

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

FINAL REPORT

(Adopted at the March 25, 2010 Plenary Session)

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

**REPORT ON IMPLEMENTATION IN THE REPUBLIC OF ECUADOR 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 Ecuador 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 Ecuador by the MESICIC Committee of Experts in the previous rounds, which are contained in the report on that country adopted by the Committee and published at the following web pages: www.oas.org/juridico/english/mec_rep_ecu.pdf y www.oas.org/juridico/english/mesicic_II_rep_ecu.pdf

2. Ratification of the Convention and adherence to the Mechanism

[3] According to the official register of the OAS General Secretariat, the Republic of Ecuador ratified the Inter-American Convention against Corruption on May 26, 1997 and deposited the respective instrument of ratification on June 2, 1997.

[4] In addition, the Republic of Ecuador 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 Ecuador

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Ecuador and in particular from the Council for Citizen Participation and Social Oversight, 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 Ecuador sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at the following web page: 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 March 25, 2010, at its Sixteenth meeting, held at OAS Headquarters, March 22-25, 2010..

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

2. Documents received from civil society organizations.

[7] The Committee also received, within the time limit established in the schedule for the third round, a document from the civil society organization “*Grupo Faro*”, and which was submitted by Transparency International.²

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

1. DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT³ FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)

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

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

[9] – The Tax Code, which at Article 32 provides that only an express provision of the law may establish tax exemptions, and that those laws will specify the requirements for exemptions to be recognized or granted.

[10]– The Law on the Internal Tax Regime, which at Article 9 establishes several exemptions from income, including, among others, dividends and utilities calculated after the payment of income tax, and distributed or accredited to national companies, in favor of other national companies or foreign or domestic national persons, resident or non-resident in Ecuador (Article 9(1)); income obtained by State institutions (Article 9(2)); and income exempt pursuant to international agreements (Article 9(3)).

[11]- Article 10 also establishes several deductions from taxable income, including, among others, those costs and expenses attributable to income, and which are properly supported pursuant to applicable regulations. With respect to supporting documentation, Article 10(16) provides in its pertinent part that “*To make the deduction the taxpayer is required to file the annual income tax return, along with all the expenses that they deduct, in the manner prescribed by the Internal Revenue Service. The Tax Authority may review the original vouchers, which the taxpayer is required to keep for six years counted from the date of filing of their income tax return.*” Article 25 (10) of the same regulation provides that management expenses are deductible provided they relate to actual expenditures, duly documented, and incurred in the ordinary course of business, such as service to customers, meetings with staff and shareholders, to a maximum of 2% of general expenses incurred during the fiscal year.

² This report can be consulted at: http://www.oas.org/juridico/spanish/mesicic3_ecu_inf_sc.pdf

³ 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.

[12]- Article 22 provides in pertinent part that "income tax liability shall be determined by the declaration of the taxpayer, the action of the Internal Revenue Service, or in a mixed manner. Article 23 provides: *"The tax authority shall make the direct or presumed determinations referred to in the tax code, as appropriate. A direct determination shall be based on the accounts of the taxpayer, and on the documentation, data or reports obtained from the taxpayer or from third parties, provided that such sources of information lead to more or less accurate conclusions as to the income received by the taxpayer."*⁴

[13] - The Law Creating the Internal Revenue Service ("*Servicio de Rentas Internas*") (Ley No. 41), which at Article 2 charges the SRI with, among other functions, making the determination of, collecting and controlling internal taxes of the State, as well as those not expressly assigned by law to another authority (Article 2(2)); impose sanctions pursuant to law (Article 2(6)); and request any necessary documentation or information connected with tax obligations from contributors (Article 2(9)).

[14] - Article 22.7 of the Regulation for Application of the Law Creating the Internal Revenue Service (IRS) provides: *"the tax audit shall be conducted essentially through a computerized system for cross-referencing the information that the IRS obtains from the taxpayers themselves or from any other source. Only in exceptional cases may the audits be conducted at the domicile of the taxpayers by officials of the IRS or by private firms contracted specifically for this purpose. In the latter case, the Regional Director or Provincial Director, as appropriate, shall approve the report and notify the taxpayer so that he may exercise his rights."*

[15] - The Regulation of the Internal Revenue Service, Resolution No. DSRI-012-2008, which sets out the functions of the various Departments of the SRI, and which, at Article 38, charges the Department for the Prevention of Infractions with, among others, *"Determining the offenses whose penalization requires the intervention of government notaries and the drawing up of certificates publicly attesting to the commission of such offenses."* (Article 38(5)); and Article 39, which charges the Section on Infractions, with, among others, *"Enforcing the rules on penalization of taxpayers in accordance with the laws in force"* (Article 39(1)) and *"Enforcing the punitive regime."* (Article 39(2)).

[16]- The Regulation for the Application of the Organic Law of the Internal Tax Regime, which expands upon various provisions of the Law on the Internal Tax Regime, in such areas as calculation of income, deductions and exemptions, among others. In addition, Article 32 of this Regulation sets out various expenses that are non deductible, including, among others: *"(5) Donations, subsidies and other appropriations in cash, in kind, or as services, which constitute use of income whose deduction is not permitted by the Organic Law of the Internal Tax Regime; (7) Any costs or expenses not supported with sales vouchers as authorized by the Regulations on Sales and Withholding Vouchers; (8) Any costs and expenses for which the necessary withholdings have not been made at source, in cases where such withholding is required by law; and (9) any costs and expenses not charged to the relevant provisions in spite of the constitution thereof."*

[17]- Article 313 of the Tax Code, as amended by Article 9 of the Law for Equitable Tax, and which classifies tax infractions into three categories; crimes, infractions and regulatory breeches; Article 323, as amended by Article 15 of the Law for Equitable Tax, and which provides the following sanctions, inter alia, applicable to infractions, depending on the case: (a) fine; (b) closure of the establishment or

⁴ In its comments on the draft preliminary report, the country under review notes that *"Among the measures that help to avoid acts of corruption, the IRS mentions the following: reform of article 106 of the Law on the Internal Taxation Regime, whereby secrecy provisions do not apply to information requested by the tax administration."*

business; (c) suspension of activities (d) confiscation; (e) seizure; and (i) imprisonment. Article 322 further provides that *“these sanctions are applied notwithstanding the collection of the corresponding taxes and applicable interest due...”* With respect to the calculation of fines, Article 329 of the Tax Code provides that *“Financial penalties shall be imposed in proportion to the value of the tax that was sought to be evaded through a punishable act or omission or to the value of the properties involved in the offense, in the case of serious crimes.”*

[18]– Article 342 of the Tax Code, as amended by Article 29 of the Law for Equitable Tax, and which criminalizes tax fraud, provides that the offense is constituted by *“All willful acts of fraud, concealment, omission, misrepresentation or deception that induce error in the determination of tax obligations or by means of which taxes actually owed are not paid, whether in full or in part, to the benefit of the liable person or a third party; and any fraudulent conduct that is contrary to or impairs the work of control, assessment and penalization of the tax authority.”*

[19]Article 343, as amended by Article 30 of the Law for Equitable Tax, provides for aggravated tax fraud, when the offense is committed with the participation of one or more employees of the tax administration; while Article 344, as amended by Article 31 of the Law for Equitable Tax, provides for various specific forms of tax fraud, such as, among others: (4) *“Knowingly provide to the Tax Authority false or adulterated information or declarations on merchandise, figures, facts, circumstances or records that influence the determination of the tax obligation of the liable person or of third parties; and, in general, the use of false, incomplete or distorted facts in tax returns or information provided to the tax authorities”*; (6) *Fraudulent omission of income or inclusion of nonexistent or higher than legally permitted costs, deductions, discounts or withholdings*; and (14) *“Wrongful and fraudulent recognition or procurement of a reimbursement of tax, interest or fines, as established by a final or confirmed decision of the tax authority or a competent judicial organ.”*

[20]- With respect to sanctions for tax fraud, Article 345 of the Tax Code, amended by Article 32 of the Law for Equitable Tax, establishes the following, in pertinent part: *“In the cases recognized in subparagraphs 1 to 3 of the preceding article and in fraud crimes set down in other laws, imprisonment of one to three years; In the cases recognized in subparagraphs 4 to 12 of the preceding article, imprisonment of two to five years and a fine equivalent to the value of the evaded or would-be evaded taxes; In the cases recognized in subparagraphs 13 and 14 of the preceding article, imprisonment of 3 to 6 years and a fine equivalent to twice the value of the amounts withheld or received and not declared and/or paid or the amounts wrongfully reimbursed.”*

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

[21] 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 relevant measures for promoting the purposes of the Convention.

[22]Nonetheless, the Committee believes that it would be beneficial for the country under review to consider adopting the measures it deems appropriate to make it easier for the appropriate authorities to detect sums paid for corruption 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

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

[23] The country under review did not provide any results in relation to this field.⁵

[24] Taking the foregoing into account, the Committee will formulate a recommendation to the country under review so that, through the tax authorities responsible for the control of the application of 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 the 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

[25] 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:

[26] The Republic of Ecuador 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.

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

⁵ In its comments on the draft preliminary report, the country under review notes that “*Cooperation with the Attorney General's office and with the Financial Intelligence Unit in controlling tax fraud and money laundering. Establishment of subsidiary rules establishing guidelines whereby taxpayers can report improper conduct by IRS officials. Transparency in all processes administered by the IRS and in particular those relating to tax collection. First-class computer systems that prevent unauthorized access to IRS databases and improper use of information. Full compliance with legislation governing the public sector, such as the Public Procurement Law, the Law Establishing the Comptroller General's Office, The Organic Law of Financial Administration and Control, etc. Establishment of operational departments to investigate tax evasion and fraud.*” In addition, Ecuador informed the Plenary of the Committee, at its March 25, 2010 session, of the names of the following computer systems which facilitate consultation and allow for the cross-checking of information: Annex Income; Operations with Related Foreign Parties (OPRE); Annex Income – Other Concepts (REOC); Annex Income – Dependency Relationship (RDEP); Annexes for ICE and Sales Prices; Annexes for Forex Disbursements – MID; Simplified Transactional Annex; RIG Annexes: Inheritances; Information Layer (OWTAR crossreferencing); Training and Evaluation for Revenue Services; Certificates of Revenue Services (CST); Certificates of Fiscal Residence (CRF); Conciliation; Consolidated Consultation; Consultation – Returns; ICC Consultations; Income Tax Consultation; General Consultation of Returns / CGD; Consultation of Pending Obligations on Global Matrix; Consultation – Procurement; Consultation RUC Foreign Trade; Consultation Validation; Accounting; CG AS400 Accounting; Quality Control; Foreign Trade; Alcohol Quotas; Returns; Special Taxpayers / Collection (Intranet Returns); 2000 Returns; Zero Returns; Statements of Net Worth; Internet Returns; Internet Banking Returns; 1-800-Factura Complaints; Internet Complaints; Internet Downloads; Rulings; VAT Reimbursements; Internet VAT Reimbursements; Vat Reimbursements Senior Citizens; DIMM Transactional Annex; DIMM Forms; Voluntary Donations to Income Tax; Billing; Notaries; Trusts; Personal Expenses; Key Generation; Revenue Management; Economic Groups; ICC; ICE Vehicles; Management Indicators, Pre-Import Licenses; White List; Vehicle Registration; Selection Matrix; Inspection Matrix; Special Taxpayer Administration System; Planning / RUC Load for Discoverer; Internet Portal; RUC Pre-Registration; Return Revenue; Form Corrections; Review Remedies; RIG (CAE - SFN); RISE; RUC; SAD – Reimbursement Administration System; Tax Consultation System; ICT Tax Compliance Report System; Crossreferencing System; Person Maintenance System; National Complaints System; National Formalities System – Workflow; Bank Validation / Revenue and Transfers; Tax Vector and Matrix; and Verification.

