

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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FINAL REPORT

(Adopted at the December 7, 2007 plenary session)

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

**REPORT ON IMPLEMENTATION IN THE REPUBLIC OF COLOMBIA OF THE
CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE SECOND ROUND, AND
ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY
IN THE FIRST ROUND¹**

INTRODUCTION

1. Content of the Report

This Report presents, first, a review of the implementation in the Republic of Colombia, of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for review in the second round: Article III, paragraphs 5 and 8, and Article VI.

Second, the Report will examine follow-up to the recommendations that were formulated to the Republic of Colombia by the MESICIC Committee of Experts in the first round, which are contained in the Report on that country adopted by the Committee at its Fourth meeting, and published at the following web page: www.oas.org/juridico/english/mec_rep_col.pdf

2. Ratification of the Convention and adherence to the Mechanism

According to the official register of the OAS General Secretariat, the Republic of Colombia deposited the instrument of ratification of the Inter-American Convention against Corruption on January 19, 1999.

In addition, it 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 INFORMATION RECEIVED

1. Response from the Republic of Colombia

The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Colombia, and in particular from the Presidential Anti-Corruption Program of Modernization, Efficiency and Transparency (Programa Presidencial de Modernización, Eficiencia,

¹ This report was adopted by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on December 7, 2007, at its Twelfth meeting, held at OAS Headquarters, December 3-7, 2007.

Transparencia y Lucha contra la Corrupción), 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 Colombia sent the provisions and documents it considered pertinent. That response, and those provisions and documents may be consulted on the following Web page: www.oas.org/juridico/spanish/mesicic2_col_sp.htm

For its review, the Committee took into account the information provided by the Republic of Colombia up to May 25, 2007, and that requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and Other Provisions.

2. Documents received from civil society organizations

The Committee also received, within the deadline established the Calendar for the Second Round adopted at its Ninth Meeting², documents from the nongovernmental organization “*Transparencia por Colombia*”, (National Chapter of Transparency International) submitted electronically.³

II. REVIEW OF THE IMPLEMENTATION, BY THE STATE PARTY, OF THE CONVENTION PROVISIONS SELECTED FOR THE SECOND ROUND

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

1.1. SYSTEMS OF GOVERNMENT HIRING

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

The Republic of Colombia has a set of provisions related to the above systems, among which the following provisions related to the principal systems should be noted:

- Constitutional provisions applicable to all civil servants, such as Article 125 of the Constitution, which provides that all positions in state organs and entities are career posts except for those filled by popular election, those subject to free appointment and dismissal, the posts of official workers, and any other position so determined by law. This article also provides that all civil service employees are selected by means of a public merit-based competition, except those for which the Constitution or the law provides a special selection mechanism. It also stipulates that admission to career positions and promotion therein shall be in accordance with statutory requirements and conditions for the determination of merits and qualities of candidates, and provides that civil servants shall be terminated as a result of an unsatisfactory evaluation in the performance of their duties, for violation of disciplinary rules, and other reasons provided in the Constitution or by law. Finally, Article 125

² This meeting was held March 27 to 31, 2006, at OAS headquarters.

³ These documents were received by email on May 25, 2007, and can be found at: http://www.oas.org/juridico/spanish/mesicic2_col_sp.htm

stipulates that in no circumstances may the political affiliation of citizens determine their appointment, promotion to, or dismissal from a career position.

- Statutory and other legal provisions applicable to public servants in the Executive branch and territorial entities, among which the following should be noted:

- Law 909 of 2004, Article 1 of which provides that the purpose of the Law is to regulate the civil service system and set out the basic principles by which public administration should be exercised; and mentions that career positions in the civil service are comprised of public posts subject to free appointment and dismissal, fixed-period positions, and temporary posts.ⁱ Article 2 of the Law provides that the civil service is governed by the principles of equality, merit, morality, efficiency, economy, impartiality, transparency, celerity, and openness. Article 3 describes the scope of the Law's application in the national executive branch and territorial entities and mentions that its provisions shall be applied on an additional basis in special civil service career systems.ⁱⁱ Article 4 refers to specific career systems and indicates that the provisions contained in this Law shall apply to a number of those career systems until regulations thereon are adopted.ⁱⁱⁱ

Article 5 of the aforesaid Law states that all the positions in the agencies and entities that it governs are civil service career positions, except for: 1. Those filled by popular election, those held for a fixed period of time in accordance with the Constitution and the law, the posts of official workers, and positions in which the functions must be exercised in indigenous communities in keeping with their laws; 2. Those subject to free appointment and dismissal that correspond with the criteria mentioned in this Law.^{iv}

The aforesaid Law also refers at Articles 7 to 13 to the National Civil Service Commission, recognized at Article 130 of the Constitution as the body responsible for administration and oversight of all career systems other than those of a special nature, and mentions that it is independent from the other branches and organs of government, has legal standing, administrative autonomy, and independent assets. Article 14 describes the functions of the Civil Service Administrative Department as, *inter alia*, policy shaping, planning, and coordination of civil service human resources at the national and territorial level according to guidelines issued by the President of the Republic. Article 15 regards the staff units of entities as the basic structure for human resources management in the public administration, and Article 16 provides that all agencies and entities governed by this law must have a Staff Committee composed of two representatives designated by the nominating entity and two staff representatives.

Article 27 of the aforementioned law also refers to the civil service career system and defines it as a technical personnel management system, the aim of which is to ensure efficiency in the public administration and offer stability and equal opportunity of admission to and promotion in the civil service, and adds that, to accomplish this objective, access to and tenure in civil service posts shall be based exclusively on merit by means of selection procedures in which transparency and fairness, without any discrimination whatever, are assured.

The aforementioned Law 909 of 2004 enshrines at Article 28 the principles governing admission to and promotion in the civil service, including, *inter alia*, merit, according to which, admission, promotion, and tenure in the civil service shall depend on the permanent demonstration of the necessary academic qualifications, experience, and competence to occupy a post; advertisement, which refers to the effective dissemination of calls for candidates in conditions such that all potential

candidates might know of them; and transparency in the management of selection procedures and choices made by boards and technical organs in charge of selection. Furthermore, Article 29 provides that competitions for admission to and promotion in the civil service shall be open to anyone able to demonstrate that they meet the requirements to serve in such positions. Article 30 states that selection competitions or processes shall be held by the National Civil Service Commission through inter-agency contracts or agreements signed with public or private universities or higher-education institutions accredited by it for that purpose.

Article 31 of the aforementioned law sets out the different stages of the competition or selection process: call for candidates, which shall be signed by the National Civil Service Commission and the head of the respective entity or agency; recruitment, the aim of which is to attract and register the greatest possible number of aspirants who meet the requirements to occupy the posts in contention; tests or selection instruments, whose purpose is to assess the capacity, suitability, and adequacy of aspirants for the various posts in contention, the results of which shall be evaluated by means of technical mechanisms, which must conform to the principles of fairness and impartiality; list of eligible candidates, which shall be drawn up by the National Civil Service Commission (or the contracted entity empowered thereby) in strict order of merit based on the test results, remain valid for two years, and be used to fill the vacancies for which the competition was held in strict order of merit; and probation period, the phase in which the person who has been selected through the competition but is not yet registered in the civil service is appointed for a six-month trial period. At the end of this period their performance shall be assessed and, if approved, they shall acquire career rights, which shall be recognized through inscription in the Civil Service Public Register. If the employee fails to obtain a satisfactory grade in the probation period they shall be relieved of their duties.

As regards to advertisement for calls for candidates, Article 33 of the aforementioned law provides that each entity shall carry them out by means of mechanisms that ensure their publication and enable free participation in them, in accordance with the rules of procedure;^v Article 33 also provides that, in particular, all acts, decisions, and proceedings connected with competitions, receipt of candidate registrations, funds, complaints, and queries should be published on the website of each public entity, the Civil Service Administrative Department, and the entities contracted to hold competitions, together with their electronic mail address and digital signatures; and that on its website the National Civil Service Commission shall publish information about the call for candidates, the list of eligible candidates, and the Civil Service Public Register.

Law 909 of 2004 also contains provisions regarding positions of a managerial nature, which Article 47 of this Law defines as posts which entail the exercise of leadership duties in the public administration of the executive branch at the national and territorial levels, while Article 49 sets out a procedure for admission to such positions.^{vi}

Finally, Law 909 of 2004 provided in its Transitory Article that in the year following the creation of the National Civil Service Commission open competitions should be held to fill any civil service posts occupied on a provisional or temporary basis.

- Decree 1227 of 2005 partially regulates Law 909 of 2004 and provides at Article 13 that it is the responsibility of the National Civil Service Commission to draw up and sign calls for candidates, based on the functions, requirements, and competency profiles for the positions identified by the entity with the vacancies, in accordance with the relevant functions and requirements handbook. Said

Decree also states that the call for candidates is the governing rule in all competitions and a mandatory requirement for the National Civil Service Commission, the administration, the entity that organizes the competition, and the participants, and that it shall contain, as a minimum, the information stipulated in the aforesaid handbook.^{vii}

The foregoing Decree also provides at Article 23 that the purpose of tests or selection instruments is to assess the capacity, suitability, and potential of aspirants, and to grade them, bearing in mind the competencies required to perform the functions and responsibilities of a position efficiently; that these factors shall be assessed by oral, written, and performance tests, background checks, interviews, final evaluation of courses completed during the selection process, and other technical mechanisms that conform to fairness and impartiality guidelines in accordance with predetermined grading parameters; that there will be a least two tests in all competitions, one of which shall be a written or a performance test, depending on the nature of the functions of the positions to be filled, and that the value of each test in the overall competition score shall be determined in the call for candidates.

- Decree 760 of 2005, Title II of which covers complaints in selection or competition procedures, and provides at Article 12 that any aspirant not accepted for a selection or competition procedure may petition their inclusion before the National Civil Service Commission or the delegated entity, as appropriate, within two days following publication of the list of persons accepted and not accepted for the competition, and that such petitions must be decided before the first test is held. Article 13 provides that complaints made by participants regarding results in tests taken in selection procedures shall be presented to the aforesaid Commission or delegated entity within five days following their publication and shall be decided before the following test is held or the selection procedure continues, for which purpose the procedure may be suspended. Article 14 provides that the Staff Committee or the entity or agency concerned in the selection procedure or competition shall have five days following publication of the list of eligible candidates to request the National Civil Service Commission to exclude a person or persons from said list, should it discover any of the circumstances mentioned in said provision.^{viii}

- Decree 2772 of 2005, which establishes the general requirements and functions of all the different positions in government agencies and entities at the national level as well as other provisions. Articles 2 to 6 of this Decree describes the general functions of positions corresponding to the levels of manager, adviser, professional, technician, and assistant; Article 16 provides that the requirements in terms of academic qualifications and experience set in said Decree for each pay grade at each level of seniority shall serve as the basis for each agency and entity to prepare their specific functions and requirements handbooks for the various positions on their staff.

- Rules on “Merit-based Selection” for non-career positions, such as those contained in Presidential Directive 10 of 2002, which provides that the appointment, selection and promotion of officials must be based exclusively upon merit, competence and suitable training for the post to which candidates aspire; Decree 1972 of 2002, which contains rules on the appointment of regional or sectional managers or directors, or whoever acts as such in government offices of the national executive branch; Decree 3344 of 2003, which contains the procedure for drawing up shortlists for the appointment of managers or directors of State-run social enterprises at the territorial level; Decree 1601 of 2005, which covers the evaluation of managerial competencies for the occupation of positions subject to free appointment and dismissal; Decree 2011 of 2006, which contains the procedure for the appointment of Directors General of regional autonomous corporations and special regime corporations; and Presidential Directive 03 of 2006, which makes it compulsory for the entity

concerned and the Civil Service Administrative Department to publish on their websites the résumés of any persons to be appointed to positions subject to free appointment and dismissal or contracted to provide advisory or consultant services.

- Statutory and other legal provisions applicable to public servants in the Legislative branch, among which the following should be noted:

- Law 5 of 1992, which contains the Rules of Procedure of the Congress -Senate and Chamber of Representatives-, of which Article 384 provides that the administrative and technical services of the Senate of the Republic and of the Chamber of Representatives established by this Law are based on the following principles: 1. Officials in the service of the Corporations are termed employees of the Legislative branch; 2. Depending on the origin of their appointment, employees of the Legislative branch are classified as follows: a) Elected: Secretaries General, Deputy Secretaries General, Secretaries General of Constitutional Committees and Coordinators of the Legal Committees of both Chambers, and Director General of the Senate of the Republic. - b) Subject to free appointment and dismissal: Administrative Director of the Chamber of Representatives, Division Chiefs and Office Chiefs of the Senate and the Chamber, Private Secretaries, University-Trained Professionals, Executive Secretaries, and Supervisors of the Offices of the Speaker and Vice Speaker of both Chambers; the Executive Secretary, Supervisors, Professional II, and the Administrative Assistant of the General Secretariat in both Chambers; the University-Trained Professional and the Supervisor of the Office of the Director General of the Senate; supervisors of the Constitutional and Legal Committees of both Chambers; Assistant Auditor of the Chamber, the Coordinators of the Ethics and the Human Rights and Hearings Committees of both Chambers, and the Committee for National and International Agencies of the Senate; and the Legislative Working Unit employees with whom this Law is concerned. - c) Civil service: all other posts or positions not mentioned in the preceding subsections.

The aforesaid Article 384 of Law 4 of 1992 also provides that until norms on civil servants in the Legislative branch are adopted, where compatible, the general civil service provisions that govern the Executive branch shall apply.

Article 388 of this Law provides that, to ensure the efficient performance of their legislative activities, each congressperson shall have a working unit at their service composed of not more than 10 employees and/or contracted workers, and that to fill these positions each congressperson shall propose to the Administrative Director (in the case of the Chamber) or the Director General (in the case of the Senate) each candidate to be hired on a free appointment/dismissal or contract basis. This provision adds that the qualifications to be met by advisers shall be defined by joint resolution of the Officers of the Chamber and of the Senate Administration Committee.⁴

Law 5 of 1992 also provides at Transitory Article 392 that until July 20, 2002, the Officers of the Senate and of the Chamber of Representatives shall determine by resolution the post functions and requirements and basic administrative procedures, and that within the same interval, said officers would, once only, adopt a joint resolution enacting the Legislative Branch Civil Service Statutes.⁵

⁴ Those qualifications were established by Resolution No. 009 of 1995, adopted by the Officers of the Chamber and the Senate Administration Committee.

⁵ Resolution 237 of 1992, which regulates the Senate Personnel Administration Regime, and Resolution 137 of 1992, the current Functions Manual of the Chamber of Representatives, set the duties and requirements of positions and the basic administrative procedures referred to in this article of Law 5 of 1992.

- Statutory and other legal provisions applicable to public servants in the Judicial branch, among which the following should be noted:

- Law 270 of 1996, Article 125 of which states that Magistrates of Judicial Corporations, Judges of the Republic, and Public Prosecutors are officials and that all other persons who occupy positions in Judicial Corporations and Offices and in administrative entities and organs of the Judicial branch are employees; Articles 127 and 128 set out the requirements for the posts of Tribunal Magistrate, Judge of the Republic, or Public Prosecutor; while Articles 129 and 161 contain the job requirements for employees in the Judicial branch.

The aforesaid Law, at Article 130, classifies posts in the Judicial branch as follows: Single-term: The posts of Justice of the Constitutional Court, Supreme Court of Justice, Council of State, Superior Judicature Council, Prosecutor General, and Executive Director of Judicial Administration; Free appointment and dismissal: the positions of Auxiliary Justice, Assistant Attorney and their equivalents, the positions in the offices of the above-listed justices, those attached to the offices of the president and vice president of these corporations, the clerks of those corporations, the positions in the offices of tribunal magistrates, the posts of Vice Prosecutor General of the Nation, Secretary General, National Directors, Regional and Sectional Directors, employees of the Office of the Prosecutor General, of the Vice Prosecutor, and of the General Secretariat, and Assistant Public Prosecutors to the Supreme Court of Justice; Career: the positions of Justice of District Superior Courts, Court of Administrative Judicial Review, and Disciplinary Chambers of the Sectional Judicature Councils, public prosecutors other than those previously mentioned, Judge of the Republic, and all other employee positions in the Judicial branch.

Article 132 of the aforementioned Law sets out the manner in which positions should be filled and provides for firm appointment to permanent vacancies once the various stages of the selection process are completed, if the post is a career position or if it is filled by means of a transfer; and provisional appointment, not to exceed six months; in the case of permanent vacancies, until the appointment can be finalized in the legally prescribed manner; and, in the case of temporary vacancies, when the appointment is not temporary or is for longer than one month. This provision adds that, in the case of career positions, as soon as the vacancy arises, the nominating entities shall request the Administrative Chamber of the Superior or Sectional Judicature Council, as appropriate, to transmit the relevant list of candidates, who must meet the basic requirements to occupy the position.

Law 270 of 1996, states at Article 156 that the principles on which the judicial career is founded are the professional nature of its officials and employees, the efficient performance of their duties, the guarantee of equality of access to employment for all apt citizens, and the consideration of merit as the core basis for admission to, tenure, and promotion in the service. Article 160 provides that for a person to hold a career position, in addition to meeting the requirements contained in the general provisions, they must have satisfactorily passed the statutory selection process and the evaluations conducted in accordance with the rules of procedure adopted for that purpose by the Administrative Chamber of the Superior Judicature Council.

Article 162 of the aforesaid Law states that the judicial career admissions system covers the following stages: For officials: merit-based competitions, creation of the National Register of Eligible Candidates, preparation of candidate lists, appointment, and confirmation; For employees: merit-

based competitions, creation of the Sectional Register of Eligible Candidates, transmission of the list of eligible candidates, and appointment. This provision adds that the Administrative Chamber of the Superior Judicature Council, in keeping with the provisions contained in this Law, shall adopt regulations covering the form, type, content, scope, and all other aspects of each stage and that the respective rules of procedure shall ensure disclosure and the opportunity to contest decisions.

Law 270 of 1996 provides at Article 164 that the merit-based competition is the process used to evaluate the expertise, skills, aptitude, experience, moral suitability, and personality of aspirants to judicial career positions and to determine their inclusion in the Register of Eligible Candidates and their ranking therein. This article also sets out the basic rules governing the aforesaid competitions.^{ix} Furthermore, Articles 165, 166, and 167, respectively, contain rules on the Register of Eligible Candidates,^x the List of Candidates,^{xi} and appointment.^{xii}

Article 174 of the aforesaid Law provides that authority for administration of the judicial career system is vested in the Administrative Chambers of the Superior or Sectional Judicature Councils, with the participation of Judicial Corporations and of Judges of the Republic under the terms of this Law and the rules of procedure, and that the Administrative Chamber of the Superior Judicature Council shall prescribe, in accordance with the provisions of this Law, the mechanisms through which administration of the career and said participation shall be put into practice. Article 175 deals with the powers of the Judicial Corporations and Judges of the Republic regarding the administration of the judicial career, including the power to appoint those officers and employees whose appointments are assigned to them by the law and the regulations.

Finally, Law 270 of 1996 provides at Article 204 that until the statute governing the judicial career system is adopted and the regulations on administration of the employment situation of judicial officials and employees are created, where applicable, Decree Law 052 of 1987 and Decree 1660 of 1978 shall remain in force, provided that their provisions do not run contrary to the Constitution and this Law.

- Decree Law 052 of 1987, which reviews, reforms, and brings into operation the Judicial Career System Statute, which contains, *inter alia*, rules governing the administration of said career system, the selection process for admission to and promotion therein, and job functions and requirements.

- Decree 1660 of 1978, which, according to Article 1, applies, *inter alia*, to officials and employees of the Judicial branch. This decree also includes provisions on the filling of positions, general requirements, grounds for ineligibility, appointment, and competitions.

- Decision 034 of 1994 issued by the Administrative Chamber of the Superior Judicature Council, “which prescribes general rules for merit-based competitions for the selection of career officials and employees in the Judicial branch.” Article 2 of this Decision refers to the different stages of the merit system; Articles 3 to 7 govern competitions; Articles 8 to 10 concern calls for candidates and provide that they shall be widely announced at least 15 business days before registration of applicants in the competition commences, as well as prescribing the contents thereof. Articles 17 to 24 of this Law govern selection tests; Article 24 refers to appeals, and provides that interested parties may file an appeal for reversal of decision in writing against test results and that the results of the judicial training course shall not be open to appeal, without prejudice to any score review procedures provided in the relevant regulations.

- Decision 1445 of 2005 adopted by the Administrative Chamber of the Superior Judicature Council, “which introduces regulations on administration of dynamic and static announcements on the new website of the Judicial branch.” Article 7 of this decision contains the current list of said announcements, and mentions at section 4.3 that the Administrative Chamber, through the Judicial Career System Administration Unit, shall be in charge of administration and publication of information on the judicial career system and calls for candidates.

- Statutory and other legal provisions applicable to public servants in the Office of the Prosecutor General, among which the following should be noted:

- Law 938 of 2004, which enacts the Organic Statute of the Office of the Prosecutor General, Article 58 of which states that the purpose of the career system in said entity is to ensure expertise, efficiency, and excellence in the provision of service, as well as equality in conditions for admission, tenure, and retirement of servants based on their merits. Article 59 classifies posts in the Office of the Prosecutor General as either subject to free appointment/dismissal or career positions, and mentions which ones are subject to free appointment and dismissal and that all other posts are career positions and must be filled by means of a competition-based selection system.^{xiii} Article 60 states that the Office of the Prosecutor has its own career system and that it is administered and regulated by the National Administration Committee for the Career System of the Office of the Prosecutor General. Article 62 provides that the call for candidates is a mandatory requirement, governs all selection processes, and shall be disseminated in accordance with the rules adopted by the Committee. Article 63 states that a list of candidates eligible to take part in competitions shall be drawn up based on the results of the selection process. Article 65 provides that the purpose of competitions is to evaluate and grade the aptitudes, capacities, expertise, skills, and experience of candidates in relation to the profile, requirements, and functions of positions, including an objective and weighted assessment of the academic qualifications, background, and qualified and relevant work experience of candidates, in accordance with the regulations adopted by the aforesaid Committee to that end.

