

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

FINAL REPORT

(Adopted at the December 7, 2007 plenary session)

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

**REPORT ON IMPLEMENTATION IN PANAMA 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. Contents of the Report

This Report presents, first, a review of implementation in the Republic of Panama 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 Panama 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 Seventh meeting, and published at the following web page: http://www.oas.org/juridico/english/mec_rep_pan.pdf

2. Ratification of the Convention and adherence to the Mechanism

According to the official register of the OAS General Secretariat, the Republic of Panama signed the Inter-American Convention against Corruption on July 20, 1998 and deposited the instrument of ratification on August 10, 1998.

In addition, the Republic of Panama 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 of the Republic of Panama

The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Panama, and in particular from the National Council for Transparency Against Corruption, 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 Panama sent the provisions and documents it considered pertinent. The response and the provisions and documents submitted can be accessed through the following web link: http://www.oas.org/juridico/spanish/mesicic2_pan_sp.htm

For its review, the Committee took into account the information provided by the Republic of Panama 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.

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.

2. Document submitted by civil society

The Committee also received, within the deadline established in the Calendar for the Second Round adopted at its Ninth Meeting,² a document from the “*Fundación para el Desarrollo de la Libertad Ciudadana*” (Panamanian Chapter of Transparency International).³

II. REVIEW OF 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. GOVERNMENT HIRING SYSTEMS

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

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

- Constitutional provisions applicable to the majority of public servants,ⁱ such as that contained in Article 300 of the Constitution, which provides that “*public servants shall be of Panamanian nationality without discrimination by reason of race, sex, religion or creed, or political affiliation. Their appointment and removal shall not be the absolute or discretionary power of any authority, except as provided for in this Constitution. Public servants shall be governed by the merit system; and their tenure in their positions shall be subject to the competence, loyalty, and morality they display in that service.*” Similarly, Article 302 establishes that the rights and duties of public servants, as well as the principles for their appointment, promotion, suspension, transfer, removal, dismissal, and retirement, shall be determined by law and that appointments of career personnel shall be based on the merit system.ⁱⁱ Article 306 also states that official agencies are to operate in accordance with a Procedures Manual and Post Classification Manual.

- Statutory and other legal provisions applicable to public servants in the administrative career,ⁱⁱⁱ such as the following:

- Law No. 9 of 1994 (the Administrative Career Law), Article 3 of which establishes, among its main objectives, promoting the admission and permanence of public servants who are distinguished for their suitability, competence, loyalty, honesty, and morals. Article 43 also states that any Panamanian, without any discrimination whatsoever, may aspire to hold a public position, provided that s/he meets the requirements set by the Administrative Career Law and its Regulations.

According to Article 51, selection for admission to the administrative career⁴ shall be conducted on the basis of the professional competence, merit, and public morals of the candidates, which shall be assessed by means of valid measuring instruments previously prepared, approved, and applied by the General Directorate of the Administrative Career

² This Meeting was held from March 27 to 31, 2006, at OAS Headquarters in Washington D.C., United States

³ This document was received electronically on May 25, 2007 and can be accessed in the following webpage: http://www.oas.org/juridico/spanish/mesicic2_pan_sp.htm

⁴ Article 52 of the Administrative Career Law establishes the following selection instruments: background personal histories, competitive examinations, entry evaluations, and any combination of thereof.

(DIGECA). That Directorate shall recruit human resources in accordance with the previously declared needs of each institution (Article 45); it may, however, decentralize the application of selection procedures when applied to position classes that are specific to an institution (Article 46).

Article 39 states that every position shall have a specific description of the tasks it entails and of the minimum requirements for occupying it. Similarly, Article 40 stipulates that a position will be classified according to its duties, responsibilities, and minimum requirements, and that each position will be ranked according to its complexity and place in the hierarchy.

Articles 55 and 56 establish two procedures for entry to the administrative career: the regular procedure^{iv} and the special procedure,^v the requirements of each are listed in Articles 61 to 66 (regular admission procedure) and 67 (special admission procedure), requirements for announcements of vacancies, requirements for candidacies for public positions, the publication of announcements, and the full legal cancellation of administrative acts in contravention of the rules governing access to public employment. The publication of official announcements for both entry procedures is provided for by Article 57.

Article 44 of the Administrative Career Law disqualifies the following from holding public positions: persons related by up to the third degree by blood and second by marriage to the nominating authority⁵ of the institution in question; a nominating authority who benefits his spouse, common-law partner, or other relative up to and including the third degree by blood or second by marriage is guilty of an administrative misdemeanor (nepotism).

