illicit enrichment or other criminal behavior, and as an instrument for detecting, preventing and punishing conflicts of interest.*
- b. *Implement a system for the declaration of capital and other assets, liabilities and interests for use in detecting, avoiding, and punishing conflicts of interest, illicit enrichment, and other illicit acts.*
- c. *Continue to take the decisions necessary to ensure that the obligation to file a declaration, and the mechanisms for enforcing this obligation, can be extended to other public servants who hold positions that may, by their nature, facilitate or generate illicit enrichment or other illegal acts against the public interest, for example some of the popularly elected positions that are not covered by the current rules.*
- f. *Strengthen the CGR, as necessary, to ensure that it has the material and human resources needed to perform its work of managing the system of sworn declarations of income, assets and liabilities.*
- g. *Expand the current system of penalties and violations applied to former public officials who fail to fulfill the requirements in this respect upon leaving office.*

²⁷ See the response of Costa Rica to the Questionnaire for the Third Round, at pp. 34-35, available at: http://www.oas.org/juridico/spanish/mesicic3_cri_resp_sp.pdf

²⁸ See the report for Costa Rica from the Second Round, at p. 42, available at: http://www.oas.org/juridico/english/mesicic_II_rep_cri.pdf

- h. *Strengthen existing programs, or implement new ones, to train public servants in the provisions governing application of the system for declarations of income, assets and liabilities; design and introduce mechanisms to disseminate the system among the public servants who are required to enforce it, to ensure their thorough familiarity with the applicable provisions.*
- i. *Make best efforts to optimize and improve compliance with the income, asset and liabilities declaration requirement by the public servants concerned, taking into account regulatory or other adjustments that may be necessary for this.*

Measures suggested by the Committee that require information on their implementation or which required additional attention, within the Framework of the Second Round.²⁹

- d. *Regulate the conditions, procedures and other aspects relating to the public disclosure, as appropriate, of declarations of income, assets and liabilities, subject to the Constitution and the fundamental principles of law.*
- e. *Establish systems for the effective and efficient verification of the contents of sworn declarations of income, assets and liabilities, establishing occasions and time limits for such verifications, strengthening the powers of the CGR for scheduling verifications, ensuring that the verification applies to a representative number of declarations, and establishing actions to overcome obstacles to required sources of information; and take the necessary decisions to ensure cooperation between the CGR and other sectors, such as the financial and taxation authorities, to facilitate the exchange of information for verifying the contents of these declarations.*

[117] In its response, the Republic of Costa Rica presents information that it considers related to measure (d), above.³⁰ The Committee reiterates the need for the country under review to pay additional attention to its implementation.

[118] With respect to measure (e) above, in its response, the Republic of Costa Rica presents information additional to that analyzed by the Committee in the Report from the Second Round.³¹ In this regard, the Committee notes, as steps which contribute to progress in the implementation of the measure, the following:

[119] - The mechanisms that have been developed by the Office of the Comptroller General of the Republic, with respect to verification of the effective and efficient verification of the statements of assets, including the “...a computer application was put in place in the second half of 2008 to verify the information reported in the components deemed to be publicly accessible, through crosschecking against other databases.”³²

[120] The Committee takes note of the steps taken by the country under review to progress with the implementation of measure (e), and reiterates the need for it to continue to give attention thereto.

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

²⁹ Ibid.

³⁰ See the response of Costa Rica to the Questionnaire for the Third Round, at p. 36, available at: http://www.oas.org/juridico/spanish/mesicic3_cri_resp_sp.pdf

³¹ Ibid, at p. 37.

³² Ibid.

Recommendations suggested by the Committee that require information on their implementation or which required additional attention, within the Framework of the Second Round:³³

Recommendation 3.1

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

Recommendation 3.2

Compile information on their functioning so that evaluation mechanisms can be implemented.

[121] In its response, the Republic of Costa Rica presents information that it considers is related to recommendation 3.1, above.³⁴ The Committee reiterates the need for the country under review to pay additional attention to its implementation.

[122] The Committee notes that the country under review did not refer to recommendation 3.2, above, in its response. Accordingly, the Committee reiterates the need for the country to pay additional attention to its implementation.

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

4.2. Mechanisms for access to information

Recommendation 4.2.1

Institute legal standards and measures to support access to public information.

Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:³⁵

- a. *Institute training and refresher programs to ensure that public officials understand and can apply, in a proper and timely manner, the rules and provisions protecting access to public information, and that they recognize the consequences, both for the administration and for themselves, when they deny such access without justification.*
- e. *Continue strengthening and expanding information systems in the form of institutional web pages, as an effective means of publicizing the management of government affairs. The*

³³ See the report for Costa Rica from the Second Round, at p. 42-43, available at: http://www.oas.org/juridico/english/mesicic_II_rep_cri.pdf

³⁴ See the response of Costa Rica to the Questionnaire for the Third Round, at p. 37, available at: http://www.oas.org/juridico/spanish/mesicic3_cri_resp_sp.pdf

³⁵ See the report for Costa Rica from the Second Round, at p. 44-45, available at: http://www.oas.org/juridico/english/mesicic_II_rep_cri.pdf

Committee recognizes the wide spectrum of electronic resources that the Republic of Costa Rica is developing to permit broad public access to information.

Measures suggested by the Committee that require information on their implementation or which required additional attention, within the Framework of the Second Round:³⁶

- b. *Consider the advisability of integrating and systematizing in a single regulatory text the provisions that guarantee access to public information.*
- c. *Continue to create and to strengthen the Departmental Comptrollers' Offices, giving them the necessary human, technical and financial resources and publicizing the system and the services it offers, consistent with the study that the country conducted.*
- d. *Strengthen the mechanisms that guarantee the right of access to public information, so that it cannot be denied for reasons other than those determined by law, or on the basis of rules other than those established, establishing for this purpose, among other aspects, the following: i) procedures for accepting requests and responding to them on a timely basis; ii) requirements on admissibility and consequences when such requirements are not met; iii) reasons why a request may be denied; iv) method for communicating with the applicant; v) prompt and specialized administrative remedies for appealing a decision made by a public servant who improperly denies access to the information requested; and vi) increase the number of sanctions so as to cover a broader spectrum of circumstances that could hamper, delay or prevent the exercise of this right and that involve the conduct of public servants.*

[123] With respect to measure (b), above, in its response, the Republic of Costa Rica presents information additional to that analyzed by the Committee in the Report from the Second Round.³⁷ In this regard, the Committee notes, as steps which contribute to progress in the implementation of the measure, the following:

[124] - As noted by Costa Rica, "*This topic has been part of the Training Program developed by the office of the Attorney General of the Republic; efforts have been made to organize civil society, such as overtures with Transparency International for the reestablishing of the Costa Rica Chapter of TI, which is now pending.*"³⁸

[125] In its response, the Republic of Costa Rica presents information that it considers is related to recommendation 4.2.1(b), above.³⁹ The Committee reiterates the need for the country under review to pay additional attention to its implementation.

[126] In its response, the Republic of Costa Rica presents information that it considers is related to measures (c) and (d), above.⁴⁰ The Committee reiterates the need for the country under review to pay additional attention to their implementation.

4.3. Mechanisms for consultation

Recommendation 4.3

³⁶ Ibid.

³⁷ See the response of Costa Rica to the Questionnaire for the Third Round, at p. 38, available at: http://www.oas.org/juridico/spanish/mesicic3_cri_resp_sp.pdf

³⁸ Ibid.