[28] Strengthen the standards and measures for the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws. To comply with this recommendation, the Republic of Ecuador 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 carrying out the control of favorable tax treatment, so that they are able to verify that they contain the established requirements, to confirm the truthfulness of the information provided, and to determine the origin of the expenditures or payment on which the claims are based.
 - ii. Strengthen the possibility of accessing the sources of information necessary to conduct those verifications and confirmations, including requests for information from financial institutions,
 - iii. Strengthen 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, on such aspects as certifying the authenticity of the documents in support of the application of favorable tax treatment;
 - v. Training programs designed specifically to alert officials to the methods used to disguise payments for corruption and to instruct them on ways of detecting such payments;
 - vi. Channels of communication so that they may promptly report to the appropriate authorities, the anomalies detected or of any irregularity that could affect the application of favorable tax treatment.
- b. Select and develop, through the tax authorities responsible for the control of the application of favorable tax treatment and the other authorities or organs with jurisdiction in that respect, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow up on the recommendations made in this report in relation thereto (see section 1.3 of Chapter II of this report).

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

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

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

[30] - The Commercial Code, which at Article 2 defines businesspersons as those “*national and foreign, natural and legal persons domiciled in Ecuador that trade in goods or property, engage in services connected with commercial activities, and who, having the capacity to enter upon contracts, make commerce their habitual profession and act in their own line of business and that of others with capital of at least 30,000 sucres for the jurisdiction of the Chambers of Commerce of Quito and Guayaquil; 8,000 sucres for Cuenca, Manta, and Bahía de Caráquez; and 5,000 sucres for all other cantons.*”

[31] Article 37 of the Code requires businesspersons to maintain accounting records in the manner established by the Law on the Internal Tax Regime; Article 39 provides that “*Businesspersons shall keep their accounts in at least four bound and covered books with numbered pages. These books are: General Journal, Ledger, General Account Book, and Cash Book.*” Article 34 of the Regulations provides that “*documentation substantiating the accounts must be retained for at least seven years pursuant to the tax code's provisions on the expiry of tax obligations, without prejudice to the time limits established in other legal provisions.*”

[32] With respect to specific accounting records, Article 40 of the Code, in pertinent part, requires the General Journal to contain to contain, “*all of the operations of the businessperson, daily and in order of occurrence, including the nature and circumstances of each operation and the result charged or credited thereto, so that each entry states who is the creditor and who is the debtor in the transaction to which it refers.*”

[33] With respect to the Ledger, Article 42 provides that “*an account shall be opened for each person or purpose, on the debit or credit side, and the items that correspond thereto shall be transferred to them based on the entries in the General Journal and in the same order of dates as they appear in the latter.*”

[34] Article 43 requires the General Account Book to contain a “*description and estimate of all their assets, both movable and immovable, and of all loans receivable and payable. These inventories shall be signed by all those interested parties at the business establishment present at the time of their formation.*” Article 43 also provides that the “*Cash Book*”, “*shall include all the entries for all monies received and paid, and at the end of each month all of the entries for each different account may be compiled at the bottom of the last day of the month.*”

[35] Article 44 provides that “*businesspersons may keep an account of their operations in a single bound and covers book with numbered pages in which entries shall be made on a daily basis, with a summary of all cash purchases and sales made, and an itemized description of those made on credit; along with the amounts paid and collected on the latter... retailers are defined as those traders who habitually only sell on a retail basis directly to the end-consumer.*”

[36] Article 45 prohibits businesspersons from (1) altering the order or dates of entries in entries; (2) leaving blank spaces; (3) making entries in the margins, writing between the lines, crossing out text, or making changes; (4) erasing entries or parts thereof; and (5) ripping out pages, altering the numbering, or mutilating any parts of the books.

[37] Article 57 requires businesspersons to conserve accounting records as well as their supporting documentation for the duration of the business, and for ten years following the liquidation of the business.

[38]- Article 1 of the Companies Act, which provides: “*a company contract is a contract whereby two or more persons combine their capital or industries to undertake commercial operations and participate*

in their profits. This contract is governed by the provisions of this law, by the Code of Commerce, by the covenants of the parties and by the provisions of the civil code.”

[39]With respect to internal controls, Article 15 of the Codification of the Company Law, gives partners the right to examine the books and documents related to the administration of the company, “... however, the shareholders of corporations, limited stock companies, and semipublic companies shall only be entitled to receive a certified copy of the balance sheet, statement of profit and loss, annual and other reports from the directors and internal auditors, and minutes of general meetings. They may also request a list of the shareholders and reports on matters addressed or to be addressed at said meetings.”

[40]With respect to external controls, Article 440 of the Codification of the Company Law provides that the purpose of the inspection of companies is to “*determine the correct composition of the capital stock, both at the time of incorporation and in the event of increases in capital; verify if the company performs its social purpose; examine the situation of the company’s assets and liabilities, if it is keeping the corporate books, such as the record book containing the minutes of general meetings and board meetings, stub book, and stock certificate register; if its accounts are legally in order; if its assets are real and properly protected; if its operations are in accordance with legal standards and the corporate charter; if the profits distributed or to be distributed match the assessments for each fiscal year and if the losses provided for its dissolution have occurred...*” Article 441 provides that the Superintendency of Companies may carry out an inspection “*ex officio or on request of an interested party of the companies over which the Superintendency exercises total control; and only on request of an interested party of those subject to its partial control.*”

[41]With further reference to external controls, article 354 of the Company Law provides “*in the case of a company subject to full control and supervision by the Superintendency of Companies, the superintendent may declare the company in a state of intervention and designate one or more trustees for that purpose, only in the following cases: (2) if, acting upon a complaint from an interested party or ex officio, the Superintendent finds that in its accounts the company has concealed assets or liabilities or has made false entries or committed other serious irregularities, which could injure the interests of partners, shareholders or third parties. The complaint must identify precisely any false entries or accounting irregularities as well as the damage that may have been or could be caused;(5) when the company finds itself in any of the situations referred to in articles 325 or 432 (5) of this law.*”

[42]Article 432 provides “*when by virtue of a complaint and through inspection it is proved that the rights of partners have been violated or the company charter or the law have been contravened to the prejudice of the company itself, its partners or third parties, the company shall immediately be subject to intervention.*” Article 325 provides that “*a company that fails without justification to contract an external auditor recognized by the Superintendency of Companies shall be punished with a fine of 3 million sucres for each day of delay, counting from the deadline for such contracting, up to a maximum of the equivalent of 40 days, at the end of which, if the auditor has not been contacted, the Superintendent shall order the intervention of the company.*”

[43]Article 20 requires those companies subject to the supervision of the Superintendence of Companies, to submit the following to the Superintendence at the beginning of the first quarter of every year: “(1) *Authorized copies of the annual balance sheet, statement of profit and loss, as well as annual and other reports from the directors and legally prescribed oversight agencies; (2) The roll of directors, legal representatives, and partners or shareholders; and, (3) Such other data as may be contained in the regulations issued by the Superintendency of Companies.*” Article 45 requires directors to keep the company's accounts in the manner established by law, article 293 requires all companies to adapt their

accounting methods, books and balance sheets to the applicable legal provisions and the rules and regulations issued by the Superintendent of Companies, and article 294 provides that the Superintendency of Companies shall, by resolution, determine the accounting principles that must be applied in preparing the balance sheets of companies under its control.

[44]With respect to inspection of books, Article 54 provides that *“Except where expressly determined by law, disclosure and examination of the corporate books may also not be ordered ex officio or at the request of an interested party, except in cases of universal succession, joint ownership, liquidation of companies, and bankruptcy.”*

[45]- The Codification of the Law of Companies, which at Article 2 provides for five types of commercial companies, as follows: *“General partnerships; limited partnerships and limited stock companies; limited liability partnerships; corporations; and semipublic companies.”*

[46]- Resolution No. 06-Q-ICI, issued by the Superintendence of Companies, and which at Article 1 requires *“national corporations, limited stock companies, semipublic companies, and those legally constituted by the State as companies, the branches of companies or other foreign enterprises organized as legal persons and any associations that they form and that carry out their activities in Ecuador, and limited liability companies...”*, to submit the following information, inter alia, to the Superintendency, pursuant to Articles 20 and 23 of the Company Law: *“(a) Financial statements: on position (annual balance sheet) and results (profit and loss), duly signed by the legal representative and the accountant; (b) Report or annual report of the legal representative to the general meeting of shareholders or partners which examined and adopted resolutions on the financial statements; (c) Report of the internal auditors or oversight committee to the general meeting of shareholders or partners which examined and adopted resolutions on the financial statements”; and “(d) External auditors’ report if, based on the total amount of assets for the preceding fiscal year, they are required to commission on, in accordance with the resolutions adopted by this Superintendency”*

[47]- The Law on the Internal Tax Regime, which at Article 21 provides that financial statements shall serve as the basis for the filing of tax declarations, as well as for presentation to the Superintendence of Companies and the Superintendence of Banks, as appropriate. Article 21 further provides that *“Financial entities as well as public-sector entities and agencies that need to know the financial position of companies for any procedure shall demand the submission of the same financial statements that served for tax purposes.”* In addition, Article 19 provides in pertinent part that *“All companies are required to maintain bookkeeping records and declare taxes based on the results of that bookkeeping....”*

[48] - Article 102 of the Law on the Internal Tax Regime provides that *“external auditors are required, under oath, to include in their opinions on the financial statements of the companies they audit an opinion with respect to their compliance with their obligations as taxpayers. An inaccurate or unsubstantiated opinion by an external auditor in relation to the matters covered by this article shall engage the auditor’s liability and constitute grounds for the Director General of the Internal Revenue Service to ask the Superintendent of Companies or of Banks and Insurance, as appropriate, to impose the respective sanction for lack of suitability for the audit function, without prejudice to other sanctions established in the criminal code.”*

[49]The Regulation of the Law on the Internal Tax Regime, which provides at Article 34, that *“Bookkeeping should be maintained under the responsibility of and signed by a legally authorized accountant...”*

[50] - The Law on Accountants, Supreme Decree No. 1549, Supreme Decree No. 1549 of November 10, 1966, which provides for two categories of accountants: Public Accountants, which include those who obtained their degrees in “...*Ecuadorian universities or higher education institutes empowered by the Educational Law to grant them*”(Article 2(b)) and those who, “*having studied at universities or higher education institutes in foreign countries, obtained a public accountancy degree and have it validated in Ecuador...*” (Article 2(b)); and Holders of a Secondary School Diploma in Accounting (*Contadores Bachilleres*), which includes those who “*have obtained a diploma in Accounting-Business Sciences and Administration since 1974 at secondary schools authorized by the Ministry of Education and Culture to grant them*” (Article 4(a)) and those who, “*having studied at secondary schools abroad, have obtained a diploma in Accountancy and Business Sciences and Administration since 1974...*” (Article 4(b)).

[51] Article 5 provides that the functions of Public Accountants include, among others, “(b) *Organize, systematize and oversee accounting records; (c) intervene directly in the organization of the accounts of companies; (d) Corroborate and audit statements on economic and financial activities; (e) Certify balance sheets following comprehensive verification of accounting records; (f) Act as an internal auditor in corporations, limited stock companies, limited liability companies and semipublic companies; and, (k) The activities that correspond to Holders of a Secondary School Diploma in Accounting and Business Administration.* Article 6 provides that the functions of Holders of a Secondary School Diploma in Accounting include, among others, to (b)*Oversee and keep accounting records; (c) organize the accounting records under their responsibility; (d) conduct expert examinations, reviews, audits, and tests of accounts; and (e) legally certify balance sheets and tax declarations for the accounting records under their responsibility.*”

[52]Article 10, titled “*Professional Secrecy*”, provides that “*unless ordered otherwise by a competent authority, all accountants and firms and associations of professional accountants are required to keep in strict confidence any operations they record, report on, and are involved in, along with the manner and conditions in which the experts and directors of the respective companies have acted.*”

[53]In addition, Article 12 provides that criminal penalties will apply with respect to accountants who “*...authorizes or certifies with their signature a balance sheet or any other false or incomplete information, regardless what the purpose might have been in auditing it...*”

[54]Article 24, titled “*Obligation to hire an Accountant*”, establishes fines for businesspersons, who, although required to maintain bookkeeping according to existing laws, do not use the services of an accountant. In addition, article 96 of the tax code provides the following, in pertinent part: “*Taxpayers or their agents have the following formal duties: (1) where so required by laws, ordinances, regulations or provisions of the respective tax authority: ... (c) to keep accounting books and records on their economic activity, in Spanish; to record their operations or transactions in legal currency and to keep such books and records until the tax obligation expires; (d) to present the corresponding statements; and (e) to comply with the specific duties established in the respective tax law.*” Article 97 provides sanctions for noncompliance: “*failure to comply with formal obligations shall engage the financial liability of the taxpayer, whether an individual or corporation, without prejudice to other applicable responsibilities.*” Finally, article 39 of the Regulations to the Internal Tax Regime requires accountants to be “*registered in the Consolidated Taxpayers Registry (RUC) even if they work exclusively as employees. Failure to register in the RUC constitutes disqualification to sign tax declarations.*” Article 3 of that regulation requires that accounts be kept under the responsibility of and signed by a legally authorized accountant.

