

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
Sixteenth Meeting of the Committee of Experts
March 22-26, 2010
Washington, DC.

OEA/Ser.L
SG/MESICIC/doc.250/09 rev. 4
25 March 2010
Original: Spanish

MEXICO

FINAL REPORT

(Adopted at the March 25, 2010 plenary session)

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

**REPORT ON IMPLEMENTATION IN MEXICO OF THE CONVENTION PROVISIONS
SELECTED FOR REVIEW IN THE THIRD ROUND, AND ON FOLLOW-UP TO THE
RECOMMENDATIONS FORMULATED TO THAT COUNTRY IN PREVIOUS ROUNDS^{1/}**

INTRODUCTION

1. Contents of the report

[1] This report presents, first, a review of implementation in Mexico 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 Mexico 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: www.oas.org/juridico/english/mec_rep_mex.pdf and www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

2. Ratification of the Convention and adherence to the Mechanism

[3] According to the official register of the OAS General Secretariat, Mexico deposited the instrument of ratification of the Inter-American Convention against Corruption on June 2, 1997.

[4] In addition, Mexico 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 Mexico

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from Mexico and in particular from the Civil Service Secretariat, 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, Mexico sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at the following web page: www.oas.org/juridico/spanish/mesicic3_mex_sp.htm

[6] For its review, the Committee took into account the information provided by Mexico 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.

^{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.

2. Documents received from civil society organizations

[7] The Committee also received, within the deadline established in the schedule for the third round, a document from “*Transparencia Mexicana*”, the national chapter of Transparency International, submitted by that organization.^{2/}

II. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE THIRD ROUND³

1. DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT⁴ 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] Mexico has a set of provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of anticorruption laws, among which the following should be noted:

[9] - The Constitution of the United Mexican States,⁵ Article 28 of which provides that “*in the United Mexican States (...) exemptions from taxes are prohibited in the terms and conditions set by law.*”

[10] - The Tax Administration Service Law of 1995⁶ provides, in Article 2, that the Tax Administration Service (SAT) “*is responsible for implementing fiscal and customs legislation so that individuals and corporations contribute proportionally and equitably to public spending; for ensuring that taxpayers comply with the tax and customs rules; for facilitating and encouraging voluntary compliance with those provisions; and for creating and supplying the information necessary for the design and assessment of tax policy.*”

[11] Similarly, Article 7 establishes, *inter alia*, the following powers of the SAT: “*To request and provide other public agencies and institutions, both domestic and foreign, with access to the information necessary to prevent tax evasion or avoidance, in compliance with the laws and international treaties applicable to taxation and customs*” (Section VI); “*To oversee and ensure due compliance with tax and customs rules and, when appropriate, to exercise the powers of verification provided for in those rules*” (Section VII); and “*To secure the information necessary to determine the origin of taxpayers’ incomes and, when appropriate, correct compliance with their fiscal obligations*” (Section XII).

^{2/} This document was received electronically on August 14, 2009, and is available in Spanish at:
http://www.oas.org/juridico/spanish/mesicic3_mex_inf_sc_sp.doc

³ Given the nature of the provisions and measures related to the provisions of the Convention selected for the Third Round that exist in Mexico, it is noted that they also cover, essentially, state and municipal jurisdictions, notwithstanding the fact that Mexico is a Federal State.

⁴ 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.

⁵ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo15.pdf.

⁶ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_adm_tribut.pdf.

[12] - The Income Tax Law,⁷ Article 31 of which sets the requirements for authorized deductions, which must be “*strictly essential for the goals of the taxpayer’s activity*,” except in the case of non-burdensome or remunerative donations, which must obey the requirements set in the Law and in the general rules established by the SAT for the purpose (Section I). For authorized deductions, taxpayers may choose to use, as their fiscal receipts, their original checking account statements issued by credit institutions, which must comply with the requirements set by Article 29-C of the Fiscal Code of the Federationⁱ (Section III, final paragraph).

[13] Similarly, Article 32 of this Law indicates the kind of allowances that cannot be deducted, including the following: “*Gifts, tokens of appreciation, and expenses of a similar nature, with the exception of those that are directly related to the selling of products or the provision of services and that are offered to customers in a general fashion*” (Section III); “*Representation expenses*” (Section IV); “*Traveling and per diem expenses, at home or abroad, when not used for the accommodation, meals, transportation, temporary use or enjoyment of automobiles, and mileage payments of the beneficiary of those expenses, or when they are incurred within a radius of 50 kilometers around the taxpayer’s fiscal domicile. Persons to whom these payments are made must have a working relationship with the taxpayer as described in Chapter I, Title IV, of this Law, or they must be providing professional services*” (Section V); “*Payments for customs services other than the fees of customs agents and the expenses incurred by those agents or by corporations established by such customs agents pursuant to the Customs Law*” (Section XXI).

[14] In addition, Chapter X (Articles 172 and 173) sets the requirements for the deductions for natural persons. Thus, Article 172 provides, *inter alia*, that authorized deductions must be “*strictly indispensable for securing the income for which the payment of tax is due*.” In turn, Article 173 provides that the following, among others, are not deductible: investments or payments for the temporary use or enjoyment of automobiles (Section II); donations and representation expenses (Section III); purchases at bars or restaurants (Section XII); and payments for customs services, under the same terms as Section XXI of Article 32 (Section XIII).

[15] - The Fiscal Code of the Federation,⁸ Article 29-C of which sets the requirements to be met by fiscal receipts for the purposes of authorized deductions,⁹ which, under Article 30, must be kept for a period of five years following the date on which the associated tax returns were presented or were supposed to have been presented.

[16] Article 36 of the Code also provides that: “*Administrative resolutions of an individual nature that are favorable to a person may only be amended by the Federal Court of Fiscal and Administrative Justice through proceedings initiated by the tax authorities.*”

[17] In addition, Articles 40 to 69-A equip the tax authorities with a large number of powers of verification, oversight, and fiscal decisions.

[18] Similarly, Chapter I of Title Four (Articles 70 to 91-D) deals in detail with breaches of the tax rules and the corresponding sanctions (fines). Article 70 stipulates that the fine is independent of the demand for payment of the corresponding tax owed and other auxiliary amounts, as well as of the sanctions imposed by the judicial authorities for criminal responsibility.

⁷ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo14.pdf.

⁸ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo6.pdf.

⁹ See Endnote No. 1.

[19] Finally, Article 108 defines the crime of tax fraud in the following terms: “*The crime of tax fraud is committed by a person who, through the use of deceit or taking advantage of errors, omits either in whole or in part to pay a levy or obtains an undue benefit to the detriment of the federal tax authorities (...) The crime of tax fraud and those set out in Article 109 of this Code shall be aggravated when incurred through: (a) Using false documents; (b) Repeatedly failing to issue receipts for activities carried out, when the tax rules require them to be issued. Repeated behavior shall be deemed to exist when in a period of five years, the taxpayer is sanctioned for such actions for the second or subsequent occasion; (c) Reporting false information to obtain, from the tax authority, the undue reimbursement of amounts paid; (d) Failing to keep the accounting systems or records required by the tax rules, or recording false data in those systems or records; (e) Omitting retained or collected payments; (f) Reporting false data to unduly offset amounts paid; (g) Using false data to accredit or reduce contributions.*” The sanctions vary in accordance with the amount defrauded (between three months and nine years in prison) and they also apply to persons who commit the offenses set out in Article 109. In aggravated offenses, the punishment is increased by one half.

[20] - Article 243 of the Federal Criminal Code¹⁰ establishes that the crime of falsification of private documents shall be punishable by a prison term of between 6 months and 5 years and a fine of between 180 and 360 times the minimum daily wage.

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

[21] The provisions that refer to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws that the Committee has examined, based on the information available to it, constitute a set of relevant measures for promoting the purposes of the Convention.

[22] Notwithstanding the foregoing, the Committee believes it would be beneficial for the country under review to consider adopting the measures it deems appropriate to assist the competent authorities in detecting amounts paid for corruption, in the event that they are being used to obtain favorable tax treatment (see Recommendation 1.4.a in Chapter II of this report).

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

[23] The State under review provided no specific information relating to the results in this area.¹¹ The Committee will therefore formulate a recommendation so that, through the tax authorities with competence in the area, 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

¹⁰ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo7.pdf.

¹¹ The State under review submitted the following information at the meeting of the Review Subgroup: “*Mexico’s Tax Administration Service (SAT) has a program for detecting false invoices, which has discovered 2,333 taxpayers making use of them, 135 companies selling them, and 1,171 deducting them (2008 Annual Report and Challenges for 2009). In addition, in September 2008, the SAT, in coordination with the Office of the Attorney General of the Republic (PGR) and the federal Secretariat of Public Security (SSP), conducted an operation at various establishments to check for the issuing of fiscal receipts and to prevent the sale of fake invoices. As for prosecutions under Article 243 of the Federal Criminal Code, between 2005 and 2009 the SAT presented 21 accusations for the falsification of documents and 108 for the use of false documents.*” The above information has not been analyzed in this report because it was submitted after the deadline set by the Committee for the submission of information subject to review (see Section I of this report, “Summary of the Information Received”), but it will be taken into account for following up on the implementation of the recommendations during the next round of review.

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

[24] 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:

[25] Mexico 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 1.1 of Chapter II of this report.

[26] In light of the comments formulated in the above-noted sections, the Committee suggests that Mexico consider the following recommendation:

[27] - 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, Mexico 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. Continue to develop manuals, guidelines or directives that will guide them in reviewing procedures related to favorable tax treatment, so that they are able to verify that the applications contain the established requirements, to confirm the truthfulness of the information provided, and to confirm the origin of the expenditures or payment on which the claims are based;
 - ii. Continue to develop computer programs that facilitate data consultation and cross-checking of information whenever necessary for the purpose of fulfilling their functions;
 - iii. Strengthen institutional coordination mechanisms that will provide the timely collaboration needed from other authorities, on such aspects as certifying the authenticity of the documents submitted in accordance with the procedures related to favorable tax treatment;
 - iv. Continue to develop training programs designed specifically to alert officials to the methods used to disguise payments for corruption and to instruct them in ways of detecting such payments in the procedures related to favorable tax treatment;
 - v. Continue to develop channels of communication permitting the prompt report of the anomalies detected or of any irregularity that could affect the decision to the authorities responsible for the procedures related to favorable tax treatment.
- b. Select and develop, through the tax authorities with jurisdiction in the matter, 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 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

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

[29] - The Constitution of the United Mexican States,¹² Article 5 of which provides that “*The law shall determine, in each state, which professions need a degree for their practice, the requirements to be met to obtain it, and the authorities that are to issue it.*”

[30] Article 16 of the Constitution also stipulates that the administrative authorities may conduct home visits to demand the presentation of books and documents necessary for substantiating that the tax rules have been complied with.

[31] - The Commercial Code,¹³ Articles 16 and 33 of which require businesspersons¹⁴ to record, in the Public Commerce Register,¹⁵ those documents that require registration by reason of their content and authenticity, and to maintain an appropriate accounting system. This accounting system shall meet the following minimum requirements: “*(a) It shall allow the identification of individual operations and their characteristics, and enable those individual operations to be connected with the original substantiating documents; (b) It shall allow a path to be traced from the individual operations to the totals leading to the final accounting figures, and vice-versa; (c) It shall allow the preparation of the statements included in the business’s financial information; (d) It shall allow the connection and tracing of the figures on those statements, the totaling of accounts, and the individual operations; (e) It shall include the internal control and verification systems necessary to prevent failures to register operations, to ensure the accounting record is correct, and to ensure the resulting figures are correct.*”

[32] Article 34 of this Code also stipulates that businesspersons shall keep a ledger, duly bound and with numbered pages, and, in the case of corporations, a minutes book or books.

[33] Article 35 of the Commercial Code states that the ledger shall record, as a minimum and at least once per month, the names or designations of the accounting accounts, their balance at the end of the prior recording period, the total of credit and debit movements in each account during the period, and their final balances. Individual ledgers may be kept by offices, activity segments, or any other breakdown, but in all instances there must be a general ledger that gathers together all the entity’s operations.

¹² Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo15.pdf.

¹³ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo8.pdf.

¹⁴ According to Article 3 of the Commercial Code, by law businesspersons are: “*I. People with the legal capacity to pursue trade who make it their regular occupation; II. Corporations incorporated in accordance with the commercial laws; and III. Foreign corporations and the agencies or branches thereof that pursue commerce within the territory of the nation.*”

¹⁵ Article 18 of the Commercial Code provides that the Public Commerce Register shall “*record commercial actions, along with those related to businesspersons for whom the law requires registration. The operation of the Public Commerce Register shall be the responsibility of the Secretariat of Trade and Industrial Development (...).*”

[34] Article 36 of the Commercial Code states that the minutes book shall record all agreements relating to the pursuit of the business adopted by shareholders' meetings and assemblies and, if applicable, by the board of directors.

[35] Article 38 provides that businesspersons shall preserve, in proper files, the original receipts of their operations, in such a way for them to be connected to those operations and to the registration thereof, and that the receipts shall be preserved for a minimum period of 10 years. Article 46 also requires businesspersons and their heirs to keep the business's books, records, and documents for a minimum period of 10 years.

[36] Article 42 prohibits ex officio searches by any court or authority to verify whether or not businesspersons are keeping their accounting systems in accordance with the applicable provisions of the Commercial Code. Article 44 further provides that in addition to cases of universal succession, corporate liquidation, third-party commercial management, or bankruptcy, businesspersons may only be required to present their books, records, and documents at a party's request or on an ex officio basis when the person to whom they belong has an interest or responsibility in the matter in which their presentation is required.

[37] - The General Law of Commercial Companies,¹⁶ Article 164 of which provides that oversight of a limited liability company shall be the task of one or more statutory auditors, appointed on a temporary and revocable basis, who may be either shareholders or persons not connected with the company.

[38] Article 165 of this law lists the disqualifications from serving as a statutory auditor¹⁷ and Article 166 sets out their powers and obligations, which include the following: "*Require monthly information from management, including at least a balance sheet and a statement of earnings*" (section II); "*Conduct examinations of the operations, documents, records, and other substantiating evidence, to the level and extent necessary to conduct oversight of the operations entrusted to them by law and to issue, with proper basis, the ruling referred to in the following section*" (section III); "*Prepare annually, for submission to the Regular General Assembly of Shareholders, a report on the truthfulness, adequacy, and reasonability of the information presented by the Board of Directors to the Shareholders' Assembly (...)*" (section IV); and "*In general, oversee without restrictions and at any time all operations of the company*" (section IX).