³⁹ See the response of Costa Rica to the Questionnaire for the Third Round, at p. 38-39, available at: http://www.oas.org/juridico/spanish/mesicic3_cri_resp_sp.pdf

⁴⁰ Ibid.

Supplement existing consultation mechanisms, establishing, as appropriate, procedures that will offer greater opportunities to hold public consultations before designing public policies and approving legal provisions.

Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:⁴¹

- a. *Create greater opportunities within the Legislative Assembly for civil society to express an opinion during debate and approval of legislation, and make such hearings mandatory when the matters discussed are sufficiently important or sensitive, with due regard to maintaining a proper balance between the need to encourage such participation and the need to maintain the efficient functioning of the Legislature.*
- b. *Applying at the national level, consultation instruments similar to those of the Municipal Regime, and allowing those instruments to be convened, locally and nationally, by popular initiative, for issues where this is considered useful.*
- c. *Using instruments similar to those already in place in specific areas, such as the environment and urban planning, for consultation in other matters, or develop other suitable mechanisms for consultations in further areas.*

Measures suggested by the Committee that require information on their implementation or which required additional attention, within the Framework of the Second Round:⁴²

- d. *The possibility of formulating specific provisions within the current constitutional and legal framework to promote the creation and recognition of bodies representing civil society organizations and institutions at the municipal level, authorized to review and to propose public policies in specified areas, establishing at the same time the right to obtain information as appropriate.*
- e. *The possibility of formulating specific provisions within the current constitutional and legal framework to incorporate, organize, and recognize urban community institutions (neighborhood councils or committees) with the authority and right to present initiatives and requests for municipal works and services for their neighborhoods.*

[127] The Committee notes that the country under review did not refer to measures (d) and (e) of the foregoing recommendation in its response. Accordingly, the Committee reiterates the need for the country under review to pay additional attention to their implementation.

4.4. Mechanisms to encourage participation in public administration

Recommendation 4.4

Strengthen and continue implementing mechanisms to encourage civil society and nongovernmental organizations to participate in public administration.

Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:⁴³

⁴¹ See the report for Costa Rica from the Second Round, at p. 47, available at: http://www.oas.org/juridico/english/mesicic_II_rep_cri.pdf

⁴² Ibid.

⁴³ See the report for Costa Rica from the Second Round, at p. 48, available at: http://www.oas.org/juridico/english/mesicic_II_rep_cri.pdf

- c. *Continue to promote and strengthen programs with objectives similar to those of the Office of Popular Initiative created by the Legislature.*
- d. *Design and implement programs to disseminate mechanisms for encouraging participation in public management and, as appropriate, provide training and the necessary tools to civil society, and nongovernmental organizations, and public officials and employees for using those mechanisms.*

Measures suggested by the Committee that require information on their implementation or which required additional attention, within the Framework of the Second Round:⁴⁴

- a. *Establish additional mechanisms that strengthen the participation of civil society organizations in public management and especially in efforts to prevent corruption, and promote awareness of those mechanisms and their use.*
- b. *Determine that the result derived from the exercise of these mechanisms be considered a vital contribution to the decision-making process.*

[128] With respect to measure (a) above, in its response, the Republic of Costa Rica presents information additional to that analyzed by the Committee in the Report from the Second Round.⁴⁵ In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[129] - The creation of the “judicial observatory”, which can be consulted at <http://www.poder-judicial.go.cr/observatoriojudicial/vol68/capacitacion/cp02.htm>, and which, as noted by the country under review, “...among other functions, monitors and publicizes the implementation of the Internal Control Law within the judicial branch.”⁴⁶

[130] The Committee takes note of the step taken by the country under review to progress with the implementation of measure (a), and reiterates the need for it to continue to give attention thereto.

[131] The Committee notes that the country under review did not refer to measures (b) of the foregoing recommendation in its response. Accordingly, the Committee reiterates the need for the country under review to pay additional attention to its implementation.

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

Recommendation 4.5

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

Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:⁴⁷

⁴⁴ Ibid.

⁴⁵ See the response of Costa Rica to the Questionnaire for the Third Round, at p. 41, available at: http://www.oas.org/juridico/spanish/mesicic3_cri_resp_sp.pdf

⁴⁶ Ibid.

⁴⁷ See the report for Costa Rica from the Second Round, at p. 48, available at: http://www.oas.org/juridico/english/mesicic_II_rep_cri.pdf

- a. *Promote additional methods, when appropriate, that will allow, facilitate and assist civil society organizations in the development of activities for the follow-up of public administration.*
- c. *The possibility of including specific provisions within the existing legal framework authorizing civil society institutions created and organized at the municipal level to oversee and monitor the allocation and use of public resources.*

Measures suggested by the Committee that require information on their implementation or which required additional attention, within the Framework of the Second Round.⁴⁸

- b. *Consider the implementation of awareness and training programs, in addition to those that already exist, directed at civil society and nongovernmental organizations on the aspects dealt with in sections 4.1 to 4.5 of this Report.*
- d. *The convenience of establishing mechanisms within the existing legal framework, which grant civil and urban communities that are created and organized at the provincial level, functions and powers to monitor municipal works and services for the neighborhood, and the use of resources budgeted and allocated for that purpose.*

[132] With respect to measure (b), above, in its response, the Republic of Costa Rica presents information additional to that analyzed by the Committee in the Report from the Second Round.⁴⁹ In this regard, the Committee notes, as steps which contribute to progress in the implementation of the measure, the following:

[133] - The work plans developed by the Institute for the municipal Encouragement and Consultation (IFAM), with each of the operative teams in each “canton”, as well as the workshops that have been executed on the formulation of projects with municipal funds.

[134] - The actions carried out by the IFAM towards the implementation of the National Decentralization Policy and the approval of a Framework Law for the Transferring of Functions.

[135] - The meetings facilitated by the IFAM with municipalities in order to diagnose needs, select priorities and subsequently develop projects.

[136] The Committee takes note of the steps taken by the country under review to progress with the implementation of measure (b), and reiterates the need for it to continue to give attention thereto.

[137] The Committee notes that the country under review did not refer to measures (d) of the foregoing recommendation in its response. Accordingly, the Committee reiterates the need for the country under review to pay additional attention to its implementation.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

⁴⁸ Ibid.

⁴⁹ See the response of Costa Rica to the Questionnaire for the Third Round, at p. 42, available at: http://www.oas.org/juridico/spanish/mesicic3_cri_resp_sp.pdf

Recommendations suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:⁵⁰

Recommendation 5.1

Determine those specific areas in which the Republic of Costa Rica sees the need for technical cooperation with other States party in order to strengthen its capacities to prevent, detect, investigate and punish acts of corruption. As well, the Republic of Costa Rica needs to determine and prioritize requests for mutual assistance in investigating or prosecuting cases of corruption.

Recommendation 5.2

Continue efforts to exchange technical cooperation with other States party on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption.

Recommendation 5.3

Design and implement a comprehensive information and training program for responsible authorities and officials, with the objective of ensuring that they are aware of and can apply mutual assistance provisions for the investigation or prosecution of acts of corruption provided for in the Convention and in other treaties subscribed by Costa Rica.

Recommendation 5.4

Design and implement an information program with which the Costa Rican authorities can ensure follow-up to requests for legal assistance relating to acts of corruption and, in particular, those covered by the Inter-American Convention against Corruption.

