

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

FINAL REPORT

(Adopted at the September 16, 2010 plenary session)

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

**REPORT ON IMPLEMENTATION IN THE REPUBLIC OF NICARAGUA 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. Report Contents

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

[2] Second, the report will examine follow-up to the implementation of the recommendations that were formulated to the Republic of Nicaragua by the MESICIC Committee of Experts in the previous rounds, which are contained in the reports on that country adopted by the Committee and published on the following web pages: www.oas.org/juridico/spanish/mec_inf_nic.pdf and www.oas.org/juridico/spanish/mesicic_II_inf_nic.pdf.

2. Ratification of the Convention and adherence to the Mechanism

[3] According to the official records of the OAS General Secretariat, the Republic of Nicaragua deposited its instrument of ratification of the Inter-American Convention against Corruption on May 6, 1999.

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

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of the Republic of Nicaragua

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Nicaragua, and, in particular, from the Office of the Attorney General of the Republic (PGR), which was evidenced, *inter alia*, in the response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its response, the Republic of Nicaragua sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at the following web page: http://www.oas.org/juridico/spanish/mesicic3_nic_sp.htm.

[6] For its review, the Committee took into account the information provided by the Republic of Nicaragua in its reply of February 22, 2010; the information requested by the Secretariat and the

1. This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on September 16, 2010, at its Seventeenth meeting, held at OAS Headquarters, September 13-16, 2010.

members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and the Review Methodology; and the information provided by the country under review under the terms of the Rules of Procedure and the Review Methodology.

2. Documents received from civil society organizations

[7] The Committee also received, within the time limit established in the schedule for the third round, a document from the civil society organization “Ethics and Transparency Civil Group” (*Grupo Cívico Ética y Transparencia, EyT*), submitted in electronic format by that organization.²

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

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

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

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

[9] – The Constitution of Nicaragua of 1987 and its amendments,³ Article 114 of which provides that “*the creation, approval, amendment, and repeal of taxes shall be the exclusive and irrevocable power of the National Assembly.*”

[10] – Law No. 562 of 2005 (Tax Code of the Republic of Nicaragua) (as amended),⁴ Article 3 of which provides that only through legislation may “*taxes be created, approved, amended, or repealed*” and may “*exemptions, releases, waivers, and other favorable tax treatment be granted, amended, expanded, or eliminated.*” Similarly, Article 4 provides that neither taxes nor exemptions, releases, etc. may be created through analogy.

[11] The Tax Code also defines, in Articles 53, 54, and 56, the concepts of exemption,⁵ release,⁶ and favorable tax treatment,⁷ respectively. Article 55 further states that: “*legal provisions granting tax exemptions and releases shall indicate, with all possible clarity and precision, the levy for which payment is being dispensed with, the scope of the exemption or release, the requirements to be met by beneficiaries, the period or duration of the privilege, and, in general, the conditions for their*

2 This document was received on February 22, 2010, and may be found at:

http://www.oas.org/juridico/spanish/mesicic3_nic_inf_sc.pdf.

3 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_const.pdf.

4 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_cod_trib_ref.pdf.

5 Tax Code, Article 53: “*Tax exemption is a special situation provided for in law whereby the payment of a levy by an individual or corporate body is dispensed with. Tax exemption does not, however, release the taxpayer or person responsible for those tasks from filing returns, retaining taxes, indicating his domicile, and other obligations set out in this Code.*”

6 Tax Code, Article 54: “*Release is a benefit or privilege provided for in law whereby an economic action is not subject to taxation. The law empowering the executive branch to authorize releases shall specify the levies covered thereby, the circumstances necessary for their application, and the time frames and conditions to which the benefit is subject.*”

7 Tax Code, Article 56: “*Favorable tax treatment comprises exceptional conditions extended to taxpayers to reduce the tax burden in special circumstances.*”

application.” In addition, Article 60 provides that: “*exemptions and favorable tax treatment granted shall be applicable exclusively to those taxpayers who effectively and directly carry out activities, actions, or contracts that are specifically covered by that exemption or benefit and subject to compliance with the legal requirements set out in the legislation granting them.*” Articles 58 and 62 indicate that exemptions are specific, and that contracts, resolutions, or agreements issued by public institutions granting tax benefits, exemptions, and releases on behalf of individuals or bodies corporate shall be void of effect.

[12] In addition, Article 145 of the Tax Code stipulates the competence of the General Revenue Directorate (DGI), an autonomous agency of the Ministry of the Treasury and Public Credit (MHCP), which is responsible for the administration, collection, oversight, and charging of taxes. The general powers of the DGI in performing its duties, along with the powers of tax inspectors or auditors in particular, are set out in Articles 146, 147, and 148.ⁱ

[13] The general powers of the DGI include requesting access from foreign public institutions and agencies to the information needed to prevent tax evasion or avoidance, in accordance with the laws and international treaties governing tax matters; as well as providing, in accordance with the principle of reciprocity, the assistance requested by oversight and regulatory bodies from other countries with which agreements have been signed or that are parties to international conventions to which Nicaragua is a party.

[14] In addition, the powers of tax inspectors or auditors in particular include, *inter alia*, the following: (a) requiring taxpayers and responsible persons to supply any information related to the determination of tax and the correct oversight thereof, in accordance with the agency’s regulations; (b) requiring taxpayers and responsible persons to appear at the offices of the Tax Administration to provide information of a tax-related nature; (c) auditing books and documents related to fiscal obligations; (d) conducting inspections at offices, commercial or industrial premises, vehicles, or facilities of any kind used by taxpayers and responsible persons; and (e) overseeing private firms of public accountants and/or chartered public accountants that are empowered to issue fiscal rulings.

[15] Finally, Article 136 of the Tax Code states that a tax offense is committed by any person who, through action or omission, illegitimately reduces tax revenues or unduly secures exemptions or other favorable tax treatment. The sanctions applicable to tax offenses are set out in Articles 137 and 138.ⁱⁱ

[16] – Law No. 453 of 2003 (Fiscal Equity Law) (as amended),⁸ Article 10 of which establishes exemptions to income taxⁱⁱⁱ and Article 12 of which provides that “*in calculating net income⁹ the following deductions shall be made: 1. Expenses paid and incurred during the tax year in any business or activity subject to that tax and that are determined as being necessary for the existence or maintenance of all sources of taxable income (...).*” For these deductions to be taken into account, taxpayers must duly record and document the charges and payments made (Article 12, final paragraph).

[17] The Fiscal Equity Law also lists, in Article 17, expenses that cannot be deducted, including those identified in paragraphs 3, 4, and 5: “(3) *Expenses that are not included in the accounts or duly supported, and those not included in the expenses and other items considered deductible for the purpose of calculating the taxable base for income tax;* (4) *The general expenses and subsistence expenses of the*

⁸ Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_ley_453.pdf.

⁹ Fiscal Equity Law, Article 4: “*Net income of Nicaraguan origin is that derived from goods or assets existing in the country, from services rendered to people in the territory of the nation, even when the provider of that service has not been physically present, or from business conducted with an effect within the Republic of Nicaragua, regardless of where said income may be received.*”

taxpayer and his family; (5) The personal expenses of partners, consultants, representatives or attorneys, directors, or executives of a corporate body.”

[18] Article 120 of this law also provides that: *“All legal provisions authorizing any government official to grant releases of any type on a discretionary basis through administrative channels or by means of executive decrees are repealed. The Office of the Comptroller General of the Republic, in the exercise of its competence, shall oversee strict compliance with this provision, so that the corresponding administrative, civil, or criminal sanctions are imposed.”*

[19] – The Regulations to the Fiscal Equity Law of 2003, as amended,¹⁰ which provide, in Article 12, that to apply for the income tax exemptions set out in Article 10 of the Law, the listed agencies are to lodge a written request with the DGI, *“along with documents proving their identity and purpose, and a complete detail of the various activities they pursue, whatever their nature. The DGI will issue the corresponding certificate.”* Article 12 further adds that the DGI will repeal the resolution admitting the exemption and will apply the corresponding sanctions if the agency is shown to have incorrectly secured an exemption.

[20] Article 23.1 of the Regulations to the Fiscal Equity Law also establishes that for the purposes of Article 12, regular expenses paid and incurred are *“those arising in any business or activity subject to tax, be they wages, salaries, and other personal remunerations, rent, insurance premiums on existing and future goods and products, advertising or communications expenses, and other regular outlays made to make the business produce or to generate the taxable income.”* In turn, Article 39 of the Regulations establishes, in the following terms, that personal expenses are not deductible: *“For the purposes of Article 17.5 of the Law, personal expenses are taken as meaning, in addition to those indicated in the previous article¹¹ but not limited to them, those personal effects paid for by a business or corporate credit card, such as: restaurants, gifts of any kind, memberships, jewelry, rentals and purchases of real estate and personal property, included as part of their income.”*

[21] – Law No. 641 of 2008 (the Criminal Code),¹² Article 303 of which defines the crime of tax fraud in the following terms: *“A sanction of between six months and three years in prison and a fine equal to twice the amount of the fraud or attempted fraud, provided that the amount is greater than ten times and no more than twenty-five times the minimum industrial wage, shall apply to anyone who partially or totally evades payment of a fiscal obligation fiscal, when: (a) he benefits illegally from a fiscal incentive or tax reimbursement; (b) he fails to lodge a tax return or submits false information; (...) When the amount of the fraud or attempted fraud exceeds twenty-five times the minimum industrial wage, the crime of tax fraud shall be punishable by between three and five years in prison and a fine equal to twice the amount of the fraud or attempted fraud.”*

[22] Article 309 of the Criminal Code further provides that *“when these crimes are committed by public authorities, officials, or employees, the penalty of absolute disqualification from office for a period of between six and ten years shall also apply; and if they are committed by other offenders, they shall be subject to a special disqualification of between six months and three years from pursuing any profession, business, industry, trade, or right related to the criminal act. When the offense is committed*

10 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_regl_ley_equi_fiscal.pdf.

11 Regulations to the Fiscal Equity Law, as amended, Article 38: *“For the purposes of Article 17.4 of the Law, the nondeductible expenses of taxpayers and their families include such payments as: airline tickets, vehicle rentals, goods purchases, credit-card payments, hospitals, clinics, laboratories, schools, seminars, symposiums, courses of any kind, universities, rents, and purchases of real-estate and personal property.”*

12 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_codigo_penal.pdf.

by a director, partner, or employee of a corporate body for the benefit of that body, in addition to the criminal liabilities incurred by the perpetrator and other participants, the corporate body shall be subject to the applicable fines and administrative and civil liability incurred in by those persons. In the event of a repeat offense, the judicial authority may order the dissolution and liquidation of the corporate body.”

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

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

[24] Notwithstanding, the Committee believes the country under review would benefit to consider taking such steps as it deems appropriate to assist the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining favorable tax treatment (see Recommendation 1.4.a in Chapter II of this report).

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

[25] With respect to results, the Republic of Nicaragua’s response to the questionnaire contains information on the complaints admitted by the Administrative Tax Tribunal (four complaints in 2007; nine in 2008; and two in 2009) and it states that: *“the complaints lodged against officials of the Tax Administration by taxpayers have been used inappropriately, in that they do not address disciplinary offenses committed by tax officials, but instead have been used to shorten the administrative proceedings. This is done in order to avoid invoking the regular administrative remedies provided in law and to take their claims directly to the Administrative Tax Tribunal, in an attempt to force that body to rule on the imposition of taxes thereby preventing the complaint mechanism from being used with the effectiveness it should enjoy in administrative disciplinary proceedings. However, the mechanism is provided for in our tax law, in the hope that taxpayers will make proper use of it in the event of actions by Tax Administration officials that are in breach of the law and administrative ethics.”*¹³

[26] The Committee, considering that the information presented by Nicaragua in its response is not related to the matters under review in this section and considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results in this topic, the Committee will formulate a recommendation to the country under review so that, through the tax authorities that process applications for favorable tax treatment and the other authorities or agencies with jurisdiction in that respect, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see recommendation 1.4.b in Chapter II of this report).

1.4. Conclusions and recommendations

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

¹³ See: Nicaragua’s response to the Third Round Questionnaire, p. 16, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

[28] The Republic of Nicaragua 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 its anticorruption laws, as described in section 1 of Chapter II of this report.

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

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

- a) Consider adopting the measures it deems appropriate for assisting the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining favorable tax treatment, such as the following (see section 1.2 of Chapter II of this report):
 - i. Manuals, guidelines or directives that will guide them in reviewing those applications, so that they are able to verify that the applications contain the established requirements, to confirm the truthfulness of the information provided, and to confirm the origin of the expenditure or payment on which the claims are based.¹⁴
 - ii. Computer programs that facilitate data consultation and cross-checking of information whenever necessary for the purpose of fulfilling their functions.
 - iii. Strengthen the institutional coordination mechanisms that will provide the timely collaboration needed from other authorities, and such aspects as certifying the authenticity of the documents submitted with the applications.
 - iv. Training programs designed specifically to alert officials to the methods used to disguise payments for corruption and to instruct them in ways of detecting such payments in the applications.
 - v. Channels of communication for informing, on a timely basis, those responsible for deciding on the granting of the benefits sought regarding any anomalies detected or other irregularities that could influence their decision.¹⁵

¹⁴ On August 11, 2010, the country under review offered the following remarks: “*The General Revenue Directorate’s Inspection Department has a Tax Audit Operating Procedures Handbook (for internal use) with which auditors are supplied for the correct performance of audits and to verify reasonable compliance with the tax base by taxpayers. The Handbook contains mechanisms to strengthen the auditor and reinforce their knowledge of tax audits as well as of general aspects concerning the balance sheet and statement of profit and loss accounts that comprise part of the tax return*”. This handbook has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, “Summary of the Information Received”) but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

¹⁵ On August 11, 2010, the country under review offered the following remarks: “*The General Revenue Directorate (DGI) has in place procedures adopted by internal administrative provisions by which its Department of Exemptions and Tax Benefit Reimbursements can determine if submitted applications have been correctly reviewed and detect any irregularity in the award of such benefits, which must be promptly reported to the DGI’s Inspection Department for an immediate operational audit of the taxpayer in order to detect tax avoidance or evasion, as appropriate*”. The information on DGI’s internal administrative provisions has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, “Summary of the Information Received”) but it will be

- b) Select and develop, through the tax authorities that process applications for favorable tax treatment and the other authorities or agencies with jurisdiction in that respect, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow up on the recommendations made in this report in relation thereto (see section 1.3 of Chapter II of this report).

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

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

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

[32] – The Commercial Code of 1916,¹⁶ which applies to all commercial companies,¹⁷ Article 28 of which requires all business persons to keep the following books: an inventory and balance book, a daybook, a ledger, and a copybook for letters and telegrams. In addition, “*commercial and industrial partnerships and companies shall also keep a minutes book, a book recording named shares and earning shares, and a receipt book for bearer shares.*” Accounts may only be kept by the double-entry system and books must be kept in the Spanish language, with the exception of the copybook for letters and telegrams (Article 29), and they must be presented to the Commercial Registrar of the jurisdiction where the commercial or industrial establishment is located (Article 32).

[33] With reference to the specific books, Article 33 states that the inventory and balance book is to be opened with an exact description of the money, stock, collectible credits, real estate and property, merchandise, and effects of all kinds, assessed at their real values, and constituting the assets; together with an exact listing of debts and pending obligations of all kinds, if applicable, constituting the liabilities. It then adds that all business persons will set down, annually, in the same book, the general balance of their business, in detail and with no reservations or omissions, under their own signature and responsibility.

[34] As for the daybook, Article 34 of the Commercial Code states that it will be used to “*record, as the first entry, the result of the inventory described in the previous article; this will be followed, on a daily basis, of all operations, with each entry expressing the income and expenditures from the corresponding accounts. When the operations are numerous, regardless of their amount, or when they took place away from the corporate domicile, those involving each account and taking place on the same day may be recorded in a single entry, but indicating in them, when detailed, the same order in which they took place. In addition, on the date on which they are removed from the cash account, it shall record the amounts that the business person uses for his domestic expenses and shall transfer them to a special account, which shall be opened for that purpose in the ledger.*”

taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

16 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_comercio.pdf

17 Commercial Code, Article 6: “*Business persons are those who ordinarily and professionally engage in any of the operations of that industry and commercial or industrial companies.*” Article 118 provides that the following kinds of commercial company are recognized in Nicaragua: general partnerships; limited partnerships; limited companies; and limited stock partnerships.

[35] Article 41 provides that the books shall be kept clearly, in date order, without blank spaces, notes between lines, deletions, or strikethroughs, and without showing signs of having been altered by replacing pages or in any other way. Article 42 indicates that any necessary clarifications or corrections to the books shall be indicated by express annotations indicating clearly what the identified errors or omissions involve.

[36] Article 43 prohibits ex officio searches by judges, courts, or any other authority to investigate whether business persons are keeping their books in compliance with the Code's provisions, together with investigations or general examinations of accounts at the business persons' offices or premises.¹⁸

[37] Article 46 establishes that business persons must preserve the books, telegrams, and correspondence of their businesses in general for the duration thereof and for ten years following the liquidation of all their dealings and commercial offices.

[38] With reference to the internal oversight of limited companies, Article 246 states that this "*shall be entrusted to one or more overseers, who may or may not be shareholders and who shall be elected by the General Meeting, in compliance with the statutes. These overseers, who shall not be obliged to act in concert, shall have the powers stipulated in the states and, in all cases, they shall be subject to the provisions of Articles 293¹⁹ and 295²⁰.*" The opinion of the overseer or overseers, as applicable, shall be communicated to all the shareholders following the presentation and discussion of the limited company's balance sheets at the General Meeting (Article 248).

[39] Article 247 of the Commercial Code provides, "*Corporations that exploit public utility concessions granted by the State or by any administrative corporation shall be subject to the oversight of agents of the government or of the respective Corporation, even though the articles of incorporation of the company might not expressly provide for such oversight. This oversight shall be limited to ensuring compliance with the provisions of law and, in particular, with the conditions of the concession and the obligations established in favor of the public, and in so doing may investigate the company's accounts.*"

[40] – Law No. 562 of 2005 (Tax Code of the Republic of Nicaragua, as amended),²¹ Article 102 of which states that the general duties of taxpayers and persons responsible include "*keeping appropriate accounting records in order to support the figures set out in their tax returns and to guarantee the other records established by the Tax Administration in accordance with current administrative provisions; allowing the Tax Administration to conduct oversight; and supplying the information required by the Tax Administration.*"

[41] The Tax Code also identifies, in Article 103, the formal duties and obligations of taxpayers and persons responsible. The administrative tax offenses applicable for noncompliance with those duties and

18 In addition, Article 26 of the Constitution of the Republic of Nicaragua provides as follows: "(...) *The law sets the cases and procedures for the examination of private documents, accounting records, and the annexes thereof, when indispensable to clarify matters placed before the judiciary or for tax reasons.*"

19 Commercial Code, Article 293: "*The members of the Oversight Council shall be obliged to check the books, cash on hand, portfolio, and securities of the company. The Council shall present an annual report to the General Meeting indicating the irregularities or imprecisions detected in the inventories and balances, and explaining, if appropriate, the reasons for which they oppose distribution of the dividends proposed by the managing partner or partners.*"

20 Commercial Code, Article 295: "*The responsibility of the members of the Oversight Council is limited to that which may be demanded for execution of a mandate, in accordance with the rules of common law.*"

21 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_cod_trib_ref.pdf.

obligations are set out in Article 126^{iv} and the corresponding penalties²² are set out in Article 127.^v Notable among the sanctions are the fines of between 30 and 50 fine units²³ for each month of delay or failure to update, for those who fail to record the relevant registers, to report the necessary date, or to report modifications thereto on a timely basis, when required so to do, and for those who fail to register the books and accounting records to be kept by taxpayers in accordance with the current legal provisions. Similarly, a fine of between 90 and 110 fine units, in addition to the criminal penalty applicable to the crime of tax fraud, is to apply to those who fail to preserve in good conditions for the statutory time their tax books, records, and documents, and the supporting documentation thereof, indicating compliance with their fiscal obligations.

[42] In addition, Article 145 of the Tax Code stipulates the competence of the General Revenue Directorate (DGI), an autonomous agency of the Ministry of the Treasury and Public Credit (MHCP), which is responsible for the administration, collection, oversight, and charging of taxes. The general powers of the DGI in performing its duties, along with the powers of tax inspectors or auditors in particular, are set out in Articles 146, 147, and 148.

[43] – Law No. 6 of 1959 (Law for the Exercise of the Profession of Public Accountancy and of the College of Public Accountants of Nicaragua)²⁴ and its Regulations,²⁵ Article 2 of which provides as follows: “*A person shall be deemed dedicated to the exercise of public accountancy when he offers, to the public and in exchange for remuneration, services that imply the auditing or checking of books, accounts, commercial records, or financial transactions, or the preparation or certification of accounting or financial statements intended for disclosure or for tax or credit purposes.*” Similarly, Article 4 of the Law and Article 1 of its Regulations stipulate that the profession of public accountancy may only be exercised by authorized public accountants in full enjoyment of their rights, or by companies or associations established for that purpose, pursuant to the terms of the Law and its Regulations.

[44] The requirements for exercising the profession of public accountancy are set out in Article 3 of the Law.^{vi} These include the obligation of being a member of the College of Public Accountants and of having at least two years’ experience.

