

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

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 EL SALVADOR 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<sup>1</sup>**

**INTRODUCTION**

**1. Contents of the Report**

[1] This report presents, first, a review of implementation in the Republic of El Salvador 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. Article III, paragraphs 7 and 10, and Articles VIII, IX, X and XIII.

[2] Second, the report will examine follow-up to the recommendations that were formulated to the Republic of El Salvador by the MESICIC Committee of Experts in the previous rounds, which are contained in the report on that country adopted by the Committee and published at: [www.oas.org/juridico/english/mec\\_rep\\_slv.pdf](http://www.oas.org/juridico/english/mec_rep_slv.pdf) and [www.oas.org/juridico/english/mesicic\\_II\\_inf\\_slv\\_en.pdf](http://www.oas.org/juridico/english/mesicic_II_inf_slv_en.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 El Salvador ratified the Inter-American Convention against Corruption on July 9, 1998, and deposited the respective instrument of ratification on March 18, 1999.

[4] In addition, the Republic of El Salvador 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 El Salvador**

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of El Salvador, and in particular from the Secretariat for Transparency of the Office of the President of the Republic and from the Executive Secretariat of the National Council for Sustainable Development, 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 El Salvador sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at the following webpage (in Spanish): [www.oas.org/juridico/spanish/mesicic3\\_slv\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_slv_sp.htm).

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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.

[6] For its review, the Committee took into account the information provided by the Republic of El Salvador up to February 22, 2010, and that furnished and requested by the Secretariat and the members of the review subgroup to carry out their functions in keeping with the Rules of Procedure and the review Methodology.

## **2. Documents received from civil society organizations**

[7] The Committee also received, within the deadline established in the schedule for the third round, a document jointly prepared by the civil society organizations National Foundation for Development (FUNDE), Foundation for Studies for the Application of Law (FESPAD), and the Social Initiative for Democracy (ISD), which was submitted by those organizations by electronic mail.<sup>2</sup>

## **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<sup>3</sup> FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)**

#### **1.1. Existence of a legal framework and/or other measures**

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

[9] – The Tax Code<sup>4</sup> and its subsequent amendments, which contain the legal principles and standards applicable to all internal taxes under the Salvadoran Tax Administration's authority and the legal fiscal relationships that originate from all taxes established by the State except for those set out in the customs and municipal laws.<sup>5</sup> Article 6 (a), (b) and (f) of the Tax Code provide that a law shall be issued in order to create, modify or abolish taxes; grant exemptions, exonerations, deductions or any type of favorable tax treatment; and introduce preferences and guarantees for the performance of tax obligations.

[10] Article 65 of the Tax Code provides, that any law that introduces specific exemptions shall set out the conditions and rules for them to be granted, the taxes covered by the law, whether the exemption is full or partial, and, as appropriate, the period of exemption. For its part, Article 91 of the Code creates the obligation for taxpayers to submit a declaration of their wealth, which shall be used by the Tax Administration for the exercise of its legal powers and to determine if a taxpayer has had an unjustified increase in wealth.

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2. This document was received on February 22, 2010 and is available in Spanish at:

[www.oas.org/juridico/spanish/mesicic3\\_slv\\_inf\\_sc.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_inf_sc.pdf)

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

4. Available at: [www.oas.org/juridico/spanish/mesicic3\\_slv\\_tributario.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_tributario.pdf)

5. Under Article 21 of the Tax Code any allusion in its provisions to the term "Tax Administration" shall be understood to refer to the Ministry of Finance, through the respective departments responsible for the administration and collection of taxes.

[11] In addition, Article 173 of the Tax Code recognizes the Tax Administration's powers of oversight, inspection, investigation and control in order to ensure the effective fulfillment of tax obligations, including by taxpayers that enjoy exemptions, exonerations, or tax incentives, as well as its power to request the submission of tax receipts and manual, mechanical and computerized accounts, books, balance sheets, records, systems, files, business correspondence, and any other documents issued by the person under investigation or third parties that concern their operations. Article 195 of the Code provides, in turn, that if upon conclusion of the Administration's tax assessment proceedings it is found that the increase in wealth is not justified, that shall be reported to the Financial Investigation Unit of the Office of the Prosecutor General so that it might proceed as the law requires.

[12] Articles 226 and 250 of the Tax Code state, respectively, that an infringement is constituted by any act or omission that entails a violation of tax rules or a breach of obligations of that nature as contained in said Code and in the relevant tax laws, be they substantive or formal in character, as does any deceitful conduct recognized and penalized by those laws; and that fraud is constituted by any simulation, concealment, manipulation or other form of deception that induces the Treasury to an error to the undue advantage of a taxpayer or a third party and to the disadvantage of the Treasury in its right to receive in full the tax set forth in this Code, the punishment for which is a fine of 100% of the defrauded tax without prejudice to the appropriate criminal penalties (Article 252).

[13] – The Income Tax Law<sup>6</sup> and its subsequent amendments, Article 28 of which provides that net income shall be determined by deducting from the income obtained the necessary costs and expenses for the production of the income and for preserving its source, as determined by this Law, together with such deductions as it establishes. This Article also provides that in all instances costs, expenses and other deductions shall conform to the requirements set forth both in the Income Tax Law and the Tax Code. In no case shall costs and expenses be deductible when they are made in connection with activities that generate untaxed income or revenues that do not constitute income for the purposes of the Income Tax Law. Article 29-A of said Law sets out the general deductions allowed from obtained income, which must fulfill the terms and conditions set forth in the same article.

[14] – The Organic Law of the Internal Revenue Department<sup>7</sup> and its subsequent amendments, which creates this Department as a body assigned to the Ministry of Finance and replaces the Departments of Direct and Excise Taxes. It has authority over all administrative activities connected with income tax; tax on net worth; real estate transfer tax; inheritance tax; gift tax; excise tax; levies on productive and commercial activities, legal acts and transfers, and any other taxes and charges that the appropriate laws assign to it. According to Article 3 of this Law, its functions consist of the imposition and enforcement of the laws concerning government taxes, rates, and levies, whose assessment, oversight and control are assigned to it by the law. Its functions also include assistance to taxpayers, receipt and inspection of declarations, and registration and control of taxpayers, among others.

[15] – The Criminal Code,<sup>8</sup> Article 250-A of which provides that anyone who, to the loss of the Treasury, obtains for themselves or for another an economic benefit to which they are not entitled or which they obtain in excess of what they are entitled to through tax reimbursements, refunds, compensations or credits, shall be punished with four to six years of imprisonment if the fraud exceeds 25,000 colons. This provision further provides that if the benefit is obtained by using

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6. Available at [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_renta.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_renta.pdf)

7. Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_internos.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_internos.pdf)

8. Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_penal.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_penal.pdf)

documents that have previously supported refunds, reimbursements, credit or compensation, was obtained fraudulently, reflect acts or transactions that have not actually occurred or have been carried out; exclude or omit to declare income; declare values originating from nonexistent transactions; or by increasing transactions actually carried out based on values or prices higher or lower than the correct ones, the punishment shall be six to eight years of imprisonment.

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

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

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

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

[18] In the results section of its response to the questionnaire,<sup>9</sup> the country under review reports the following:

[19] “According to the latest available data contained in the Annual Report of the Ministry of Finance, June 2008 to May 2009,<sup>10</sup> as regards control and oversight of compliance with tax obligations, the amounts collected by Agencies and Oversight Units came to US\$57.9 million, the bulk of which was recorded at the Central Offices of the Internal Revenue Department, which accounted for 84.3% of the total collected; the remaining 15.7% was collected by Customs.

[20] The output generated by the Internal Revenue Department arises from 43,230 cases under verification of compliance with formal and substantive obligations.

[21] For its part, the Customs’ Department of Legal Proceedings adopted 253 decisions between June 2008 and May 2009, which resulted from ex-post verifications carried out by the Oversight Division. These decisions gave rise to revenue in the form of duties, taxes, and fines of \$19.3 million.”

[22] 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 of 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 organs with jurisdiction in that respect, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see Recommendation 1.4 (c) in Chapter II of this report).

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9. See response of El Salvador to the Questionnaire in the Third Round, p. 33, available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_resp.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_resp.pdf)

10. See: [http://www.mh.gob.sv/portal/page/portal/MH\\_PRINCIPAL/MEMORIAS\\_HDA](http://www.mh.gob.sv/portal/page/portal/MH_PRINCIPAL/MEMORIAS_HDA)

#### 1.4. Conclusions and recommendations

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

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

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

[26] Strengthen standards and measures on denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws.

[27] To comply with this recommendation, the Republic of El Salvador could take the following measures into account:

- a) Consider adopting the measures that it deems appropriate to make it easier for the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining such treatment, 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.
  - ii. Continue strengthening the investigative capacity of the authorities responsible for implementing the provisions that deny favorable tax treatment for amounts paid for corruption.
  - iii. Computer programs that facilitate data consultation and crosschecking of information whenever necessary for the purpose of fulfilling their functions.
  - iv. Institutional coordination mechanisms that will provide the timely collaboration needed from other authorities, and such aspects as certifying the authenticity of the documents submitted with the applications.
  - v. Training programs designed specifically to alert officials to the methods used to disguise payments for corruption and to instruct them in ways of detecting such payments in the applications.
  - vi. Channels of communication so that they may promptly report to those who must decide on favorable treatment and warn them of the anomalies detected or of any irregularity that could affect the decision.

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

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

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

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

[29] The Commercial Code,<sup>11</sup> Article 2 of which defines businesspersons as natural persons who own a business (individual businesspersons) and as companies (corporations). Articles 411 (II) and 435 of this Law require businesspersons to keep their accounts properly organized in accordance with one of the systems that are generally accepted in such matters and approved by those who exercise government audit functions. Furthermore, all businesspersons are required to keep records of account (books), including Financial Statements, a General Journal, and a Ledger, and all those that may be required by accounting regulations or law. In addition, Article 435 allows for businesspersons to keep their accounts on separate sheets, make summarized annotations in the General Journal, and use electronic systems or any other suitable technological means to record accounting operations; and requires them to report the foregoing to the government oversight office.

[30] Article 436 of this Code provides that all accounts shall be kept in the country, including those of agencies, affiliates, subsidiaries, or branch offices of foreign companies, and that any contravention of the foregoing shall be punished by the government oversight office in accordance with the law; it also requires any authority that is aware of such an infraction to immediately notify the aforementioned office.

[31] Article 438 of the Commercial Code provides that the mandatory records to which Article 435 refers should be kept in bound books or on separate numbered sheets authorized by the authorized public accountant appointed by the businessperson. Specifically as regards corporations, the external auditor shall authorize the books or records and the administrator designated in the bylaws shall endorse said authorization. The pages of each book shall be numbered and stamped by the authorized public accountant, who shall put a signed and sealed notice on the first page that expresses the name of the businessperson who will use them, the purpose for which they will be used, the number of authorized pages, and the place and date of delivery to the party concerned. The government oversight office shall monitor compliance with this obligation and may impose penalties for any faults on the part of the auditor, the businessperson, or their administrators, as appropriate, in accordance with the law.

[32] For their part, Articles 439 and 441 of the Code set out, respectively, the obligation for businesspersons to enter their daily transactions and keep their accounts in a clear manner, in chronological order, without blank spaces, insertions, scratched- or crossed-out entries, or signs of alteration. The provisions also provide that at the close of each fiscal year the financial position of their business is to be established by means of a balance sheet and statements of profit and loss and of

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11. Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_comercio.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_comercio.pdf)

changes in equity, which shall be certified by an authorized public accountant, deposited with the Business Records Office in order that they might take effect with respect to third parties, and be accompanied by the auditor's opinion and its accompanying notes for the purpose of reporting on the consistency of the respective accounts.

[33] As regards the contents of the records of account, according to Article 442 of the Code, the financial statements shall contain the regular and special balance sheets; a summary of the inventories for each balance sheet and of the accounts comprising the balance sheet items; the statements of profit and loss relating to each balance sheet, statements of equity, and any other statement necessary to demonstrate the businessperson's financial position, as well as the manner of verification of the distribution of the net profits or application of the net losses. Furthermore, Article 443 provides that all balance sheets shall truthfully express with the accuracy compatible with their purpose the financial position of the business on the day to which they refer, in accordance with the principles of estimation issued by the Oversight Council of Professional Public Accountants and Auditors or, in the absence thereof, the International Accounting Standards, and they shall be prepared in keeping with the accounting principles authorized by the aforementioned Council and with the nature of the business concerned.