[55] - The Regulation of the Law of Accountants, issued by the Public Education Ministry, which at Article 37, provides that all national or foreign companies that are established in Ecuador are required to hire the services of Public Accountants and provides for financial penalties to be imposed in the event of noncompliance.

[56]- Article 83 of the Constitution, which provides that Ecuadorians have the duty and responsibility, without prejudice to the provisions of the Constitution and the law, *“(8) to administer public property honestly and with full respect for the law, and to report and combat acts of corruption.”*

[57]- The Criminal Code, which at Article 201, provides that *“Anyone who, by reason of their status or function, position of employment, profession, or art, becomes privy to a secret that would be potentially harmful if disclosed without just cause shall be punished with six months to three years of imprisonment and a fine of between 50 and 500 sucres.”*

[58] - The Criminal Code, Article 339 of which sanctions with imprisonment, *“...any other person who commits fraud in connection with public instruments;”* Article 340, which sanctions fraud with respect to private documents; and Article 341, which provides in pertinent part that *“...anyone who intentionally uses a false document shall be punished as if they were the author of the fraud.”*

[59]- The Law on the Internal Tax Regime, which at Article 20 provides that accounting records shall be maintained taking generally accepted accounting principles into consideration.

[60]- Article 36 of the Regulation of the Law on the Internal Tax Regime, which requires accounting to be carried out *“subject to the Ecuadorian Accounting Standards (NEC in Spanish) and the International Accounting Standards (IAS), on aspects not covered by the former.”*

[61]- The Ecuadorian Accounting Standards, adopted by the Superintendence of Companies through Resolution No. 99.14.3.3.007 of August, 1999 and Resolution No. 02.Q.ICI.003 of March, 2002, respectively.

[62]- Resolution No. 08.G.DSC.010, issued by the Superintendence of Companies, which establishes a timetable for the application of the International Financial Reporting Standards.

[63]- In addition, there are also provisions applicable to other types of entities, such as those contained in the Law on the Securities Market and in the General Law for Financial System Institutions

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

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

[65]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:

[66]The Committee observes that Article 10 of the Law of Accountants, which addresses professional secrecy, requires, absent a judicial order, accountants to maintain strict confidence with respect to information that they encounter in accounting records. Meanwhile, Article 83.8 of the Constitution of the Republic makes it a duty and responsibility of Ecuadorians, without prejudice to the provisions of the Constitution and the law, "to report and combat acts of corruption. However, Article 201 of the Criminal

Code punishes with imprisonment, the disclosure, without just cause, of information obtained as a result of the exercise of one's profession.

[67]In light of the foregoing, the Committee is concerned that, although it is a duty and responsibility of all Ecuadorians to report and combat acts of corruption, professional secrecy, as described in Article 10 of the Law of Accountants, may pose an obstacle for accountants to bring to the attention of the appropriate authorities any acts of corruption or violations of law that they discover in the course of their work. The Committee will formulate a recommendation in this regard. (See recommendations 2.4(a) and (b) in Chapter II of this report.)

[68]Second, 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)

[69]Third, 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).

[70]Fourth, 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 (e) in Chapter II of this report.)

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

[71]With respect to results in this field, the response of the Republic of Ecuador to the questionnaire only makes reference to statistics gathered by National Secretariat for Development of Human Resources and Remuneration in the Public Sector (SENRES), with respect to individuals who have been dismissed for violations of Article 49 of the Organic Law of the Civil Service and Administrative Careers and of Unification and Ratification of Remuneration in the Public Sector.

[72]Taking the foregoing into account, and considering that the information provided does not directly refer to the issue being examined, 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(f) in Chapter II of this report)

2.4. Conclusions and recommendations

[73]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:

[74]The Republic of Ecuador has considered and adopted measures 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.

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

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

- a. Adopt the necessary measures so that the duty of accountants responsible for the entry of accounting records and for internal auditors, when they detect anomalies relating to the reporting of acts of corruption, pursuant to article 83.8 of the Constitution of the Republic and article 102 of the Law on the Internal Tax Regime, will permit them in practice to bring those anomalies to the attention of the legal representative and the partners (in the case of companies) or members (in the case of associations), and to report them to the appropriate authorities in the event that they could constitute an offense, and provide a legal framework that will protect them (see Chapter II, Section 2.2 of this report).
- b. 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 Law of Accountants 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).
- c. Hold awareness campaigns that target the individuals responsible for the entry of accounting records and for accounting for their accuracy, on the importance of abiding by the standards in force to ensure the veracity of said records and the consequences of their violation, in addition to implementing training programs specifically designed to instruct those who work in the area of internal control in publicly held companies and other types of associations required to keep accounting records, on how to detect corrupt acts through their work. (See 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. Adopt the measures considered appropriate, and strengthen those that exist, to facilitate the detection, by the organs and entities responsible for preventing and/or investigating violations of measures designed to ensure the accuracy of accounting

records, of sums 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 for those organs or entities on how to review accounting records in order to detect sums paid for corruption;
 - iv. Computer programs that provide easy access to the necessary information to verify the veracity of accounting records and of the supporting documents on which they are based; and
 - v. Institutional coordination mechanisms that enable those organs or entities to easily obtain the necessary collaboration from other institutions to verify the veracity of accounting records and of the supporting documents on which they are based or to establish their authenticity.
 - vi. Training programs for the officials of these organs and entities, specifically designed to alert them to the methods used to disguise payments for corruption in those records and to instruct them on how to detect them.
- f. 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

[77] The Republic of Ecuador has not yet adopted a set of provisions on transnational bribery as provided for by Article VIII of the Convention.

[78] In this regard, Ecuador notes that *“With respect to the measures that the state party is adopting to criminalize transnational bribery, new reforms are awaited as is the preparation of a new Ecuadorian Criminal Code.”*⁶

⁶ See the response of Ecuador to the Questionnaire for the Third Round of Review, at p. 6, available at http://www.oas.org/juridico/spanish/mesicic3_ecu_resp_sp.pdf. Also, in its comments on the draft preliminary report, Ecuador informs that *“there is a draft Organic Code of Penal Guarantees, which proposes a comprehensive reform that includes amendments to substantive and procedural criminal law and in the enforcement of sentences. That draft was*

[79] With respect to the provision of assistance and cooperation provided for by the Convention in relation to this offense, Ecuador notes that “*Cooperation is put into effect via a variety of mechanisms, in keeping with the Inter-American Convention on Mutual Assistance in Criminal Matters, and is provided in a prompt and timely manner in cases where offenses of this type have been perpetrated in member states or where the latter might have been affected.*”⁷

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

[80] Based on the observations contained in the preceding section, the Committee will formulate the relevant recommendations to the country under review so that, subject to its Constitution and the fundamental principles of its legal system, it establish as an offense the conduct of transnational bribery as described in Article VIII of the Convention. (See recommendations 3.4.1, 3.4.2, 3.4.3, and 3.4.4, in Chapter II of this report).

[81] Similarly, in the absence of provisions related to transnational bribery in Ecuador, the Committee considers that the country under review could benefit from the adoption of a law on international cooperation, in order to comply with the third paragraph of article VIII of the Convention, which requires that ‘any state party that has not established transnational bribery as an offense shall, in so far as its laws permit, provide assistance and cooperation with respect to this offense as provided in this Convention. (See recommendations 3.4.5 in Chapter II of this report).

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

[82] The lack of standards on this area precludes an appraisal of results in this respect. Bearing this circumstance in mind, the Committee will formulate a recommendation. (See recommendation 3.4.6 in Chapter II of this report)

3.4. Conclusions and recommendations

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

[84] The Republic of Ecuador has adopted certain 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.

[85] In light of the comments formulated in that section, the Committee suggests that the country under review consider the following recommendations:

- 3.4.1. Criminalize, subject to its Constitution and the fundamental principles of its legal system, the conduct of transnational bribery as described in Article VIII of the Convention, which defines it as the offering or granting, directly or indirectly, by nationals of a state party, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another state, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage, in

prepared by the Ministry of Justice and Human Rights and submitted to civil society for consideration, and is intended to bring the Ecuadorian penal system into line with the principles of the current constitution and international standards.”

⁷ Ibid.

connection with any economic or commercial transaction, in exchange for any act or omission in the performance of that official's public functions. (See Chapter II, Section 3.2 of this report).

- 3.4.2. Consider the possibility of adopting the necessary measures to ensure, with respect to the provisions that ultimately do prohibit and punish the acts described in Article VIII of the Convention, so that there is clarity as regards what should be understood by the term “government official of another state.” (See Chapter II, Section 3.2 of this report).
- 3.4.3. Adopt, subject to its Constitution and the fundamental principles of its legal system, pertinent measures to prohibit and punish any businesses domiciled in its territory that engage in the conduct described in Article VIII of the Convention, irrespective of the penalties applicable to persons connected thereto who are found to have been involved in the commission of acts that constitute that conduct. (See Chapter II, Section 3.2 of this report).
- 3.4.4. Adopt, subject to its Constitution and the fundamental principles of its legal system, pertinent measures to prohibit and punish any government official or employee who commits the crime of transnational bribery, notwithstanding the penalties to which the person or persons connected thereto who are involved in the commission of the acts that constitute said conduct might be liable. (See Chapter II, Section 3.2 of this report).
- 3.4.5. Adopt a law on international cooperation, in order to comply with the third paragraph of article VIII of the Convention, which requires that ‘any state party that has not established transnational bribery as an offense shall, in so far as its laws permit, provide assistance and cooperation with respect to this offense as provided in this Convention. (See Chapter II, Section 3.2 of this report).
- 3.4.6. Select and develop, through the organs and agencies that would, in due course, be responsible for the investigation and/or prosecution of the offense of transnational bribery, and with requesting and/or providing assistance and cooperation with respect thereto, as provided in the Convention, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See Chapter II, Section 3.3 of this report).

4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

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

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

[87] – Article 233 of the Political Constitution of the Republic, which provides that “*No public servant will be exempt from responsibility for actions carried out, or for omissions, in the exercise of their public functions, and they will be administratively, civilly and criminally liable for the handling and administration of funds, and public property or resources. Public servants and delegates or representatives of collegiate bodies of State institutions, will be subject to the penalties established for*

the crimes of embezzlement, bribery, extortion, and illicit enrichment. The action to prosecute them and the corresponding penalties have no statute of limitations, and in these cases, the trials shall begin and shall continue even in the absence of the persons accused. These standards also apply to those that participate in these crimes, even when [those persons] do not have the qualities indicated above.