[45] Article 7 of the Law identifies the functions reserved in particular for Authorized Public Accountants. These include the power to certify all kinds of financial statements or statements of assets, fund distributions, calculations of dividends and benefits, and other similar documents, of both individuals and corporate bodies, and to intervene in reporting on the administration of assets and in the presentation of books, documents, or other items related to the clarification of accounting matters. Under Article 8 of the Law, those functions are only obligatory “*when they affect or involve the agencies of the public service specifically identified in the Regulations*²⁶ *or expressly ordered in a law of the Republic.*”

[46] Article 14 of the Law creates the College of Accountants of Nicaragua, the functions of which, set out in Article 17 of the Law, are the following: (a) *Promote the advance of accounting and related*

22 Article 112 of the Tax Code provides for the administrative responsibility of corporate bodies for the commission of administrative tax offenses.

23 Tax Code, Article 8: “*The value of each Fine Unit shall be C\$25.00 (twenty-five cordobas).*”

24 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_leyccpn.pdf

25 Agreement No. 41-J of 1967. Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_reg_pub.pdf

26 Those agencies are the following: Private and domestic banks, general deposit warehouse, insurance companies, savings and loans institutions for housing, and, in general, financial and credit institutions (Article 36 of the Regulations to the Law for the Exercise of the Profession of Public Accountancy).

sciences; (b) Ensure the progress of all aspects of the profession, its collective defense, and the normal development of its professional activities; (c) Ensure the further development of teaching in the area. To this end it will work with the National University of Nicaragua, schools of public accountancy, and any other teaching establishment established in the future, and provide advice on legal or regulatory amendments deemed necessary; and (d) Issue opinions, respond to the techniques inquiries lodged with it, and resolve conflicts in areas of its competence.” Article 43 of the Regulations states that to perform the functions indicated in paragraphs (a) and (d) of this article, the College will have the status of a technical investigative and consultative body.

[47] Article 16 of the Law states that the College of Accountants of Nicaragua will perform its functions through two agencies: the General Committee²⁷ and the Board.²⁸ In turn, Article 58 of the Regulations creates the Court of Honor as the agency of the College with special responsibility for overseeing compliance, by the College and its agencies in general, and by each of its members in particular, with the rules of professional ethics²⁹ (Article 78 of the Regulations). Article 81 of the Regulations identifies the powers of the Court of Honor.^{vii}

[48] Article 86 of the Regulations establishes the following sanctions, which may be imposed on members of the College: (a) warning (verbal or written), (b) summons to appear, and (c) expulsion from the College. Appeals and remedies are governed by Articles 92 to 98 of the Regulations. The penalty of expulsion from the College, if confirmed by the Ministry of Public Education, produces the suspension of the recipient’s authorization to exercise the profession (Regulations, Article 94).

[49] – Law No. 588 of 2007 (General Law of Professional Colleges and Practice)³⁰, Article 39(d)(iii) of which waives the maintenance of professional secrecy “*when said secrecy covers the commission of a crime or any illicit act.*”

[50] – The Code of Professional Ethics of the College of Public Accountants of Nicaragua,³¹ which in section VII, first paragraph, states that public accountants³² are prohibited to reveal any information obtained in the course of their work, “*which would constitute a violation of the confidential relationship that must prevail between them and their customers or clients. Exempted from this rule are cases in which the information is given with the written consent of the client or customer, or requested by a court of law or by the Court of Honor of the College of Public Accountants of Nicaragua in connection with situations that institution is required to examine to pursue its objectives directly involving the public accountant in question.*”

27 The General Committee is the supreme authority of the College and is responsible for resolving all matters that, by their nature or under express legal mandate, cannot be resolved by the Board. Its powers include hearing appeals lodged against the resolutions of the Board (Articles 22 and 23.c of the Law for the Exercise of the Profession of Public Accountancy).

28 The Board is responsible, *inter alia*, for: selecting the topics that the College is to research; keeping a register of authorized accountants, and publishing it at least once a year; drafting the Code of Professional Ethics; hearing violations of legal or regulatory provisions, of the Code of Professional Ethics, and of the established tariffs; and imposing the sanctions set out in the Regulations (Article 27 of the Law for the Exercise of the Profession of Public Accountancy).

29 The Code of Professional Ethics of the College of Accountants of Nicaragua sets out the powers of the Court of Honor in judging breaches of its provisions and in applying the corresponding sanctions.

30 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_ley588.pdf

31 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_publico.pdf.

32 Statement II of the Code of Professional Ethics indicates that the Code applies to active members of the College of Public Accountants of Nicaragua, “*who are required to adapt their actions to those principles and provisions, regardless of where they carry out their activities, in their relations with the general public, with their professional colleagues, with their clients, whether they act individually or as members of a firm of authorized public accountants.*” It also covers public accountants who, in addition, practice or pursue another profession.

[51] In addition, the fourth paragraph of section VII of the Code of Ethics provides that “*professionals shall be relieved of the obligation of observing professional secrecy when they must necessarily reveal what they know to defend their professional integrity when said information is irreplaceable for that purpose.*”

[52] – The Resolution of the College of Public Accountants of Nicaragua on “Deferral of the Comprehensive Adoption of the ‘International Financial Reporting Standards (IFRS)’, and Process of Studying and Adopting the Project ‘IFRS for Private Entities’ (Nonregulated Entities),”³³ operative paragraph 2 of which sets a period expiring on June 30, 2011, for the full application of IFRS to economic agencies.

[53] In addition, operative paragraph 3 states, “*Prior to the above deadline it will be acceptable for these economic entities in process of transition toward full adoption, to prepare their financial statements in accordance with the Generally Accepted Accounting Principles and Accounting Standards in force in Nicaragua on the date of the resolution of June 24, 2003, and for the International Financial Reporting Standards (IFRS) and their Interpretations to be used on a supplemental basis as rules governing matters not addressed by those principles.*”

[54] – Law No. 641 of 2008 (the Criminal Code),³⁴ Article 310 of which criminalizes accounting offenses in the following terms: “*A prison term of between six months and three years and a fine of between ninety and one hundred and twenty days shall apply to any person required by law to keep commercial accounts, books, or tax records to meet fiscal obligations who: (a) keeps two or more similar books with different entries or figures, even if they are auxiliary or unauthorized books, to record accounting, tax, or corporate operations; (b) conceals, destroys, or orders or allows the destruction, be it total or partial, of the accounting books required by domestic law or tax rules, rendering them illegible; or (c) replaces or alters the numbered pages of the books referred to in paragraph (b). Should the beneficiary of the accounting offense be a corporate body, the individuals involved shall answer for it. In the event of a repeat offense, the maximum penalty established shall apply, along with a sentence of community work of between thirty and one hundred days, for a period no shorter than two hours per day.*”

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

[55] With respect to the provisions that refer to the prevention of bribery of domestic and foreign government officials that the Committee has examined, based on the information available to it, they constitute a set of measures relevant for promoting the purposes of the Convention.

[56] Notwithstanding, the Committee considers it appropriate to express some comments regarding the advisability of developing and complementing certain legal provisions that might be useful for the country under review to consider.

[57] First, the Committee notes that although the Commercial Code, in Article 29, specifies that all business persons must keep double-entry bookkeeping in the Spanish language, it offers no further details about the system to be used to keep those accounts. Neither does the Commercial Code indicate whether the accounts of commercial companies must be kept with the involvement of public accountants. The Committee will formulate a recommendation in this regard (see recommendation 2.4.a in Chapter II of this report).

33 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resccpn.pdf.

34 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_codigo_penal.pdf.

[58] Second, although the Commercial Code states that limited companies must have one or more overseers to check their books, cash on hand, portfolios, and securities, the Committee notes that, on the basis of the information available to it, there is no obligation on commercial companies or associations of any other kind to institute adequate internal accounting controls in accordance with their nature, as required by Article III, paragraph 10, of the Convention. The Committee believes it would be useful, in addition, to consider the use of guidelines or standards in performing internal audits in order to help detect anomalies or acts of corruption, and to require accountants and other persons responsible for keeping accounting records, as well as internal auditors, to inform the legal officer and shareholders (in corporations) or members (in associations) of any anomalies they detect. The Committee will formulate recommendations in this regard (see recommendations 2.4.b and 2.4.c in Chapter II of this report).

[59] Third, Article 246 of the Commercial Code provides that internal oversight of corporations may be entrusted to one or more overseers, who may or may not be shareholders. The Committee believes that the oversight of corporations or any other type of company should be carried out by a natural or legal person independent of the shareholders and management. As the wording of the provision stands, there is a risk that the oversight body could ultimately be both judge and jury with respect to any act of corruption detected. The Committee will formulate a recommendation in this regard (see recommendation 2.4.d in Chapter II of this report).

[60] Fourth, the Committee believes it would be useful for the country under review to consider holding awareness campaigns targeted at persons responsible for maintaining accounts and verifying their accuracy, on the importance of observing the rules issued to guarantee the truthfulness of those records and the consequences of violation. The Committee will formulate a recommendation in this regard (see recommendation 2.4.e in Chapter II of this report).

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

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

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

[63] The country under review provided no information relating to the results in this area. The Committee will therefore make a recommendation to the country under review so that, through the organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and ensure that commercial companies and other types of associations required to establish internal accounting controls do so in the proper manner, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see recommendation 2.4.h in Chapter II of this report).

2.4. Conclusions and recommendations

[64] 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 provision contained in Article III, paragraph 10, of the Convention:

[65] **The Republic of Nicaragua has considered and adopted measures intended to create, maintain, and strengthen provisions for the prevention of the bribery of domestic and foreign government officials, as described in Chapter II, Section 2, of this report.**

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

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

- a) Amend the Commercial Code so that it provides for the use of generally accepted accounting principles and provides the requirement that accounting records are to be kept by public accountants (see section 2.2 of Chapter II of this report).
- b) Adopt the relevant measures to require commercial companies or associations of any other kind to institute adequate internal accounting controls in accordance with their nature, as required by Article III, paragraph 10, of the Convention, and to consider the use of guidelines or standards in performing internal audits in order to help detect anomalies or acts of corruption (see section 2.2 of Chapter II of this report).
- c) Take the measures necessary to require accountants and other persons responsible for keeping accounting records, as well as overseers or internal auditors, to inform the legal officer and shareholders (in corporations) or members (in associations) of any anomalies they detect (see section 2.2 of Chapter II of this report).
- d) Adopt standards that provide that the internal oversight of all companies must be completely independent and autonomous. (see section 2.2 of Chapter II of this report).
- e) Promote training for individuals responsible for the entry and accuracy of accounting records, including awareness on the importance of abiding by the standards in force to ensure the veracity of said records and the consequences of their violation (see section 2.2 of Chapter II of this report).
- f) Consider holding awareness and integrity promotion campaigns that target the private sector and consider adopting measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption (see section 2.2 of Chapter II of this report).³⁵

35 On August 11, 2010, the country under review offered the following remarks: *“In Nicaragua private business has played a pivotal role in the country’s social and political development. Its contributions have been necessary to achieve technological and productive advancement. In that respect, the Office of Public Ethics, in order to encourage them, as producers of consumer goods and generators of services, to observe high ethical standards that combine profitability with a widespread social impact and social responsibility, organized talks, workshops, and seminars for entrepreneurs in the municipal districts of Managua,*

- g) Consider the adoption of the instruments necessary to facilitate the detection, by the organs and entities responsible for preventing and/or investigating violations of measures designed to safeguard the accuracy of accounting records and protect their contents, of sums paid for corruption that are concealed in those records, such as the following (see section 2.2 of Chapter II of this report):
- i. 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. Manuals, guidelines or directives on how to review accounting records in order to detect sums paid for corruption for those control organs or entities that as yet do not have them.³⁶
 - 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. Strengthen the institutional coordination mechanisms that enable those organs or entities to obtain, easily and on a timely basis, the necessary collaboration from other institutions to verify the veracity of accounting records and of the supporting documents on which they are based or to establish their authenticity.
 - v. Training programs for the officials of these organs and entities responsible for preventing and/or investigating violations of measures intended to guarantee the accuracy of accounting records, 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.³⁷
- h) 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

Boaco, Estelí, and Matagalpa on the theme 'Social Ethics and Values in Private Enterprise'. It is important to note that training events have been carried out with funds provided by donors to the Anti-Corruption Fund (FAC) in Nicaragua, which include Switzerland, Norway and the United Nations Development Programme (UNDP). In addition the Office of Public Ethics has developed a module entitled 'Social Ethics and Values in Private Enterprise' which it distributes to participants at these events". This information on awareness campaigns has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

36 On August 11, 2010, the country under review offered the following remarks: "*The General Revenue Directorate's Inspection Department has a Tax Audit Operating Procedures Handbook (for internal use) with which auditors are supplied for the correct performance of audits and to verify reasonable compliance with the tax base by taxpayers. The Handbook contains mechanisms to strengthen the auditor and reinforce their knowledge of tax audits as well as of general aspects concerning the balance sheet and statement of profit and loss accounts that comprise part of the tax return*". This handbook has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

37 On August 11, 2010, the country under review offered the following remarks: "*The General Revenue Directorate has regular training programs on tax matters targeting taxpayers and public servants on, inter alia, correct filing of tax returns, exemption and exoneration procedures, tax audit procedures, tax offences, and criminal laws that punish acts of corruption in this area*". The information on these training programs has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

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 (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

[68] The Republic of Nicaragua has the following provision applicable to transnational bribery:

[69] – Law No. 641 of 2008 (the Criminal Code),³⁸ Article 449 of which defines the crime of international bribery in the following terms: *“A nonresident foreigner who offers, promises, extends, or grants to a domestic authority, official, or public employee,³⁹ or a resident national or foreigner who commits the same conduct with respect to officials of another state or international organization or agency, either directly or through a third party, any article of monetary value, or other benefit, such as a gift, money, favors, promises, or advantages, in exchange for that public authority, official, or employee having performed or not performed, or for performing or not performing, any action in the pursuit of his duties related to international economic or commercial activity, shall be punished by a prison term of between four and eight years and a fine of between five hundred and one thousand days.”*

[70] *“Any public authority, official, or employee who requests or accepts from a nonresident foreigner, either directly or indirectly, a gift, money, favors, promises or advantages, or any item of monetary value, for himself or for another person or entity, in exchange for performing or not performing, or for having performed or not performed, any action in the pursuit of his duties related to international economic or commercial activity, shall be punished by a prison term of between four and eight years and disqualification from holding any public post or position for the same duration.”*

[71] Article 45 of the Criminal Code criminalizes the offense of acting in another’s name in the following terms: *“A person who, while serving as the director, de facto or de jure manager, or organ of a corporate entity, or in the name of or in the legal or voluntary representation of another, commits an act that, except for the authorship thereof, is covered by the precept corresponding to a crime or misdemeanor, shall respond personally in accordance therewith, even though he does not meet the conditions, qualities, or relations that the definition of the corresponding crime or misdemeanor requires to be considered an active subject, if those circumstances exist in the entity or body in whose name or representation he acted.”*

[72] Article 113 of the Criminal Code determines, in the following terms, the accessory penalties applicable to corporate entities in cases of offenses committed within their scope or to their benefit: *“When the criminal act is committed within the scope of or to the benefit of a corporate entity, the judge or court, after hearing the parties or their legal officers, may impose, when grounds exist and when deemed necessary in the specific case, one or several of the following accessory penalties: (a) An intervention of the company to safeguard workers’ or creditors’ rights for as long as necessary, up to a maximum of five years; (b) Closure of the company, its premises or establishments, on a temporary or*

38 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_codigo_penal.pdf.

39 Criminal Code, Article 38: *“Public authority, official, and employee. For the purposes of this Code, a public authority, official, or employee shall mean any person who, under immediate provision of law, by direct or indirect election, or by appointment, commissioning by a competent authority, or contractual relationship, participates in the exercise of public functions, including the members of the Nicaraguan Army and of the National Police or any other agent of authority. Public function shall be taken as meaning all permanent or temporary activity, remunerated or honorary, performed by an individual on behalf or in service of the State or its agencies and companies, at any of its hierarchical levels.”*

permanent basis. Temporary closure may not be extended for more than five years; (c) Dissolution of the company, association, or foundation; (d) Suspension of the activities of the corporation, company, foundation, or association for a period not exceeding five years; (e) A ban on the future realization of activities, commercial operations, or business of the same kind as those during which the crime was committed, abetted, or concealed. This ban may be either temporary or permanent. If temporary, it may not extend for a period longer than five years. The temporary closure provided for in section (b) and the suspension provided for in section (d) of the preceding paragraph may also be ordered by the judge during the legal proceedings. The imposition and enforcement of the accessory penalties provided for in this article are intended to prevent the continuation of the criminal activity and the effects thereof.”^{viii}

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

[73] With respect to the provision whereby the Republic of Nicaragua has criminalized the criminal offense of transnational bribery as provided for in Article VIII of the Convention, which the Committee has examined 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

[74] With regard to results, the Republic of Nicaragua’s response to the questionnaire states that: *“As already stated, the State of Nicaragua has indeed criminalized the type of corruption described in Article VIII of the Convention, but over the past five years we have pursued no legal proceedings in connection with the commission of that criminal act.”*⁴⁰

[75] Bearing that information in mind, the Committee believes it would be useful for the country under review to continue paying attention to detecting and investigating cases of transnational bribery and to strengthening the capacities of the agencies or entities responsible for investigating and/or prosecuting the crime of transnational bribery and for requesting and/or providing the assistance and cooperation established in connection with it in the Convention (see recommendation 3.4. in Chapter II of this report).

3.4. Conclusions and recommendations

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

[77] **The Republic of Nicaragua 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.**

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

- Continue to pay attention to the detection and investigation of cases of transnational bribery, to work to strengthen the capabilities of the agencies or bodies tasked with investigating and/or prosecuting the crime of transnational bribery, and with requesting and/or extending the

⁴⁰ See: Nicaragua’s response to the Third Round Questionnaire, p. 26, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

assistance and cooperation provided for in connection with it in the Convention (see section 3.3 of Chapter II of this report).

4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

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

[79] The Republic of Nicaragua has the following provision applicable to illicit enrichment:

[80] – Law No. 641 of 2008 (the Criminal Code),⁴¹ Article 448 of which defines the crime of illicit enrichment in the following terms: “*A public authority, official, or employee who, without committing a more severely punished crime, obtains an increase in his net worth that is significantly excessive compared to his legitimate income during the performance of his functions and the origin of which he cannot reasonably justify, when so required to do by the competent body⁴² indicated by law, shall be punished by a prison term of between three and six years and disqualified from holding public positions or post for the same duration.*”

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

[81] With respect to the provision whereby the Republic of Nicaragua has criminalized the criminal offense of illicit enrichment as provided in Article IX of the Convention, 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

[82] Regarding results in this area, Nicaragua’s response to the questionnaire states that “*During 2009, one complaint was filed and the Public Prosecution Service (MP) issued a Resolution of Lack of Merit.*”⁴³

[83] Considering that the Committee does not have information that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review, so that through the organs or agencies responsible for the investigation and/or prosecution of the offense of illicit enrichment, and with requesting and/or providing assistance and cooperation as provided in the Convention, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see recommendation 4.4. in Chapter II of this report).

4.4. Conclusions and recommendations

[84] 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 provision contained in Article IX of the Convention:

41 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_codigo_penal.pdf.

42 The competent body for this is the Office of the Comptroller General of the Republic, as provided for in Articles 23 and 24 of Law No. 438, “Civil Servants’ Probity Law.”

43 See: Nicaragua’s response to the Third Round Questionnaire, p. 28, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

[85] **The Republic of Nicaragua 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.**

[86] In light of the comments formulated in that section, the Committee suggests that the Republic of Nicaragua 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 assistance and cooperation as provided for in the Convention, procedures and indicators, when appropriate and where they do not yet exist, to analyze 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

[87] The Republic of Nicaragua criminalized the offenses of transnational bribery and illicit enrichment, as set out, respectively, in Articles VIII and IX of the Inter-American Convention against Corruption, following the date on which it ratified that Convention, and it notified the OAS Secretary General of that criminalization by means of Note MPN-OEA/018-02-10, of March 1, 2010, from the Permanent Mission of Nicaragua to the Organization of American States.

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

[88] Since the Republic of Nicaragua criminalized the offenses of transnational bribery and illicit enrichment, as set out, respectively, in Articles VIII and IX of the Inter-American Convention Against Corruption, following the date on which it ratified that Convention, and that in March 2010 it notified the OAS Secretary General of that criminalization, as provided for in Article X thereof, the Committee will formulate no recommendation for it on this point.

5.3. Conclusion

[89] Based on the review conducted in the preceding paragraphs, the Committee concludes that the Republic of Nicaragua has complied with the terms 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

[90] – The Constitution of Nicaragua of 1987, as amended,⁴⁴ states in Article 43 that “*Extradition for political crimes, or related common crimes, as determined by Nicaragua, does not exist in Nicaragua. Extradition for common crimes is regulated by law and by international treaties. Nicaraguans may not be extradited from the territory of the nation.*”

[91] – Law No. 641 of 2008 (the Criminal Code),⁴⁵ establishes the requirements for extradition in Article 18.^{ix} In addition, Article 19 of the Criminal Code prohibits the extradition of Nicaraguan nationals in the following terms: “*The State of Nicaragua may in no circumstance hand over*

44 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_const.pdf.

45 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_codigo_penal.pdf.