[34] Article 446 of the Commercial Code provides that the first entry in the general journal shall be the balance sheet that shows the financial position of the businessperson at the start of their operations, noting the asset, liability, and capital accounts, and immediately after, in chronological order, the entries corresponding to the operations that the businessperson carries out on their own account or on behalf of third parties. Furthermore, when the needs of the business so require, the General Journal and Ledger to which Article 435 refers, may comprise of several records, provided that the requirements set forth in the Commercial Code are met.

[35] Under Article 448 of the Code, the government oversight office, shall, through its officials, monitor businesspersons to ensure that they keep their records in accordance with the provisions contained in the Code, lest said office impose on the offending businessperson a penalty as prescribed by the law. The aforesaid office shall also demand the correction of the irregularities that gave rise to the fine. For its part, Article 449 provides that refusal to allow access to the accounts to any administrative authority which, pursuant to the Commercial Code or other laws is entitled to demand such access, shall be punished with the suspension of the business license until the inspection is confirmed.

[36] Regarding how long accounting records should be kept, Article 451 of the Code provides that businesspersons and their heirs or successors shall keep the records of their business in general for 10 years and for at least five years after the winding up of all their business affairs. This article also states that the Registrar shall not grant a business license or shall cancel the license granted to anyone who has violated the provisions of this article and that any authority who is aware of such an infringement shall bring it to the attention of the registrar. In addition, under Article 454 of the Code, the following shall be considered accompanying documents to the accounts and shall be kept for the length of time mentioned in Article 451: letters, telegrams and invoices received and any copies thereof issued by businesspersons that serve as proof for accounting purposes. To that end, Article 455 permits businesspersons to use microfilm, optical discs, or any other suitable media to archive documents and information for the efficient safekeeping of the necessary records, documents, and reports, once 24 months, as a minimum, has elapsed since their issue. The copies or reproductions

originating from these media shall have the same evidentiary value as the originals, provided that they are certified by a notary upon comparison with the originals.<sup>12</sup>

[37] As regards government oversight of corporation and activities mentioned in the Commercial Code, Article 362 thereof provides that this oversight shall be done through the Financial System Superintendency, which shall monitor companies that engage in banking, financial, insurance, and savings operations; the Securities Superintendency, which shall monitor companies that engage in the securities business; the Pensions Superintendency, which shall monitor companies that engage in pension management; and the Commercial Transactions Superintendency, which shall monitor all other cases not covered by the foregoing, barring the exceptions set down in the Commercial Code. Pursuant to Article 364, the above superintendencies have the authority to impose fines on supervised entities or on their members and administrators in the cases and amounts provided in the laws that govern them.<sup>13</sup>

[38] – The Tax Code,<sup>14</sup> Article 139 of which establishes the obligation to keep formal accounting records for those taxpayers that are required to do so pursuant to the Commercial Code or other special laws.<sup>15</sup> These accounting records shall be supplemented with the necessary auxiliary books of account and supported with the legal documentation that justifies the records and make it possible to identify with sufficient orderliness and clarity the acts that generate the taxes established in the tax laws, expenditures, estimates, and all the operations that permit the determination of the actual tax situation. This article also provides that entries shall be made in chronological order, in a complete and timely manner, and shall not be amended in such a way that it is not possible to determine their original content or establish with certainty if the entries are original or were made subsequently. It also provides that the accounts may be kept manually or by means of mechanized systems, for which purpose it shall not be necessary to obtain prior permission from the Tax Administration, it being sufficient to comply with the standards on keeping the relevant files and programs. Finally this article requires taxpayers to exhibit their accounts at the head office or at the place where they have reported that they shall keep them.

[39] In addition, Article 242 of the Tax Code recognizes the following as breaches with respect to the obligations to keep accounting records, special records, and personal property transfer and records on the rendering of services: a) failure to keep or to keep in the proper manner books, records, and manual or computerized systems of account, special records, and books on purchases and sales for personal property transfer and the rendering of services;<sup>16</sup> b) failure to record operations

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12. For tax purposes, Article 147 of the Tax Code provides that, among other records, individuals or entities, whether or not they are taxpayers, responsible parties, withholding or reception agents, auditors, or accountants, are required to keep in good order and condition, for at least 10 years counted from their issue or receipt, books of account, internal and external receipts, special records, inventories, and books for Personal Property Transfer and Services Tax. Furthermore, in the case of computerized accounting records, the magnetic media that contain the information shall be kept, as shall the respective programs for their handling. It is also a requirement to keep for the same length of time the computerized billing programs used as well as those documents kept on microfiche, microfilm and other such systems.

13. Organic Law of the Financial System Superintendency, available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_superintendencia.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_superintendencia.pdf); Organic Law of the Securities Superintendency, available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_valores.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_valores.pdf); Organic Law of the Pensions Superintendency, available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_pensiones.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_pensiones.pdf); Law of the Commercial Transactions Superintendency, available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_mercantiles.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_mercantiles.pdf)

14. Available at: [www.oas.org/juridico/spanish/mesicic3\\_slv\\_tributario.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_tributario.pdf)

15. Article 139 of the Tax Code defines formal accounting records as those which “are kept in legally authorized books in a manner consistent with one of the generally accepted accounting methods appropriate to the business in question.”

16. Penalty: a fine of four times the monthly minimum wage.

and to make or enter false, inaccurate, or incomplete annotations;<sup>17</sup> c) delay in making annotations in books or records as follows: 1) in the case of income tax, the lateness in bookkeeping shall not exceed two months, which time limit shall also apply where the obligation to keep special records is concerned;<sup>18</sup> 2) in the case of personal property transfer and the rendering of services, the delay shall not exceed 15 calendar days counted from the date on which the requisite documents under the Tax Code should be issued or are received;<sup>19</sup> 3) use of counterfeit, fraudulent, or adulterated tax credit receipts, invoices or documents to support annotations in manual books or records of account, computerized accounting systems, or in connection with personal property transfer and the rendering of services;<sup>20</sup> 4) The keeping of manual or computerized accounting books, records, documents and files, special records, and records concerning personal property transfer and the rendering of services in a place other than the taxpayer's establishment, business, or office or the place reported to the Tax Administration;<sup>21</sup> and, 5) failure to present or exhibit books or special records of account for personal property transfer and the rendering of services at the request of the Tax Administration within the time limit established by it.<sup>22</sup>

[40] The Accountancy Law,<sup>23</sup> which governs the exercise of this profession as well as the duties of auditing, and the rights and obligations of natural and legal persons that carry them out. Articles 2 and 3, respectively, determine who may engage in public accountancy and the requirements for the Oversight Council of Professional Public Accountants and Auditors to authorize said exercise (Article 5). Article 6 of this Law provides for the existence of the Registry of Professional Public Accountants, which is under the administration of the aforesaid Council. Article 17 sets out the instances in which the intervention of public accountants is obligatory, in particular, inter alia, the authorization of descriptions of accounting systems, catalogues of accounts, and instructions manuals required for businesspersons, those who the law requires to keep accounts and those who wish to have an accounting system; certification of the requirements or books that businesspersons must keep in accordance with the laws on such matters; issuance of opinions on compliance with professional obligations by businesspersons and on the basic financial statements of all partnerships or companies, cooperative associations, autonomous institutions, trade unions, and foundations or associations of any nature based on internationally accepted auditing standards and principles approved by the Council; certification of the balance sheets required of the businesspersons' companies under the Commercial Code and special laws, and inform the person being audited, in writing and in a timely manner, of any legal violations that they find in the course of the review.

[41] In addition, Article 22 of this law expressly prohibits public accountants from issuing reports or opinions, inter alia, on accounting records, financial statements, or any other accounting or legal documents that are not supported by books or documents that are not consistent with reality, or that assert, confirm, or endorse, acts, operations or records that do not exist or that were carried out in a

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17. Penalty: a fine of nine times the monthly minimum wage.

18. Penalty: A fine of 4,970 colones with an increase of 70 colones for each day that elapses from the time that the violation was committed until the close of the tax year under inspection, which fine shall not exceed 20 times the monthly minimum wage.

19. Penalty: A fine of 4,970 colones with an increase of 490 colones for each day that elapses from the time that the violation was committed until the day that the period closes, which fine shall not exceed nine times the monthly minimum wage;

20. Penalty: A fine of 30% of the amount of the operation entered in the counterfeit, fraudulent or adulterated documents, which fine shall not be less than nine times the monthly minimum wage.

21. Penalty: A fine of 16 times the monthly minimum wage

22. Penalty: A fine equivalent to 0.5% of the book value of the equity or capital shown on the balance sheet, less the unrealized asset appreciation surplus, which fine shall not be less than 20 times the monthly minimum wage.

23. Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_contaduria.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_contaduria.pdf)

manner different from that described in such reports or opinions; on acts, operations or records that have not been directly examined or verified by staff under their authority; or on matters that are entrusted to them by law or at the wishes of the interested parties under false, malicious, or inaccurate terms or in a way that prompts confusion. In this regard, oversight of the exercise of the profession of public accountancy falls on the aforementioned Oversight Council of Professional Public Accountants and Auditors, which is one of the administratively independent technical organs attached to the Ministry of Economy whose powers, pursuant to Article 36 of this Law, include the following: authorize those who fulfill the necessary legal requirements to exercise the public accountancy profession, and punish them for faults committed in its exercise; keep the Register of Professional Public Accountants in which all those who meet the requirements prescribed by law shall be enrolled; monitor the exercise of the profession and ensure that it is not practiced by anyone who lacks the necessary authority; determine the principles according to which businesspersons shall keep their accounts and establish guidelines for the valuation of assets and liabilities and the constitution of provisions and reserves; approve internationally accepted accounting principles and auditing standards, including those of a financial nature, where the law does not contain express provisions thereon; issue or authorize standards on professional ethics and any other provisions of a technical or ethical nature to be complied with in the practice of the profession, as well as making them public; and hear and settle complaints received in writing or initiated ex officio for violation of legal norms or faults committed in the exercise of the profession.

[42] According to Article 45 of the Accountancy Law, failure by public accountants to perform the obligations set forth in said law shall be deemed infractions and the Oversight Council shall impose the penalties contained in Article 47 thereof pursuant to the procedure set out in the chapter contained in Title IV of this Law.

[43] The Code of Professional Ethics for Public Accountants,<sup>24</sup> which is applicable to public accountants registered with the Oversight Council of Professional Public Accountants and Auditors, whether they be natural or legal persons, both in independent practice and when they act as officials or employees of public or private institutions. One of the fundamental principles of the Code is that “...*the Public Accountant shall observe professional confidentiality and on no account reveal, for their own gain or that of third parties, any facts, data, or circumstances to which they are or might have been privy in the practice of their profession, except with the authority of the client or when required to do so by a competent authority.*” The Code also provides that no public accountant shall certify accounts, balance sheets, or any other work of a professional character without due verification in advance, whether that be done personally by them or by authorized assistants under their supervision (Article 10). It also states that all balance sheets, reports, opinions, statements and documents that they prepare or certify shall, to the best of their knowledge express the truth and not conceal or distort facts such as to induce error on the part of any authorities or persons that may need to take the reports of the public accountant into consideration (Article 12).

[44] The Criminal Code,<sup>25</sup> Articles 218 (management fraud), 283 (forgery of a public document), 284 (document tampering), 286 (suppression, destruction or concealment of genuine documents), and 287 (use and possession of false documents) criminalize and punish conduct such as establishment of accounts or operations without recording them on the books; registration of fictional expenditures or misstatement of the purpose thereof; adulteration of accounting records; use of false documents to support accounting records, and destruction of accounting documents before their prescribed custody

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24. Available at [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_etica.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_etica.pdf).

25. Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_penal.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_penal.pdf)

period expires. In addition, Article 249-A (tax evasion) punishes anyone who, in order to avoid taxes, inter alia, omits to keep accounting, special, auxiliary, or legal books or records required by the tax laws, or keeps two or more sets of accounts or two or more sets of invoices.