The preceding Law also provides at Article 66 that, based on the results of the competition, a register of eligible candidates shall be formed in order to fill positions and vacancies that arise during their period of eligibility, which shall be two (2) years. Article 67 provides that positions shall be filled in strict descending order, starting with those who occupy the top places in the register of eligible candidates. Article 58 provides that those entitled to appointment based on their placing in the register of eligible candidates shall be hired for a three-month probation period, at the end of which they shall be graded and, if found to be satisfactory, confirmed in the position and placed on the career system payroll.

- Resolution 0-1501 of 2005 adopted by the Prosecutor General, Article 2 of which contains the general requirements to serve in the Office of the Prosecutor General. Article 4 classifies positions, in order to set out their job requirements and pay, according to the following grades: management, adviser, executive, professional, technician, assistant, and auxiliary. Article 15 provides that the Prosecutor General shall be elected by the Supreme Court of Justice from a shortlist provided by the President of the Republic and that all other positions in the Office of the Prosecutor shall be filled by persons appointed by the Prosecutor General. Article 17 refers to regular appointments for filling positions subject to free appointment and dismissal; to three-month probationary appointments, to career positions whose holders are selected through merit-based competitions; to firm appointments once the probation period has been passed and the candidate has received a satisfactory grading; and to provisional appointments, with the mention that such appointments are used to temporarily fill

career positions and temporary or permanent vacancies with staff not selected by means of a merit-based competition, and that in no case shall such appointments give rise to career rights.

Decision 001 of 2006 adopted by the National Administration Committee for the Career System of the Office of the Prosecutor General, which introduces the rules of procedure for selection processes and merit-based competitions, and provides at Article 1 that the purpose of selection processes and merit-based competitions is to select, in an objective manner and under equal conditions, candidates who meet the profile and the basic standards and legal requirements for the functions in the position to which they aspire. Article 3 mentions that the National Administration Committee for the Career System shall determine the terms and conditions and rules of each national merit-based competition. Article 4 deals with selection factors and states that for the purposes of admission and promotion to career positions candidates will undergo an objective and weighted evaluation of their aptitudes, capacities, expertise, and skills relevant to the functions of the position to be filled as well as of their academic qualifications and qualified work experience, in keeping with the handbook on functions, job competencies, and requirements of the Prosecutor's Office, and that the appropriate factors should be described for each call for candidates, depending on the post levels, requirements, and functions.

Article 6 of the foregoing Decision provides that the stages of the selection process are the call for candidates, entry to the competition, review of requirements for admission to the merit-based competition, and the list of persons admitted and not admitted to the merit-based competition. Article 8 provides that the call for candidates shall be published in a nationally distributed daily newspaper at least 15 business days before the start of registration of aspirants, be placed in a visible place at the entrance to the national headquarters, offices of national directors, and offices of sectional directors at least five business days before the start of registration of aspirants and remained there for the duration of the registration period; and that it shall also be advertised and posted on the Prosecutor's Office website

Article 9 of the aforesaid Decision describes the minimum information that the call for candidates must contain.^{xiv} Article 12 provides that persons not accepted for the competition shall have three business days following the publication of the list of persons admitted and not admitted in which to present objections in writing to the National Administration Committee for the Career System; the committee shall settle those objections within the following 15 business days. Article 13 provides that all merit-based competition shall be open to all persons, whether they serve in the entity or not. Article 14 provides that the stages of the competition are application of selection tests, list of persons who pass or fail, register of eligible candidates, and probationary hire. Article 15 describes the aspects to be evaluated in the merit-based competition. Article 18 provides that the evaluation criteria for such competitions are objective and, therefore, test results shall be weighed according to a score grading system. Article 19 provides that the elimination test results shall be published before the classification tests are held. Once the relevant lists of results have been published, aspirants may present appeals for reversal of decision to the National Administration Committee for the Career System within three business days following their publication, and that the Committee shall settle those appeals within the following 15 business days counted from the expiration of the appeal deadline.

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

With respect to the constitutional and legal provisions that refer to the principal systems of government hiring that the Committee has examined, based on the information available to it, they constitute a set of measures relevant to promoting the purposes of the Convention.

Notwithstanding, the Committee believes it would be appropriate to make a number of observations to the country under review on the advisability of complementing, developing and amending certain legal provisions that refer to those systems.

- With respect to the Executive branch and territorial entities, the Committee considers following:

The Committee notes that Articles 3 and 4 of Law 909 of 2004 concern the existence of special and specific career systems, which they mention, and provide, with respect to special career systems, that the provisions of said Law shall apply on an additional basis in the event of gaps in the rules and regulations that govern them and, with regard to the specific careers, that the latter are defined as those which, by reason of the unique and specialized nature of the functions performed by the entities to which they apply, contain specific administrative career regulations in terms of hiring, training, tenure, promotion, and retirement of staff, and are recognized by laws other than those that govern the civil service.

Although the Committee understands that, as the Republic of Columbia points out in its Response to the Questionnaire,⁶ the existence of special career systems may be based on the Constitution and that the creation of specific career systems may be grounded in the unique and special nature of the functions that certain entities perform, it also believes that it would be advisable for the country under review to consider continuing to take the appropriate steps to bring the various career service systems in line with the general system, so that the specific and special systems created by law do not become fragmented from the general government career service, notwithstanding the cases expressly prescribed in its Political Constitution, guiding itself to that end by the principles of openness, equity, and efficiency as provided for in the Convention.⁷ The Committee will make a recommendation in that regard. (see Recommendation 1.1.1 (a) in Chapter III, Section 1.1 of this report).

- With respect to the Legislative branch, the Committee considers the following:

Law 5 of 1992 provided at Transitory Article 392 that until July 20, 2002, the Officers of the Senate and of the Chamber of Representatives would determine by resolution the functions and requirements of the posts as well as the basic administrative procedures, and that within the same interval, said officers would, once only, adopt a joint resolution enacting the Legislative Branch Civil Service Statutes.

In a ruling of September 25, 1997,⁸ the Council of State found that the preceding rule was “manifestly unconstitutional and, therefore, should be advocated as inapplicable in light of the special controls stipulated in Article 4 of the Constitution,” and declared void resolution 001 of July 7, 1992,

⁶ Response of Colombia to the Questionnaire, p. 5

⁷ The state under review reported, in its comments on the draft preliminary report on Colombia for the second round of review, that “in Rulings C-1230 of 2005 and C-175 of 2006 the Constitutional Court gave the National Civil Service Commission the job of administering and supervising the specific and special career services created by law; with that, agencies with specific career service such as the DIAN, the Inpec, the Superintendencies, Aeronautics, the DAS, and the like – and those with special systems created by law, such as the teaching career service, are now administered and supervised by the National Civil Service Commission. Recruitment announcements have been issued to staff those systems.”

⁸ Available at: http://www.oas.org/juridico/spanish/mesicic2_col_sp.htm

“which enacts the Legislative Branch Civil Service Statutes,” adopted by the Officers of the Senate and of the Chamber of Representatives.

One of the reasons provided in the aforesaid ruling stated that “with respect to the regulation of career positions, the Constitution does not empower the Congress to delegate its legislative authority in offices or bodies within its organic structure since, in point of fact, insofar as the institutional need to furnish legal precepts is concerned, the Congress is compelled to act as one body, that is, through the two legislative chambers. Accordingly, the expression contained in Article 50 of the Constitution that ‘It is the responsibility of the Congress to make the laws’ is apodictic.”

Bearing in mind the foregoing ruling, from which it is to be surmised that the Legislative Branch Civil Service Statutes are subject to legal regulation and may not be issued by the Officers of the Senate and of the Chamber of Representatives, as provided in Transitory Article 392 of Law 5 of 1992, the Committee finds that the country under review should, consequently, consider adopting the relevant law to enact said statutes, guiding itself to that end by the principles of openness, equity, and efficiency, as provided for in the Convention, without prejudice to the application of the general Civil Service rules in force for the Executive branch, subject to their compatibility, until said Statutes are adopted, as provided in Article 384 of the aforesaid Law. The Committee will make a recommendation in that regard (see Recommendation 1.1.2 in Chapter III, Section 1.1 of this report).

- With respect to the Judicial branch, the Committee considers the following:

Law 270 of 1996 provides at Article 204 that until the statute governing the judicial career system is adopted and the regulations on administration of the employment situation of judicial officials and employees are created, where applicable, Decree Law 052 of 1987 and Decree 1660 of 1978 shall remain in force, provided that their provisions do not run contrary to the Constitution and this Law.

With respect to the foregoing provision, the Committee believes that the country under review ought to consider enacting the statute governing the judicial career system referred to therein, guiding itself to that end by the principles of openness, equity, and efficiency as provided for in the Convention. In that way it would avoid reliance on provisions in this area that predate said Law and, moreover, the rules and regulations on the judicial career system would be consolidated in a single, concise and well-defined text that would be easier to apply for the officials required to do so, and clearer and more comprehensible for public servants in the Judicial branch as well as for the citizenry at large. The Committee will make a recommendation in that regard (see Recommendation 1.1.3 (a) in Chapter III, Section 1.1 of this report).

- With respect to the Office of the Prosecutor General, the Committee considers the following:

Resolution 0-1501 of 2005 adopted by the Prosecutor General refers at Article 17 to the different types of appointments, including provisional appointments, with the mention that such appointments are used to temporarily fill career positions and temporary or permanent vacancies with staff not selected by means of a merit-based competition, and that in no case shall such appointments give rise to career rights.

With respect to the foregoing provision, the Committee considers that since provisional appointments are a temporary means to fill career positions, in situations where such appointments are made to fill permanent vacancies, a time limit should be set on provisional appointments, in order for the vacancy

to be filled through competition, in accordance with the rules in force for that purpose. The Committee will make a recommendation in that regard (see Recommendation 1.1.4 (a) in Chapter III, Section 1.1 of this report).

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

In its Response to the Questionnaire the Republic of Colombia provided information on results obtained in the context of the Executive branch and territorial entities regarding positions governed by Law 909 of 2004,⁹ among which the following should be noted:

“It should be noted that in this framework --in which the entities have not managed, after nearly seven years, to fill any career positions through the merit-based system-- at present, by virtue of Constitutional Court Judgment C-372 of 1999, a competition-based selection process is underway with more than 619,000 registered aspirants across the country to fill over 56,000 positions.”¹⁰

In its Response to the Questionnaire, the Republic of Colombia then goes on to provide an overview of developments in Call for Candidates 001 of 2005 published by the National Civil Service Commission, “through which it complied with the Transitory Article of Law 909 of 2004 and initiated and opened a competitive selection process to fill the civil service positions reported by public entities that were either occupied on a provisional and temporary basis or permanently vacant.”¹¹

The aforementioned overview starts by mentioning that “chat sessions” were held on March 6, 2006 with officials of the aforesaid Commission in order to confirm and issue instructions on the Call for Candidates and concludes with the observation that on December 10, 2006 a general basic pre-selection test was held and sat by 307,681 individuals, the results of which were published on January 13, 2007.¹²

The Republic of Colombia also indicates in its Response to the Questionnaire that all information on Call for Candidates 001 of 2005 may be found at the National Civil Service Commission website (www.cnscc.gov.co), provides an implementation timetable for Phase 1 of the Call for Candidates, and notes that “as mentioned, on November 28, 2006, the decision was adopted approving the general guidelines for implementation of the Second or Specific Phase of Call for Candidates 001 of 2005 in order to fill civil service positions in the entities covered by Law 909 of 2004.”¹³

Having consulted the National Civil Service Commission website at the address supplied by the country under review in its Response to the Questionnaire and having analyzed the information contained in the said Response, the Committee finds that the selection process initiated with Call for Candidates 001 of 2005 published on December 6 and 22 of that year (first and second notices, respectively) is pending completion.

The Committee understands that a selection process on such a scale as the one underway, given the enormous number of positions to fill and the vast quantity of aspirants thereto, requires an

⁹ Response of Colombia to the Questionnaire, pp. 20 to 27 and 32 to 35

¹⁰ Response of Colombia to the Questionnaire, p. 20

¹¹ Response of Colombia to the Questionnaire, p. 21

¹² Response of Colombia to the Questionnaire, pp. 21 to 25

¹³ Response of Colombia to the Questionnaire, pp. 32 to 35

extraordinary effort and amount of resources. Furthermore the Committee considers it fitting to express its recognition to the country under review for having embarked on the process and encourages it to continue to move forward with its implementation in order to complete it. The Committee will make a recommendation in that regard (see Recommendation 1.1.1. (b) in Chapter III, Section 1.1 of this report).

The Response to the Questionnaire by the Republic of Colombia also contains information on results connected with the merit-based selection of directors and managers recruited into public entities in the Executive branch.”¹⁴ With respect to the foregoing, “in keeping with the rules in force, between September 2002 and December 2005, 2,307 selection processes were carried out at 112 entities to fill positions of managers and chief internal auditors in the Executive branch and State-run social enterprises at the National and territorial level.”¹⁵ In its Response, the Republic of Colombia then goes on to provide more detailed information in that regard.

The Republic of Colombia’s Response to the Questionnaire also provided information about results obtained in the context of the Judicial branch,¹⁶ including the following:

“The Administrative Chamber of the Superior Judicature Council has continued to implement selection processes and is determined to consolidate and strengthen the judicial career system according to the principles of efficiency, effectiveness, independence, professionalism, suitability, and well-being of judicial officials and employees, as well as to make equal opportunity of admission a reality for all citizens who meet the requirements to that effect.

In 2006, the Administrative Chamber of the Superior Judicature Council continued with the merit-based competition to fill employee positions in the Supreme Court of Justice, Council of State, Constitutional Court, and Disciplinary Chamber of the Superior Judicature Council, which will provide registers of eligible candidates to fill permanent vacancies as they arise in those positions.”

The Republic of Colombia then presents a table on merit-based competitions held from 1994 to 2006, which is available for consultation at http://www.oas.org/juridico/spanish/mesicic2_col_sp_, followed by more detailed information on certain selection processes.

An examination of the table on merit-based competitions held between 1994 and 2006 reveals that competitions numbers 7 and 8 for “Employees in the Executive Judicial Administration Board” and “Employees in the Administrative Chamber of the Superior Judicature Council”, respectively, have not been completed since, according to a note signaled by an asterisk at the foot of the table, “The Administrative Chamber of the Superior Judicature Council decided to postpone these competitions owing to a multitude of circumstances, *inter alia*, the fact that in 2002 and subsequent years the administrative apparatus of the Judicial branch underwent significant changes.”¹⁷

With respect to the foregoing, the Committee believes that it would be appropriate for the country under review to consider adopting, through the appropriate authority, the necessary measures to

¹⁴ Response of Colombia to the Questionnaire, pp. 42 to 44

¹⁵ “Number of processes recorded in the DAFP program; the DNP figure is 2,587”.

¹⁶ Response of Colombia to the Questionnaire, pp. 38 to 40

¹⁷ Response of Colombia to the Questionnaire, p. 39

complete the aforementioned selection processes. The Committee will make a recommendation in that regard (see Recommendation 1.1.3 (b) in Chapter III, Section 1.1 of this report).

In its Response to the Questionnaire,¹⁸ the Republic of Colombia also provided the following information concerning results in the framework of the Office of the Prosecutor General:

“Pursuant to aforementioned provisions, public servants who met the requirements set for acceptance into to the career system were included therein. At present there are 1601 servants listed in the Single Career System Register of the Office of the Prosecutor General.

Financing for merit-based competitions to fill other career positions in the Office of the Prosecutor General was subject to the availability of a sufficient budget provided by the Ministry of Finance and Public Credit, which had not been assured when the present fiscal year began.¹⁹

Previously, thanks to a contribution from the European Community in the framework of the agreement “Strengthening the justice sector to reduce impunity in Colombia,” the *Universidad Nacional de Colombia* was chosen in an international public tender for a contract to hold the selection process and merit-based competition to fill career positions of prosecutors, assistant prosecutors, and judicial assistants (prosecutor's offices).

In order to fill the positions in other areas, bearing in mind the funds allocated by the Ministry of Finance, the National Administration Commission for the Career System, as the competent organ, is making adjustments to this year’s activity schedule.”

In consideration of the above information, the Committee believes that the state under review should consider adopting, through the corresponding authority, the measures pertinent to progress with and conclude the merit-based competition for filling vacancies under the regime of the Office of the Prosecutor General. The Committee will issue a recommendation on this point (see recommendation 1.1.4 (b) in Chapter III, section 1.1. of this report).

Finally, in addition to highlighting the importance of responding in full to the questions on results in the Questionnaire, given that it does not have information on the Legislative branch that would allow a comprehensive evaluation of the results of that organ in this area, it will make a recommendation to it in that regard (see General Recommendation 4.2 in Chapter III of this report).

1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES

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

The Republic of Colombia has a set of provisions related to the above-mentioned systems, among which the following should be noted:

¹⁸ Response of Colombia to the Questionnaire, pp. 9 and 10

¹⁹ The state under review reported, in its comments on the draft preliminary report on Colombia for the second round of review, that “under the Annual Budget Law for Fiscal Year 2007, No. 1110 of December 2006, and Decree 4579 of December 2006, under the heading called “Other Transfers – distribution cleared by the DGPPN,” the Office of the Attorney General of the Nation was assigned seven billion pesos to conduct the merit-based competition noted there.”

- Statutory and other legal provisions applicable to all State entities, among which the following should be noted:

- Law 80 of 1993,²⁰ “which adopts the General Statute on Government Procurement,” of which Article 1 states that its purpose is to set out the rules and principles that govern contracting by State entities; Article 2 defines those entities.^{xv} Article 13 provides that contracts financed with funds provided by multilateral credit agencies or entered into with foreign persons governed by public law or international cooperation, assistance, or aid agencies may be made subject to the regulations of those entities in all matters concerning procedures for formation and award of tender and special clauses on execution, performance, payment, and adjustments. Article 22 creates the bidders register for persons aspiring to enter into construction, consulting, supply and purchase-sale contracts. Article 23 states that all persons involved in government contracting shall act in accordance with the principles of transparency, economy, and accountability, as well as the guiding precepts of the civil service.

Article 24 of the aforementioned law refers to the principle of transparency, and mentions at section 1 that contractors shall be selected through public tenders or competitions, except in the cases which it proceeds to mention,^{xvi} wherein direct contracting shall be possible; section 2 provides that in procurement processes interested parties shall have the opportunity to know and contest all reports, concepts, and decisions presented or adopted, to which end there shall be set stages in which bidders shall have the opportunity to examine such acts and present their comments; section 5 provides that lists of conditions or terms of reference, *inter alia*, shall indicate the objective requirements to be met in order to participate in a particular selection process; objective, fair, clear, and complete rules shall be drawn up to permit bidders to prepare bids of the same type, so as to ensure an objective choice lest the tender or competition be declared void. Furthermore, there shall be a precise definition of the conditions with respect to cost and quality of goods, construction works or services necessary to perform a contract. In addition, section 7 of this article provides that all administrative decisions adopted in or occasioned by the agreement, except those that are merely formalities, shall be based on detailed and precise reasons as shall evaluation reports, the award decision, and decisions voiding the selection process.

This Law also refers at Article 25 to the principle of economy and mentions in section 1 thereof that the rules governing selection and lists of conditions and terms of reference for selection processes shall be met and shall set out the procedures and stages strictly necessary for ensuring the objective selection of the most favorable bid. This article adds that, to that end, they shall state preclusive and mandatory terms for the different stages of the selection process and the authorities shall be diligent in giving momentum to proceedings. Section 2 of this Article provides that the rules on contracting procedures shall be interpreted in such a way as not to give rise to any procedures other than or in

²⁰ The state under review reported that Law 1150 of 2007 was proclaimed on July 16, 2007, which “introduces measures for efficiency and transparency in Law 80 of 1993 and issues other general provisions for publicly funded contracting.” This Law, which contains 33 articles, will come into force six months after its proclamation, which took place on July 16, 2007, with the exception of three of its articles: Art. 6, governing the verification of bidders’ conditions, to come into effect 18 months after proclamation; and Arts. 9 and 17, governing, respectively, award procedures and the right of due process, which came into effect upon proclamation. The Law is not analyzed in this report since it was adopted after the deadline set by the Committee for supplying information for analysis (see section I of this report, “Summary of Information Received).

addition to those expressly provided for, or to permit defects of form or nonobservance of requirements to serve as grounds not to adopt a decision or to order injunctive interlocutory measures.

This Law also refers at Article 26 to the principle of accountability, and mentions at section 1 thereof that public servants are under obligation to seek fulfillment of the purposes of the contract, to ensure correct performance of the contract, and to protect the rights of the entity, contractor, and any third parties that might be affected by the execution of the contract; section 2 provides that public servants shall be held accountable for any unlawful acts or omissions and shall be liable to make good any damages caused by reason thereof.

Article 27 of Law 80 of 1993 provides that in government contracts equality or equivalence shall be maintained between rights and obligations in bidding or contracting, as appropriate, and that if said equality or equivalents is broken for reasons not imputable to the person affected, the parties shall adopt the necessary measures as soon as possible to provide restitution. Article 29 of the Law provides that contractors shall be selected objectively and that selection is objective when the bid chosen is the most favorable to the entity and its intended purposes and it does not take into consideration factors of affection or interest or, in general, subjective reasons of any kind. This Article also states that the most favorable bid is the one which, based on selection factors, such as compliance, experience, organization, equipment, deadline, price, and the precise, detailed, and specific weighting arising from lists of conditions or terms of reference or from a study prior to the signing of the contract, in the case of direct procurement, is the most advantageous to the entity without the determination as to favorability taking account of factors other than those contained in said document, only some of them, the lowest price, or the deadline offered.

Article 30 of Law 80 of 1993, governs the structure of selection procedures and indicates that tenders or competitions shall be carried out in accordance with the rules established therein. These rules, *inter alia*, refer to disclosure of lists of conditions and a public hearing held at the request of anyone who has acquired said conditions with the purpose of providing a precise explanation of the content and scope of thereof;^{xvii} provide for the setting of the time limits that shall be in effect from the time that bids may be presented until the close of the tender, as well as for the appraisal of bids, award of the tender, and signing of the contract;^{xviii} state that in the event of the situation provided in Article 273 of the Constitution,²¹ the tender award ceremony shall be held in a public hearing, at which a memorandum shall be drawn up, stating for the record all discussions and decisions in the proceedings therein; and stipulate that the award shall be made by means of a reasoned decision and personally brought to the attention of the successful bidder in the manner and conditions established for administrative acts and, in the absence of a public hearing, communicated to the unsuccessful bidders within five (5) calendar days thereafter; said decision is irrevocable and binding on the awardee.