Nicaraguan citizens to another state. Neither may it hand over a person who, at the time the punishable action was committed, held Nicaraguan nationality. In both such cases, if extradition is sought, the State of Nicaragua must prosecute them for the common crime committed. If the person sought has served part of a sentence or security measures abroad, that time shall be applied in his favor by the judge.”

[92] – Law No. 406 of 2001 (Code of Criminal Procedure),⁴⁶ Articles 348 to 358 of which regulate the conditions, procedure, and effects of extradition in the absence of a treaty or agreement signed and ratified by Nicaragua, together with those issues not addressed by the existing treaties or conventions.

[93] Article 349 of the Code of Criminal Procedure prohibits the extradition of Nicaraguan nationals, and Articles 355 and 356 set out the procedure to be followed in informal urgent extraditions.^x In such cases, the person sought may be held in preventive custody for a period of up to two months (Article 356.2).

[94] – The extradition treaties signed by the Republic of Nicaragua and in force are with Chile, Colombia, Costa Rica, the United States, and Mexico.⁴⁷

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

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

[96] Nevertheless, the Committee believes it is necessary that, pursuant to Article XIII, paragraph 6, of the Convention, the country under review consider adopting the relevant measures to notify, in due course, a requesting state whose extradition request in connection with offenses under the Convention is denied on the grounds of the nationality of the person sought, or because the requested state deems that it has jurisdiction, regarding the final outcome of the case brought before its competent authorities as a result of that denial (see recommendation 6.4.a in Chapter II of this report).

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

[97] In the section of the Republic of Nicaragua’s response to the questionnaire dealing with the results in this area, it reports that:

[98] *“To date, the Public Prosecution Service of Nicaragua has received no extradition requests in relation to the offenses set out in the Inter-American Convention against Corruption.”*⁴⁸

[99] The country under review presented no information on active extradition requests sent to other State Parties in the Convention.

[100] Based on the foregoing, the Committee will make a recommendation to the country under review so that, through agencies or entities charged with processing active and passive extradition requests, it can develop procedures and indicators, when appropriate and when they do not exist, to enable it to

46 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_procesal.pdf.

47 The texts of the bilateral extradition treaties signed by the Republic of Nicaragua may be found at: <http://www.oas.org/juridico/mla/sp/per/index.html>.

48 See: Nicaragua’s response to the Third Round Questionnaire, p. 32, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

present information on the use of the Inter-American Convention Against Corruption as the legal basis for the extradition requests it submits to other states parties, and to ground its decisions on such requests lodged with it by those other states parties (see recommendation 6.4.b in Chapter II of this report).

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

6.4. Conclusions and recommendations

[102] 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:

[103] The Republic of Nicaragua has adopted measures on extradition, as provided for in Article XIII of the Convention, as described in Chapter II, Section 6, of this report.

[104] In view of the comments made in that section, the Committee suggests that the Republic of Nicaragua consider the following recommendations:

- a. Adopt the relevant measures to notify, in due course, a requesting state whose extradition request in connection with offenses under the Convention is denied on the grounds of the nationality of the person sought, or because the requested state deems that it has jurisdiction, regarding the final outcome of the case brought before its competent authorities as result of that denial (see section 6.2 of Chapter II of this report).
- b. Develop procedures and indicators, when appropriate and when they do not exist, to allow the presentation of information on the use of the Inter-American Convention against Corruption as the legal basis for extradition requests served on other states parties (see section 6.2 of Chapter II of this report).
- c. Consider the utility of the Inter-American Convention against Corruption for extradition purposes in corruption cases, which could consist of, among other measures, the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area (see section 6.3 of Chapter II of this report).⁴⁹

49 On August 11, 2010, the country under review offered the following remarks: “*the Specialized Unit against Corruption and Organized Crime of the Office of the Attorney General has attended seminars on the topic of international agreements and treaties, which have addressed the importance of applying them in accordance with the nature of the offence to requests for international cooperation, which includes application of the Inter-American Convention against Corruption. In this regard, in March 2009, the Institute of Legal Research (INEJ) held a seminar entitled Application of International Instruments and Crimes against Public Administration*”. The information on these seminars has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, “Summary of the Information Received”) but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

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

FIRST ROUND⁵⁰

[105] With respect to implementation of the recommendations issued to the Republic of Nicaragua in the report from the First Round on which it did not supply information with regard to progress in their implementation in its response to Section II of the Questionnaire for the Second Round, or on those for which it supplied information but which the Committee considered in Section IV of the report for that round that they needed further attention, and on the basis of the information available to it dealing with further progress with their implementation made after that report, the Committee notes the following:

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

1.1. Standards of conduct to prevent conflicts of interests and enforcement mechanisms

Recommendation 1.1.1:

Strengthen the implementation of laws and regulatory systems concerning conflicts of interest so that they permit practical and effective application of the public ethics system.

Measure suggested by the Committee in connection with the above recommendation, which was satisfactorily considered, in accordance with the Second Round report.⁵¹

- *Regulate certain eventualities that may encompass conflicts of interest and that due to its importance it would be convenient to treat with greater detail and specificity (see section chapter II, section 1.1.2).*

Measures suggested by the Committee pending information on their implementation or requiring additional attention, in accordance with the Second Round report.⁵²

- *Ensure the applicability of sanctions to public servants who violate the norms that govern conflicts of interests, in accordance with the aims of the Civil Service Probity Law (see section chapter II, section 1.1.2).*
- *Establish adequate restrictions for those public servants who have recently left their public positions (see section chapter II, section 1.1.2).*
- *Design and implement mechanisms to publicize and provide training on the standards of conduct, including those involving conflicts of interest, to all government officials and employees, and provide further training or periodic updating regarding them.*

[106] With respect to the first measure of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the in the Report

50 The references to sections appearing in italics in the transcribed recommendations and measures refer to the report from the First Review Round.

51 See: pages 27-29 of this report, available at: http://www.oas.org/juridico/spanish/mesicic_II_inf_nic.pdf.

52 See: pages 27-29 of this report, available at: http://www.oas.org/juridico/spanish/mesicic_II_inf_nic.pdf.

from the Second Round. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:⁵³

[107] – The passage of Law No. 681 of 2009, the “*Organic Law of the Comptrollership General of the Republic and of the Control System for the Public Administration and Oversight of State Assets and Resources*,”⁵⁴ Article 87 of which says that final resolutions handed down by the Superior Council of the Office of the Comptroller General of the Republic confirming civil responsibilities are binding.

[108] The Committee takes note of the step taken by the country under review to advance in the implementation of the first measure of the above recommendation and of the need for it to continue to give attention thereto, bearing in mind that the difficulty indicated in the First Round report still persists⁵⁵ as regards the imposition of sanctions on the actions described in Articles 8 (disqualifications) and 10 (incompatibilities) of the Civil Servants’ Probity Law.

[109] With respect to the implementation of the third measure of the foregoing recommendation (*Establish adequate restrictions for those public servants who have recently left their public positions*), in its response, the country under review did not present additional information that was not already reviewed by the Committee in the Report of the Second Round. As such, the Committee reiterates the need for the country under review to give additional attention to implementation thereto.

[110] With respect to the implementation of the fourth measure of the foregoing recommendation (*Designing and implementing mechanisms to inform and train all public servants* in its response, the country under review presents information additional to that reviewed by the Committee in the in the Report from the Second Round. In this regard, the Committee notes the following as a step that leads it to conclude that said measure has been satisfactorily considered.⁵⁶

[111] “*The institutions of the Nicaraguan State design and implement Annual Internal/External Training Programs and Plans addressing these topics.*

[112] *Pursuant to its institutional role of helping strengthen a suitable climate of control for the exercise of public functions in the agencies of the public administration, the external training department of the Office of the Comptroller General of the Republic (CGR) organized a total of 104 training events between January and November 2009, whereby 3,713 public officials received training on the CGR’s legal and regulatory framework, including matters related to auditing and the old and new Organic Laws of the CGR. During this period, a total of 1124 man/hours were invested in external training. (See: Annual Report, attached.)*

[113] *The indicator set out in the Annual Operating Plan (POA-2009) set an estimate of 3,800 public officials to be trained; 98% of that target was met.*

[114] *The Office of Public Ethics (OEP) has carried out activities in the areas of promotion, education, outreach, awareness-raising, and preventive legal/technical advice, in accordance with its power to promote integrity and transparency at the national level in order to prevent and combat*

53 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 32, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

54 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_ley681.pdf.

55 See: page 5 of this report, available at: http://www.oas.org/juridico/spanish/mec_inf_nic.pdf.

56 See: Republic of Nicaragua’s response to the Third Round questionnaire, pp. 34-35, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

corruption, encouraging the values of honesty, civic responsibility, and ethics among public servants and the general public.

[115] *The OEP has been strengthening its capacity for coverage, by reaching out to both agencies of the executive branch and to other public institutions, local governments, and sectors of the citizenry. For example, in the training area, there have been a growing number of events specializing in public ethics topics: in 2006, nine training events (166 public servants) and 26 talks for students (1,548) were organized; in 2007, 36 training events were held for 1,780 public servants, with which their coverage among the agencies of the State expanded but their presence among the citizenry remained low.*

[116] *The year 2009 was key in strengthening the OEP's capacity for expanding its coverage and increasing the dynamism of its work, with the implementation of multiplication strategies such as the Inter-institutional Network of Ethics Promoters and the Public Administration Social Oversight Network. This was complemented by the coordination work carried out by the Ethics Officers appointed within each agency of the executive branch and other institutions pursuant to Executive Decree 35-2009 "Code of Ethical Conduct of Public Servants."*

[117] *Some 4,776 public servants received training on topics such as ethics in the public administration, internal controls, legal basis for the ethical behavior of public servants, dealing with such legal provisions as Articles 130 and 131 of the Constitution of Nicaragua, the Executive Branch Civil Servants' Probity Law, the Civil Service and Administrative Career Law, and the Law on Access to Public Information, as well as crimes against the public administration, social skills and values in dealings with the public, and human rights in the public administration.*

[118] *There were a total of 86 specialized training events, using a workshop format, with the participation of public servants from 43 agencies of the executive branch and local governments (52% women and 48% men). See: Quantitative Report, OEP 2009.*

[119] *Between July and December 2009, approximately 362 public servants (52% women and 48% men) learned in detail about the provisions of the Code of Ethical Conduct of Public Servants of the Executive Branch, through the organization of 12 events (seminars and workshops) at the following institutions: Office of the Attorney General of the Republic, INIDE, Colegio Rigoberto López Pérez, Nicaraguan Municipal Development Institute, Nicaraguan Women's Institute, ENATREL, INJUVE, MIFIC, National Ports Company, INISER, Ministry of Foreign Affairs, and the National Lottery (...).*

[120] *The Committee takes note of the satisfactory consideration by the country under review of the fourth measure of the foregoing recommendation, 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 public officials in the performance of their functions and mechanisms to enforce compliance.

Recommendation 1.2.1:

Strengthen the control systems within the public administration.

Measures suggested by the Committee pending information on their implementation or requiring additional attention, in accordance with the Second Round report.⁵⁷

- *Modernize or introduce a legal reform to the Organic Law of the Comptroller General in order to establish, among other things, simple procedures for application of penalties to violators of these standards of conduct and for obtaining restitution to the State for damages for which the violators may be liable.*
- *Make public, where appropriate, the reports of the Comptroller General of the Republic, as the oversight body of the cited standards of conduct.*
- *Design and implement mechanisms to publicize and provide training on the standards of conduct to all government officials and employees, and provide further training or periodic updating regarding them.*

[121] With respect to the implementation of the first measure of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the in the Report from the Second Round. In this regard, the Committee notes the following as a step that leads it to conclude that said measure has been satisfactorily considered:⁵⁸

[122] – The passage of Law No. 681 of 2009, the “*Organic Law of the Comptrollership General of the Republic and of the Control System for the Public Administration and Oversight of State Assets and Resources*,”⁵⁹ Article 87 of which says that final resolutions handed down by the Superior Council of the Office of the Comptroller General of the Republic confirming civil responsibilities are binding.

[123] The Committee takes note of the satisfactory consideration by the country under review of the first measure of the foregoing recommendation, without entering into an analysis of the substance of the provision of the Law referred to by the country under review.

[124] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization “Ethics and Transparency Civil Group” (EyT) notes the following:⁶⁰

[125] “*While the CGR’s new Organic Law – Law No. 681, ‘Organic Law of the Comptrollership General of the Republic and of the Control System for the Public Administration and Oversight of State Assets and Resources’ –does give the Comptroller’s Office greater capacity for investigation and prosecution, as provided in Arts. 92 and 105, that does not explicitly and practically resolve the lack of financial and human resources, which is one of the major obstacles that the agency faces in discharging its functions. This has been confirmed by the oversight agency’s top authority, Dr. Guillermo Arguello Poessy, who said that: “The oversight agency’s new Organic Law imposes additional responsibilities on the institution while, incongruously, the General Budget of the Republic does not guarantee it the human or material resources for the faithful discharge of its mandate.” An example of this situation is the fact that for checking more than 4000 probity declarations, there are only four inspectors for the entire country.*”

57 See: pages 29-30 of this report, available at: http://www.oas.org/juridico/spanish/mesicic_II_inf_nic.pdf.

58 See: Republic of Nicaragua’s response to the Third Round questionnaire, pp. 32 and 36, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

59 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_ley681.pdf.

60 Report of the civil society organization “Ethics and Transparency Civic Group” (EyT), p. 24: http://www.oas.org/juridico/spanish/mesicic3_nic_inf_sc.pdf.

[126] With respect to the implementation of the second measure of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the in the Report from the Second Round. In this regard, the Committee notes the following as a step that leads it to conclude that said measure has been satisfactorily considered.⁶¹

[127] – The publication, on the web page of the Office of the Comptroller General of the Republic (www.cgr.gob.ni) of the results of the investigations and audits carried out, along with other documents of relevance.

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

[129] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization “Ethics and Transparency Civil Group” (EyT) notes the following:⁶²

[130] *“Legal decisions, audit resolutions, management reports, forms for probity declarations, press stories, the strategic plan, resolutions on audit reports, the Manuals for Government Audits, as well as other documents of public interest are published on the agency’s web site (www.cgr.gob.ni).”*

[131] With respect to the implementation of the third measure of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the in the Report from the Second Round. In this regard, the Committee notes the following as a step that leads it to conclude that said measure has been satisfactorily considered:⁶³

[132] *“The Office of the Comptroller General of the Republic has a Training Center and, as part of its vision, has carried out training as indicated in this report, pursuant to the 2009 Annual Operating Plan (AOP), which identified Specific Goal No. 1 as “Strengthened compliance with the legal provisions and standards of the National Oversight System for Public Sector Entities,” with its corresponding result and compliance indicator.*

[133] *For 2009, the compliance indicator was estimated at 3,800 public servants trained in the legal and regulatory framework of the National Oversight System, which includes training in technical standards for internal oversight, the CGR Organic Law, the Civil Servants’ Probity Law, and the State Contracting Law (Law 323) regarding those issues that are the sole competence of the Office of the Comptroller General of the Republic, the Municipal Contracting Law, and specific training topics for government audits.”*

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

61 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 36, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

62 Report of the civil society organization “Ethics and Transparency Civic Group” (EyT), p. 24: http://www.oas.org/juridico/spanish/mesicic3_nic_inf_sc.pdf.

63 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 36, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

1.3. Standards of conduct and mechanisms relating to measures and systems that require public officials to report to appropriate authorities regarding acts of corruption in public office of which they are aware

Recommendation 1.3.1:

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

Measures suggested by the Committee pending information on their implementation or requiring additional attention, in accordance with the Second Round report:⁶⁴

- *Apply effectively to those who violate this obligation, the sanctions provided in the corresponding punishment regimes (see chapter II, section 1.3.2).*
- *Train public officials concerning the existence and purpose of their responsibility to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.*

[135] With respect to the first measure of the foregoing recommendation, in its response, the country under review presents information that it considers related.⁶⁵

[136] *“The Code of Ethical Conduct of Public Servants of the Executive Branch, Decree 35-2009, specifies the actions a public servant must take in the event acts of corruption are committed in public functions; of these, note some of the ones provided for in Article 19, ‘Commitment,’ sections ‘b’ and ‘c,’ which read: ‘(b) All public servants must immediately report to their superiors any act in breach of the provisions of this Code, and must reject pressure from hierarchical superiors, hirers, interested parties, or anyone wishing to obtain undue favors, advantages, or benefits through illegal actions;’ ‘(c) Public servants, as the chief custodians of the State’s property in the places they work, must immediately inform their superiors or the corresponding entity of any damage suffered by that property.’*

[137] *Article 16.b provides as follows: ‘(b) All hierarchical superiors within the public administration must establish and maintain open information channels for receiving, attending to, and dealing with complaints, allegations, reports, petitions, requests, and suggestions made by the general population regarding the duties and ethical behavior of public servants...’*

[138] *Article 34 of the Code also provides that all breaches of its principles and provisions shall trigger the sanctions set out in the laws governing the actions of public servants, including the Nicaraguan Constitution, the Civil Service and Administrative Career Law (Law 476), the Civil Servants’ Probity Law (Law 438), the Criminal Code of the Republic of Nicaragua (Law 641), the Law on Access to Public Information (Law 621), the Labor Code, etc.”*

[139] The Committee reiterates the need for the country under review to give additional attention to the implementation of the first measure of the foregoing recommendation, bearing in mind that the Code of Ethical Conduct of Public Servants of the Executive Branch is not itself binding and that,

64 See: pages 30-31 of this report, available at: http://www.oas.org/juridico/spanish/mesicic_II_inf_nic.pdf.

65 See: Republic of Nicaragua’s response to the Third Round questionnaire, pp. 36-37, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

consequently, the problem indicated in the First Round report persists⁶⁶ in that noncompliance with the duty of reporting acts of corruption in public functions has not been included as one of the offenses addressed by Article 12 of the Civil Servants' Probity Law.

[140] With respect to the implementation of the second measure of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the in the Report from the Second Round. In this regard, the Committee notes the following as steps that lead it to conclude that said measure has been satisfactorily considered:⁶⁷

[141] *“As has been reported, the Office of Public Ethics has a training program for public servants in the executive branch; thus, in coordination with the Office of the Attorney General of the Republic, it provides training on topics related to crimes against the public administration as provided for in the new Criminal Code (Arts. 435 to 458), informing them about the obligation incumbent on all public servants to report, to the competent authorities, all acts of corruption of which they are aware; they are also informed about the Citizen Complaint Offices that have been set up by the Office of the Comptroller General of the Republic, the National Police, and the Office of the Attorney General of the Republic.”*

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

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

Recommendation 2.1:

Improve the systems for verification and use of the content of sworn financial declarations.

Measures suggested by the Committee pending information on their implementation or requiring additional attention, in accordance with the Second Round report:⁶⁸

- *Establish systems for verifying the content of the sworn declaration by the competent authority (see chapter II, sections 2.1 and 2.2).*
- *Design systems that facilitate access to the information contained in the sworn declarations by those who are authorized to do so.*
- *Optimize the systems for analyzing the content of asset declarations for the purpose of detecting and reventing conflicts of interest as well as for detecting possible cases of illicit enrichment.*

[143] With respect to the implementation of the first measure of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the in the Report from the Second Round:⁶⁹

66 See: page 9 of this report, available at: http://www.oas.org/juridico/spanish/mec_inf_nic.pdf.

67 See: the Republic of Nicaragua's response to the Third Round questionnaire, p. 37, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

68 See: pages 31-32 of this report, available at: http://www.oas.org/juridico/spanish/mesicic_II_inf_nic.pdf.

[144] *“The verification of the contents of statements of net worth is required by Art. 23 of the Probity Law, which provides: Public servants, in their Declarations of Net Worth, will authorize the CGR to file requests with the corresponding agencies. In addition, the Superior Council, at its 524th regular session, authorized the Administrative Procedures Manual, which sets out guidelines for the receipt, custody, checking, and review of public servants’ probity declarations.”*

[145] The Committee takes note of the need for the country under review to give additional attention to the implementation of the first measure of the foregoing recommendation, since the Administrative Procedures Manual adopted by the Superior Council of the Office of the Comptroller General of the Republic was not made available to it and, consequently, it was unable to verify the information it contains.

[146] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization “Ethics and Transparency Civil Group” (EyT) notes the following:⁷⁰

[147] *“In spite of the provisions of Law No. 438, “Civil Servants’ Probity Law,” regarding the verification of public servants’ statements of net worth, the Directorate of Probity has only four inspectors responsible for investigating and analyzing the content of 4,000 probity declarations submitted by mayors, assistant mayors, councilors, ministers, vice ministers, presidents of autonomous entities, directors general, members of the branches of government, etc. This constraint was confirmed in an interview with the President of the Comptroller’s Office, Dr. Guillermo Arguello, in which the institution declared itself incapable of verifying whether or not a public servant included any property or bank accounts held abroad. (...).”*

[148] With respect to the second measure of the foregoing recommendation, in its response, the country under review presents information that it considers related:⁷¹

[149] *“Art. 22 of the Probity Law empowers the competent agencies to require public servants to submit probity statements: specifically, the offices of the Attorney General of the Republic and of the Prosecutor General of the Republic. Once the request is presented, it must be processed immediately; in other words, no procedure for doing this is established. This is not the case with respect to any individual or corporate body, when the prior acquiescence of the public servant is required.”*

[150] The Committee takes note of the need for the country under review to give additional attention to the implementation of the second measure of the foregoing recommendation, bearing in mind that, as indicated in the First Round report,⁷² it refers to the creation of electronic databases to facilitate the consultation of sworn statements of net worth by those legally authorized to do so.