[45] – The Code of Criminal Procedure<sup>26</sup>, Articles 229 and 232 of which establishes the obligation for accountants and auditors to bring to the attention of the proper authorities any illicit acts that they discover in the performance of their functions, and that they may not invoke the right of forbearance recognized in Article 187 of this Code.

[46] In its response, the country under review also provides information that indicates the existence of provisions, measures, and mechanisms in this regard, with different contents and scope in relation to control of other financial entities and agencies, such as those contained in the Bank Law,<sup>27</sup> the Cooperative Banks and Savings and Loan Associations Law,<sup>28</sup> Organic Law of the State Financial Administration,<sup>29</sup> and the Anti-Money Laundering Law.<sup>30</sup>

[47] The Non-Profit Associations and Foundations Law,<sup>31</sup> which imposes on these entities the tax obligations provided in the laws for natural and legal persons, unless expressly excluded by said laws (Article 6), and establishes for them, under Article 40, the obligation to keep formal accounts of their equity in accordance with certain generally accepted accounting systems and tax laws. Article 41 of this Law states that associations and foundations shall have organs to monitor the administration of the equity as stated in their bylaws and that at all times their members and founders shall have the right to require the administrators to report on their activities and financial position. Article 41 also provides that the auditors of these entities have an obligation, should they note any irregularity in the administration of the capital of the entity that they audit, to inform its members of that fact in writing at the General Meeting so that they might adopt a decision on the matter, and also the Government Accounting Office if they handle public funds. For its part, Article 84 punishes with a fine of between 500 and 10,000 colones those associations and foundations, and the management or administrators thereof, that fail, in spite of legal requirements, to keep formal accounts in the cases established by law, to apply established accounting standards, and to present to the Records Office duly audited balance sheets and statements of profit and loss, among other breaches contained in Article 83 of the Law.

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

[48] 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.

[49] Notwithstanding, the Committee considers it appropriate to express some comments regarding the advisability that the country under review considers strengthening the legal framework and measures in place in this regard.

[50] To begin with, the Committee notes that the Commercial Code, under Article 294, provides for the possibility of including in the bylaws an oversight council, notwithstanding the fact that it is mandatory to include the appointment of a person to exercise external auditing functions (Articles

26. Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_procesal.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_procesal.pdf)

27. Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_banco.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_banco.pdf)

28. Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_credito.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_credito.pdf)

29. Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_estado.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_estado.pdf)

30. Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_lavado.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_lavado.pdf)

31. Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_funciones.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_funciones.pdf)

289 and 290). In this regard, in keeping with the purpose of Article III (10) of the Convention, the Committee believes it necessary for the Republic of El Salvador to consider the adoption of such measures as it deems pertinent to ensure that both corporations and other types of associations introduce internal accounting controls appropriate to their nature. The Republic of El Salvador might also consider the use of guidelines or manuals on the conduct of internal audits designed to detect anomalies or corrupt acts and make it a duty for public accountants or whoever is responsible for the entry of accounting records, as well as for internal auditors, to bring them to the attention of the officers and the partners (in the case of companies) or members (in the case of associations), and to report them to the appropriate authorities in the event that they might constitute an offense. (See Recommendations 2.4(a) and (b) in Chapter II of this report).

[51] In second place, and in order to strengthen the overall obligatory accounting system in place in the country under review, as contained mainly in the Commercial and Tax Codes and the Accountancy Law referred to in the foregoing section, the Committee urges the Republic of El Salvador to consider continuing its efforts at harmonizing its accounting and auditing system with the International Financial Reporting Standards (IFRS)<sup>32</sup> and the International Standards on Auditing (ISAs),<sup>33</sup> bearing in mind the progress in this regard that has been made by the Oversight Council of Professional Public Accountants, particularly in the wake of the reforms made to the Commercial Code in 2000, which expressly adopted the International Accounting Standards (IAS). (See Recommendation 2.4 (c), in Chapter II of this report).

[52] The Committee notes, moreover, the existence, authority, and functions of the Oversight Council of Professional Public Accountants and Auditors as the only agency in the country under review that monitors the practice of public accountancy and auditing, issues rules on ethical and technical aspects thereof, and ensures that both professions are exercised in accordance to law. In this regard, the Committee believes it advisable for the Republic of El Salvador to consider strengthening this Council, so that it has available the necessary support and human and financial resources, should they be insufficient, to perform its functions properly, as well as mechanisms for the effective institutional coordination of its actions and the ongoing evaluation and follow-up thereof. (See Recommendation 2.4 (d) in Chapter II of this report).

[53] In relation to the foregoing, the Committee also believes that it would be beneficial for the Republic of El Salvador to consider adopting and/or strengthening, as appropriate, measures to make it easier for the organs or agencies, in particular the superintendencies described in the section above, responsible for prevention and/or investigation of noncompliance with measures designed to safeguard the accuracy of accounting records, to detect sums paid for corruption concealed in those records. (See Recommendation 2.4 (e) in Chapter II of this report).

[54] By the same token, the Committee believes that it would be advisable for the Republic of El Salvador to consider holding awareness campaigns targeted at persons responsible for maintaining accounts and verifying their accuracy, on the importance of observing the standards in force to ensure the veracity of said records and the consequences of their violation, and also to consider implementing training programs designed specifically for internal comptrollers in publicly held companies and other types of associations who are required to keep accounts, to instruct them in

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32. The IFRS include: a) the pronouncements issued by the International Accounting Standards Board (IASB); b) the International Accounting Standards (IAS) issued by the predecessor of the IASB, the International Accounting Standards Committee; and, c) related official interpretations.

33. ISAs are issued by the International Auditing and Assurance Standards Board (IAASB) as part of the International Federation of Accountants (IFAC).

ways of detecting acts of bribery in the course of their work. (See Recommendation 2.4 (f) in Chapter II of this report).

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

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

[56] In the results section of its response to the questionnaire,<sup>34</sup> the country under review first alludes to the measures adopted by the Financial System Superintendency in 2008 and, secondly, to the possibility of presenting complaints via the websites of the Securities, Pensions, and Commercial Transactions Superintendencies.

[57] The country under review also cites as results those contained in the Annual Report of the Ministry of Economy, for the time period June 2007 to May 2008,<sup>35</sup> in which the Commercial Transactions Superintendency, in keeping with the provisions of its governing law, the Commercial Code, and other business laws, carried out during the aforementioned period the task of monitoring the fulfillment of commercial and accounting transactions by national and foreign businesspersons, and the administrators thereof. In particular, these efforts included: audits and assessment verifications; accounting system certification; management of the corporate register; implementation of the recommendations contained in the report on observance of accounting, auditing, and supervision standards and codes; certification of investigations carried out by the Superintendency at the request of interested parties; response to requests from different government institutions, including the Office of the Prosecutor General, Ministry of Finance, Business Courts, Securities Superintendency, and Consumer Protection Office, among others.

[58] The foregoing notwithstanding, 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 of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the appropriate manner, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See Recommendation 2.4 (h) in Chapter II of this report).

### **2.4. Conclusions and Recommendations**

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

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34. See response of El Salvador to the Questionnaire in the Third Round, pp. 46 and 47, available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_resp.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_resp.pdf)

35. See: [http://www.minec.gob.sv/index.php?option=com\\_phocadownload&view=category&id=8:&Itemid=79](http://www.minec.gob.sv/index.php?option=com_phocadownload&view=category&id=8:&Itemid=79)

**[60] The Republic of El Salvador 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.**

[61] In light of the comments formulated in the above-noted sections, the Committee suggests that the country under review consider the following recommendation:

[62] Strengthen the standards and measures on the prevention of bribery of domestic and foreign government officials.

[63] To comply with this recommendation, the Republic of El Salvador could take the following measures into account:

- a) Adopt appropriate measures to make it an obligation for publicly held companies or associations of whatever type introduce internal accounting controls appropriate to their nature as provided by Article III (10) of the Convention, and consider the use of guidelines or manuals on the conduct of internal audits designed to detect anomalies or corrupt acts. (See Chapter II, Section 2.2 of this report).
- b) Adopt the necessary measures to make it a duty for individuals and public accountants responsible for the entry of accounting records, as well as for internal auditors, when they detect anomalies to bring them to the attention of the officers and the partners (in the case of companies) or members (in the case of associations), and to report them to the appropriate authorities in the event that they might constitute an offense. (See Chapter II, Section 2.2 of this report).
- c) Continue the efforts at harmonization of the accounting and auditing system with the International Financial Reporting Standards (IFRS) and International Standards on Auditing (ISAs), bearing in mind the progress in this regard that has been made by the Oversight Council of Professional Public Accountants. (See Chapter II, Section 2.2 of this report).
- d) Strengthen the Oversight Council of Professional Public Accountants and Auditors, so that it has available the necessary support and human and financial resources, should they be insufficient, to perform its functions properly, as well as mechanisms for the effective institutional coordination of its actions and the ongoing evaluation and follow-up thereof (See Chapter II, Section 2.2 of this report).
- e) Consider adopting and/or strengthening, as appropriate, measures to make it easier for the organs or agencies responsible for preventing and/or investigating violations of measures designed to safeguard the accuracy of accounting records, the detection of sums paid for corruption concealed through said records, such as the following (see Chapter II, Section 2.2 of this report):
  - i. Investigation tactics, such as follow-up on expenditures, crosschecking of information and accounts, and requests for information from financial entities in order to determine if such payments occurred.

- ii. Continue to develop strategies, such as production of manuals, guidelines or directives for those organs or entities on how to review accounting records in order to detect sums paid for corruption.
  - iii. Computer programs that provide easy access to the necessary information to verify the veracity of accounting records and of the supporting documents on which they are based.
  - iv. Institutional coordination mechanisms that enable those organs or entities to easily obtain the necessary collaboration from other institutions to verify the veracity of accounting records and of the supporting documents on which they are based or to establish their authenticity; and
  - v. Training programs for the officials of these organs and entities, specifically designed to alert them to the methods used to disguise payments for corruption in those records and to instruct them on how to detect them.
- f) Continue to promote training for individuals responsible for maintaining accounts and verifying their accuracy, including raising awareness of the importance of observing the standards in force for ensuring the veracity of said records and the consequences of their violation (See Chapter II, Section 2.2 of this report).
  - g) Continue holding awareness and integrity promotion campaigns that target the private sector, and also consider measures such as production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption. (See Chapter II, Section 2.2 of this report).
  - h) Through the organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and for ensuring ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the proper manner, select and develop 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. (See Chapter II, Section 2.3 of this report).

### **3. TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)**

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

[64] The Republic El Salvador has the following provision on transnational bribery:

[65] The Criminal Code,<sup>36</sup> Article 335-A (transnational bribery) of which states: “*Any person who directly or indirectly offers, promises, or grants to a government official or employee, public authority, or agent of another state or an international organization any object of monetary value, including a gift, favor, promise, or advantage, in connection with an economic or commercial transaction so that said person might carry out or omit any act in the performance of their public functions shall be punished with two to four years of imprisonment.*”

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36. Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_penal.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_penal.pdf).

[66] Similarly, Article 38 of the Criminal Code provides that: *“A person serving as the director or manager of a corporate entity, or acting in the name of another or in the legal or voluntary representation of another, shall respond personally, even though he does not meet the conditions, qualities, or relations that the definition of the corresponding offense requires to be considered an active subject, when those circumstances exist within the entity or person in whose name or representation he is acting.*

[67] *In any event, the corporate entity shall incur in special subsidiary civil liability. Irrespective of the foregoing, in cases of personal exaction, third-party exaction, active bribery, and transnational bribery, the corporate entity shall be jointly responsible for the harm inflicted pursuant to the terms of Art. 118<sup>37</sup> of this Code.”*

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

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

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

[69] With regard to results in this area, the Republic of El Salvador reports that as of the date of its response to the Questionnaire, there was no investigation or ongoing proceeding for the offense criminalized in Article 335-A of the Criminal Code.

[70] In light of the foregoing and of the fact that the offense of transnational bribery has been criminalized in the Republic of El Salvador since 2005, the Committee believes it advisable for the country under review to continue to give attention to the detection and investigation of cases of transnational bribery and to seek to strengthen the capacities of the organs or agencies charged with the investigation and/or prosecution of the offense of transnational bribery, and with requesting and/or providing assistance and cooperation with respect thereto, as provided in the Convention. (See Recommendation 3.4 in Chapter II of this report).