[88]- Article 296.1 of the Criminal Code, which provides that “*Illicit enrichment is the unexplained increase in the wealth of a person produced in the course of, or as a consequence, of the performance of a public duty or function that is not the result of legally received income.*”

[89]- Article 296.2 of the Criminal Code, which provides that “*Illicit enrichment shall be punished with a sentence of two to five years of imprisonment and the repayment of twice the amount of the illicit enrichment, provided that it does not constitute another offence.*”

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

[90]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

[91]With respect to results in this field, the response of Ecuador notes that “*As regards the results obtained from criminalizing the offense, the Office of the Prosecutor General, has been pursuing and initiating cases which have yielded satisfactory results.*”⁸

[92] 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 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 4.4(a) in Chapter II of this report)

4.4. Conclusion and recommendation

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

[94]The Republic of Ecuador 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.

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

⁸ See the response of Ecuador to the Questionnaire for the Third Round of Review, available at: http://www.oas.org/juridico/spanish/mesicic3_ecu_resp_sp.pdf

- a. Select and develop, through 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, 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 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

[96]The Republic of Ecuador has not criminalized transnational bribery as provided for by Article VIII of the Inter-American Convention against Corruption, as noted in Chapter II, Section 3 of this Report.

[97]The Republic of Ecuador 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

[98] Bearing in mind that the country under review has not criminalized transnational bribery as provided in Article VIII of the Convention, when it does so, the Committee will recommend that it notify the OAS Secretary General of that fact, in accordance with Article X of the Convention. (See the recommendation in Chapter II, Section 5.3 of this report).

[99] Because the country under review criminalized illicit enrichment prior to the date on which it ratified the Convention, the notification referred to in Article X of the Convention is not applicable.

5.3. Conclusion and Recommendation

[100] On the basis of the analysis conducted in the sections 5.1 and 5.2 above, the Committee offers the following conclusion with respect to implementation in the country under review of the provisions contained in Article X of the Convention:

[101] The Republic of Ecuador has not criminalized transnational bribery as provided in Articles VIII of the Convention. Accordingly, when it does so, the Committee recommends that it notify the OAS Secretary General of that fact, in accordance with 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

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

[103] – The Extradition Law, Article 1 of which provides that “*Extradition will be preferentially granted based on the principle of reciprocity. The Government may request a guarantee of reciprocity from the requesting State.*”; Article 2 provides that “*Extradition may be granted, pursuant to the limits noted in the Political Constitution of the Republic, for those crimes which Ecuadorian laws and the laws of the requesting State provide for a sanction of not less than one year*

of incarceration as a maximum, or a more severe punishment; or when the objective of the request is the fulfillment of a sentence of not less than one year of incarceration for offenses that are also criminalized by Ecuadorian law; nonetheless, a granting of extradition may also include other crimes referred to in the request when they have a lesser penalty.”

[104] Article 4 of the Extradition Law provides that Ecuadorians will not be extradited, and that *“they shall be judged pursuant to the laws of Ecuador ...”*. In addition, Article 5 provides that extradition will not be granted in the following situations: (1) *“Foreigners for crimes which should be judged by Ecuadorian judges and tribunals, pursuant to domestic law.”*; (2) For political crimes; (3) For military crimes criminalized by the Ecuadorian military criminal code; (4) *“When the requested person should be judged by an exception Tribunal (‘Tribunal de excepción’).”*; (5) *“When the prescription of the offense of the punishment has been verified, pursuant to Ecuadorian law or the law of the requesting State.”*; (6) *“When the requested person is under a [judicial] process or has been judged and sentenced or exonerated in Ecuador for the same facts on which the extradition request is based...”*; (7) *“When the requesting State does not guarantee that the requested person will not be executed or will not be subject to punishment that affects his physical body or to inhuman or degrading treatment.”*; (8) When the requesting State has not provided the guarantees called for by Article 3 of the Extradition Law;⁹ (9) *“When the requested person has been granted asylum, provided that they are not being prosecuted for another crime that warrants extradition.”*

[105] Article 6 provides that extradition may be denied when: (1) There are reasons to believe that the extradition request has been presented to persecute or punish someone based on their race, political opinion or sexual orientation, or that the situation of the requested person is at risk of being aggravated as a result of those considerations; and (2) When the requested person is under the age of 18 at the time of the extradition request and is resident in Ecuador, if it is considered that their extradition may impede their social reintegration, and *“notwithstanding the adoption, pursuant to the authorities of the requesting State, of more appropriate measures..”*

[106] Article 5,ⁱ at subparagraph (1), provides that the extradition of foreigners will not be granted when the crimes at issue should be heard by Ecuadorian courts and judges, according to Ecuadorian law. Article 5(1) further provides that in those cases, *“if the State in which the events took place so requests, the Government of Ecuador shall note the facts that motivated the request to the Ministry of the Attorney General, in order for it to prosecute the requested person. If this occurs, the requested State will be requested to provide the stops that have been taken in order to continue the prosecution in Ecuador.”*

[107] Article 7 of the Extradition Law, which provides that extradition requests shall be formulated via diplomatic channels, or if no such channel exists in the requesting state, directly from the requesting government. Article 7 also specifies the information that must be submitted along with a request for extradition.ⁱⁱ

[108] Article 8 of the Extradition Law provides that in cases of urgency, the President of the Supreme Court of Justice may order the preventive detention of the requested person, upon request from the Judge

⁹ Article 3 of the Extradition Law provides as follows: *“If the extradition request is based on a sentence issued in the absence of the requested person, in which he/she has been sentenced to a punishment which, pursuant to Ecuadorian legislation, cannot be imposed on someone who was not present at the trial or its equivalent, extradition will be granted on the condition that the diplomatic representative of the requesting State in Ecuador, in the time period that is determined, offers sufficient guarantees that the requested person will be subject to a new trial at which they must be present and fulfilling the other guarantees of due process.”*

or Tribunal, or diplomatic or consular officer of the requesting state. Article 8 also specifies the manner in which the request must be submitted, as well as the information that should be contained therein.

[109] - The Convention on Extradition signed in Montevideo in 1933.¹⁰

[110] - The bilateral extradition treaties¹¹ entered into between Ecuador and Bolivia, Brazil, Chile, Peru, and the United States, respectively.

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

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

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

[113] The Committee notes that pursuant to the Extradition Law, extradition is not conditional on the existence of a treaty between Ecuador and the requesting state. The Committee further observes that in those cases where extradition of a person is denied on the basis of their Ecuadorian citizenship or on the basis of Ecuador exercising jurisdiction over the offense, the Extradition Law requires the person be tried in the local courts.

[114] However, the Committee has found no provision that requires Ecuador to inform the requesting state of the disposition of those cases where an extradition request is denied on the basis that Ecuador has jurisdiction over the offense, or in those cases where extradition is denied based on the citizenship of the requested individual. 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

[115] With respect to results in this field, the response of Ecuador states the following: *“We do not have any specific cases that have been presented in the last five years.”*¹²

[116] 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,

¹⁰ This Convention, to which Ecuador is a party together with Argentina, Chile, Colombia, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, México, Nicaragua, Panamá, and the United States, may be consulted at: <http://www.oas.org/juridico/mla/en/ecu/index.html>

¹¹ These treaties may be consulted at: <http://www.oas.org/juridico/mla/en/ecu/index.html>

¹² See the response of Ecuador to the questionnaire for the Third Round of Review, at p. 12, available at: http://www.oas.org/juridico/spanish/mesicic3_ecu_resp_sp.pdf. Nonetheless, in its comments on the draft preliminary report, Ecuador informs of *“the processing of 21 active extradition requests relating to public corruption ...since the year 2000. We should note that these matters are executed by the President of the National Court of Justice to the Ministry of Foreign Relations, in accordance with its jurisdiction in the matter, pursuant to articles 23 to 27 of the Law on Extradition.”* This information on results has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information (see Section I of this report, “Summary of the Information Received”) but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

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)

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

6.4. Conclusions and recommendations.

[118] 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:

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

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

- a. Adopt the measures necessary in order to inform requesting states in due course of the disposition of those cases when an extradition request is denied based on the Ecuadorian citizenship of the requested person, or based on Ecuador exercising jurisdiction over the offense. (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. In addition, the Committee considers that it might be useful for the country under review to consider the utility of the Inter-American Convention against Corruption for extradition purposes and corruption cases. This could consist, among other measures, in the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area. (See section 6.3 of chapter II of this report)

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

FIRST ROUND¹³

[121] With respect to the implementation of the recommendations issued to the Republic of Ecuador 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 1.1.1

Strengthen the implementation of laws and regulatory systems related to conflicts of interest.

Measures suggested by the Committee that require information on their implementation or which required further attention within the Framework of the Second Round:¹⁴

- a. *Accurately identify implications, prohibitions, incompatibilities and disqualifications related to conflicts between private interests and the public interest.*
- b. *Establish adequate restrictions, as applicable and for a reasonable period, for those who cease to exercise a public function (see Section 1.1.2 of Chapter II of this report).*
- c. *Design and implement mechanisms for informing and training all public servants with respect to the standards of conduct, including those relating to conflicts of interest, and to respond to requests for advice and consultation on the standards by public servants, as well as provide periodic training and updating with regard to said standards.*
- d. *Conduct evaluations of the use and effectiveness of the standards of conduct for preventing conflicts of interest and of the mechanisms existing in Ecuador to enforce these standards, as instruments for preventing corruption. As an outcome from said evaluations, consider the adoption of measures to promote, facilitate, and consolidate or ensure the effectiveness of these instruments for this purpose.*
- e. *Carry out a study on the possibility of compiling the standards of conduct for the correct, honorable and proper fulfillment of public functions referred to in the Convention. (This consideration is also pertinent with respect to Sections 1.2.2 and 1.3.2 in Chapter II of this report, and shall be understood to apply to them as well.)*

¹³ The references to sections that appear in italics in the recommendations and measures transcribed herein, refer to the report from the First Round of Review.

¹⁴ See pages 31-32 of this report, available at: http://www.oas.org/juridico/english/mec_rep_ecu.pdf.

[122] With respect to the implementation of the foregoing recommendation and its measures, in its response,¹⁵ the country under review presents additional information to that analyzed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step which contributes to progress in implementation of the recommendation, the following:

[123] As noted by the country under review, *“The National Assembly will adopt this amendment and the Organic Law of the Public Service will be issued, incorporating into the reform proposal, the aspect of conflict of interest, which provides that ‘In the event that there is a conflict of interest between public servants in the same institution that have some degree of familial relationship as provided by law, the person that is to take the decision, will immediately inform their superior of the situation, and shall immediately recuse themselves from hearing the proceedings at issue, while the matter is resolved.’ With respect to conflicts of interest, the Regulation of the Organic Law of the Public Service will also include ‘prohibitions and mechanisms for avoiding conflicts of interest’, incorporating this aspect in provisions and in the Code of Ethics for servants of the Public Sector, which will be prepared by SENRES.”*

[124] The Committee takes note of the step taken by the country under review to progress with the implementation of the foregoing recommendation and the respective measures, and of the need for it to continue to give attention to their implementation.

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

Recommendation 1.2.1

Strengthen the system of control of public resources.

Measures suggested by the Committee that require information on their implementation or which required further attention within the Framework of the Second Round:¹⁶

- a. *Consider the possibility of having the Bill on Modernizing the Criminal Treatment of Corruption, mentioned in Chapter II, Section 1.2.2 of this report, adopted by the appropriate authority once the corresponding procedures have been completed.*
- b. *Design and implement mechanisms for informing and training all public servants with respect to the standards of conduct, including those relating to conflicts of interest, and to respond to requests for advice and consultation on the standards by public servants, as well as provide periodic training and updating with regard to said standards.*
- c. *Conduct an evaluation of the use and effectiveness of the standards of conduct for ensuring the conservation and proper use of public resources and of the mechanisms existing in Ecuador to enforce these standards, as instruments for preventing corruption. As an outcome from said evaluation, consider the adoption of measures to promote, facilitate, and consolidate or ensure the effectiveness of these instruments for this purpose.*

¹⁵ See the response of Ecuador to the Questionnaire for the Third Round, at. p. 14, available at: http://www.oas.org/juridico/spanish/mesicic3_ecu_resp_sp.pdf

¹⁶ See pages 32-33 of this report, available at: http://www.oas.org/juridico/english/mec_rep_ecu.pdf

[125] In its response,¹⁷ the country under review presents additional information to that analyzed by the Committee in the Report from the Second Round, with respect to the implementation of measure (b), above. In this regard, the Committee notes, as steps which lead to the conclusion that this measure has been satisfactorily considered, the following:

[126] – The training provided by the Comptroller General of the State in the following areas: “*The new State institutions; National Public Procurement System; Responsibilities; Public Management; Administrative Law; Workshops to coordinate the oversight between the Attorney General and the Comptroller General; Workshops on Public Ethics and Values; Integrated system for Human Development; Public Management and Social Oversight; and Internal Oversight Provisions, among others.*”¹⁸

[127] – The training that was provided to approximately 15,000 public servants at the national level in 2007 and 2008.