[39] Article 167 of this law also provides that any shareholder may report to the statutory auditors, in writing, any action of management that he believes to be irregular, and the auditors must refer to those allegations in their reports to the General Assembly of Shareholders, formulating the considerations and proposals they deem relevant regarding them.

[40] Finally, Article 173 provides that the financial statements of limited companies, along with the reports of their statutory auditors, shall be made available to the shareholders at least 15 days prior to the date of the Assembly at which they are to be discussed, and that the shareholders shall be

¹⁶ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_ley_soc_merc.pdf

¹⁷ Under Article 165 of the General Companies Law, the following may not serve as statutory auditors: "I. Those disqualified by law from pursuing trade; II. Employees of the company, employees of those companies that hold shares in the company in excess of twenty-five percent of the capital stock, and employees of those companies in which the company holds more than fifty percent of the shares; III. Blood relatives of the managers in a straight line in any degree, in the collateral line up to the fourth degree, and by affinity up to the second degree."

entitled to receive a copy of those reports. In turn, Article 177 states that 15 days after the date on which the report was approved by the General Assembly of Shareholders, the financial statements included with it must be sent for publication, along with the notes thereto and the ruling of the statutory auditor, in the official gazette of the state where the company is domiciled or, in the case of companies with offices or agencies in several states, in the Official Journal of the Federation.

[41] - The Stock Market Law,¹⁸ Article 85 of which requires companies wishing to register securities with the National Securities Register to present their audited annual financial statements, prepared in accordance with accounting principles issued or recognized by the National Banking and Securities Commission, along with the ruling issued by the external auditor appointed by the company that provides the external audit professional services.

[42] - The Sole Issuers Circular of the National Banking and Securities Commission,¹⁹ Article 78 of which states that financial statements are to be prepared in accordance with the International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB) and ruled on, when applicable, by the external auditor.

[43] The 16th transitory provision of that circular²⁰ reads that “*until the Mexican Council for the Research and Development of Financial Information Standards recognizes or issues generally accepted accounting principles, the financial statements to be drawn up under those principles shall be prepared in accordance with generally accepted accounting principles published by the Mexican Institute of Public Accountants.*” On June 1, 2004, the Mexican Council for the Research and Development of Financial Information Standards (CINIF) became the independent agency responsible for issuing accounting standards in Mexico, which was previously the task of the Accounting Principles Commission of the Mexican Institute of Public Accountants (IMCP) for more than 30 years.ⁱⁱ

[44] - The Fiscal Code of the Federation,²¹ Article 28 of which provides that taxpayers are to keep the accounting systems and records indicated in the Code’s Regulations and that failure to do so shall trigger the sanctions set out in Articles 83 and 84 of the Code,ⁱⁱⁱ to which maximum and minimum levels are assigned, the ranges for their determination going from Mex\$843 to Mex\$8,421 up to Mex\$20,000 or Mex\$30,000.²²

[45] Regarding the conservation of the accounting records described above, Article 30 of the Federal Fiscal Code requires accounting records to be kept for a period of five years following the date on which the returns were filed or should have been filed. For accounts and the corresponding document covering dealings with effects that are prolonged over time, the period in question begins on the day of the filing of the tax return covering the final period in which such effects were registered.

[46] Similarly, Article 42 of the Code grants the tax authorities the following powers, *inter alia*, for verifying compliance with the tax rules: (a) To require taxpayers, their representatives, or third

¹⁸ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_ley_merc_valor.pdf

¹⁹ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_circ_unica_CNBV.doc

²⁰ General provisions applicable to issuers of securities and other participants in the stock market, published in the Official Journal of the Federation on March 19, 2003.

²¹ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo6.pdf

²² According to the terms of Article 17-A of the Federal Fiscal Code, these amounts are updated every six months and are published in the Official Journal of the Federation.

parties related to them to exhibit, at their domicile or place of business or at the offices of the authorities, the accounts and other documents or reports needed to conduct a review; (b) To conduct visits to taxpayers, their representatives, or third parties related to them and review their accounts, assets, and merchandise; (c) To review the rulings issued by public accountants on taxpayers' financial statements; and (d) To gather the evidence necessary to lodge a complaint with the Public Prosecution Service for it to take action for the possible commission of tax offenses.

[47] Article 52 requires the obligatory registration of public accountants with the tax authorities, pursuant to the Regulations of the Fiscal Code of the Federation²³; this registration may be obtained by both Mexican nationals and by foreigners with the right to issue rulings under the international treaties to which Mexico is a party. Mexican nationals are required to have a public accountant's degree registered with the Secretariat of Public Education and to be members of a professional college recognized by that same Secretariat for at least the three years prior to submitting the corresponding application for registration. In addition, they are required to be certified by the professional colleges or associations of public accountants that are registered and authorized by the Secretariat of Public Education, and only those certifications issued to public accountants by certification bodies that have obtained the Secretariat of Public Education's Recognition of Suitability shall be valid; they must also have a minimum of three years' experience in preparing fiscal rulings.

[48] This same article of the Fiscal Code of the Federation also establishes sanctions applicable to public accountants who fail to comply with its provisions: "*Should a public accountant fail to comply with the provisions referred to in this article, or fail to apply the auditing rules and procedures, the fiscal authority, following a hearing, shall warn or reprimand the registered public accountant or shall suspend the effects of his registration for up to two years, in accordance with the provisions of this Code's Regulations. Should an accountant reoffend, participate in the commission of a crime of a fiscal nature, or fail to show, upon the request of the authority, the working papers he drew up in connection with an audit conducted on a taxpayer's financial statements for fiscal purposes, his registration shall be irrevocably canceled. In such cases, immediate notice shall be served in writing to the professional college and, if applicable, to the Federation of Professional Colleges to which the public accountant in question belongs. (...) When a ruling or declaration is made without meeting the requirement of independence of the part of the public accountant or of the corporation to which he belongs, the registration of the public accountant shall be canceled, following a hearing, in accordance with the procedure set out in this Code's Regulations.*"

[49] Finally, it should also be noted that Article 111 of the Code imposes a sanction of between three months and three years in prison on any person who records his accounting, fiscal, or corporate operations in two or more books or in two or more accounting systems with different contents, and to any one who conceals, alters, or destroys, either in whole or in part, those accounting systems and records and the documentation covering the corresponding entries that must be made in accordance with the law.

[50] - The Regulations to the Fiscal Code of the Federation,²⁴ Articles 26 and 27 of which specify the minimum requirements to be met by accounting records^{iv} and qualitative features to be met if manual, mechanical, or electronic systems are used.

²³ See Article 45 *et seq.* of the Regulations to the Fiscal Code of the Federation, available at:
http://www.oas.org/juridico/spanish/mesicic3_mex_anexo9.pdf.

²⁴ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo9.pdf.

[51] For taxpayers who adopt the manual record-keeping system, Article 28 of the Regulations states that they are to keep a daybook and ledger and all others books that they are required to maintain by other tax rules, all duly bound and with numbered pages. Article 29 indicates the information those books are to contain: In the daybook, the taxpayer is to record, in a descriptive fashion, all his operations, actions, and activities, in their chronological order and indicating the credit or debit operation to which each corresponds. The ledger is to record the names of the accounting accounts, their balance at the end of the prior recording period, the total of credit and debit movements in each account during the period, and their final balances.

[52] - The Regulatory Law of Article 5 of the Constitution,²⁵ Regarding the Practice of Professions in the Federal District, Article 5 of which states that the practice of a profession in Mexico requires authorization from the Secretariat of Public Education's General Directorate of Professions, following compliance with the requirements indicated in that article.

[53] Similarly, Articles 44 to 51 of the same law set out the purpose of Professional Colleges, together with the requirements for creating and obtaining registration from those colleges, which may in no case number more than five for each profession.

[54] - The Statutes of the Mexican Institute of Public Accountants (IMCP),²⁶ Article 1.03 of which sets out, *inter alia*, the following purposes of the Institute: “*Promote the unification of criteria and work for the adoption and acceptance, among its members, of the basic rules, principles, and procedures of ethics and professional conduct that are deemed necessary*”; “*Publish, in the public interest, the accounting standards that must be observed in the drafting and presentation of financial information for external purposes, and promote their acceptance and observation in the country*”; and “*Adopt as basic rules, and consequently to be obligatorily observed by the Institute’s members, the financial information standards issued by the Mexican Council for the Research and Development of Financial Information Standards (CINIF) through its Research and Development Center (CID)*.”

[55] Article 3.03 of the Statutes also specifies the requirements for admission to the Institute.^v Article 3.07 establishes the obligations of members, which include abiding by the Code of Ethics and the rules for professional conduct adopted by the Institute; appearing before the Honor Committee or providing it with the information it requests, in connection with allegations of violations of the IMCP Statutes or of the Code of Professional Ethics; and submitting to the inspections and oversight relating to the basic provisions of quality control followed by the IMCP, either directly or through the Mexican Council for Quality Control Oversight in Public Accounting Firms.

[56] Finally, Chapter VII of the Statutes provides for the creation of the Honor Committee, the functions of which include reprimanding members and federated bodies in connection with violations of the Institute’s rules, when it gathers sufficient evidence regarding such violations, and deciding, on appeal from the honor committees of the federated bodies, on the nonadmission, expulsion, or reprimand of members of those associations, for violations of the Institute’s basic rules. The reprimands referred to and, when applicable, the sanctions, are as follows: (a) Private reprimand; (b) Public reprimand; (c) Fine; (d) Temporary suspension; (e) Expulsion; (f) Official complaint and

²⁵ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_ley_regl_art_5.pdf

²⁶ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_estatutos_imcp.pdf

request for the corresponding authorities to cancel the registration of the member's professional credentials (Article 7.07).

[57] - The Code of Professional Ethics of the Mexican Institute of Public Accountants,²⁷ Article VI of which states that a public accountant²⁸ has an obligation to maintain professional secrecy and to refrain from revealing, for any reason, for his own benefit or that of third parties, facts, data, or circumstances of which he becomes or has been aware in his professional practice. With the authorization of the interested parties, the public accountant will provide the competent authorities with the information and documents they request.

[58] In addition, Article VII of this Code of Ethics establishes the duty of loyalty toward a person contracting professional services, requiring a public accountant to refrain from taking advantage of situations that could harm the person for whom he is working.

[59] Finally, Article 5.01 states that a public accountant who violates the Code will receive the sanctions imposed by the affiliated association to which he belongs or by the IMCP, which will intervene in situations in which the affiliated association fails to act and for the purpose of the ratifications required by its statutes. In turn, Article 5.02 provides that the seriousness of the violation shall be taken into account in imposing sanctions, and that seriousness will be assessed in light of the importance of the violation for the prestige and stability of the profession of public accountants and the responsibility which may arise. The sanctions available are private reprimands, public reprimands, temporary suspension of a member's rights, expulsion, and reporting the violation of the laws governing professional practice to the competent authorities (Article 5.03).

[60] - Bulletin 3070 ("Fraud Considerations to be Reflected in an Audit of Financial Statements"), issued by the Auditing Rules and Procedures Commission of the Mexican Institute of Public Accountants,²⁹ paragraph 55 of which states that *"When the auditor determines that there is evidence that fraud may exist, he must report the situation to the appropriate level of the administration. This shall apply even when the matter may be considered inconsequential, such as a small theft committed by a low-level employee within the hierarchy of the entity. A fraud involving senior management or a fraud by either senior management or other employees that causes a significant distortion of the financial statements must be reported directly to the Board of Directors, Auditing Committee, or other similar body. In addition, the auditor shall agree on, with the Board of Directors or with the Auditing Committee, the nature and extent of communications between him and them regarding theft committed by low-level employees."*

[61] Paragraph 58 of the Bulletin also provides that an auditor may be obliged to reveal possible frauds to agencies other than the entity in the following cases: (a) in compliance with certain legal and contractual requirements (for example, when the auditing service is contracted by a government agency or body); (b) to a subsequent auditor who inquires under Bulletin 5070 regarding communications between the subsequent auditor and the previous auditor; or (c) in response to a judicial request. In addition, Article 59 states that *"due to the potential existence of conflicts between the auditor's ethics and his legal obligations regarding the confidentiality of his clients' business, it*

²⁷ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo12.pdf

²⁸ Article I of the Code of Professional Ethics states that the Code applies to all public accountants and companies, domestic or foreign, by reason of being such, regardless of the nature of the activity or specialty that the public accountant pursues in his independent practice or when serving as an officer or employee of a public or private institution. It also covers public accountants who additionally practice other professions.

²⁹ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_boletin_3070.pdf

is appropriate for the auditor to consult with legal counsel before making revelations to third parties about the matters addressed in paragraphs 55 to 58.”

[62] - Finally, the country under review also has applicable provisions, measures, and mechanisms, with different contents and scope, regarding the oversight of financial entities and associations of other kinds, such as those contained in the Credit Institutions Law and in the General Law of Cooperative Societies.

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

[63] As regards the constitutional and legal provisions governing the prevention of bribery of domestic and foreign government officials that the Committee has examined, on the basis of the information made available, they may be said to constitute a set of pertinent measures for promoting the purposes of the Convention.

[64] Nonetheless, the Committee considers it appropriate to express some comments about certain provisions in this regard that the country under review could consider supplementing, developing, or adapting:

[65] First of all, the Committee believes the country under review should consider adopting, through the means it deems appropriate, the relevant measures so that “professional secrecy” does not pose an obstacle for those professionals whose activities are regulated by the Code of Professional Ethics of the Mexican Institute of Public Accountants, from reporting to the competent authorities, any acts of corruption they detect in their professional practice. The Committee will formulate a recommendation in this regard. (See recommendation 2.4.a in Chapter II of this report.)

[66] In second place, the Committee believes it would be beneficial for the country under review to consider adopting the measures it deems appropriate to facilitate the detection, by the organs and agencies charged with preventing and/or investigating noncompliance with measures intended to ensure the accuracy of accounting records, of amounts paid for corruption concealed in those records. (See recommendation 2.4.b in Chapter II of this report.)