69 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 37, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

70 Report of the civil society organization “Ethics and Transparency Civic Group” (EyT), p. 25: http://www.oas.org/juridico/spanish/mesicic3_nic_inf_sc.pdf.

71 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 38, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

72 See: page 10 of this report, available at: http://www.oas.org/juridico/spanish/mec_inf_nic.pdf.

[151] With respect to the implementation of the third measure of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the in the Report from the Second Round.⁷³

[152] *“The Superior Council approved the administrative procedure for conducting analyses and verification of probity statements at its 524th session on April 12, 2007.”*

[153] The Committee notes the need for the country under review to pay additional attention to the implementation of the first measure of the foregoing recommendation, since the Administrative Procedures Manual adopted by the Superior Council of the Office of the Comptroller General of the Republic was not made available to it and, consequently, it has been unable to verify the information it contains.

[154] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization “Ethics and Transparency Civil Group” (EyT) notes the following:⁷⁴

[155] *“Low percentage of public officials submitting their declarations of net worth upon leaving their positions. During 2007,⁷⁵ the Office of the Comptroller General of the Republic received 4,063 statements of net worth, of which 3,126 (76.93%) were presented by civil servants commencing service functions and 937 (23.07%) by those leaving their positions. Of these, the Office of the Comptroller General of the Republic (CGR) checked 40. Of the probity declarations received during 2007 at the start of tenure, 1,835 were from civil servants starting out in their posts that same year, and 1,291 were from public employees who began their employment prior to 2007. Of the probity declarations received during 2007 at the conclusion of functions, 859 were from public employees leaving their posts that same year and 78 were from civil servants who left their posts prior to 2007.*

[156] *During 2008,⁷⁶ the CGR received 2,809 statements of net worth, of which 2,462 (87.65%) were lodged upon commencement and 347 (12.35%) were lodged upon separation. Of these, 50 were checked, in accordance with the Annual Operating Plan. Of the start-of-tenure probity declarations received during 2008, 861 were from civil servants starting out in their posts that same year, and 1,601 were from public employees who began their employment prior to 2008. Similarly, of the probity declarations received during 2008 at the conclusion of functions, 231 were from public employees leaving their posts that same year and 116 were from civil servants who left their posts prior to 2008.”*

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

Recommendation 3.1:

Strengthening the Comptroller General, as the oversight body that undertakes the functions related to the effective compliance with paragraphs (1), (2), (4) and (11) of Article III of the Convention.

73 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 37, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

74 Report of the civil society organization “Ethics and Transparency Civic Group” (EyT), p. 37: http://www.oas.org/juridico/spanish/mesicic3_nic_inf_sc.pdf.

75 Management Reports (CGR): http://www.cgr.gob.ni/cgr/index.php?option=com_docman&task=cat_view&gid=64&Itemid=53.

76 Management Reports (CGR): http://www.cgr.gob.ni/cgr/index.php?option=com_docman&task=cat_view&gid=64&Itemid=53.

Measures suggested by the Committee pending information on their implementation or requiring additional attention, in accordance with the Second Round report:⁷⁷

- *Strengthen the Office of the Comptroller General, giving the office the necessary legal instruments and resources needed for compliance with the new responsibilities that have been assigned to it, in relation with the oversight provisions of the Convention.*
- *Guarantee the autonomy and independence of the internal audit units, and strengthening fulfillment of their responsibilities in the detection and prevention of illegal administrative activities.*
- *Make sure that the Comptroller General of the Republic has greater political and social support; and establish mechanisms that will allow coordination and continued evaluation and monitoring of its actions.*

[157] With respect to the implementation of the first measure of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the in the Report from the Second Round. In this regard, the Committee notes the following measure as a step toward its implementation:⁷⁸

[158] – The passage of Law No. 681 of 2009, the “*Organic Law of the Comptrollership General of the Republic and of the Control System for the Public Administration and Oversight of State Assets and Resources*,”⁷⁹ Article 7 of which establishes its functional, administrative, and financial independence and autonomy and that “*the competent agencies of the State shall assign, on a yearly basis, an adequate amount from the tax revenues of the General Budget of the Republic.*” In turn, Article 8 states that the budget of the Office of the Comptroller General of the Republic is to be funded by: (a) an adequate amount from the tax revenues of the General Budget of the Republic, allowing it to carry out all the functions and exercise all the powers established for it in the law, (b) donations, and (c) provisions contained in other legislation.

[159] However, the Committee notes that the budget of the CGR fell from a total amount of C\$160,961,904.50 in 2007⁸⁰ to C\$141,096,000 in 2010.⁸¹

[160] The Committee notes the step taken by the country under review to make progress with the implementation of the first measure of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind the aforesaid reduction in its budget.⁸²

[161] With respect to the implementation of the second measure of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the

77 See: pages 32-33 of this report, available at: http://www.oas.org/juridico/spanish/mesicic_II_inf_nic.pdf.

78 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 38, available at:

http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

79 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_ley681.pdf.

80 See: “Budget Spending Report 2007” of the Ministry of the Treasury and Public Credit of Nicaragua, available at:

http://www.oas.org/juridico/spanish/mesicic3_nic_inf_07.pdf.

81 See: Section II, Title II (Office of the Comptroller General of the Republic), “General Budget of the Republic of Nicaragua 2010,” Ministry of the Treasury and Public Credit of Nicaragua, available at:

http://www.oas.org/juridico/spanish/mesicic3_nic_presCGR.pdf.

82 The reduction in the budget of the CGR was also a matter of concern of the “Ethics and Transparency Civic Group” (EyT).

See: Report of the civil society organization “Ethics and Transparency Civic Group” (EyT), p. 25:

http://www.oas.org/juridico/spanish/mesicic3_nic_inf_sc.pdf.

Committee in the in the Report from the Second Round. In this regard, the Committee notes the following as steps that lead it to conclude that said measure has been satisfactorily considered:⁸³

[162] – The passage of Law No. 681 of 2009, the “*Organic Law of the Comptrollership General of the Republic and of the Control System for the Public Administration and Oversight of State Assets and Resources*,”⁸⁴ Article 48 of which establishes provisions to govern the independence of internal auditors with respect to the people, activities, and interests of the organs and agencies that they examine.

[163] – The issuing of Administrative Circular No. 002-2010 by the CGR’s Superior Council on January 14, 2010,⁸⁵ which orders the top authorities of the public administration to refrain from giving orders to or involving internal auditors in activities of any kind in order to protect their independence.

[164] – The issuing of the Government Auditing Rules, updated by the CGR, in November 2008,⁸⁶ section 1.10 of which states that government auditors and public servants who perform auditing tasks must, in auditing-related matters, maintain an attitude of complete independence from the officials and employees that carry out operations and must be unhindered in their work at the agencies and bodies subject to their inspections.

[165] – The adoption of the “*Standards for the Appointment, Removal, or Suspension of Internal Auditors and the Technical Staff of the Internal Auditing Units of Agencies of the Public Administration*”⁸⁷ by the Superior Council of the CGR at its 644th regular meeting on August 6, 2009.

[166] The Committee takes note of the satisfactory consideration by the country under review of the second measure of the foregoing recommendation, without entering into an analysis of the substance of the provision of the Law referred to by the country under review.

[167] With respect to the third measure of the foregoing recommendation, in its response, the country under review did not present information. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.⁸⁸

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

Recommendation 4.1:

Institute legal norms supporting public access to government information.

83 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 39, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

84 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_ley681.pdf.

85 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_cir_admi_uai.pdf.

86 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_nagun.pdf.

87 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_normativa.pdf.

88 On August 11, 2010, the country under review offered the following remarks: “*the Office of the Comptroller General has received political support, which is reflected by the approval of all the legislative initiatives designed to increase its operational efficiency, as in the case of the recently approved Law 681 (Organic Law of the Office of the Comptroller General and of the Control System for the Public Administration and Oversight of State Assets and Resources)*”.

Measure suggested by the Committee pending information on its implementation or requiring additional attention, in accordance with the Second Round report:⁸⁹

- *Develop and issue regulations on procedures for acceptance of requests for information, for response to requests in a timely fashion, for appeal procedures in the case of denials, and for penalties concerning failure to comply with obligations to provide information.*

[168] With respect to the implementation of the single measure of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the in the Report from the Second Round. In this regard, the Committee notes the following as steps that lead it to conclude that said measure has been satisfactorily considered:⁹⁰

[169] – The enactment of Law No. 621 of 2007, “*Law on Access to Public Information*,”⁹¹ and its Regulations.⁹² Articles 26 to 34 of this Law set the procedure for exercising the right of access to public information. Article 28 sets a maximum period of 15 business days following the submission of the request for the entity to give its response. This deadline may be extended by an additional 10 business days if any of the circumstances listed in Article 29 are present. Appeals against cases in which requests for information are denied are regulated by Articles 36 to 38. The administrative sanctions that apply to noncompliance with the obligation of providing information are set out in Articles 47 to 49 and are to be applied independently of the offenses and corresponding penalties established by the Criminal Code.

[170] – The enactment of Law No. 641 of 2008 (the Criminal Code),⁹³ Article 443 of which punishes the denial of access to public information in the following terms: “*Any public authority, official, or employee who, in a case other than those permitted by law, denies or hinders access to requested public information shall be punished by a prison term of between six months and two years in prison and disqualification from holding a public position or public employment for a period of between one and two years.*”

[171] The Committee takes note of the satisfactory consideration by the country under review of the single measure of the foregoing recommendation, without entering into an analysis of the substance of the provision of the Law referred to by the country under review.

Recommendation 4.2:

Institute procedures, where appropriate, that provide an opportunity for consultation prior to the design of public policies and to the approval of legal norms.

Measures suggested by the Committee pending information on their implementation or requiring additional attention, in accordance with the Second Round report:⁹⁴

- *Publish and disseminate the drafts of legal norms, and develop transparent processes in order to allow the consultation of interested sectors in relation to the drafting of laws, decrees and resolutions within the executive branch.*

89 See: pages 33-34 of this report, available at: http://www.oas.org/juridico/spanish/mesicic_II_inf_nic.pdf.

90 See: Republic of Nicaragua’s response to the Third Round questionnaire, pp. 39-41, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

91 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_ley621.pdf.

92 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_ley621_reg.pdf.

93 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_codigo_penal.pdf.

94 See: pages 34-36 of this report, available at: http://www.oas.org/juridico/spanish/mesicic_II_inf_nic.pdf.

- *Develop suitable mechanisms to allow for public consultation in areas other than those already considered.*

[172] With respect to the implementation of the measures of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the in the Report from the Second Round. In this regard, the Committee notes the following as steps that lead it to conclude that said measure has been satisfactorily considered:⁹⁵

[173] *“Public consultations have been held with respect to the following laws:*

[174] *– Bill declaring and defining the Cayos Perlas system as a wildlife refuge, consulted with the Secretariat of the Atlantic Coast, the mayor’s office, and other agencies.*

[175] *– Bill amending and expanding Article 126 of Law 453, the Fiscal Equity Law, agreed on in conjunction with the COSEP, the executive branch, members of the legislature, civil society, and the industrial and fisheries sectors.*

[176] *– Bill amending and expanding Law No. 200, General Law of Telecommunications and Postal Services.*

[177] *– Bill to Promote the Admission of Resident Pensioners and Resident Rentiers.*

[178] *– Special bill for the TUMARIN Hydroelectric Project.*

[179] *– Bill for the Simplification of Formalities and Services in the Public Administration.*

[180] *– Bill for the Organic Law of the Nicaraguan Institute of Fisheries and Aquaculture.*

[181] *– Bill to amend and expand the Organic Law of the Urban and Rural Housing Institute (INVUR).*

[182] *– Draft bill for the Public Sector Administrative Contracting Law. This draft bill underwent public consultation during 2006 and 2007; in 2008 the draft bill was presented to the Production, Economy, and Budget Commission, when it was presented by the office of the President of the Republic, and then, in 2009, the aforesaid consultation was organized by the National Assembly, through the same Commission. The Consultative Forum, at which the Regulatory Unit participated, was also attended by public sector entities, international agencies, sectoral associations, suppliers, the private sector, and small and medium-sized enterprises (SMEs). New contributions for the document were received and a grid of the comments and contributions was sent to the National Assembly for its consideration. The forum was held in late September 2009 and was supported with funding from the Inter-American Development Bank.*

[183] *– The draft bill for the Code of Ethical Conduct of Public Servants of the Executive Branch, Decree 35-2009, was presented for validation by public servants from various executive agencies. It was duly validated and their contributions, suggestions, and recommendations were incorporated into the draft; contributions were also received from the civil service supervisory agency, the General Directorate of Public Functions of the Ministry of the Treasury and Public Credit.*

⁹⁵ See: Republic of Nicaragua’s response to the Third Round questionnaire, pp. 42-44, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

[184] – *The Probity and Transparency Commission of the National Assembly is conducting consultations regarding the proposal to create the Office of Public Ethics that was introduced by the executive branch in 2006.*

[185] (...)

[186] – *The Organic Law of the Legislative Branch provides, in Chapter II, Article 98, for consultations and rulings. It establishes a process of consultation and ruling for all bills submitted (Articles 98, 99, and 100) under the aforesaid Organic Law (...).*”

[187] The Committee takes note of the satisfactory consideration, by the country under review, of the first and second measures of the foregoing recommendation, which, by their nature, require a continuation of efforts in their implementation.

Recommendation 4.3:

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

Measure suggested by the Committee pending information on its implementation or requiring additional attention, in accordance with the Second Round report:⁹⁶

- *Establish mechanisms to encourage civil society and nongovernmental organizations to participate in efforts to prevent corruption and to develop public awareness of the problem; and promote awareness of the mechanisms established for participation and explaining their use.*

[188] With respect to the first measure of the foregoing recommendation, in its response, the country under review presents information that it considers related:⁹⁷

[189] “*The Office of Public Ethics, over the period January 2008 to December 2009, has organized training events promoting the exercise of social oversight and raising public awareness about the importance of social oversight of the public administration, based on the Constitution and with the dissemination and promotion of Law 475 (Citizen Participation Law) and Law 621 (Law on Access to Public Information), raising the profile of those topics through talks, workshops, and forums.*

[190] *These training events have targeted 6,000 citizens from different sectors of society civil, specifically high-school and university students, residents of Managua’s districts I, II, III, IV, V, VI, and VII, associations of business owners, young people belonging to the Federation of Secondary Students and INJUVE, and through the Citizen Power structures in the municipalities of San Ramón, Matagalpa, Boaco, Ocotal, Managua, Chinandega, León, Rivas, Masaya, and Jinotepe.*

[191] *To promote these social oversight mechanisms among the general population, the Office of Public Ethics prepared and launched a social oversight strategy whereby it has coordinated its efforts with various organized citizens’ groups in order to encourage different organized sectors that are producers and consumers of goods and services, adopting a high profile and social responsibility toward the citizenry and, most particularly, the most disadvantaged. The strategy included a work plan and follow-up which will yield Social Audit Reports in specific public programs for outreach and*

96 See: pages 34-36 of this report, available at: http://www.oas.org/juridico/spanish/mesicic_II_inf_nic.pdf.

97 See: Republic of Nicaragua’s response to the Third Round questionnaire, pp. 44-45, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

awareness-raising among both the public and the agencies involved, to serve as a tool to guide the population in conducting social audits in order to ensure the efficiency and good performance of public functions and to develop plans of action for the implementation the government's social programs.

[192] *Social audits are a form of public expression and they help the population conduct social oversight.*

[193] *The three-yearly plan of the Office of Public Ethics provides, for the year 2009, for six social audits on topics including, in particular, the development of social projects run by different state agencies.*

[194] *With this tool the population can monitor the public administration in different state and local-government agencies, providing them with information so they can learn about the aspects being audited and contribute to improvements in them."*

[195] The Committee takes note of the need for the country under review to give additional attention to the implementation of the first measure of the foregoing recommendation, bearing in mind that the information presented relates to the monitoring of the public administration by civil society organizations, as set out in recommendation 4.4.

Recommendation 4.4:

Strengthen and further implement mechanisms that encourage civil society and nongovernmental organizations to participate in monitoring public administration.

Measures suggested by the Committee pending information on their implementation or requiring additional attention, in accordance with the Second Round report:⁹⁸

- *Promote additional ways, where appropriate, to allow, facilitate, and assist civil society and nongovernmental organizations in developing activities to monitor public administration.*
- *Design and carry out programs to publicize mechanisms for participation in monitoring public administration; and, where appropriate, train and enable civil society and non-governmental organizations to have the necessary tools to use the said mechanisms.*

[196] With respect to the implementation of the measures of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the in the Report from the Second Round. In this regard, the Committee notes the following as steps that lead it to conclude that said measure has been satisfactorily considered:⁹⁹

[197] *"The Office of Public Ethics, over the period January 2008 to December 2009, has organized training events promoting the exercise of social oversight and raising public awareness about the importance of social oversight of the public administration, based on the Constitution and with the dissemination and promotion of Law 475 (Citizen Participation Law) and Law 621 (Law on Access to Public Information), raising the profile of those topics through talks, workshops, and forums.*

98 See: pages 34-36 of this report, available at: http://www.oas.org/juridico/spanish/mesicic_II_inf_nic.pdf.

99 See: Republic of Nicaragua's response to the Third Round questionnaire, pp. 44-45, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

[198] *These training events have targeted 6,000 citizens from different sectors of society civil, specifically high-school and university students, residents of Managua's districts I, II, III, IV, V, VI, and VII, associations of business owners, young people belonging to the Federation of Secondary Students and INJUVE, and through the structures of the Citizen's Branch of Government in the municipalities of San Ramón, Matagalpa, Boaco, Ocotal, Managua, Chinandega, León, Rivas, Masaya, and Jinotepe.*

[199] *To promote these social oversight mechanisms among the general population, the Office of Public Ethics prepared and launched a social oversight strategy whereby it has coordinated its efforts with various organized citizens' groups in order to encourage different organized sectors that are producers and consumers of goods and services, adopting a high profile and social responsibility toward the citizenry and, most particularly, the most disadvantaged. The strategy included a work plan and follow-up which will yield Social Audit Reports in specific public programs for outreach and awareness-raising among both the public and the agencies involved, to serve as a tool to guide the population in conducting social audits in order to ensure the efficiency and good performance of public functions and to development plans of action for the implementation the government's social programs.*

[200] *Social audits are a form of public expression and they help the population conduct social oversight.*

[201] *The three-yearly plan of the Office of Public Ethics provides, for the year 2009, for six social audits on topics including, in particular, the development of social projects run by different state agencies.*

[202] *With this tool the population can monitor the public administration in different state and local-government agencies, providing them with information so they can learn about and contribute to improvements in the aspects being audited."*

[203] The Committee takes note of the satisfactory consideration, by the country under review, of the first and second measures of the foregoing recommendation, which, by their nature, require a continuation of efforts in their implementation.

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

Measures suggested by the Committee pending information on their implementation or requiring additional attention, in accordance with the Second Round report:¹⁰⁰

Recommendation 5.1:

Determine and prioritize specific areas in which the Republic of Nicaragua feels it needs technical cooperation from other States Parties in order to strengthen its ability to prevent, detect, investigate and punish corrupt acts.

In addition, the Republic of Nicaragua should determine and prioritize the requests for reciprocal assistance to investigate or adjudicate cases of corruption.

[204] With respect to the implementation of the foregoing recommendation, the country under review presents information in its Progress Report presented at the Fifteenth Meeting of the Committee of

100 See: pages 36-38 of this report, available at: http://www.oas.org/juridico/spanish/mesicic_II_inf_nic.pdf.

Experts. In this regard, the Committee notes the following as steps that lead it to conclude that said recommendation has been satisfactorily considered:¹⁰¹

[205] *“As regards progress with the SISCAE electronic purchasing system, external funding must be sought since its implementation is costly in comparison with the resources available within the Government of Nicaragua.*

[206] *Within the National Police the attention paid to corruption and its prevention needs to be strengthened in the specialties of economic investigations (anticorruption), the Judicial Auxiliary Directorate (special offenses), and the office of the Inspector General, in order to bolster the control, oversight, and prosecution of cases, both internally and externally.*

[207] *Other areas requiring strengthening through cooperation include: general administration in the procurement area; in the Police Academy, formal and informal education programs on addressing and preventing corruption within the police; in the Personnel Division, for policies affecting human resources; in Finance and Internal Auditing, in order to strengthen the internal oversight mechanisms.”*

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

Recommendation 5.2:

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

[209] With respect to the implementation of the foregoing recommendation, the country under review presents information in its Progress Report presented at the Fifteenth Meeting of the Committee of Experts. In this regard, the Committee notes the following as steps that lead it to conclude that said recommendation has been satisfactorily considered:¹⁰²

[210] *“To combat corruption and provide greater citizen security, better access to justice, and an improved rule of law, since early 2008 the National Police has been promoting the Programmatic Approach Model, which is based on the guidelines set in the Declaration of Paris and the Accra Agenda for Action.*

[211] *On April 15, 2009, the Ministry of Foreign Affairs hosted the inauguration of the Dialogue Office, the aim of which is to serve as a forum for negotiations and dialogue between the National Police and the cooperation agencies based in the country. At the event, the Code of Conduct was signed by the Government of Nicaragua, the National Police, and the development partners, setting out the ethics and cooperation conditions to be observed by the National Police and its development partners (AECID, GTZ, UNDP, and ASDI). Two working groups were defined at this meeting:*

[212] • *Group 01; Planning and Organization Commission of the Dialogue Office.*

[213] • *Group 02; Results Framework and Joint Responsibility Commission.*

101 See: page 10 of this report, available at: http://www.oas.org/juridico/english/mec_avance_nicXV.pdf.

102 See pp. 11-12 of this report, available at: http://www.oas.org/juridico/english/mec_avance_nicXV.pdf.

[214] *As a way to support cooperation within the programmatic approach, a Memorandum of Understanding was drawn up for the creation of a common fund to support the 2008 – 2012 National Police Strategic Plan, within the context of the implementation of the programmatic approach for institutional development; it was signed by the government of the Republic of Nicaragua, represented by the Ministry of Foreign Affairs and the National Police, and the foreign governments and international cooperation agencies involved.”*

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

Recommendation 5.3:

Design and implement an integral program for dissemination and training directed specifically to competent authorities (in particular to, judges, magistrates, state attorneys and other authorities with judicial investigative functions), in order to ensure that they are knowledgeable of the provisions on mutual legal assistance and other related treaties signed by Nicaragua, and may apply them to concrete cases.