[138] The Committee notes that recommendations 5.1, 5.2, 5.3 and 5.4, above, were deemed to have been satisfactorily considered within the framework of the report from the Second Round. Nonetheless, taking into account that that report noted that these recommendations, due to their nature, are continuous in nature, the Committee looks forward to the country under review reporting on actions developed in this regard, in the annual progress reports provided for by Article 32 of the Rules of Procedure.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

Recommendations suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:⁵¹

Recommendation 6.1

Conclude the formalities necessary to finalize the appointment of the Office of the Public Ethics Prosecutor as the Central Authority described in Article XVIII of the Convention for the purposes of the international technical assistance and cooperation set forth therein.

⁵⁰ See the report for Costa Rica from the Second Round, at pp. 49-50, available at: http://www.oas.org/juridico/english/mesicic_II_rep_cri.pdf

⁵¹ Ibid, at pp. 50-51.

Recommendation 6.2

Inform the General Secretariat of the OAS of the appointment of the Office of the Public Ethics Prosecutor as the central authority, in accordance with established formalities.

Recommendation 6.3

Ensure that, once the authority is designated, it has the resources necessary to fulfill its functions.

[139] - The Committee notes that recommendations 6.1, 6.2 and 6.3 were deemed to have been satisfactorily considered within the framework of the Second Round.

7. GENERAL RECOMMENDATIONS

Recommendations suggested by the Committee that require information on their implementation or which required additional attention, within the Framework of the Second Round.⁵²

Recommendation 7.1

Design and implement, when appropriate, training programs for public servants in charge of applying the systems, standards, measures and mechanisms considered in this Report, with the objective of guaranteeing adequate knowledge, handling and implementation of the above.

[140] With respect to the foregoing recommendation, in its response, the Republic of Costa Rica presents information additional to that analyzed by the Committee in the Report from the Second Round.⁵³ In this regard, the Committee notes, as a step which contributes to implementation of this recommendation, the following:

[141] *“As has already been indicated in this report, the oversight agencies have trained civil servants and private citizens. The additional topics and activities will be indicated in the Plan of Action.”*

[142] The Committee takes note of the step taken by the country under review to progress with the implementation of recommendation 7.1, and reiterates the need for it to continue to give attention thereto.

Recommendation 7.2

Select and develop procedures and indicators, as appropriate, which enable verification of the follow-up to the recommendations contained in this Report, and communicate the results of this follow-up to the Committee through the Technical Secretariat. With this in mind, consider taking into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee; as well, consider information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.

⁵² See the report for Costa Rica from the Second Round, at pp. 51-52, available at: http://www.oas.org/juridico/english/mesicic_II_rep_cri.pdf

⁵³ See the response of Costa Rica to the Questionnaire for the Third Round, at p. 44, available at: http://www.oas.org/juridico/spanish/mesicic3_cri_resp_sp.pdf

[143] With respect to the foregoing recommendation, in its response, the Republic of Costa Rica presents information additional to that analyzed by the Committee in the Report from the Second Round.⁵⁴ In this regard, the Committee notes, as a step which contributes to implementation of this recommendation, the following:

[144] *“Currently, and with the assistance of the OAS Secretariat, a National Plan for implementation of the MESICIC’s recommendations is being drawn up. The method chosen provides that each measure will indicate the actions to be taken, the agencies responsible, performance indicators, timeframes, and estimated costs.”*

[145] The Committee takes note of the step taken by the country under review to progress with the implementation of recommendation 7.2, and reiterates the need for it to continue to give attention thereto.

Recommendation 7.3

Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this Report, and the recommendations contained in it.

[146] The Committee notes that the country under review did not refer to recommendation 7.3, above, in its response. Accordingly, the Committee reiterates the need for the country to pay additional attention to its implementation.

SECOND ROUND

[147] Based on the information available to it, the Committee offers the following observations with respect to the implementation of the recommendations formulated to the Republic of Costa Rica in the report from the Second Round:

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 the hiring systems for employees of the Executive branch.”

Measures Suggested by the Committee:

- a) *Enact guidelines in order to enforce Article 27 of the Civil Service Statute, with objective criteria.*

⁵⁴ Ibid.

- b) *Continue with efforts and strengthen the provisions required for the publication of the Descriptive Manual of Civil Service Posts, as well as updates thereto, via the internet.*
- c) *Continue with efforts and strengthen the provisions required for the publication of the Executive branch vacancy announcements, through the development of an electronic system which allows for the publication and dissemination of such vacancies to the public at large.*

[148] In its response, the Republic of Costa Rica presents information that it considers is related to the implementation of measure (a) of the foregoing recommendation.⁵⁵ In this regard, the Committee takes note of the need for Costa Rica to pay additional attention to the implementation of this measure.

[149] In its response, the Republic of Costa Rica presents information with respect to the implementation of measures (b) and (c) of the foregoing recommendation.⁵⁶ In this regard, the Committee notes, as steps which contribute to progress in the implementation of the recommendation, those steps taken with respect to the following:

[150] – The publication, via Internet, by the Directorate General of the Civil Service, of the Manuals of Specialties and Classes, Manuals of Position Classes, Institutional Manuals, and Manuals of Teaching Position Classes.

[151] – The publication of vacancies in the Executive Branch, online, at:
<http://www.sercivil.go.cr/dgsnet/concursos.aspx>

[152] The Committee takes notes of the steps taken by the Republic of Costa Rica to move towards implementation of the foregoing recommendation, through the steps taken with respect to measures (b) and (c), as well as of the need for Costa Rica to continue to give attention thereto.

Recommendation 1.1.2:

“Strengthen the hiring systems for employees of the Legislative branch.”

Measures Suggested by the Committee:

- a) *Enact guidelines in order to enforce article 12 of the Law for Personnel of the Legislative Assembly, with objective criteria.*
- b) *Continue with efforts and strengthen the provisions required for the publication of the Job Description Manual for Legislative Assembly Posts, as well as any updates thereto, such as by electronic publication via the internet.*
- c) *Continue with efforts and strengthen the provisions required for the publication of vacancies in the Legislative branch, through the development of an electronic system which allows for the publication and dissemination of such vacancies to the public at large.*

⁵⁵ See the response of Costa Rica to the questionnaire for the Third Round, at p. 45, available at:
http://www.oas.org/juridico/spanish/mesicic3_cri_sp.htm

⁵⁶ Ibid, at p. 46.

[153] In its response, the Republic of Costa Rica presents information that it considers is related to the implementation of measure (a) of the foregoing recommendation.⁵⁷ In this regard, the Committee takes note of the need for Costa Rica to pay additional attention to the implementation of this measure.

[154] In its response, the Republic of Costa Rica presents information with respect to the implementation of measures (b) and (c) of the foregoing recommendation.⁵⁸ In this regard, the Committee notes, as steps which contribute to progress in the implementation of the recommendation, those steps taken with respect to the following:

[155] – The steps taken towards the design of a new Internet portal for Legislative Branch, where, as noted by the country under review, legislative branch vacancies as well as the new job description manuals will be published.

[156] The Committee takes note of the steps taken by the Republic of Costa Rica to move towards implementation of measure (b) and (c) of the foregoing recommendation, as well as the need for Costa Rica to continue to give attention thereto.