[128] – The 50 training events that have taken place in 2009.

[129] The Committee takes note of the satisfactory consideration of measure (b) of the foregoing recommendation, which, due to its nature, requires continuity with regard to its implementation. In addition, the Committee takes note of the need for the country under review to give additional attention to the implementation of measures (a) and (c) of this recommendation.¹⁹

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

Recommendation 1.3.1

Strengthen existing mechanisms in the Republic of Ecuador that require public servants to report to appropriate authorities acts of corruption in the performance of public functions.

¹⁷ See the response of Ecuador to the Questionnaire for the Third Round, at. p. 25, available at: http://www.oas.org/juridico/spanish/mesicic3_ecu_resp_sp.pdf

¹⁸ Ibid.

¹⁹ With respect to measure (a), in its comments on the draft preliminary report, Ecuador explains the following: “*while the Bill on Modernizing the Criminal Treatment of Corruption was presented to the Civil and Criminal Law Committee of the National Congress, and the Congress says it took this into account in preparing one of the reforms to the criminal code, nevertheless those reforms did not reflect the spirit of The Bill. In order to rationalize the penal system, the Ministry of Justice and Human Rights prepared a draft Organic Code of Penal Guarantees, which calls for reforms in substantive and procedural criminal law and in the enforcement of sentences. That draft will bring the Ecuadorian penal system into line with the principles of the current constitution and international standards.*” With respect to measure (c), in its comments on the draft preliminary report, Ecuador informed that “*In October 2009 the Comptroller General's office (CGE) launched an internal project known as the "Seal of Ethics" (Sello Etico) to promote and encourage compliance with certain standards of ethics in public sector entities.*” This last information has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information (see Section I of this report, “Summary of the Information Received”) but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

Measures suggested by the Committee that require information on their implementation or which required further attention, within the Framework of the Second Round:²⁰

- a. *Develop the constitutional law (Article 97, num. 14 Political Constitution) that establishes the duty and responsibility to report and combat acts of corruption in the case of public servants that fail to report such acts, through the identification of the pertinent administrative liabilities and their corresponding sanctions.*
- b. *Facilitate compliance with said constitutional obligation by using the means of communication judged to be appropriate, by regulating its use, and by developing the witness protection program established under the law, such that informants are guaranteed more protection, than the ones that exist currently, against potential threats or retaliation that may be directed toward them as a consequence of complying with this obligation.*
- c. *Train public servants about the existence and purpose of the responsibility to report to appropriate authorities acts of corruption in the performance of public functions.*

[130] In its response,²¹ and with respect to the implementation of the foregoing recommendation and its measures, the country under review presents additional information to that analyzed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the following:

[131] – Article 206.1 of the current constitution, which allows for an agenda to encourage public officials to report acts of corruption; as well as Article 208.7, which provides, among the functions of the Council on Citizen Participation and Social Oversight, that of assisting in the protection of persons who report acts of corruption.

[132] – Article 13.7 of the Organic Law of the Council for Citizen Participation and Social Oversight, which provides that it is a function of the Council: to solicit from the Public Prosecutor the protection of persons who report or testify in the investigations that are carried out, through the system for protecting victims and witnesses and in the case of imminent risk, request immediate action by the Public Prosecutor.

[133] – Article 14 of the Law of the Council, which guarantees confidentiality and protection for the informant.

[134] – The acquisition of 24 additional offices in all of the provinces in order to improve the services provided to the public by the Attorney General.

[135] – The seven additional offices for receiving complaints that have been opened in the cities of Guayaquil and Quito.

²⁰ See page 33 of this report, available at: http://www.oas.org/juridico/english/mec_rep_ecu.pdf

²¹ See the response of Ecuador to the Questionnaire for the Third Round, at p. 25, available at: http://www.oas.org/juridico/spanish/mesicic3_ecu_resp_sp.pdf. In addition, in its comments on the draft preliminary report, Ecuador informed of the system for receiving complaints of possible acts of corruption, through the institutional website of the National Secretariat for Transparency in Executive Management; and of the Substitute Regulations for the Program of Protection and Assistance to Victims, Witnesses and other participants in criminal proceedings. This information has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information (see Section I of this report, “Summary of the Information Received”) but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

[136] – The 11 Indigenous Prosecutors Offices that have been created.

[137] – The goal of increasing by 900 in 2009, the number of public servants working in prosecutors offices, and thus doubling the number of prosecutors and officials, in order to improve the services provided to the public.

[138] – The entry into force in January, 2009, of the Code of Ethics for officials and employees of the Attorney General of the State.

[139] The Committee takes note of the steps taken by the country under review to progress with the implementation of the foregoing recommendation and its measures, and of the need for it to continue to give attention to their implementation.

[140] In this connection, the report presented by civil society organization “Grupo Faro”, notes that “The legislation of Ecuador does not have norms that define clear and efficient mechanisms for guaranteeing the protection of public officials that report acts of corruption. With the exception of the Municipality of Quito that has defined certain mechanisms, both at the national and regional levels, there is no agenda that promotes the reporting of acts of corruption by public officials.”²²

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

Recommendation 2.1

Strengthen systems for the disclosure of income, assets and liabilities.

Measures suggested by the Committee that require information on their implementation or which required further attention, within the Framework of the Second Round:²³

- a. *Regulate the conditions, procedures and other appropriate aspects related to publicizing the sworn declarations of net worth) of public servants (including income, assets and liabilities, as appropriate.*
- b. *Review and follow up on compliance by public servants with the obligation to present a sworn declaration of net worth (including income, assets and liabilities), pointing out the degree of compliance and suggesting suitable measures to modify or correct the situation.*
- c. *Optimize systems for reviewing the contents of sworn declarations of net worth with the objective of detecting and preventing conflicts of interest, as well as detecting possible cases of illicit enrichment.*

[141] In its response,²⁴ and with respect to the implementation of the foregoing recommendation and its measures, the country under review presents additional information to that analyzed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the following:

²² See page 28 of this report, available at: http://www.oas.org/juridico/spanish/mesicic3_ecu_inf_sc.pdf

²³ See pages 33-34 of this report, available at: http://www.oas.org/juridico/english/mec_rep_ecu.pdf

²⁴ See the response of Ecuador to the Questionnaire for the Third Round, at. p. 25, available at: http://www.oas.org/juridico/spanish/mesicic3_ecu_resp_sp.pdf

[142] – Article 231 of the Constitution of 2008, which provides that “*Public servants, without exception, will present, at the beginning and end of their service and periodically as determined by law, a sworn statements of assets, which will include assets and liabilities, as well as the authorization so that, if necessary, the secrecy of their banking records can be lifted; those who do not comply with this obligation cannot take office. The members of the Armed Forces and the National Police shall submit an additional sworn statement, prior to receiving promotions and before retirement. The Comptroller General of the State shall examine and confirm the declarations and shall investigate those cases in which there is a presumption of illicit enrichment. The failure to present the statement upon ceasing functions or unjustified inconsistencies between statements shall lead to a presumption of illicit enrichment. When there is serious indication of the use of a straw man, the Comptroller General may request similar statements from persons associated with the person who has exercised public functions.*”

[143] – The creation by the Comptroller General, in 2008, of the Directorate of Public Ethics and Citizen Participation”, charged with receiving, registering, verifying and following-up o non sworn statements, in order to take the actions necessary in those cases where there is a presumption of illicit enrichment.

[144] The Committee takes note of the steps taken by the country under review to progress with the implementation of the foregoing recommendation and its measures, and of the need for it to continue to give attention to their implementation.

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

Recommendations suggested by the Committee that require information on their implementation or which required further attention, within the Framework of the Second Round:²⁵

Recommendation 3.1

Strengthen the oversight bodies concerning the functions they perform related to the effective enforcement of the provisions of Articles 1, 2 4, and 11 of the Convention, with the objective of ensuring the effectiveness of such oversight, as follows: provide them with the necessary resources to do an excellent job; ensure that they receive improved support for their activities; establish mechanisms that enable effective institutional coordination of their activities, as appropriate, as well as the ongoing evaluation and monitoring of these activities.

[145] In its response,²⁶ and with respect to the implementation of the recommendation 3.1 above, the country under review presents information additional to that analyzed in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the following:

[146] – Chapter V of Title IV of the Constitution of the Republic of Ecuador, in force since 20 October 2008, which groups the oversight bodies under a new State entity, known as the Transparency and Social Oversight Function. That body promotes the supervision of public sector entities and agencies

²⁵ See page 34 of this report, available at: http://www.oas.org/juridico/english/mec_rep_ecu.pdf

²⁶ In its comments on the draft preliminary report, Ecuador informed of the grouping of oversight bodies pursuant to the Constitution, and of the Law of the Council on Citizen Participation and Social Control.

and of natural or legal persons of the private sector who provide services or conduct activities of public interest, so that they will do so with responsibility, transparency and equity; it is also to foster and encourage citizen participation, to protect the exercise and observance of rights, and to prevent and combat corruption.

[147] – Article 206 of the Constitution, which establishes the attributes and functions of the coordination entity.

[148] – The Law of the Council on Citizen Participation and Social Oversight, which at Chapter III, defines the powers of the entity for promoting transparency and combating corruption, one of which is "to *“promote institutional policies on transparency in the management of public affairs, ethics and the use of property, resources and in the exercise of public functions, and citizen access to public information.”*

[149] The Committee takes note of the steps taken by the country under review to progress with the implementation of the foregoing recommendation, and of the need for it to continue to give attention to its implementation.

Recommendation 3.2

Adopt the necessary measures to set up and consolidate the Sistema Anticorrupción del Ecuador – SAE (Ecuadorian Anticorruption System), as stipulated in Executive Decree No. 122, 2003 (see Chapter II, Section 3.3 of this report).

[150] In its response,²⁷ and with respect to the implementation of the recommendation 3.1 above, the country under review presents information additional to that analyzed in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the following:

[151] – *“...the new constitution the fight against corruption, which contemplates the fight against corruption, not through the scattered efforts of institutions, but through the new Function for Transparency and Social Oversight, which combines at the constitutional level the purposes pursued by the SAE, including coordination of the national anticorruption plan.”*

[152] The Committee takes note of the satisfactory consideration by the country under review, of recommendation 3.2, above, through the implementation of an alternative measure, as explained above.

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

4.1. Mechanisms for access to information

Recommendation 4.1.1

Establish legal standards that guarantee access to public information.

²⁷ In its comments on the draft preliminary report, Ecuador informed of the alternative measure that had been implemented, and which has replaced the SAE.

Measures suggested by the Committee that require information on their implementation or which required further attention, within the Framework of the Second Round:²⁸

- a. *Strengthen the mechanisms designed to enforce the right of civil society and of citizens to access to public information and to appeal decisions under which requests for information are denied, so as to guarantee easy access to said mechanisms and to ensure that the mechanisms are effective in protecting the right to public information. In this respect, consider the possibility of having the Draft Basic Law on Access to Public Information, mentioned in Chapter II, Section 4.2.2 of this report, adopted by the appropriate authority once the corresponding procedures have been completed.*
- b. *Carry out a study on the use and effectiveness of mechanisms for access to information held by (or under the control of) public institutions in Ecuador, as instruments to prevent corruption. Based on the outcome of this study, Ecuador should consider the adoption of measures designed to promote, facilitate, consolidate and ensure the effectiveness of these mechanisms for this purpose.*

[153] In its response,²⁹ and with respect to the implementation of recommendation 4.1.1 above and its measures, the country under review presents information additional to that analyzed in the Report from the Second Round. In this regard, the Committee notes, as a step which contributes to progress in implementation of the recommendation, the following:

[154] – Article 91 of the Constitution, which creates an “action for access to information”, which guarantees access to information when this has been denied, expressly or tacitly, or when the information provided is incomplete or unreliable.