²¹ The first clause of Article 273 of the Constitution states, "At the request of any of the bidders, the Comptroller General of the Republic or any other fiscal control authority with jurisdiction shall order the tender award ceremony to be held in a public hearing."

Article 32, section 1 of Law 80 of 1993 refers to works contracts and states that they are agreements entered on by state entities for the construction, maintenance, and installation of buildings, and, in general, any other material work thereon, regardless of the manner of execution and payment. It also provides that in any works contracts entered on as a result of a public tender or competition, a person independent of the contracting entity and the contractor shall be hired as the supervising engineer and held accountable for any acts and omissions imputable to them under the terms of Article 53 of this Statute

Articles 50 to 53 of Law 80 of 1993 refer to the liability of state entities, public servants, contractors, consultants, supervising engineers, and advisers in the context of contractual activity. Article 56 concerns criminal liability of private individuals involved in government contracting. Article 57 refers to criminal liability of public servants and Article 58 provides punitive measures for acts or omissions imputed to the aforementioned persons in connection with their contractual activities. Articles 62 to 66 cover contract management oversight; the first of these Articles provides for the intervention of the Office of the Attorney General, while Article 64 makes provision for the participation of the Office of the Prosecutor General through specialized investigation units; Article 65 provides for the intervention of fiscal control authorities and Article 66 allows community participation and provides, to that end, that all contracts entered on by state entities shall be subject to citizen oversight and control.

Finally, Law 80 of 1993 provides at Article 77 that administrative decisions adopted by reason of or occasioned by contractual activity shall only be susceptible to motions for reversal and invocation of contractual action in accordance with the rules contained in the Code of Administrative Judicial Review. The first paragraph of this article notes that the award decision shall not be open to appeal through administrative channels but may be challenged through an action for annulment and restoration in keeping with the rules set forth in the aforesaid Code; the second paragraph provides that to file actions against administrative decisions in contracting operations it is not necessary to bring an action against the contract from which they originate.

- Decree 855 of 1994, which partially governs Law 80 of 1993 in the area of direct procurement, of which Article 2 provides that in such contracts, the chief or representative of the state entity, or the official in whom that authority is delegated, shall, in choosing contractors, ensure that the principles of economy and transparency, and, in particular, the duty to be objective in said selection set down in said Law, are met. Articles 4, 6, 7, 10, 14, 15, 18 and 19, respectively, of the Law govern matters concerning goods and services concerning national security, government lending operations, inter-agency contracts, procurement of products originating from or used in agriculture, sale of the assets of state entities, sale or procurement of real property, acts and contracts directly concerning with the commercial and industrial activities of state-owned industrial and commercial companies and of semipublic companies, and telecommunications activities and service concessions. Article 20 provides that in direct procurement operations not provided for in this decree, the contract may be concluded on the basis of market prices without the need first to obtain bids or publish invitations to contract.

- Decree 856 of 1994, which governs the functions of the register of eligible bidders and provides at Article 3 that bidders shall register with the chamber of commerce with jurisdiction in the area where their principal domicile is situated. Articles 13 to 20 refer to challenges and appeals in this area. This

Decree is supplemented by Decree 92 of 1998, which governs classification and ranking in the register.

- Law 598 of 2000, Article 1 of which creates, for the purposes of oversight of fiscal management by the State and private citizens or entities that handle public funds, the Government Procurement Oversight Information System (SICE); the Single Catalogue of Goods and Services (CUBS); and the Single Register of Reference Prices (RUPR). This Law also states that the SICE comprises the subsystems, methods, principles, instruments, and other aspects that ensure that fiscal oversight is exercised in accordance with the administrative decisions adopted by the Comptroller General. It defines the CUBS as the collection of, *inter alia*, codes, descriptions, and standard definitions of goods and services for common use or for use in works contracted by state entities in order to ensure transparency in procurement activities in keeping with the purposes of the State. The Law stipulates that providers shall register in the RUPR the prices of goods and services for common use or for use in works contracts that they are in a position to offer the public administration and private citizens or entities that handle public funds. Article 5 of this Law provides that the CUBS and RUPR shall be consulted in the execution of the purchase plans of state entities and procurement of goods and services from private citizens or entities that handle public funds. Article 6 states that government contracts published in accordance with the law shall contain the unit prices and codes of goods and services procured as contained in the CUBS.

- Decree 2170 of 2002, which regulates Law 80 of 1993 and provides at Article 9 for the participation of citizen watchdog committees in the pre-contractual, contractual, and post contractual stages of procurement processes. Chapter III refers to objective selection in direct procurement, and, at Article 10, mentions the minimum contents of lists of conditions or terms of reference for contracts of this type.^{xix} Article 11 contains the criteria for small contracts,^{xx} while Article 13 covers contracts for provision of professional services or execution of artistic works that may only be commissioned from certain natural or legal persons, or for the direct performance of scientific or technological activities. Article 14 sets out the rules for inter-agency contracts with cooperatives and associations formed by territorial entities. Article 17 sets out the situations in which it is considered that a plurality of bidders does not exist and Article 20 governs contracts for provision of health services. This Decree also refers at Chapter VI to electronic procurement mechanisms and indicates in Article 21 the information concerning procurement processes that state entities are required to publish on their website, assuming they have one. Article 22 provides for hearings held by electronic means; Article 23 covers interactive communication in selection processes, and Article 24 refers to the safekeeping of electronic documents.

- Decree 3620 of 2004, which creates the Inter-Sectoral Committee on Government Procurement, Article 4 of which provides that among the functions of the said Committee are to elaborate and coordinate preliminary draft laws on government procurement prepared by different entities of the national government and to examine those presented by other bodies; prepare preliminary draft decrees, orders, and guidelines on procurement in order to submit them to the government for consideration; adopt the necessary measures to harmonize procurement regulations; and defying the functional aspects to be included in the Connectivity Agenda for the operations of the Integrated Electronic Procurement System.

- Decree 2434 of 2006, which governs Law 80 of 1993 and partially modifies Decree 2170 of 2002, Article 1 of which provides that state entities shall publish in the Single Contracting Portal draft lists of conditions or terms of reference for public tenders or competition processes in order to provide the

general public with information to enable them to comment on the contents of the aforementioned documents. Article 2 of this Decree concerns disclosure of definitive lists of conditions or terms of reference. Article 3 provides that entities subject to Law 80 of 1993 shall publish the documents and decisions concerning the contractual activities referred to in the said article by means of the Single Government Procurement Portal. Article 4 sets out the deadlines, which run from one to seven months counted from the entry into force of this Decree,²² by which entities are required to meet the obligation contained in the preceding article. Finally, Article 5 contains a strategy for entities that do not have access to technological infrastructure.

- Constitutional, statutory and other legal provisions applicable to contracts entered by certain State entities, among which the following should be noted:

- Contracts entered by public universities (Constitution, Article 69;²³ special system governed by Law 30 of 1992, Article 57; and by Law 647 of 2001, Article 1).

- Contracts entered by the *Banco de la República* [Central Bank] (Constitution, Article 371;²⁴ Law 31 of 1992, Article 3).

- Contracts financed with funds provided by multilateral credit agencies or entered into with foreign persons governed by public law or international cooperation, assistance or aid agencies (Law 80 of 1993, Article 13).

- Contracts entered on with credit institutions, insurance companies, or other state-owned financial entities, that concern the regular activities associated with their social purpose (Law 80 of 1993, Article 32, par. 1).

- Contracts entered on by state entities, the purpose of which is provision of services and telecommunications activities for the purchase and supply of equipment, and construction, installation, and maintenance of networks and other places where they are situated. (Law 80 of 1993, Article 38).

- Contracts for exploration and development of renewable and nonrenewable natural resources, as well as those that concern marketing and other commercial and industrial activities undertaken by the appropriate state entities (Law 80 of 1993, Article 76).

- Contracts entered by State-run social enterprises (Law 100 of 1993, Article 195).²⁵

- Contracts to ensure air and airport security entered into by the Civil Aeronautics Special Administrative Unit (Law 105 of 1993, Article 54).

²² Decree 2434 of 2006 was issued on July 18, 2006, and entered into force the following day upon its publication in Official Gazette No. 46334.

²³ Article 69 of the Constitution provides in one of its paragraphs, "The autonomy of universities is assured. Universities may issue their own guidelines and govern themselves according to their own statutes in accordance with law.- The law shall establish a special regime for public universities."

²⁴ Article 371 of the Constitution provides in one of its paragraphs. "The *Banco de la República* shall exercise the functions of central bank. It shall be organized as a legal person governed by public law with administrative, financial and technical autonomy subject to its own legal regime."

²⁵ By which the Nation and territorial entities directly provide direct health services.

- Contracts entered by state entities that provide household public services (Law 142 of 1994, Article 31; and Law 689 of 2001, Article 3).

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

With respect to the statutory and other legal provisions that refer to the principal systems of the procurement of goods and services in the country under review that the Committee has examined, based on the information available to it, they constitute a set of measures relevant to promoting the purposes of the Convention.

Notwithstanding, the Committee considers it appropriate to make a number of observations on the advisability of complementing, developing and amending certain legal provisions that refer to those systems:

First, the Committee notes that Law 80 of 1993²⁶ contains the “General Statute on Government Procurement” and surmises from Articles 1 and 2 thereof that it applies to all state entities; however, it also observes that there are a large number of special systems that apply to contracts entered on by certain entities in particular.

The Committee understands that special contracting systems exist because of the special purpose, nature and particularities of the activities entrusted to government agencies that have been given jurisdiction over specific issues. Their unique characteristics notwithstanding, such agencies must nonetheless abide by the general framework governing contracting and the underlying principles of the legal system governing state contracts.

Even so, the Committee finds that the country under review should consider the possibility of a further review of the principles and relevance of these special systems, along with the adoption of the relevant steps to ensure the requisite harmony for the management of diverse procurement systems, guiding itself to that end by the principles of openness, equity, and efficiency as provided for in the Convention. The Committee will make a recommendation in that regard (see Recommendation 1.2 (a) in Chapter III, Section 1.2 of this report)

In connection with the foregoing, it should be noted that an annex to one of the documents presented by “*Transparencia por Colombia*” mentions the following.²⁷

“The statistics presented in this document are taken from the study ‘Construction of the Procurement Database [*Construcción del Universo de Referencia de la Contratación*],’²⁸ prepared by the consultant for the BIRF-DNP Government Procurement Project, Juan Pablo Garzón, from August 2005 to March 2006, under the leadership and supervision of the consultant Salomé Naranjo. This

²⁶ See footnote 20 of this report.

²⁷ This annex can be found on p. 16 of the report presented by “*Transparencia por Colombia*”

²⁸ With respect to the “Procurement Database,” the document from *Transparencia por Colombia* states that: “According to the study, the annual report of the Office of the Comptroller General of the Republic is the main source of information for the database, followed by the Inspectorate of the Capital District of Bogota and the territorial entities.” (p. 16, footnote number 11)

database contains the contracts signed by 587 public entities²⁹ in fiscal year 2004 whose combined value at current prices comes to 20.4 billion pesos.

The study notes that of all 1,615 entities, 280 (17.3%) enjoy special systems for their contracting operations and, of the latter, 174 (10.8% of the total) are at the national level and 106 (6.6% of the total) are at the territorial level.

The overall value of procurement operations conducted both by entities under special systems and by entities under the general system is similar, with either group accounting for close to 10 billion pesos. This means that approximately 50% of public funds available for contracting are executed through contracts entered upon by entities that benefit from special contracting systems, which they themselves have usually created.”

Furthermore, one of the sections of the document entitled “*Mesa de Trabajo*” [Working Group], also presented by “*Transparencia por Colombia*,” notes the following:³⁰

“In this way, there was a move away from a statute that was intended to be universal to a multitude of special regimes that hinder and deter the participation of potential suppliers in procurement processes as well as discouraging citizen oversight, to the detriment of the transparency that should characterize government procurement, not only because adequate participation and effective citizen oversight require knowledge of each of these different regimes, but also, in particular, because the procurement processes of entities outside the general regime are usually unknown to the public since the decision whether or not to disclose them is left to the entities concerned, which are legally authorized to adopt their own procurement regulations.”

Second, the Committee notes that Article 13 of Law 80 of 1993 provides that contracts financed with funds provided by multilateral credit agencies or entered into with foreign persons governed by public law or international cooperation, assistance, or aid agencies may be made subject to the regulations of those entities in all matters concerning procedures for formation and award of tender and special clauses on execution, performance, payment, and adjustments.

The Committee believes that it would be appropriate for the country under review to consider modifying the foregoing provision so that if contracts or agreements financed with funds from agencies providing international cooperation, assistance, or aid mostly involve public funds from state entities, the provisions that refer to said entities in the General Procurement Statute shall be applied. The Committee will make a recommendation in that regard (see Recommendation 1.2 (b) in Chapter III, Section 1.2 of this report).

Furthermore, one of the sections of the document entitled “*Mesa de Trabajo*” presented by “*Transparencia por Colombia*” notes the following:³¹

“Agreements of this type, which are expressly excluded from the scope of the Procurement Statute by Article 13 of Law 80 of 1993, have been questioned by the oversight agencies and the media because they allow public funds to be delivered to entities that, owing to their nature, are not subject to fiscal

²⁹ On this point, the document from *Transparencia por Colombia* explains: “Although the total is made up of 1615 entities, those chosen account for 80% of total public procurement.” (p. 16, footnote number 12)

³⁰ Document entitled “*Mesa de Trabajo*” [Working Group], presented by “*Transparencia por Colombia*”, p. 3

³¹ Document entitled “*Mesa de Trabajo*”, presented by “*Transparencia por Colombia*”, p. 3

control.³² CONPES 3249 and the World Bank have recommended the elimination of this prerogative (particularly where agreements involving public funds are concerned).³³ In its 2006 Country Procurement Assessment Report (CPAR) the World Bank notes that “*evidently the purpose of contracting with cooperation entities cannot be to enable the government agency to exercise its contracting authority under standards different to those contained in Law 80 of 1993, since that really would be nothing more than an intermediation operation.*”

Third, with respect to Article 24 (c) of Law 80 of 1993, which permits direct procurement in the case of inter-agency contracts, the Committee believes that the country under review ought to consider limiting this exception to the public tender procedure strictly to cases in which the object of the contract to be entered into between the state entities is directly connected with the functions entrusted to them. The Committee will make a recommendation in that regard (see Recommendation 1.2 (c) in Chapter III, Section 1.2 of this report).

With respect to the foregoing, it is worth mentioning that one of the sections of the document “*Mesa de Trabajo*” presented by “*Transparencia por Colombia*” states the following:³⁴

“Under Law 80 of 1993, contracts of this type may be concluded directly. While there are provisions in the Constitution and laws that provide for harmonious collaboration among state entities for the purpose of accomplishing their objectives, in practice, contracts of this type are used to enable entities bound by the General Statute on Procurement to enter into agreements with other government entities subject to a special system and so evade compliance with the requirements and time constraints that Law 80 of 1993 imposes on the former.”

Fourth, in reference to Article 24 (g) of Law 80 of 1993, which allows direct procurement when the tender or competition is declared void, the Committee believes, bearing in mind the principles of openness, equity, and efficiency provided in the Convention, the country under review should consider the possibility of making provision for a new process other than direct contracting, that would also guarantee those principles when this situation arises. The Committee will make a recommendation in that regard (see Recommendation 1.2 (d) in Chapter III, Section 1.2 of this report).

Fifth, as regards Article 24 (h) of Law 80 of 1993, which permits direct procurement when no bid is presented or none of the bids satisfy the list conditions or terms of reference, or, in general, when there is a lack of will to participate, the Committee believes, bearing in mind the principles of openness, equity, and efficiency provided in the Convention, that the country under review ought to consider ordering a new tender or competition process to be held when such situations arise, without prejudice to introducing in the process such modifications as may be deemed appropriate to ensure the effective participation of bidders therein. The Committee will make a recommendation in that regard (see Recommendation 1.2 (e) in Chapter III, Section 1.2 of this report).

³² “For example, *Semana* magazine severely questioned procurement operations of this type in an article entitled “*La Vena Rota*” [The Burst Vein], published in edition 1092 of July 4, 2003.”

³³ “In the report, the World Bank assumes that the practice was corrected by Decree 2166 of 2004. We consider this view to be precipitated, since the object of very few agreements includes “administration of funds,” despite the fact that, in practice, the purpose of “technical cooperation and assistance” as formally stated in the object of agreements is limited to said administration.”

³⁴ Document entitled “*Mesa de Trabajo*”, presented by “*Transparencia por Colombia*”, pp. 3 and 4

Sixth, in relation to Article 27 of Law 80 of 1993, which provides that in government contracts equality or equivalence shall be maintained between rights and obligations in bidding or contracting, as appropriate, and that if said equality or equivalence is broken for reasons not imputable to the person affected, the parties shall adopt the necessary measures as soon as possible to provide restitution, the Committee finds that this provision could be interpreted as pledge from the State guaranteeing the profit expected by the contractor in the event of contingencies that are part and parcel of the unpredictable nature of business, which could give rise to claims against state entities for compensation for profits beyond the consideration agreed in the respective contract

In light of the foregoing, the Committee believes that it would be advisable for the country under review to consider amending the aforesaid rule in order to include such provisions as may be necessary, such as a determination as to the risks that give rise to compensation, in order to prevent it becoming the basis for a claim against a state entity for profits lost due to contingencies that are part and parcel of the unpredictable nature of business, in spite of what the latter might have agreed to as consideration in the respective contract. The Committee will make a recommendation in that regard (see Recommendation 1.2 (f) in Chapter III, Section 1.2 of this report).

With respect to the foregoing, it should be mentioned that one of the sections of the document entitled “*Mesa de Trabajo*” presented by “*Transparencia por Colombia*” states the following:³⁵

“Both the Procurement Mission and the World Bank procurement assessment report have questioned the profit guarantee for contractors provided in Law 80 of 1993 and described it as an “exorbitantly expensive clause” in favor of the awardee. A weighted analysis (included in lists of conditions) of the procurement risks and a distribution thereof in the draft agreement could reduce pressure on officials and conflicts over restoration of economic balance in the contract. If the profit guarantee for contractors is kept, it should at least be made compulsory to include the analysis and distribution of risks in the contract documents, thereby seeking to reduce the number of judicial decisions contrary to the interests of the nation as well as the risks of corruption generated by the discretionary authority of officials in this area.”

Seventh, with respect to Decree 855 of 1994, the Committee notes that at Article 20 it provides that in direct procurement operations not provided for in this decree, the contract may be concluded on the basis of market prices without the need first to obtain bids or publish invitations to contract. The Committee believes that the country under review ought to consider abolishing this provision, bearing in mind the principles of openness, equity, and efficiency provided in the Convention and also that Law 80 of 1993 provides at Article 29 that contractors shall be selected objectively and that selection is objective when the bid chosen is the one most favorable to the entity. The Committee will make a recommendation in that regard (see Recommendation 1.2 (g) in Chapter III, Section 1.2 of this report).

Eighth, with respect to Decree 2170 of 2002, the Committee notes that, according to the country's Response,³⁶ the Council of State provisionally suspended a number of the provisions contained in said decree, including Article 3, which develops Article 29 of Law 80 of 1993, setting out guidelines to be followed in selection processes. Given the importance of these matters, the Committee believes that the country under review ought to consider adopting pertinent measures, through the appropriate authority, to precisely define the guidelines for the objective selection of contractors, guiding itself to

³⁵ Document entitled “*Mesa de Trabajo*”, presented by “*Transparencia por Colombia*”, p. 5

³⁶ Response of Colombia to the Questionnaire, p. 74

that end by the principles of openness, equity, and efficiency contained in the Convention. The Committee will make a recommendation in that regard (see Recommendation 1.2 (h) in Chapter III, Section 1.2 of this report).

In connection with the foregoing, the Committee wishes to acknowledge the efforts of the country under review to move forward in the direction suggested, as evinced by what it says in its Response, where it mentions that the government has submitted a bill in this regard to Congress where all the requisite debates have been held and reconciliation is pending of the texts approved by the Chamber of Representatives and the Senate.³⁷

Ninth, also in reference to Decree 2170 of 2002, the Committee notes that Article 11 provides that when the value of the contract to be entered on is equal to or less than 10% of the small contract amount referred to in Article 24, section 1(a) of Law 80 of 1993, entities may enter upon said contract taking market price as the sole consideration, without the need first to obtain several bids. The Committee believes that the country under review ought to consider abolishing this provision, bearing in mind the principles of openness, equity, and efficiency provided in the Convention and also that Law 80 of 1993 provides at Article 29 that contractors shall be selected objectively and that selection is objective when the bid chosen is the one most favorable to the entity. The Committee will make a recommendation in that regard (see Recommendation 1.2 (i) in Chapter III, Section 1.2 of this report).

Finally, the Committee observes that the legislation on government procurement is scattered among several laws, decrees, partial reforms, and other standards. Accordingly, the Committee considers that the State under review would benefit from the consolidation of its standards in a single, concise and well-defined text that would be easier to apply for the officials required to do so, and clearer and more comprehensible for everyone involved in government procurement as well as for the citizenry at large. Considering that Colombia has already taken steps in that direction,³⁸ the Committee will formulate a recommendation for it to continue taking those steps in order to attain the full consolidation of its standards (see Recommendation 1.2 (j) in Chapter III, Section 1.2 of this report).

1.2.3 Results of the legal framework and/or other measures

In its Response to the Questionnaire the Republic of Colombia provided information on results in this area, among which the following should be noted:

First, the Republic of Colombia provides data on results obtained by the Government Procurement Oversight Information System (SICE) in a table that contains the statistics corresponding to the period from December 2002 to December 2006,³⁹ after which it notes the following:⁴⁰

³⁷ Response of Colombia to the Questionnaire, pp. 74 and 75

³⁸ The country under review reported, in its comments on the draft preliminary report on Colombia for the second round of review, that “in response to Presidential Directive 01 (2005), the National Government Planning Department has compiled the laws governing contracts and has analyzed their legal effect. It has digitalized the text of these provisions and is working on the Draft Single Decree on Government Contracting and on the Compilation of Laws, which will be a collection of the laws currently in force on the subject of contracts.”