[216] With respect to the foregoing recommendation, in its response, the country under review did not present information. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation formulated by the Committee that was satisfactorily considered, in accordance with the Second Round report:¹⁰³

Recommendation 6.1:

Notify the OAS General Secretariat of the designation of the central authority, pursuant to the prescribed formalities.

Recommendation formulated by the Committee pending information on its implementation or requiring additional attention, in accordance with the Second Round report:¹⁰⁴

Recommendation 6.2:

Give the central authority sufficient resources to properly perform its duties.

[217] With respect to the foregoing recommendation, in its response, the country under review did not present information. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

103 See: page 38 of this report, available at: http://www.oas.org/juridico/spanish/mesicic_II_inf_nic.pdf

104 See: pages 38-39 of this report, available at: http://www.oas.org/juridico/spanish/mesicic_II_inf_nic.pdf

7. GENERAL RECOMMENDATIONS

Measures suggested by the Committee pending information on their implementation or requiring additional attention, in accordance with the Second Round report:¹⁰⁵

Recommendation 7.1:

Design and implement training programs for public servants who are responsible for implementing the systems, norms, measures and mechanisms considered in this report, in order to ensure that they are adequately known, managed and applied.

[218] With respect to the implementation of the foregoing recommendation, the country under review presents information in its Progress Report presented at the Fifteenth Meeting of the Committee of Experts. In this regard, the Committee notes the following as steps that lead it to conclude that said recommendation has been satisfactorily considered:¹⁰⁶

[219] *“The Office of Public Ethics provides continuous training at different events (modular workshops, seminars, talks, forums) on such topics as: social oversight; ethics and values of private business vis-à-vis society; ethics and values; internal oversight in the public administration; legal guidelines governing the actions of public servants, a module that covers the following laws: Political Constitution of Nicaragua, Civil Servants’ Probity Law, Law on Access to Information, Civil Service and Administrative Career Law, Criminal Code, Inter-American Convention against Corruption, United Nations Convention against Corruption, and Code of Ethical Conduct of Public Servants of the Executive Branch. These training events are targeted at the following groups:*

[220] • *Public servants from the executive branch and from municipal governments in Managua and the departments*

[221] • *High-school and university students*

[222] • *Organized citizens’ groups*

[223] • *Small and medium-sized business owners*

[224] *The Office of the Comptroller General of the Republic annually designs and implements its Annual Internal/External Training Plan in accordance with the Strategic Plan for Institutional Development (PEDI), Annual Operating Plan (AOP), and ISO 9001 training needs of the General Legal Directorate for all public servants.*

[225] *Similarly, for the education and training of national authorities on legal assistance matters, between December 2008 and May 2009 the Office of the Attorney General of the Republic conducted training exercises for Assistant Criminal Prosecutors from all regions of the country and for the various Assistant Criminal Prosecutors assigned to state agencies; with this, almost 70 criminal prosecutors were trained on each day. In addition, in May of this year, the Office of the Attorney General of the Republic, through its Bilateral Interinstitutional Collaboration Agreements with the National Police, appointed two prosecutors from the Anticorruption Unit to teach professionalization courses for promotions within the police. These courses, dealing with the enforcement of the various international*

105 See: pages 39-40 of this report, available at: http://www.oas.org/juridico/spanish/mesicic_II_inf_nic.pdf.

106 See: pages 12-13 of this report, available at: http://www.oas.org/juridico/english/mec_avance_nicXV.pdf.

agreements signed by Nicaragua, including the IACAC and the UNCAC, were held at the Walter Mendoza Police Academy in the city of Managua, and were given to 157 officers from the Legal Assistance and Economic Investigations Directorates.”

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

Recommendation 7.2:

Select, develop and report to the Technical Secretariat of the Committee procedures and indicators, where appropriate, that allow for verifying follow-up of the recommendations established in this report. For this purpose, the Technical Secretariat of the Committee will publish on the OAS website a list of more generalized indicators applicable within the Inter-American system that may be available for selection by the State under review.

[227] With respect to the foregoing recommendation, in its response, the country under review did not present information. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

SECOND ROUND¹⁰⁷

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

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

1.1. Government hiring systems

Recommendation 1.1.1:

Strengthen government hiring systems.

Measures suggested by the Committee:

- (a) Consider adopting the declaration of background and interests instrument for candidates for positions in the Civil Service, together with the usefulness of using the Civil Service Information System (SISEC), established in Article 32 of Law No 476 of 2003, or a similar system, to facilitate consultation by the people who handle the selection processes. (See section 1.1.2 of Chapter II of this Report).*
- (b) Establish the obligation of leaving due record of the evaluation criteria used and the basis for the decisions adopted in the final selection of those who are to be admitted to the Administrative Career at the end of the competitive selection process. (See section 1.1.2 of Chapter II of this Report).*

¹⁰⁷ The references to sections appearing in italics in the transcribed recommendations and measures refer to the report from the Second Round of Review.

- (c) *Establish a reasonable minimum period of notice for the publication of announcements prior to the commencement of the competitive process. (See section 1.1.2 of Chapter II of this Report).*
- (d) *Adopt a regulatory framework for those who work in state-owned public companies, universities, and centers of higher technical education, to regulate career entry systems based on the principles of merit, equity, and equality; implement provisions regarding the establishment of control mechanisms and governing or administrating authorities; systems for administrative or judicial challenges intended to clarify, modify or revoke substantial actions in personnel selection processes; and develop mechanisms for the timely dissemination of vacancy opportunities, making use of the mass media. (See section 1.1.2 of Chapter II of this Report).*
- (e) *Continue with the training activities on the legal framework of the Civil Service and Administrative Career Law, increasing the number of participants to cover the various agencies responsible for the system. (See section 1.1.3 of Chapter II of this Report).*
- (f) *Continue with the development and implementation of the position classification system within state agencies, in order to uphold the provisions of Article 22 et seq. of Law No. 476 of 2003. (See section 1.1.3 of Chapter II of this Report).*
- (g) *Establish, as appropriate, the agencies responsible for enforcing Law No. 476 of 2003. (See section 1.1.3 of Chapter II of this Report).*
- (h) *Adopt and implement rules and mechanisms to allow the use of judicial channels as a mechanism for resolving appeals filed by a candidate for a public position regarding the decisions reached in the corresponding selection process. (See section 1.1.2 of Chapter II of this Report).*

[229] With respect to measure (a) of the foregoing recommendation, in its response, the country under review presents information that it considers related:¹⁰⁸

[230] *“To participate in selection processes, the General Directorate of Public Functions requires that candidates state, in writing, their interest in or reasons for applying for a vacant post. They must also present CVs and the corresponding supporting documents, including employment records, health certificates, and police records.*

[231] *The SISEC has been designed to handle all information on the management and development of public servants and it consequently contains different application modules for the human resource management systems. One of these is the Job Vacancy System, a module that has been developed and the implementation of which requires the prior implementation of other modules – Structures, Classification, and Individuals – and that process began in 2009.”*

[232] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (a) of the foregoing recommendation, bearing in mind that the recommended instrument seeks to equip the country undergoing review with the information necessary to prevent access to public employment by persons who, on account of their past, could undermine confidence in the integrity of public officials, or by those who, on account of their personal interests, do

108 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 48, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

not offer the necessary guarantees that those public interests for which they would be responsible if selected would be adequately protected.

[233] In its response, the country under review presents information with respect to the implementation of measure (b) of the foregoing recommendation. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the measure, the following:¹⁰⁹

[234] *“In March 2007, by means of Circular DIGEFUP-DJSG-0479-03-07, the DIGEFUP ruled that new personnel admissions had to be supported by photocopies of documents indicating that the selection process had been carried out in accordance with the terms Law No. 476. The documents to be attached include: Minutes of the Selection Committee, Announcement, Candidate’s Appraisal Certificate.*

[235] *The DIGEFUP reviews the selection processes carried out by the agencies belonging to the Fiscal Payroll System (SNF) and issues technical rulings to support the admission of new public servants. Since 2008, the implementation of the Job Vacancy System in agencies that do not belong to the SNF is undergoing technical supervision.*

[236] *A proposed set of Vacancy Regulations has been drawn up, and this has been validated internally by the DIGEFUP and externally with human resource offices. It was also sent to the Civil Service Appeals Commission for its contributions, and is currently going through the approval process.*

[237] *For admission of public servants to the Administrative Career, once the selection process has concluded, the criteria and guidelines are set out in Law No. 476 and its Regulations; to finalize it, in accordance with Art. 98 of the Law’s Regulations, the human resource office submits the corresponding application along with the documents stipulated by Circular DIGEFUP-DJSG-0478-03-07.¹¹⁰ These actions are observed on a permanent basis and the DIGEFUP provides supervision and technical assistance for their observance by the different agencies.”*

[238] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (b) of the foregoing recommendation and of the need for it to continue to give attention thereto, since the Vacancy Regulations are still pending approval.¹¹¹

[239] In its response, the country under review presents information with respect to the implementation of measure (c) of the foregoing recommendation. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the measure, the following:¹¹²

[240] *“This issue is addressed in the proposed Vacancy Regulations, which state that announcements of vacancies are to be published at least eight days before the start of the process; it also requires them to be published on a widespread basis and through different channels.*

109 See: Republic of Nicaragua’s response to the Third Round questionnaire, pp. 48-49, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

110 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_cir_digefup_0478.pdf.

111 On August 11, 2010, the country under review offered the following remarks: *“The Vacancy Regulations are validated and agreed internally by the civil service governing body and externally by the Civil Service Appeals Commission and human resources departments. Thus far they have been submitted to the General Director of Public Functions for approval and circulation to human resources departments. Accordingly a period of time is needed for it to present considerations and queries to the superior authority of the Ministry of Finance and Public Credit”.*

112 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 49, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

[241] *At present, as part of its review and supervision of the implementation of the Vacancy System, the DIGEFUP checks that the announcement has been made and that there is an adequate margin of time between the publication date and the selection process.*”

[242] 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 as well as the need for it to continue to give attention thereto, since the Vacancy Regulations are still pending approval.

[243] With respect to measure (d) of the foregoing recommendation, in its response, the country under review presents information that it considers related:¹¹³

[244] *“As the agency responsible for overseeing the civil service regime in Nicaragua, the DIGEFUP is restricted from influencing that group of agencies since they are not covered by the Civil Service and Administrative Career Law (No. 476) and are consequently exempt.*”

[245] *Public companies are established by their own laws and their labor relations are still governed by the Labor Code. Universities and centers of higher education are governed by the University Autonomy Law.*”

[246] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (d) of the foregoing recommendation, bearing in mind that it has presented no information in addition to that already analyzed in the Second Round report.

[247] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization “Ethics and Transparency Civil Group” (EyT) notes the following:¹¹⁴

[248] *“No measures or amendments to the current Civil Service Law are planned to give it authority over the employees of public state-owned companies, universities, or centers of higher technical education. What do exist in such cases are Internal Regulations and Ethics Manuals.*”

[249] With respect to the implementation of measure (e) of the foregoing recommendation, the country under review presents information in its Progress Report presented at the Fifteenth Meeting of the Committee of Experts. In this regard, the Committee notes the following as steps that lead it to conclude that said measure has been satisfactorily considered:¹¹⁵

[250] *“1. Over the July 2008 to July 2009 period, a broad training program was carried out on the legal framework for the civil service in Nicaragua. It focused on matters related to the appeals procedure overseen by the Civil Service Appeals Commission. These training activities were aimed at senior and technical staff from human resource offices, managerial staff, legal advisors, and trade-union leaders; 22 events were held, attended by 613 participants from most of the agencies.*”

[251] *For August and September, two (2) training events dealing with Law No. 476 are planned.*

113 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 49, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

114 Report of the civil society organization “Ethics and Transparency Civic Group” (EyT), p. 29: http://www.oas.org/juridico/spanish/mesicic3_nic_inf_sc.pdf.

115 See: page 15 of this report, available at: http://www.oas.org/juridico/english/mec_avance_nicXV.pdf.

[252] 2. *These training activities are carried out on a permanent basis as one of the DIGEFUP's strategic functions.*"

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

[254] In its response, the country under review presents information with respect to the implementation of measure (f) of the foregoing recommendation. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the measure, the following:¹¹⁶

[255] *"The post classification system is a strategic activity that has been implemented progressively at various agencies under the civil service umbrella. As of December 2009, this system had been implemented in 49 agencies of the public administration, which have individual and shared post manuals."*

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

[257] In its response, the country under review presents information with respect to the implementation of measure (g) of the foregoing recommendation. In this regard, the Committee notes the following measures as steps which contribute to progress in the implementation thereof:¹¹⁷

[258] *"The General Directorate of Public Functions, the governing agency for the civil service, institutional human resource offices, and the Civil Service Appeals Commission (CASC), was established and has been operational since March 2007; the members of the National Civil Service Commission (CNCS) have been appointed but they have not yet formally taken office."*

[259] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (g) of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that the official establishment of the National Civil Service Commission (CNCS) is still pending.

[260] With respect to the implementation of measure (h) of the foregoing recommendation, the Committee notes the existence of Law 350 of 2000 ("*Law Regulating the Contentious Administrative Jurisdiction*")¹¹⁸ as indicated in the State's response to the Third Round questionnaire¹¹⁹ and which was not addressed by the country in its reply to the Second Round questionnaire. Bearing in mind that the recommendation was extended solely on account of the absence of a law regulating contentious administrative matters, the Committee believes that measure (h) of the foregoing recommendation is no longer current.

116 See: the Republic of Nicaragua's response to the Third Round questionnaire, p. 50, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

117 See: the Republic of Nicaragua's response to the Third Round questionnaire, p. 50, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

118 Available at:

119 See: the Republic of Nicaragua's response to the Third Round questionnaire, p. 66, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

Recommendation 1.1.2:

Strengthen the systems for hiring public officials at municipal administrative entities.

Measures suggested by the Committee:

- (a) *Regulate Article 139 of Law No. 502 of 2004 to establish that the only possibility whereby the public servant may enter the municipal civil service is to apply for a position for which they meet the necessary requirements through participation in the vacancy application. (See section 1.1.2 of Chapter II of this Report.)*
- (b) *Enact Regulations for Law No. 502 of 2004, in order to ensure its effective enforcement. (See section 1.1.2 of Chapter II of this Report.)*
- (c) *Establish, as appropriate, the agencies responsible for enforcing Law No. 502 of 2004. (See section 1.1.3 of Chapter II of this Report.)*

[261] In its response, the country under review presents information with respect to the implementation of measure (a) of the foregoing recommendation.¹²⁰

[262] *“Law No. 502 has its Regulations, and both these instruments rule that admission to the Municipal Administrative Career shall be by means of public merit-based competition. (Arts. 45 et seq. of the Law and Arts. 4 et seq. of the Regulations).”*

[263] 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, bearing in mind that it has not yet regulated Article 139 of Law No. 502, which empowers (but does not oblige) municipalities to dismiss, transfer, or cancel the appointments or contracts of municipal officials and employees who do not meet the academic requirements set for their positions.

[264] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization “Ethics and Transparency Civil Group” (EyT) notes the following:¹²¹

[265] *“Law 502, the Municipal Administrative Career Law, has already been regulated; however, it is not effectively enforced when changes take place in the local authorities. One of the main requirements for admission to the Municipal Administrative Career is having served at least one year within the municipal government.”*

[266] With respect to the implementation of measure (b) of the foregoing recommendation, the Committee notes Decree 51-2005 (the Regulations to Law No. 502 of 2004)¹²² which was presented by the country under review after the deadline for responding to the Second Round questionnaire. Bearing this in mind, the Committee takes note of the satisfactory consideration by the country under review of measure (b) of the foregoing recommendation, without offering a detailed analysis of the contents of the aforesaid provisions.

120 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 51, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

121 Report of the civil society organization “Ethics and Transparency Civic Group” (EyT), p. 30: http://www.oas.org/juridico/spanish/mesicic3_nic_inf_sc.pdf.

122 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_decreto51.pdf.

[267] In its response, the country under review presents information with respect to the implementation of measure (c) of the foregoing recommendation. In this regard, the Committee notes the following measures as steps which contribute to progress in the implementation thereof:¹²³

[268] *“Regarding this measure, the State of Nicaragua reports that during 2008, the National Municipal Administrative Career Commission set up and swore in the following Commissions:*

[269] *Departmental Commissions:*

[270] *Managua, April 15, 2008*

[271] *Chinandega, April 24, 2008*

[272] *Rivas, May 6, 2008*

[273] *Nueva Segovia, May 20, 2008*

[274] *Madriz, May 21, 2008*

[275] *Matagalpa, May 22, 2008*

[276] *Carazo, May 23, 2008*

[277] *Estelí, June 24, 2008*

[278] *Jinotega, July 14, 2008*

[279] *Grenada, July 17, 2008*

[280] *León, August 4, 2008*

[281] *The Municipal Commissions in each department were the following:*

[282] *Department of Managua: all 9 – Managua, Ciudad Sandino, Mateare, Tipitapa, San Francisco Libre, Ticuantepe, El Crucero, Villa el Carmen, and San Rafael del Sur.*

[283] *Department of Chinandega: 9 out of 13 – Chinandega, El Realejo, Corinto, Posoltega, Chichigalpa, El Viejo, Puerto Morazán, Santo Tomás del Norte, San Pedro del Norte.*

[284] *Department of Carazo: 5 out of 8 – Jinotepe, Dolores, Diriamba, El Rosario, and San Marcos.*

[285] *Department of Rivas: 9 out of 10 – Rivas, Tola, San Juan del Sur, Belén, Cárdenas, Moyogalpa, Potosí, Buenos Aires, and Altagracia.*

[286] *Department of Nueva Segovia: 5 out of 12 – Jalapa, Dipilto, El Jicaro, Macuelizo, Ocotal.*

[287] *Department of Matagalpa: 4 out of 13 – El Tuma - La Dalia, Matagalpa, Esquipulas, and San Isidro.*

123 See: Republic of Nicaragua’s response to the Third Round questionnaire, pp. 51-52, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

[288] *Department of Madriz: 7 out of 9 – Somoto, San Lucas, Las Sabanas, Palacaguina, San José de Cusmapa, Telpaneca, Yalagüina*

[289] *Department of Jinotega: 3 out of 8 – La Concordia, Jinotega, and El Cua.*

[290] *Department of Grenada: 1 out of 4 – Municipality of Grenada.*

[291] *Department of Estelí: 3 out of 6 – La Trinidad, Limay, and Pueblo Nuevo.*

[292] *Total: 55 municipalities.*

[293] *The top priority of the National Municipal Administrative Career Commission for the year 2010 is to enforce the terms of Law No. 502 and its Regulations; it therefore aims to set up all the municipal, regional, and departmental Municipal Administrative Career Commissions in order to ensure the effective enforcement and application of Law No. 502 and its Regulations to guarantee the municipalities' socioeconomic development. To achieve this, the local governments must have honest, modern, efficient, and effective administrations, and so the commitment of the National Municipal Administrative Career Commission and of the Departmental, Regional, and Municipal Commissions is to provide the local governments with a Human Resource Administration System for the execution of their municipal public policies to the benefit of the population."*

[294] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (c) of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that the establishment of some municipal, regional, and departmental Municipal Administrative Career Commissions is still pending.

[295] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization "Ethics and Transparency Civil Group" (EyT) notes the following:¹²⁴

[296] *"The National Municipal Administrative Career Commission was created, with its president Mr. Edward Centeno, Executive President of the Nicaraguan Municipal Development Institute (INIFOM), and its secretary Mr. Roger Cajina, leader of the National Union of Employees. This agency is charged with implementing Law 502. According to the law, the members of this Commission are the Executive President of INIFOM, two representatives of municipal authorities elected at meetings of the most representative municipalities' associations, and two representatives of municipal officers and employees elected by the country's most representative trade-union confederations.³⁶ The remaining commissions indicated by the law have not yet been established or their creation has not been announced on the INIFOM web site."*

Recommendation 1.1.3:

Strengthen the systems for hiring public officials within the judicial branch.