Recommendation 1.1.3:

“Strengthen the hiring systems for employees of the Judicial branch.”

Measures Suggested by the Committee:

- a) *Continue with efforts and strengthen the provisions required for the publication of vacancies for those who fall within the category of employee/ service official (“servidores”/funcionarios de servicio”) in the Judicial branch, as is the case with vacancies for those who comprise the career service. These vacancies, together with career service vacancies may be published by means of an electronic system which allows for their dissemination to the public at large, possibly via the internet.*
- b) *Continue with efforts and strengthen the provisions required for the publication of the Post Classification Manual, as well as any updates thereto, via the internet.*

[157] In its response, the Republic of Costa Rica presents information with respect to the implementation of measure (a) of this recommendation.⁵⁹ In this regard, the Committee notes, as a step which contributes to progress in the implementation of the recommendation, the step taken with respect to the following:

[158] – As noted by Costa Rica, *“All competitions for civil servants and officers in the judicial branch are published on the intranet, to which 8,000 employees have access. They are also publicized outside the judiciary through the information boards that are freely accessible by the public. Since information on competitions and the descriptive positions manual is public, it is also available to any member of the public who requests it. It can also be seen on the internet, at*

⁵⁷ Ibid, at p. 46.

⁵⁸ Ibid, at p. 47.

⁵⁹ Ibid, at p. 48.

*http://www.poder-judicial.go.cr/personal/concursos.htm, which sets out the requirements, forms, and procedure for access to those positions.*⁶⁰

[159] In its response, the Republic of Costa Rica presents information with respect to the implementation of measure (b) of this recommendation.⁶¹ In this regard, the Committee notes, as a step which contributes to progress in the implementation of the recommendation, the step taken with respect to the following:

[160] – The publication, via Internet, of the Descriptive Manual of Posts and Functions, at: <http://www.poder-judicial.go.cr/personal/manual.htm>

[161] The Committee takes notes of the step taken by the Republic of Costa Rica to move towards implementation of measure (a) and (b) of the foregoing recommendation, as well as the need for Costa Rica to continue to give attention thereto.

Recommendation 1.1.4:

“Strengthen the hiring systems for Public Ministry employees.”

Measure Suggested by the Committee:

- Continue the efforts required for the publication of vacancies via the Internet.

[162] In its response, the Republic of Costa Rica presents information with respect to the implementation of this measure.⁶² In this regard, the Committee notes, as a step which contributes to progress in the implementation of the recommendation, the step taken with respect to the following:

[163] – The publication, via Internet, of Public Ministry vacancies at: <http://www.poder-judicial.go.cr/personal/concursos/htm>

[164] The Committee takes notes of the step taken by the Republic of Costa Rica to move towards implementation of the foregoing recommendation, as well as the need for Costa Rica to continue to give attention thereto.

Recommendation 1.1.5:

“Strengthen the hiring systems for Comptroller General employees.”

Measures Suggested by the Committee:

- a) *Enact guidelines in order to enforce Article 3 of the Law on Salaries and the Merit Regime of the Comptroller General of the Republic, with objective criteria.*
- b) *Continue efforts and strengthen the provisions required for the publication of vacancies in the Office of the Comptroller General, via the internet.*

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

- c) *Continue efforts and strengthen the provisions required for the publication of the Descriptive Manual of Posts, as well as any updates thereto, via the internet*

[165] In its response, the Republic of Costa Rica presents information with respect to the implementation of measure (a) of this recommendation.⁶³ In this regard, the Committee notes, as a step which contributes to progress in the implementation of the recommendation, the step taken with respect to the following:

[166] – The efforts by the Comptroller General of the Republic to “*strengthen the Human Potential Management process, a part of the Knowledge Management macroprocess, as provided by the General Comprehensive Oversight Manual (MEGEFI), which is the highest-level regulatory instrument for regulating and describing, in general terms, the processes to be followed by the office of the Comptroller General of the Republic in performing its public treasury oversight duties.*”⁶⁴

[167] In its response, the Republic of Costa Rica presents information with respect to the implementation of measure (b) of this recommendation.⁶⁵ In this regard, the Committee notes, as a step which contributes to progress in the implementation of the recommendation, those steps taken with respect to the following:

[168] – The publication, via Internet, of vacancies in the Office of the Comptroller General of the Republic.

[169] The Committee takes notes of the steps taken by the Republic of Costa Rica to move towards implementation of measures (a) and (b) of the foregoing recommendation, as well as the need for Costa Rica to continue to give attention thereto.

[170] In its response, the Republic of Costa Rica presents information that it considers is related to measure (c) of the foregoing recommendation.⁶⁶ In this regard, the Committee notes, as a step which contributes to progress in the implementation of the recommendation, those steps taken with respect to the following:

[171] The publication of the Descriptive Manual of Posts on the institutional intranet of the Comptroller General.

[172] The Committee takes notes of the steps taken by the Republic of Costa Rica to move towards implementation of measure (c) of the foregoing recommendation, as well as the need for Costa Rica to continue to give attention to the implementation thereof.

1.2. Government Systems for the Procurement of Goods and Services

Recommendation 1.2.1

“Ensure observance of the public bidding regime, when public bidding is the procedure to be applied pursuant to law.”

⁶³ Ibid, at p. 49.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

[173] In its response, the Republic of Costa Rica presents information that it considers is related to recommendation 1.2.1, above.⁶⁷ The Committee notes the need for the country under review to pay additional attention to its implementation.

Recommendation 1.2.2

“Strengthen the systems for the contracting of public works by implementing provisions addressing the following:

- *Provisions which develop and implement a comprehensive citizen oversight mechanism that covers all the different stages of public works procurement procedures, without prejudice to existing internal or external institutional controls.”*

[174] In its response, the Republic of Costa Rica presents information that it considers is related to recommendation 1.2.2, above.⁶⁸ In this regard, the Committee notes the need for the country under review to pay additional attention to its implementation.

Recommendation 1.2.3:

“Consider the creation of a national Registry of Providers, which could be used by all of the entities of the Public Administration.”

[175] In its response, the Republic of Costa Rica presents information that it considers is related to recommendation 1.2.3, above.⁶⁹ In this regard, the Committee notes the need for the country under review to pay additional attention to its implementation.

Recommendation 1.2.4:

“Consider the possibility of extending the use of ComprARED to include the other branches and entities of the Public Administration.”

[176] In its response, the Republic of Costa Rica presents information that it considers is related to recommendation 1.2.4, above.⁷⁰ The Committee notes the need for the country under review to pay additional attention to its implementation.

Recommendation 1.2.5:

“Continue with efforts to ensure that SIAF maintains information on the results of the use of the exceptions to the applicability of the Law on Administrative Contracting, which allow an evaluation of how frequently each of those exceptions is relied upon.”

[177] In its response, the Republic of Costa Rica presents information with respect to the implementation of this recommendation.⁷¹ In this regard, the Committee notes, as steps which lead to a

⁶⁷ Ibid, at p. 50.

⁶⁸ Ibid, at p. 51.

⁶⁹ Ibid.

⁷⁰ Ibid, at p. 51.

⁷¹ Ibid, at p. 52.

determination that the recommendation has been satisfactorily considered, those steps taken with respect to the following:

[178] – As noted by Costa Rica, “*The SIAC is equipped to generate reports that identify the different kinds of exception to administrative contracting through the establishment of certain parameters. These reports are used as input for oversight processes. At the time this report was being drafted, the necessary statistical data was not available.*”⁷²

[179] The Committee takes notes of the satisfactory consideration by Costa Rica of the foregoing recommendation, which, due to its nature, requires continuity with respect to its implementation.