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

4.2. Mechanisms for consultation

Recommendation 4.2.1

Complement existing consultative mechanisms by establishing procedures, as appropriate, that enable public consultations to take place prior to the development of public policies and the final approval of legal provisions.

Measures suggested by the Committee that require information on their implementation or which required further attention, within the Framework of the Second Round:³⁰

- a. *Increase the publication and dissemination of draft legal provisions and hold transparent processes that enable consultation with interested sectors concerning the preparation of draft laws, decrees or resolutions by the Executive Branch.*

²⁸ See page 35 of this report, available at: http://www.oas.org/juridico/english/mec_rep_ecu.pdf

²⁹ In its comments on the draft preliminary report, Ecuador informed of the alternative measure that had been implemented, and which has replaced the SAE.

³⁰ See page 35 of this report, available at: http://www.oas.org/juridico/english/mec_rep_ecu.pdf

- b. *Take the necessary measures to establish and define the institutionalization of consultations with civil society. In this respect, the Committee suggests that the Republic of Ecuador consider the possibility of having the Draft Basic Law on Social Oversight of Public Authority, mentioned in Chapter II, Section 4.3.2 of this report, adopted into law by the appropriate authority once the corresponding procedures have been completed.*
- c. *Carry out a comprehensive study on the use and effectiveness of existing consultative mechanisms in Ecuador, as instruments to prevent corruption. Based on the outcome of this study, Ecuador should consider the adoption of measures designed to promote, facilitate, consolidate and ensure the effectiveness of these mechanisms for this purpose.*

[156] In its response,³¹ and with respect to the implementation of the foregoing recommendation and its measures, the country under review presents information additional to that analyzed in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the following:

[157] – The workshops “*to disseminate the Draft Law on Citizen Participation and Social Oversight*”, which addressed “*Social Oversight...Revocation of Mandate, Co Legislation, Plan and participative budgets and political parties and organizations....*”

[158] – The five meetings held for citizen consultation in 2009, for the preparation of the Draft Law on Citizen Participation in the provinces of Guayas, Santa Elena, Azuay, Tungurahua, and Pichincha.

[159] The Committee takes note of the steps taken by the country under review to progress with the implementation of the foregoing recommendation and the respective measures, and of the need for it to continue to give attention to their implementation.

[160] In this connection, the report presented by civil society organization “Grupo Faro”, notes that “*There has been progress with the Constitution of 2008, which at Articles 257 and 398 require prior citizen consultation in the areas of public policies. At the same time, the environmental norms have with incorporated mechanisms for citizen consultation prior to carrying out projects with an environmental impact. Similarly, this legislation has been incorporated in regulations of some municipalities that have Units for Environmental Management.*”³²

4.3. Mechanisms to encourage participation in public administration

Recommendation 4.3.1

Strengthen and continue to implement mechanisms that encourage civil society and non-governmental organizations to participate in public administration. As well as to make progress in repealing standards that may discourage such participation.

³¹ See the response of Ecuador to the Questionnaire for the Third Round, at. p. 20, available at: http://www.oas.org/juridico/spanish/mesicic3_ecu_resp_sp.pdf. In addition, in its comments on the draft preliminary report, Ecuador informed of “*the Draft Organic Law on Social Control of Public Authority is now superseded by the new Constitution, which provides in its first transitional provision that a new law is to be issued regulating citizen participation in light of the new constitutional principles in this matter. We should mention that the Organic Law on Citizen Participation has now been given legislative approval; it develops the constitutional principles with respect to transparency and access to public information, and is now awaiting approval by the Executive.*”

³² See page 31 of this report, available at: http://www.oas.org/juridico/spanish/mesicic3_ecu_inf_sc.pdf

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

- a. *Establish mechanisms, in addition to those that already exist, to strengthen the participation of civil society and non-governmental organizations in efforts to prevent corruption and to raise public awareness of the problem; as well, promote the awareness and use of established participatory mechanisms. In this respect, consider the possibility of having the Draft Basic Law on Social Oversight of Public Authority, mentioned in Chapter II, Section 4.4.2 of this report, adopted into law by the appropriate authority once the corresponding procedures have been completed.*
- b. *Repeal the so-called 'laws on contempt' (see Chapter II, Section 4.4.2 of this report).*

[161] In its response,³⁴ and with respect to the implementation of the foregoing recommendation and its measures, the country under review presents information additional to that analyzed in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the following:

[162] – The organization in 2009, of “citizen watchdogs on Citizen Security for “Creating the Good Life”, established in the Constitution, and the goal of which is citizen participation in reporting irregularities in their communities and subsequently reported to the National Police.

[163] – The citizen watchdogs on budget participation, created in three cities of the Amazon Region, so that citizens can participate in the analysis and evaluation of budget execution in their cities.

[164] – The encounters that have been held with different representatives of the Mariscal sector of Quito, in order to reach agreements that allow the establishment of working relationships between the National Police, the municipality and citizens.

[165] The proposal for a Citizen Security Observatory.

[166] The Committee takes note of the steps taken by the country under review to progress with the implementation of the foregoing recommendation and the respective measures, and of the need for it to continue to give attention to their implementation.

[167] In this connection, the report presented by civil society organization “Grupo Faro”, notes that *“Article 207 of the Constitution of the Republic of Ecuador creates to Council for Citizen Participation and Social Control, which will ‘promote and motivate the exercise of those rights related to citizen participation and will establish social control mechanisms in those areas that are of public interest and will designate the authorities that are appropriate pursuant to the Constitution and the law...On July 14, 2009, the Legislative Commission approved the Organic Law of the Council on Citizen Participation and Social Control, the purpose of which is to regulate the organization, operation and attributes of that entity. That law establishes the criteria for the admissibility of cases for investigation and also indicates*

³³ See pages 35-36 of this report, available at: http://www.oas.org/juridico/english/mec_rep_ecu.pdf

³⁴ See the response of Ecuador to the Questionnaire for the Third Round, at. p. 22, available at: http://www.oas.org/juridico/spanish/mesicic3_ecu_resp_sp.pdf. In addition, in its comments on the draft preliminary report, Ecuador informed that the Basic Law on Social Control of Public Authority is no longer in force.

that the reports of investigations will lead to control and prosecutions, and that they may be used as evidence and they are obligatory."³⁵

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

Recommendation 4.4.1

Strengthen and continue to implement measures that encourage civil society and non-governmental organizations to participate in the monitoring of the public administration.

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

- a. *Promote ways, when appropriate, that enable public servants to permit, facilitate or assist civil society and non-governmental organizations to develop activities for monitoring their public activities. In this respect, consider the possibility of having the Draft Basic Law on Social Control of Public Authority, mentioned in Chapter II, Section 4.5.2 of this report, adopted into law by the appropriate authority once the corresponding procedures have been completed.*
- b. *Design and implement programs to publicize participatory mechanisms concerning the monitoring of public administration and, when appropriate, train and provide the necessary tools to civil society and non-governmental organizations in order to use such mechanisms.*

[168] In its response,³⁷ and with respect to the implementation of the foregoing recommendation and its measures, the country under review presents information additional to that which was analyzed in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the following:

[169] – The Judicial System Citizen Observatories implemented jointly by the Ministry of Justice and Human Rights in 2008, and which were officially presented to the public through various events held in 2009; and the four citizen observatories created in the provinces of Pichincha, Guayas, Azuay and Esmeraldas.

[170] – The “Macro-Electoral Oversight” that has been implemented in 12 cantons, and the training provided to 229 individuals in this regard.

[171] – The meetings held with coordinators of the Movements of Children and Adolescents.

[172] – The Workshops held with Afro-Ecuadorian groups, held in order to strengthen Afro-Ecuadorian social organizations.

[173] The Committee takes note of the steps taken by the country under review to progress with the implementation of the foregoing recommendation and the respective measures, and of the need for it to continue to give attention to their implementation.

³⁵ See page 27 of this report, available at: http://www.oas.org/juridico/spanish/mesicic3_ecu_inf_sc.pdf

³⁶ See page 36 of this report, available at: http://www.oas.org/juridico/english/mec_rep_ecu.pdf

³⁷ See the response of Ecuador to the Questionnaire for the Third Round, at p. 24, available at: http://www.oas.org/juridico/spanish/mesicic3_ecu_resp_sp.pdf

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

Recommendations suggested by the Committee that require information on their implementation or which required further attention, within the Framework of the Second Round:³⁸

Recommendation 5.1

Determine and prioritize specific areas in which the Republic of Ecuador needs technical cooperation from other States and international cooperation agencies to strengthen its capacity to prevent, detect, investigate and punish acts of corruption.

Recommendation 5.2

Continue efforts to foster technical cooperation exchanges with other State Parties on the most effective ways and means to prevent, detect, investigate and punish acts of corruption.

[174] The Committee notes that in its response, the country under review did not refer to steps taken with respect to the implementation of recommendations 5.1 and 5.2, above. Accordingly, the Committee reiterates the need for the country under review to pay additional attention to their implementation.³⁹

Recommendation 5.3

Design and implement a comprehensive program for informing and training competent authorities and public servants with the objective of ensuring that they are aware of and can apply mutual legal assistance provisions related to the investigation or prosecution of acts of corruption covered in the Convention and in other treaties subscribed by the Republic of Ecuador.

Similarly, train competent public servants to ensure the greatest possible mutual technical and legal assistance in order to prevent, detect, investigate and punish acts of corruption.

[175] In its response,⁴⁰ the country under review presents additional information to that analyzed by the Committee in the Report from the Second Round, with respect to the implementation of recommendation 5.3, above. In this regard, the Committee notes, as steps which lead to the conclusion that this recommendation has been satisfactorily considered, the following:

[176] – The guide and specific form for requesting international criminal assistance created by the Prosecutor General, and the organization of a department charged with carrying out this coordination between prosecutors in need of international criminal assistance, the Ministry of External Relations and different international prosecutors.

[177] – The workshops that have been held with auditors from the Comptroller General and prosecutors in Quito, Guayaquil and Cuenca.

³⁸ See pages 36-37 of this report, available at: http://www.oas.org/juridico/english/mec_rep_ecu.pdf

³⁹ In its comments on the draft preliminary report, Ecuador informs that “In November 2008, in the context of the United Nations Convention against Corruption, Ecuador produced a preliminary compilation of technical assistance needs, using a matrix provided by the United Nations Office on Drugs and Crime (UNODC), referring to the four chapters of that Convention: Preventive Measures, Criminalization and Law Enforcement, International Cooperation, and Asset Recovery.”

⁴⁰ See the response of Ecuador to the Questionnaire for the Third Round, at p. 19, available at: http://www.oas.org/juridico/spanish/mesicic3_ecu_resp_sp.pdf

[178] The Committee takes note of the satisfactory consideration of recommendation 5.3, above, which, due to its continuous nature, should continue to be developed.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

The Committee did not formulate recommendations to the Republic of Ecuador in this field.

7. GENERAL RECOMMENDATIONS

Recommendations suggested by the Committee that require information on their implementation or which required further attention, within the Framework of the Second Round:⁴¹

Recommendation 7.1

Design and implement, as 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.

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.

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.