³⁹ This table is on p. 63 of the Response of Colombia to the Questionnaire, available at http://www.oas.org/juridico/spanish/mesicic2_col_sp.htm

“The increase in the number of entities between 2003 and 2004 was 400%; and between 2004 and 2006, 1108%. Similarly, and as a consequence of the foregoing, the number of providers went up by 171% between 2003 and 2004, and by 321% between 2004 and 2006. By 2006 there was a 503% increase in the number of registered procurement plans in comparison to 2004.

It should also be pointed out that 2006 was the first year in which information was reported by all regulated entities and that 2007 was the second year that historical information was recorded. It is well-known that the construction of statistical databases takes time, particularly in the area of fiscal oversight. Nevertheless, it is possible to mention that according to the Confecámaras report on the review conducted in 2002 on market share in public procurement, only 4% of persons in the Single Register of Bidders secured government contracts.”

With respect to the foregoing information, the Committee finds that it serves to show a progressive increase in the use of the system to which it refers, for which the country under review deserves recognition.

Similarly, with respect to this system, the Republic of Colombia also furnishes the following information:⁴¹

“Furthermore, we provide the following figures for the portal, which do not include the general reports that the CGR will present in a periodic newsletter publication of which will commence in the second half of 2007, once the reporting module has been designed and the information recorded validated:

Indicator	2007	Figures under examination
Procurement plans	1,886	5,464 in total
Amount of registered procurement plans	15 billion	
Tenders		7.166 billion in 2006
Direct procurement		26.723 billion in 2006

Figures under examination (not validated)”

With respect to the preceding information, the Committee finds from its analysis of it that although Article 24 (1) of Law 80 of 1993 expressly provides that, except where it stipulates otherwise, contractors shall be selected by means of public tender or competitions, in practice direct procurement has been the main contracting mechanism used in the period to which that information refers. In light of this observation, the Committee will make a recommendation to the country under review the effect that its consider adopting pertinent measures, through the appropriate authority, to ensure that direct procurement is employed as a consequence of the strict application of the exceptions provided in the Law (see Recommendation 1.2 (k) in Chapter III of this report).

⁴⁰ Response of Colombia to the Questionnaire, p. 63

⁴¹ Response of Colombia to the Questionnaire, pp. 63 and 64

In respect of the above, it is worth mentioning that in the annex to one of the document presented by “Transparencia por Colombia,”⁴² to which reference was made in section 1.2 .1 of this report, notes the following:

“Of the total value of procurement by state entities, only one third (1/3) is awarded by tender. The remaining two thirds are contracted out by means of direct procurement procedures.”

Second, the following information is supplied regarding an anti-corruption agreement concluded by the Office of the Prosecutor General, the Office of the Attorney General, and the Office of the Comptroller General:⁴³

“In the framework of this agreement, the investment has been monitored of funds provided by royalties, in connection with which, inter alia, the following irregularities have been detected in procurement operations:

- Contracts are not part of a priority program contained in development plans or are used for purposes others than those indicated by the Law.
- Contracts are signed without prior studies, planning, environmental permission, on land not legalized, without records of initiation, or without guarantees.
- Contracts are entered on in disregard of the requirements set forth in Law 80 of 1993 and Decree 2170 of 2002 regarding publication of draft conditions and final conditions.
- Indefinite suspension of contracts and absence of memoranda of partial and final acceptance and of settlement.
- There are instances of breach of contract or poor execution of works by contractors.
- Deficient control and follow-up on progress of works and absence of reports by the supervising engineer.
- Inadequate bookkeeping, budget management and transfer of resources to general funds
- Fragmentation of resources.
- Failure to comply with rules on fiscal rationalization.”

The Committee notes that the foregoing information reveals the existence of irregularities in the area of procurement with respect to investment of funds from royalties and, without prejudice to such measures as the oversight agencies in the country under review might be required to adopt against such irregularities, it believes that it would be appropriate for the country to consider a comprehensive evaluation to determine the objective reasons for the commission of said irregularities and, based on its findings, design and consider the adoption of specific measures to prevent their occurrence. The Committee will make a recommendation in that regard (see Recommendation 1.2 (l) in Chapter III of this report).

Third, the country supplies information on the number of bidders registered with the Chamber of Commerce corresponding to the years 2005 and 2006, as well as the number of active bidders as of the date of the Response to the Questionnaire.⁴⁴

⁴² This annex is on p. 16 of the report presented by “*Transparencia por Colombia*”

⁴³ Response of Colombia to the Questionnaire, pp. 64 and 65

⁴⁴ This information is on pp. 67 to 69 of the Response of Colombia to the Questionnaire, available at http://www.oas.org/juridico/spanish/mesicic2_col_sp.htm

In fourth place, the Republic of Colombia supplies the following information on the Single Procurement Portal:

“The following table shows how the number of entities registered in the Single Procurement Portal has evolved:

Year	Number of entities
2003	122
2004	140
2005	173
2006	373
2007 *	1329

* The data for 2007 correspond to April of this year.

The projections for the use of the Procurement Portal are as follows:

The total number of entities is 3,285. However, bearing in mind that some entities, in particular territorial ones, may encounter connectivity problems, it is expected that there will be 2000 entities connected by the end of September 2007.

Thereafter, the Procurement Portal is expected to be replaced as a mechanism by the Electronic Procurement System, which will begin to function with the entities that already use the Procurement Portal.

It should be noted that in addition to the disclosure mechanisms with which the Procurement Portal is equipped at present, the Electronic Procurement System will include transactional functions that will make it possible to conclude agreements entirely online.

In addition to the foregoing, the government of the Republic of Colombia is implementing a transactional tool for the Electronic Government Procurement System which will make it possible, *inter alia*, to digitalize contract dossiers, receive bids and hold auctions online, make purchases through the catalogue, and implement demand aggregation mechanisms, such as framework agreements. The purchase phase of this project is close to conclusion and the tool is scheduled to be in operation by November 2007.”

With respect to the foregoing information, the Committee considers, in first place, that it reflects a progressive increase in the number of entities connected to the Single Procurement Portal. However, bearing in mind that Article 3 of Decree 2434 of 2006 set deadlines by which all entities were to comply with the obligation to disclose information through the Portal about all their contractual activities, all of which have since expired, the Committee also considers that the country under review ought to examine the possibility of adopting pertinent measures to ensure that any entities that are not yet connected to the Portal become so. The Committee will make a recommendation in that regard (see Recommendation 1.2 (m) in Chapter III of this report).

The preceding information also indicates that the Single Procurement Portal is in a process of transition toward the Electronic Procurement System, which, according to the country under review, will include transactional functions that would make it possible to conclude agreements entirely online. Bearing in mind the importance of having said System available soon, and since the Republic

of Colombia has already taken steps toward its implementation, the Committee believes it would be useful to encourage it to continue with those actions in order to attain that goal.⁴⁵ The Committee will make a recommendation in that regard (see Recommendation 1.2 (n) in Chapter III of this report).

In connection with the foregoing, one of the sections of the document entitled “*Mesa de Trabajo*” presented by “*Transparencia por Colombia*” notes the following:⁴⁶

“The studies consulted⁴⁷ draw attention to efforts such as the Government Procurement Oversight Information System (SICE) but note as that it is not integrated with the Single Procurement Portal and that there is no disclosure of the way in which the tool is made available for potential suppliers. The monitoring carried out by *Transparencia por Colombia* is particularly important because it reveals shortcomings such as the lack of consistency between the information in the SICE and that reported by the entities through other mechanisms; the lack of commitment of entities required to disclose information; and the difficulty of exercising citizen oversight of procurement due to restrictions in access to the tool. The rating of the Single Procurement Portal is slightly better and we are waiting to see what the impact of Decree 2434 of 2006 will be, since it creates the obligation for all entities subject to law 80 of 1993 to disclose all contract information through the Single Portal.”

With respect to the Single Procurement Portal, the Response of the country under review also contains a number of tables with statistical data for 2006 and January-April 2007.⁴⁸

Lastly, the country under review supplies information on the Sanctions and Disqualification Register Information System (SIRI), including, *inter alia*, the following table:⁴⁹

GROUND FOR DISQUALIFICATION*	TOTAL
Registration cancelled	2
Entering into contracts while ineligible	1
Contract declared void	166
Failure to sign the contract awarded	1
Participation in tenders while ineligible	1
TOTAL	171

* The data reported to the Office of the Prosecutor by different authorities between January 1, 2003 and December 31, 2006, was taken into consideration in preparing this information.

⁴⁵ The country under review reported, in its comments on the draft preliminary report on Colombia for the second round of review, that “this system is being implemented according to established timetables and in keeping with the prerequisites required for contracting of this type.”

⁴⁶ Document entitled “*Mesa de Trabajo*”, presented by “*Transparencia por Colombia*”, p. 5

⁴⁷ “The CPAR 2005 recommends strengthening the Single Procurement Portal and merging it with the SICE, as well as reducing the cost registration with the latter. Also taken into account was *Cuaderno de Transparencia* No. 12 “*Monitoreo Ciudadano a Herramientas de Transparencia en la Contratación Pública*” [Citizen Monitoring of Transparency Tools in Government Procurement], which contains a study on the SICE and the Single Procurement Portal.”

⁴⁸ These tables are found on pp. 78 to 80 of the Response of Colombia to the Questionnaire, available at http://www.oas.org/juridico/spanish/mesicic2_col_sp.htm

⁴⁹ Response of the Republic of Colombia to the Questionnaire, p. 81

The Committee considers that the foregoing information reflects that the country under review has imposed sanctions for violation of procurement rules.

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

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

The Republic of Colombia has a set of measures and provisions related to the above-mentioned systems, among which the following should be noted:

- The Constitution, Article 250 (8), which includes among the duties of the Office of the Prosecutor General that of ensuring protection for victims, jurors, witnesses, and anyone else involved in a criminal proceeding.

- Law 418 of 1997, Article 67, which creates the “Program for Protection of Witnesses, Victims, Persons Involved in Proceedings, and Officials of the Office of the Prosecutor,” to be financed by the State and directed and coordinated by the Office of the Prosecutor General. The purpose of this program is to afford comprehensive protection and social assistance to all of the aforementioned persons, as well as to their relatives within the fourth degree of consanguinity and second degree of affinity, adoptive children or parents, and the spouse, partner or common-law spouse, when they are risk of attack or their lives are in danger as a result or on the occasion of their involvement in a criminal proceeding. This provision also adds that in cases where lives of witnesses or whistleblowers are in danger, the Office of the Prosecutor shall protect their identity.

Article 69 of the foregoing Law provides that persons under the protection of said program shall be entitled to physical protection, social assistance, a change of identity and domicile and other temporary or permanent measures designed to ensure the proper preservation of their physical and moral integrity, as well as that of the members of their family. This article adds that when the circumstances so warrant, that protection may include their transfer abroad, including the cost of their travel and upkeep for as long as, and under the conditions that, the Prosecutor General stipulates. Article 70 provides that the judicial official presiding over the proceedings, any other public servant, or the party concerned, may request that the Victim and Witness Protection Office to admit a particular individual to the program and that the petition be processed pursuant to the procedure established by said Office, by means of a resolution adopted by the Prosecutor General, who is responsible for deciding the merits of the request. Article 72 concerns penalties for violating the identity confidentiality of protected persons.

Law 418 of 1997 also provides at Article 76 that the President of the Republic shall enter into agreements with other States and international organizations in order to make it easier for the Office of the Prosecutor to obtain such information and collaboration as may be necessary to implement the program; that the Prosecutor General may request the support of international organizations that have

similar protection programs for victims and witnesses when it is necessary to move them to other countries; and authorizes the government to receive national and international donations to the protection program, which shall be managed by the Prosecutor General.

- Law 600 of 2000, Article 29 (2) of which orders the non-admission of groundless accusations and of anonymous accusations that provide no evidence or specific data for an investigation, which are to be referred to the agencies of the judicial police for them to carry out the necessary verification formalities.

- Law 734 of 2002 (Single Disciplinary Code), Article 35, which makes it an obligation for all public servants to offer guarantees to public servants or private citizens who report unlawful acts or omissions by superiors, subordinates, or private citizens who administer public funds or perform public duties.

- Law 906 of 2004 (Code of Criminal Procedure), Article 69 (4) of which states that anonymous filings that provide no evidence or specific data for an investigation shall be archived by the corresponding prosecutor, and Article 342,⁵⁰ concerning protection measures, provides that once the indictment has been presented, the judge may, at the request of the Office of the Prosecutor, should it be deemed necessary to protect the integrity of victims or witnesses, order that the Office of the Prosecutor be made the domicile for the purposes of summonses and notifications; and that the necessary measures be adopted to offer effective protection to victims and witnesses in order to avert possible reactions against them or their next of kin as a result of their performance of their duty as witnesses.

- Law 962 of 2005, Article 81 of which states that no anonymous accusation or filing may lead to legal, criminal, disciplinary, or prosecutorial action or to any action taken by the competent administrative authority (except when such accusation or filing indicates, albeit summarily, the truthfulness of the accusations, or when it refers specifically to clearly identifiable events or persons).

- Law 1010 of 2006, which adopts measures to prevent, correct, and punish harassment in the workplace and other types of harassment in the framework of labor relations. Article 11 of this law recognizes guarantees for public servants against retaliatory attitudes in order to avert reprisals against anyone who lodges petitions, complaints and reports of harassment in the workplace or bears witness in such proceedings.

- Resolution 02700 of 1996 adopted by the Prosecutor General, “which reorganizes the Protection and Assistance Program of the Office of the Prosecutor General for witnesses, victims, and persons involved in proceedings, as well as setting policies in that regard.” Article 1 of this resolution identifies all of the foregoing and their relatives within the fourth degree of consanguinity and the first degree of affinity, adoptive children or parents, and the spouse, partner or common-law spouse, as the beneficiaries of said program. Article 3 contains definitions of, *inter alia*, a witness, victim, and person involved in proceedings.^{xxi} Article 5 provides that the protection procedure may be requested by the judicial official presiding over the proceeding, any other public servant, or by the

⁵⁰ This Article of the Code of Criminal Procedure was declared CONDITIONALLY ENFORCEABLE by the Constitutional Court in Judgment C-209-07 of March 21, 2007, “on the understanding that the victim himself may also petition a competent judge to order the appropriate measure.”

interested party themselves. Articles 5 to 8 set out in the manner in which the request should be formulated and processed. Article 9 prescribes the minimum obligations for the protected person and for the program.^{xxii} Article 14 classifies the levels of security to be afforded to protected person as Maximum, Medium, and Supervised. Finally, Article 17 contains the grounds for exclusion from the program.

- Resolution 28 of 1996 adopted by the Attorney General “creates the Program for protection of witnesses, victims, persons involved in proceedings, and officials of the entity.” Article 1 of the resolution provides that the purpose of the Program is to afford adequate protection and social assistance to all of the aforementioned persons when they are at risk of attack or their lives are in danger as a result of or occasioned by their involvement in proceedings within the jurisdiction of the Office of the Attorney General. Article 10 provides that the Attorney General may request the support of international institutions that have similar protection programs for officials, victims, witnesses and persons involved in proceedings whenever it is necessary to move them to other countries.

- Resolution 377 of 2003 adopted by the Attorney General, “which introduces regulations on and restructures the Program for protection of witnesses, victims, and persons involved in disciplinary proceedings, as well as setting policy in that regard. Article 1 of the resolution provides that persons under the protection of this program shall be entitled to physical protection, social assistance, a change of identity and domicile, and other temporary or permanent measures designed to ensure the proper preservation of their physical and moral integrity, as well as that of their family. Article 2 provides that anyone who, on account of their collaboration, contribution of evidence, or effective involvement in proceedings, is at risk of injury to their physical or mental integrity, may benefit from this program, as may members of their family. Article 3 (6) concerns penalties for violation of the secrecy of measures adopted under the program. Article 4 contains definitions of, *inter alia*, a witness, victim, and person involved in proceedings.^{xxiii} Article 8 provides that the Office of the Attorney General shall request the Ministry of Finance for an appropriation of funds for the program and that the performance of the measures and activities mentioned in this resolution that are incumbent on the program is subject to the effective allocation of funds and the availability of those funds in the budget, all in accordance with the pertinent laws and standards.

The above resolution also provides at Article 9 that protection may be requested by the Attorney General, the Vice Attorney General, the competent official who presides over the proceedings, the Ombudsman, the Presidential Adviser for Protection of Human Rights, and/or by the interested party themselves, and sets out the manner in which the request should be formulated. Articles 10 and 11 govern the processing of such requests, and Article 16 prescribes the minimum obligations for the protected person and for the program.^{xxiv} Article 19 classifies the levels of security to be afforded to the protected person as Maximum, Medium, and Supervised. Finally, Article 21 describes the circumstances that shall give rise to exclusion from the program.

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

With respect to the mechanisms and legal provisions for protecting public servants and private citizens who in good faith report acts of corruption, the Committee notes that, on the basis of the

information available to it, they may be said to constitute a set of measures that are pertinent for promoting the purposes of the Convention.

Notwithstanding, the Committee considers it appropriate to make a number of observations on the advisability of complementing, developing and amending certain legal provisions that refer to those measures:

First, with respect to Attorney General resolutions 28 of 1996 and 377 of 2003 on the “Program for Protection of Witnesses, Victims, and Persons Involved in Disciplinary Proceedings,” the Committee notes that they do not expressly mention persons who report acts of corruption as beneficiaries of the program, for which reason it will make a recommendation to the country under review that it consider expanding the aforementioned regulations to include persons who report acts of corruption among the beneficiaries of the Program (see Recommendation 2 (a) in Chapter III, Section 2 of this report).

Further to the foregoing, bearing in mind what the country under review said in its Response with respect to the preceding protection program, in the sense that “the aforesaid program is not operational at present due to lack of funds to ensure its long-term sustainability,” the Committee will make a recommendation to the country under review that it consider the adoption, through the appropriate authority, of measures to ensure the operations of the aforesaid program (see Recommendation 2 (b) in Chapter III, Section 2 of this report).

Second, the Committee considers that, while Article 11 of Law 1010 of 2006, recognizes guarantees for public servants against retaliatory attitudes in order to avert reprisals against anyone who lodges petitions, complaints and reports of harassment in the workplace or bear witness in such proceedings, those guarantees do not refer expressly to persons who have reported acts of corruption.

In addition to the foregoing, the Committee believes that it would be appropriate to create additional protection measures targeting not just the protection of the physical integrity of whistleblowers and their families, but also protection in the workplace, particularly for public officials and when the acts of corruption could involve their superiors or coworkers.

Based on the comments contained in the two preceding paragraphs, the Committee will make a recommendation to the country under review (see Recommendation 2 (c) in Chapter III, Section 2 of this report) to the effect that it consider adoption, through the appropriate authority, of comprehensive regulations on the protection of public servants and private citizens who, in good faith, report acts of corruption, including protecting their identities, in accordance with its Constitution and basic principles of its domestic legal system, which could include, among others, the following aspects:

- i. Mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it.
- ii. Additional protection measures to protect not only the physical integrity of whistleblowers and their families, but also to provide protection in the workplace, especially when the person is a public official and the acts of corruption involve superiors or co-workers.

In relation to the foregoing, the Committee wishes to acknowledge the efforts of the country under review to move forward in the direction described, as evidenced by what it states in its Response that “on this point, work is currently underway, in cooperation with the Colombia Office of the UN High

Commissioner for Human Rights to review and prepare a new bill and design a training plan on protection and security issues, judicial police, and human rights.”⁵¹

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

In its Response to the Questionnaire, the Republic of Colombia provides the following information in this regard:⁵²

“In 2005, the Protection and Assistance Program received eight (8) admission applications for alleged threats in connection with investigations of offences committed against the public administration.

Of the applications submitted, one was admitted to the program; it was determined with respect to the remaining seven that they did not meet the requirements contained in the rules in force since the persons evaluated did not participate in the proceedings.

The offences connected with applications for protection in 2005 concerned the following punishable conduct:

Punishable conduct	Number of applications
Embezzlement of public funds	3
Wrongful conclusion of contracts	3
Extortion	2

The figures for 2006 are as follows:

Punishable conduct	Number of applications
Wrongful conclusion of contracts and embezzlement	2
Embezzlement	6
Extortion	2

Of the 10 applications received in 2006, two (2) were admitted to the program because they met the requirements contained in the regulations in force.”

With respect to the foregoing information, the Committee notes that it serves to show that in the country under review requests for protection in connection with offences committed against the public administration have been presented and processed. However, since said information does not permit a comprehensive evaluation of the objective results in the area under review, the Committee will make a recommendation to the country in that regard. (see General Recommendation 4.2 in Chapter III of this report).

⁵¹ Response of Colombia to the Questionnaire, p. 84

⁵² Response of Colombia to the Questionnaire, pp. 86 and 87

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

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

The Republic of Colombia has a set of provisions related to the criminalization of the acts of corruption provided for in Article VI(1) of the Convention, among which the following should be noted.^{.xxv}

- With regard to paragraph (a) of Article VI(1):

- “Article 404 – Extortion. Any public servant who,^{xxvi} in abuse of their office, constrains or induces someone to give or promise to them, or to a third party, undue monies or any other benefits, or who requests such monies or benefits, shall be liable to a term of imprisonment of six (6) to ten (10) years, a fine of fifty (50) to one hundred (100) times the statutory minimum wage in force, and disqualification from holding public office for five (5) to eight (8) years.”

- “Article 405 - Solicitation or acceptance of bribes for violation of official duty. Any public servant who directly or indirectly receives money or some other benefit, or who accepts a promise of remuneration, whether for themselves or for another, in order to delay or omit to perform an act that they are bound by their official duties to perform, or in order to carry out an act contrary to said duties, shall be liable to a term of imprisonment of five (5) to eight (8) years, a fine of fifty (50) to one hundred (100) times the statutory minimum wage in force, and disqualification from holding public office for five (5) to eight (8) years.”