### **3.4. Conclusion and recommendation**

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

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

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

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37. Article 118 of the Criminal Code (joint civil liability): *“The civil liability arising from a crime or misdemeanor shall be borne jointly by those persons legally ruled to be the perpetrators or participants. Irrespective of the foregoing and for the internal purposes of this joint relationship, if those criminally responsible for a crime or misdemeanor number two or more, the judge or court shall set the amount for which each is to respond in civil proceedings in proportion to their contribution to the result.”*

- Continue to give attention to the detection and investigation of cases of transnational bribery and seek to strengthen the capacities of the organs or agencies charged with the investigation and/or prosecution of the offense of transnational bribery, and with requesting and/or providing assistance and cooperation with respect thereto, as provided in the Convention. (See Chapter II, Section 3.3 of this report).

#### 4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

##### 4.1. Existence of a legal framework and/or other measures

[74] The Republic El Salvador has the following provision on illicit enrichment:

[75] Article 240 of the Constitution of the Republic of El Salvador provides,<sup>38</sup> *“Those public officials and employees that unlawfully enrich themselves at the expense of the Government or Municipal Treasury shall be required to make restitution to the State or Municipality for what they improperly acquired without prejudice to their liability under the law.*

[76] *Illicit enrichment is presumed when the increase in the capital of public official or employee, counted from the date on which they took up their position until the date of their termination, is significantly higher than it normally would be based on their lawful pay and emoluments and the increases in their capital or income by any other lawful cause. In determining that increase, the capital and income of the public official or employee, their spouse, and their children shall be jointly considered.*

[77] *Those public officials and employees that the law determines are required to declare their wealth to the Supreme Court of Justice in accordance with the preceding clauses within 60 days after taking up their duties. The Court has the authority to take the measures it deems necessary to verify the accuracy of the declaration, which it shall keep confidential and which shall serve exclusively for the purpose provided in this article. The aforementioned public officials and employees shall submit a new declaration of their wealth upon termination of their duties. The law shall determine the penalties for breach of this obligation.*

[78] *Judicial proceedings for unlawful enrichment may only be instituted within 10 years after the date on which the public official or employee ceased to hold the office in whose exercise said enrichment may have occurred.”*

[79] The Criminal Code,<sup>39</sup> Article 333 (illicit enrichment) of which provides: *“Any government official, public authority, or public employee who in the course of their duties or functions obtains an unjustified increase in wealth shall be punished with three to 10 years of imprisonment.*

[80] *Third parties who disguise an unjustified increase in wealth shall be liable to the same penalty.*

[81] *Whatever the case, they shall be disqualified from that position or employment for the same period of time.”*

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38. Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_constitucion.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_constitucion.pdf)

39. Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_penal.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_penal.pdf)

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

[82] With respect to the provision by which the Republic of El Salvador has criminalized illicit enrichment, as provided in Article IX of the Convention, the Committee notes that, on the basis of the information available to it, it may be said to be pertinent for promoting the purposes of the Convention.

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

[83] The Republic of El Salvador did not refer to results in this area in its response. Bearing in mind the foregoing, 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 with respect thereto, as provided in the Convention, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto . (See Recommendation 4.4. in Chapter II of this report).

#### **4.4. Conclusion and recommendation**

[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 provisions contained in Article IX of the Convention:

**[85] The Republic of El Salvador has adopted certain measures on the offense of illicit enrichment 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 country under review consider the following recommendation:

- Through the organs or agencies charged with the investigation and/or prosecution of the offense of illicit enrichment and with requesting and/or providing assistance and cooperation with respect thereto, as provided in the Convention, select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard. (See Chapter II, Section 4.3 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 El Salvador criminalized transnational bribery, as provided in Article VIII of the Convention, after the date on which it ratified it, and notified the OAS Secretary General of said criminalization by Note 205/2010 from the Permanent Mission of El Salvador to the Organization of American States dated August 11, 2010.

[88] The country under review has also criminalized illicit enrichment, as provided in Article IX of the Inter-American Convention against Corruption, prior to the date on which it ratified the Convention.

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

[89] El Salvador criminalized transnational bribery as provided in Article VIII of the Convention after the date on which it ratified it and on August 11, 2010, notified the OAS Secretary General of said criminalization in accordance with Article X thereof.

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

## 5.3. Conclusions and recommendations

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

## 6. EXTRADITION (ARTICLE XIII OF THE CONVENTION)

### 6.1. Existence of a legal framework and/or other measures

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

[93] The Constitution of the Republic of El Salvador,<sup>40</sup> of which Article 28 (second and third paragraphs) provides, “*Extradition shall be governed by international treaties and, where Salvadorans are concerned, shall only proceed if the respective treaty expressly provides as much and has been approved by the legislative body of the signatory countries. Whatever the case, its stipulations shall enshrine the principle of reciprocity and grant Salvadorans all the guarantees under criminal and procedural law recognized in this Constitution.*”

[94] *Extradition shall proceed when the offense has been committed in the territorial jurisdiction of the requesting country, except where offenses of international dimensions are concerned, and in no case may be stipulated for political offenses even should common crimes arise as a consequence of the latter...*”

[95] For its part, Article 144 of the Constitution states, “*The international treaties entered upon by El Salvador with other states or with international agencies constitute laws of the Republic upon their entry into force pursuant to the provisions of the treaty itself and this Constitution.*” Article 182(3) recognizes the power of the Supreme Court of Justice to “*consider grounds for seizure and other matters not reserved to another authority; to order the issuance of petitions or rogatory commissions for acts to be performed outside the State and to order compliance with those received from other states, in observance of the provisions of treaties; and to grant extradition.*”

[96] The Criminal Code,<sup>41</sup> of which Article 9 (Personal or nationality principle) provides that Salvadoran criminal law shall also apply to: 1) Offenses committed abroad by a person in the service of the State, when that person has not been tried in the place where the offense was committed on account of the privileges inherent in their position; 2) Offenses committed by a Salvadoran abroad or

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40. Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_constitucion.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_constitucion.pdf).

41. Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_penal.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_penal.pdf)

in a place not subject to the jurisdiction of a particular State, when such offenses infringe upon the legal rights of another Salvadoran; and, 3) Offenses committed abroad by Salvadorans when extradition is requested and denied on account of their nationality, or by foreigners when such offenses infringe upon the legal rights of Salvadorans.

[97] The Code of Criminal Procedure,<sup>42</sup> of which Article 60 (Subsidiary rules) provides, *“If it is unknown or there is doubt as to where the deed was committed, the judge shall take cognizance on preventive grounds. If execution of the offense was initiated on national soil and consummated on foreign soil, or vice versa, jurisdiction shall fall to the judge in and for the place where the act or omission initiated or, failing that, to the judge where the outcome or its effects occurred. In the event of extraterritoriality of criminal law, jurisdiction shall fall to the judge in and for the capital of the Republic sitting at the time of commission of the deed. In the case of offenses committed onboard private or commercial ships or aircraft while sailing in jurisdictional waters or flying through national airspace, jurisdiction shall fall to the judge in and for the place where the ship or aircraft makes port or lands. When the ship or aircraft does not make port or land on national soil, jurisdiction shall go to the judge in and for the capital of the republic sitting at the time of commission of the deed.”*

[98] The Convention on Extradition signed at Montevideo,<sup>43</sup> Uruguay, on December 26, 1933, in the framework of the Seventh International Conference of American States.

[99] The bilateral extradition treaties in force signed by the Republic of El Salvador with the United States and Mexico.<sup>44</sup>

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

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

[101] However, as regards the provisions contained in Article XIII (6) with respect to the obligation of the Requested State to report the final outcome of the prosecution when extradition is refused solely on the basis of nationality or because the Requested State deems that it has jurisdiction,<sup>45</sup> the Committee believes it necessary for the country under review, without prejudice to the provisions of the aforementioned Montevideo Convention on Extradition, 1933, of which the Republic of El Salvador is a state party, to consider adopting pertinent measures to discharge said obligation. (See Recommendation 6.4.1. in Chapter II of this report).

[102] Furthermore, as regards the discretionary authority of the requested state to take into custody a person whose extradition is sought and who is present in its territory, or take other appropriate measures to ensure his presence at extradition proceedings, as provided in Article XIII (7) of the

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42. Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_slv\\_procesal.pdf](http://www.oas.org/juridico/spanish/mesicic3_slv_procesal.pdf)

43. Available via the Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition at:

[http://www.oas.org/juridico/MLA/en/Treaties/en\\_Conve\\_Extra\\_Inter\\_American\\_1933\\_Montevideo.pdf](http://www.oas.org/juridico/MLA/en/Treaties/en_Conve_Extra_Inter_American_1933_Montevideo.pdf)

44. These treaties are available for consultation in the El Salvador section of the Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition at: <http://www.oas.org/juridico/mla/en/slv/index.html>

45. In relation to this reason for refusing extradition, in its response El Salvador says, *“With respect to the possibility of refusing extradition because El Salvador deems that it has jurisdiction, there is no provision of law that permits such a thing; Article 9 (1) and (2) of the Criminal Code suggests the contrary.”* See response of El Salvador to the Questionnaire in the Third Evaluation Round, p. 56.

Convention, in its response, the Republic of El Salvador says, *“In view of the fact that extradition, as an institution, is not developed in the country’s secondary laws, for the reasons given above the propriety of detention or any other appropriate precautionary measure to ensure the appearance of a person sought for extradition at the relevant proceedings shall be determined in accordance with the Extradition Treaties signed and ratified by El Salvador.”*<sup>46</sup>

### **6.3 Results of the legal framework and/or other measures**

[103] The Republic of El Salvador did not refer to results in this area in its response. Accordingly, the Committee will make a recommendation to it so that, through the organs or agencies responsible for processing incoming and outgoing extradition requests, respectively, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See Recommendation 6.4.2. in Chapter II of this report).

[104] By the same token, the Committee believes that it would be useful for the country under review to consider adoption of appropriate measures to benefit from a greater use of the Convention in cases of extradition, which could include, inter alia, implementation of training programs on the possibilities for its application, specifically designed for judicial and administrative authorities with jurisdiction over such matters. (See Recommendation 6.4.3. in Chapter II of this report).

### **6.4. Conclusions and recommendations**

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

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

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

- 6.4.1. Adopt the relevant measures to inform, in due course, a requesting state to which it refuses an extradition request for an offense that it has criminalized in accordance with the Convention, solely on the basis of the nationality of the person sought, on the final outcome of the case, which, as a consequence of that refusal, it has submitted to its competent authorities for prosecution in accordance with Article XIII (6) of the Convention (see Chapter II, Section 6.2 of this report).
- 6.4.2. Select and develop, through the competent organs or agencies, procedures and indicators, when appropriate and where they do not yet exist, to verify the follow-up to the recommendations formulated in this report with respect to this area; and to analyze objective results obtained with respect to extradition requests formulated to other States Parties to the Convention, for the investigation or prosecution of the offenses that the country under review has criminalized in accordance therewith as well as the steps that have been taken to respond to similar request from other States Parties. (See Chapter II, Section 6.3 of this report).

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46. See response of El Salvador to the Questionnaire in the Third Evaluation Round, p. 60.

- 6.4.3 Adopt appropriate measures to benefit from a greater use of the Inter-American Convention against Corruption in cases of extradition, which could include, inter alia, implementation of training programs on the possibilities for its application, specifically designed for judicial and administrative authorities with jurisdiction over such matters (See Chapter II, Section 6.3 of this report).