[179] The Committee notes that in its response, the country under review did not refer to steps taken with respect to the implementation of recommendations 7.1, 7.2, and 7.3, above. Accordingly, the Committee reiterates the need for the country under review to pay additional attention to their implementation.⁴²

SECOND ROUND⁴³

[180] 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:

⁴¹ See page 37 of this report, available at: http://www.oas.org/juridico/english/mec_rep_ecu.pdf

⁴² In its comments on the draft preliminary report, Ecuador informed that “*Training for public officials of the component entities of the Transparency and Social Oversight Function began in 2009 and will continue in 2010.*” This information has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information (see Section I of this report, “Summary of the Information Received”) but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

⁴³ The references to sections that appear in italics in the recommendations and measures transcribed herein, refer to the report from the Second Round of Review.

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

1.1. Systems of Government Hiring

Recommendation 1.1.1:

Strengthen government hiring systems in general.

Measure Suggested by the Committee:

Follow up the way in which Article 20 of the RLOSCCA is applied with regard to the hiring of occasional services in order to ascertain whether the system prevents successive renewals, so that exceptions are not used as a means of evading merit-based and competitive exams.

[181] In its response,⁴⁴ the Republic of Ecuador presents information with respect to the implementation of the foregoing recommendation and its measure. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the recommendation, the following:

[182] *“Ecuador is working on determining the optimal structure for institutions and the optimization of contracts, according to institutional needs, and avoiding duplication on competencies, position, functions and products, as well as the restructuring and actual classification of posts. The management of the SENRES is focused on reviewing the appointments in all the public sector, including autonomous institutions, pursuant to Article 225 and Article 326(16) of the Constitution.”*

[183] The Committee takes notes of the step taken by the Republic of Ecuador towards implementation of the foregoing recommendation, as well as the need for Ecuador to give additional attention to the implementation of this recommendation and its measure.

Recommendation 1.1.2:

“Strengthen the systems for the hiring of public servants for the Legislative Function.”

Measures Suggested by the Committee:

- a) *Make the necessary amendments in order to establish guidelines on implementation of the staff selection subsystem, setting parameters as to how merit and competitive examinations shall be conducted, including the advertising of vacancies and minimum requirements for selection, in order to ensure the principles of legality, fairness, neutrality, equality and transparency.*
- b) *Study the modification of Article 5 of the LCAFL, so candidates who apply for a vacancy through an open competition, and are neither officials nor employees of the Legislative, have access to the same appeals processes as the public servants referred to.*
- c) *Study the modification of paragraph (b) of Article 1-A of the LCAFL, so as to define “temporary or occasional staff,” in order to prevent appointments of public servants for an*

⁴⁴ See the response of Ecuador to the Questionnaire for the Third Round, at p. 15, available at: http://www.oas.org/juridico/spanish/mesicic3_ecu_resp_sp.pdf

indefinite period and without having been subject to a merit-based competition, under the heading "other temporary or occasional staff".

[184] The Committee notes that in its response, Ecuador did not refer to steps taken with respect to the implementation of recommendation 1.1.2, above, or its measures. Accordingly, the Committee takes note of the need for the country under review to pay additional attention to their implementation.⁴⁵

Recommendation 1.1.3:

Strengthen the systems for hiring public servants for the Judiciary.

Measures Suggested by the Committee:

- a) *Formulate the amendments that need to be made to the Regulations on the Judicial Career (RCJ) in order to set guidelines on the implementation of the subsystem for selecting personnel, establishing the parameters on how the competitions should be conducted, including the mechanism for announcing vacancies and publishing selection requirements, in order to ensure that merit-based and competitive examinations conform to the principles of legality, equity, neutrality, equality and transparency.*
- b) *Draft the amendments that should be made to the RCJ in order to set up a mechanism for contesting selection processes, accessible for officials and employees of the Judicial Branch and for external candidates.*
- c) *Amend Article 10 of the Regulations on the Judicial Career in order to eliminate the possibility of public officials continuing to be employed without taking a merit-based and competitive examination, because of the alleged urgency for the service..*

[185] The Committee notes that in its response, Ecuador did not refer to steps taken with respect to the implementation of recommendation 1.1.3, above, or its measures. Accordingly, the Committee takes note of the need for the country under review to pay additional attention to their implementation.⁴⁶

Recommendation 1.1.4:

Strengthen the systems for hiring public servants for the Public Prosecutions Service.

Measures Suggested by the Committee:

- a) *Update Article 5 of the Instructions on Recruitment of Staff for the Public Prosecutions Service (IRSPMP), in order to include other media such as radio, television, satellite,*

⁴⁵ In its comments on the draft preliminary report, Ecuador informed that "the draft Organic Law of the Public Service provides that all institutions providing public services, as is the case with the legislative function and the judicial function, must observe the standard provisions for the public service. However, we must note that the new Organic Code of the Judicial Function and the Organic Law of the Legislative Function, issued in the course of 2009 and currently in force, will have to comply with the provisions of the new Organic Law of the Public Service when it comes into force."

⁴⁶ In its comments on the draft preliminary report, Ecuador notes "...the new Organic Code of the Judicial Function, in force since March 2009 addresses this in Chapter I on guidelines for careers in the judicial function, the characteristics of that function, and the profile and classification of the judicial servant...with issuance of the new Organic Law of the Public Service it will be feasible for administrative officials to be subject to a standard legal determination defined in that law, based on principles of merit, legality, fairness and, above all, transparency."

Internet, etc. when announcing vacancies subject to open competition, thereby ensuring broader publicity of the announcement.

- b) *Amend Article 22 of the IRSPMP to extend the period during which a candidate can contest a competition to a more fair and realistic term, taking into account that the period begins the next day of the publication of the results, in order to guarantee a transparent process. Additionally, make the necessary amendments to ensure that the appealing instance is not the same one that rated the competition. This would ensure the possibility of a second instance for appeals.*

[186] In its response,⁴⁷ the Republic of Ecuador presents information with respect to the implementation of the foregoing recommendation and its measures. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the recommendation, the following:

[187] – *“In the proposal for reforming the Organic Law of the Civil Service and Administrative Careers-LOSCCA, which will contain the Law of the Public Service, Systems for the hiring of officials in general in the public service will be strengthened, through various mechanisms established in the Law, correcting the deficiencies that are currently in the LOSCCA, adapting it to the new Constitution and promoting equitable remuneration in the Public Sector. Additionally, SENRES is updating the Selection Norms, pursuant to what is established in the Constitution of the Republic and the new Law of the Public Service to the adopted.”*

[188] The Committee takes notes of the step taken by the Republic of Ecuador towards implementation of the foregoing recommendation, as well as the need for Ecuador to give additional attention to the implementation of this recommendation and its measures.

Recommendation 1.1.5:

Take the necessary measures to unify and harmonize the systems of government hiring, thereby avoiding its fragmentation, and fostering better compliance with the principles of legality, fairness, neutrality, equality and transparency foreseen in the Convention.

[189] In its response,⁴⁸ the Republic of Ecuador presents information with respect to the implementation of the foregoing recommendation. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the recommendation, the following:

[190] – *“The National Technical Secretariat for Human Resources Development and Remuneration in the Public Service, is currently developing the Integrated Human Resource Information System – SIIRH, which allows [the provision of] timely information for the purpose of planning and taking immediate corrective action, reducing unnecessary costs. The SIIRH will receive real time data from the Units for the Administration of Human Resources in the public sector institutions, in order to obtain information regarding property tax and rent in institutions and public servants, about the entry through merit based competitions, certificates of ability to exercise public functions, remuneration scales, information on public servants – resume, education – training, administrative actions, organic structure of the institutions of the Public Sector.”*

⁴⁷ See the response of Ecuador to the Questionnaire for the Third Round, at. p. 15, available at: http://www.oas.org/juridico/spanish/mesicic3_ecu_resp_sp.pdf

⁴⁸ See the response of Ecuador to the Questionnaire for the Third Round, at. p. 16, available at: http://www.oas.org/juridico/spanish/mesicic3_ecu_resp_sp.pdf

[191] The Committee takes notes of the step taken by the Republic of Ecuador towards implementation of the foregoing recommendation, as well as the need for Ecuador to give additional attention to its implementation.

1.2. Government Systems for the Procurement of Goods and Services

Recommendation 1.2.1

Strengthen public tendering procedures, public competitive bidding processes and procurement in general.

Measure Suggested by the Committee:

Review the exceptions, exclusions and special procurement systems, unifying their practices and systems, particularly those contained in Articles 4 to 6 of the Public Procurement Law and Articles 12 and 14 of the Consulting Services Law, and ensuring that public tendering and competitive bidding serve as the general rule for the selection of hiring systems in the state procurement system, thereby ensuring compliance with the principles of openness, equity and efficiency envisaged in the Convention.

[192] In its response,⁴⁹ the Republic of Ecuador presents information with respect to the implementation of the foregoing recommendation and its measure. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the recommendation, the following:

[193] – The creation of the National System for Public Procurement, on April 18, 2007, through Executive Decree No. 258.

[194] – The entry into force of the Organic Law of the National System for Public Procurement, on August 4, 2008, which repeals the Public Procurement Law as well as the Consulting Services Law, and establishes the principles and standards that regulate the acquisition or purchase of goods, execution of works, and the provision of services, including consulting services, through the creation of information tools which make up the National Public Procurement System, which include the Single Registry of Suppliers and the Portal www.compraspublicas.gov.ec. This Law, at Article 9, expressly repeals the special provisions relating to public procurement contained in other laws.

[195] – Article 2 of the Organic Law of the National System for Public Procurement, which establishes a special regime for certain categories of procurement.^{50, iii}

[196] The Committee takes notes of the steps taken by the Republic of Ecuador towards implementation of the foregoing recommendation and its measure, as well as the need for Ecuador to give additional attention to their implementation.

Recommendation 1.2.2:

Strengthen the Government Procurement system's mechanisms of control.

⁴⁹ Ibid., at p. 27.

⁵⁰ At the March 19, 2010 meeting of the review subgroup, Ecuador informed that Title III, Chapter VII, of the Regulations to the Organic Law of the National Public Procurement System, regulates the procedures subject to the special regime under Art. 2 of the Law, provides general standards for them, and requires that they have technical documents that justify them, among other prior requirements for admissibility.

Measures Suggested by the Committee:

- a) *Create a governing body in charge of overseeing procurement in every State entity, without exception, which would encourage information statistics to be drawn up, develop standardized procedures, promote the training and professionalization of public servants, develop a registry of suppliers, maintain a list of standardized prices and plan government procurement from a social development perspective.*
- b) *Create a centralized registry of contractors of works, goods or services, mandatory to all State bodies and dependencies, to foster the principles of openness, equity and efficiency provided for in the Convention.*

[197] In its response,⁵¹ the Republic of Ecuador presents information with respect to the implementation of the foregoing recommendation and its measures. In this regard, the Committee notes, as steps which contribute to progress in the implementation thereof, the following:

[198] - The National Institute of Public Procurement (INCOP), created by the Organic Law of the National System for Public Procurement, which serves as the lead body for public procurement in Ecuador, and which administers the COMPRASPUBLICAS portal, which will contain public information such as reports from the contracting entities, statistics, noncompliant contractors, and information on the status of public procurement contracts.

[199] - The Single Registry of Suppliers (RUP), which serves as the is the single registry of suppliers to the state and which is administered by INCOP, in order to encourage participation by artisans, microenterprises, small and medium-sized firms, with preference for procurement using the procedures of reverse electronic auction, direct contracting, quotations, and inclusive fairs (Ferias Inclusivas).

[200] The Committee takes note of the satisfactory consideration of recommendation 1.2.2 above, through compliance with measures (a) and (b) thereof.

Recommendation 1.2.3:

Continue strengthening the use of electronic media and information systems for government procurement.

Measure Suggested by the Committee:

Make it mandatory for all State bodies and dependencies to use CONTRATANET.

[201] In its response,⁵² the Republic of Ecuador presents information with respect to the implementation of the foregoing recommendation and its measure. In this regard, the Committee notes, as steps which contribute to progress in the implementation thereof, the following:

⁵¹ See the response of Ecuador to the Questionnaire for the Third Round. In addition, in its comments on the draft preliminary report, Ecuador provided further and specific details concerning the new procurement law and the new national procurement system, as detailed herein.