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

[67] Mexico’s reply to the questionnaire³⁰ provides the following information on results in this area:

[68] *“As measures to prevent corruption and to follow up on compliance with the anticorruption rules, the following steps have been taken:*

[69] • *Dissemination of and permanent training to public employees in various federal government agencies in the Code of Ethics of the Federal Public Administration (...).*

[70] • *Electronic publicity campaign to promote the content of the international anticorruption conventions and a culture of reporting national and international bribery.*

³⁰ See: Mexico’s reply to the Questionnaire for the Third Round, p. 11, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

[71] • *Drafting the National and International Bribery Detection Manual and training at the national level for auditors, for it to be applied as part of internal regulations in fiscal reviews.*

[72] • *Coordination with private sector associations – such as the National Association of Corporate Lawyers (ANADE), the Employers' Confederation of the Mexican Republic (COPARMEX), and Taxpayers' Ombudsmen – to publicize the content of the international anticorruption conventions, promote the obligation of reporting the crime of bribery, and developing training courses on the crime of international bribery."*

[73] Mexico also submitted information on the organization of the "Latin American Regional Conference: Commitment and Cooperation in the Fight against Corruption and International Bribery," which was "*chiefly aimed at public employees at the three levels of government, and to business owners, lawyers, accountants, civil society organizations, and international agencies involved with anticorruption. The event was attended by some 800 people from 22 countries in Latin America, the Caribbean, and Europe.*"³¹ It also submitted information on a joint edition, in Spanish, with a print-run of 5,000 copies, of the OECD document "Bribery in Public Procurement: Methods, Actors and Counter-Measures."

[74] The Committee believes that this information serves to demonstrate that major campaigns have been held in Mexico to raise awareness and promote integrity, targeting not only the public sector but also the private sector, and that auditors have been provided with training on how to detect national and international bribery. The Committee will formulate recommendations for Mexico to continue with these efforts. (See recommendations 2.4.c and 2.4.d in Chapter II of this report.)

[75] However, since it has no further information processed in such a way to allow it to conduct a comprehensive appraisal of the results in this area, the Committee will formulate a recommendation to the country under review so that, through its organs and entities charged with preventing and/or investigating violations of the measures intended to ensure the accuracy of accounting records and with overseeing that commercial companies and other types of associations required to establish internal accounting controls do so in an appropriate fashion, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See recommendation 2.4.e in Chapter II of this report.)

2.4. Conclusions and Recommendations

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

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

[78] In light of the comments made in that section, the Committee suggests that Mexico consider the following recommendation:

³¹ See: Mexico's reply to the Questionnaire for the Third Round, p. 12, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

[79] - Strengthen standards and measures on prevention of bribery of domestic and foreign government officials. To comply with this recommendation, Mexico could give consideration to the following measures:

- a) Adopt, in accordance with its legal framework, through the means it deems appropriate, the relevant measures so that “professional secrecy” does not pose an obstacle for those professionals whose activities are regulated by the Code of Professional Ethics of the Mexican Institute of Public Accountants from reporting to the competent authorities, any acts of corruption they detect in their professional practice, or that could lead to possible criminal actions related to bribery. (See section 2.2 of Chapter II of this report.)
- b) Consider adopting the measures it deems appropriate to facilitate the detection, by the agencies or bodies charged with preventing and/or investigating noncompliance with measures intended to ensure the accuracy of accounting records, of amounts paid for corruption concealed in those records, such as the following: (See section 2.2 of Chapter II of this report.)
 - i. Investigation tactics, such as follow-up on expenditures, crosschecking of information and accounts, and requests for information from financial entities in order to determine if such payments occurred.
 - ii. Continue to develop strategies, which may include manuals, guidelines or directives for those control organs or entities, on how to review accounting records in order to detect sums paid for corruption.
 - iii. Computer programs that provide easy access to the necessary information to verify the veracity of accounting records and of the supporting documents on which they are based.
 - iv. Institutional coordination mechanisms that enable those organs or entities to easily obtain the necessary collaboration from other institutions or authorities to verify the veracity of accounting records and of the supporting documents on which they are based or to establish their authenticity.
 - v. Training programs for 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.
- c) Continue to provide training to those persons responsible for accounting records and for verifying their accuracy, including awareness about the importance of abiding by the standards enacted to guarantee the truthfulness of those records and the consequences of violations. (See section 2.3 of Chapter II of this report.)
- d) Continue to organize awareness and integrity promotion campaigns targeting the private sector, and consider adopting measures such as preparing manuals and guides to provide companies with orientation on the good practices that should be followed to prevent corruption. (See section 2.3 of Chapter II of this report.)

- e) Select and develop, through its organs and entities charged with preventing and/or investigating violations of the measures intended to ensure the accuracy of accounting records and with overseeing that commercial companies and other types of associations required to establish internal accounting controls do so in an appropriate fashion, 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 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

[80] Mexico has the following provision that deals with transnational bribery:

[81] - The Federal Criminal Code,³² Article 222-bis, which provides: “*The same penalties provided in the previous article shall be imposed^{vii} to whom, with the purpose of obtaining or retaining for himself/herself or for another party, undue advantages in the development or conducting of international business transactions, offers, promises or gives, whether by himself/herself or through a third party, money or any other advantage, whether in assets or services:*

[82] *I. To a foreign public servant or to a third party designated thereby, for that public servant to process or refrain from processing the course or resolution of matters relating to the inherent functions of his post, position, or commission;*

[83] *II. To a foreign public servant or to a third party designated thereby, for that public servant to process or resolve any matter not within the scope of the inherent functions of his post, position, or commission; or,*

[84] *III. To any person for that person to appear before a foreign public servant to request or propose the processing or resolution of any matter related to the inherent functions of the latter's post, position, or commission;*

[85] *For the purposes of this article, “foreign public servant” shall mean any person who holds, either by election or appointment, a post, position, or commission in the legislative, executive, or judicial branch or in an autonomous public body at any level of a foreign state’s government; any person exercising a function for an authority, agency, or corporation owned by a foreign state or with foreign state participation; and any officer or agent of an international public organization.*

[86] *When any of the offenses covered in this article is committed in the circumstances described in Article 11 of this Code^{vii} the judge shall impose on the corporation a fine of up to one thousand day-equivalents³³ and may order its suspension or dissolution, in consideration of the level of knowledge of the administrative bodies regarding the bribery in an international transaction and the harm inflicted or benefit obtained by the corporation.”*

³² Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo7.pdf

³³ Under Article 29 of the Federal Criminal Code, a fine of a day-equivalent shall be equal to the net daily earnings of the offender at the time the offense was committed, taking into consideration all his income.

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

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

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

[88] In reference to the results, Mexico's reply to the questionnaire³⁴ states that: "*To date, Mexico has registered no cases of transnational bribery.*"

[89] In addition, the Committee notes the "*National Accountability, Transparency, and Anticorruption Program, 2008-2012*" of the Mexican federal government, the objectives of which include establishing mechanisms for coordinating actions to combat corruption in the federal public administration, aiming to ensure that all identified cases of transnational bribery are investigated by 2012.³⁵

[90] In light of the above information and of the fact that Mexico criminalized the offense of transnational bribery in 1999, the Committee believes it would be useful for the country under review to continue to pay attention to the detection and investigation of cases of transnational bribery, aiming at strengthening the capacity of the organs or agencies charged with the investigation and/or prosecution of the offense of transnational bribery, and with requesting and/or providing assistance and cooperation with respect thereto, as provided in the Convention. (See recommendation 3.4 in Chapter II of this report.)

3.4. Conclusions and Recommendations

[91] 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 provision contained in Article VIII of the Convention:

[92] Mexico has adopted measures on the offense of transnational bribery as provided in Article VIII of the Convention, as described in Chapter II, Section 3, of this report.

[93] In view of the comments made in that section, the Committee suggests that Mexico consider the following recommendation:

- Continue to pay attention to the detection and investigation of cases of transnational bribery, to work to strengthen the capacity of the agencies or bodies tasked with investigating and/or prosecuting the crime of transnational bribery, and to request and/or extend the assistance and cooperation provided in the Convention with respect thereto. (See section 3.3 of Chapter II of this Report).

³⁴ See: Mexico's reply to the Questionnaire for the Third Round, p. 15, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

³⁵ See: "National Accountability, Transparency, and Anticorruption Program, 2008-2012," pp. 46-47, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo20.pdf

4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

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

[94] Mexico has the following provisions related to illicit enrichment:

[95] – The Constitution of the United Mexican States,³⁶ Article 109 (penultimate paragraph) of which provides that: “*The law shall determine the cases and circumstances in which criminal sanctions for illicit enrichment shall apply to public servants who, during their tenure in office or as a result thereof, through themselves or an intermediary, significantly increase their net worths, acquire assets or act as the owner thereof, the legal origin of which they cannot explain.*”³⁷

[96] – The Federal Criminal Code,³⁸ Article 224 of which states:

[97] “*Sanctions shall apply to anyone who commits illicit enrichment by reason of his post, position, or commission. Illicit enrichment exists when a public servant^{viii} is unable to prove the legitimacy of an increase in his net worth or the legal origin of assets held in his name or with respect to which he acts as the owner, pursuant to the Federal Law on the Responsibilities of Public Servants.*

³⁶ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo15.pdf.

³⁷ Mexico presented the following case law in connection with Article 109 of its Constitution: “*Location: Ninth Period; Body: Plenary; Source: Judicial Weekly and Gazette of the Federation XVI, August 2002; Page: 7; Opinion: P. XXXVI/2002, Isolated Opinion; Re: Constitutional, Criminal.*

ILLICIT ENRICHMENT. ARTICLE 109 OF THE CONSTITUTION, WHICH COVERS IT, DOES NOT PROVIDE A REGIME OF EXCEPTIONS FROM INDIVIDUAL GUARANTEES FOR PUBLIC SERVANTS.

*The genetic, teleological interpretation of the amendment of Title Four of the Political Constitution of the United Mexican States, covering Articles 108 to 114, published in the Official Journal of the Federation on December 28, 1982, reveals that the causes behind it were based on the need to establish a new constitutional foundation for the appropriate and more rigorous punishment of responsibilities incurred by public servants. In addition, a detailed analysis of the rationale, of the rulings of the congressional committees, and of the debates regarding Article 109, section III, paragraph three, which sets out the express intent to impose criminal punishments on public servants for illicit enrichment, does not indicate the desire of the constitutional reform process to establish a regime of exceptions to individual guarantees. Indeed, although the cited provision indicates that the public servant must accredit that his wealth has come from a legitimate source, that must not be understood as a displacement of the burden of evidence onto the suspect, but rather as his right of defense to refute evidence brought against him. Consequently, under the general rules set out in Articles 21 and 102 of the Constitution, it falls to the Public Prosecution Service to establish the elements that make up a crime and the guilt of the accused. To rule that a public servant has enriched himself illicitly (the essential core of the crime) requires first proving given facts or circumstances, such as the status of the accused as a public servant (qualified subject), his net worth at the start and conclusion of functions, the earnings paid during his tenure in the position, and the real current situation of the subject's net worth, in order to be able to arrive at a logical, natural process that clearly and with a minimal amount of common sense indicates that there is a substantial mismatch between the public servant's earning from his post, position, or commission and what he really has in his personal assets. Taken together, these facts and circumstances create a *iuris tantum* assumption that the active subject has enriched himself illicitly, which constitutes circumstantial evidence indicating the *corpus delicti* and his responsibility therein, which may in any event be refuted by the public servant's demonstration of the licit origin of the substantial increase in his net worth.*

Amparo under review 1293/2000. August 15, 2002. Eleven votes. Presented by: Sergio Salvador Aguirre Anguiano. Secretaries: Eduardo Ferrer Mac Gregor Poisot and Arnulfo Moreno Flores.

The Plenary of the Court, at its public session held on August 15 of this year, adopted, as No. XXXVI/2002, the foregoing isolated opinion; and decided that the vote was suitable for constituting jurisprudence. Mexico City, Federal District, August 16, 2002.”

³⁸ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo7.pdf.

[98] “Criminal responsibility is also incurred by a person who knowingly passes off, as his own, assets acquired by a public servant in contravention of the provisions of this law.

[99] “The following sanctions shall apply to those who commit the crime of illicit enrichment:

[100] “Forfeiture, to the benefit of the State, of those assets that cannot be accredited in accordance with the Federal Law on the Responsibilities of Public Servants.

[101] “When the amount of the illicit enrichment does not exceed the equivalent of five thousand times the minimum daily wage in force in the Federal District, the sanction shall be a prison term of between three months and two years, a fine of between thirty and three hundred times the minimum daily wage in force in the Federal District at the time the crime was committed, dismissal, and disqualification from holding another public post, position, or commission for between three months and two years.

[102] “When the amount of the illicit enrichment exceeds the equivalent of five thousand times the minimum daily wage in force in the Federal District, the sanction shall be a prison term of between two and fourteen years, a fine of between three hundred and five hundred times the minimum daily wage in force in the Federal District at the time the crime was committed, dismissal, and disqualification from holding another public post, position, or commission for between two and fourteen years.”

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

[103] With respect to the provision through which Mexico has criminalized the criminal offense of illicit enrichment as provided in Article IX of the Convention, that have been examined by the Committee on the basis of the information available to it, it may be said to be pertinent for promoting the purposes of the Convention.

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

[104] In the results section of Mexico’s reply to the questionnaire,³⁹ the country under review offers data from the Office of the Attorney General of the Republic (PGR), indicating that a total of 54 preliminary inquiries into the crime of illicit enrichment were opened between 2004 and May 2009.

[105] The Committee believes that the above information demonstrates that Mexico has pursued criminal investigations into illicit enrichment offenses. However, the Committee does not have information on the results of those preliminary inquiries, on whether they were referred to the competent judicial authorities, and on any results of those referrals.

[106] Consequently, since it has no information in addition to that referenced above, processed in such a way that would enable it to offer a comprehensive appraisal of the 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 as

³⁹ See: Mexico’s reply to the Questionnaire for the Third Round, p. 17, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

well as with requesting and/or providing the related assistance and cooperation provided for in the Convention, 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 4.4. in Chapter II of this report.)

4.4. Conclusions and Recommendations

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

[108] Mexico has adopted measures on the offense of illicit enrichment as provided in Article IX of the Convention, as described in Chapter II, Section 4, of this report.