Recommendation 1.2.6:

“Establish guidelines which encourage the dissemination, prior to publication, of bid documents or invitations to participate in bidding processes, so that suggestions can be received from the private sector.”

[180] In its response, the Republic of Costa Rica presents information that it considers is related to recommendation 1.2.6, above.⁷³ The Committee notes the need for the country under review to pay additional attention to its implementation.

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

Recommendation 2:

“Adopt, through the respective authority, a comprehensive regulation on protection of public servants and private citizens who in good faith report acts of corruption, in accordance with the fundamental principles of its domestic legal order, which could include, among others, the following aspects:”

Measures Suggested by the Committee:

- a) *Protection for persons who report acts of corruption subject to investigation in administrative or judicial proceedings. (See Section 2 in Chapter II of this report)*
- b) *Protective measures aimed not only at protecting the physical integrity of the informant and his or her family, but also at protecting their employment situation, especially in the case of public servants, especially in cases where the acts of corruption may involve his or her hierarchical superior or colleagues. (See Section 2 in Chapter II of this report)*
- c) *Provisions which sanction the failure to observe the rules and/or duties relating to protection. (See Section 2 in Chapter II of this report)*
- d) *A simplified whistleblower protection application process.*

⁷² Ibid.

⁷³ Ibid.

- e) *Mechanisms which facilitate international cooperation in the foregoing areas, when appropriate, including the assistance and cooperation provided for by the Convention, as well as the exchange of experiences, training and mutual assistance*
- f) *The respective competence of judicial and administrative authorities with respect to this area, clearly distinguishing one from the other.*

[181] In its response, the Republic of Costa Rica presents information with respect to the implementation of the foregoing recommendation.⁷⁴ In this regard, the Committee notes, as a step which contributes to progress in the implementation of the recommendation, the following:

[182] The passage of the Law on the Protection of Victims, Witnesses, and other Persons Involved in Criminal Proceedings, which, as noted by the country under review, “*establishes a simplified and expedited procedure for handling requests for protection...*” and “*authorizes the Protection Unit in the Office of Victim Assistance in the Public Ministry to enter into agreements and maintain national and international relations...in order to facilitate compliance with the law.*” (FN,

[183] The Committee takes notes of the step taken by the country under review to proceed with the implementation of the measures of the foregoing recommendation, through compliance with measures (d) and (e) thereof, and of the need for it to continue to give attention to the remaining measures of this recommendation.

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

The Committee did not formulate recommendations in this section in the report from the Second Round.

4. GENERAL RECOMMENDATIONS

Based on the review and comments made throughout this report, the Committee suggests that the Republic of Costa Rica consider the following recommendations:

Recommendation 4.1:

“Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, provisions, measures, and mechanisms considered in this report, for the purpose of ensuring that they are adequately known, managed, and implemented.”

[184] In its response, the Republic of Costa Rica presents information with respect to the foregoing recommendation.⁷⁵ In this regard, the Committee notes, as a step which contributes to implementation of this recommendation, the following:

[185] *“As has already been indicated in this report, the oversight agencies have trained civil servants and private citizens. The additional topics and activities will be indicated in the Plan of Action.”*⁷⁶

⁷⁴ Ibid, pp. 53-57.

⁷⁵ Ibid, at p. 57.

⁷⁶ Ibid.

[186] The Committee takes note of the step taken by the country under review to progress with the implementation of recommendation 4.1, as well as of the need for it to continue to give attention thereto.

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, provisions, measures, and mechanisms considered in this report, and to verify follow-up on the recommendations made herein.”

[187] In its response, the Republic of Costa Rica presents information with respect to the foregoing recommendation.⁷⁷ In this regard, the Committee notes, as a step which contributes to its implementation, the following:

[188] *“Currently, and with the assistance of the OAS Secretariat, a National Plan for implementation of the MESICIC’s recommendations is being drawn up. The method chosen indicates that each measure will indicate the actions to be taken, the agencies responsible, performance indicators, timeframes, and estimated costs.”*⁷⁸

[189] The Committee takes note of the step taken by the country under review to progress with the implementation of recommendation 4.2, as well as of the need for it to continue to give attention thereto.

ENDNOTES

ⁱ ***“IV.- Deductible expenditure.*** *The arguments of the applicant on highest-level appeal turn on the issue of deductibility of expenses with respect to income tax, concretely, their substantiation and propriety. Hence the need briefly to establish in advance a number of principles in that regard. Income tax, as governed by Law 7092, is levied on profits and, in general, all regular or extra income, whether received or accrued, that originates from a Costa Rican source; the latter expression is understood to refer to income generated from services rendered, property situated, or capital used in Costa Rican territory (Article 1). Income tax is also imposed on all increases in net worth that are not duly justified. This is precisely its material element. It is based on the concept of net income; that is, it is levied on wealth or activities that give rise to a profit or a tax obligation. This means that the income that is liable to tax is that which originates from the use of production factors (land, labor and capital), but only in the fraction of the wealth net of the costs and expenditures incurred to produce it. Otherwise, the nature of the tax would be compromised, as it would be imposed on the base that yields the profit and not on the profit itself. Therefore, its calculation base consists of the taxable net income defined in paragraph 7 of this law as “...the result produced by deducting from the gross income the*

⁷⁷ Ibid.

⁷⁸ Ibid.
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appropriate expenses and costs necessary to produce a profit or benefit along with all other outlays expressly authorized by law, duly supported by vouchers and set down in the accounting records.” Accordingly, Under Article 5 of Law 7092, gross income should be understood as all the benefits or income received or accrued by the taxable person in a given fiscal period. From these should be excluded the items listed in paragraph 6 ibidem, in addition to all those outlays that are useful and necessary to produce the activity that generate dividends; in other words, based on the consideration that the primary activity is the source that enables the generation profits, all those items that seek or are designed to ensure the continuity of the productive activity are, in principle, excluded from the net base for the calculation of tax (Article 12 of the Regulations of the above-cited law).

V.-The definition and nature of this tax, as well as its material content, allow deductions. Indeed, determining the net income, as described, presupposes a mechanism for deducting the expenditures that the taxpayer has incurred in generating the taxable income, within a framework of utility and need. From that perspective, the applicable deductions for this tax must be associated with the contents of the definition of net income, in the sense that they are deductible as expenditures that enable the production of the taxable profit. Thus, defining the propriety of the deduction presupposes an intellectual exercise on the part of the Tax Administration, in order to determine which deductions applied by the taxable person satisfy these requirements. Therefore, deductible expenditures are all those that contribute to the production of profits, or, to put it more simply, all those outlays that are linked to the generation of taxable income. In other words, the reducing effect on the tax obligations at its base, which stems from the phenomenon of deductibility of expenditures depends, as a fundamental and necessary prerequisite, on its links to the productive activity, so that the only ones that will be deductible are those that are expended in order to obtain the profits that comprise the taxable portion. This objective link also requires that the expense be necessary. Furthermore, the lawmakers have established concurrent conditions for the propriety of the deduction. Paragraph 8 of the Law that governs this tax, in conjunction with Article 12 of its Regulations (Decree 18445-H), conditions that propriety to the following requirements: 1.-