⁵² See the response of Ecuador to the Questionnaire for the Third Round. In addition, in its comments on the draft preliminary report, Ecuador provided further and specific details concerning the new COMPRASPUBLICAS website, as detailed herein.

[202] – The COMPRASPUBLICAS internet portal, available at www.compraspublicas.com, created by the Organic Law of the National System for Public Procurement, which requires all state agencies or entities to use the COMPRASPUBLICAS portal as the only system for public procurement.

[203] The Committee takes note of the satisfactory consideration of recommendation 1.2.3 above.

[204] In this connection, the report presented by civil society organization “Grupo Faro”, notes that “*The new Law on Public Contracting creates the Portal for Public Purchases (www.compraspublicas.gov.ec), and it is mandatory for all transactions of the institutions to be published via this method. Similarly, registration is mandatory for all providers that wish to participate in public contracting. In this regard, it should be noted that INCOP informed that, as of July, 2009, 86,766 provides had been registered, compared with 6,664 that were registered in August, 2008.*”⁵³

Recommendation 1.2.4:

Strengthen the identification of selection criteria for contractors.

Measures Suggested by the Committee:

- a) *Define the scope of the expression “convenient to national and institutional interests” used in Amend Article 26 of the Law on Public Procurement to define that criterion more accurately.*
- b) *Establish selection criteria for procurement processes that are not subject to a public tender or competitive process.*

[205] In its response,⁵⁴ the Republic of Ecuador presents information with respect to the implementation of the foregoing recommendation and its measure. In this regard, the Committee notes, as steps which contribute to progress in the implementation thereof, the following:

[206] - The Organic Law of the National System for Public Procurement, which repealed the Law on Public Procurement.

[207] The Committee takes note of the step taken by the country under review to progress with implementation of measure (b) of the foregoing recommendation, and of the need for it to continue to give attention to its implementation. In addition, the Committee takes note of the need for the country under review to give additional attention to the implementation of measure (a) of this recommendation, considering that the new procurement legislation still contains the phrase “convenient to national and institutional interests.

Recommendation 1.2.5:

Continue fostering the principles of openness, equity and efficiency foreseen in the Convention.

⁵³ See page 37 of this report, available at: http://www.oas.org/juridico/spanish/mesicic3_ecu_inf_sc.pdf

⁵⁴ See the response of Ecuador to the Questionnaire for the Third Round. In addition, in its comments on the draft preliminary report, Ecuador provided further and specific details concerning the Organic Law of the National System for Public Procurement, as detailed herein.

Measure Suggested by the Committee:

Include well-defined appeals in the current legislation so that candidates can contest the results of all or part of the procurement process for consulting services.

[208] In its response,⁵⁵ the Republic of Ecuador presents information with respect to the implementation of the foregoing recommendation and its measure. In this regard, the Committee notes, as steps which contribute to progress in the implementation thereof, the following:

[209] – The Organic Law of the National System for Public Procurement, which allows for the filing of complaints and administrative appeals, and which contains rules for settling disputes presented in the pre-contractual and contractual stage of procurement processes.

[210] The Committee takes note of the satisfactory consideration of recommendation 1.2.3 above.

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

Recommendation 2.1:

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

Measures Suggested by the Committee:

- a) *Make the necessary amendments to the Organic Law on the Commission for Civic Control of Corruption to protect the identity of people who, in good faith, report acts of corruption in accordance with the legislation regarding public service, even after the Report is published.*
- b) *Make the necessary amendments to current legislation, in order to better protect whistleblowers who in good faith report acts of corruption, and their families, within the framework of public service legislation, so this protection would not be limited to criminal procedures but would include public administration in general. Protection would be extended to labor situations, particularly in the cases of public servants, and in those cases when those acts of corruption could involve a superior or a colleague.*

[211] The Committee notes that in its response, Ecuador did not refer to steps taken with respect to the implementation of recommendation 2.1, above, or its measures. Accordingly, the Committee takes note of the need for the country under review to pay additional attention to their implementation.

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

Recommendation 3:

Consider adapt[ing] its criminal legislation to the Inter-American Convention against Corruption.

⁵⁵ See the response of Ecuador to the Questionnaire for the Third Round. In addition, in their comments on the draft preliminary report, both Ecuador and Nicaragua provided further and specific details concerning appeal and dispute resolution mechanisms, as detailed herein.

Measure Suggested by the Committee:

Adapt Ecuadorian criminal legislation to the Inter-American Convention against Corruption, bearing in mind the revisions suggested in the study “Adapting Ecuadorian Legislation to the Inter-American Convention against Corruption.

[212] In its response,⁵⁶ the Republic of Ecuador presents information with respect to the implementation of the foregoing recommendation and its measure. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the recommendation, the following:

[213] – The modifications to the Criminal Code and the Code of Criminal Procedure, which have been approved by the Legislative and Management Commission, “...*in order to achieve greater agility in the processing and trial of cases, particularly in corruption offenses.*”

[214] – The preparations that are being made to amend the Law to Publish Money Laundering and the Code of Criminal Procedure.

[215] – The draft Law on Extinction of Control (*Extinción de Dominio*), coordinated by the Attorney General of the State, together with various other entities, which has been submitted to the National Assembly, and which addresses the fight against drug trafficking and money laundering.

[216] The Committee takes notes of the steps taken by the Republic of Ecuador towards implementation of the foregoing recommendation and its measure, as well as the need for Ecuador to give additional attention to its implementation.

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.

[217] The Committee notes that in its response, Ecuador did not refer to steps taken with respect to the implementation of recommendation 4.1, above. Accordingly, the Committee takes note of the need for the country under review to pay additional attention to its implementation.

Recommendation 4.2:

⁵⁶ See the response of Ecuador to the Questionnaire for the Third Round, at. p. 19, available at: http://www.oas.org/juridico/spanish/mesicic3_ecu_resp_sp.pdf. In addition, in its comments on the draft preliminary report, Ecuador informs of the existence of “*a draft Organic Code of Penal Guarantees, which proposes a comprehensive reform that includes amendments to substantive and procedural criminal law and in the enforcement of sentences. That draft was prepared by the Ministry of Justice and Human Rights and submitted to civil society for consideration, and is intended to bring the Ecuadorian penal system into line with the principles of the current constitution and international standards.*”

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.

[218] The Committee notes that in its response, Ecuador did not refer to steps taken with respect to the implementation of recommendation 4.2, above. Accordingly, the Committee takes note of the need for the country under review to pay additional attention to its implementation.

ENDNOTES

ⁱ The full text of Article 5 of the Extradition Law read as follows:

“Art. 5.- Extradition shall not be granted in the following cases:

1) That of foreigners for offenses over which the Ecuadorian judges and courts have jurisdiction under domestic law.

When extradition is deniable under the preceding paragraph, should the State in which the acts were committed so request, the Ecuadorian government shall bring the matter that gave rise to the extradition request to the attention of Office of the Attorney General so that it might proceed judicially against the wanted person. Should the matter thus proceed, the requesting state shall be asked to forward the record of the case in order to continue the proceeding in Ecuador.

If the crime was committed outside the territory of the requesting state, extradition may be denied if Ecuadorian law does not permit prosecution of an offence of the same type committed outside Ecuador.

2) For offenses of a political nature. The following shall not be considered political offenses: acts of terrorism; crimes against humanity as provided in the Convention on the Prevention and Punishment of the Crime of Genocide adopted by the United Nations General Assembly; or an attempt on the life of a head of state or a member of their family. Furthermore, common crimes shall not be considered political offenses even when committed for political reasons.

3) For military offenses recognized by the Ecuadorian Military Criminal Code and, notwithstanding the provisions in that regard contained in international treaties signed and ratified by Ecuador, those committed through the media in exercise of the right to freedom of expression, and privately actionable offenses.

4) When the wanted person must be tried by a special tribunal.

5) When it is found that the statute of limitations for action or the sentence has run according to Ecuadorian law or the law of the requesting state.

6) When the wanted person is under prosecution or has been tried, convicted, or acquitted in Ecuador for the same offenses on which the extradition request is based. However, extradition may be granted if a writ of prohibition has been issued putting an end to the criminal proceeding for the said offenses and that has not occurred due to a final ruling of acquittal or any other decision with *res judicata* effect.

7) When the requesting state does not offer a guarantee that the person wanted for extradition will not be executed or subjected to punishments that violate the integrity of their person or to inhuman or degrading treatment.

8) When the requesting state has not offered the assurances required by Article 3 of this Law.

9) When the wanted person has been granted asylum, provided that they are not sought for any other extraditable offense. Refusal of asylum on whatever grounds shall not be an impediment to denial of extradition for any of the causes provided in this law.”

ⁱⁱ The full text of Article 7 of the Extradition Law provides as follows:

“Art. 7.- Extradition requests shall be made through diplomatic channels or, in the absence of a diplomatic representative of the requesting state in Ecuador, from government to government and be accompanied by the following:

a) A certified copy of the conviction or the pre-trial custody order or similar order under the laws of the requesting country, together with a summary of the offenses, their nature, and the place, date, and circumstances in which they occurred.

b) As much known information as possible about the identity, nationality, and residence of the wanted individual and, if possible, a photograph of them and their fingerprints.

c) A copy of the legal texts setting out the offense and the applicable penalty and prescription date.

d) Should the offense be punishable by any of the penalties mentioned in Article 5(7) of this Law, the requesting state shall provide sufficient assurances such as to satisfy the Ecuadorian government that those penalties will not be executed.

The aforementioned documents, whether original or certified copies, shall be accompanied by an official Spanish translation should their texts be in another language. Authentication of the submitted documents shall not be necessary when the procedure is conducted through diplomatic channels.”

iii Article 2 of the Organic Law of the National Public Procurement System provides as follows: “Special Regime. The specific rules enacted for the purpose by the President of the Republic in this Law’s General Regulations shall apply, on a selective basis, to precontractual procedures for the following procurement operations:

1. Purchases of medicines effected by agencies that provide health services, including the Ecuadorian Social Security Institute;
2. Those deemed by the President of the Republic to be necessary for the internal and external security of the State, execution of which is the responsibility of the armed forces or of the National Police;
3. Those intended to carry out social communication activities for providing information on the actions of the national government or of the contracting entities;
4. Those intended to secure the provision of legal advisory and representation services required by the national government or the contracting entities;
5. Those with the purpose of executing a work of art, literature, or science;
6. Those for the purchase of spare parts or accessories needed to maintain equipment and machinery held by the contracting agencies, provided that they do not appear in the Electronic Catalogue on the COMPRASPUBLICAS web page;
7. Those for international and domestic mail carrying services, which shall be governed by international agreements or by the legal and regulatory provisions issued to that effect, as applicable;
8. Those entered into by the State with public sector entities; by a public sector entity with another such entity; by such entities with public companies or with companies of which at least fifty percent (50%) of the paid-in capital belongs to public-law entities or their subsidiaries; or by such a company with another such company.

This shall also apply to contracts entered into by public-sector entities, public companies, and companies of which at least fifty percent (50%) of the paid-in capital belongs to public-law entities or their subsidiaries, with companies in which foreign states have a holding of at least fifty percent (50%) or with the subsidiaries thereof.

The special regime provided by this article shall apply to public companies or to companies of which at least fifty percent (50%) of the paid-in capital belongs to public-law entities or their subsidiaries solely with respect to the specific nature of the business; for their general business, the common regime provided for in this Law shall apply.

Differentiating between specific business and common business shall be the task of the Executive Director of the National Public Procurement Institute.

9. Those entered into by institutions of the financial and insurance systems in which the State or its agencies are the sole shareholders or hold a majority interest; and those entered into by the private-law subsidiaries of state or public companies or of private-law commercial companies in which the state or its agencies hold shares or capital in excess of fifty percent (50%), solely for specific activities in strategic sectors as defined by the competent ministry.”