Measures suggested by the Committee:

- (a) *Amend Article 84 of Law No. 501 of 2005 to exclude the possibility of entry to the Judicial Career by any means other than the merit system. (See section 1.1.2 of Chapter II of this*

¹²⁴ Report of the civil society organization "Ethics and Transparency Civic Group" (EyT), p. 30:
http://www.oas.org/juridico/spanish/mesicic3_nic_inf_sc.pdf

Report.)

- (b) The adoption, by the National Judicial Career Council, of a Requirements Manual covering those positions that make up the Judicial Career and the scores corresponding to each item, so that the appraisal of requirements need not be determined every time a vacancy is to be covered and in each individual selection process, but is instead established ahead of time in a general and publicly available document. (See section 1.1.2 of Chapter II of this Report.)*
- (c) Consider including the internet as a channel for publishing vacancy competition announcements. (See section 1.1.2 of Chapter II of this Report.)*
- (d) Enact regulations for the enforcement of Law No. 501 of 2005. (See section 1.1.3 of Chapter II of this Report.)*

[297] With respect to measure (a) of the foregoing recommendation, in its response, the country under review presents information that it considers related:¹²⁵

[298] *“Art. 84 of Law No. 501 of 2005 deals exclusively with the requirements for Judicial Secretaries of Categories C and D (C: Judicial Reception Secretary, Judicial Notifications Officer, and District Court Secretary; and D: Local Court Secretary) in accordance with Art. 10 of that law. It also specifies that those officials in such positions upon enactment of the law and who did not meet the requirement in paragraph 4 (being an attorney) could remain in their position and office. This indicates that they are not exempt from complying with the other formal requirements for admission to the Judicial Career set out in Art. 10 (Nicaraguan national; in full enjoyment of political and civic rights; of the age set for each case; not military or police on active service or resigned within 12 months prior to appointment; not a minister of religion; subject to none of the disqualifications set by law).*

[299] *The final section of Art. 84 of Law 501 also states that this will be without prejudice to the corresponding evaluations, with the aforesaid requirement remaining in place for new admissions or promotions.*

[300] *The evaluations referred to in Art. 84 are covered by Arts. 46 and 47 of Law 501 and are regulated in Chapter III, Performance Evaluation Commissions, of the Judicial Career Regulations, enacted by means of Supreme Court of Justice Agreement No. 51 under the powers extended by Art. 164 of the Constitution and in Law 260 (LOPJ).*

[301] *In order to comply with those regulations, the Nicaraguan judiciary has begun the process of implementing Human Resource Management Systems to enforce annual performance evaluations of officers of the Judicial Career.”*

[302] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (a) of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind it has not presented information in addition to that already analyzed in the Second Round report.

[303] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization “Ethics and Transparency Civil Group” (EyT) notes the following:¹²⁶

¹²⁵ See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 53, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

[304] *“There has been no progress on this point; Law 501, the Judicial Career Law, has undergone no partial amendment or total reform. Thus, Art. 84 allows for the possibility of judicial secretaries remaining in their posts even if they do not meet the requirement of being attorneys, without prejudice to the corresponding evaluations, with the aforesaid requirement remaining in place for new admissions or promotions (...).”*

[305] With respect to measure (b) of the foregoing recommendation, in its response, the country under review presents information that it considers related:¹²⁷

[306] *“In connection with this recommendation, in January 2009, through the Program for Judicial Strengthening and Access to Justice – specifically, one of its projects called Human Resources and Communication, the Judicial and Civil Service Career Law component of which is intended for its establishment and for the introduction of Human Resource Management Systems – the judiciary began the process of devising the “Integrated System for the Single Registry of Judicial Officers” (SIRUFJ), which will help regulate labor relations between the prosecutorial staff and administrative offices of this branch of government.*

[307] *The National Judicial Administration and Career Council drew up and published Agreement No. 12, which mandates the obligatory implementation of the Single Registry of Judicial Officers in human resource offices, the Judicial Inspectorate, and the Judicial School as of April 2009.*

[308] *Work is underway on the implementation of the SIRUFJ with the Directorate of Human Resources, the Judicial Inspectorate, the Secretariat, and the Judicial School. To do this, system refresher and retraining exercises were carried out in all the areas under study, beginning with the Judicial School.*

[309] *A consultancy project is also being pursued for the “Design, Development, and Implementation of a Computerized Organization and Functions System for the Management of Judicial Human Resources,” which will help consolidate the effective management of the prosecutorial staff under the principles set out in the Judicial Career Law: merit, responsibility, equality, disclosure, stability, impartiality, independence, specialization, equity, legality, and capability.*

[310] *This computerized system will record admissions, records, assignments, post classifications, training, transfers, promotions, retirements, leaves of absence, pay and benefits, administrative and disciplinary situations, special services, and performance evaluations of staff members, in accordance with Law 501 and its Regulations.*

[311] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (b) of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that no progress has been reported with the production of a manual of requirements for the positions that make up the Judicial Career and corresponding score attached to each item.

126 Report of the civil society organization “Ethics and Transparency Civic Group” (EyT), p. 30:

http://www.oas.org/juridico/spanish/mesicic3_nic_inf_sc.pdf.

127 See: Republic of Nicaragua’s response to the Third Round questionnaire, pp. 53-54, available at:

http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

[312] In its response, the country under review presents information with respect to the implementation of measure (c) of the foregoing recommendation. In this regard, the Committee notes the following measures as steps which contribute to progress in the implementation thereof:¹²⁸

[313] *“This recommendation has already been implemented by the judicial branch in the competition for merit-based selection for family judges in accordance with the Judicial Career Law.*

[314] *To do this, an ad hoc Secretariat was established and the procedure was carried out.*

[315] *The Admission and Merits Appraisal Commission was set up for 190 candidates for family judge positions in accordance with the competition rules.*

[316] *In the second phase of the competition, the written competitive examination was held in Managua, and the third and final phase of the process involved the theoretical/practical course. The final results were published in June 2008, with the selection of four candidates to serve as: First Family Judge, Managua District; Second Family Judge, Managua District; Family Judge, Matagalpa District; and Family Judge, Chinandega District.*

[317] *The entire process, with the announcement of the competition and its phases, was published on the judicial branch’s web page.*

[318] *During this period, all the previously established phases and procedures were carried out for the competitive admission process for the selection of psychologists and social workers to be attached to the Family Courts’ multidisciplinary team, and these were also published on the judicial branch’s web page.”*

[319] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (c) of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that its aim was to include the internet as one of the ways for publishing the announcements referred to in Article 14 of Law No. 501.

[320] In its reply, the country under review submits information on the implementation of measure (d) of the foregoing recommendation. In this regard, the Committee notes the following as a step that leads it to conclude that the said measure has been satisfactorily considered:¹²⁹

[321] *“On June 12, 2008, the Judicial Career Rules were approved, which were issued by Supreme Court of Justice Agreement No. 51 pursuant to the powers granted by Art. 164 of the Constitution and Law 260 (LOPJ).*

[322] *These rules will govern the implementation of the Judicial Career Law and were issued by the Plenary of the Supreme Court of Justice in accordance with the provisions of Arts. 9, 18, 19, 32, 46, 52, 69, 80, 81, and 82 of the Judicial Career Law, and Art. 88 of the Organic Law of the Judicial Branch.”*

[323] The Committee takes note of the satisfactory consideration by the country under review of measure (d) of the foregoing recommendation, without entering into an analysis of the substance of the provision of the Law referred to by the country under review.

128 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 54, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

129 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 54, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

Recommendation 1.1.4:

Strengthen the systems for hiring public officials within the Public Prosecution Service.

Measure suggested by the Committee:

Adopt a regulatory framework for application within the Public Prosecution Service, to regulate the systems for career entry based on the principles of merit, equity, and equality; to implement provisions regarding the establishment of control mechanisms and governing or administrating authorities; systems for administrative or judicial challenges intended to clarify, modify or revoke substantial actions in personnel selection processes; and to develop mechanisms for the timely dissemination of vacancy opportunities, making use of the mass media. (See sections 1.1.2 and 1.1.3 of Chapter II of this Report.)

[324] In its response, the country under review presents information with respect to the implementation of the sole measure of the foregoing recommendation. In this regard, the Committee notes the following measures as steps which contribute to progress in the implementation thereof.¹³⁰

[325] *“The enactment of Law No. 586, the Public Prosecution Service Career Law, passed on June 20, 2006, and published in La Gaceta No. 192 on October 4, 2006, regulated and strengthened the Public Prosecution Service Career regime created by Article 9 of the Organic Law of the Public Prosecution Service, thus guaranteeing its organizational, functional, and administrative autonomy, ensuring the efficiency and suitability of its officers, and standardizing requirements and procedures for admissions, continued service, training, promotions, transfers, and retirements. According to the terms of its Article 2, this legislation applies to all career officers, defined as those employed on a permanent basis and admitted to the Public Prosecution Service after meeting the requirements set for a position in its lead or support agencies and after completing the competitive process and probationary period, as provided for in the law in question.*

[326] *“Law No. 586, the Public Prosecution Service Career Law, is governed by the following principles:*

[327] *1. Equality: All citizens shall have equal rights to aspire to the Public Prosecution Service Career regime, provided that they meet the requirements set in the Organic Prosecution Service Law and its Regulations, this Law, the Manual of Posts, Functions, and Requirements, and the guidelines issued for the purpose by the Prosecutor General of the Republic. Once in the career regime, the corresponding rights, procedures, and sanctions shall be applied in strict compliance with the principle of equality and in accordance with the institutional principles set out in the agency’s Organic Law.*

[328] *2. Merit: Admission, continued service, and promotions within the Public Prosecution Service Career shall depend on the results of the admission tests and the position performance evaluations indicated in this Law (...).*

[329] *(...) Admission and selection.*

[330] *Admission to the prosecutorial service, according to Art. 12 of Law No. 586, will be by means of a public competitive process, while admission to the administrative area will depend on the*

130 See: Republic of Nicaragua’s response to the Third Round questionnaire, pp. 55-60, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

examination of candidates' résumés, sent for the purpose by the Administrative/Financial Director General. Final decisions on appointments to the prosecutorial or administrative areas shall be the responsibility of the Prosecutor General of the Republic. In both cases, candidates must meet the requirements set out in the Organic Prosecution Service Law and its Regulations, in Law No. 586, in the Manual of Posts, Functions, and Requirements, and in the rules issued for the purpose by the Prosecutor General of the Republic for the position in question.

[331] *Governing Agencies of the Public Prosecution Service Career System*

[332] *The Public Prosecution Service Career system is overseen by its governing agencies: the Prosecutor General of the Republic and the Public Prosecution Service Career Committee. The Prosecutor General of the Republic is the top authority for management, administration, execution, and decision-making within the Public Prosecution Service Career, and the Committee is responsible for executing the programs for admissions, selection, promotion, and career development approved by the Prosecutor General of the Republic, be it by means of agreements, resolutions, or guidelines.*

[333] *Career Committee*

[334] *The Committee comprises the Assistant Prosecutor General, who coordinates it, the Inspector General, the Executive Secretary, a senior prosecutor appointed by the Prosecutor General, and the Administrative/Financial Director General. In the event of the temporary or permanent absence of the Assistant Prosecutor General, the Career Committee is to be coordinated by either the Inspector General or the Executive Secretary, according to the orders given by the Prosecutor General of the Republic.*

[335] *Among the powers that Law No. 586 gives to the Career Committee, Article 15.3 indicates: Organize, carry out, and supervise the competitions and tests for the selection, admission, promotion, and continued service of personnel as adopted by the Prosecutor General of the Republic (...).*

[336] *(...) Announcements*

[337] *When service needs in the prosecutorial area so require, the Prosecutor General of the Republic will issue a public announcement for the admission of prosecutors, either opening all the vacant positions to public competition or to increase the list of eligible individuals in its database. According to Art. 18, the announcement must be published in the national press for three consecutive days.*

[338] *Result*

[339] *According to Art. 19 of Law No.586, the competition results in each phase be published in the national press by the official communications office of the Public Prosecution Service. Candidates not in agreement with the results of the competitive process may appeal to the Prosecutor General, following the appeal remedy set out in this Law.*

[340] *Appeal remedy, according to rule FGR-LCMP No. 01-2008, issued by the Prosecutor General of the Republic of Nicaragua on March 13, 2008, to be filed with the Prosecutor General within three [sic] of the publication of the result in the phase challenged by the appellant, with the resolution to be given within a period of no more than five days."*

[341] The Committee takes note of the steps taken by the country under review to advance in its implementation of the sole measure of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that Law No. 586 does not offer a challenge mechanism for clarifying, amending, or annulling substantive decisions in personnel selection processes. Although the second paragraph of Article 19 provides that “Candidates not in agreement with the results of the competitive process may appeal to the Prosecutor General, following the appeal remedy set out in this Law,” the appeal remedy provided for in Article 60 of Law No. 586 appears to be geared toward appeals against disciplinary proceedings brought against prosecutors or other members of the Public Prosecution Service Career. In addition, the mechanisms for publishing vacancies in the Public Prosecution Service Career with sufficient notice ahead of the selection process are inadequately developed and neither do they specify the criteria to be used by the Prosecutor General of the Republic in selecting candidates other than those recommended for a vacancy by the Public Prosecution Service Career Committee, in exercise of the power granted by Article 23 of Law No. 586.

[342] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization “Ethics and Transparency Civil Group” (EyT) notes the following:¹³¹

[343] “Progress was made with the passage, in June 2006, of Law 586, the Public Prosecution Service Career Law, which is governed by the principles (Art. 3) of equality, merit, capability, stability, efficiency, specialization, and responsibility. In turn, rule FGR-LCMP No. 001-2008 adds the principles of suitability, integrity, transparency, professionalism, service vocation, and disposition. This law, without requiring regulation (according to Art. 77), came into force following its publication in October of that year and its enforcement is acceptable in terms of disclosure of selection processes and compliance with them.

[344] This is in spite of the fact that as regards the mechanisms for publicizing vacancies, the Law does not require the agency to issue a public invitation for the admission of prosecutors through a competitive process, but instead leaves it to the discretion of the governing body to do so “when service needs in the prosecutorial area so require...,” per Art. 18, Chapter I, Title II.

[345] The rules do not establish specific provisions on the contents and timing of announcements; they simply stipulate that they are to be published on three consecutive days. The submission period for documents (résumés) is not regulated, nor is the deadline for them to be received (...).”

1.2. Systems for the government procurement of goods and services

Recommendation 1.2.1:

Strengthen procedures for contracting through public bidding and through public competitions for offers.

Measures suggested by the Committee:

- (a) *Elaborate on the circumstances covered by Article 3, paragraphs (j) and (k), of Law No. 323 of 2000 (as amended), establishing the grounds and limitations according to which the exclusions contained therein are to be handled. (See sections 1.2.2 and 1.2.3 of Chapter II of this Report.)*

¹³¹ Report of the civil society organization “Ethics and Transparency Civic Group” (EyT), p. 31:
http://www.oas.org/juridico/spanish/mesicic3_nic_inf_sc.pdf

- (b) *Amend the final paragraph of Article 42 of Law No. 323 of 2000 (as amended) to require, when a request for bids is declared unanswered or fruitless, the commencement of a new bidding process if it is decided to proceed with the contract, with any necessary modifications to the basic document and conditions. (See section 1.2.2 of Chapter II of this Report.)*
- (c) *Take the steps necessary to ensure that the law to be enacted on municipal contracting contains provisions dealing with disclosure, equity, and efficiency; contracting systems both with and without public bidding processes; bodies to govern or administer oversight systems and mechanisms; registration of contractors; electronic media and information systems for public procurement; contracts for public works; identification of criteria for selecting contractors; and procedures for filing challenges; and enable an electronic hiring system to be developed. (See section 1.2.2 of Chapter II of this Report.)*

[346] In its response, the country under review presents information with respect to the implementation of measure (a) of the foregoing recommendation.¹³²

[347] *“In previous reports, we have spoken of the work carried out on the preliminary draft of the Public Sector Administrative Contracting Law, which is currently with the National Assembly and specifically deals with topics relating to emergencies, urgency, public interest, and security. This preliminary draft legislation identifies those situations, establishes definitions to limit the actions of contracting agencies to the constraints of the Law, and provides for the selection of bidders through a simplified, competitive procedure called Direct Procurement.*

[348] *Although this legislation is still at the draft stage, the General Procurement Directorate (DGCE) of the Ministry of the Treasury and Public Credit, acting as the agency responsible for oversight and governance of the purchasing system for public sector entities, municipalities, and the municipal sector, in order to maintain balance in the use of the exceptions provided, has drawn up rules for all the situations provided for in Art. 3 of Law No. 323, the State Contracting Law. With specific reference to cases of emergencies, based on Law No. 337, the Law Creating the National System for Disaster Prevention, Mitigation, and Attention (SINAPRED) and its Regulations, and the Technical Standards for Internal Control issued by the Office of the Comptroller General of the Republic, the “Procedural Guide for Purchasing and Contracting during Emergencies or Public Disasters” and the “Guide for Contracting absent Procedures for Reasons of Urgency, Security, or Other Public Interest” were published. These documents precisely deal with how such exceptions are to be applied, and they define what situations are to be considered urgent, matters of security, or other forms of public interest. In addition, the Office of the Comptroller General of the Republic (CGR) and the regulatory unit (DGCE), as the agencies responsible for oversight, have published administrative provisions by means of administrative circulars, emphasizing the planning, programming, and publication of procurement operations, and in their permanent training efforts they follow the guidelines of properly organizing procurement and avoiding, to the extent possible, the use of the exceptions provided in paragraph (k), unless warranted by the circumstances and justifiable in terms of the law. The administrative provisions that emphasize the preparation of Annual Purchasing Plans are enclosed.*

[349] *Significant progress with this topic was made with the implementation of the exclusions module in the State Administrative Contracting System (SISCAE), through which all public sector agencies and entities are to publish on the web site www.nicaraguacompra.gob.ni their procurement operations made*

132 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 37, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

under the exclusion of procedures, thereby increasing transparency and reducing discretion in those contracts.”

[350] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (a) of the foregoing recommendation, bearing in mind that it has not yet developed the situations provided for in paragraphs (j) and (k) of Article 3 of Law No. 323 of 2000 by establishing the grounds and limits with which the exclusions it provides for are to be handled.

[351] In its response, the country under review presents information with respect to the implementation of measure (b) of the foregoing recommendation. In this regard, the Committee notes, as a step toward its implementation, the following measure:¹³³

[352] *“The preliminary draft of the Public Sector Administrative Contracting Law, Article 50 of which deals with cases when invitations are ruled unanswered, requiring that a new process be organized and that the bidding terms and documents be reviewed. The organization of a new bidding process is left optional, since, given the nature of a public agency’s business, execution might be undelayable or urgent, a situation that could arise in any administration. Consequently, it allows for a new contracting process to be organized, either by seeking bids or through the direct contracting method, which, in the preliminary draft, is offered as another form of conducting procurement. The preliminary draft of the Public Sector Administrative Contracting Law can be found in the annexes.*

[353] *This draft bill underwent public consultation during 2006 and 2007; in 2008 the draft bill was presented to the Production, Economy, and Budget Commission, when it was presented by the office of the President of the Republic, and then, in 2009, the aforesaid consultation was organized by the National Assembly, through the same Commission. The Consultative Forum, at which the Regulatory Unit participated, was also attended by public sector entities, international agencies, sectoral associations, suppliers, the private sector, and small and medium-sized enterprises (SMEs). New contributions for the document were received and a grid of the comments and contributions was sent to the National Assembly for its consideration. The forum was held in late September 2009 and was supported with funding from the Inter-American Development Bank.”*

[354] The Committee takes note of the steps taken by the country under review to advance in the implementation of measure (b) of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that the preliminary draft legislation in question has not yet been passed into law.

[355] In its response, the country under review presents information with respect to the implementation of measure (c) of the foregoing recommendation. In this regard, the Committee notes the following as steps that lead it to conclude that said measure has been satisfactorily considered:¹³⁴

[356] *“Law No.622, the Municipal Contracting Law, was published in the Official Journal La Gaceta on June 25, 2007, and its Regulations were published there on January 10, 2008. The Law contains provisions for the enforcement of the General Contracting Principles (Arts. 5 to 8 of the Law); it establishes two bidding mechanisms (public bidding and registration bidding), together with a third*

133 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 61, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

134 See: Republic of Nicaragua’s response to the Third Round questionnaire, pp. 61-63, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

mechanism in the form of quotation procurement (divided into minor, for less than 300,000 cordobas, and major, for between 300,000 and 900,000 cordobas).