That they are expenses necessary to obtain current or potential income taxed by this Law. 2.- That the obligation has been met to withhold and pay the tax set in other provisions contained in this Law. 3.- That the supporting vouchers are duly authorized by the Tax Administration. Only when all of these prerequisites are met may the expense be deducted from the calculation base. In this connection, in Decision 633 adopted at 10:45 on September 6, 2006, this Court dwelt at length on the nature and particularities of the expenses under examinations; that opinion applies fully to this case, which justifies the length of the quotation, as follows: “Paragraph 8 of Law 7092, contains a non-restrictive catalogue that describes items that may be regarded as deductible expenditure and, conversely, in Article 9 ibidem, which expenditures do not fall into that category. However, the requirement that there be a connection between the expenditure and the income generation does not in itself determine its deductibility from the tax base, since, a series of additional conditions must also be met. ... The innate, effective and fundamental transcendence of the deductibility of expenditure stems from the essential and unassailable relational framework that must prevail between the expense and its condition of serving as a means to produce taxable income, which obviously must be accredited with the supporting documents that the taxpayer is required by law to keep as proof and for the purposes of keeping their operations in order. This is the principal element that makes it possible to determine whether or not an expense, in principle and if it is confirmed that the other two aforementioned situations also exist, can be set against the calculation base. Such may be surmised from the purpose of the aforementioned taxation system, which is designed to tax net income; in other words, not the source of the production of wealth. That much is reflected, for example, in the power invested in the internal revenue service to reject, in full or in part, some of the expenditures listed in paragraph 8 of the above-cited law when it considers them excessive or inadmissible, or else -and note should be taken of the definition developed here- when, “... based on the reasoned studies carried out by the Administration, it does not consider them indispensable for obtaining taxable income.” Similarly, subparagraph j) of the same law provides that the following are not deductible from gross income: “Any other outlay that is not linked to the generation of taxable income.” By contrast, if the expenditure meets the aforementioned requirements, is connected with the generation of taxable income, and is appropriately accredited, it is deductible. Paragraph 12 of the Regulations on the Income Tax Law (Executive Decree 18445-H) provides likewise. The combination of these factors leads to the conclusion that, in reality, the deductions

system is complex in nature, basically guided by the above-explained associative link coupled with the requirements that the obligation to withhold and pay the taxes required by the same provision in accordance with the law, and to supply the vouchers that prove as much, has been met as means to substantiate the expense incurred. These are concurrent elements, which means that if any of them are absent or omitted, the deduction is, in principle, unviable, even if all the other conditions have been fulfilled. It should also be noted, that expenses are only income tax deductible if they originate in the appropriate fiscal period, which means that they are subject to the temporal aspect of the tax, which is an innate characteristic of their condition of being incidental to the period. In sum, these outlays must conform to the provisions contained in Article 8 (1) of the Income Tax Law and its reforms, and Article 12 of its Regulations. Furthermore, those expended or incurred during the respective fiscal period must be necessary to produce the income or to preserve its production source, since if they are not, they might justifiably be denied." **FIRST CHAMBER OF THE SUPREME COURT OF JUSTICE. RES: 000214-F-SI-2008** adopted at 8:25 on March 25, 2008.

Accordingly, as Articles 8 and 9 of the above-cited Law and Article 103 of the Tax Code provide, it is not sufficient simply to supply vouchers in order to justify an expense, since expenses must also be authorized by the Tax Administration, since "the validity of the deduction performed by the taxpayer for the purposes of their declarations is subject to ex-post oversight which the revenue service might perform in that regard." (Judgment 000633-F-2006 adopted at 10:45 on September 6, 2006). Accordingly, we should conclude that the tax administration has been supplied with sufficient powers to verify or check the information submitted by the taxpayer; that is, the power of oversight and investigation, both of the documents provided and of those that it deems necessary to accredit the expenditure, given that the purpose of this function is to:

"[...] unravel the underlying economic reality in the tax debt, leading to the obligation to complete the amount due, should it be determined that the tax amount is higher, or, in the opposite case, that is, if too much tax was paid, to refund the excess paid in response to a claim, since its retention, were such the case, would be improper and, therefore, unlawful. The aforesaid investigative power also permits solicitation of information from third parties, government offices or officials, or the taxable person themselves, who, in accordance with the Tax Code, are required to furnish the documents requested of them (Articles 128 and 132 of the Tax Code). The aim of all of the foregoing is to set the amount of the tax obligation within its correct dimension; that is, to establish the real extent of the duty to pay tax, and create the obligation to collaborate with the revenue service, pursuant to the principles set forth in Article 18 of the Constitution. That is reason why the propriety of the expense must be fully demonstrated by the taxpayer, and it is up to the tax administration, in line with its powers, to adopt a decision on its propriety, not only qualitatively, but also quantitatively speaking. Thus, if it is rejected, the taxable person must supply the necessary evidence to warrant a change of opinion; in other words, in most cases, the burden of proof is on them." (Judgment 000633-F-2006, cited above).

Based on the foregoing, it is not enough for the expense to be linked to the generation of taxable income for it to be deductible from the tax base. Rather, above all, **it is imperative for the taxpayer to demonstrate that the expense was actually made by means of vouchers duly accepted by the Tax Administration, which substantiation, we repeat, is essential and fundamental for accrediting the actual existence of the item and for establishing its propriety in quantitative and qualitative terms.** **CONTENTIOUS ADMINISTRATIVE TRIBUNAL, SEVENTH SECTION, SECOND JUDICIAL CIRCUIT IN AND FOR SAN JOSE, Opinion 004-2009-SVII** adopted at 14:30 on January 9, 2009.-

"Based on the agreement submitted as evidence and the addenda made to it, payment for the agreed service was ostensibly made "in accordance with the level of services rendered", which means that the amount estimated would vary depending on market activity and the activities of the company itself, as well as on management needs each month. However, the evidence put forward shows that payment was made at a flat rate at the beginning of each month, which means that payment was made in advance and not for services rendered, and also, at a fixed, as opposed to a variable, rate. This also leads to the conclusion that the service was not independently appraised each month for the purposes of collection of payment for the work allegedly performed. Thus, these elements of certainty based on logic and reason make it necessary empirically to verify the activity actually carried out and which the contract actually provided for when the parties stated that the amount charged by the service company -CAA- would be itemized. That information was requested from the plaintiff; however, the latter has simply furnished a series of documents -including some which pertain to periods other than the one under review- which did not allow it to be concluded for certain that continuous

activities were performed that warrant payment of the sums paid for the services. The plaintiff also supplied the opinion of an expert as evidence to show that the service was rendered; however, this expert opinion only demonstrates that payment was formally made for the service, not that the service was provided as agreed, which, in the final analysis, is what would substantiate the expenditure. As yet, the plaintiff has not invoked the right to request the counterparty to provide the itemization in support of the payment made, and since that probative need has not been satisfied, which would make it possible to conclude for certain that the service paid for was duly received by the plaintiff, the sum deducted lacks any legal basis for that purpose and should be rejected, because it is physically impossible to say for certain that the contract was performed as agreed, and it is impossible to confirm a connection between the expenditures made and a profit-seeking motive. In light of the circumstances of the agreement and the documents presented, this Tribunal believes that the question as to whether or not the agreed work was necessary is immaterial. The company is free to use its income with the intention of improving growth; however, it must demonstrate that intention, not simply engage in unsubstantiated business transactions with related companies. It must demonstrate that the activity that generated the expenditure was appropriate, and not simply what was agreed in order to generate it. Thus, such a rejection was appropriate and naturally produced the immediate effect of increasing the income-tax base and the corresponding tax burden. SECTION TEN OF THE CONTENTIOUS ADMINISTRATIVE TRIBUNAL. SECOND JUDICIAL CIRCUIT IN AND FOR SAN JOSE, 04-2009-SX adopted at 13:30 on January 9, 2009.