- “Article 406 - Solicitation or acceptance of bribes for performance of official duty. Any public servant who directly or indirectly receives money or some other benefit, or who accepts a promise of remuneration, whether for themselves or for another, in order to perform an act that they are bound by their official duties to perform shall be liable to a term of imprisonment of four (4) to seven (7) years, a fine of fifty (50) to one hundred (100) times the statutory minimum wage in force, and disqualification from holding public office for five (5) to eight (8) years.” – “Any public servant who receives money or some other benefit from a person with an interest in a matter submitted to their jurisdiction, shall be liable to a term of imprisonment of two (2) to five (5) years, a fine of thirty (30) to fifty (50) times the statutory minimum wage in force, and disqualification from holding public office for five (5) years.”

- With regard to paragraph (b) of Article VI(1):

- “Article 407 - Offering of bribes. Whoever offers money or some other benefit to a public servant in the circumstances provided in the two foregoing Articles, shall be liable to a term of imprisonment of three (3) to six (6) years, a fine of fifty (50) to one hundred (100) times the statutory minimum wage in force, and disqualification from holding public office for five (5) to eight (8) years.”

- With regard to paragraph (c) of Article VI(1):

- “Article 397 - Embezzlement by appropriation. Any public servant who, for their own benefit or that of a third party, appropriates the property of the State or of companies or institutions in which the latter has a proprietary interest, quasi-governmental property or funds, or private property whose

management, possession, or safekeeping has been entrusted to them by reason or in the course of their duties, shall be liable to a term of imprisonment of six (6) to fifteen (15) years, a fine equivalent to the value of what was appropriated, not to exceed the equivalent of fifty thousand (50,000) times the statutory minimum wage in force, and disqualification from holding public office for the same period of time.”

- “Article 398 - Embezzlement by use. Any public servant who unduly uses or permits another to use the property of the State or of companies or institutions in which the latter has a proprietary interest, or private property whose management, possession, or safekeeping has been entrusted to them by reason or in the course of their duties, shall be liable to a term of imprisonment of one (1) to four (4) years and disqualification from holding public office for the same period of time.”

- “Article 409 - Contracting with improper interest. Any public servant who, for their own benefit or that of a third party, has an interest in any kind of contract or operation in which their position or duties requires their involvement, shall be liable to a term of imprisonment of four (4) to twelve (12) years, a fine of fifty (50) to two hundred (200) times the statutory minimum wage in force, and disqualification from holding public office for five (5) to twelve (12) years.”

- “Article 419 - Use of secret or confidential information. Any public servant who, for their own benefit or that of another, uses a scientific discovery or any other information or data that have come to their attention by reason of their duties and which are required to be kept secret or confidential shall be liable to a fine and the loss of their public post or position of employment, provided that the offence is not punishable by a higher penalty.”

- “Article 420 - Undue use of privileged official information. Any public servant who, as an employee, executive, or member of a board or management organ of any public entity, makes undue use of information not for public consumption to which he is made privy by reason or in the course of their duties, in order to obtain a benefit for themselves or for a third party, whether the latter be a natural or legal person, shall be liable to a fine and the loss of their public post or position of employment.”

- “421- Unlawful advisory services and other activities. Any public servant who unlawfully represents, litigate, arranges, or provides advisory services on a judicial, administrative, or police matter shall be liable to a fine and the loss of their public post or position of employment.” – “If the person responsible is a servant of the judicial branch or the Office of the Attorney General, the penalties shall be a term of imprisonment of one (1) to three (3) years, and disqualification from holding public office for five (5) years.”

▪ With respect to paragraph (d) of Article VI(1):

- “Article 323 - Money laundering. Whoever purchases, protects, invests, transports, transforms, has custody of, or administers assets that directly or indirectly originate from trafficking in migrants, trafficking in persons, extortion, illicit enrichment, kidnapping, rebellion, trafficking in firearms, terrorist financing and administration of funds connected with terrorist activities, trafficking in toxic and narcotic drugs or psychotropic substances, crimes against the financial system, crimes against the public administration, or that are connected with the proceeds of offences committed as part of a conspiracy to commit crime, or who legalize or give the appearance of legality to properties originating from the aforesaid activities, conceal or disguise the true nature, origin, whereabouts, destination, movement, or ownership of such properties, or who otherwise engage in any other acts to

conceal or disguise their illicit origin, shall be liable, for that conduct alone, to a term of imprisonment of eight (8) to twenty-two (22) years and a fine of six hundred fifty (650) to fifty thousand (50,000) times the statutory minimum wage in force.” – “The same penalty shall apply when the offences described in the preceding paragraph are carried out with properties declared forfeit.” - “Money laundering shall be punishable even should the activities from which the properties originate or the acts punished in the preceding paragraphs have been carried out abroad, either in whole or in part.” - “The prison terms provided in this article shall be increased by between one-third and one half should the offences committed have involved exchange or foreign trade operations or the introduction of merchandise into national territory. The increase in penalty provided in the preceding paragraph shall also apply when contraband merchandise is introduced into the national territory.”

- “Article 446 - Accessory after the fact. Whoever, in the knowledge that an offence has been committed, and without prior agreement, helps the culprit to evade the authorities or to obstruct the investigation thereof, shall be liable to a term of imprisonment of one (1) to four (4) years. - If this conduct is in respect of the crimes of genocide, forced disappearance, torture, forced displacement, homicide, extortion, illicit enrichment, kidnapping, or trafficking in drugs, narcotic, or psychotropic substances, the penalty shall be four (4) to twelve (12) years of imprisonment. If the offence constitutes a misdemeanor a fine shall be imposed.”

- “Article 447 – Receiving stolen goods or criminal instruments. Whoever, without having taken part in the commission of an offence, purchases, possesses, converts, or transfers movable or immovable property that proceeds directly or indirectly from a criminal offence or who otherwise engages in any acts to conceal or disguise their illicit origin, shall be liable to a term of imprisonment of two (2) to eight (8) years and a fine of five (5) to five hundred (500) times the statutory minimum wage in force, provided that the offence is not punishable by a higher penalty.”

▪ With respect to paragraph (e) of Article VI(1):

- “Article 29 - Principal. Whoever commits an offence themselves or using another person as an instrument is a principal. - Whoever, on the basis of a common plan, act in accordance with the principle of division of tasks for the performance of the crime are co-principals, depending on the importance of their contributions. A principal is also anyone who acts as a member or an authorized or *de facto* representative organ of a legal person, of a collective entity without such an attribute, or of a natural person whose representation is voluntarily held, and who commits the offence, even though the particular elements that give rise to punishment for the offence in question do not come together in them, but in the person or collective entity they represent. Any principal -in any of the various modalities- of an offense shall be liable to the penalty provided for that offense.”

- “Article 30 – Participants. Instigators and accomplices are participants in an offense. - Whoever instigates another to commit a wrongdoing shall be liable to the penalty provided for the offense. - Whoever contributes to the commission of a wrongdoing or provides assistance after the fact, by arrangement before the fact or concomitantly therewith, shall be liable to the penalty provided for the offense reduced by between one-sixth and one half. - Participants who take part in the commission of a crime without meeting the particular requirements stipulated in the classification thereof shall have the penalty reduced by one quarter.”

- “Article 27 - Attempted commission. Whoever initiates the commission of a wrongdoing by means of acts suitable and unmistakably intended to bring about its consummation, which does not occur for reasons alien to their will, shall be liable to not less than half of the minimum, nor more than three-

quarters of the maximum penalty provided for the consummated offense. - When the offense is not consummated for reasons alien to the will of the perpetrator or participant, they shall incur a penalty of not less than one-third of the minimum, nor more than two-thirds of the maximum penalty provided for the consummated offense, if they have voluntarily made all the necessary efforts to prevent its consummation.”

- “Article 340: Conspiracy. When various persons conspire to commit crimes, each one of them shall be punished, for that simple fact, by between three and six years in prison. - When the conspiracy is to commit the crimes of genocide, forced disappearance, torture, forced displacement, homicide, terrorism, drug trafficking, abduction with extortion, extortion, or to organize, promote, equip, or fund outlawed armed groups, the prison term shall be from six to twelve years and a fine of between two thousand and twenty thousand times the current statutory minimum monthly wage. - The prison term shall be increased by one-half for those who organize, promote, direct, lead, set up, or fund the conspiracy to commit crimes.”

- “Article 434 – Collaboration to commit a crime against the public administration. Any public servant who collaborates with another public servant or a private citizen to commit a crime against the public administration shall be liable, for this conduct alone, to a term of imprisonment of one (1) to three (3) years, provided that the offense is not punishable by a higher penalty. Any private citizen who takes part shall receive the same penalty.

- “Article 446 - Accessory after the fact. Whoever, in the knowledge that an offence has been committed, and without prior agreement, helps the culprit to evade the authorities or to obstruct the investigation thereof, shall be liable to a term of imprisonment of one (1) to four (4) years. - If this conduct is in respect of the crimes of genocide, forced disappearance, torture, forced displacement, homicide, extortion, illicit enrichment, kidnapping, or trafficking in drugs, narcotic, or psychotropic substances, the penalty shall be four (4) to twelve (12) years of imprisonment. If the offence constitutes a misdemeanor a fine shall be imposed.”

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

With respect to provisions related to the criminalization of the acts of corruption provided for in Article VI(1) of the Convention that have been examined by the Committee, based on the information made available to it, they constitute, as a whole, a set of provisions relevant for promoting the purposes of the Convention.

The Committee believes that although the elements “gifts,” “favors,” and “advantages” as described in Article VI.I (a) of the Convention are not specifically listed in Articles 404, 405, and 406 of the Criminal Code (which define, respectively, the offenses of extortion, bribery for violation of official duty, and bribery for performance of official duty), an analysis of the extortion provisions of Article 404 reveals that the concepts of “undue monies or any other benefits” contained therein cover those elements; thus, the benefit sought or obtained by a public employee who abuses his/her position or function can be economic, personal, or of any other nature.

The Committee also believes that the offenses of taking bribes for the violation or performance of duty and the offering of bribes, covered respectively by Articles 405, 406, and 407 of the Criminal Code, also cover the notion of benefit and that, as indicated, the elements of gifts, favors, promises, and/or advantages constitute a benefit or gain that could, in conjunction with the other requirements

of a criminal nature, constitute one of the crimes punishable under the aforesaid articles of the Criminal Code.

In this regard, the Committee also took into account the interpretation given by the Colombian judiciary that was provided by the country under review.⁵³

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

In its Response to the Questionnaire (Annex 3),⁵⁴ the Republic of Colombia furnished statistical information provided by the Office of the Prosecutor General on results obtained in the framework of the proceedings governed by Law 600 of 2000 (mixed system) and Law 600 of 2004 (accusatory system, which is being progressively implemented in the country by regions) with respect to the following “Crimes against the Public Administration”:

Wrongful Conclusion of Contracts (Art. 172 of the C.C.); Making Contracts without Fulfilling Legal Requirements (Art. 410 of the C.C.); Contracting with Improper Interest (Art. 409 of the C.C.); Criminal Embezzlement (Art. 400 of the C.C.); Embezzlement by Inappropriate Use of Official Resources (Art. 399 of the C.C.); Embezzlement by Appropriation (Art. 397 of the C.C.); Embezzlement by Another Person's Error (Art. 135 of the C.C.); Embezzlement by Extension (Art. 138 of the C.C.); Embezzlement by Use (Art. 398 of the C.C.); Violation of Legal or Constitutional Rules on Ineligibility and Incompatibility (Art. 408 of the C.C.)

In respect of the foregoing information, the Committee centers its attention on the data concerning the crimes of Contracting with Improper Interest, Embezzlement by Appropriation, and Embezzlement by Use, as these are the offence is most often connected with certain of acts of corruption covered by Article VI.1 of the Convention.

From the foregoing, the Committee notes that the information regarding the proceedings governed by Law 600 of 2000, which covers the period between January 2001 and December 31, 2006, serves to show that a large number of investigations have been opened, as well as measures ordered and convictions issued in connection with the offenses mentioned in the preceding paragraph. However, it also shows that in 17 cases involving contracting with improper interest, 229 cases of

⁵³ Colombia furnished jurisprudence from its courts, stating:

(1) As regards extortion: “We note that the object of those provisions is an undue benefit, including money; thus, the qualifying characteristic is broader than extortion, since the ‘undue’ component refers not only to what is illicit but also to situations in which, while the benefit is not illicit, it is not equitable or fair to obtain it.” (Supreme Court of Justice, Criminal Cassation Chamber, Santafé de Bogota, D.C., April 9, 1992; by Edgar Saavedra Rojas; adopted in Deed No. 44. Proceedings No. 7418).

(2) As regards bribery: “Bribery clearly constitutes corruption. For that reason it is known by that name, along with that of *baratería*. The latter name is given because the official deceives himself by exchanging something of inestimable worth (public duty) for a thing that is worth less (the money, the gift, the promise of remuneration).” (Supreme Court of Justice, Criminal Cassation Chamber, Santafé de Bogota, D.C., August 19, 1976; by Gustavo Gómez Velásquez; adopted in Deed No. 39); “the existence of a gift or a promise of remuneration, as a result of which the official performs or abstains from performing an action that he is required to perform as a part of his functions.” (Supreme Court of Justice, Criminal Chamber; Bogotá, January 18, 1979; by Luis Enrique Romero Soto; adopted in Deed No. 1).

⁵⁴ This annex to the Response of Colombia to the Questionnaire is available for consultation at: http://www.oas.org/juridico/spanish/mesicic2_col_sp.htm

embezzlement by appropriation, and three cases of embezzlement by use, the courts ordered the preclusion of the preliminary investigation because the statute of limitations had run. In light of this circumstance, and since Colombia has already taken various steps to prevent the application of statutory limitations to the investigation of offenses of all kinds, including those identified above,⁵⁵ the Committee will issue the country under review a recommendation for the corresponding authority to consider continuing to adopt the relevant measures for attaining this goal (see Recommendation in Chapter III, Section 3 of this report).

As regards the information referring to proceedings under Law 906 of 2004, which covers the period from January 2005 to December 31, 2006, the Committee finds that it serves to show that investigations had been opened into the aforementioned crimes and that indictments have been presented and convictions handed down for the crimes of embezzlement by appropriation and embezzlement by use; that information does not, however, indicate whether there have been any orders issued for the closure of the investigations into the crimes against the public administration it refers to on account of the expiration of statutory limits.

Finally, 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 the criminal investigations referred to by the country under review in connection with the acts of corruption provided in Article VI(1) of the Convention, other than the crimes of contracting with improper interest, embezzlement by appropriation and embezzlement by use, it will make a recommendation in that regard (see General Recommendation 4.2 in Chapter III of this report).

III. CONCLUSIONS AND RECOMMENDATIONS IN RELATION TO THE IMPLEMENTATION OF THE PROVISIONS OF THE CONVENTION SELECTED IN THE SECOND ROUND

Based on the review conducted in Chapter II of this Report, the Committee offers the following conclusions and recommendations regarding implementation by the Republic of Colombia of the provisions contained in Article III(5) (systems of government hiring and for the procurement of goods and services); Article III(8) (systems for protecting public servants and private citizens who, in good faith, report acts of corruption); and Article VI (acts of corruption) of the Convention, which were selected for review within the framework of the Second Round.

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

⁵⁵ The country under review reported, in its comments on the draft preliminary report on Colombia for the second round of review, that “the Attorney General of the Nation issued a guideline, within the agency’s Strategic Plan, requiring the promptest possible processing, with due respect for guarantees and procedures in each case, of all investigations pursued in accordance with the procedure indicated in Law 600 of 2000, irrespective of the nature of the offense involved. This framework guideline was adopted by the National Prosecution Directorate for monitoring all the investigations being pursued by the National Unit Specializing in Crimes against the Public Administration, as well as other prosecution services.” (“Created directly by the Attorney General of the Nation in 1998, to combat crime related to offenses committed against the public administration.”)

1.1. Systems of Government Hiring

The Republic of Colombia has considered and adopted measures intended to establish, maintain, and strengthen the systems of government hiring, as discussed in Section 1.1 of Chapter II of this Report.

In light of the comments made in the above-noted section, the Committee suggests that the Republic of Colombia consider the following recommendations:

1.1.1 Strengthen government hiring systems in the Executive branch and territorial entities. In meeting this recommendation, the Republic of Colombia could take into account the following measures:

- a) Continue to take the appropriate steps to bring the various career service systems in line with the general system, so that the specific and special systems created by law do not become fragmented from the general government career service, notwithstanding the cases expressly prescribed in the Political Constitution, informed by the principles of openness, equity and efficiency prescribed by the Convention (see Chapter II, Section 1.1.2 of this report).
- b) Continue to move forward with implementation of the competitive selection process initiated by Call for Candidates 001 of 2005 to fill civil service positions occupied on a provisional and temporary basis, and to complete it (see Chapter II, Section 1.1.3 of this report).

1.1.2. Strengthen government hiring systems in the legislative branch. In meeting this recommendation, the Republic of Colombia could take into account the following measure:

- Adopt the relevant law to enact the Legislative Branch Civil Service Statutes, guiding itself to that end by the principles of openness, equity, and efficiency as provided for in the Convention, without prejudice to the application of the general civil service rules in force for the Executive branch, subject to their compatibility, until said Statutes are adopted, as provided at article 384 of Law 5 of 1992 (see Chapter II, Section 1.1.2 of this report).

1.1.3 Strengthen government hiring systems in the judicial branch. In meeting this recommendation, the Republic of Colombia could take into account the following measures:

- a) Enact the statute governing the judicial career system referred to in Article 204 of Law 270 of 1996, guiding itself to that end by the principles of openness, equity, and efficiency as provided for in the Convention. (see Chapter II, Section 1.1.2 of this report).

- b) Adopt, through the appropriate authority, the necessary measures to complete the selection processes for “Employees of the Executive Judicial Administration Board” and “Employees of the Administrative Chamber of the Superior Judicature Council” (see Chapter II, Section 1.1.3 of this report).

1.1.4 Strengthen government hiring systems in the Office of the Prosecutor General. In meeting this recommendation, the Republic of Colombia could take into account the following measures:

- a) Set, through the appropriate authority, a time limit on any provisional appointment made to fill a permanent vacancy, in order for the vacancy to be filled through competition in accordance with the rules in force for that purpose (see Chapter II, Section 1.1.2 of this report).
- b) Adopt, through the appropriate authority, the measures pertinent to advance and complete the merit-based competition to staff the career service of the Office of the Attorney General of the Nation (see Chapter II, Section 1.1.3 of this report).

1.2. Government Systems for the Procurement of Goods and Services

The Republic of Colombia has considered and adopted measures intended to establish, maintain and strengthen the systems for government procurement of goods and services, as discussed in Section 1.2 of Chapter II of this Report.

In light of the comments made in the above-noted section, the Committee suggests that the Republic of Colombia consider the following recommendation:

- Strengthen systems for the procurement of goods and services by the government. In meeting this recommendation, the Republic of Colombia could take into account the following measures:⁵⁶
 - a) Progress with reviewing the basis and relevance of the special contracting regimes, and with adopting appropriate measures to ensure the requisite harmony for the management of

⁵⁶ The Committee notes the Republic of Colombia states that with the enactment of Law 1150 on July 16, 2007, which amended Law 80 of 1993, the “General Statute on Government Procurement,” it complies with the measures recommended in paragraphs (a), (b), (c), (d), (e), (f), (g) and (h) of the recommendation in section 1.2 on systems for the procurement of goods and services by the state. The Committee acknowledges the efforts made by the Republic of Colombia in implementing a comprehensive set of regulations on systems for government procurement and contracting; it has not, however, been able to analyze that legislation, since it was enacted after the deadline for submitting responses to the questionnaire (May 25, 2007). The Committee has consequently not been able to assess whether the new law complies with the requirements contained in Article III, paragraph 5, of the Convention.

diverse procurement systems, informed by the principles of openness, equity, and efficiency as provided for by the Convention (see Chapter II, Section 1.2.2 of this report).

- b) Amend Article 13 of Law 80 (1993) to require that if contracts or agreements financed with funds from agencies providing international cooperation, assistance or aid mostly involve public funds from state entities, the provisions that refer to said entities in the General Procurement Statute shall be applied (see Recommendation in Chapter II, Section 1.2.2 of this report).
- c) Amend Article 24 (c) of Law 80 of 1993, limiting direct procurement, where inter-agency contracts are concerned, to cases in which the object of the contract to be entered on between the state entities is directly connected with the functions entrusted to them (see Chapter II, Section 1.2.2 of this report).
- d) Amend Article 24 (g) of Law 80 of 1993, to provide that when a tender or competition is declared void, a new process other than direct contracting shall be followed, one that will also guarantee the principles of openness, equity, and efficiency enshrined in the Convention (see Chapter II, Section 1.2.2 of this report).
- e) Amend Article 24 (h) of Law 80 of 1993, ordering that new tender or competition process, not a direct procurement procedure, shall be held when no bid is presented or none of the bids satisfy the list conditions or terms of reference, or, in general, when there is a lack of will to participate, without prejudice to introducing in said process such modifications as may be deemed appropriate to ensure the effective participation of bidders therein (see Chapter II, Section 1.2.2 of this report).
- f) Amend Article 27 of Law 80 of 1993 to include such provisions as may be necessary, such as a determination as to the risks that give rise to compensation, in order to prevent said provision becoming the basis for a claim against a state entity for profits lost due to contingencies that are part and parcel of the unpredictable nature of business, in spite of what the latter might have agreed to as consideration in the respective contract (see Chapter II, Section 1.2.2 of this report).
- g) Abolish Article 20 of Decree 855 of 1994, which provides that in direct procurement operations not provided for in said decree, the contract may be concluded on the basis of market prices without the need first to obtain bids or publish invitations to contract. (see Chapter II, Section 1.2.2 of this report).
- h) Adopt pertinent measures, through the appropriate authority, to precisely define the guidelines for the objective selection of contractors, guiding itself to that end by the principles of openness, equity, and efficiency contained in the Convention (see Chapter II, Section 1.2.2 of this report).