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

#### **FIRST ROUND**

[108] With respect to implementation of the recommendations issued to the Republic of El Salvador 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 additional attention, and on the basis of the information available to it, referring to progress in implementation subsequent to 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 interest and mechanisms to enforce them**

▪ Recommendation:

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

▪ Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round.<sup>47/</sup>

a) *Consider the possibility of legislating, through the appropriate legal and administrative procedures, conduct aimed at preventing conflicts of interest so as to ensure the correct, honorable, and proper fulfillment of the public functions referred to in the Convention, including, among others, adopting a legal instrument applicable to all public officials, which enables them to know their duties and rights in precise terms. This is irrespective of the fact that given the doctrine of the separation of powers and the existence of autonomous bodies, consideration could be given to the establishment of specific regimes aimed at particular sectors which, on account of their specializations and spheres of competence, could require the establishment of especially restrictive norms that define their duties and rights.*

e) *Consider the possibility of establishing, implementing or improving, as appropriate, mechanisms to disseminate and train all public servants in the standards of conduct with a view to preventing conflicts of interest in the performance of public functions, and providing training and periodic updating with respect to those standards.*

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47. See p. 34 of this report, available at [http://www.oas.org/juridico/english/mesicic\\_II\\_inf\\_slv\\_en.pdf](http://www.oas.org/juridico/english/mesicic_II_inf_slv_en.pdf)

▪ Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>48/</sup>

b) *Consider the possibility of creating or strengthening preventive mechanisms in the access to public-sector positions, applicable to all public officials, in accordance with the scope determined in the law itself, and in relation to the positions it may determine, taking into account the following aspects:*

i. *Supplement the standards of general applicability for entry into the public-sector, strengthening the preventive mechanisms that facilitate the detection of possible conflicts of interests.*

*To this end, consideration could be given to the provisions set forth in Articles 18 and 19 of the Civil Service Law, as a point of reference for the development of such legal provisions, in order to ensure the impartiality that civil servants must observe in discharging their positions, posts or commissions and after the conclusion thereof.*

ii. *Develop other mechanisms that identify those cases that may arise in the course of the performance of public functions, and which could constitute conflicts of interest.*

c) *Consider the possibility of creating and implementing mechanisms that make it possible to determine in specific cases whether those who perform public functions have conflicts of interest, and which at the same time make it possible to take the measures needed to protect the public interest, such as separation from their functions, official repudiation of the matter, their renouncing any private interests in the conflict, or the invalidity of the decisions by those who are in such a position.*

d) *Consider strengthening appropriate and relevant restrictions for those who cease to hold public positions and the measures for the enforcement thereof, upholding due balance with an individuals' constitutional right to freedom of employment, for a reasonable period (see section 1.1.2 of Chapter II of this report) and considering, inter alia, the following possibilities:*

i. *Establish terms and conditions on how a former employee may use information or documents to which he or she had access in public service.*

ii. *Refrain from participating in matters directly related to the formerly held position.*

iii. *Consider the possibility for the oversight body to provide former public employees with guidance and to clarify any doubts that might arise from the specific activities in which they are engaged.*

f) *The Committee encourages the Republic of El Salvador to continue supporting the work of the Court of Accounts by establishing indicators that make it possible to determine its results more precisely.*

g) *Compile information regarding conflict-of-interest cases, to establish mechanisms of evaluation that make it possible to verify the results in this area.*

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48. See pp. 34 and 35 of this report, available at [http://www.oas.org/juridico/english/mesicic\\_II\\_inf\\_slv\\_en.pdf](http://www.oas.org/juridico/english/mesicic_II_inf_slv_en.pdf)

[109] With respect to the measures of the foregoing recommendation, in its Response,<sup>49/</sup> the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step that contributes to the progress in the implementation of the measures, the bill to reform the Government Ethics Law introduced by the Legislative Assembly of the Republic in December 2009.

[110] The Committee takes note of the steps taken by the country under review to advance in its implementation of the measures of the foregoing recommendation as well as reiterates the need for it to continue to give attention thereto, bearing in mind that the bill to reform the Government Ethics Law introduced in December 2009 remains pending for debate in the Legislative Assembly of the Republic.

[111] Furthermore, in regards to the implementation of the measures of the recommendation and the recommendation itself, the civil society organizations National Foundation for Development (FUNDE), Foundation for Studies for the Application of Law (FESPAD), and Social Initiative for Democracy (ISD) note the following:<sup>50/</sup>

[112] - In relation to the recommendation:

[113] *“The adoption of the Government Ethics Law and creation of the Government Ethics Tribunal constitute significant progress with respect to this recommendation to the extent that the Law has introduced standards on conflict of interests among the duties and prohibitions that it sets out (Arts. 3 (j), 5 (g), 6 (p), 18, 24, 25, 26, 27, and 28)...*

[114] *Also, in June 2008 regulations were issued that govern the operations of the ethics committees created by the law. However, the efforts of the ethics committees appointed by each institution have not been effective in dealing with complaints, owing to the deep distrust that public servants have for these mechanisms.*

[115] *There has been no progress in the adoption of standards and mechanisms for determining when a conflict of interests arises. For instance, the Civil Service Law, which governs the entry of public servants to the civil service has not undergone reforms during the period under review with respect to entry requirements, in the sense of incorporating the provisions contained in Article 5 of the Government Ethics Law on the obligation for applicants to submit a sworn statement to the effect that they do not have any conflicts of interests.*

[116] *In part this is addressed by the Government Ethics Law which prohibits officials to take up matters where is a conflict of interests; however, as yet, standards governing the nullity of decisions made by those whose position constitutes a conflict of interests have not been adopted.”*

[117] - With respect to measure f):

[118] *“The Court of Accounts is one of the institutions that evinces significant shortcomings in the way it performs its important role. Although progress was made with the adoption of new regulations in 1995, this measure has not succeeded in properly implementing all the legally assigned functions*

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49. See response of El Salvador to the Questionnaire in the Third Evaluation Round, p. 61.

50. “Independent Report by Civil Society in El Salvador on the Questionnaire for the Third Round,” submitted by the civil society organizations National Foundation for Development (FUNDE), Foundation for Studies for the Application of Law (FESPAD), and Social Initiative for Democracy (ISD), pp. 265-273.

of the control entity. In particular, it would be advisable to evaluate its timeliness in detecting irregularities and cases of corruption.”

## **1.2. Standards of conduct and mechanisms to ensure the proper conservation and use of resources entrusted to government officials**

### ▪ Recommendation:

*Consider strengthening the implementation of statutes and regulatory systems with respect to the control of resources of the public administration.*

### ▪ Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round.<sup>51/</sup>

a) *Consider the possibility of legislating, taking into account the appropriate procedures, conduct aimed at ensuring the proper conservation and use of resources entrusted to government officials in the performance of their functions, including aspects such as preparing a legal instrument that offers the Republic of El Salvador a uniform legal regime on the basis of normative conditions that are adapted to the specificities, degree, and practical requirements of each of the entities that makes up the public administration, and which also provides equal treatment in regulating the conduct of public servants, providing legal security in the performance of public functions and to the proper conservation and use of government property.*

*This is irrespective of whether or not the applicable specific provisions place obligations on each of the branches of government, municipalities and, if relevant, those applicable to the autonomous institutions.*

b) *Design and implement mechanisms for disseminating and training all public servants on the standards of conduct to ensure the proper conservation and use of public resources, and to resolve their consultations in this respect, as well as to provide training and periodic updating with respect to those standards.*

### ▪ Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round.<sup>52/</sup>

c) *Perform an evaluation of the use and effectiveness of the standards of conduct for ensuring the proper conservation and use of public resources and of the mechanisms for compliance with them in the Republic of El Salvador, and instruments for preventing corruption and, based on the results of that evaluation, consider adopting measures to promote, facilitate and consolidate or ensure the effectiveness of them, for that purpose.*

[119] 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 with respect to the measure of the foregoing recommendation. As such, the Committee reiterates the need for the country under review to give additional attention to implementation thereto.

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51. See pp. 35 and 36 of this report, available at [http://www.oas.org/juridico/english/mesicic\\_II\\_inf\\_slv\\_en.pdf](http://www.oas.org/juridico/english/mesicic_II_inf_slv_en.pdf)

52. See p. 35 of this report, available at [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

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

▪ Recommendation:

*Consider strengthening the mechanisms it has to require government officials to report to the appropriate authorities acts of corruption in the performance of public of which they are aware.*

▪ Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round.<sup>53/</sup>

a) *Facilitate the performance of the obligation to report acts of corruption through the means it deems appropriate, and in particular, regulate the submission of such reports so as to further facilitate their submission, establishing requirements that do not cause potential whistleblowers to become inhibited, and including the possibility that these reports keep confidential the names of the whistleblowers during administrative proceedings.*

d) *Advance in efforts aimed at training public officials in relation to the existence and purpose of the responsibility to report to the appropriate authorities acts of corruption in the performance of public functions of which they are aware, including the corresponding protection regime in these cases, and to motivate the Republic of El Salvador to consolidate the advances in this regard already made by the Citizen Participation Section of the Court of Accounts.*

▪ Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>54/</sup>

b) *Consider adopting and implementing measures of protection for public officials who report acts of corruption in good faith, including those who report corruption by their superiors, such that they find assurances in the face of the threats or reprisals to which they may be subject as a result of carrying out this obligation.*

c) *Provide that the scope of the obligation contained in Article 312 of the Criminal Code refer both to punishable acts the public servant learns of in the performance of public functions, and on occasion of them, and acts of corruption that they become aware of not in the performance of said functions.*

e) *Consider the possibility of strengthening those administrative and legal proceedings related to the effective application of the applicable sanctions to those public officials and employees who engage in acts of corruption.*

f) *Compile information on the submission of reports of acts of corruption by public officials or employees that make it possible to verify the results in this area.*

[120] 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 with respect to the measures

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53. See pp. 36 and 37 of this report, available at [http://www.oas.org/juridico/english/mesicic\\_II\\_inf\\_slv\\_en.pdf](http://www.oas.org/juridico/english/mesicic_II_inf_slv_en.pdf)

54. See pp. 36 and 37 of this report, available at [http://www.oas.org/juridico/english/mesicic\\_II\\_inf\\_slv\\_en.pdf](http://www.oas.org/juridico/english/mesicic_II_inf_slv_en.pdf)

of the foregoing recommendation. As such, the Committee reiterates the need for the country under review to give additional attention to implementation thereto.

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

### ▪ Recommendation:

*Consider expanding and complementing the systems for registering the income, assets and liabilities, and regulate their publication, as appropriate, through pertinent provisions.*

### ▪ Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>55/</sup>

- a) *Consider the advisability of implementing a specific law that includes time frames and reasonable circumstances for demanding the periodic and updated submission of declarations of net worth by those persons obligated to do so, so as to diminish opportunities for corruption and to prevent and detect crimes against government property during the performance of public functions.*
- b) *Consider the possibility of developing Article 8, section 1 of the Law on Illicit Enrichment of Public Officials and Employees, such that the Supreme Court, through its Probity Section, may have systems that make it possible to promote and timely verify the declarations, setting time frames and occasions for doing so, and providing for those decisions that make it possible to collaborate with this and other entities of the State, such as the financial or tax authorities, so as to facilitate this task.*
- c) *Take into consideration that the systems for registering the income, assets and liabilities of those who hold public office may constitute an effective instrument not only for determining their illicit enrichment, but also for preventing and detecting other acts of corruption.*
- d) *Regulate the conditions, procedures and other aspects relating to the public disclosure, as appropriate, of the declarations of income, assets and liabilities, subject to the Constitution and the fundamental principles of the legal system of El Salvador.*
- e) *Consider the possibility of expanding the regime of sanctions, so as to cover other types of conduct, such as the failure to disclose information when making the declaration, including, among other measures, imposing sanctions additional to those that exist.*
- f) *Implement training programs for public servants on the regulations applicable to the system for registering income, assets, and liabilities, and design mechanisms for disseminating that system among the public servants obligated to comply with it, to assure that the current regulations are known.*
- g) *Implement the procedures needed to perform effective control of compliance with the obligation to submit these declarations, so as to make it possible to verify the results in this area.*

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55. See pp. 37 and 38 of this report, available at [http://www.oas.org/juridico/english/mesicic\\_II\\_inf\\_slv\\_en.pdf](http://www.oas.org/juridico/english/mesicic_II_inf_slv_en.pdf)

[121] In its Response,<sup>56/</sup> the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step that contributes to the progress in the implementation of the measures of the foregoing recommendation, the proposed Public Probity Law, which was drafted on the basis of a review of the legislation in force and of a previous draft probity law submitted by the Supreme Court of Justice. The proposed Law also takes into account the Constitution, the international conventions and treaties on this topic ratified by the Republic of El Salvador, and the experience of the Probity Section of the Supreme Court of Justice in the implementation of the Law on Illicit Enrichment of Public Officials and Employees that has been in force since 1950. This draft law was submitted by the interagency committee in September 2008, as Bill No. 2496-1-2006-1, and is currently under debate for approval.