[109] In light of the comments made in that section, the Committee suggests that Mexico consider the following recommendation:

- Select and develop, through the organs or agencies charged with the investigation and/or prosecution of the offense of illicit enrichment as well as with requesting and/or providing the related assistance and cooperation provided for in the Convention, procedures and indicators, when appropriate and where they do not yet exist, to analyze the objective results obtained in this regard. (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

[110] Mexico criminalized the offense of transnational bribery as provided for in Article VIII of the Inter-American Convention Against Corruption after the date on which it ratified the Convention⁴⁰ and notified the OAS Secretary General of said criminalization by Note OEA00492 from the Permanent Mission of Mexico to the Organization of American States dated March 9, 2010.

[111] Similarly, Mexico criminalized the offense of illicit enrichment as provided for in Article IX of the Inter-American Convention Against Corruption prior to the date on which it ratified the Convention.⁴¹

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

[112] Since Mexico criminalized the offense of transnational bribery as provided for in Article VIII of the Inter-American Convention Against Corruption after the date on which it ratified the Convention and that on March 9, 2010 it notified the OAS Secretary General of said criminalization,

⁴⁰ Mexico criminalized transnational bribery through a decree published in the Official Journal of the Federation on May 17, 1999.

⁴¹ Mexico criminalized illicit enrichment through a decree published in the Official Journal of the Federation on January 5, 1983.

in accordance with Article X thereof, the Committee shall not offer any recommendation in that respect. (See recommendation in Section 5.3 of Chapter II of this Report.)

[113] Also, since Mexico criminalized the offense of illicit enrichment as provided for in Article IX of the Inter-American Convention Against Corruption prior to the date on which it ratified the Convention, it is not required to serve the notice provided for in Article X thereof and consequently, the Committee will formulate no recommendation on this point.

5.3. Conclusion

[114] Based on the review conducted in the foregoing sections, the Committee concludes that Mexico has complied with the provisions of Article X of the Convention.

6. EXTRADITION (ARTICLE XIII OF THE CONVENTION)

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

[115] Mexico has a set of provisions related to extradition, most notably:

[116] – The Constitution of the United Mexican States,⁴² Article 119-III of which provides that “*Extraditions requested by a foreign state shall be processed by the federal executive branch, with the intervention of the judicial authorities, pursuant to the terms of this Constitution, the applicable international treaties signed, and the regulatory laws. In such cases, a warrant from the judge ordering compliance with the request shall be sufficient grounds for an arrest of up to sixty calendar days.*”

[117] – The International Extradition Law,⁴³ Article 1 of which provides that “*The provisions of this law are public and federal in nature and are intended to determine the cases and conditions for handing over to requesting states, when no international treaties exist, persons accused before their courts, or convicted thereby, for common crimes.*”

[118] Article 7 of this law provides that extradition shall not be granted when “*I.- The person sought has been acquitted, pardoned, or amnestied, or when he has served the sentence related to the crime for which the request is made; II.- No legitimate party has filed a complaint, when Mexican criminal law demands that requirement; III.- The action or punishment is covered by statutory limitations, in accordance with Mexican criminal law or the applicable law of the requesting state; and IV.- The crime was committed within the jurisdiction of the courts of the Republic.*”

[119] The law also provides, at Article 14, that “*No Mexican may be handed over to a foreign state except in exceptional cases in the opinion of the executive branch*” and, at Article 15, that “*Mexican nationality shall not constitute an impediment to extradition when it was acquired after the events for which the extradition is sought.*” Similarly, Article 32 of the law states that “*If the person sought is a Mexican citizen and the extradition is refused for that sole reason, the Secretariat of Foreign Affairs shall notify the person in question and the Attorney General of the Republic of the decision; it shall make the person available to the Attorney General and refer the proceedings to him so that the Public Prosecution Service may, if applicable, refer the case to the competent courts.*”

⁴² Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo15.pdf

⁴³ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo19.pdf

[120] Finally, Article 17 of this law provides that “*When a state notes its intent to submit a formal request for the extradition of a given person and requests the adoption of precautionary measures with respect to that person, said measures may be granted provided that the requesting state’s request contains an indication of the crime for which extradition is sought and a statement that an arrest warrant has been issued for the person by a competent authority.*”

[121] “*Should the Secretariat of Foreign Affairs deem that grounds exist, it shall convey the request to the Attorney General of the Republic, who shall immediately urge the corresponding District Judge to enact the appropriate measures, which may entail, at the request of the Attorney General of the Republic, judicial confinement or other steps applicable under the relevant treaties or laws.*”

[122] – Mexico currently has signed extradition treaties with Bahamas, Belize, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, El Salvador, the United States of America, Guatemala, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela.⁴⁴

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

[123] The provisions related to extradition that the Committee has examined on the basis of the information made available to it may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

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

[124] In its reply to the questionnaire, Mexico notes the following regarding results in this area:

[125] “*To date Mexico has not needed to invoke the Inter-American Convention against Corruption (IACC) to seek the extradition of individuals for the commission of acts of corruption described in Article VI thereof, since other types of offenses are cited in its international extradition requests.*”

[126] “*Nevertheless, by ratifying the IACC, the Mexican government is obliged to maintain that legal instrument as part of its legislation and, consequently, observe it as a legal basis for an international extradition request.*”⁴⁵

[127] Mexico also reports that from 2004 to date, it received one extradition request relating to the crime of embezzlement formulated by a state party to the Convention and that it sent two extradition requests to a non-State Party, both relating to the crime of embezzlement.⁴⁶ ⁴⁷

⁴⁴ The texts of the bilateral extradition treaties signed by Mexico are available at:
<http://www.oas.org/juridico/mla/sp/mex/index.html>.

⁴⁵ See: Mexico’s reply to the Questionnaire for the Third Round, p. 18, available at:
http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

⁴⁶ See: Mexico’s reply to the Questionnaire for the Third Round, p. 21, available at:
http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

⁴⁷ The State under review submitted the following information at the meeting of the Review Subgroup: “*Since 2004, the Government of Mexico has sought the international extradition of four individuals to face trial for the crime of embezzlement: two from Costa Rica (the extradition procedures are being processed); one from the United States of America (which concluded with the transfer of the person sought to Mexico); and one from Spain (which also concluded with the person sought being handed over to national authorities). In addition, our country was asked to extradite five individuals to face trial for the crimes of embezzlement or bribery – one by Guatemala and four by the United States of*

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

6.4. Conclusions and Recommendations

[129] 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 provision contained in Article XIII of the Convention:

[130] Mexico has adopted measures relating to extradition as provided for in Article XIII of the Convention, as indicated in section 6 of Chapter II of this report.

[131] In light of the comments made in that section, the Committee suggests that Mexico consider the following recommendation:

- Consider the utility of the Inter-American Convention against Corruption for extradition purposes in corruption cases. This could consist, among other measures, in the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the 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 ROUND⁴⁸

[132] With respect to the implementation of the recommendations issued to Mexico 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:

A. COOPERATION OF FEDERAL GOVERNMENT AUTHORITIES WITH THE FEDERAL STATES

Sole recommendation formulated by the Committee, which was satisfactorily considered in the terms set out in the Second Round report:⁴⁹

Recommendation:

“...the Committee recommends that the country under review consider having the federal authorities promote the relevant cooperation mechanisms with State Entities, in order to obtain information on the issues corresponding to the Convention within the scope of the State governments, as well as provide technical assistance for the effective implementation of the Convention.”

[133] The Committee has already noted the satisfactory consideration of the foregoing recommendation by the country under review in the terms set out in the report adopted thereon during the Second Round.⁵⁰ Since that report indicates that the recommendation, by its nature, requires a continuation of efforts in its implementation, it trusts that the country under review will report on the actions it takes toward that end in the annual progress reports provided for in Article 32 of the Committee's Rules of Procedure.

B. RECOMMENDATIONS AT THE FEDERAL LEVEL

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

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

Recommendation:

Strengthen the implementation of laws and codes of conduct concerning conflicts of interest.

⁴⁸ 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.

⁴⁹ See: pages 37-38 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

⁵⁰ See: pages 37-38 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round.⁵¹

a. Based on the Code of Ethics of Federal Public Administration Civil Servants, encourage each of the agencies and entities of the Federal Public Administration to devise and issue a specific Code of Conduct defining the actions of its public employees in concrete situations, in accordance with the functions and activities inherent to each institution, as provided for in the relevant provisions (see Chapter II, Section 1.1.2 of this report).

b. Provide all civil servants with training in the standards of conduct and the mechanisms for preventing conflicts of interest and carry out a widespread dissemination of those standards and mechanisms.

[134] In its response, the country under review presents information on measure (a) of the foregoing recommendation, additional 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 thereof, the following:

[135] ‘With respect to section (a), in order to strengthen its efforts in drafting and implementing Codes of Conduct throughout the various agencies and offices of the federal public administration, the federal government has been working since December 2007 on the design and implementation of the program ‘Culture of Legality: Ethics and Public Responsibility.’ With this program, which was released in March 2008, the SFP seeks to strengthen a culture of compliance with legality within the federal administration and to construct inclusive public ethics that will establish values and principles to guide the actions of public servants in promptly complying with the law and, at the same time, raise their awareness about the example that they should set for society in general.

[136] As part of the first stage of this program, a study into codes of ethics and behaviors within the federal administration was conducted between April and June 2008, by administering a questionnaire to 270 federal government offices and agencies. By December 2008, 210 entities had returned their replies to the questionnaire, 203 of which have Codes of Conduct. Only 196 of the returned questionnaires were processed, and these yielded important results for a precise understanding of the current situation of the adoption and dissemination of those values within the civil service. (See charts in Annex 21⁵² for specific data.)⁵³

[137] In addition, one of the charts contained in Annex 21 of Mexico’s reply to the Third Round questionnaire indicates that 86% of the 203 Codes of Conduct of the various federal government offices and agencies include provisions governing conflicts of interest.

[138] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (a) of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that although there has been an increase in the number of offices and agencies of the federal public administration that have drafted and enacted the Codes of

⁵¹ See: pages 38-40 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

⁵² Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo21.pdf.

⁵³ See: Mexico’s reply to the Questionnaire for the Third Round, p. 25, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

Conduct referred to in that measure, not all those offices and agencies have Codes of Conduct and, where they do, not all regulate the topic of conflicts of interest.

[139] In its response, the country under review presents information on measure (b) of the foregoing recommendation, additional to that analyzed by the Committee in the report from the Second Round. In this regard, the Committee notes, as steps which lead it to conclude that the measure has been satisfactorily considered, the following:

[140] • The coordination, by the Civil Service Secretariat (SPF), over the period November 2007 to April 2008, of 118 training courses targeting 3,496 public servants from the oversight and control agencies, which covered the topic of conflicts of interest as one of their main components.⁵⁴

[141] • The organization of the Third National Transparency Colloquium, ‘Transparency and accountability as the basis for management in combating corruption,’ in coordination with the National Public Administration Institute (INAP).⁵⁵

[142] • Dissemination of the guidebook ‘Administrative Responsibilities in Electoral Contexts: Legality as a Road to Public Responsibility,’⁵⁶ and the creation of a computer-based course⁵⁷ based on that publication.⁵⁸

[143] The Committee takes note of the satisfactory consideration by the country under review of measure (b) as transcribed above, which, by its nature, requires a continuation of efforts in its 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:

Strengthen the implementation of legal provisions and codes of conduct with respect to the proper conservation and use of public resources.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round.⁵⁹

a. *Based on the Code of Ethics of Federal Public Administration Civil Servants, encourage each of the agencies and entities of the Federal Public Administration to devise and issue a specific Code of Conduct defining the actions of its public employees in concrete situations, in accordance with the functions and activities inherent to each institution, as provided for in the relevant provisions (see Chapter II, Section 1.1.2 of this report).*

⁵⁴ See: Mexico's reply to the Questionnaire for the Third Round, p. 25, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf

⁵⁵ See: Mexico's reply to the Questionnaire for the Third Round, p. 26, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf

⁵⁶ Available at: http://www.programaanticorrupcion.gob.mx/Folleto_Responsabilidades_2008.pdf.

⁵⁷ Available at: http://portal.funcionpublica.gob.mx:8080/wb3/wb/SFP/blindaje_electoral.

⁵⁸ See: Mexico's reply to the Questionnaire for the Third Round, p. 26, available at:

http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

⁵⁹ See: pages 40-41 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

b. Disseminate the provisions related to the conservation and use of public resources.

[144] In its response, the country under review presents information on measure (a) of the foregoing recommendation, additional to that analyzed by the Committee analyzed in the report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in implementation thereof, the following:

[145] *'With respect to section (a), in order to strengthen its efforts in drafting and implementing Codes of Conduct throughout the various agencies and offices of the federal public administration, the federal government has been working since December 2007 on the design and implementation of the program 'Culture of Legality: Ethics and Public Responsibility.' With this program, which was released in March 2008, the SFP seeks to strengthen a culture of compliance with legality within the federal administration and to construct inclusive public ethics that will establish values and principles to guide the actions of public servants in promptly complying with the law and, at the same time, raise their awareness about the example that they should set for society in general.'*

[146] *As part of the first stage of this program, a study into codes of ethics and behaviors within the federal administration was conducted between April and June 2008, by administering a questionnaire to 270 federal government offices and agencies. By December 2008, 210 entities had returned their replies to the questionnaire, 203 of which have Codes of Conduct. Only 196 of the returned questionnaires were processed, and these yielded important results for a precise understanding of the current situation of the adoption and dissemination of those values within the civil service. (See charts in Annex 21⁶⁰ for specific data.)*⁶¹

[147] In addition, one of the charts contained in Annex 21 of Mexico's reply to the Third Round questionnaire indicates that 95% of the 203 Codes of Conduct of the federal public administration's different offices and agencies contain provisions on the proper conservation and use of public resources.

[148] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (a) of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that although there has been an increase in the number of offices and agencies of the federal public administration that have drafted and enacted the Codes of Conduct referred to in that measure, all those offices and agencies do not yet have Codes of Conduct and, where they do, not all regulate the topic of the proper conservation and use of public resources.