- i) Abolish the paragraph in Article 11 of Decree 2170 of 2002 that provides that when the value of the contract to be entered on is equal to or less than 10% of the small contract amount referred to in Article 24, section 1(a) of Law 80 of 1993, entities may enter upon said contract taking market price as the sole consideration, without the need first to obtain several bids, (see Chapter II, Section 1.2.2 of this report).
- j) Continue with the actions necessary to consolidate the standards on government procurement in a single, concise and well-defined text, in order to make it easier to apply for the officials required to do so, and clearer and more comprehensible for everyone involved in government procurement as well as for the citizenry at large (see Chapter II, Section 1.2.2 of this report).
- k) Adopt pertinent measures, through the appropriate authority, to ensure that direct procurement is employed as a consequence of the strict application of the exceptions provided in the Law (see Chapter II, Section 1.2.3 of this report).
- l) Conduct a comprehensive evaluation to determine the objective reasons for the commission of irregularities in the area of procurement with respect to investment of funds from royalties and, based on its findings and without prejudice to such measures as the oversight agencies in the country under review might be required to adopt against such irregularities, design and consider the adoption of specific measures to prevent their occurrence (see Chapter II, Section 1.2.3 of this report).
- m) Take the steps necessary to incorporate into the Single Contracting Portal those state agencies that are not already covered by it. (See section 1.2.3 of Chapter II of this report.)
- n) Continue with the actions necessary to implement the Electronic Procurement System (see Chapter II, Section 1.2.3 of this report).

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

The Republic of Colombia has considered and adopted certain measures intended to establish, maintain and strengthen systems to protect public servants and private citizens who in good faith report acts of corruption, as described in Section 2 of Chapter II of this Report.

In light of the comments made in the above-noted section, the Committee suggests that the Republic of Colombia consider the following recommendation:

- Strengthen systems to protect public servants and private citizens who in good faith report acts of corruption. In meeting this recommendation, the Republic of Colombia could take into account the following measures:

- a) Expand, through the appropriate authority, the regulations on the “Program for Protection of Witnesses, Victims, and Persons Involved in Disciplinary Proceedings,” in order expressly to include persons who report acts of corruption among the beneficiaries of that program (see Chapter II, Section 2.2 of this report).
- b) Adopt, through the appropriate authority, measures pertinent to ensure the operations of the “Program for Protection of Witnesses, Victims, and Persons Involved in Disciplinary Proceedings,” (see Chapter II, Section 2.2 of this report).
- c) Adopt, through the appropriate authority, comprehensive regulations on the protection of public servants and private citizens who in good faith report acts of corruption, including protecting their identities, in accordance with its Constitution and the basic principles of its domestic legal system, which could include, among others, the following aspects:
 - i. Mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it.
 - ii. Additional protection measures to protect not only the physical integrity of whistleblowers and their families, but also to provide protection in the workplace, especially when the person is a public official and the acts of corruption involve superiors or co-workers.

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

The Republic of Colombia has adopted measures aimed at criminalizing the acts of corruption provided for by Article VI(1) of the Convention, as discussed in Section 3 of Chapter II of this Report.

In light of the comments made in the above-noted section, the Committee makes the following recommendation to the Republic of Colombia:

Consider continuing to adopt, through the appropriate authority, the measures pertinent to avoid preclusion of the preliminary investigation due to the running of the statute of limitations in cases that involve the offences of contracting with improper interest, embezzlement by appropriation, and embezzlement by use, pursued in accordance with the procedure contained in Law 600 of 2000 (see Chapter II, Section 3.3 of this report).

4. GENERAL RECOMMENDATIONS

Based on the review and contributions made throughout this Report, the Committee suggests that the Republic of Colombia consider the following recommendations:

- 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.

- 4.2. Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, standards, measures and mechanisms considered in this Report, and to verify follow-up on the recommendations made herein. (see Sections 1.1.3, 2.3 and 3.3 of Chapter II of this Report)

5. FOLLOW-UP

The Committee will consider the periodic update Reports submitted by the Republic of Colombia concerning progress in implementing previous recommendations, within the framework of the plenary meetings of the Committee and in accordance with the provisions of Article 31 of the Rules of Procedure and Other Provisions.

Similarly, the Committee will review the progress in implementing the recommendations made in this Report, in accordance with the provisions of Article 29 of the Rules of Procedure.

IV. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN THE FIRST ROUND

The Committee observes, in relation with the implementation of the recommendations formulated for the Republic of Colombia in the Report in the First Round of review, based on the information at its disposal, the following:

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

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

Recommendation 1.1.1:

That the Republic of Colombia, taking into account the provisions of Law 489 of 1998 and other pertinent provisions, continue undertaking and strengthening, as a permanent State policy, training programs for civil servants when they first assume their positions and periodically thereafter. Such programs should include courses on conflicts of interest and, in general, on standards of conduct and mechanisms to enforce them as referred to in Article III, paragraphs 1 and 2 of the Inter-American Convention against Corruption.

In its Response,⁵⁷ the country under review presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which enable it to conclude that the recommendation has been satisfactorily considered, the measures taken with respect to:

- The redesign of the Training Program for Senior Government Officials by the Civil Service Administrative Department and the Higher School of Public Administration, introducing a new

⁵⁷ Response of Colombia to the Questionnaire, pp. 98 to 100.

approach for training the program's target group and implementation of specific training programs in 2006.

- The updating, through Resolution 415 of 2003, of the National Education and Training Plan, establishing Transparent Government as a policy guideline, in a bid to move forward with the adoption of measures to strengthen ethical values in public service, open the way for societal oversight mechanisms, and implement mechanisms to enhance efficiency and transparency.

- The obligation for all entities to implement induction and reinduction courses that must include an update on the regulations on ineligibility, conflicts of interest, and administrative morality, in accordance with the provisions contained in the Decree 1567 of 1998.

- The study "Participatory Design of the Government's Civil-Servant Education and Training Policy: Prospects for Non-Formal and Informal Education," which the Civil Service Administrative Department (DAFP) and the Higher School of Public Administration (ESAP) began to carry out in May 2006.

The Committee takes note that the country under review has satisfactorily considered the foregoing recommendation, without prejudice to the fact that they are of a continuous nature and should continue to be implemented.

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

Recommendation 1.2:

Strengthening preventive measures and control systems for ensuring the effective conservation and adequate use of resources assigned to public servants in the performance of their functions.

Measure suggested by the Committee:

- Undertaking a comprehensive evaluation to determine the objective causes that give rise to the investigations into the crime of embezzlement of public funds and, based on the results, define and adopt specific measures as may be required in order to prevent the occurrence of this crime, and, ultimately, to ensure the conservation and adequate use of the resources entrusted to public servants.

- Undertaking a comprehensive evaluation that makes it possible to determine the objective causes that are impeding or limiting the effectiveness of the internal control systems and the fiscal control systems to avoid "budgetary and other resource deviations" and that, based on the results, the specific measures needed be defined and adopted, so as to prevent such deviations and ensure the conservation and adequate use of public resources.

In its Response, the country under review presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

As regards the first measure in the recommendation, the country under review reports the following:⁵⁸

⁵⁸ Response of Colombia to the Questionnaire, pp. 106 and 107.

- The Cooperation and Support Agreement between the Office of the Prosecutor General, the Office of the Attorney General, and the Office of the Comptroller General, signed in 2003 and renewed in April 2006. “In the framework of the aforementioned agreement and bearing in mind the experience of working in coordination and the commonalities in the area of prevention, joint studies are being carried out to identify the most pressing problems that undermine the efficient, effective, economical, and equitable use of funds. As a result of these efforts the following studies have been prepared: Review of the seized properties administration policy; review of the defense procurement policy with respect to firearms, equipment, and services classified as for defense and national security; evaluation of revenue for specific use in the environmental sector, with particular emphasis on electrical transfers to regional autonomous corporations and municipalities; and prevention guidelines to contribute to the improvement of public administration.”

- Information Systems: “In order to monitor and comprehensively evaluate the causes of investigations arising from embezzlement offences, Colombia is working with information systems that provide it with complete and timely information on government procurement processes, in particular the following: Government Procurement Oversight Information System (SICE), which gathers all relevant information on government procurement processes, enabling self-regulation, institutional control and disclosure of operations (described in detail in chapter 1, section I, subsection 2 of the Response of Colombia to the Questionnaire); Single Government Procurement Portal (PUC), an electronic system to consult information about contracting processes managed by state entities subject to the procurement rules set down in Law 80 of 1993” (described in detail in section I, chapter 1, subsection 2 of the Response of Colombia to the Questionnaire).

As regards the second measure in the recommendation, the country under review reports the following:⁵⁹

- Decree 1599 of 2005, which adopted the Standard Internal Control Model (MECI) for State entities, which were given a deadline of 20 months to adopt the Model in Decree 2621 of August 3, 2006, that is, until April 2, 2008. In addition, the Civil Service Administrative Department provides training in this connection.

- Circulars 02 and 05 of 2005, issued by the National Government Advisory Council on Internal Control, which, respectively, invite all public managers and employees throughout the public administration to adopt this new internal control structure in a decided manner and take the necessary steps to ensure its correct implementation; and issue instructions for the preparation and presentation of the Annual Executive Report on Progress in Implementation of the Internal Control System to be submitted in April 2007.

- Implementation of Information Systems to enhance transparency and efficiency in the use of public resources, such as, the Uniform Personnel Information System (SUIP), which (at www.empleopublico.gov.co) contains approximately 150,000 curriculum vitae of national level government officials; the Sanctions and Disqualification Register System (SIRI), a tool created by the Office of the Attorney General in 2004;^{xxvii} the Uniform Automated Income, Service and Oversight System (MUISCA), which permits collection, systematization, and organized use of information on payment of national taxes as well as on a number of territorial entities;^{xxviii} the Secure Information, Background, Transaction, and Assets System (PIJAO), which records information on

⁵⁹ Response of Colombia to the Questionnaire, pp. 101 to 106.

transactions carried out, *inter alia*, in the finance, exchange, insurance, and international trade sectors;^{xxix} the Regulated Persons Report of the Office of the Comptroller General, which contains a list of natural and legal persons with outstanding tax in favor of the State;^{xxx} the Interoperability Platform, which is a set of tools necessary for information system linkage.

- The Public Sector Employment and Information System (SIGEP), under development by the Civil Service Administrative Department, in cooperation, *inter alia*, with the Presidential Anti-Corruption Program, the Financial Intelligence and Analysis Unit (UIAF), the Superintendency of Finance, and the Office of the Attorney General, which are working on the design of the SIGEP assets and income module so as to enable implementation of a system to share information with other entities, in order to detect and follow up on corruption among public officials.

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the two measures in the foregoing recommendation as well as the need for it to continue giving attention thereto.

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

Recommendation 1.3.1:

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

Measures suggested by the Committee:

- *Considering measures to ensure the effectiveness of the obligation that public servants are required under the Colombian law to report to appropriate authorities acts of corruption in the performance of public functions; the performance of this duty be facilitated; they be given the protection they need in keeping with the seriousness of the corrupt acts reported; and, if they fail to carry out that obligation, the sanctions provided for in the Colombian legal order for such situations will be applied.*

- *Training public officials concerning the existence and purpose of their responsibility to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.*

In its Response,⁶⁰ the country under review presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The Code of Criminal Procedure (Law 906 of 2004), Article 67 of which provides: “All persons must report to the authorities any offence of which they have knowledge and that is required to be investigated on an official basis. A public official who has learned of the commission of an offense required to be investigated on an official basis shall without delay initiate an investigation if he has authority to do so. If not, he shall immediately make the facts known to the appropriate authority.”

⁶⁰ Response of Colombia to the Questionnaire, pp. 107 and 108.

- The Law against harassment in the workplace promulgated in 2006 (which is mentioned in section I, chapter 2, subsection A(3) of the Response of Colombia to the Questionnaire, and analyzed in Chapter II, Section 2.2 of this report).
- “Information systems. The DAFP, which is designing the Civil Service Information and Management System (SIGEP), plans to include a function in the Employee Portal that would enable civil servants to make suggestions and report situations concerning conduct and correct performance of assigned duties.”⁶¹

The Committee takes note that the country under review has satisfactorily considered the element of the first measure in the recommendation which refers to “[c]onsidering measures to ensure the effectiveness of the obligation that public servants are required under the Colombian law to report to appropriate authorities acts of corruption in the performance of public functions; the performance of this duty be facilitated,” insofar as the above transcribed provision of the Code of Criminal Procedure (Law 906 of 2004) is concerned.

The Committee also takes note of the steps taken by the country under review to proceed with the other elements of the first measure in the recommendation as well as the need for it to continue giving attention to its implementation, as well as the second measure in that recommendation, to which it did not refer in its Response.

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

Recommendation 2.1:

Improving the systems for control and evaluation of the content of the financial disclosure reports and regulating their disclosure.

Measures suggested by the Committee:

- *Optimizing the systems for analysis of the content of the financial disclosure reports for the purpose of detecting and preventing conflicts of interest as well as detecting possible cases of illicit enrichment.*
- *Regulating the conditions, procedures and other aspects that are considered appropriate in relation to the publishing of the declarations on assets, income and liabilities from civil servants, subject to the Constitution and the basic tenets of Colombia’s legal system.*

In its Response,⁶² the country under review presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measure taken with respect to:

- “One of the functions being examined with a view to its inclusion in the new Civil Service Information and Management System (SIGEP), which will come on line in approximately 18 months

⁶¹ Response of Colombia to the Questionnaire, p. 108.

⁶² Response of Colombia to the Questionnaire, p. 109.

time, is an employee assets and income reporting feature, which can be permanently updated by the employee in conditions that guarantee the full security of the information as well as functions that permit oversight by the agencies concerned, in order to enable them to detect anomalies or unjustified increases in assets and income.

In this framework, talks have been held with a view to revising the assets and income declaration form, in which the Civil Service Administrative Department, the Financial Intelligence and Analysis Unit, the Superintendency of Finance, the Presidential Anti-Corruption Program, and the Office of the Attorney General have taken part.”

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the first measure in the above recommendation as well as the need for it to continue giving attention to the implementation of this recommendation, bearing in mind that the new Civil Service Information and Management System (SIGEP) is not yet operational, as well as to the second measure in that recommendation, to which it did not refer in its Response.

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

Recommendation 3.1:

Strengthening the oversight bodies through coordination of their functions for control of effective compliance with the provisions in Article III, paragraphs 1, 2, 4, and 11 of the Convention, and optimizing their coordination as established by the Colombian legal system, providing them with necessary legal instruments and resources for the complete development of their functions; and making sure that they have greater political and social support; and establishing mechanisms that will allow continued evaluation and monitoring of their actions.

In its Response,⁶³ the country under review presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measure taken with respect to:

- The Cooperation and Support Agreement between the Office of the Prosecutor General, the Office of the Attorney General, and the Office of the Comptroller General, signed in 2003 and renewed in April 2006, to coordinate anti-corruption efforts and the measures carried out by these oversight organs under this agreement.⁶⁴

The Committee takes note that the country under review has satisfactorily considered the element in the above recommendation that refers to strengthening coordination of the oversight bodies, which, by its nature, requires a continuation of efforts and requires the need for it to continue giving attention to the implementation of this recommendation; bearing in mind that in its Response it did not refer to the other elements therein.

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

⁶³ Response of Colombia to the Questionnaire, pp. 110 to 113.

⁶⁴ These measures are described on pages 110 to 113 of the Response of Colombia to the Questionnaire.

4.1. Mechanisms for access to information

Recommendation 4.1.1:

Considering measures for having the advances made to date in “connectivity” and use of the information technologies in the national-level entities and started at the territorial level with decree 2170 of 2002, consolidated and extended to the departmental, district, and municipal entities, and, accordingly, that the institutions that perform public functions at the departmental and municipal levels would also be under an obligation to disseminate information in their possession or under their control.

Recommendation 4.1.2:

Considering strengthening existing mechanisms so that public employees and officials will be more compliant in meeting their obligation to make information available to citizens.

In its Response, the country under review presents information with respect to the above recommendations. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendations, the following measures:

In connection with Recommendation 4.1.1, the country under review reports the following:⁶⁵

“On-line Territorial Government Project - The Colombian Government, through the Connectivity Agenda Program of the Ministry of Communications, is implementing the On-line Territorial Government Project, through which it intends to strengthen the use of information and communication technologies in information provision activities by territorial entities.

In the first phase of this project connectivity was brought to 624 municipalities which now have their own website and public accountability software, designed by *Corporación Transparencia por Colombia*. This project also provides coaching and training in the use of these applications.”

In connection with Recommendation 4.1.2, the country under review reports the following:⁶⁶

- “On-Line Government Portal. This is a mechanism that facilitates access for the general public to information in the possession of the government, including data that of the Presidential Anti-Corruption Program, the Office of the Comptroller General, the Ombudsman, the Civil Service Administrative Department, the Higher School of Public Administration, the Ministry of the Interior and Justice, the Ministry of Social Welfare, the Superintendency of Public Utilities, the Office of the Attorney General, the Office of the Accountant General, the Colombian Municipalities Federation, the Capital District Inspectorate, and, in general, all of the entities advancing the issue of Societal Oversight of the Public Administration.”

- “Government Goals Information System (SIGOB). This system constitutes a significant stride in making information on the performance of the administration available to direct beneficiaries of

⁶⁵ Response of Colombia to the Questionnaire, p. 113.

⁶⁶ Response of Colombia to the Questionnaire, pp. 113 to 116.

government programs and projects, inasmuch as it is a permanent consultation mechanism on progress in the principal activities pursued by the government. Tools such as this guarantee a successful transition to a management model, in which quality information supplied by the government in a timely manner are a mainstay of the administration's efforts.

SIGOB is an interagency working instrument that came into operation in 2003 and makes it possible to monitor PND goals as well as the funds earmarked to meet those commitments. This tool collects information from the entities in all 19 sectors of the executive branch tasked with fulfillment of PND objectives.”

- “Uniform Personnel Information System (SUIP). At present, the SUIP collect information from 223 national-level entities on their organizational structures, rules and regulations, staff complement (including the curriculum vitae of each official) with information on positions filled and vacancies, as well as information regarding contracts for professional, advisory, or consulting services hired by each entity.

It is a web-based application with two consultation modules or interfaces: one for entities that report to the SUIP, and the other for the general public (including public officials). Through the latter interface it is possible to consult information about standards, organizational structure, basic information, complement and structures, positions filled, vacancies (due to retirement, temporary, or permanent) at each entity consulted.”

The Committee takes note of the steps taken by the country under review to proceed with the implementation of Recommendation 4.1.1 as well as the need for it to continue giving attention to the implementation of this recommendation, bearing in mind that the “On-line Territorial Government Project”, has not yet been completed.

The Committee also takes note that the country under review has satisfactorily considered Recommendation 4.1.2, which, by its nature, requires a continuation of efforts.

4.2. Mechanisms for consultation

Recommendation 4.2.1:

Undertaking comprehensive evaluation of the use and effectiveness of the mechanisms of consultation in Colombia as instruments for preventing corruption, and that, as a result of that evaluation, consider the adoption of measures to promote, facilitate, and consolidate or ensure their effectiveness.

Recommendation 4.2.2:

That, in relation to the mechanisms of consultation and the public hearings, in the context of the public administration, referred to by decree 2130 of 1991 and Law 489 of 1998 (Articles 32 and 33), considering measures to extend their application to the departmental and municipal levels be given.

In its Response, the country under review presents information with respect to the above recommendations. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendations, the following measures:

In connection with Recommendation 4.2.1, the country under review reports the following:⁶⁷

- “Efforts have centered on improving accountability mechanisms, to which end, the Civil Service Administrative Department follows up on accountability hearings open to the public organized by national-level entities. Two follow-up surveys have been carried out: the first at the end of 2004 and the second at the end of 2005. The surveys found that the number of agencies that held hearings went up 400% from eight in 2004 to 32 in 2005.

On the strength of these findings, the decision was made to encourage hearings through two circulars issued by the Civil Service Administrative Department; the design of guidelines to inform the public about how to participate in hearings; and training for agency teams to spearhead the process.

Furthermore various accountability measures were implemented by different agencies, including the National Planning Department, the Presidential Anti-Corruption Program, *Transparencia por Colombia*, and the Colombian Municipalities Federation. These measures are not linked under a joint strategy.”

In connection with Recommendation 4.2.2, the country under review reports the following:⁶⁸

- “Since 2003, the Civil Service Administrative Department (DAFP) has been pursuing a public accountability-disclosure strategy in the framework of the public administration democratization program. Two sets of guidelines have been issued for that purpose: one for government agencies to organize and carry out accountability processes; and the other two advise the public on their and participation in those processes.

Similarly, the DAFP also prepared the citizen participation guidelines for accountability-disclosure processes, as well as the public administration assessment guidelines, which are available for consultation at www.dafp.gov.co/gestiondeltaletohumano/controlsocial

In pursuit of this policy, with the assistance of the DAFP, the Minister of Culture designed a handbook containing guidelines on municipal accountability processes, in order to inform the citizenry about compliance with the cultural affairs policy and management of funds transferred for its implementation. The result was the holding of public accountability-disclosure processes in approximately 100 municipalities.

In turn, the Office of the Comptroller General has an accountability process in which the aim is for audited entities to present audit results to the public in the presence of this oversight agency.

In cases where widespread problems exist, the Office of the Prosecutor General, the Office of the Attorney General, and the Office of the Comptroller General, through the agreement that they have signed to coordinate anticorruption efforts, act in a joint manner to ensure accountability.

Furthermore, the National Planning Department has been leading the preparation of a National Council of Economic and Social Policy (CONPES) document on accountability in a bid to set a policy to be observed by all State entities in this area.”

⁶⁷ Response of Colombia to the Questionnaire, pp. 116 and 117.

⁶⁸ Response of Colombia to the Questionnaire, pp. 116 and 117.

The Committee takes note of the steps taken by the country under review to proceed with the implementation of Recommendation 4.2.1 as well as the need for it to continue giving attention to the implementation of this recommendation; bearing in mind that still pending is the comprehensive evaluation and adoption of measures referred to in said recommendation.

The Committee also takes note that the country under review has satisfactorily considered Recommendation 4.2.2, which, by its nature, requires a continuation of efforts.

4.3. Mechanisms to encourage participation in public administration

Recommendation 4.3.1:

Undertaking an evaluation on the use and effectiveness of the mechanisms of active participation in the management of public affairs existing in Colombia, as instruments to prevent corruption and that, as part of that evaluation, consider the adoption of measures to promote, facilitate, and consolidate or assure their effectiveness with that aim.