ⁱⁱ The text of Article 44bis of the Law against Corruption and Illicit Enrichment in Public Service provides as follows:

“Article 44bis – Administrative sanctions to legal persons. In those cases provided by paragraph m (of article 38 and article 55 of this Law, and in articles 340 to 345bis of the Criminal Code, when the payment, gift or undue advantage is given, by an employee of a legal person, in relation to the exercise of the functions of the position or using goods or means of that legal person, the legal person will be fined twenty to one-thousand basic salary, notwithstanding and independently of the criminal and civil penalties that are applicable and the administrative responsibility of the employee, pursuant to this and other applicable laws.

If the payment, gift or undue advantage is related to an administrative contracting procedure, the legal person that is responsible will be assessed the above fine or up to ten percent (10%) of the amount of the offer or of the contract, whichever is greater; in addition, they will be disqualified as provided by paragraph (c) of article 100 of Law No. 7484, Administrative Contracting.

Without prejudice to the authority of the Comptroller General of the Republic, each ministry or institution that forms part of the Public Administration, centralized or decentralized, is competent to begin the administrative procedure or to impose the sanctions provided by this article, on behalf of the Comptroller or that institution, or to the institution to which the official that has been given, offered or promised the payment, gift or undue advantage belongs, pursuant to applicable regulations.

In those cases in which the competent public institution for the imposition of the sanctions provided in this article claims regulatory jurisdiction pursuant to law over the responsible legal person, the penalty provided for in the first and second paragraphs may be applied, depending on the severity of the offense, and without regard to the other competencies of the respective institution, any of the following sanctions:

- a) Closure of the business, its subsidiaries, or locations or the temporary establishment for a period not to exceed five years;*
- b) Suspension of the activities of the business for a maximum period of five years;*
- c) Cancellation of the concession or the operating permit of the business;*
- d) Loss of the tax benefits or the exemptions granted to the business;*

For the imposition of the penalties provided by this article, the ordinary procedure provided for in the General Law of the Public Administration must be followed, and due process must be respected. With respect to prescription, Article 71 of the Organic Law of the Comptroller General of the Republic, No. 7248, shall apply.

The final decision issued shall declare the corresponding responsibility and the amount [of the fine]. The certification of the final resolution shall be available against the person responsible.

If causes for abstention or recusal with respect to any official that should intervene or decide in a proceeding based on this article, the relevant laws of the General Law of the Public Administration shall apply.

The internal audits of public institutions shall ensure that adequate procedures are established for the proper compliance with the provisions of this article, without regard to the functions of the Comptroller General of the Republic.”

ⁱⁱⁱArticle 92 of Law No. 4755 provides as follows: “Article 92. — Inducement of error by the Tax Administration”

When the amount defrauded is more than 200 times the minimum wage, the penalty shall be five to ten years of imprisonment for anyone who induces an error by the Tax Administration through simulation of data, distortion or concealment of genuine information, or any other form of deception apt to induce it to error, in order to obtain for themselves or for a third-party a financial benefit, exemptions, or refund to the detriment of the Treasury.

For the purposes of the provisions in the preceding paragraph the following shall apply:

a) The defrauded amount shall not include any interests, fines, or charges of a punitive nature.

b) In order to determine the aforementioned amount, in the case of taxes paid on an annual basis, the defrauded amount shall be considered in that period; for taxes payable at frequencies of less than 12 months, the amount defrauded during the interval from January 1 to December 31 of the same year shall be added together.

For all other taxes the amount shall be deemed to pertain to each of the items for which a taxable event may be assessed.

A person shall be deemed legally entitled to a pardon when they repair their infringement before the Tax Administration requests it or institutes proceedings to obtain redress.

For the purposes of the preceding paragraph any measure adopted, with notice thereof served to the taxable person, in order to verify compliance with tax obligations pertaining to a particular tax and period shall be considered proceedings on the part of the Administration.”

^{iv} “In effect, according to Article 103 of the Code of Conduct of the Tax Administration, it can resort to any legal measures and procedures that might help ascertain compliance with the tax obligations.

Article 104 authorizes it to request that the taxpayer present the books, files, accounting records and any important tax information, whatever it is supported by. In particular, copy of the books, files and accounting records, information on the method of calculation used and the applications developed, copy of the magnetic supporting data that contains tax information. In addition, Article 105 authorizes it to request from third parties, for fiscal purposes, information that might be useful from the point of view of taxation in view of its economic, financial and professional relations with other parties. Article 106 also enables it to request information from financial entities on the financial and economic operations of certain clients or users, and it must document in its request the existence of sound information on steps taken with the intention of committing an illicit tax act. Article 108 authorizes it to request information from beneficiaries of fiscal incentives on compliance with the requisites and facts that legitimize the incentives received. Article 109 gives the Tax Administration the power to issue guidelines on how tax information must be submitted, and to require that books, files and records of its negotiations be submitted in order to be able to control and determine the tax obligations and supporting documents correctly. The accounting records must be backed by the supporting documents. Article 123 authorizes it to check the tax returns, books and other documents showing tax information. According to sub-paragraph 124 the Tax Administration shall reach an official decision when the accounting books or records required by law are not kept or when documents justifying the accounting operations are not presented or when data and information requested is not provided or when the accounting is not kept on a regular basis or is faulty. Article 23 of the General Rules on Tax Management, Control and Collection requires that the Tax Administration maintain and disseminate the instructions, guidelines and criteria issued so that taxpayer, declarers and their delegates are aware of and understand the extent of their obligations; they also reaffirm the verification and control powers granted by the Law, in particular as regards the information that must be presented to or can be requested by the Administration. Article 60 of the Ministry of Finance’s Procedures Manual lists in detail the competencies of each Ministry, including matters related to the legalization of books and the granting of exemptions.

It should also be noted that the Ministry of Finance has signed a cooperation agreement with the Treasury Department to prevent and fight corruption by its officials. To that effect the creation of a body at General Directorate level is being studied to prevent officials with tax competencies from committing acts of corruption. The Department could issue recommendations on how to fight corruption and on transparency in public finance

functions, identify procedures liable to lead to acts of corruption, correct practices followed at the Ministry and introduce quality control into management. This would make it possible to determine whether a particular tax benefit is the result of an act of corruption.”

^v “Article 3°—Duty of probity. A public official is under obligation to act in the public interest. This duty will be demonstrated, fundamentally, by identifying and attending to the priority needs of the community, in a well-planned, regular, efficient, continuous manner and under equal conditions for the inhabitants of the Republic. Thus, public servants must be upstanding citizens and act in good faith when exercising the powers conferred on them by the law; ensuring that the decisions taken to comply with their attributions are impartial and in line with his institution’s objectives, and lastly that their management of public funds adheres strictly to the principles of legality, efficiency, economy and accountability.”