[149] In its response, the country under review presents information on measure (b) of the foregoing recommendation, additional to that analyzed by the Committee analyzed in the report from the Second Round. In this regard, the Committee notes, as steps that lead it to conclude that said measure has been satisfactorily considered, the following:

[150] *'With respect to section (b), as part of the measures for strengthening the enforcement of the rules guaranteeing the correct use of federal public resources, the federal government, through the Civil Service Secretariat, encourages the use of guidelines and standards for government auditing'*

⁶⁰ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo21.pdf

⁶¹ See: Mexico's reply to the Questionnaire for the Third Round, p. 25, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

and internal control and provides training courses on the topic. The aim of these guides and courses is provide a support tool and frame of reference for conducting audits of: individuals and assets contracted by the departments and agencies of the federal public administration; the granting of bonuses for productivity, efficiency, and quality to public servants belonging to federal administration departments and agencies; public sector purchases, lease arrangements, and services; the leasing, sale, and purchase of real estate and stocks and inventories of consumable goods; and others.⁶²

[151] The Committee takes note of the satisfactory consideration by the country under review of measure (b) as transcribed above, which, by its nature, requires a continuation of efforts in its implementation.

1.3. Measures and systems requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

Recommendation:

Strengthen the mechanisms Mexico has to require public officials to report acts of corruption in public office of which they are aware to the appropriate authorities.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round.⁶³

- a. *Based on the Code of Ethics of Federal Public Administration Civil Servants, encourage each of the agencies and entities of the Federal Public Administration to devise and issue a specific Code of Conduct defining the actions of its public employees in concrete situations, in accordance with the functions and activities inherent to each institution, as provided for in the relevant provisions (see Chapter II, Section 1.3.2 of this report).*
- b. *Disseminate the provisions related to the measures and systems that require public officials to report acts of corruption in public office of which they are aware.*
- c. *Adopt and implement protective measures for civil servants who report acts of corruption, thus safeguarding them from the threats or retaliation that might be directed at them on account of having complied with that obligation.*

[152] In its response, the country under review presents information on measure (a) of the foregoing recommendation, additional to that analyzed by the Committee analyzed in the report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in implementation thereof, the following:

[153] *'With respect to section (a), in order to strengthen its efforts in drafting and implementing Codes of Conduct throughout the various agencies and offices of the federal public administration, the federal government has been working since December 2007 on the design and implementation of the program 'Culture of Legality: Ethics and Public Responsibility.' With this program, which was*

⁶² See: Mexico's reply to the Questionnaire for the Third Round, p. 29, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

⁶³ See: pages 42-43 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

released in March 2008, the SFP seeks to strengthen a culture of compliance with legality within the federal administration and to construct inclusive public ethics that will establish values and principles to guide the actions of public servants in promptly complying with the law and, at the same time, raise their awareness about the example that they should set for society in general.

[154] *As part of the first stage of this program, a study into codes of ethics and behaviors within the federal administration was conducted between April and June 2008, by administering a questionnaire to 270 federal government offices and agencies. By December 2008, 210 entities had returned their replies to the questionnaire, 203 of which have Codes of Conduct. Only 196 of the returned questionnaires were processed, and these yielded important results for a precise understanding of the current situation of the adoption and dissemination of those values within the civil service. (See charts in Annex 21⁶⁴ for specific data.)⁶⁵*

[155] In addition, one of the charts contained in Annex 21 of Mexico's reply to the Third Round questionnaire indicates that 72% of the 203 Codes of Conduct of the different departments and agencies of the federal public administration contain provisions on the reporting of acts of corruption by public officials.

[156] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (a) of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that although there has been an increase in the number of offices and agencies of the federal public administration that have drafted and enacted the Codes of Conduct referred to in that measure, all of those offices and agencies do not yet have Codes of Conduct and, where they do, not all regulate the topic of requiring public officials to report acts of corruption.

[157] In its response, the country under review presents information on measure (b) of the foregoing recommendation, additional 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 thereof, the following:

[158] *'(...) the federal government has introduced several programs that seek to encourage the detection and reporting of acts of corruption. One of these programs, known as 'Simulated User,' assesses the different government agencies and the formalities they carry out. Over the past year, as a result of this program, 18 public servants were sanctioned for various administrative irregularities.'*

[159] *Similarly, communications strategies were developed within various agencies of the federal public administration to encourage public employees and citizens in general to report any irregularities committed in public service (...).⁶⁶*

[160] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (b) of the foregoing recommendation and the need for it to continue to give attention thereto.

⁶⁴ Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo21.pdf.

⁶⁵ See: Mexico's reply to the Questionnaire for the Third Round, p. 25, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

⁶⁶ See: Mexico's reply to the Questionnaire for the Third Round, pp. 31-32, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

[161] In its response, the country under review presents information on measure (c) of the foregoing recommendation, additional 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 thereof, the following:

[162] *'With respect to the measure contained in recommendation 1.3, a decree was published in the Official Journal of the Federation on January 23, 2009, which amended, added, and repealed several provisions dealing with the protection of victims, plaintiffs, witnesses, experts, judges, magistrates, public prosecutors, police officers, and other parties, when so required by their participation in criminal proceedings.'*

[163] • *Federal Code of Criminal Procedure (Annex 22): Articles 2, section V; 3, section X, paragraphs (a) and (d); 123; 141-A, section XVII; 141-B, section IX; and 253 bis;*

[164] • *Organic Law of the Office of the Attorney General of the Republic (Annex 23): Article 5, sections IX, X, and XI.*⁶⁷

[165] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (c) of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that the protection described does not explicitly cover those who report irregularities in good faith and that neither does it afford broad protection from potential threats or retaliation that public officials may suffer as a consequence of complying with their obligation of informing the competent authorities about acts of corruption in the public service of which they are aware.

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

Recommendation:

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

Measure suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:⁶⁸

e. *Continue the awareness campaigns for public officials about their legal and ethical duty to report truthful data on their statements of net worth.*

[166] The Committee has already noted the satisfactory consideration of the foregoing measure by the country under review in the terms set out in the report adopted thereon during the Second Round.⁶⁹ Since that report indicates that the measure, by its nature, requires a continuation of efforts in its implementation, it looks forward to the country under review reporting on the actions it takes

⁶⁷ See: Mexico's reply to the Questionnaire for the Third Round, pp. 30-31, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

⁶⁸ See: pages 45-46 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

⁶⁹ See: pages 45-46 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

toward that end in the annual progress reports provided for in Article 32 of the Committee's Rules of Procedure.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round.⁷⁰

- a. *Strengthen the mechanisms whereby the competent authority can verify the content of statements of net worth, as set forth in Federal Law on the Administrative Responsibilities of Civil Servants (LFRASP), establishing systems to facilitate and perform such verification on a timely basis (see Chapter II, Section 2.2 of this report).*
- b. *Regulate the conditions, procedures, and other aspects relating to the public disclosure, as appropriate, of declarations of income, assets and liabilities, subject to the Constitution and the fundamental principles of law.*
- c. *Strengthen the strategic plans for verifying and analyzing the statements of net worth presented.*
- d. *Maximize the use of the systems for analyzing the content of the statements of income, assets, and liabilities for the purpose of strengthening them, as a useful tool for the detection of possible cases of unjust enrichment, and when appropriate, of conflicts of interest.*

[167] In its response, the country under review presents information on measure (a) of the foregoing recommendation, additional to that analyzed by the Committee analyzed in the report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in implementation thereof, the following:

[168] *'With respect to recommendation 2, section (a), in order to strengthen the verification of changes in net worths, the federal government is working, through the Civil Service Secretariat, on the implementation of an Alert System that will help detect cases that warrant investigation for the possible illicit enrichment. In addition, the Net Worth Evolution procedure is being redesigned to make it more streamlined and efficient.*

[169] *In addition, the Civil Service Secretariat, in coordination with the Financial Intelligence Unit, is working on a draft Collaboration Agreement that will enable them to exchange financial information related to the detection of irregular financial operations by public officials belonging to both the federal government and local governments, framed by the concept of Politically Exposed Persons.*

[170] *Similarly, an area of opportunity exists in the planned amendments to the banking and financial legislation, which include the lifting of bank and stock-market secrecy, in order to enable access to information on public servants subject to investigation for the evolution of their net worths in investment funds, trusts, brokerage houses, etc.*

[171] *In connection with the feasibility of requesting and obtaining information on the bank accounts of public servants subject to investigation in the United States of America, a study was prepared and informal meetings were held. Agreements on this issue are expected to be reached soon. In regard to cases involving information from department stores, with the aim of checking*

⁷⁰ See: pages 43-46 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

expenses incurred by public servants and their economic dependents subject to investigation, work continues with requests for such information.

[172] *Thus, a decree was published on May 28, 2009, which amended Article 40, paragraph 2, of the Federal Law of Administrative Responsibilities dealing with the registration of public servants (Annex 5). It requires the registration of employment details of public servants obliged to submit statements of net worth, their duties, income, and acknowledgments, their statements of net worth depending on their income during the previous year, and the existence of any sanctions or resolutions voiding them.⁷¹*

[173] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (a) of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that much of the information presented deals with actions that are still underway.

[174] In its response, the country under review presents information on measure (b) of the foregoing recommendation, additional to that analyzed by the Committee analyzed in the report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in implementation thereof, the following:

[175] *'Regarding section (b), work continues on a daily basis with attending to those public servants who request the services offered in connection with statements of net worth, in which they are invited to make the details of their net worth public (...).⁷²*

[176] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (b) of the foregoing recommendation and the need for it to continue to give attention thereto.

[177] In its response, the country under review did not refer to measure (c) of the foregoing recommendation. The Committee therefore notes the need for Mexico to give additional attention to its implementation.

[178] In its response, the country under review presents information on measure (d) of the foregoing recommendation, additional 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 thereof, the following:

[179] *'Regarding section (d), work is underway on designing a new form for statements of net worth, intended to be easier to fill out and to serve as a useful tool for detecting possible cases of illicit enrichment as well as possible cases of conflicts of interest.⁷³*

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

⁷¹ See: Mexico's reply to the Questionnaire for the Third Round, pp. 33-34, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

⁷² See: Mexico's reply to the Questionnaire for the Third Round, p. 34, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

⁷³ See: Mexico's reply to the Questionnaire for the Third Round, p. 34, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

give attention thereto, bearing in mind that the action related to it indicated in the reply has not yet concluded.

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

Sole recommendation formulated by the Committee, which was considered satisfactorily in the terms set out in the Second Round report.⁷⁴

Recommendation:

“...the Committee suggests that Mexico consider continuing the coordination between its oversight bodies with respect to their functions relating to oversight of effective compliance with the provisions of paragraphs 1, 2, 4 and 11 of the Convention, in order to ensure the effectiveness of that oversight and of the mechanisms that allow for institutional coordination of their actions and ensure an ongoing evaluation and follow-up thereof.”

[181] The Committee has already noted the satisfactory consideration of the foregoing recommendation by the country under review in the terms set out in the report adopted thereon during the Second Round.⁷⁵ Since that report indicates that the recommendation, by its nature, requires a continuation of efforts in its implementation, it looks forward to the country under review reporting on the actions it takes toward that end in the annual progress reports provided for in Article 32 of the Committee’s Rules of Procedure.

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

4.1. General participation mechanisms

No recommendations were formulated by the Committee in this section

4.2. Mechanisms for access to information

Recommendation:

Strengthen the mechanisms for ensuring access to public information.

Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:⁷⁶

b. Continue encouraging, subject to the autonomy of the local and municipal governments, the adoption by the nation’s States and Municipalities legislation to guarantee access to public information.

⁷⁴ See: pages 46-47 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

⁷⁵ See: pages 46-47 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

⁷⁶ See: pages 47-50 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

d. Continue developing training and dissemination programs dealing with the mechanisms for public information access, in order to help civil servants and citizens understand them and to optimize the use of available technology to that end.

[182] The Committee has already noted the satisfactory consideration of the foregoing measures by the country under review in the terms set out in the report adopted thereon during the Second Round.⁷⁷ Since that report indicates that the measures, by their nature, require a continuation of efforts in their implementation, it looks forward to the country under review reporting on the actions it takes toward that end in the annual progress reports provided for in Article 32 of the Committee's Rules of Procedure.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round.⁷⁸

a. Continue with its efforts to ensure that those agencies and entities that are required to do so by the provisions governing the right of public information publish on their WebPages, the information indicated as obligatory in those provisions (see Chapter II, Section 4.2.3 of this report).

c. Continue to take steps to optimize the archive systems of the agencies and entities identified in section 4.2.3 of Chapter II of this report, to facilitate access to public information.

[183] In its response, the country under review presents information on measure (a) of the foregoing recommendation, additional to that analyzed by the Committee in the report from the Second Round. In this regard, the Committee notes the following measures:

[184] *'During 2008, with the aim of verifying compliance with the transparency obligations contained in Article 7 of the Federal Law on Transparency and Access to Governmental Public Information (LFTAIPG; Annex 27), evaluations of the 240 departments and agencies of the federal public administration were carried out. In addition, the Federal Institute for Access to Governmental Public Information maintained permanent campaigns to promote the use of transparency portals, the right to information, and transparency obligations.'*⁷⁹

[185] The results of that evaluation, conducted by the Federal Institute for Access to Public Information (IFAI) in the first half of 2009 and published on its web site,⁸⁰ indicate that the average compliance rate within the federal public administration was approximately 82%.