[122] The Committee takes note of the steps taken by the country under review to advance in its implementation of the measures of the foregoing recommendation as well as reiterates the need for it to continue to give attention thereto, bearing in mind that the proposed Public Probity Law is presently under debate for approval.

[123] Furthermore, in regards to the implementation of the measures of the recommendation, the civil society organizations National Foundation for Development (FUNDE), Foundation for Studies for the Application of Law (FESPAD), and Social Initiative for Democracy (ISD) note the following:<sup>57/</sup>

[124] - With respect to measure a):

[125] *“In spite of the fact that four Supreme Court justices presented a proposed Probity Law in 2006 to replace the current Law on Illicit Enrichment which governs the aspects mentioned in this measure, the Legislative Assembly has not approved it.*

[126] *Under Article 240 of the Constitution the time limit for submitting declarations is 60 days, which is considered reasonable.*

[127] *It is believed that the current law lacks what is needed to ensure the effective prevention of these crimes against government property.”*

[128] - With respect to measure b):

[129] *“Article 16 (b) of the proposed Probity Law introduces the authority of the Probity Section to “investigate the veracity of the contents of declarations of net worth;” Article 11, second paragraph, provides that one of the powers of verification of the Probity Section is to order such expert assessments as it deems advisable; and Article 25 provides that it may request all authorities, officials, employees, and entities of any nature to provide such information as it deems relevant, even if it is a confidential.*

[130] *The bill began to be debated in the Legislative Assembly; unfortunately, however, it has not been approved.”*

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56. See response of El Salvador to the Questionnaire in the Third Evaluation Round, p. 65.

57. “Independent Report by Civil Society in El Salvador on the Questionnaire for the Third Round,” submitted by the civil society organizations National Foundation for Development (FUNDE), Foundation for Studies for the Application of Law (FESPAD), and Social Initiative for Democracy (ISD), pp. 265-273.

[131] - With respect to measure c):

[132] *“There has been no progress on this measure beyond the proposal presented, Articles 44 et seq. of which govern disclosure of declarations. The bill recognizes that the contents of declarations are confidential; however, it empowers the Probity Section to disclose all breaches of legal obligations, statistics, information of a general nature, proceedings instituted, procedural steps taken, and penalties imposed.”*

[133] - With respect to measure d):

[134] *“A significant constraint established by the Constitution for the clarification of these acts is that it recognizes the confidentiality of declarations, for which reason their contents may not be made public. The second constraint is that criminal proceedings may only be instituted within 10 years after the date on which the official or employee ceases to perform the function whose exercise may have given rise to said enrichment.”*

[135] - With respect to measure e):

[136] *“The Government Ethics Tribunal has covered these elements in its training courses on illicit enrichment; however, a permanent awareness program for public servants is lacking.”*

[137] - With respect to measure f):

[138] *“The system of annual statements of net worth for public officials provided at Article 240 of the Constitution and developed by the Law on Illicit Enrichment of Public Officials and Employees empowers the Supreme Court of Justice, through the Probity Section (see box 1), to adopt such measures as it deems necessary to verify the veracity of statements, and also to impose penalties for failure to submit statements on time and institute proceedings should there be evidence of undue enrichment. However, as regards the adoption by the Supreme Court of such measures as it deems necessary, these were suppressed in one case... involving high-ranking officials; and as regards penalties, they are laughable for public officials, who prefer to pay the fine than obey the law.”*

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

#### **▪ Recommendation 3.1:**

*Strengthen the oversight bodies, especially the Supreme Court of Justice and the Court of Accounts, in terms of the functions they perform in relation to monitoring effective compliance with the provisions set forth at paragraphs 1, 2, 4, and 11 of Article III of the Convention, for the purpose of ensuring the effectiveness of such monitoring, providing them with the resources they need to fully perform their functions and establishing mechanisms that make possible the institutional coordination of their actions, and an ongoing evaluation and monitoring of them.*

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

[140] Furthermore, in regards to the implementation of the recommendation, the civil society organizations National Foundation for Development (FUNDE), Foundation for Studies for the Application of Law (FESPAD), and Social Initiative for Democracy (ISD) note the following:<sup>58/</sup>

[141] *“Greater interagency coordination is needed for the application of Article III of the Convention, so as to identify plans of action and areas that need to be strengthened in order to implement the systems proposed in the Convention. For instance, the system of statements of net worth for public officials has not being discussed in the judicial branch, a fact made clear by the limited involvement of the Supreme Court of Justice in seeking new legislation in this area.”*

▪ Recommendation 3.2:

*Implement the mechanisms needed to gather the information related to the functions performed by the oversight bodies aimed at establishing elements for evaluating this area.*

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

▪ Recommendation 3.3:

*Establish a body, or provide additional authority to an existing body, in order to ensure appropriate monitoring of the mechanisms recommended in section 4 below (Article III, paragraph 11).*

[143] In its Response,<sup>59/</sup> the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step that contributes to the progress in the implementation of the foregoing recommendation the draft Law on Transparency and Access to Public Information.

[144] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation as well as reiterates the need for it to continue to give attention thereto, bearing in mind that the draft Law on Transparency and Access to Public Information is presently under debate.

[145] Furthermore, in regards to the implementation of the recommendation, the civil society organizations National Foundation for Development (FUNDE), Foundation for Studies for the Application of Law (FESPAD), and Social Initiative for Democracy (ISD) note the following:<sup>60/</sup>

[146] *“The current administration under Mauricio Funes created the Secretariat for Transparency, which promotes transparency in the public administration and citizen participation. One of the elements of the Plan of the Secretariat is to create a citizen oversight system that makes participation mechanisms available to the public. This includes the creation of Information and Response Offices*

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58. “Independent Civil Society Report on El Salvador for the Questionnaire in the Third Round,” submitted by the civil society organizations National Foundation for Development (FUNDE), Foundation for Studies for the Application of Law (FESPAD), and Social Initiative for Democracy (ISD), p. 35.

59. See response of El Salvador to the Questionnaire in the Third Evaluation Round, p. 66.

60. “Independent Civil Society Report on El Salvador for the Questionnaire in the Third Round,” submitted by the civil society organizations National Foundation for Development (FUNDE), Foundation for Studies for the Application of Law (FESPAD), and Social Initiative for Democracy (ISD), p. 36.

*at each Ministry, autonomous entity, and other offices of the executive branch where members of the public can lodge information requests or complaints.*

#### **4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ART. III, PARAGRAPH 11)**

##### **4.1. General participation mechanisms**

The Committee did not offer any recommendations in this section.

##### **4.2 Mechanisms for access to information**

▪ Recommendation:

*Institute legal provisions and measures to support access to government information.*

▪ Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>61/</sup>

- a) *Consider the advisability of issuing law or laws, the provisions of which specifically ensure access to government information.*
- b) *Strengthen the provisions and mechanisms that ensure the right of access to government information, by creating and regulating a procedure designed to protect this right, that could include provisions such as: (i) the procedures for accepting requests and responding to them on a timely basis; (ii) the admissibility requirements and consequences when such requirements are not met; (iii) the reasons why a request may be denied; (iv) the method for communicating the decision to the applicant; (v) prompt and specialized administrative remedies for appealing a decision made by a public servant who improperly denies access to the information requested; (vi) the implementation of a regime of sanctions – administrative and criminal – for public servants who may hamper, delay, or prevent the exercise of this right; and (vii) exceptions to the right of access to government information.*
- c) *Expressly define the limitations for access to information provided for in the Legal System of El Salvador.*
- d) *Continue strengthening and expanding the information systems that operate through the different web pages created by the public institutions, as an effective means of disseminating the everyday management of the State. In this respect, the Committee recognizes the considerable collection of computerized resources fostered by the Republic of El Salvador, allowing access to ample government information.*
- e) *Ensure, through training and updating programs, that public officials are knowledgeable of and can apply, properly and in timely fashion, the laws and regulations that protect access to government information.*

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61. See pp. 39 and 40 of this report, available at [http://www.oas.org/juridico/english/mesicic\\_II\\_inf\\_slv\\_en.pdf](http://www.oas.org/juridico/english/mesicic_II_inf_slv_en.pdf)

- f) *Consider the usefulness of having the applicable law ensure access to information held by the Branches of the Government, municipalities, and by the autonomous institutions.*
- g) *Consider establishing a mechanism with autonomy in its operations, charged with promoting and disseminating the right to and access to government information, resolving denials to furnish access to information, and protecting personal data held by the government offices and agencies.*

[147] In its Response, the country under review did not present information with respect to the implementation of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.<sup>62</sup>

[148] Furthermore, in regards to the implementation of the recommendation, the civil society organizations National Foundation for Development (FUNDE), Foundation for Studies for the Application of Law (FESPAD), and Social Initiative for Democracy (ISD) note the following:<sup>63/</sup>

[149] *“Despite the fact that several bills on access to public information have been introduced in the Legislative Assembly since 2006 that would contribute to the implementation of the recommendations, the Legislative Assembly has not yet enacted a law. A working group was set up to promote a consolidated law based on a proposal from the Farabundo Martí Front party and the proposal put forward by the Salvadoran Foundation for Economic and Social Development (FUSADES), which is currently before the Committee on Legislation and Constitutional Law of the Legislative Assembly for review. Apparently [CHECK] al frenos???? of the minority parties and discussions on the election mechanism for the officers of the institution that ensures the right of access to information, the reservation criteria, and the body that would appoint the officers.”*

#### **4.3. Mechanisms for consultation**

- Recommendation:

*Supplement the existing consultative mechanisms, establishing, as appropriate, procedures that will offer greater opportunities to hold consultations between society in general prior to designing public policies and approving legal provisions.*

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62. In its comments of August 11, 2010, the country under review notes the following: *“In recent months the Government of El Salvador has been engaged in the following activities designed to hasten the adoption of appropriate standards on access to information and transparency: The holding of an on-line forum open to all leaders of society for 45 days; analysis by international experts of the core aspects of the standards; staging of three on-site consultations with NGOs, employers’ associations, municipal associations, and other organizations to discuss the contents of the proposed standards; preparation of a study on feasibility and implementation costs of the prospective standards; analysis of the OAS model law on access to information as a comparative guide for the proposed standards. The results were relayed to the Legislative Assembly as a contribution to the study that that body is already conducting of the draft bills that it has under discussion.”*

63. “Independent Civil Society Report on El Salvador for the Questionnaire in the Third Round,” submitted by the civil society organizations National Foundation for Development (FUNDE), Foundation for Studies for the Application of Law (FESPAD), and Social Initiative for Democracy (ISD), p. 36.

- Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>64/</sup>
  - a) *Consider applying national-level consultation instruments that are similar to those considered in the municipal realm, to provide an appropriate role to civil society in its consultative activity.*
  - b) *Consider the possibility of applying consultation instruments with characteristics similar to those already in place in specific areas, such as the environment, to other areas, or develop other suitable mechanisms that make it possible to engage in those consultations in other settings, additional to those in which they are already contemplated.*
  - c) *Continue implementing the system of sectoral roundtables, considering the possibility of expanding their use to encompass a larger number of areas of interest to civil society.*
  - d) *Consider the advisability of designing and implementing programs for dissemination on the consultative mechanisms, training and facilitating civil society and nongovernmental organizations, as well as public officials and employees, on their use.*

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

[151] Furthermore, in regards to the implementation of the recommendation, the civil society organizations National Foundation for Development (FUNDE), Foundation for Studies for the Application of Law (FESPAD), and Social Initiative for Democracy (ISD) note the following:<sup>65/</sup>

[152] *“The executive branch has been adopting measures since 2005, including the creation of committees to address problems such as security and local development. The new government is now pursuing the same approach on issues such as housing policy, economic and social dialogue, and the transparency and anticorruption policy. Although at first this measure centered more on the inclusion of political parties and business associations, the aim now is to seek to include other, traditionally excluded agents, and the emphasis is on the creation of spaces for dialogue and negotiation to reach sustainable agreements by which to strengthen the institutions for tackling the problems in hand. Although there has been progress in making the process more inclusive and broadening the objectives for reaching consensus, there is nothing to guarantee the institutionalization of these processes.”*

#### **4.4. Mechanisms to encourage participation in public administration**

- Recommendation:

*Implement mechanisms that encourage civil society and nongovernmental organizations to participate in the conduct of public affairs.*

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64. See p. 41 of this report, available at [http://www.oas.org/juridico/english/mesicic\\_II\\_inf\\_slv\\_en.pdf](http://www.oas.org/juridico/english/mesicic_II_inf_slv_en.pdf)

65. “Independent Civil Society Report on El Salvador for the Questionnaire in the Third Round,” submitted by the civil society organizations National Foundation for Development (FUNDE), Foundation for Studies for the Application of Law (FESPAD), and Social Initiative for Democracy (ISD), p. 37.

- Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>66/</sup>
  - a) *Consider the possibility of adopting, through the respective mechanisms and procedures, measures such as those provided for in the Draft Executive Decree for the establishment of the Ethics Commission for the Public Function.*
  - b) *Consider the advisability of creating and implementing laws and mechanisms to encourage the participation of civil society and nongovernmental organizations in efforts to prevent corruption, including aspects of participation in addition to those that already exist.*
  - c) *Take actions which encourage the prevention and reporting of acts of corruption, and which allow the Government to identify those areas in which such acts are likely to arise more frequently.*

[153] In its Response, the country under review did not present information with respect to the implementation of the measures of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

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

- Recommendation:

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

- Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>67/</sup>
  - a) *Consider applying mechanisms of participation in monitoring public administration at the national level, similar to those contemplated in the municipal regime, in those areas where the State considers they may be useful, including the possibility of such mechanisms being convoked by civic initiative at the local and national levels.*
  - b) *Consider the implementation of awareness and training programs directed at civil society and nongovernmental organizations on the aspects dealt with in sections 4.1 to 4.5 of this report.*

[154] In its Response, the country under review did not present information with respect to the implementation of the measures of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

[155] Furthermore, in regards to the implementation of the recommendation, the civil society organizations National Foundation for Development (FUNDE), Foundation for Studies for the Application of Law (FESPAD), and Social Initiative for Democracy (ISD) note the following:<sup>68/</sup>

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66. See p. 42 of this report, available at [http://www.oas.org/juridico/english/mesicic\\_II\\_inf\\_slv\\_en.pdf](http://www.oas.org/juridico/english/mesicic_II_inf_slv_en.pdf)

67. See p. 43 of this report, available at [http://www.oas.org/juridico/english/mesicic\\_II\\_inf\\_slv\\_en.pdf](http://www.oas.org/juridico/english/mesicic_II_inf_slv_en.pdf)

[156] “An interesting development came out of the commitment on matters related to transparency signed by the current president. We refer to the implementation of a Citizen Observatory on Public Works which would begin with the participatory observation of the activities of the Ministry of Public Works (MOP in Spanish) and progressively expand its observation scope to include other government offices. So far the Observatory has encountered difficulties in securing a source of funding that guarantees sufficient independence so as not to compromise its credibility and ensures that it is objective and offers constructive criticism. Having said that, it is thought that these problems will be overcome in the near term.”

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

### ▪ Recommendation 5.1:

*Determine those specific areas in which the Republic of El Salvador sees the need for technical cooperation with other States Parties in order to strengthen its capacities to prevent, detect, investigate and punish acts of corruption. As well, the Republic of El Salvador should determine and prioritize requests for mutual assistance that are received in investigating or prosecuting cases of corruption.*

### ▪ Recommendation 5.2:

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

### ▪ Recommendation 5.3:

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

### ▪ Recommendation 5.4:

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

[157] In its Response, the country under review did not present information with respect to the implementation of the foregoing recommendations. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

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68. “Independent Civil Society Report on El Salvador for the Questionnaire in the Third Round,” submitted by the civil society organizations National Foundation for Development (FUNDE), Foundation for Studies for the Application of Law (FESPAD), and Social Initiative for Democracy (ISD), p. 37.

## 6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

- Recommendation suggested by the Committee that was satisfactorily considered within the Framework of the Second Round.<sup>69</sup>

- Recommendation 6.1:

*Designate, through the procedures established for the purpose, the central authority or authorities for the purposes of the international assistance and cooperation provided for in the Convention.*

- Recommendations suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round.<sup>70</sup>

- Recommendation 6.2:

*Inform the General Secretariat of the OAS of the appointment of the authority or authorities alluded to in the previous point, in keeping with the formalities provided for to this end.*

[158] The Committee takes note of the satisfactory consideration of the above recommendation, bearing in mind that by means of Verbal Note No. OEA-389/2007 of November 1, 2007, the Permanent Mission of El Salvador to the OAS informed the General Secretariat of the appointment of the Department of Legal Affairs and Human Rights of the Ministry of Foreign Affairs as the Central Authority

- Recommendation 6.3:

*Ensure that once that authority is designated, it has the resources needed to adequately carry out its functions.*

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

## 7. GENERAL RECOMMENDATIONS

- Recommendations suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round.<sup>71</sup>

- Recommendation 7.1:

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

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69. See p. 44 of this report, available at [http://www.oas.org/juridico/english/mesicic\\_II\\_inf\\_slv\\_en.pdf](http://www.oas.org/juridico/english/mesicic_II_inf_slv_en.pdf)

70. See p. 43 of this report, available at [http://www.oas.org/juridico/english/mesicic\\_II\\_inf\\_slv\\_en.pdf](http://www.oas.org/juridico/english/mesicic_II_inf_slv_en.pdf)

71. See p. 43 of this report, available at [http://www.oas.org/juridico/english/mesicic\\_II\\_inf\\_slv\\_en.pdf](http://www.oas.org/juridico/english/mesicic_II_inf_slv_en.pdf)

▪ Recommendation 7.2:

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

▪ Recommendation 7.3:

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

[160] In its Response, the country under review did not present information with respect to the implementation of the foregoing recommendations. Accordingly, the Committee reiterates the need for the country under review to give additional attention thereto.

## SECOND ROUND<sup>72</sup>

[161] The Committee offers the following observations with respect to the implementation of the recommendations made to the Republic of El Salvador in the Report from the Second Round, based on the information available to it:

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

#### 1.1. Systems of Government Hiring

▪ Recommendation 1.1.1:

Strengthen government hiring systems.

▪ Measures suggested by the Committee:

a) *Strengthen and develop, as appropriate, and through relevant legal and administrative procedures, the different stages that comprise the personnel recruitment and selection processes in the public administration, through adoption of clearly defined provisions and guidelines, in particular on calls for candidates, as well as the requirements, content and dissemination thereof; staging of processes, terms and conditions, and assessment of suitability tests, as well as selection of candidates and their subsequent appointment as new employees, ensuring the principles of openness, equity, and efficiency provided in the Convention. (See Section 1.1.2 in Chapter II of this Report).*

b) *Develop, through appropriate legal and administrative procedures, standards and mechanisms governing the scope and limits of the employment in the public administration of staff under work contracts mentioned in Article 4, paragraph (m), of the Civil Service Law so*

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72. The section references that appear in parentheses in the recommendations and measures transcribed in italics allude to the report from the Second Round of Review

*as to ensure reliable verification of aptness, merits, competencies, and attitudes suitable for the exercise of the functions corresponding to the position to be held, based on the principles of openness, equity, and efficiency provided in the Convention.*

- c) *Continue to strengthen the bodies responsible for implementing the Civil Service Law, in particular the Civil Service Commissions and the Civil Service Tribunal, with respect to the functions that they perform in the areas of administration and control of government hiring systems, supplying them with the necessary resources to perform their functions properly and establishing mechanisms for the effective institutional coordination of their actions as well as the ongoing evaluation and follow-up thereof. (See Section 1.1.2 in Chapter II of this Report).*
- d) *Strengthen and ensure the appropriate dissemination of provisions establishing through administrative and judicial channels challenge mechanisms for the purpose of clarification, modification, or revocation of substantive decisions in staff recruitment and selection procedures. (See Section 1.1.2 in Chapter II of this Report).*

[162] With respect to measure b) of the foregoing recommendation, in its Response, the country under review presents information.<sup>73</sup> In this regard, the Committee notes the following as a step that leads it to conclude said measure has been satisfactorily considered:

[163] *“In view of the fact that Article 4 (m) of the Civil Service Law has been reformed,<sup>74</sup> the recommendation made by MESICIC is no longer pertinent because the civil service career system now includes staff that used to provide services to the state under work contracts.”*

[164] The Committee takes note of the reforms introduced to Article 4 of the Civil Service Law which incorporate in the civil service career system any individual hired under contract who provides services of a permanent nature that pertain to the workings of public institutions. Accordingly, the Committee takes note of the satisfactory consideration by the country under review of measure b) of the foregoing recommendation.

[165] With respect to measure c) of the foregoing recommendation, in its Response, the country under review presents information.<sup>75</sup> In this regard, the Committee notes as steps which contribute to progress in the implementation of the measure, the proposal to prepare the draft General Regulations for the Civil Service Law and the implementation of on-site and virtual training courses for Civil Service Committees, officials, and public sector employees, in order to educate and inform them on different aspects of public administration.

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

[167] With respect to measure d) of the foregoing recommendation, in its Response, the country under review presents information.<sup>76</sup> In this regard, the Committee notes as steps which contribute to

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73. See response of El Salvador to the Questionnaire in the Third Evaluation Round, p. 66.

74 Legislative Decree No. 10 of May 20, 2009, published in Official Gazette No. 94, Vol. 383 of May 25, 2009.

75 See response of El Salvador to the Questionnaire in the Third Evaluation Round, p. 67

76. See response of El Salvador to the Questionnaire in the Third Evaluation Round, p. 67.

progress in the implementation of the measure, the restructuring plan in the judiciary for employee recruitment and selection processes and the publication of vacancies therein on the official web site.

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

[169] The Committee also notes the need for that country under review to give additional attention to measure a) of the foregoing recommendation, bearing in mind that it does not refer to its implementation in its Response.

- Recommendation 1.1.2:

- Strengthen municipal government hiring systems.*

- Measures suggested by the Committee:

- a) *Adopt, through appropriate legal or administrative procedures, clear and compulsory mechanisms that ensure objectiveness in candidate selection as provided in Article 31 of the Municipal Civil Service Law. (See Section 1.1.2 in Chapter II of this Report).*

- b) *Promote, in accordance with Articles 55 and 56 of the Municipal Civil Service Law, the strengthening of the National Registry of the Municipal Civil Service System and the Municipal Registries of the Municipal Civil Service System and grant the Salvadoran Institute for Municipal Development and the necessary oversight powers to monitor proper compliance with this obligation. (See Section 1.1.2 in Chapter II of this Report).*

[170] In its Response, the country under review did not refer to the aforementioned measures of the foregoing recommendation. Accordingly, the Committee takes note of the need for the country under review to give additional attention to its implementation.

- Recommendation 1.1.3:

- Strengthen government hiring systems in the legislative branch.*

- Measure suggested by the Committee

- Adopt, through the appropriate authority, clear and specific provisions to govern the legislative branch recruitment system based on the principles of merit, equality, and transparency, including control mechanisms and governing or administrative authorities; employment opportunity dissemination mechanisms, and challenge mechanisms for the purposes of clarification, modification, or revocation of substantive decisions in legislative branch hiring processes. (See Section 1.1.2 in Chapter II of this Report).*

[171] In its Response, the country under review did not refer to the aforementioned measure of the foregoing recommendation. Accordingly, the Committee takes note of the need for the country under review to give additional attention to its implementation.

- Recommendation 1.1.4:

*Strengthen government hiring systems in the judicial branch.*

- Measure suggested by the Committee

*Adopt, through appropriate procedures, mechanisms establishing clearly defined guidelines on announcement of employment opportunities and vacancies in the judicial branch and the content and form thereof, as well as the amount of advance notice required in their publication, to which end mass media outlets may be used, such as national newspapers and/or Internet websites. (See Section 1.1.2 in Chapter II of this Report).*

[172] With respect to the measure of the foregoing recommendation, in its Response, the country under review presents information.<sup>77</sup> In this regard, the Committee notes as steps which contribute to progress in the implementation of the measure, the restructuring plan in the judiciary for employee recruitment and selection processes and the publication of vacancies therein on the official web site.