[357] *In quotation procurement for major amounts, the request for tenders is issued publicly and a Bid Committee is set up. This covers contracts for public works, services, leasing, consultancies, each with their corresponding section, and it is positive from the point of view of transparency and enhanced competition. A recently approved ministerial agreement amends these contract amounts in municipalities; this is the result of the provisions of Law No. 622 whereby the devaluation of the cordoba against the U.S. dollar can be taken into consideration.*

[358] *Oversight of the Municipal Purchasing System is given to the Directorate of Municipal Contracting, which is a dependent agency of the General Procurement Directorate/Ministry of the Treasury and Public Credit. Coverage of municipalities has been successful over the past three years: attention and coverage have been given to the 153 municipalities and entities of the municipal sector which, as indicated by Law No.622, comprise municipal associations, communities, companies, and consortiums. Part of our work – in addition to advisory services, assistance, and training – has also been to provide guides, regulatory instruments, and management tools: we have distributed two CDs containing a compendium of municipal regulations (1st and 2nd editions) and have encouraged the implementation of those provisions within municipalities (for example: model terms and conditions for competitive bidding processes, contract management, organizational manual and operational standards for quotation procurement, technical specifications, bid evaluation, etc.), in order to increase the efficiency, effectiveness, and legality of purchasing operations and to implement, through regulations, internal municipal control. CDs containing those compendiums are enclosed in the annexes.*

[359] *Law No. 622 contains no provision requiring the use of the web site; however, through administrative rules and standards, and through Law No. 550, the Financial Administration and Budgetary Regime Law, which is publicly applicable legislation, the oversight agency (DGCE) is encouraging municipalities to use the State Administrative Contracting System (SISCAE) or the web site www.nicaraguacompra.gob.ni.*

[360] *Currently 38 municipalities publish their procurement processes on the web site and 135 municipalities annually publish their General Purchasing Plans; in addition, they are receiving training on how to use the web site. Nevertheless, connectivity and equipment problems exist, so that many municipalities visit Cyber Cafés in order to access the site. Given this circumstance, in 2007 and 2008 the DGCE supplied, at least, 148 computers with accessories, printers, furniture, and fax machines to 99 municipalities and 10 public sector agencies; in 2009, five municipalities were given printers, using external funding through the Efficiency and Transparency in Procurement Program (PREFTEC)/IDB. The agencies are most receptive, have assumed great ownership, and have shown keen interest in complying with the provisions.*

[361] *Regarding the availability of remedies for challenges, the Law contains provisions governing the right to file challenges (Arts. 103 to 107) as part of the framework of transparency and due process. Participants in municipal bidding processes can challenge the public procurement processes in which they compete and can appeal to the Oversight Agency, by means of remedies for annulment, when no satisfaction is obtained; obviously, they can take their claims as far as amparo relief proceedings before the corresponding courts of law. (...)."*

[362] The Committee takes note of the satisfactory consideration by the country under review of measure (c) of the foregoing recommendation, without entering into an analysis of the substance of the provision of the Law referred to by the country under review.

Recommendation 1.2.2:

Continue strengthening the governing bodies of the public sector procurement system, particularly the General Procurement Directorate and the purchasing units, as regards the roles they play in managing and overseeing the system, providing them with the resources necessary for due compliance with their duties, and establishing mechanisms to allow institutional coordination of their actions and their continuous evaluation and follow-up. (See section 1.2.3 of Chapter II of this Report.)

[363] In its response, the country under review presents information with respect to the implementation of the foregoing recommendation. In this regard, the Committee notes the following as steps that lead it to conclude that said recommendation has been satisfactorily considered:¹³⁵

[364] *“In 2008, as part of the efforts of the Government of Reconciliation and National Unity, through the Ministry of the Treasury and Public Credit, the General Procurement Directorate increased its technical personnel by 100%, from 31 line officers to 70. This has enabled it to give a better and more complete service, since it now covers all the public sector entities, the 153 municipalities, and 20 entities of the municipal sector; a more personalized form of attention is given; advice is provided on special procurement laws; specific technical assistance is given on topics including the enforcement of rules, the preparation of bid documents and technical specifications, evaluating bids, disclosure, and the use of the SISCAE; in addition, workshops are organized on tools for management and disclosure, and on regulatory matters.*

[365] *The monitoring area conducts continuous follow-up of the selected purchasing units through the following indicators: (a) SISCAE: encouraging, through monitoring, the purchasing units’ use and ownership of technological tools, so they can comply with the publication of key stages: in other words, they receive advice on what processes they should update in order to make their publications correctly and on a timely basis; (b) Process supervision: carried out using the Administrative Case File Administration Guide, which checks that processes are organized correctly; substantial progress has been made with this indicator – the units have overcome the weaknesses identified in 2008, with the 2009 case files better prepared and supported; (c) Baseline indicators: these allow us to assess levels of organization, procurement management, and behavior in the State Administrative Contracting Information System (SISCAE); these evaluations have enabled us to conduct on-site checks to verify that the purchasing units have: (1) resolution for its creation authorized by the highest authority, (2) hierarchical level within the institutional organizational chart in which 98% of the agencies evaluated (20 entities selected as a sample) are dependent on the highest authority, (3) updated organization and functions manual, (4) area staff trained in contracting, (5) connectivity for accessing www.nicaraguacompra.gob.ni (6) employees trained in its use, (7) timely and correct publication of key stages, (8) use of regulatory instruments and tools issued by the regulatory agency.*

[366] *(...) As part of the strengthening of the General Procurement Directorate, a Purchasing and Contracting Training Center was established in 2008, with the capacity in both equipment and personnel for dealing with procurement topics; this is used for training events and, between 2007 and 2009, more than 11,332 people received training, including public and municipal officials, suppliers,*

135 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 63, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

and SMEs. Two diploma courses on Purchasing and Contracting have taken place, with an average of 800 graduates, comprising both officials and suppliers; this has served to enhance the competencies of Purchasing Unit personnel within the National Purchasing and Contracting System.”

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

Recommendation 1.2.3:

Extend the use of electronic media for publicizing public contracts.

Measures suggested by the Committee:

- (a) Strengthen and increase the scope of use of electronic communications, such as the internet for publicizing the main developments in contract processes of a certain magnitude or importance, in the phases of preparations, contractor selection, contract award, and execution of the contract. (See sections 1.2.2 and 1.2.3 of Chapter II of this Report.)*
- (b) Consider the possibility of using electronic media for conducting the State’s contractual activities, allowing procurement processes for goods and services to be conducted through those channels. (See section 1.2.2 of Chapter II of this Report.)*

[368] In its response, the country under review presents information with respect to the implementation of measure (a) of the foregoing recommendation. In this regard, the Committee notes the following as steps that lead it to conclude that said measure has been satisfactorily considered.¹³⁶

[369] *“There has been a notable increase in the use of the State Administrative Contracting System (SISCAE) and of the web site www.nicaraguacompra.gob.ni. While 63 entities were using the web site in the year 2007, the page is currently used by 75 public entities and 38 municipalities to publish the main stages of their procurement processes – Annual Purchasing Plan or General Purchasing Plan, announcements, bidding terms and conditions, changes, amendments, or clarifications of the process, awards, and purchase orders – and all this information on the processes is actually available. The web site has other modules for outreach, including: exclusions, the disqualifications regime, legal and regulatory framework, the on-line register of suppliers, the catalogue of goods and services, publication of AGAs and expressions of interest (...).*

[370] *Other functions are also being developed, such as prequalifications, dynamic statistics (showing all users real-time information on different types of statistics), and linking the SISCAE to the SIGFA (Integrated Financial Information System) through structured data on the purchase order, allowing improved oversight and speed and eliminating duplications. Note that the SISCAE electronic platform is currently under development and is evolving, and that it requires funding for its continued development and implementation.”*

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

¹³⁶ See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 64, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

[372] In its response, the country under review presents information with respect to the implementation of measure (b) of the foregoing recommendation. In this regard, the Committee notes the following measures as steps which contribute to progress in the implementation thereof:¹³⁷

[373] *“As part of its endeavors to make progress with procurement and the modernization of the National Purchasing System, Nicaragua is making efforts to develop more dynamic procurement procedures through the use of electronic media. In October 2006, amendments were made to the Regulations to Law No.323, Decree No. 67-2006, allowing the SISCAE to be established, under the aegis of DGCE/MHCP, as a technological platform for procurement that follows current trends toward electronic purchasing and e-government, and that will allow greater levels of transparency, accountability, participation, and efficiency to be attained in how procurement is managed. This mechanism has also been incorporated into the preliminary draft of the Public Sector Administrative Contracting Law (Arts. 65 to 67 of the preliminary draft), which will help modernize the procurement system. (...)*

[374] *Note that the Ministry of the Treasury and Public Credit is working to modernize the State Financial Administration System through a project, to be financed with external funds, that involves the development of various phases in the SISCAE, such as electronic auctions and allowing procurement through electronic channels.”*

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

Recommendation 1.2.4:

Strengthen procedures for lodging challenges.

Measure suggested by the Committee:

Adopt and implement rules and mechanisms to allow the use of judicial channels as a mechanism for resolving challenges filed by bidders regarding the decisions reached in bidding and contract award processes. (See section 1.2.2 of Chapter II of this Report.)

[376] With respect to the implementation of the foregoing recommendation, the Committee notes the existence of Law 350 of 2000 (“*Law Regulating the Contentious-Administrative Jurisdiction*”)¹³⁸ as indicated in the country’s response to the Third Round questionnaire¹³⁹ and which was not addressed by the country in its response to the Second Round questionnaire. Since that recommendation was formulated solely because there was no law regulating matters of contentious-administrative jurisdiction, the Committee believes that the recommendation is no longer current.

137 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 65, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

138 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_ley350.pdf

139 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 66, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

Recommendation 1.2.5:

Expand the public works contracting regime set out in Law No. 323 of 2000 (as amended) and its Regulations.

Measures suggested by the Committee:

- (a) Consider the implementation of oversight systems for each individual public works contract which, in consideration of the size of each project, will provide for interventions or direct supervision of contract execution by the contract executor or its appointee; allow civic oversight or citizen control; demand regular reporting on contract progress. (See section 1.2.2 of Chapter II of this Report).*
- (b) Take the necessary steps regarding unforeseen circumstances that would justify amending public works contracts, including those cases in which the State or the contractor might be due indemnification payments. (See section 1.2.2 of Chapter II of this Report).*

[377] In its response, the country under review presents information with respect to the implementation of measure (a) of the foregoing recommendation. In this regard, the Committee notes the following measures as steps which contribute to progress in the implementation thereof:¹⁴⁰

[378] *“This is a topic of great interest for the Purchasing Regulatory Unit in Nicaragua, and it has come to the forefront since 2008. Law No. 323, in Arts. 9 and 101, and Art. 135 of its General Regulations, sets out the obligation of supervising the execution of administrative contracting; to supplement this, the DGCE provided the municipal and public entities with a Contract Administration Guide/Manual, which contains technical and operational procedures to enable the contracting entity to direct and oversee contract execution.*

[379] *At the municipal level, in addition to this mechanism, Committees for the Municipal Development and Open Councils have been established, which provide for citizen oversight and accountability. The Regulatory Compendiums published by the Regulatory Unit can be found in the annexes.*

[380] *Recently, in 2010, through the Office of the President of the Republic, the Directorate of Public Investments established a Bidding Follow-up Commission, on which the Regulatory Unit is represented. Its purpose is to encourage entities in complying with their annual purchasing plans, correctly programming their procurement of goods and services on a timely basis, and avoiding the under-execution of projects. Another aim is to encourage entities to be more diligent in their supervision, management, and oversight of contract execution; to do this, follow-up or contract administration teams would be established within the entities.*

[381] *In pursuit of this strengthening and in compliance with the strategies of the Government of Reconciliation and National Unity, the DGCE is also promoting the work of the Interinstitutional Commission for the Renewal of the National System Public Contracting System. Created in December 2009, this agency’s purpose is to create a forum for communications between the public and private sectors, national and international organizations, and civil society in order to take joint actions to improve the transparency and effectiveness of contracting in line with international standards (...).”*

140 See: Republic of Nicaragua’s response to the Third Round questionnaire, pp. 66-67, available at: http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

[382] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (a) of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that some of the actions set out in its reply have not yet been completed.

[383] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization “Ethics and Transparency Civil Group” (EyT) notes the following:¹⁴¹

[384] *“In 2008, a series of regulatory instruments were published that seek to strengthen contracting procedures, oversight systems, and follow-up of contracting operations, regardless of whether the procurement is for works, goods, or services. For such purchases, there are: model terms and conditions for competitive bidding processes; Contract Administration Guide; Contractual Clause Guide for the public sector, municipalities and municipal sector; Laws Nos. 323 and 622 set out the contracting agency’s rights of oversight and supervision, and these are reflected in the contracts they sign. In addition, processes must be published on the official procurement web site and, in accordance with the Law on Information Access, the entities must also have information access offices where contracting details are available.”*

[385] *The oversight agency (CGR) created the State Contracting Analysis, Control and Follow-up Department (DACSCE), to follow up on all contracts worth more than one million cordobas (C\$1,000,000.00).”*

[386] With respect to the implementation of measure (b) of the foregoing recommendation, in its response¹⁴² the country under review presented no information in addition to that already analyzed by the Committee in the Second Round report; consequently, the Committee reiterates the need for the country under review to pay additional attention to it.¹⁴³

Recommendation 1.2.6:

Conduct regular comprehensive assessments to gauge the usage and effectiveness of the public sector procurement system and, using the results of that effort, identify and consider the adoption of specific measures to ensure transparency, disclosure, equity, and efficiency in its operations. (See section 1.2.3 in Chapter II of this Report.)

[387] In its response, the country under review provides information with respect to the foregoing recommendation. In this regard, the Committee notes the following as steps that lead it to conclude that said measure has been satisfactorily considered:¹⁴⁴

[388] *“In late 2009, through the Ministry of the Treasury and Public Credit, and with the coordination of the General Procurement Directorate, Nicaragua performed an evaluation of the*

141 Report of the civil society organization “Ethics and Transparency Civic Group” (EyT), p. 33:

http://www.oas.org/juridico/spanish/mesicic3_nic_inf_sc.pdf.

142 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 67, available at:

http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

143 On August 11, 2010, the country under review offered the following remarks: “Law 662 (Law on Transparency in Nicaraguan State Entities) published in 2008 provides that all public-sector entities are required to present a clear and unrestricted report of their accounts to the National Assembly, notwithstanding the provisions contained in Law 621 (Law on Access to Public Information) and that their institutional web pages must offer information that meets the requests of the general public”.

144 See: Republic of Nicaragua’s response to the Third Round questionnaire, pp. 67-68, available at:

http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

National Purchasing and Contracting System, with the support of the Inter-American Development Bank and following the methodology of OECD-DAC/World Bank/IDB. The evaluation process concluded recently, and work is underway on the final reports and plan of action that will enable the system to involve and be improved. Fourteen entities were chosen, including public sector agencies and municipalities, which, at the same time, represent more than 50% of total procurement in the country. This exercise has been of great interest to Nicaragua in strengthening, improving, and modernizing the National Purchasing and Contracting System in accordance with principles of transparency, legality, equality, and free competition; it has also highlighted the progress made through the ongoing reform process and revealed its weaknesses and opportunities for improvement.”

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

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

Recommendation 2:

Create a system for protecting public servants and private citizens who, in good faith, report acts of corruption.

Measures suggested by the Committee:

- *Enact, through the relevant legal and administrative procedures, a legal instrument to establish systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including identity protection, in accordance with its Constitution and the basic principles of its domestic legal system (see section 2.2 in Chapter II of this report). This could cover, inter alia, the following:*
 - o *Reporting mechanisms, such as anonymous complaints and identity-protected complaints, to guarantee the personal security and identity confidentiality of public officials and private citizens who, in good faith, report acts of corruption. (See section 2.2 of Chapter II of this Report.)*
 - o *Protection measures, 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. (See section 2.2 of Chapter II of this Report.)*
 - o *Mechanisms for reporting the threats or reprisals that informants may face, indicating the authorities responsible for processing protection requests and the agencies responsible for providing such protection. (See section 2.2 of Chapter II of this Report.)*
 - o *Mechanisms for the protection of witnesses, providing them with the same guarantees as public officials and private citizens. (See section 2.2 of Chapter II of this Report.)*
 - o *Mechanisms to facilitate international cooperation in the above areas, when appropriate. (See section 2.2 of Chapter II of this Report.)*

[390] In its response, the country under review provides information with respect to the foregoing recommendation. In this regard, the Committee notes the following measure as a step which contributes to progress in the implementation thereof:¹⁴⁵

[391] ▪ The Draft Law on Organized Crime, lodged with the National Assembly,¹⁴⁶ which contains articles that provide for and regulate the protection of victims, witnesses, experts, and other parties involved in criminal investigations and trials, as well as their families and other persons at risk on account of their direct or indirect participation in the investigation of crimes of various kinds, including acts of corruption.

[392] The Committee takes note of the step taken by the country under review to make progress with the implementation of the foregoing recommendation and of the need for it to continue to give attention thereto, bearing in mind that the draft legislation on organized crime referred to above has not yet been passed into law.

[393] Furthermore, in regards to the implementation of this measure of the recommendation, the civil society organization “Ethics and Transparency Civil Group” (EyT) notes the following:¹⁴⁷

[394] “(...) *It should be noted that the possible mandates (Arts. 61 and 62) of the draft Organized Crime Law, which is currently with the Assembly’s Justice Commission, include bolstering its practical viability through a comprehensive legal framework that will uphold the rights and guarantees of victims and witnesses involved in the investigation or prosecution of the offenses addressed by law. In the bill, the Public Prosecution Service is designated as the central authority.*”

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

Recommendation 3:

Criminalize fraudulent use pursuant to paragraph (d) of Article VI.1. (See section 3.2 of Chapter II of this Report.)

[395] In its response, the country under review provides information with respect to the foregoing recommendation. In this regard, the Committee notes the following as a step that leads it to conclude that the said measure has been satisfactorily considered:¹⁴⁸

[396] – The enactment of Law No. 641 of 2008 (the Criminal Code),¹⁴⁹ Article 443 of which punishes third parties who benefit from acts of corruption in the following terms: “*A person who obtains a benefit from the commission of the offenses set out in this title¹⁵⁰ shall be subject to the same penalty established for the crime when committed by a public authority, official, or employee.*”

145 See: the Republic of Nicaragua’s response to the Third Round questionnaire, p. 68, available at:

http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

146 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_dictamen.pdf.

147 Report of the civil society organization “Ethics and Transparency Civic Group” (EyT), p. 34:

http://www.oas.org/juridico/spanish/mesicic3_nic_inf_sc.pdf.

148 See: Republic of Nicaragua’s response to the Third Round questionnaire, pp. 68-70, available at:

http://www.oas.org/juridico/spanish/mesicic3_nic_resp.pdf.

149 Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_codigo_penal.pdf.

150 Title XIX of the Nicaraguan Criminal Code includes, “inter alia, the following offenses: bribery committed by a public authority, official, or employee (Art. 445), bribery committed by a private citizen (Art. 446), requesting or accepting undue

[397] The Committee takes note of the satisfactory consideration, by the country under review, of the foregoing recommendation.

4. GENERAL RECOMMENDATIONS

Recommendation 4.1:

Design and implement, when appropriate, training programs for the civil servants responsible for enforcing the systems, standards, measures, and mechanisms referred to in this report, in order to ensure that they are adequately understood, managed, and put into practice.

[398] In its response, the country under review did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee takes note of the need for the country under review to give additional attention thereto.^{x1}

Recommendation 4.2:

Select and develop procedures and indicators, when appropriate and when they do not yet exist, for analyzing the results of the systems, norms, measures and mechanisms considered in this report, and for monitoring compliance with the recommendations it contains.

[399] In its response, the country under review did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee takes note of the need for the country under review to give additional attention thereto.

advantages for an action or omission (Art. 447), illicit enrichment (Art. 448), international bribery (Art. 449), embezzlement (Art. 451), misappropriation of public funds (Art. 452).

ENDNOTES

ⁱ In accordance with the Nicaraguan Tax Code, the general powers of the DGI in performing its duties, as well as the powers of tax inspectors or auditors in particular, are the following:

“Special powers.

Art. 146. In addition to the powers set out in previous articles, the Tax Administration shall have authority for the following: 1. Requiring individuals and corporations to present their tax returns in accordance with the time frames and terms set out in this Code and other applicable tax laws, together with other information generated by electronic systems supplied by the Tax Administration; 2. Requiring and receiving payment from taxpayers and responsible persons for taxes owed and, when appropriate, for the late payments and fines set out in this Code;

3. Assigning tax control registration numbers to taxpayers and responsible persons; 4. Requiring taxpayers and responsible persons to keep books and special records for negotiations and operations involving tax matters; 5. Making adjustments in accordance with the law in order to settle taxes. For this purpose it may modify returns, demand clarifications and additions, and make the changes deemed appropriate in accordance with the information supplied by the taxpayer or received from other sources; 6. Determining, on an ex officio basis and with general applicability, the taxable base in accordance with income and specific activities; 7. Authorizing, at the prior request of the taxpayer or person responsible, that accounting records and/or the issuing of invoices may be carried out using a method other than manual procedures, such as by using information technology; 8. Executing tax forgiveness as approved by law. Authorizing and implementing the waiving of fines and late payments set out in this Code. All of this in accordance with the law; 9. Ordering administrative interventions, seizures of merchandise, and closures of business, and implementing the other penalties provided for in this Code; 10. Requesting the assistance of law enforcement when hampered in discharging its functions; 11. Establishing, by means of administrative orders, the Tax System’s different categories of taxpayers and responsible persons, in order to provide better fiscal oversight; 12. In accordance with laws and international treaties dealing with tax matters, asking other foreign public institutions and agencies for access to the information needed to prevent tax evasion or avoidance. Providing, in accordance with the principle of reciprocity, the assistance requested by oversight and regulatory bodies from other countries with which agreements have been signed or that are parties to international conventions to which Nicaragua is a party; 13. Authorizing the presentation of tax solvency certificates for imports or admissions into the country of goods and services; and, 14. Requiring information stored on electric storage media when it deems appropriate.”