[186] The Committee notes the need for the country under review to give additional attention to measure (a) in the foregoing recommendation, bearing in mind that the level of compliance with the transparency obligations set out in Article 7 of the Federal Law on Transparency and Access to Governmental Public Information in the first half of 2009 was lower than the level previously reported in the report from the Second Round.⁸¹

⁷⁷ See: pages 47-50 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

⁷⁸ See: pages 47-50 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

⁷⁹ See: Mexico's reply to the Questionnaire for the Third Round, p. 37, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

⁸⁰ See: document 'Transparency Obligations Indicator (ODT), Results of Verification of Compliance with Article 7 of the LFTAIPG,' available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resultados_odt_ifai.xls

⁸¹ The level of compliance as of December 31, 2005, was 95.9%. See: pages 51-52 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

[187] In addition, with reference to the implementation of this measure in the recommendation, the civil society organization Transparencia Mexicana (the national chapter of Transparency International) offers the following comment:

[188] ‘(...) in 2008 the Civil Service Secretariat (SFP) published its sectoral program, the National Program of Accountability, Transparency, and Anticorruption 2008-2012 (PNRCTCC 2008-2012), setting out five objectives. The first objective is ‘To consolidate a state policy for information, transparency, and accountability.’ Compliance with this goal is to be measured by means of three indicators:

[189] 1. *Compliance with all the quality criteria contained in the guidelines for institutional web pages of the federal public administration, with the target of having 65% of the departments and agencies of the federal administration meeting those criteria by 2012.*

[190] 2. *Publication of specific information on the web pages of departments and agencies of the federal administration, with the target of 100% of departments and agencies publishing that information by 2012.*

[191] 3. *Compliance with the provisions of Art. 6 of the Constitution by the departments and agencies of the federal administration, with the target of 100% of them complying with Article 6.*

[192] To attain these goals, the SFP has established six strategies, including increasing the effectiveness of transparency and public information policies within the federal administration and the Office of the Attorney General of the Republic (Strategy 1) and improving the regulatory framework to encourage transparency and accountability in the federal administration (Strategy 5). The SFP has also set itself the task of devising evaluation criteria for complying with Article 6 of the Constitution and creating a regulatory framework to systematize electronic information within the federal administration, and of encouraging academic institutes and research centers to conduct studies into transparency, accountability, and anticorruption efforts.⁸²

[193] In its response, the country under review presents information on measure (c) of the foregoing recommendation, additional 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 thereof, the following:

[194] ‘Regarding section (c) of this recommendation, the federal government, through the Secretariat of the Interior, organized the Third Meeting of Federal Government Archives, which was held in Mexico City on December 1 to 3 and was attended by 320 participants. The meeting reflected on the dual responsibility of public records offices, based on the experience of the General Archive of the Nation: the preservation of historical memory and the right to information that we know as transparency. Other topics addressed included: strategies for establishing an archive system, strategies and consolidation in the organization of procedural, collection, and historical archives and electronic files, and the process for issuing rulings on documents.

⁸² Document ‘Independent Report on the Implementation of the Inter-American Convention against Corruption – Third Round of Review,’ submitted by Transparencia Mexicana, pp. 18-19. Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_inf_sc_sp.doc.

[195] In addition, as of December 2008, ten courses and specialization workshops had been held, covering document administration, preparing archive classification charts, document availability cataloguing, and procedures for removing documents.⁸³

[196] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (c) of the foregoing recommendation and the need for it to continue to give attention thereto.

[197] In addition, with reference to the implementation of this measure in the recommendation, the civil society organization Transparencia Mexicana (the national chapter of Transparency International) offers the following comment:

[198] ‘A legislative bill on this topic exists: the Federal Archives Law, passed by the Chamber of Deputies on March 31, 2009, and referred to the Senate. The goals of this law will be:

[199] I. Guarantee the location and prompt issuing of documents through modern archive organization and preservation systems, to assist government efficiency, correct government management, and institutional progress;

[200] II. Ensure timely access to information and thus accountability, through the proper administration and custody of files containing governmental public information;

[201] III. Guarantee the correct conservation, organization, and consultation of procedural, collection, and historical archives to serve the needs of the public administration, to defend the rights of individuals and public and private bodies corporate, and to encourage historical documentary research;

[202] IV. Promote the use of information technologies to improve the administration of archives by obligated entities;

[203] V. Establish mechanisms for collaboration between federal, state, and municipal authorities on archive matters;

[204] VI. Contribute to the creation of a culture that appreciates archives as tools for efficient government.’⁸⁴

4.3. Consultation Mechanisms

Recommendation:

Complement existing mechanisms of consultation, establishing procedures, when appropriate, so as to allow for making public consultations prior to designing public policies and prior to the final adoption of legal provisions.

⁸³ See: Mexico’s reply to the Questionnaire for the Third Round, p. 38, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

⁸⁴ Document ‘Independent Report on the Implementation of the Inter-American Convention against Corruption – Third Round of Review,’ submitted by Transparencia Mexicana, p. 20. Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_inf_sc_sp.doc.

Measure suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:⁸⁵

Continue consultation with interested sectors of civil society and non-governmental organizations regarding the design of public policies and the drafting of laws, decrees and resolutions by the executive branch.

[205] The Committee has already noted the satisfactory consideration of the foregoing measure by the country under review in the terms set out in the report adopted thereon during the Second Round.⁸⁶ Since that report indicates that the measure, by its nature, requires a continuation of efforts in its implementation, it looks forward to the country under review reporting on the actions it takes toward that end in the annual progress reports provided for in Article 32 of the Committee's Rules of Procedure.

4.4. Mechanisms to encourage participation in public administration

Recommendation:

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

Measure suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:⁸⁷

a. *Continue to adopt mechanisms that strengthen the participation of civil society and nongovernmental organizations in anticorruption efforts.*

[206] The Committee has already noted the satisfactory consideration of the foregoing measure by the country under review in the terms set out in the report adopted thereon during the Second Round.⁸⁸ Since that report indicates that the measure, by its nature, requires a continuation of efforts in its implementation, it looks forward to the country under review reporting on the actions it takes toward that end in the annual progress reports provided for in Article 32 of the Committee's Rules of Procedure.

Measure suggested by the Committee that requires information on its implementation or which required additional attention within the Framework of the Second Round:⁸⁹

b. *Set quantitative and qualitative indicators that will help determine the impact of citizen participation on the final proposed law (see Chapter II, Section 4.4.3. of this report).*

[207] In its response, the country under review presents no additional information on measure (b) of the foregoing recommendation, additional to that analyzed by the Committee in the report from the

⁸⁵ See: pages 50-51 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

⁸⁶ See: pages 50-51 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

⁸⁷ See: page 51 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

⁸⁸ See: page 51 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

⁸⁹ See: pages 51-52 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

Second Round. The Committee therefore reiterates the need for the country under review to give additional attention to it.

[208] In addition, with reference to the implementation of this measure in the recommendation, the civil society organization Transparencia Mexicana (the national chapter of Transparency International) offers the following comment:

[209] *'(...) In addition to the indicators managed by COFEMER, in PNRCTCC 2008-2012 the SPF set the goal of institutionalizing the mechanisms for citizen participation and engagement in the fight against corruption and in improving transparency and legality (Objective 4). Compliance with this goal will be measured by means of three indicators, federal programs involving social oversight schemes, compliance with the guidelines for ensuring citizen participation in corruption prevention and combat actions within the federal administration, and the percentage of civil society organizations involved in monitoring the public administration to promote transparency and anticorruption efforts.'*⁹⁰

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

Recommendation:

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

Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:⁹¹

- a. *Promote new forms of social oversight – such as citizen oversight groups for the supervision of public activities and projects – and providing civil society with training and advice for making proper use thereof.*
- c. *The competent authorities should raise awareness of the mechanisms that make up the Integral Societal Oversight System (SICS) disseminate a mechanism for setting up the Societal Oversight and continue implementing existing plans.*

[210] The Committee has already noted the satisfactory consideration of the foregoing measures by the country under review in the terms set out in the report adopted thereon during the Second Round.⁹² Since that report indicates that the measures, by their nature, require a continuation of efforts in their implementation, it looks forward to the country under review reporting on the actions it takes toward that end in the annual progress reports provided for in Article 32 of the Committee's Rules of Procedure.

Measure suggested by the Committee that require information on its implementation or which required additional attention within the Framework of the Second Round:⁹³

⁹⁰ Document ‘Independent Report on the Implementation of the Inter-American Convention against Corruption – Third Round of Review,’ submitted by Transparencia Mexicana, p. 21. Available at: http://www.oas.org/juridico/spanish/mesicic3_mex_inf_sc_sp.doc.

⁹¹ See: pages 52-54 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

⁹² See: pages 52-54 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

⁹³ See: pages 52-54 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

b. Continue work on implementing the Integral Societal Oversight System (SICS), expanding it into a larger number of offices and programs of the Federal Public Administration.

[211] In its response, the country under review presents information on measure (b) of the foregoing recommendation, additional 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 thereof, the following:

[212] ‘Regarding section (b), the Comprehensive Social Oversight System is being put into place, in different phases, in federal social development programs, as well as in other programs that address rural and economic development policy. In addition, major efforts are being made to ensure that when these programs involve activities for promoting social oversight in the states and municipalities, those levels of government have the tools and training necessary to support the citizenry. As a part of this work, a computer system for social oversight is being implemented, which will serve to record and systematize the actions of all government agencies in this area and, in addition, could serve to detect evidence for social oversight and constitute another channel for receiving and following up on complaints and accusations made by the public.’⁹⁴

[213] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (b) of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that the computer system for social oversight referred to in the reply had not yet been fully implemented.

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

Recommendations formulated by the Committee, which were considered satisfactorily in the terms set out in the Second Round report.⁹⁵

Recommendation 5.1:

Identify and prioritize specific areas in which Mexico considers that it needs the technical cooperation of other State Parties and international cooperation agencies in order to strengthen its capacity to prevent, detect, investigate and punish acts of corruption.

Recommendation 5.2:

Continue its efforts to exchange technical cooperation with other State Parties regarding the most effective ways and methods for preventing, detecting, investigating and punishing acts of corruption.

[214] The Committee has already noted the satisfactory consideration of the foregoing recommendations by the country under review in the terms set out in the report adopted thereon during the Second Round.⁹⁶ Since that report indicates that the recommendations, by their nature, require a continuation of efforts in their implementation, it looks forward to the country under review

⁹⁴ See: Mexico’s reply to the Questionnaire for the Third Round, pp. 44-45, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

⁹⁵ See: pages 54-55 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

⁹⁶ See: pages 54-55 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

reporting on the actions it takes toward that end in the annual progress reports provided for in Article 32 of the Committee's Rules of Procedure.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

[215] The Committee did not formulate recommendations on this provision of the Convention to the country under review, because it noted with satisfaction that Mexico complied with Article XVIII of the Convention, by appointing the Ministry of Foreign Affairs as the central authority for the purposes of the assistance and international cooperation provided for in the Convention.

7. GENERAL RECOMMENDATIONS

Recommendations formulated by the Committee, which were considered satisfactorily in the terms set out in the Second Round report:⁹⁷

Recommendation 7.1:

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

Recommendation 7.3:

Develop, when appropriate and where they do not yet exist, procedures for analyzing the mechanisms mentioned in this report, as well as the recommendations contained herein.

[216] The Committee has already noted the satisfactory consideration of the foregoing recommendations by the country under review in the terms set out in the report adopted thereon during the Second Round.⁹⁸ Since that report indicates that the recommendations, by their nature, require a continuation of efforts in their implementation, it looks forward to the country under review reporting on the actions it takes toward that end in the annual progress reports provided for in Article 32 of the Committee's Rules of Procedure.

Recommendation formulated by the Committee that require information on its implementation or which required additional attention within the Framework of the Second Round:⁹⁹

Recommendation 7.2:

Select and develop procedures and indicators, when appropriate, that make it possible to verify follow-up on the recommendations made in this report, and report back to the Committee, through the Technical Secretariat, in this regard. For the purposes indicated, Mexico could consider taking into account the list of the most widely used indicators, applicable in the Inter-American system that were available for the selection indicated by the country under analysis, which has been published on the OAS website by the Technical Secretariat of the Committee, as well as information derived from the analysis of the mechanisms developed in accordance with recommendation 7.3, which follows.

⁹⁷ See: pages 55-56 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

⁹⁸ See: pages 55-56 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

⁹⁹ See: pages 55-56 of this report, available at: http://www.oas.org/juridico/english/mesicic_II_rep_mex.pdf

[217] In its response, the country under review presents additional information on the foregoing recommendation, additional 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 thereof, the following:

[218] *'(...) the federal government published the National Accountability, Transparency, and Anticorruption Program 2008- 2012 as part of International Anti-Corruption Day on December 9, 2008. The program sets out the federal strategy for fighting corruption and it is obligatory for all the agencies that make up the federal public administration.*

[219] *The program sets out six main objectives, which reflect a number of recommendations made by international agencies. Strategy 5.4, which includes six lines of action, requires the monitoring of the federal public administration's compliance with the commitments set out in international anticorruption conventions; it also orders the coordination of strategies among the various government institutions and agencies responsible for detecting international bribery.*

[220] *The program also establishes federal strategies for interconnecting the administrative and criminal justice arenas, with a view to adopting specific criteria for following up on administrative measures imposed on public officials and on sanctions imposed on companies.*

[221] *In this context, phase one of a comprehensive evaluation system, called the Strategic Anticorruption Information System (SIECC) has been developed. This system will provide timely information on the monitoring and evaluation of government management in complying with four of the six strategic objectives, which aim at positively impacting four specific dimensions (structural, procedural, organizational, perceptual-cultural) within the federal public administration.*

[222] *The strategic information system will be a monitoring and evaluation tool that will periodically gather, with the participation of the various administrative units of the Civil Service Secretariat, the results and progress made with each variable and with each line of action in this program. This will allow permanent feedback and, at the same time, provide up-to-date and timely information on the pursuit and achievement of the program's strategic objectives.¹⁰⁰*

[223] The Committee notes the steps taken by the country under review to advance in the implementation of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that the information presented deals with actions that are still underway.

¹⁰⁰ See: Mexico's reply to the Questionnaire for the Third Round, p. 50, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

SECOND ROUND¹⁰¹

[224] The Committee offers the following observations with respect to the implementation of the recommendations made to Mexico in the report from the Second Round, based on the information available to it:

A. COOPERATION OF FEDERAL GOVERNMENT AUTHORITIES WITH THE FEDERAL STATES

Recommendation 1:

“the Committee encourages Mexico to continue to undertake joint with its federal states actions aimed at obtaining information on the implementation of the Convention, and strengthening the cooperation and coordination between the federal government and the federal states for its effective implementation, and at providing them with the technical assistance they may need to that end”.

[225] The Committee has already noted the satisfactory consideration, by the country under review, of the recommendation similar to this one that was served on it in the report from the First Round.¹⁰² Since the actions toward the implementation of this recommendation described by Mexico in its response¹⁰³ enable it to be reasonably assumed that the above recommendation has been satisfactorily addressed, the Committee takes note and, aware that the recommendation by its nature requires continuity in its implementation, looks forward to the country under review reporting on the actions taken toward that end in the annual progress reports provided for in Article 32 of the Rules of Procedure.

B. CONCLUSIONS AND RECOMMENDATIONS AT THE FEDERAL LEVEL

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

1.1. Systems of government hiring

Recommendation 1.1.1.:

Strengthen the systems for hiring public servants in the federal executive branch.