“Article 5°—Fraudulent evasion of the applicable law. Administrative functions exercised by the State and other public entities, and the performance of entities governed by private law in respect of relations with them that are carried out under the provisions of a particular law in pursuit of a result that is not in keeping with the objectives of the State and its body of laws, will be deemed to constitute fraudulent evasion of the applicable law and will not prevent that law from being duly enforced.”

“Article 6—Nullity of documents or contracts derived from the fraudulent evasion of the applicable law. Abuse of the process of court will result in the nullity of the administrative action or contract derived therefrom and entail compensation being awarded for damages caused to the Public Administration or third parties. (...)”

“Article 58.—Fraudulent evasion of the law in administrative functions. A public official who fraudulently evades the applicable law while exercising an administrative function, according to the definition of Article 5 of this Law, shall be sentenced to one to five years in prison. The same punishment will apply to anyone who benefits from or facilitates such a crime in the knowledge that the result of his action is against the law .”

“Article 21.—Officials who must declare their capital assets. The following persons must declare their capital assets to the Office of the Comptroller General of the Republic, pursuant to the provisions of this Law and its Regulations: Legislative Assembly deputies, president of the Republic, vice presidents; ministers with and without portfolio, magistrates of the Judicial Branch and the Supreme Tribunal of Elections and their alternates, the Comptroller General and Deputy Comptrollers General of the Republic, the Ombudsman and alternate Ombudsman, the Attorney General and Assistant Attorney General of the Republic, the Prosecutor General of the Republic, the rectors, comptrollers or deputy comptrollers of state higher education institutions, the Regulator General of the Republic, superintendents of financial, securities and pension institutions and the respective intendents; senior ministerial officials, members of the boards of directors, except for inspectors without the right to vote, executive presidents, managers, assistant managers, internal auditors or deputy auditors, and heads of all public procurement departments in State-owned companies, as well as councilors, portfolio holders and their alternates and municipal mayors.

The following persons must also submit a sworn statement of assets: customs employees, employees who process public tenders, other public officials responsible for the safekeeping, administration, inspection or collection of public funds, employees who establish revenue or income on behalf of the state, employees who approve and authorize disbursements with public funds according to the list contained in the Regulations to this Laws. These may include employees of entities governed by private law which are responsible for the administration or safekeeping of funds or grantees of funds, public goods and services who, wherever pertinent, will be subject to the provisions of this Law and its Regulations.

The Comptroller and the Deputy Comptrollers General of the Republic will send a true copy of their sworn statements to the Legislative Assembly which, with respect to these officials, will have the same authority that this law gives to the Comptroller General of the Republic in relation to other public servants.”

Although this article contains a list of officials who must file a sworn statement of assets, the administration also has the authority to ask any official to demonstrate the origin of the funds comprising his assets, according to Article 23 of that law:

“Article 23.—Personal sworn statement. The fact that a public servant is not under obligation to submit a sworn statement of assets does not mean that investigations may not be conducted to determine whether there has been any illicit enrichment or other infringement of this Law. To that effect, the Comptroller General of the Republic or Public Prosecutions Service through the Prosecutor General may at any time require that a particular public official responsible for the administration or safekeeping of public funds submit a sworn statement of assets. In that

case, the official must submit his initial, annual and final statements in accordance with the same periods, terms and sanctions laid down in this Law and its Regulation, but the deadline for submitting the first statement will commence as of the day following the date the order was received. The Public Prosecutions Service will send the Comptroller General of the Republic a true copy of the statements received.”

Thus, the Office of the Comptroller General of the Republic or the Public Prosecutions Service may at any time require that a particular public official responsible for the administration or safekeeping of public funds submit a sworn statement of assets.

The Public Administration has the power to use these declarations as evidence for any investigations deemed necessary according to Article 24 of the above-mentioned Law:

“Article 24.—Confidentiality of the statements. The content of sworn statements is confidential, except to the person making the statement, and does not affect the right of special investigations commissions of the Legislative Assembly, the Office of the Comptroller General of the Republic, the Public Prosecutions Service or the courts of the Republic to gain access thereto, if they need to investigate and determine whether any offences provided for in the law have been infringed. The confidential nature of such statements does not affect the right of citizens to know whether the declaration was presented or if it is in conformity with the law.”

In the same order of ideas, our legislation not only exercises oversight of public officials but also of private entities who do business with the Public Administration. This is regulated by Article 30 of the Law against Corruption and Illicit Enrichment in Public Service:

“Article 30.—Authorization for access to information. The declaration will contain an authorization allowing the Office of the Comptroller General of the Republic to request information on national and foreign financial entities and organizations with which it has a stockholding or any economic relationship or interest that may be pertinent to the purpose of this Law.”

Sworn statements must be truthful and are a legal requirement under the provisions of Article 34:

“Article 34.—Determination of the truthfulness of the statement. When deemed necessary, the Comptroller General of the Republic may examine and check, in detail, the accuracy and veracity of declarations, in accordance with the procedures and powers granted under the Constitution and the laws. It may also send the person who filed the statement a written request to clarify or furnish additional proof, stipulating a reasonable deadline for their presentation.”

Moreover, two new criminal sanctions related to the crime of Illicit Enrichment, have been created. These are in Articles 47 and 61 of the law in question:

“Article 47.—Acknowledgement of receipt, legalization or concealment of assets. Anyone who conceals, secures, transforms, invests, transfers, administers, acquires, has in safekeeping or gives an appearance of legitimacy to goods or rights, in the knowledge that they were the product of illicit enrichment or criminal activities of a public official, committed on the occasion of the charge or through any means and opportunity given.”

Article 61—Civil consequences of illicit enrichment. A firm judicial sentence for the crime of illicit enrichment will result in the loss, in favor of the state of the respective public entity, of the movable or real property, securities, money or rights, obtained by the perpetrator, co-perpetrator or accomplices, as a direct result of the offence, except for the rights of third parties acting in good faith, as determined by the appropriate judicial authority.

In the case of assets that must be recorded in the National Register, the court order will suffice for the respective section of the Register to transfer the asset to the municipalities of the districts where they are located, in the case of real estate, so they can be used in works that will benefit the district or a charitable public institution. All other assets will be disposed of pursuant to the Regulations to this Law.

No stamp duty or registration charges are payable for the registration made in compliance with this order.”

Costa Rica recently added another regulatory instrument to its body of laws: the Law against Crime, Law 8754, which came into force on July 27 of this year:

“Article 20.—Source of assets

The Office of the Comptroller General of the Republic, the Ministry of Finance, the ICD or the Public Prosecutions Service may report any increase in capital without any apparent lawful reason, to the Civil Court of Finance for Summary Affairs, going back a maximum of ten years, by any public official or entity governed by private law, individual or body corporate.

Once a complaint is received, the court shall invite the interested party to a hearing for a period of twenty working days to answer and furnish proof; in the same resolution, as a precautionary measure, it will order the seizure of

the assets and issue a prohibition on their registration and any financial transaction. The only action that may be taken against the precautionary measure is an application to appeal without suspension of execution, which must be filed within twenty-four hours with the Court of Appeals against Administrative Decisions composed of a Panel of Judges (Tribunal Colegiado Contencioso Administrativo) which without further delay will issue a ruling taking priority over any other matter.”

With the entry into force of this Law it will be possible to conduct a study of the assets of public officials going back up to ten years when these appear to have increased for no apparently lawful reason.”