“Tax Oversight. *Art. 147. The Tax Administration shall exercise its tax oversight through its duly accredited oversight agencies. Objections, adjustments, sanctions, amendments, and their corresponding notifications shall be signed by the heads of the relevant departments authorized for this purpose.*”

“Powers of tax inspectors or auditors. *Art. 148. Tax inspectors or auditors shall have broad powers of oversight and investigation, as established in this Code and other legal provisions and they may, in particular: 1. Request taxpayers and responsible persons to supply any information, in the form of documents, magnetic media, via the internet, or in other ways, related to the determination of their taxes and their correct oversight, in accordance with the agency’s regulations; 2. Require taxpayers and responsible persons to appear at the offices of the Tax Administration to provide information of a tax-related nature; 3. Verify and oversee the content of tax returns, under the penalty of the offense of civil and criminal perjury, for which they may audit books and documents related to fiscal obligations. The Tax Administration may receive information on electronic storage media, when so requested by a taxpayer in accordance with the criteria set by the Tax Administration; 4. Determine, on an ex officio basis, the tax to be paid by a taxpayer or responsible person, in the event that returns are not filed, under the penalty of the offense of civil and criminal perjury, within the time frames indicated by the tax laws; 5. Check for failures to comply with fiscal obligations and implement the penalties provided for in this Code, in accordance with the requirements set by this Law; 6. Conducting inspections at offices, commercial or industrial premises, vehicles, or facilities of any kind used by taxpayers and responsible persons; 7. Witness or carry out the taking of physical inventory of merchandise and other goods belonging to taxpayers and responsible persons; and 8. Overseeing private firms of public accountants and/or chartered public accountants that are empowered to issue fiscal rulings.*”

In addition, mention should be made of Article 27 of the Tax Code, which reads:

Provision of Information and its Evidentiary Value. For tax purposes and effects only, all natural and legal persons are required, at no cost, to supply any information that they possess on such matters and which might be

required by the tax administration within ten (10) business days. As regards information on third-party taxpayers, only the Tax Registry (RUC) number of the taxpayer or, failing that, their name and identity card number, as well as the date and amount of the transactions, should be provided. If the institutions from which this information is requested are subject to supervision and inspection by the Superintendency of Banks and Other Financial Institutions, the legal provisions and standards on bank secrecy shall be strictly adhered to and observed. If information on third-party taxpayers requested by the tax administration is a general requirement the tax administration is not obliged to notify natural or legal persons of the procurement of that information. Where information on third-party taxpayers requested by the tax administration is obtained by means of a specific taxpayer requisition, the tax administration is obliged to notify natural or legal persons of the procurement of this information. All information obtained by the Tax Authority is subject to unfettered access by the natural or legal persons on which said information was requested.

Officials at all levels of the state apparatus, regardless of their nature, and, in general, who discharge public duties are required to furnish the Tax Administration with such tax-related data and background information as it may require by means of general provisions or through specific requisitions, and to provide it and its officials with the support, assistance and protection necessary to carry out their functions. As regards the provision of information, documents, and other background data, a request from the Tax Administration shall suffice; a court order shall not be necessary. Furthermore, all state officials are required to report to the appropriate tax administration any tax offenses that come to their attention in the course of their official functions.

The obligation of professionals to supply tax-related information to the Tax Administration shall not extend to non property-related, private information of which they become aware in the practice of their profession, whose disclosure might harm the reputation or personal or family life of individuals.

Professionals may not invoke professional confidentiality to prevent verification of their tax situation.

The Tax Administration may enter on international agreements for information with tax administrations abroad in order to strengthen the Institution's control activities. All information so requested and obtained shall comply with the rule set forth in the paragraph two of this article."

ⁱⁱ The sanctions applicable to tax offenses are set out in the following terms by Articles 137 and 138 of the Tax Code, respectively: "Art. 137. A tax offense shall be deemed to have occurred when it is proven that the taxpayer or person responsible for retentions has failed to pay or hand over levies that by law he is required to pay or transfer; in this case, the applicable fine shall be twenty-five percent of the omitted tax.

(...)

A fine in the amount of between FIVE HUNDRED and ONE THOUSAND FIVE HUNDRED FINE UNITS shall be imposed in the following cases of tax offenses: (...) 7. Providing false information, or behaviors or actions tending to hide the truth of the business from the competent tax authorities; 8. When there is willful or fraudulent omission in the returns to be presented for tax purposes or in the documents on which they are based, and the truth is not reflected in them, by omitting or reducing the amounts of assets or income; (...) 11. Taking advantage of exemptions or releases for purposes other than those applicable under and indicated by law; and,

Domestic law will regulate the issues to be taken into account by the Tax Administration in determining the exact amount to be imposed as a fine for each offense described in this article, subject to the minimum and maximum limits indicated herein.

In cases involving the above paragraphs, the inapplicability of fines shall not be admissible."

"Art. 138. In cases of tax offenses, the Tax Administration may also impose the following sanctions: 1. Administrative intervention of the business; 2. Repealed; 3. Closure of the premises or establishment where the offense was committed, for a maximum of six business days.

If, as a result of the offenses committed, the evasion is consummated, an additional fine of up to the amount of tax avoided, without exceeding one hundred percent of that tax, shall be imposed."

ⁱⁱⁱ Under Article 10 of the Fiscal Equity Law, the following are exempt from paying income tax:

"1. Universities and centers of higher technical education, in compliance with Article 125 of the Constitution of the Republic of Nicaragua, together with centers for vocational technical education. Artistic, scientific, educational, and cultural institutions, workers' trade unions, political parties, fire departments, and the Nicaraguan Red Cross, provided that they do not pursue the accumulation of profit.

When those same institutions carry out remunerated activities that entail competition in the market for goods and services, the income from such activities shall not be exempt from the payment of this tax; 2. The branches of

government, ministries, municipalities, autonomous regions, indigenous communities, autonomous and decentralized agencies, and all other state bodies with respect to their incomes from their activities of authority or of public law; 3. Diplomatic representations, missions, and international agencies, diplomatic and consular representatives of foreign nations, provided that reciprocal arrangements exist; 4. Churches, denominations, faiths, and religious foundations that have a legal identity, with respect to their income from activities and assets intended for their purposes; 5. Charitable and social assistance institutions, associations, foundations, federations, and confederations that have a legal identity and do not pursue the accumulation of profit;

When those same institutions carry out remunerated activities that entail competition in the market for goods and services, the income from such activities shall not be exempt from the payment of this tax. Similarly, such corporate bodies shall not be exempt from paying this tax when they provide financial services of any nature, regardless of whether those services are or are not subject to the oversight of the Superintendency of Banks and of other financial institutions; 6. Representatives, officers, or employees of international organizations or agencies, when such exemption is stipulated in the corresponding agreement or treaty, with the exception of nationals providing such services within the territory of the nation and when their remunerations are not subject to a similar benefit in the country or agency paying that remuneration. 7. Legally established cooperative societies. If surpluses are distributed, the amount distributed to the partners or members shall be considered a part of those individuals' personal incomes, subject to income tax in accordance with the terms of this law and its regulations."

^{IV} Tax Code, Article 126: "The following are administrative tax offenses for noncompliance with the duties and obligations of taxpayers and persons responsible: 1. Failing to file records with the corresponding registers, to report the necessary data, or communicate amendments to them on a timely basis, when obliged so to do.

2. Failing to register the books and accounting records to be kept by taxpayers in accordance with the current legal provisions; 3. Failing to sign financial statements, tax returns, and other fiscal documents, when so required by the tax rules; 4. Failing to secure, from the Tax Administration, authorization for performing actions or activities that are allowed by the current tax rules but for which such authorization is legally required. 5. Failing to afford access to officers authorized by the Tax Administration to conduct inspections and checks of any premises, warehouse, commercial or industrial establishment, office, deposit, ship, truck, aircraft, or other means of transport, and failing to supply the information requested of them in accordance with the law and the corresponding supporting documentation, when so required by the Tax Administration; 6. Failing to appear before the Tax Authority, either in person or through a legally authorized proxy, when their presence is formally required in order to furnish information of interest for tax purposes; 7. Failing to provide any information related to the determination of tax, or used to correctly determine the amount owed as such, and the effective verification thereof, consequently answering the questions asked regarding sales, rent, income, expenses, goods, depreciations, debts, and, in general, regarding circumstances and operations related to taxable business; 8. Failing to preserve in good conditions for the statutory time their tax books, records, and documents, and the supporting documentation thereof, indicating compliance with their fiscal obligations; 9. Failing to keep their books and accounting records up to date; taking "up to date" as meaning a delay in recording accounting operations of no more than three months; and, (...)"

^V Tax Code, Article 127: "Administrative offenses involving noncompliance of taxpayers and the persons responsible for tax matters with their formal obligations shall be punishable as follows: 1. Those listed in paragraphs 1, 2, and 3 of the previous article with a fine of between THIRTY and FIFTY FINE UNITS, for each month the delay or failure to update lasts; 2. Those listed in paragraph 4 of the previous article, with a fine of between FIFTY and SEVENTY FINE UNITS, and the annulment of the actions and activities carried out; 3. Those listed in paragraphs 5, 6, and 7 of the previous article, with a fine of between SEVENTY and NINETY FINE UNITS, [...] when inspections or checks are hindered through a failure to appear or a delay in furnishing information. This same penalty shall apply to the failure to present or the delayed presentation of the returns described in Article 134 of this Code; 4. Those listed in paragraph 8 of the previous article, with a fine of between NINETY and ONE HUNDRED AND TEN FINE UNITS; and those listed in paragraph 9 of the previous article, with a fine of between ONE HUNDRED AND TEN and ONE HUNDRED AND THIRTY FINE UNITS; both in addition to the provisions applicable to the crime of tax fraud; and, (...).

General rules will regulate the issues that the Tax Administration is to take into account in determining the exact amount to be imposed as a fine, invariably within the maximum and minimum limits indicated in this article. In any event, the maximum amount of accumulated fines may not exceed the equivalent of twenty (20) percent of the

tax obligation, excluding from that percentage fines applied for failing to present returns and/or for presenting them late. (...)"

^{vi} Law for the Exercise of the Profession of Public Accountancy and of the College of Public Accountants of Nicaragua, Article 3: "Exercise of the profession of public accountant requires the authorization of the Ministry of Public Education, subject to compliance with the following requirements: (a) Adult age and in full enjoyment of civic rights; (b) Recognized moral solvency; (c) Qualified as a public accountant; (d) Member of the College of Public Accountants; (e) Provision of a minimum guarantee of C\$5,000.00 by means of a bond from an insurance company, extended to the General Treasury Oversight Office of the Republic; the power to certify in tax matters shall require a guarantee of C\$15,000.00. In signing all such certifications, the accountant will indicate that his bond remains in full effect. That declaration will have the force and scope of a legal confession. These bonds shall be kept in the custody of the College of Public Accountants, which shall be obliged to publicize the name of any bond-holder who fails to renew his bond upon its expiration. (f) At least two years as an auditor and accountant in the conditions set by the corresponding Regulations.

The Board of the College of Accountants will assess, in each case, the required practice and will gather information on life and habits for the purposes established in this article."

^{vii} Regulations to the Law for the Exercise of the Profession of Public Accountancy and of the College of Public Accountants of Nicaragua, Article 81: "The powers of the Court of Honor are the following: (a) Upholding the College's prestige and good name and ensuring the actions of its members are in compliance with the rules of professional ethics; (b) Processing appeals lodged against the resolutions of the Board, and asking the Board to convene the General Committee to hear such appeals; (c) Giving the Board its opinion on when the President of the College, in compliance with Art. 28.i of the Law, should bring proceedings against individuals or corporate bodies that, absent proper authorization or in breach of the terms thereof, provide public accountancy functions, or against people who falsely claim to be public accountants; (ch) Giving its opinion to the Board whenever a member asks the College to defend him from any accusation made against him involving professional honor and reputation; (d) Asking the Board to convene a special meeting of the General Committee whenever it deems such a meeting necessary, indicating the reasons for the request. The Board may not ignore such requests.

^{viii} In addition, Article 167 of the Code of Criminal Procedure of Nicaragua establishes that judges or courts may adopt, by providing the reasons thereof, the following financial precautionary measures: "(a) The provision of appropriate economic security, of an amount that is not impossible to meet, by the accused or another person, by depositing money, security, bonds from two or more appropriate persons, or financial guarantees; (b) placement of a preventive notice in the Public Register, as a guarantee for subsequent liabilities; (c) the freezing of bank accounts and of stocks and securities certificates; (d) Liens or preventive seizure; and (e) judicial intervention of the company."

Moreover, Article 112 of the Criminal Code establishes that: "All penalties imposed for willful or imprudent crimes or misdemeanors shall entail the forfeiture of the assets arising therefrom or of the goods acquired with the value of those assets, the instruments with which it was carried out or that were intended for its execution, or the gains arising from the criminal infractions, regardless of any transformations undergone. All such property shall be seized, unless they were acquired legally by a good-faith third party not responsible for the crime.

The seized assets, instruments, or gains shall be sold if they are legally tradable, with the proceeds to be used to cover the civil liabilities of the person convicted of the offense; and, if they are not, they shall be dealt with as appropriate or, failing that, rendered unusable. Firearms or military materials shall be conveyed to the National Police or to the Nicaraguan Army, as appropriate.

When those assets and instruments are legally tradable and their value is not in proportion to the nature or seriousness of the criminal offense, or they cover the civil liabilities in full, the judge or court may resolve to refrain from ordering their seizure or order their partial seizure".

^{ix} Criminal Code, Article 18: "For extradition to proceed, the following conditions must be met: (a) The act for which it is brought must constitute a crime in both the requesting state and in Nicaragua; (b) Statutory limitations must not apply to either the prosecution or the punishment in either of the two countries; (c) The person sought must not be facing trial or have been prosecuted in connection with the same act by the courts of the Republic; (d) It must not be for a political crime, or a related common crime, as determined by Nicaragua; (e) The crime in question must be punishable under Nicaraguan law with a punishment of at least one year in prison; (f) The requesting state must guarantee that the person sought will not appear before a special court or tribunal, will not

be executed, and will not be submitted to violations of his physical integrity or to inhumane or degrading treatment; (g) The person sought must not have been granted asylum or the status of a political refugee; (h) The person sought must not be facing trial or have been convicted for offenses committed in Nicaragua prior to the extradition request. However, if he is acquitted or has served his sentence, his extradition may be ordered; (i) The crime must have been committed in the territory of the requesting state, or have produced effects therein.”

^x Articles 355 and 356 of the Code of Criminal Procedure provide, respectively, as follows:

“Article 355. *Informal urgent extradition.* Extradition may be requested through any means of communication, provided that an warrant exists for the arrest of the person sought and the requesting party has promised to meet the requirements established for the procedure.

In this case, the documents referred to in the following article must be presented to the Nicaraguan Embassy or Consulate no later than ten days after the arrest of the accused. Notice must be given immediately to the Criminal Chamber of the Supreme Court of Justice, along with the documents for it to take cognizance of and resolve the matter.

If the provisions set herein are not met, the detained person shall be released and his or her extradition may not be sought anew through this summary procedure.”

“Article 356. *Procedure.* When extradition is requested, the following formalities will be observed: 1. The person sought will be placed at the disposal of the Criminal Chamber of the Supreme Court of Justice, which will assign the accused public defense counsel if he does not have an attorney; 2. While the extradition is being processed, the accused may be held in preventive custody for up to two months; 3. The requesting state must present: (a) Personal data identifying the accused or prisoner; (b) Documents showing the existence of a warrant or order for arrest or imprisonment or, if applicable, the final judgment setting down his conviction; (c) True copies of the proceedings, providing evidence or at least a reasonable indication of the guilt of the person in question; and, (d) True copies of the legal provisions governing the offense, the involvement with which the offender is accused, and a specification of the applicable penalty and applicable statutory limitations. The true copies referred to in this article shall be submitted in the form and fashion stipulated by normal legislation. Should the documentation be submitted without observing those formalities or if it is incomplete, the court shall request the missing documents through the most expeditious channel that exists. 4. Upon the conclusion of this procedure, a hearing will be given to the accused, his defense counsel, and the Public Prosecution Service for a period of up to twenty days, of which ten days will be for the presentation of evidence and the remainder for its examination. 5. Motions filed during the substantiation of the formalities will be decided by the Chamber, which will reject all steps not of relevance or that, in its opinion, tend to hamper the proceedings. 6. It will issue a resolution granting or denying the extradition within ten days after the previously indicated period, and it may impose such conditions on it as it sees fit. In any event, it must request and secure from the requesting country a formal undertaking that the person sought will not be tried for a different previous offense or submitted to punishments other than those set for the offense or those imposed by the corresponding judgment, a copy of which the requesting country will convey to our courts 7. The Criminal Chamber’s resolution shall admit appeals for a period of three days as of the date after which notification thereof is given.”

^{xi} On August 11, 2010, the country under review offered the following remarks: “Through different agencies, the State of Nicaragua pursues a series of standing training programs as part of its strategic, institutional, development and capacity building, and operational plans. In parallel, the institutions involved in the Joint Donor Anti-Corruption Trust Fund are implementing a series of events in order to comply with the recommendation (...). These include the following: The Office of Public Ethics has prepared, designed, and is implementing an institutional and professional capacity-building plan aimed at bolstering the technical and professional capacities of employees. The plan mentions the various areas of expertise that it is developing and identifies staff professionalization alternatives and mechanisms under arrangements with government agencies. It also includes the individual investment of each member. Specialized Training:

- Postgraduate courses: Public Management, through the General Directorate of Public Functions of the Ministry of Finance and Public Credit; Criminal Code of the Republic of Nicaragua imparted by the Supreme Court of Justice, through the Judicial College; Penitentiary Science and Human Rights.
- Course on Corruption Investigation Techniques, imparted at the Walter Mendoza National Police Institute of Higher Studies.
- Master’s in Senior Policy Management, self-financed.

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- *Staff participation in different workshops: Organic Law of the Comptrollership General of the Republic and of the Control System for the Public Administration and Oversight of State Assets and Resources, imparted by the Office of the Comptroller General; Workshop on the Central American Customs Duties Code and its Regulations, imparted by the General Directorate of Customs; Different aspects of Government Procurement imparted by the General Procurement Directorate.*
 - *Different events organized by the Office of Public Ethics for civil servants:*

Seminars on the Inter-American Convention against Corruption.

Conference on 'Myths and Progress in the Fight against Corruption' held at the Autonomous University of Nicaragua, with the keynote address given by Dr. Miguel Peñailillo, international conference speaker.

As part of its general logical framework and institutional plan for 2008 and 2009, the National Police, through its Financial Investigations Directorate (DIE), implemented a training component entitled "Preventive and investigative capacity building in the police for the fight against public corruption," which has enabled consolidation of the main areas in which it takes steps to prevent and suppress corruption. This strengthening has consisted of broadening operational capacities and specialist training for DIE and DAJ personnel, among other aspects.

In the 2008-2009 period training was provided to a total of 336 officials, including police and government employees, broken down as follows:

Two seminar courses entitled 'Corruption Investigation Techniques,' attended by 109 officials from the police and other government institutions (98 from DIE and DAJ; 7 prosecutors from the Office of the Attorney General; 3 from the Office of Public Ethics; 2 from the Banking Superintendency; 1 from Customs). Of the 109 officials trained, 55 were financed with anti-corruption funds.

Training was also provided to 157 officials from the following specialized areas: Financial Investigations, Judicial Assistance, Police Intelligence, and Narcotics Investigations, on the topics of prevention and suppression of corruption, money laundering, organized crime, and police intelligence.

In order to strengthen the prevention and investigative capacities of the police in the fight against public corruption, the above plan also provided for seminars and training courses on acts of corruption, money laundering, financial intelligence, forensic audits, and Criminal Code definitions for DIE personnel from financial investigation units in provincial parts of the country and border posts, as well as for DAJ officials.

Three seminars were held for government officials and public sector employees, with particular attention to crimes against the public administration and internal audit and financial standards. In that connection, training was given to a total of 70 officials and employees of the state-owned ports company, Empresa Nacional de Puertos (ENP) as well as the INSS and PETRONIC.

In addition, personnel from the Specialized Unit against Corruption and Organized Crime of the Office of the Attorney General received training on corruption offenses at the following seminars organized with support from the Anticorruption Fund (FAC):

- *46 participants at the seminar 'Forensic audits applied to corruption cases;'*
- *46 participants at the seminar on 'Typologies of corruption;'*
- *46 participants at the seminar on 'Financial information in the possession of public agencies and its impact on the investigation of corruption cases;'*
- *47 participants at the seminar on 'The scope of anticorruption instruments and their enforcement in domestic law;'*
- *57 participants at the seminar on 'Structural analysis of public corruption offences. In this context, from April 24 to May 9, 2009, the Office of the Prosecutor General of the Republic provided training to every prosecutor in the country on the following topics:*
 - *The participation of the Office of the Prosecutor General in investigations and the role of the criminal prosecutor;*
 - *Guiding principles of criminal procedure and the respective trial hearings;*
 - *The investigation and complaint as the basis for indictment; and*
 - *The indictment and collection of evidence in trials.*

These measures have clearly contributed in providing specialist training in relevant matters to departmental prosecutors and to prosecutors and officials attached to ministries and government agencies."