Measures suggested by the Committee:

a. Regulate the power that Articles 74 of the Federal Civil Service Career Law (LSPCAF) and 31 of its Regulations (RLSPCAF) grants to direct supervisors of areas for which vacancy notices are issued to veto any or all of the finalist candidates in the respective selection process, so that its exercise is subject to predetermined grounds and based on reasons of probity, equity, and efficiency (See Chapter II, Section 1.1.2 of this report).

¹⁰¹ 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.

¹⁰² See: paragraph 139 of this Report.

¹⁰³ See: Mexico’s reply to the Questionnaire for the Third Round, pp. 22-24, available at:
http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

b. Examine the reasons why a considerable number of competitive selection processes have been declared void, in order to adopt the necessary corrective measures (See Chapter II, Section 1.1.3 of this report).

c. Continue to monitor progress in the implementation of the professional career system in order to ensure that the goals set in that connection are met (See Chapter II, Section 1.1.3 of this report).

[226] In its response, the country under review provides information which it considers related to measure (a) of the foregoing recommendation.¹⁰⁴ The Committee notes the need for the country under review to give additional attention to its implementation.

[227] In the progress report presented at the 13th meeting of the Committee,¹⁰⁵ the country under review presents information on measure (b) of the foregoing recommendation. In this regard, the Committee notes, as a step which contributes to progress in implementation thereof, the following:

[228] ‘*The effectiveness of the measures undertaken can be seen in the falling numbers of competitions declared unanswered since the entry into force of the new LSPCAF Regulations, after having remained relatively stable with notable increases in a number of months. Thus, on average, between September 2007 and April 9, 2008, the percentage of unanswered competitions was 27%, with a range of between 11% and 43%, with the lowest figure recorded in February 2008 from a total number of 1002 competitions.*¹⁰⁶

[229] The Committee takes note of the step taken by the country under review to advance in its implementation of measure (b) of the foregoing recommendation and the need for it to continue to give attention thereto.

[230] In its response, the country under review presents information on the implementation of measure (c) of the foregoing recommendation. In this regard, the Committee notes, as steps that lead it to conclude that said measure has been satisfactorily considered, the following:

[231] ‘*Regarding section (c) of recommendation 1.1.1, work continues on the process for the publication of the Program for the Professional Career Service 2008 – 2012.*

[232] *During 2008 follow-up was given to the operation of the Professional Career Service through the progress made by the institutions in Integral Professional Career Service Evaluation Model system (MideSPC) and the validation carried out by the Internal Oversight Organs.*

¹⁰⁴ See: Mexico’s reply to the Questionnaire for the Third Round, pp. 52-53, available at:

http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

¹⁰⁵ The progress report is taken into account since Mexico’s reply to the Third Round questionnaire (footnote No. 2) indicates: ‘*Mexico has presented its national progress reports at each meeting of the Committee of Experts of the Mechanism for Follow-up on Implementation of the Inter-American Convention against Corruption (MESICIC). The following paragraphs broadly summarize the measures and actions that Mexico has taken since the adoption of the Final Report on the Implementation in Mexico of the provisions of the Inter-American Convention against Corruption in 2007 (Second Round of Review). Emphasis is placed on the actions taken by Mexico between December 2008 and the first half of 2009. Information prior to that date can be found in the national progress reports presented by the United Mexican States to the MESICIC Committee of Experts at the corresponding meetings.*

¹⁰⁶ See: page 21 of this report, available at: http://www.oas.org/juridico/spanish/mec_avance_mexXIII.pdf.

[233] As part of the control and evaluation mechanism for the Professional Career Service (SPC), commitments were established and the agencies subject to the SPC were required to report on their progress. Thus, the result of the Professional Career Service System and its subsystems is obtained from the direct average of its components. Consequently, the SPC System committed, on average, by 74 agencies, 44.25% for 2008, with a rate of real progress at the conclusion of the exercise of 46.32%, meaning 100% compliance with the commitment entered into by the agencies (...).¹⁰⁷

[234] The Committee takes note of the satisfactory consideration by the country under review of measure (c) of the foregoing recommendation, which, by its nature, requires a continuation of efforts in its implementation.

Recommendation 1.1.2.:

Strengthen the systems for hiring public servants in the federal legislative branch.

Measures suggested by the Committee:

a. Adopt, through the appropriate authority, a merit-based selection procedure to fill the career staff vacancies in the House of Deputies mentioned in Articles 49 and 51 of the Organic Law of the Congress of the United Mexican States (LOCGEUM) in light of their essentially technical nature, taking into account to that end the principles of openness, equity and efficiency provided in the Convention (see Chapter II, Section 1.1.2 of this report).

b. Enact, through the appropriate authority and within a reasonable time, the amendments to the Statutes on the Technical and Administrative Organization of the House of Deputies Service Career, bearing in mind to that end the principles of openness, equity and efficiency provided in the Convention (see Chapter II, Section 1.1.2 of this report).

c. Consider, through the appropriate authority, positions in the areas of parliamentary, administrative, and financial services of the House of Deputies, as included in the House of Deputies Career Service, bearing in mind their essentially technical nature and the provisions contained in Articles 49 and 51 of the Organic Law of the Congress of the United Mexican States (LOCGEUM) (see Chapter II, Section 1.1.2 of this report).

[235] In its response, the country under review provides information which it considers related to measures (a), (b), and (c) of the foregoing recommendation.¹⁰⁸ The Committee notes the need for the country under review to give additional attention to its implementation.

Recommendation 1.1.3.:

Strengthen the systems for hiring public servants in the federal judicial branch.

Measure suggested by the Committee:

¹⁰⁷ See: Mexico's reply to the Questionnaire for the Third Round, pp. 53-54, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

¹⁰⁸ See: Mexico's reply to the Questionnaire for the Third Round, pp. 55-56, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

- Adopt, through the appropriate authority, a merit-based selection procedure for judicial career positions other than those of circuit magistrate and district judge, in light of their essentially technical nature, bearing in mind to that end the principles of openness, equity and efficiency provided in the Convention (see Chapter II, Section I.1.2 of this report).

[236] In its response, the country under review presents information that it considers related to the measure of the foregoing recommendation.¹⁰⁹ The Committee notes the need for the country under review to give additional attention to implementation thereof.

1.2. Systems for government procurement of goods and services

Recommendation 1.2.1.:

Strengthen the systems for government procurement of goods and services in the federal executive branch.

Measure suggested by the Committee:

- Adopt the measures necessary to overcome the circumstances preventing the complete implementation of government procurement in electronic format in federal executive branch institutions where that is pending.(see Chapter II, Section 1.2.3 of this report).

[237] In its response, the country under review presents information that it considers related to the measure of the foregoing recommendation.¹¹⁰ The Committee notes the need for the country under review to give additional attention to implementation thereof.

Recommendation 1.2.2.:

Strengthen the systems of government procurement of goods and services in the federal legislative branch.

Measures suggested by the Committee:

a. Enhance, through the appropriate authority, the House of Deputies Procurement, Leasing and Services Law and the House of Deputies Public Works and Related Services Law, with the inclusion of a general provision regarding the need to provide a reasoned decision to employ procurement procedures other than public competitive bidding, in order to promote the principles of openness, equity and efficiency recognized in the Convention (see Chapter II, Section 1.2.2 of this report).

b. Enhance, through the appropriate authorities, the House of Deputies Procurement, Leasing and Services Law, the House of Deputies Public Works and Related Services Law, and the Rules on Senate Procurement, Leasing, Service Provision, and Public Works, with the inclusion of penalties to be imposed on providers, bidders and contractors who violate the provisions contained in the

¹⁰⁹ See: Mexico's reply to the Questionnaire for the Third Round, pp. 55-56, available at:
http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

¹¹⁰ See: Mexico's reply to the Questionnaire for the Third Round, pp. 58-59, available at:
http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

aforesaid laws and rules, in order to strengthen their effective enforcement (see Chapter II, Section 1.2.2 of this report).

c. Enhance, through the appropriate authorities, the House of Deputies Procurement, Leasing and Services Law, the House of Deputies Public Works and Related Services Law, and the Rules on Senate Procurement, Leasing, Service Provision, and Public Works, establishing societal oversight mechanisms to monitor procurement, such as citizen oversight offices, in order to strengthen control of those activities (see Chapter II, Section 1.2.2 of this report).

d. Enhance, through the appropriate authority, the House of Deputies Procurement, Leasing and Services Law and the House of Deputies Public Works and Related Services Law, by establishing a mechanism for contesting decisions adopted by the Office of the Comptroller General on objections lodged under those Laws, in order to strengthen the effectiveness of challenge mechanisms (see Chapter II, Section 1.2.2 of this report).

[238] In its response, the country under review provides information which it considers related to measure (a) of the foregoing recommendation.¹¹¹ The Committee notes the need for the country under review to give additional attention to its implementation.

[239] In its response, the country under review presents information on the implementation of measure (b) of the foregoing recommendation. In this regard, the Committee notes, as steps that lead it to conclude that said measure has been satisfactorily considered, the following:

[240] *'Regarding section (b), note that Article 52, sections III, IV, X, XV, and XVI of the Purchasing, Leasing, and Services Standards (Annex 35), and Article 48, sections III, IV, V, VI, and VIII of the Public Works and Related Services Standards of the Chamber of Deputies (Annex 36) establish sanctions applicable for noncompliance therewith, which serves to strengthen control over compliance with the internal regulations.'*

[241] *Regarding fines and disqualifications, the Standards Manual for Purchasing, Leasing, Service Provision, and Public Works of the Senate (Annex 37) provides for conventional penalties (Rules 90 and 91) and disqualifications (Rule 24) for suppliers, bidders, or contractors who fail to meet their contractual obligations (...).*¹¹²

[242] The Committee takes note of the satisfactory consideration by the country under review of measure (b) of the foregoing recommendation.

[243] In its response, the country under review provides information which it considers related to measure (c) of the foregoing recommendation.¹¹³ The Committee notes the need for the country under review to give additional attention to its implementation.

¹¹¹ See: Mexico's reply to the Questionnaire for the Third Round, p. 61, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

¹¹² See: Mexico's reply to the Questionnaire for the Third Round, p. 61, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

¹¹³ See: Mexico's reply to the Questionnaire for the Third Round, p. 61, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

[244] In its response, the country under review did not refer to measure (d) of the foregoing recommendation. The Committee therefore notes the need for Mexico to give additional attention to its implementation.

Recommendation 1.2.3.:

Strengthen the systems of government procurement of goods and services in the federal judicial branch.

- Enhance, through the appropriate authorities, General Administrative Decision 6/2001 of the Office of the President of the Supreme Court of Justice of the Nation and General Decision 75/2000 of the Plenary of the Federal Judicature Council, by establishing societal oversight mechanisms to monitor procurement, such as citizen oversight offices, in order to strengthen control of those activities (see Chapter II, Section 1.2.2 of this report).

[245] In its response, the country under review presents information on the implementation of the measure of the foregoing recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation thereof, the following:

[246] ‘In November 2007, the NGO Transparencia Mexicana and the Supreme Court of Justice of the Nation signed a general collaboration agreement to strengthen transparency in the supreme court’s budget, with the NGO serving as a social watchdog. In addition, in the Transparency section of the Supreme Court’s web page (...), any individual may consult the court’s real-estate holdings, details of the trusts in which the court is trust or, judgments and opinions on transparency and access to information issued by the federal judiciary, procedures for the appointment of judicial officials, and administrative responsibilities.’¹¹⁴

[247] The Committee takes note of the steps taken by the country under review to advance in its implementation of the measure set out in the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that a comprehensive set of regulations for the social oversight mechanisms that monitor the judiciary’s procurement activities does not yet exist.

[248] The Committee also notes the information furnished about the internal agencies that have been involved in the implementation of this recommendation.¹¹⁵

2. SYSTEMS TO PROTECT PUBLIC SERVANTS AND PRIVATE CITIZENS WHO IN GOOD FAITH REPORT ACTS OF CORRUPTION (ARTICLE III, PARAGRAPH 8 OF THE CONVENTION)

Recommendation 2:

Strengthen the systems for protecting public servants and private citizens who in good faith report acts of corruption.

¹¹⁴ See: Mexico’s reply to the Questionnaire for the Third Round, pp. 62-63, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

¹¹⁵ See: Mexico’s reply to the Questionnaire for the Third Round, p. 63, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf. These are the Supreme Court of Justice of the Nation and the Federal Judicature Council.