In its Response,⁶⁹ the country under review presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- “Compliance by national-level entities with the democratization policy is monitored through the follow-up reports on implementation of the Sectoral Administrative Development Plan. The policy encourages the opening up of the administration to citizen participation, provided for in Decree 3622 of 2005 as one of the administrative development policies. Follow-up findings are set down in annual reports on the subject submitted to the Office of the President of the Republic. Based on these reports guidelines are issued to entities on ways to enhance democratization strategies so as to facilitate citizen participation in government affairs.”

- “Citizen watchdogs. The Inter-Agency Network for Support of Citizen Watchdogs, which was created by Law 850 of 2003 and composed of the Office of the Comptroller General, the Office of the Attorney General, the Ombudsman, the Ministry of the Interior and Justice, the Higher School of Public Administration (ESAP) and the Civil Service Administrative Department, identified four lines of action for the coordinated implementation of projects in support of citizen watchdogs and societal oversight. One of those lines of action is Technical Assistance and Evaluation of the impact of processes with societal oversight organizations. Some of the goals set are to have a current register of watchdog agencies; identify capacity-building needs to enable citizens to perform a watchdog role; implement organizational support and legal advisory strategies, and monitor the results of agencies’ results. The mechanism used will be the citizen participation follow-up system developed by the Ministry of the Interior and Justice.”

- “Regional Strategies. The Transparency Pacts sponsored by the Office of the Vice President of the Republic through the Presidential Anti-Corruption Program invited different civil society organizations and local government authorities (governors and mayors) to sign governance pacts and agreements to strengthen local government efficiency and transparency, and, in particular, to promote citizen participation in societal oversight of government affairs.”

⁶⁹ Response of Colombia to the Questionnaire, pp. 118 to 121.

- “Visible Audits. Visible Audits is a new project launched by the Presidential Anti-Corruption Program intended to support and encourage beneficiaries of public construction works and services to exercise technical and organized monitoring, surveillance and oversight of projects carried out by territorial entities with funds from royalties and the General Participation System (SGP), in sectors of fundamental importance to the community, such as education, health, housing, potable water systems, and basic sanitation.”

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for it to continue giving attention to the implementation of this recommendation, bearing in mind that still pending is the evaluation and adoption of measures referred to in said recommendation.

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

Recommendation 4.4.1:

Considering measures to consolidate and expand the dissemination programs of the participatory mechanisms for monitoring the management of public affairs; educate and train civic leaders to give impetus to their use; include in basic and secondary education programs content concerning the prevention of corruption and the fulfillment of civic duties; create citizen awareness on the importance of denouncing acts of public corruption; and offer the necessary protection to those who report them.

Recommendation 4.4.2:

Considering the adoption of the appropriate measures in relation with mechanisms like the National Commission for Moralization provided for in Decree 1681 of 1997.

In its Response, the country under review presents information with respect to the above recommendations. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendations, the following measures taken with respect to:

In connection with Recommendation 4.4.1, the country under review reports the following:⁷⁰

- The National Training Plan for Societal Oversight of Public Administration. “In keeping with the mandate contained in Article 35 of Law 489 of 1998, the ‘National Training Plan for Societal Oversight of Public Administration’ was created, constituting the most extensive **inter-agency** partnership devoted to training in and promotion of citizen oversight in all Colombia’s regions. Its curriculum is composed of the Consultation Document Series ‘National Training Plan for Societal Oversight of Public Administration,’ which is divided into three educational phases.”⁷¹

- The Inter-Agency Network for Support of Citizen Watchdogs and Promotion of Societal Oversight. “Pursuant to Article 22 of Law 850 of 2003, the decision creating the Inter-Agency Network for Support of Citizen Watchdogs and promotion of societal oversight was signed in February 2005.”^{xxxii} It

⁷⁰ Response of Colombia to the Questionnaire, pp. 121 to 131.

⁷¹ The Response of Colombia to the Questionnaire (p. 121) mentions those phases and the results of the Plan in 2001-2004.

should be noted that the Ministry of the Interior and Justice has been entrusted the roles of coordination of the network, supervision of linkage between plans and programs, training for the watchdog agencies and networks created, and provision of economic support through the Participation and Democracy Strengthening Fund.”⁷²

- Measures in the framework of the Agreement between the Prosecutor General, Attorney General, and Comptroller General in support of societal oversight.⁷³

- Culture of Legality. “The purpose of the culture of legality is to ensure understanding and acceptance of rules by the public. This line of action is pursued in a bid to ensure that all social actors (government officials and servants, private sector, users, taxpayers and civil society in general) are scrupulous in their observance of the laws in a manner true to their aims.” – “The projects Legality Curriculum (*Curriculo de la Legalidad*) and Legal Stories (*Cuentos Legales*) were implemented to advance this strategy.”^{xxxii}

- Publications for strengthening societal oversight. “Based on research carried out by the Office of Citizen Participation with support from the Netherlands a series of publications have been produced that inform and educate the citizenry about public policy issues, with the intention that these tools be used to monitor the public administration more effectively.”⁷⁴

- Strengthening citizen participation in monitoring public spending. “It should also be noted that the modernization program at present being implemented by the Office of the Comptroller General contains a component titled “Strengthening Citizen Participation,” the overarching objective of which is to encourage the public to participate actively in public spending oversight.”⁷⁵

- Coordinated Audits. “As regards strengthening the audit process and the follow-up that needs to be performed on improvement plans through agreements with civil society and coordinated audits, by the end of the January-June 2006 period, according to CUBO data, 39 coordinated audits were underway in the country and 79 had concluded.” – “In the March-October period 20 cooperation agreements were concluded with civil society organizations to monitor management of public affairs.”⁷⁶

In connection with Recommendation 4.4.2, the country under review reports the following:⁷⁷

“As regards the National Commission for Moralization, as of May 8, 2003, it had taken steps as the lead agency on generation of policies on adoption of strategies to ensure the correct performance of the public administration and coordination of state agencies in the implementation policy, plans, and programs with respect to morality in public administration.

⁷² The Response of Colombia to the Questionnaire (pp. 122 to 124) mentions the measures adopted by the Network in 2005 and 2006

⁷³ The Response of Colombia to the Questionnaire (pp. 124 and 125) refers to the various activities carried out under this agreement.

⁷⁴ The Response of Colombia to the Questionnaire (pp. 127 and 128) describes these publications.

⁷⁵ The Response of Colombia to the Questionnaire (pp. 128 to 130) mentions the measures adopted under this program, which included citizen training activities “for the exercise of participatory public spending oversight,” publications on citizen oversight, and radio and television campaigns.

⁷⁶ The Response of Colombia to the Questionnaire (p. 131) also mentions that “one of the components of the Holland Project consists of strengthening the coordinated audit strategy carried out with civil society organizations” The Response also refers to the activities carried out by this project.

⁷⁷ Response of Colombia to the Questionnaire, pp. 131 to 133.

The Inter-Agency Subcommittee has organized different policies, including one which led to an **inter-agency** anti-corruption agreement signed by the Office of the Prosecutor General, the Office of the Attorney General, and the Office of the Comptroller General, in which the Presidential Anti-Corruption Program also plays a role in representation of the executive branch: The scope of that role is subject to express limits determined in detail and in advance by the Program, so as to ensure that due process is not violated.”⁷⁸

“Finally, it should be pointed out that the citizen subcommittee has not held any meetings because, as yet, it has not been installed, nor have its members been selected.”⁷⁹

The Committee also takes note that the country under review has satisfactorily considered the elements of Recommendation 4.4.1 that concern consolidation and expansion of the dissemination programs of the participatory mechanisms for monitoring the management of public affairs; education and training of civic leaders to give impetus to their use; and creation of citizen awareness on the importance of denouncing acts of public corruption, which, by their nature, requires a continuation of efforts.

Furthermore, the Committee also notes that the country under review must continue to devote attention to the remaining elements of the foregoing recommendation. While the project titled “Legality Curriculum” has introduced content into ninth-grade secondary education that is related to the prevention of corruption and fulfillment of civic duties,⁸⁰ this content has not yet been introduced into basic education, and that in Section II of its response no reference was made to the issue of providing the needed protection to persons who report acts of corruption.⁸¹

The Committee takes note of the steps taken by the country under review to proceed with the implementation of Recommendation 4.4.2 as well as the need for it to continue giving attention to the implementation of this recommendation, bearing in mind that the Citizen Subcommittee, which is one of the two subcommittees that comprise the National Commission for Moralization to which the said recommendation refers, has not yet been installed nor its members selected.⁸²

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

Recommendation 5.1:

⁷⁸ The Response of Colombia to the Questionnaire (pp. 127 and 128) also reports on meetings of the Inter-Agency Subcommittee and the creation of a Regional Moralization Commission in every department in the country, with a view to meeting the objectives set out in the program.

⁷⁹ Response of Colombia to the Questionnaire, p. 133

⁸⁰ In section I, chapter two of Colombia’s response to the questionnaire (pp. 83 to 87) reference is made to protection of public officials and private citizens who report acts of corruption, which is examined in section 2 of Chapter II of this report.

⁸¹ The country under review reported, in its comments on the draft preliminary report on Colombia for the second round of review, that “the content of secondary-education programs now address the prevention of corruption and compliance with civic duties.”

⁸² In accordance with what is stated on page 132 of the Response of Colombia to the Questionnaire, by virtue of Decree 978 of 1999, the National Commission for Moralization has two subcommittees: the Institutional Subcommittee and the Citizen Committee.

Reviewing comprehensively the specific areas in which the Republic of Colombia might need or could usefully receive mutual technical cooperation to prevent, detect, investigate, and punish acts of corruption; and that based on this review, a comprehensive strategy be designed and implemented that would permit the Republic of Colombia to approach other States Parties and non-parties to the Convention and institutions or financial agencies engaged in international cooperation to seek the technical cooperation it needs.

Recommendation 5.2:

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

Recommendation 5.3:

Defining and implementing a program for dissemination and training directed specifically to competent authorities (in particular to, judges, magistrates, state attorneys and other authorities with judicial investigative functions), in order to strengthen knowledge and application, in those concrete cases of which they have knowledge, of the provisions on mutual assistance and other related treaties signed by the Republic of Colombia, and may apply then to concrete cases.

Recommendation 5.4:

Developing information mechanisms to allow Colombian authorities to follow up requests for mutual assistance relating to crimes associated with corruption and particularly those crimes contemplated in the Inter-American Convention against Corruption.

In its Response, the country under review presents information with respect to the above recommendations. In this regard, the Committee notes, as steps which enable it to conclude that the recommendation has been satisfactorily considered, the following measures:

In connection with Recommendations 5.1 and 5.2, the country under review reports the following:⁸³

“In this connection, Colombia has also ratified the Inter-American Convention against Corruption and the United Nations Convention against Corruption (Convention of Mérida of 2003). The latter instrument is in force for Colombia and, therefore, provides the Office of the Prosecutor General with new opportunities for evidence sharing with foreign authorities on matters such as seizure and disposal of assets; information exchange among administrative and judicial agencies; proceedings on liability of legal persons; flexibility on the principle of double criminality for the purposes of mutual legal assistance; possibility and use of special investigative techniques; promotion of joint investigation teams, and, finally, standards and a broader framework in the area of extradition, given the scope of the crimes recognized in the latter instrument.”

In connection with Recommendation 5.3, the country under review reports the following:⁸⁴

⁸³ Response of Colombia to the Questionnaire, pp. 133 and 134

⁸⁴ Response of Colombia to the Questionnaire, pp. 134 and 135

“In this regard, the Department of International Affairs, through the training programs offered at the School of Criminological and Criminalistic Science of the Office of the Prosecutor General, has arranged for a nationwide training program for officials of the institution, including a specific module on international legal assistance and evidence sharing with other countries. The project will commence in February and conclude in November 2007 in order to ensure nationwide coverage. The program specifically targets investigators, office assistants, and deputy prosecutors. The areas addressed that have to do with mutual judicial assistance are transnational crime, assistance mechanisms, special instruments, acts of corruption, and special mechanisms, such as special investigative techniques and extradition.”

In connection with Recommendation 5.4, the country under review reports the following:⁸⁵

“In this area, the Office of the Prosecutor General, through the Department of International Affairs, participates in the Secure E-mail Project (Groove System), in keeping with the recommendations of REMJA, the OAS specialized forum on mutual legal assistance.

Furthermore, the Office of the Prosecutor General, through the Department of International Affairs, participates in various inter-American forums (CICAD, CIFTA, CICTE, Hemispheric Cooperation Network), in order to boost cooperation and collaboration among authorities in the region. In this connection, communication has increased with the members of the Organization involved in the project. This has enabled permanent contact with counterparts in other states, which benefits processing and consultations in connection with mutual judicial co-operation. At present, Colombia enjoys permanent, fluid communications with countries such as Argentina, Ecuador, Paraguay, Mexico, Peru, United States and others. On the domestic front, the Department of International Affairs of the Office of the Prosecutor General has its own software that enables it to track the status of requests made and received, with the result that developments in the area of mutual legal assistance are permanently monitored, which is particularly important for the purposes of domestic and foreign evaluation.”

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

The Committee did not formulate recommendations on this provision of the Convention to the country under review, because it found that the Republic of Colombia complied with Article XVIII of the Convention by deciding to rely on the central authorities provided for in relevant treaties (Office of the Prosecutor General and Ministry of Justice and Law) for the purposes of the assistance and international cooperation provided for in the Convention, which is in keeping with paragraph 1 of the aforesaid Article, and by appointing the Colombian International Cooperation Agency as the central authority for the purposes of the mutual technical cooperation provided for in the Convention.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1:

Developing procedures to ensure that the public servants who are responsible for implementing the systems mentioned in this report receive the training they need to effectively perform their duties.

⁸⁵ Response of Colombia to the Questionnaire, p. 135

The Response by the Republic of Colombia to the Questionnaire did not refer to this recommendation. As such, the Committee takes note of the need for the country under review to give additional attention to its implementation.

Recommendation 7.2:

Selecting, developing and reporting to the Technical Secretariat of the Committee indicators, where appropriate, that will make it possible to verify follow-up of the recommendations established in this report. For this purpose, the Technical Secretariat of the Committee will publish on the OAS website a list of more generalized indicators applicable within the Inter-American system that may be available for selection by the State under review.

The Response by the Republic of Colombia to the Questionnaire did not refer to this recommendation. As such, the Committee takes note of the need for the country under review to give additional attention to its implementation.

END NOTES

ⁱ Article 21 of Law 909 of 2004 states the following: “Temporary positions: 1. If necessary, the agencies and entities to which this law applies may, in special circumstances, if necessary for the comparison of bids, create temporary or transitory positions on their staff. The creation of such positions must meet one of the following conditions: a) To carry out functions not performed by the staff because it is not among the permanent activities of the administration; b) to carry out programs or projects of a fixed duration; c) to supplement staffing needs due to an excessive workload brought about by exceptional events; d) to perform institutional advisory or consulting services whose overall duration does not exceed twelve (12) months and which are directly related to the purpose and nature of institution. - 2. Technical grounds as well as the appropriation and availability of funds to cover the payment of wages and social security benefits must be stated in each case to justify the creation of temporary positions. - 3. These positions shall be filled from current lists of eligible candidates for permanent positions; however, appointment to these positions shall not occasion removal from said lists. Should it not be possible to use the lists, an evaluation process will be carried out to determine the capacities and competencies of candidates.”

ⁱⁱ Section 2 of this Article of Law 909 of 2004 mentions the following special career systems: Judicial Branch; Office of the Attorney General and Office of the Ombudsman; Office of the Comptroller General of the Republic and Offices of Territorial Comptrollers; Office of the Prosecutor General; autonomous universities; diplomatic and consular career staff; teachers; and congressional career staff. Furthermore, paragraph 2 of this article provides that until career regulations are adopted for the staff of Offices of Territorial Comptrollers and congressional career staff, the provisions contained in this Law shall apply to them.

ⁱⁱⁱ This article of Law 909 of 2004 defines specific civil service career systems as those which, by reason of the unique and specialized nature of the functions performed by the entities to which they apply, contain specific civil service regulations as regards hiring, training, tenure, promotion, and retirement of staff, and are recognized by laws other than those that govern the civil service career system, in connection with which the article mentions the following entities: Administrative Security Department (DAS); National Prisons Institute (INPEC); National Taxes and Customs Special Administrative Unit (DIAN); scientific and technological staff

of the public entities that comprise the National Science and Technology System; Superintendencies; Administrative Department of the Office of the President; and the Civil Aviation Special Administrative Unit. This article also states that the provisions contained in this law shall apply until the regulations are adopted for the special civil service career systems for employees of government superintendencies, scientific and technological staff of the National Science and Technology System, staff of the Administrative Department of the Office of the President, and personnel of the Civil Aeronautics Special Administrative Unit.

^{iv} Section 2 of this article of Law 909 of 2004 provides the following: “Posts subject to free appointment and dismissal that conform to any of the following criteria: a) Management, leadership, guidance of institutions, which entails adoption of policies or guidelines, thus: - In the Central Government at the National Level: Minister; Director of Administrative Department; Vice Minister; Deputy Director of Administrative Department; Commissioner; Accountant General; Deputy Accountant General; Superintendent, Deputy Superintendent Supervisor; Director and Deputy Director of Special Administrative Unit; Secretary General and Deputy Secretary General; Director of Superintendency; Director of Diplomatic Academy; Director of Protocol; Commercial Attaché; Administrative, Financial, Administrative and Financial, Technical, or Operations Director; Deputy Administrative, Financial, Administrative and Financial, Technical, or Operations Director, Management Director; Chiefs or Acting Chief Internal Auditors and of Internal Disciplinary Control; Office Chief, Chiefs of Legal Advisory, Planning, Press, or Communications Offices; International Negotiator; Provisional Administrator of Oil Companies, and Harbor Master. – Furthermore, in the Civil Aeronautics Special Administrative Unit, the following: Air Attaché; Airport Administrator; Airport Manager; Regional Aeronautical Director; Area Aeronautical Director and Chief of Aeronautics Office. - In the National-Level Decentralized Administration: President, Director, or General or National Manager; Vice President, Deputy Director, or Deputy General or National Manager; Director and Deputy Director of Special Administrative Unit; Superintendent; Deputy Superintendent; Supervisor; Director of Superintendency; Secretary General; Technical Directors, Deputy Administrative, Financial, or Administrative and Financial Director; Territorial, Regional, Sectional or Local Director or Manager; Hospital Unit Director; Office Chief, Chiefs of Legal Advisory, Planning, Press, or Communications Offices; Chief or Acting Chief Internal Auditors and of Internal Disciplinary Control; advisers attached to the Offices of the Superintendent of Banks and of Deputy Superintendents and Division Chiefs of the Banking Superintendency of Colombia. - In the Central Administration and Control Organs at the Territorial Level: Secretary General; Office Secretary and Deputy Secretary; Deputy Inspector, Municipal Inspector; Director and Deputy Director of Administrative Department; Executive Director and Deputy Executive Director of Municipal Association; Director and Deputy Director of Metropolitan Area; Deputy Comptroller, Vice Comptroller, or Assistant Comptroller; Chief or Acting Chief Internal Auditor; Chiefs of Legal Advisory, Planning, Press, or Communications Offices; Local Mayor, Subdepartmental Mayor [*Corregidor*] and Deputy Representative. - In the Decentralized Administration at the Territorial Level: President; director or manager; Vice President; Deputy Director or Deputy Manager; Secretary General; Chiefs of Legal Advisory, Planning, Press, or Communications Offices, and Chief or Acting Chief Internal Auditors and of Internal Disciplinary Control; - b) Positions of trust assigned functions of institutional advisory, assistance, or support services, in the direct and immediate service of the following officials, provided that such positions are attached to their respective offices, thus: - In the Central Administration at the National Level: Minister and Vice Minister; Director and Deputy Director of Administrative Department; Director and Deputy Director of the National Police; Superintendent, and Director of Special Administrative Unit. - In the Armed Forces and National Police, positions attached to command offices, and intelligence and communications units and departments, on account of the necessary *intuitu personae* nature of persons those who occupy them, in light of the way in which matters of a public nature or of national security subject to the strictest confidence must be handled, Force Commanders and their Seconds-in-Command and Chairman of the Joint Chiefs Of Staff. - In the Ministry of Foreign Affairs, administrative staff abroad other than Colombian nationals and support staff abroad. - In Congress, those provided for in Law 5 of 1992.- In the Decentralized Administration at the National Level: President, Director or General Manager, Superintendent and Director of Special Administrative Unit. - In the Central Administration and Control Organs at the Territorial Level: Governor, Metropolitan Mayor, and District, Municipal, and Local Mayor. - In The Decentralized Administration at the Territorial Level: President, Director, or Manager; - c) positions that

entail direct administration or management of government property, funds, and/or securities; - d) Positions not in the state security agencies whose functions, such as escorting, consist of personal security and protection for public servants.”

^v Article 15 of Decree 1227 of 2005 provides as follows: “Calls for candidates shall be published by the entity with the position to be filled by means of at least the following mechanisms: 15.1. A print medium of broad national or regional circulation, by means of two advertisements on different days. 15.2. By radio, on officially approved stations with national or regional coverage in the respective territorial area, at least three times a day during business hours on two days. 15.3. By television, on officially approved networks, at least twice on different days during business hours. 15.4. In municipalities with less than twenty thousand (20,000) inhabitants announcements or edicts may be used, notwithstanding any disclosures by means of the aforementioned mechanisms. Announcements shall be understood to mean dissemination by means of loudspeakers situated in public places, such as churches, community centers, or community-based or trade union organizations, among others, at least three times a day at intervals of at least two hours on two different days, one of which shall be market day. An official written record shall be made of the foregoing, including the text of the announcement, signed by the announcer and two witnesses. Advertisements in the press, radio, and television shall furnish basic information about the competition and inform aspirants where calls for candidates shall be placed or published and who will conduct the selection process.” Article 16 adds the following: “The call for candidates shall be published in full at least five (5) business days before registration of aspirants commences, in a place of easy public access at the entity for which the competition is held, at the respective governor’s and mayor’s offices, and, assuming that they exist, on the websites of same, of the National Civil Service Commission, of the Civil Service Administrative Department, and of the entity hired to hold the competition.”