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

- Recommendation 1.1.5:

*Strengthen government hiring systems in oversight bodies.*

- Measures suggested by the Committee:

a) *Adopt, through appropriate procedures, mechanisms establishing clearly defined guidelines on announcement of employment opportunities and vacancies in Court of Accounts and in the Office of the Prosecutor General and the content and form thereof, as well as the amount of advance notice required in their publication, to which end mass media outlets may be used, such as national newspapers and/or Internet websites. (See Section 1.1.2 in Chapter II of this Report).*

b) *Strengthen and ensure the appropriate dissemination of provisions establishing through administrative and judicial channels challenge mechanisms for the purpose of clarification, modification, or revocation of substantive decisions in staff recruitment and selection procedures in the Court of Accounts and the Office of the Prosecutor General, and ensure timely, and objective, impartial, and effective processing. (See Section 1.1.2 in Chapter II of this Report).*

[174] With respect to measure b) of the foregoing recommendation, in its Response, the country under review presents information.<sup>78</sup> In this regard, the Committee notes as steps which contribute to progress in the implementation of measure b), the restructuring plan in the judiciary for employee recruitment and selection processes and the publication of vacancies therein on the official web site.

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77. See response of El Salvador to the Questionnaire in the Third Evaluation Round, p. 67.

78. See response of El Salvador to the Questionnaire in the Third Round, pp. 67 and 68.

[175] 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 the need for it to continue to give attention thereto.

[176] The Committee also notes the need for that country under review to give additional attention to measure a) of the foregoing recommendation, bearing in mind that it does not refer to its implementation in its Response.

▪ Recommendation 1.1.6:

*Carry out periodic comprehensive evaluations in order to assess the use and effectiveness of the government hiring system and, based on the findings, identify and consider adoption of specific measures by which to ensure the transparency, openness, equity, and efficiency thereof. (See Section 1.1.3 in Chapter II of this Report).*

[177] With respect to the implementation of the foregoing recommendation, in its Response, the country under review presents information.<sup>79</sup> In this regard, the Committee notes as steps which contribute to progress in its implementation, the projects set in motion by the Court of Accounts to accomplish the proposed objectives, which consist of: a) “Evaluation of attitudes and aptitudes of newly hired personnel,” b) “Performance assessment of the employees of the Court of Accounts,” which is defined for all staff, and, c) “Performance assessment of audit technical personnel;” the first of these is underway, while for the other two January to June 2009 was set as an approximate implementation time frame.

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

## **1.2. Systems for government procurement of goods and services**

▪ Recommendation 1.2.1:

*Continue to strengthen the governing bodies of the Government Procurement and Contracting System (SIAC), in particular the Government Procurement and Contracting Regulatory Unit (UNAC), as well as the Institutional Procurement and Contracting Units (UACIs), with respect to the functions that they perform in the area of administration and control of the system, providing them with the resources necessary to perform their functions properly and developing mechanisms for the effective institutional coordination of their actions as well as the ongoing evaluation and follow-up thereof. (See Section 1.2.2 in Chapter II of this Report).*

[179] With respect to the implementation of the foregoing recommendation, in its Response, the country under review presents information.<sup>80</sup> In this regard, the Committee notes as steps which contribute to progress in its implementation, the reforms proposed to the Government Procurement and Contracting Law (LACAP), the main aims of which, according to the response of the Republic of El Salvador, are to update, modernize, and strengthen the regulatory framework on government procurement in order to generate legal certainty and clarity in their application; strengthen the functions and responsibilities both of the governing entity and of the operating units; seek to ensure

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79. See response of El Salvador to the Questionnaire in the Third Evaluation Round, p. 68.

80. See response of El Salvador to the Questionnaire in the Third Evaluation Round, p. 68.

that the actions of officials and employees connected with procurement and contracting processes are based on adequate procurement planning and improved performance in the management of contracts; foster electronic transactions, and simplify the procedures for accessing and overseeing government procurement processes.

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

▪ Recommendation 1.2.2:

*Strengthen oversight mechanisms in procurement processes for goods, construction projects, general services, and consultant services.*

▪ Measures suggested by the Committee:

- a) *Adopt, through the existing bodies, provisions that provide for the selection of an administrative unit that carries out work of auditing, control, and oversight of contracts of a certain amount and/or complexity that so require. (See Section 1.2.2 in Chapter II of this Report).*
- b) *Encourage the creation of citizen review mechanisms to perform oversight and monitoring of the pre-contractual phase, and of the execution of those contracts, having regard to their nature, importance, and/or magnitude. (See Section 1.2.2 in Chapter II of this Report).*
- c) *Develop provisions for the implementation of mechanisms or systems for the rendering of periodic accounts both by suppliers and contractors and by persons or entities directly responsible for supervision, control and oversight of contracts, ensuring the openness thereof. (See Section 1.2.2 in Chapter II of this Report).*

[181] In its Response, the country under review did not refer to the aforementioned measures of the foregoing recommendation. Accordingly, the Committee takes note of the need for the country under review to give additional attention to its implementation.

▪ Recommendation 1.2.3:

*Develop and implement the single Registry of bidders, procurement, and contracts that contains all the data from the different registries mentioned in the Government Procurement and Contracting Law and its Regulations, using, for instance, information technology for its formation, updating, consultation, and dissemination.*

[182] In its Response, the country under review did not refer to the aforementioned recommendation. Accordingly, the Committee takes note of the need for the country under review to give additional attention to its implementation.

▪ Recommendation 1.2.4:

*Continue to develop and strengthen the information technology component of the Government Procurement and Contracting System, COMPRASAL ([www.comprasal.gob.sv](http://www.comprasal.gob.sv)), in order to ensure transparency, openness, equity, and efficiency in government systems for procurement of*

*goods and services in keeping with the Convention. (See Section 1.2.2 in Chapter II of this Report).*

[183] With respect to the implementation of the foregoing recommendation, in its Response, the country under review presents information.<sup>81</sup> In this regard, the Committee notes as steps which contribute to progress in its implementation the new design of the Government Procurement and Contracting System (SIAC), COMPRASAL II, the aim of which is to implement a new phase of that system in order to provide a tool for public sector agencies to conduct their procurement operations, bolstering transparency and efficiency in the government procurement market in the Republic of El Salvador.

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

▪ Recommendation 1.2.5:

*Examine the possibility of publishing, when appropriate, preliminary bidding terms and conditions so that interested parties might examine and submit observations on them. (See Section 1.2.2 in Chapter II of this Report).*

[185] In its Response, the country under review did not refer to the aforementioned recommendation. Accordingly, the Committee takes note of the need for the country under review to give additional attention to its implementation.

▪ Recommendation 1.2.6:

*Strengthen public works contracting systems.*

▪ Measure suggested by the Committee

*Consider implementation of control systems for each individual public works contract, which enable civic inspections or citizen oversight activities; entail the obligation to submit periodic reports on the progress of the contract; and make it possible to determine if the expected cost/benefit ratio was actually achieved and if the quality of the work met the terms of the contract. (See Section 1.2.2 in Chapter II of this Report).*

[186] With respect to the implementation of the measure of the foregoing recommendation, in its Response, the country under review presents information.<sup>82</sup> In this regard, the Committee notes as a step which contributes to progress in the implementation of the measure, the preparation of the “Evaluation of the Government Procurement and Contracting System” based on the OECD-DAC Methodology, which seeks to determine the quality and effectiveness of that system with a view to devising a plan to build up its capacities. According to the response of the Republic of El Salvador, the medium-term aim of the methodology is for the country to improve the system in order to bring it up to internationally recognized standards. This would allow greater efficiency in the use of public funds and help the government to meet its commitments, through the determination of baseline, performance and compliance indicators by which objectively to assess the system based on a review

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81. See response of El Salvador to the Questionnaire in the Third Evaluation Round, p. 69.

82. See response of El Salvador to the Questionnaire in the Third Evaluation Round, p. 69.

of its legal and regulatory framework, institutional framework, administrative capacity, operational effectiveness, integrity and transparency.

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

▪ Recommendation 1.2.7:

*Carry out periodic comprehensive evaluations in order to assess the use and effectiveness of the government procurement and contracting system and, based on its findings, identify and consider adoption of specific measures by which to ensure the transparency, openness, equity, and efficiency thereof. (See Section 1.2.3 in Chapter III of this Report).*

[188] In its Response, the country under review did not refer to the aforementioned recommendation. Accordingly, the Committee takes note of the need for the country under review to give additional attention to its implementation.

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

▪ Recommendation 2.1:

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

▪ Measures suggested by the Committee:

- a) *Increase the possibility of applying protection and assistance measures provided in the Special Victim and Witness Protection Law for public officials or private citizens who report acts of corruption that might not be recognized as crimes and be subject to an administrative investigation.*
- b) *Hasten, under the aegis of the Special Victim and Witness Protection Law, implementation of mechanisms to facilitate, where relevant, international cooperation, including the technical assistance and mutual cooperation for which the Convention provides, as well as experience sharing, training, and mutual assistance.*
- c) *Expand the legal and administrative protection measures, including those for the work place for public servants and private citizens who in good faith report acts of corruption.*
- d) *Expressly recognize the entitlement of public servants to protection, including the protection of their identity as contemplated under the Government Ethics Law for private citizens who report acts of corruption.*
- e) *Establish provisions that provide for administrative sanctions for noncompliance of protection rules and/or obligations.*

[189] With respect to measure d) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>83</sup> The Committee notes the need for the country under review to give additional attention to implementation of the measure along with the other measures of said recommendation.

▪ Recommendation 2.2:

*Perform periodic comprehensive evaluations in order to assess the use and effectiveness of the Victim and Witness Protection Program, and the Government Ethics Law and, based on their findings, identify and consider adoption of specific measures by which to ensure the effective application thereof. (See Section 2.3 in Chapter III of this Report).*

[190] In its Response, the country under review did not refer to the aforementioned recommendation. Accordingly, the Committee takes note of the need for the country under review to give additional attention to its implementation.

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

▪ Recommendation 3.1:

*Adapt and/or strengthen, as appropriate, criminal laws so as to include the elements of acts of corruption provided in Article VI(1) of the Convention.*

▪ Measures suggested by the Committee:

a) *Include, in the offenses defined in Articles 331 and 335 of the Criminal Code, the phrase “or for another person or entity” contained in paragraphs (a) and (b) of Article VI.1 of the Convention. (See section 3.2 of Chapter II of this Report.)*

b) *Study the possibility of amending Article 39 of the Criminal Code to expand the notion of public official to cover those private citizens involved in the provision of public services or who manage public funds in any capacity or form. (See section 3.2 of Chapter II of this Report.)*

[191] In its Response, the country under review did not refer to the aforementioned measures of the foregoing recommendation. Accordingly, the Committee takes note of the need for the country under review to give additional attention to its implementation.

▪ Recommendation 3.2:

*Include the terms “public authorities” and “government agents” referred to in Article 39 of the Criminal Code in the criminalization of the offence of offering bribes described in Articles 270, 325, 328, 332, 335 and 336 of said Code. (See Section 3.2 in Chapter II of this Report).*

[192] In its Response, the country under review did not refer to the aforementioned recommendation. Accordingly, the Committee takes note of the need for the country under review to give additional attention to its implementation.

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83. See response of El Salvador to the Questionnaire in the Third Evaluation Round, p. 70.

- Recommendation 3.3:

*Select and develop, through the Judicial Branch and the Office of the Prosecutor General and other relevant government entities, procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, provisions, measures, and mechanisms considered in Chapter II, Section 3 of this Report. (See Section 3.3 in Chapter II of this Report).*

[193] In its Response, the country under review did not refer to the aforementioned recommendation. Accordingly, the Committee takes note of the need for the country under review to give additional attention to its implementation.

#### **4. GENERAL RECOMMENDATIONS**

- Recommendation 4.1:

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

- Recommendation 4.2:

*Select and develop procedures and indicators, when appropriate and where they do not presently exist, to analyze the results of the systems, standards, measures and mechanisms considered in this Report, and to follow-up on the recommendations made herein. (See Chapter II, Sections 1.1.3 and 1.2.3).*

[194] In its Response, the country under review did not refer to the aforementioned recommendations. Accordingly, the Committee takes note of the need for the country under review to give additional attention to its implementation.