Measures suggested by the Committee:

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

- a. Additional measures of protection for those who report acts of corruption that may or may not be defined as criminal offenses, but which could be subject to judicial or administrative investigation.*
- b. Additional measures of protection, targeting not just the protection of the physical integrity of whistleblowers and their families, but also the protection of their positions of employment, particularly for public officials and when the acts of corruption could involve their superiors or coworkers.*
- c. A simplified whistleblower protection application process.*
- d. Additional Mechanisms for the protection of witnesses, providing them with the same guarantees as public officials and private citizens.*
- e. Mechanisms to facilitate international cooperation in the above areas, when appropriate.*

[249] In its response, the country under review presents information on the implementation of the foregoing recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation thereof, the following:

[250] • The publication, in the Official Journal of the Federation of June 18, 2008, of the decree amending Articles 19, paragraph 2, 20-B, section V, first paragraph, and 20-C, sections V and VI, of the Constitution of the United Mexican States, which deal with the protection of victims, witnesses, minors, and individuals filing complaints.¹¹⁶

[251] • The publication, in the Official Journal of the Federation of January 23, 2009, of the decree amending, adding, and repealing various provisions of the Federal Code of Criminal Procedure (Articles 2, section V; 3, section X, paragraphs a and d; 123; 141-A, section XVII; 141-B, section IX; and 253 Bis) and of the Organic Law of the Office of the Attorney General of the Republic (Article 5, sections IX, X, and XI), which deal with the protection of victims, witnesses, experts, and others, when involved in criminal proceedings.¹¹⁷

[252] • The preparation and presentation of the ‘National Accountability, Transparency, and Anticorruption Program 2008-2012’ (PNRCTCC) in December 2008, which contains, in its Objective 6 (Strategy 6.4, lines of action 6.4.1. to 6.4.4.), specific measures related to promoting a

¹¹⁶ See: Mexico’s reply to the Questionnaire for the Third Round, pp. 64-65, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

¹¹⁷ See: Mexico’s reply to the Questionnaire for the Third Round, pp. 65-67, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

culture of reporting irregularities and to guaranteeing the legal security and integrity of persons who report acts of corruption.¹¹⁸

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

[254] In addition, with reference to the implementation of this recommendation, the civil society organization Transparencia Mexicana (the national chapter of Transparency International) offers the following comment:

[255] *'Some reforms have been made in this area which, while not focused on the topic of corruption, could enable the creation of a witness protection system for reports of acts of corruption. On June 18, 2008, the Official Journal published the amendment of Article 20-B, section V, of the Constitution of the United Mexican States (...)*

[256] *At the same time, the Secretariat of Public Security (SSP) developed its National Public Security Program 2008-2012, which sets out some strategies and lines of action that could help strengthen the whistleblower protection system. Strengthening collaborative ties with citizen participation agencies has been proposed, together with encouraging a culture of reporting irregularities through publicity campaigns carried out in conjunction with civil society organizations.*

[257] *In addition, the goal has been that by 2012, a total of 91,943 complaints from the public will have been channeled to the competent agencies, working from the baseline of 38,779 reports channeled in 2006. As of June 2008 the following results had been recorded: 68,461 potentially criminal acts were reported to the federal system, of which 1,058 involved offenses committed by public servants. As of June 2008, sanctions had been imposed on 5,186 public servants, with 4,776 in 2007.*

[258] *The SFP has also incorporated strategies to address the promotion of filing reports of irregularities and the protection of whistleblowers. Specifically, the PNRCTCC 2008-2012 sets out the strategy of strengthening the regulatory framework and the process to encourage reporting and of creating an appropriate legal instrument for protecting whistleblowers. The actions for achieving this include establishing an efficient system for following up on and dealing promptly with complaints, reports, and petitions from the public, simplifying the formalities for presenting complaints, reports, and petitions, including citizen watchdog mechanisms, and enacting a legal instrument providing protection, security, and integrity for public servants who report acts of corruption and for safeguarding their jobs, positions, or commissions. (...)*

[259] *In this regard, use should be made of the recent legislative amendments to design a program or system for specifically protecting whistleblowers and witnesses in corruption cases (...).*¹¹⁹

¹¹⁸ See: Mexico's reply to the Questionnaire for the Third Round, p. 67, available at:
http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf

¹¹⁹ Document 'Independent Report on the Implementation of the Inter-American Convention against Corruption – Third Round of Review,' submitted by Transparencia Mexicana, pp. 25-26. Available at:
http://www.oas.org/juridico/spanish/mesicic3_mex_inf_sc_sp.doc.

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

Evaluate the need to modify the definition of the crime of bribery provided for by Article 222, section II of the Federal Criminal Code, insofar as it refers to the element of spontaneity, in light of what is provided for by paragraph (b) of Article VI.I of the Convention. (See Chapter II, Section 3.2 of this report)

[260] In its response, the country under review provides information which it considers related to the foregoing recommendation.¹²⁰ The Committee notes the need for the country under review to give additional attention to its implementation.

4. GENERAL 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 the said systems, provisions, measures and mechanisms are adequately known, managed, and implemented.

[261] In its response, the country under review did not refer to the foregoing recommendation.¹²¹ The Committee therefore notes the need for Mexico to give additional attention to its implementation.

Recommendation 4.2.:

Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, provisions, measures, and mechanisms considered in this report, and to follow-up on the recommendations made herein (see Chapter II, Sections 1.1.3.; 1.2.3.; and 3.3 of this report).

[262] In its response, the country under review presents additional information on the foregoing recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation thereof, the following:

[263] ‘(...) the federal government published the National Accountability, Transparency, and Anticorruption Program 2008- 2012 as part of International Anti-Corruption Day on December 9, 2008. The program sets out the federal strategy for fighting corruption and it is obligatory for all the agencies that make up the federal public administration.

[264] The program sets out six main objectives, which reflect a number of recommendations made by international agencies. Strategy 5.4, which includes six lines of action, requires the monitoring of the federal public administration’s compliance with the commitments set out in international

¹²⁰ See: Mexico’s reply to the Questionnaire for the Third Round, p. 67, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

¹²¹ See: Mexico’s reply to the Questionnaire for the Third Round, p. 68, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

anticorruption conventions; it also orders the coordination of strategies among the various government institutions and agencies responsible for detecting international bribery.

[265] *The program also establishes federal strategies for interconnecting the administrative and criminal justice arenas, with a view to adopting specific criteria for following up on administrative measures imposed on public officials and on sanctions imposed on companies.*

[266] *In this context, phase one of a comprehensive evaluation system, called the Strategic Anticorruption Information System (SIECC) has been developed. This system will provide timely information on the monitoring and evaluation of government management in complying with four of the six strategic objectives, which aim at positively impacting four specific dimensions (structural, procedural, organizational, perceptual-cultural) within the federal public administration.*

[267] *The strategic information system will be a monitoring and evaluation tool that will periodically gather, with the participation of the various administrative units of the Civil Service Secretariat, the results and progress made with each variable and with each line of action in this program. This will allow permanent feedback and, at the same time, provide up-to-date and timely information on the pursuit and achievement of the program's strategic objectives.¹²²*

[268] The Committee notes the steps taken by the country under review to advance in its implementation of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that the information presented deals with actions that are still underway.

Recommendation 4.3.:

Design and implement public awareness campaigns in transparency, targeting the public and those who take part in political activities, with respect to the issues referred to in this report.

[269] In its response, the country under review submitted information relating to this recommendation. In this regard, the Committee notes, as a step which contributes to progress in implementation thereof, the following:

[270] • The preparation and presentation of the ‘National Accountability, Transparency and Anticorruption Program 2008-2012’ (PNRCTCC) in December 2008, Objectives 1, 3, and 4 (Strategies 1.2, 1.4, 3.1, 3.2, 3.3, 3.4, and 4.2) of which set out specific measures related to raising the awareness of the public and of public servants about transparency, accountability, and the anticorruption effort.¹²³

[271] The Committee notes the step taken by the country under review to advance in its implementation of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that the information presented deals with actions that are still underway.

¹²² See: Mexico’s reply to the Questionnaire for the Third Round, p. 50, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

¹²³ See: Mexico’s reply to the Questionnaire for the Third Round, p. 69, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_resp_sp.pdf.

ENDNOTES

ⁱ Fiscal Code of the Federation, Article 29-C: “*In transactions for purchases of goods, for the temporary use or enjoyment of goods, or for the provision of services in which payment is made by means of a named check for deposit in the beneficiary’s account, by account transfers at credit institutions or brokerage houses, by credit or debit cards, or by electronic debit or debit account, for the purposes of the deductions or credits authorized in tax law, the account statement of the person making the payment may be used as evidence thereof, provided that the following requirements are met:*

I. *The check indicates the Federal Taxpayers’ Number of the person to whom the check is issued. It shall be assumed, absent evidence to the contrary, that this requirement has been met when the statement issued for the purpose by the credit institution or brokerage house indicates the number corresponding to the check’s payee.*

II. *An issued document exists that indicates: the Federal Taxpayers’ Number of the seller, the service provider, or the person ceding temporary use or enjoyment of the goods; the good or service in question; the price or remuneration; the issue date; and, explicitly and separately, the taxes transferred, broken down by the applicable rate.*

III. *The accounts record, in accordance with the regulations of this Code, the operation covered by the check issued or transfer made.*

IV. *The operation is directly recorded in the statement with the document referred to in Section II of this article, with the purchase of the good, with the use or enjoyment, or with the provision of the service, and with the operation recorded in the accounts, pursuant to the regulations of this Code.*

V. *The original of the corresponding statement of account is preserved for the period of time indicated in Article 30 of this Code.*

The original statement issued for the purpose by the credit institution or brokerage house must indicate the Federal Taxpayers’ Number of the person selling the goods, transferring their use or enjoyment, or providing the service.

Those taxpayers who choose to implement the provisions of this article, in addition to the requirements established therein, shall meet the requirements for documents, checks, debit accounts, and statements of account established by the Tax Administration Service in its generally applicable rules.

Those who choose to implement the provisions of this article shall allow inspectors, in pursuit of their powers of verification, to consult electronically the information on the statements of account in question, directly at the credit institutions or brokerage houses that issued those statements.

The provisions of this article shall not apply to payments for goods, for the use or enjoyment thereof, or for services for which taxes must be retained under the fiscal regulations or in cases in which taxes other than value added tax are transferred.

The provisions of this article shall apply without prejudice to the other accounting obligations that taxpayers must observe.

In the event of noncompliance with any of the requirements set in this article, the statement shall not be considered a fiscal receipt for the purposes of the deductions or credits provided for in the tax legislation.”

ⁱⁱ The list of the International Accounting Standards (IAS) and the International Financial Reporting Standards (IFRS) adopted in Mexico is available at: http://www.cinif.org.mx/normatividad_proyectos_proceso.php.

For further information on standards for financial information in Mexico, see Annex 10 of Mexico's reply to the Questionnaire for the Third Round, available at: http://www.oas.org/juridico/spanish/mesicic3_mex_anexo10.pdf.

ⁱⁱⁱ Article 75, section II, of the Federal Fiscal Code, deems the following, *inter alia*, to be aggravating factors of an offense: (a) The use of false documents or the recording of nonexistent operations; (b) The use of documents issued to a third party to deduct the amount thereof in calculating tax due or to accredit transferred amounts as tax paid; (c) The keeping of two or more accounting systems with different contents; (d) The keeping of two or more company record books with different content; and (e) Destroying or ordering or allowing the destruction of the accounts, either in whole or in part.

Such actions are punishable by an increase in the fines imposed on the taxpayer, in a percentage of between 60% and 90% of the unpaid tax or the undue benefit (Article 77, section II).

^{iv} The minimum requirements set by Article 26 of the Regulations to the Fiscal Code of the Federation are the following: "*I. Identify each transaction, act, or activity, and its characteristics, relating them to the substantiating documentation, in such a manner that they may be identified with the different tax payments and rates, including activities exempt from payment by law. II. Identify investments made, relating them with the substantiating documentation, in such a manner that the date of acquisition of the asset or of the investment made, its description, the original amount of the investment, and the amount of the annual deduction may be determined. III. Relate each transaction, act, or activity with the balances which result from the final figures of the accounts. IV. Draw up the financial statements. V. Relate the financial statements with the accounts of each transaction. VI. Ensure the complete registration of transactions, acts, or activities, and guaranteeing that they are correctly entered by means of the required internal audit and verification systems. VII. Identify tax payments which must be canceled or refunded, by virtue of refunds received and discounts or credits granted in accordance with the tax rules. VIII. Substantiate compliance with the requirements for the extension of tax incentives. IX. Identify goods, distinguishing between items purchased and produced, raw materials and finished or partly finished products, and items sold and those intended for donation or destruction, as applicable.*"

^v Under Article 3.03 of the IMCP Statutes, active members are those who meet the following requirements:

"(a) Hold a public accountant's degree issued by an authorized institution of recognized moral solvency that is registered with the General Directorate of Professions and, if applicable, with the corresponding state agency, in accordance with the laws and regulations governing professional practice. Consideration shall also be given to the provisions of Chapters I, II, and III of the Regulatory Law of Article 5 of the Constitution and of Chapter II of the corresponding Regulations, together with, as appropriate, the corresponding state regulatory laws, regulations, and provisions. Foreigners shall meet the requirements set by the Secretariat of Public Education, through its General Directorate of Professions, and shall be in compliance with our country's immigration laws;

(b) Hold a public accountant's degree issued by an authorized institution of recognized moral solvency, bearing in mind the provisions of Chapters I, II, and III of the Regulatory Law of Articles 4 and 5 of the Constitution and Chapter II of the corresponding Regulations, together with, as appropriate, the corresponding state regulatory laws, regulations, and provisions;

(c) The accountant's degree must be registered with the General Directorate of Professions and, if applicable, with the corresponding state agency, in accordance with the laws and regulations governing professional practice;

(d) Enjoy a spotless reputation both in his professional undertakings and in his social and public life;

(e) Not have his rights suspended, either temporarily or permanently, by any of the Institute's federated bodies."

^{vi} Article 222 of the Federal Criminal Code provides as follows regarding the sanctions applicable to those who commit the crime of bribery: “*When the amount or value of the gift or promise does not exceed the equivalent of five hundred times the minimum daily wage in force in the Federal District at the time the crime is committed, or when it has no value, a punishment shall apply of between three months and two years in prison, a fine of between thirty and three hundred times the minimum wage, and dismissal and disqualification for between three months and two years from holding another public post, position, or commission.*

When the amount or value of the gift, promise, or benefit exceeds the equivalent of five hundred times the minimum daily wage in force in the Federal District at the time the crime is committed, a punishment shall apply of between two and fourteen years in prison, a fine of between three hundred and a thousand times the minimum wage, and dismissal and disqualification for between two and fourteen years from holding another public post, position, or commission.

In no instance shall the money or gifts given be returned to those responsible for the crime of bribery; they shall instead be applied to the benefit of the State.”

^{vii} Article 11 of the Federal Criminal Code provides as follows: “*When a member or representative of a society, corporation, or company of any kind, with the exception of institutions of the State, commits a crime with means provided for that purpose by the society, corporation, or company, so that the crime is committed on behalf of or under the protection of the corporation or for its benefit, in his decision the judge may, solely and exclusively in the cases specified by law, order the suspension or dissolution of the corporation, when he deems it necessary for public security.”*

^{viii} Article 212 of the Federal Criminal Code provides as follows: “*For the purposes of this title (Title X: Crimes Committed by Public Servants) and the following title (Title XI: Crimes against the Administration of Justice,) a ‘public servant’ is any person who holds a post, position, or commission of any kind in the centralized federal public administration or in the administration of the Federal District, decentralized organs, companies with a majority state ownership, organizations and societies attached thereto, public trusts, in the Congress of the Union, or in the federal judiciary or the judiciary of the Federal District, or who handle federal funds. The provisions contained in this title also apply to State Governors, members of local legislatures, and magistrates of local courts of justice, for the commission of the crimes described in this Title at the federal level. - The sanctions established for the crime in question shall also apply to any person who participates in the commission of any of the offenses described in this title or the next.”*

^{ix} Article 8, section XI, of the Federal Law of Administrative Responsibilities requires public servants to file timely and truthful statements of their net worths. Articles 35 to 47 of that law regulate the submission of statements of net worth by public servants, together with the powers of the Civil Service Secretariat (SPF) to investigate and audit changes in the net worth of public servants.