^{vi} This article of Law 909 of 2004 provides the following: 1. Notwithstanding the margins of discretionary authority that characterize these positions, professional competence shall be the prevailing criterion in the appointment of managers in public entities.- 2. In appointing employees, the criteria of merit, capacity, and experience in performance of the job shall be taken into account and one or more examinations may be held to evaluate knowledge or aptitudes required for its performance, as well as an interview and an appraisal of academic qualifications and experience.- 3. The candidate or candidates proposed by the nominating entity may be evaluated by a technical organ of the entity composed of managers and external consultants, or, as appropriate, the task may be entrusted to a public or private university or to a firm of external consultants that specializes in managerial recruitment.- 4. The Civil Service Administrative Department shall provide technical support to the various public entities in the implementation of these procedures.- 5. The Civil Service Administrative Department shall design specific policies on management training in order to prepare potential candidates as managers in public entities.- Paragraph. In any event, the decision on the appointment of the employee rests with the nominating authority.

^{vii} This Article of Decree 1227 of 2005 provides that calls for candidates should contain at least the following information: “13.1. The date and number of the call for candidates. 13.2. The entity for which the competition is held, specifying if it is of national or territorial nature, together with the municipality and department where it is located. 13.3. The entity holding the competition. 13.4. Means of disclosure. 13.5. Identification of the position: title, code, pay grade, basic allowance, number of positions to be filled, location, functions, and competencies profile in terms of academic qualifications, experience, expertise, skills, and aptitudes. 13.6. Registration of applications: date, time, and place of presentation and date of results. 13.7. Tests: type (elimination or qualification); pass mark for elimination tests; the value of each test in the competition; date, time, and place of the test. 13.8. Length of probation period; 13.9. Identification of the competent agency for settlement of any complaints that might arise in the procedure; and 13.10. Authorized signature of the National Civil Service Commission. Paragraph. In addition to the terms set forth in this decree for the separate stages of selection procedures, the call for candidates shall state that the presentation of complaints, their processing, and decision shall be carried out in accordance with the procedural standards.”

^{viii} Article 15 of Decree 760 of 2005 mentions the following circumstances: “14.1. They were admitted to the competition without meeting the requirements stipulated in the call for candidates. 14.2. They supplied false or adulterated documents for their registration. 14.3. They did not pass the tests set in the competition. 14.4. Another person took the tests for them in the competition. 14.5. They had foreknowledge of the tests applied. 14.6. They took steps to cheat in the competition.”

^{ix} Judicial career merit competitions are subject to the following basic rules: “1. Participation in the competition is open to any Colombian citizen who meets the necessary requirements, depending on the category of the post to be filled, as well as to any officials and employees who are in service, meet the same requirements, and aspire to positions in a specialty field different to the one in which they serve.- 2. The call for candidates is a mandatory requirement that governs all merit-based selection processes. The Administrative Chamber of the Superior and Sectional Judicature Councils shall hold calls for bids on a regular basis every two years and on a special basis whenever, as circumstances dictate, the Register of Eligible Candidates is inadequate.- 3. Applications of aspirants that do not satisfy the qualifications set out in the call for candidates or that fail to attest compliance with all of the requirements contained therein shall be rejected by means of a reasoned decision against which there shall be no appeal through administrative channels.- All merit competitions shall consist of two successive stages of selection and classification. - The purpose of the selection stage is to choose aspirants to be included in the relevant Register of Eligible Candidates. The selection stage shall consist of an array of elimination tests set and regulated by the Administrative Chamber of the Superior Judicature Council. - The purpose of the classification stage is to determine the order of merit in the register of each eligible candidate by assigning them a rank in the register for each type of position and specialty field. - PARAGRAPH 1. The Administrative Chamber of the Superior Judicature Council shall adopt general rules on the content and procedure of each stage and set the scores for the various tests that comprise the first stage. - PARAGRAPH 2. All tests set in competitions for judicial career posts, as well as all of the technical documents on which they are based, are confidential.”

^x ARTICLE 165. “REGISTER OF ELIGIBLE CANDIDATES. Those who pass the preceding stages shall be included by the Administrative Chamber of the Superior or Sectional Judicature Councils in the respective Register of Eligible Candidates to career positions as officials and employees in the judicial branch, bearing in mind the different categories of posts and the following principles. - Inclusion in the register shall be in descending order according to the scores for each stage of the selection process set out in the rules of procedure. - Individual entries in the register shall be valid for four years. In January and February of each year interested parties may update their entries with such data as they deem necessary, which, as appropriate, shall serve to reclassify the register. - In the case of posts of officials or employees in national judicial corporations, the competition and inclusion in the register shall be carried out by the Administrative Chamber of the Superior Judicature Council; in all other cases, that function shall belong to the Administrative Chambers of the Sectional Judicature Councils. - PARAGRAPH. In each case, subject to conformity with the rules of procedure, aspirants may at any time state the territorial offices in which they have an interest.”

^{xi} ARTICLE 166: “LIST OF CANDIDATES. Positions shall be filled from lists of more than five (5) candidates in the current register of eligible candidates which shall be submitted by the Administrative Chambers of the Superior or Sectional Judicature Councils.”

^{xii} ARTICLE 167: “APPOINTMENT. Whenever a vacancy for the position of an official arises, the nominating entity shall communicate the news to the appropriate Administrative Chamber of the Superior or Sectional Judicature Council, as the case may be, within not more than three days after the vacancy arises. Once it receives the list of candidates, the nominating entity shall proceed with the appointment within 10 days. - In the case of vacancies for employee positions, the nominating entity, within three days, shall request the relevant administrative chamber of the Superior or Sectional Judicature Council to send it a list of eligible persons which shall be composed of the persons who occupied the first five places in the respective register of eligible candidates, following verification of their availability. The Chamber shall transmit the list within the following three (3) days and the appointment shall be made within not more than ten (10) days thereafter.”

^{xiii} Article 59 of Law 938 of 2004 indicates that the following positions are subject to free appointment and dismissal: the Vice Prosecutor General; the Secretary General; national directors and their advisers; sectional directors; employees of the Office of the Prosecutor General, Vice Prosecutor General and General Secretariat; assistant public prosecutors to the Supreme Court of Justice and their auxiliary prosecutors; Chiefs of the Legal, Computer Systems, Personnel, Planning, Internal Disciplinary Control, Internal Control, Press and Communications, and Protection and Assistance Offices, as well as the Director of International Affairs at the national level; the Chief of the Criminalistics Division and the Chief of the Investigations Division of the Office of the National Director of the Technical Investigations Corps; positions that involve financial management and accounting of assets, money, or securities of the entity; and any positions created by this law and mentioned in the nomenclature under a different name provided they belong to the framework of the institution's management.

^{xiv} Article 9 provides that the call for candidates should contain at least the following information: Number of the call for candidates; Date set; Identification and a number of positions to be filled; Functions and requirements; When the handbook on functions, duties, and requirements does not stipulate the formal or informal academic qualifications required for the position in the merit-based competition, the call for candidates shall specify them; Form, place, date, and requirements for registration; Form, place, and date of publication of the list of persons admitted and not admitted; Type of selection tests or instruments, including the pass marks; Nature of tests, elimination or classification; Percentage value of each test in the overall score.

^{xv} Article 2, section 1 of Law 80 of 1993 provides that the following are State entities: a) The Nation, regions, departments, provinces, the capital district and special districts, metropolitan areas, associations of municipalities, indigenous territories, and municipalities; government facilities, state-owned industrial and commercial enterprises, semi-public corporations in which the State has a proprietary interest of more than fifty percent (50%), as well as any indirect decentralized agencies and other legal persons in which the State has a majority interest, regardless of the name they adopt, at any level. -b) The Senate, the Chamber of Representatives, the Superior Judicature Council, the Office of the Prosecutor General, the Office of the Comptroller General, offices of departmental, district, and municipal comptrollers, the Office of the Attorney General, the National Civil Registry, ministries, administrative departments, superintendencies, special administrative units and, in general, any state agency or office with legally recognized authority to undertake contracts.

^{xvi} Article 24 of Law 80 of 1993, provides that direct contracting is possible in the following cases: a) contracts for small amounts. The following values shall be regarded as small amounts, determined as a function of the annual budgets of the entities covered by this law, expressed in terms of statutory monthly minimum wages. For entities with an annual budget more than or equal to 1.2 million times the statutory monthly minimum wage, a small amount shall be up to 1,000 times the statutory monthly minimum wage; for those with an annual budget more than or equal to one million but less than 1.2 million times the statutory monthly minimum wage, a small amount shall be up to 800 times the statutory monthly minimum wage; for those with an annual budget more than or equal to 500,000 but less than one million times the statutory monthly minimum wage, a small amount shall be up to 600 times the statutory monthly minimum wage; for those with an annual budget more than or equal to 250,000 but less than 500,000 times the statutory monthly minimum wage, a small amount shall be up to 400 times the statutory monthly minimum wage; for those with an annual budget more than or equal to 120,000 but less than 250,000 times the statutory monthly minimum wage, a small amount shall be up to 300 times the statutory monthly minimum wage; for those with an annual budget more than or equal to 12,000 but less than 120,000 times the statutory monthly minimum wage, a small amount shall be up to 250 times the statutory monthly minimum wage; for those with an annual budget more than or equal to 6,000 times the statutory monthly minimum wage but less than 12,000 times the statutory monthly minimum wage, a small amount shall be up to 100 times the statutory monthly minimum wage, and for those with an annual budget less than 6,000 times the statutory monthly minimum wage, a small amount shall be up to 25 times the statutory monthly minimum wage. - b) Government loans. - c) Inter-agency contracts other than insurance contracts. - d) contracts for provision of professional services or execution of artistic works that may only be commissioned

from certain natural or legal persons, or for the direct performance of scientific or technological activities. - e) Property leases or purchases. - f) Manifest urgency. - g) When the tender or competition is declared void. - h) When no bid is presented or none of the bids satisfy the list conditions or terms of reference, or, in general, when there is a lack of will to participate. - i) Contracts for goods and services required for national defense and security. - j) When there is not more than one bidder. - k) Contracts for commodities originating from or used in agriculture to be offered up for trade in legally constituted commodity exchanges. - l) Contracts entered into by state entities for the provision of health services. The respective internal regulations shall set the guarantees to be put up by contractors. The relevant payments may be made through trust commissions. - m) Acts and contracts directly concerned with the commercial and industrial activities of state-owned industrial and commercial companies and of semipublic companies, except for contracts identified in an expository manner in Article 32 of this Law.

^{xvii} The relevant paragraphs of Article 30 of Law 80 of 1993 provide as follows: “2. The entity concerned shall prepare the necessary bidding conditions or terms of reference, in accordance with the provisions contained in Article 24, section 5 of this law, which, in particular, shall include details of the aspects to do with the object of the contract, the legal regulations governing it, the rights and obligations of the parties, determination and weighting of objective selection factors and/or any other circumstances with regard to time, method, and place deemed necessary to ensure objective, clear, and complete rules. - 3. Subject to the nature, object, and amount of the contract, up to three (3) notices shall be published at intervals of between two (2) and five (5) calendar days within ten (10) to twenty (20) calendar days before the start of the tender or competition process, in widely circulated newspapers in the entity’s territorial jurisdiction or, in the absence thereof, in other social communication media with the same scope. If no such communication media exist, in small villages, depending on the criteria set out in the rules, notices shall be read out by announcement and posted in the main public places for seven (7) calendar days, one of which must be one of the market days in the community in question. The notices shall contain information on the object and basic characteristics of the relevant tender or competition. - 4. Within three (3) business days following the start of the period for presentation of bids, a public hearing shall be held at the request of anyone who has purchased said conditions, in order to precisely explain the content and scope of thereof and to hear the opinions of interested parties, for which minutes shall be drawn up and signed by the persons present. Based on the discussions held in the hearing and if appropriate, the chief or representative of the entity shall adopt the relevant modifications to said documents and, if necessary, shall extend the tender or competition by up to six (6) business days.”

^{xviii} Article 30, Section 8 of Law 80 of 1993, provides, “8. Bid evaluation reports shall remain in the secretariat of the entity for five (5) business days so that bidders may submit such observations as they deem appropriate. In exercising this entitlement, bidders shall not be permitted to complete, add to, modify, or improve their bids.”

^{xix} Article 10 of Decree 2170 of 2002 states, “Lists of conditions or terms of reference to provide the framework for direct procurement selection processes shall include at least the following information: 1. Object of the contract - 2. Technical characteristics of the goods, works, or services required by the entity - 3. Official budget - 4. Bid selection factors and precise, specific, and detailed mathematical weighting of those factors - 5. Tie-break criteria - 6. Requirements or documents necessary for the comparison of bids concerning the prospective procurement - 7. Deadline (date and time) for bid presentation - 8. Time-limit for the evaluation of bids and award of contract - 9. Time-limit for and payment of the contract.”

^{xx} Article 11 of Decree 2170 of 2002, provides: “*Small Contracts*. The following criteria shall be borne in mind for entering into contracts mentioned to in Article 24, Section 1(a) of Law 80 of 1993: 1. The draft and definitive lists of conditions or terms of reference shall be published as prescribed in Articles 1 and 2 of the instant Decree.- 2. The call for bid shall be public.- 3. On the date mentioned in the list of conditions or terms of reference, bidders interested in taking part in the selection process shall express their interest by means of the mechanism indicated by the entity for that purpose, in order to form a list of possible bidders. When there are more than 10 possible bidders the entity may hold a public hearing to draw lots in order to choose from them at

least 10 eligible bidders to submit bids in the selection process. The entity shall make a written record of the foregoing in a memorandum which shall be published on its website. In those cases where the entity does not have the available technological infrastructure and connectivity, the memorandum shall be communicated to each person that attended the respective hearing.- When there are less than 10 possible bidders the entity shall include all of them in the selection process.- 4. Entities may make use of the dynamic bidding and award system in accordance with the rules contained in Article 12 of this Decree.- 5. In cases where the entity does not make use of the mechanism provided in the preceding section, the award shall be made on a reasoned basis to the bidder that presents the bid that best meets the entity's needs, in accordance with the stipulated requirements and the selection factors mentioned in the lists of conditions or terms of reference, and provided that it is consistent with market prices.- The entity shall bring this decision to the attention of all the bidders that took part in the selection process.- Paragraph. When the value of the contract to be entered into is equal to or less than 10% of the small contract amount referred to in Article 24, section 1(a) of Law 80 of 1993, entities may enter upon said contract taking market price as the sole consideration, without the need first to obtain several bids.”

^{xxi} Article 3 of resolution 02700 of 1996 provides, “The following definitions shall apply for the purposes of this resolution: 1) Protection and Assistance Program: The measure adopted by the Office of the Prosecutor General to provide comprehensive protection and social assistance to victims, witnesses, and persons involved in proceedings, as well as to the relatives thereof, as mentioned in the Article 1 of this resolution. - 2) Witness: Anyone who has made a statement in a criminal proceeding. - 3) Victim: The person against whom the offence is committed.- 4) Person involved in the proceeding: any public servant or private citizen who occupies a particular position within the criminal proceeding. - 5) Informer: A person who, while lacking proof, provides information that may or may not be useful to the criminal proceeding. Their protection, should it be necessary, shall be provided by the investigative agency that secured their participation. While they remain in this capacity it is not incumbent on the Program to provide them protection. - 6) Betrayer: A person who takes part in a criminal act and accuses or names the other persons who committed the punishable act, in order to obtain a benefit in the proceeding. Their protection shall be provided by the investigative agency that secured their participation. Unless otherwise stipulated by law, while they remain in this capacity it is not incumbent on the Program to provide them protection.- 7) Assistance: The application of the PROTECTION AND ASSISTANCE PROGRAM to deal with the personal and family conflict suffered by the protected person and his family. It translates into economic, psychological, medical, and other measures of assistance designed to meet needs assessed beforehand.- 8) Risk: The threat or danger that hangs over the life or wellbeing of a witness, victim, or person involved in the proceeding that originates from their participation in the criminal proceeding.”

^{xxii} Article 3 (2) of resolution 02700 of 1996 sets forth the following minimum obligations for the Program: a) Design and implement appropriate measures to meet the security, upkeep, accommodation, medical, and psychological needs of the protected person. - b) Where possible, arrange for a position of employment and access to education for the protected person, as a means for their social relocation. - c) Treat the protected person fittingly, in strict observance of their human rights. - d) Ensure that the resources allocated are correctly used.”

^{xxiii} Article 4 of resolution 377 of 2003 provides, “The following definitions shall apply for the purposes of this resolution: - Victim: The individual -natural person- whose person or rights are injured as a result of the conduct of the persons against whom disciplinary measures are adopted; - Witness: The person who acquires knowledge of a deed and has disclosed it through a statement in a disciplinary proceeding; - Person involved in the proceeding: Any public servant or private citizen who, due to their involvement, is classed as a subject in the proceeding; - Informer: A person who, while lacking proof, contributes useful information to the disciplinary proceeding. Their protection, should it be necessary, shall be requested of the State security agencies or the Ministry of the Interior, as appropriate. While they remain in this capacity it is not incumbent on the Program to provide them protection; - Protected person: Anyone who has been admitted to the protection and assistance program with whom a memorandum of commitment has been signed; - Risk: The threat or

danger that hangs over the life or wellbeing of a witness, victim, or person involved in the proceeding that originates from their participation in the criminal proceeding.”

^{xxiv} The second paragraph of Article 16 of resolution 377 of 2003, sets forth the following minimum obligations for the Program: a) Design and implement appropriate measures to meet the security, upkeep, accommodation, medical, and psychological needs of the protected person, to which end such agreements as may be necessary shall be signed with public and private institutions. - b) Where possible, arrange for a position of employment and/or access to education for the protected person, as a means for their social relocation. Such arrangements shall be made bearing in mind the possibilities and constraints of the agreements and of the availability of such services. - c) Treat the protected person fittingly, in strict observance of their human rights. - d) Ensure that resources are correctly used.”

^{xxv} The Criminal Code of Colombia was enacted by Law 599 of 2000. Law 890 of 2004 introduced at Article 14 a general increase in penalties for two crimes recognized in the special part of the Criminal Code, with the result that all offences that Colombian law punishes as acts of corruption were subject to this punitive increase as follows: “The penalties provided for the criminal offences contained in the special part of the Criminal Code shall increase by one third at the minimum level and by one half at the maximum level. In all cases, application of this general increase shall respect the upper limit for prison sentences for criminal offences as provided in Article 2 of this law. Articles 230A, 442, 444, 444A 453, 454A, 454B and 454C of the Criminal Code shall be subject to the penalty indicated in this law.” - Article 2 of Law 890 of 2004 provides, “Article 37(1) of the Criminal Code is amended as follows: 1. Terms of imprisonment for criminal offences shall have a maximum length of fifty (50) years except in cases of compound offences.”

^{xxvi} Article 20 of the Criminal Code provides: “For all criminal law purposes, all members of public corporations, as well as the employees and workers of the State and of its territorially decentralized entities and decentralized service entities are public servants. - By the same token, members of the security forces, private citizens who perform public functions on a permanent or temporary basis, officials and workers of the *Banco de la República*, members of the National Citizens Commission against Corruption, and persons who administer the resources referred to by Article 338 of the Constitution are also considered public servants.”

^{xxvii} The Response of Colombia to the Questionnaire (p. 104) notes that the purpose of the SIRI is “to record disciplinary and criminal penalties and disqualifications arising from contractual relations with the State, from accountability rulings, decisions on removal from office, suspensions and exclusions from the professions, and which, thanks to its follow-up on execution of penalties, makes it possible to effectively monitor anyone who is in ineligible for State contracts.”

^{xxviii} The Response of Colombia to the Questionnaire (pp. 104 and 105) mentions that the MUISCA “is an indirect embezzlement prevention mechanism because it protects tax information (which is thus rendered difficult to alter) and because it enables detection of anomalies in the financial positions of taxpayers, including public servants.”

^{xxix} The Response of Colombia to the Questionnaire (p. 105) notes that the PIJAO “is a direct embezzlement prevention mechanism (despite the fact that it has a much broader scope) because it facilitates detection of financial operations that might be used in an attempt to launder assets that sometimes proceed from crimes against the public administration.”

^{xxx} The Response of Colombia to the Questionnaire (p. 105) mentions that this Report “is a direct embezzlement prevention mechanism (despite the fact that it has a much broader scope) because it facilitates prosecution of debtors, including those punished for the commission of this offence.”

^{xxxi} “ at the national level, this partnership is composed of the Ministry of the Interior and Justice, the Civil Service Administrative Department, the Higher School of Public Administration, the Ombudsman, the Office of the Attorney General, the Office of the Comptroller General, the Office of the Accountant General, the Ministry of Social Welfare, the Ministry of Environment, Housing, and Land Development, the Ministry of

Culture, the Superintendency of Public Household Utilities, the Capital District Inspectorate, and the Colombian Municipalities Federation. In this way, all of these entities are active members of the Inter-Agency Network for Support of Citizen Watchdogs and Promotion of Societal Oversight.”

^{xxxii} The Response of Colombia to the Questionnaire (pp. 124 and 125) states, with respect to the “Legality Curriculum”, that “the objectives of this program are, on one hand, to ensure that students grasp the importance of a culture of legality for society, bearing in mind that relationships within society are founded on agreements; and, on the other hand, to instill in students an understanding of social rule of law, the meaning of which, in order to enjoy legitimacy, needs to be understood by all citizens, not simply jurists.” Colombia's Response to the questionnaire also alludes to the successful results in eight pilot municipalities and the plan to extend the program to include any educational establishments in said municipalities that might be interested in implementing the curriculum in 2007. As regards “legal stories,” Colombia notes in its Response that “it is a nationwide school-based communication strategy in which students create graphic novels that address two interrelated issues: legality and illegality.” The country describes the project's objectives and adds that “it will get underway in 2007 at 32 schools in 16 municipalities in Colombia, as well as at 85 Graphic Design and Advertising Schools in the country. The intention of the Presidential Anti-Corruption Program is that the graphic novels created in the competitions held be reproduced in newspapers, alternative press, and other media around the country. The launch of the campaign is scheduled for June 2007.”