Articles 7 to 20 regulate the existence of and define the functions of a body to oversee and execute the human resource policies adopted by the executive (the General Directorate of the Administrative Career, or DIGECA). These functions include designing the human resource administration system, its organization, programs, and mechanisms for execution, information, assessment, and oversight; establishing regulations, systems, and procedures to facilitate the enforcement of the Administrative Career Law; and implementing the public sector's human resource policies in accordance with the executive's guidelines (Article 9).

Articles 21 to 26 create and regulate the Administrative Career Technical Board, the functions of which include advising the President of the Republic regarding human resources management and proposing human resources policies and recommendations for improving the system (Article 26).

Finally, Article 36 provides that the functions of the institutional human resource offices of public sector entities shall include complying with and enforcing, within their respective entities, the Administrative Career Law, its Regulations, and provisions handed down by the DIGECA, and overseeing, recording, and keeping statistics on the personnel of those entities.

⁵ Article 2 defines the nominating authority as *"the authority with the power to formalize appointments of public servants, in accordance with this law."* Article 50 further establishes that the nominating authority *"shall invariably be the maximum authority of the corresponding state institution."*

- Executive Decree No. 222 of September 12, 1997 (Regulations of the Administrative Career Law), which expands on the provisions of the law in question and contains detailed rules for the administrative career personnel selection regime. Notable among its terms are the following: Articles 10, 11, and 12 establish the functions of the DIGECA and regulate the coordination of its activities with the nominating authorities and other higher administrative career bodies. Article 13 provides that the Institutional Human Resource Office is the ranking body of the administrative career responsible for the correct enforcement of the system at the institutional level and is to be attached to the nominating authority. Articles 16 to 92 regulate entry to the administrative career, detailing the stages of and requirements of the regular admission procedure and the special admission procedure. Article 42 stipulates that the DIGECA shall declare ineligible to hold a public position any candidate related by up to the third degree by blood and second by marriage with the nominating authority of the institution in question, as well as any candidate dismissed on two occasions for breaches of the statutory or regulatory provisions governing the administrative career. Articles 32, 33, 55, and 56 regulate the remedies available for appealing against decisions made in admissions procedures (regular and special). Articles 96 to 106 and 107 to 111 govern the classification of posts and positions, respectively.
- Statutory and other legal provisions applicable to public servants in the judicial career,^{vi} such as the following:
 - Book XII, Article 270, of the Judicial Code of September 1, 1987, states that to enter the judicial career, a candidate must meet the requirements set by the Law and its Regulations for holding the position in question and that, for this purpose, a classification of posts in the judiciary and the Public Prosecution Service will be prepared and will be used as the basis for all selections, appointments, and promotions of career officers.
 - Supreme Court of Justice Agreement No. 46 of September 27, 1991 (Judicial Career Regulations), amended by Agreement No. 230 of June 14, 2000, Article 2 of which states that the judicial career shall be based on the merits, qualifications, and background of a candidate for a judicial position, and on suitability, ability, probity, and equality of opportunities, in order to encourage the entry of the best candidates (Article 3).

Article 8 identifies the agencies responsible for the administration of the judicial career: including the plenary of the Supreme Court of Justice, the Staff Commission, and the judiciary's Personnel Department. The functions of the Staff Commission are defined in Article 10, and those of the Personnel Department in Article 11.

Article 6 establishes the requirements for admission to the judicial career. Articles 13 to 19 and Articles 20 to 36 regulate, respectively, the position classification system and the selection system for admission to the judicial career. The publication of announcements is covered by Article 29, and Articles 32 and 33 provide for the possibility of challenging the selection process results through reconsideration remedies and appeals, which are to be placed before the Staff Commission and the Fourth Chamber of the Supreme Court of Justice, respectively.
- Statutory provisions applicable to public servants in the legislative career,^{vii} such as the following:

- Law No. 12 of February 10, 1998, (Legislative Service Career Law), Article 1 of which states that its purpose includes setting the organizational, technical, and administrative foundations for an employment regime based on the principles of political freedom, equality, merit, honesty, and ability.

According to Article 20, selection for admission to the legislative service career⁶ shall be conducted on the basis of the professional competence, merit, and public morals of the candidates, which shall be assessed by means of valid measuring instruments previously prepared and applied by the Human Resources Directorate of the Legislative Assembly. Similarly, Article 22 provides that to ensure objectivity in how the selection instruments are applied, clear, precise, and objective guidelines and procedures shall be established to guarantee the system's transparency.

Article 15 provides that the Human Resources Directorate shall prepare and maintain a Post Classification Manual, organized by wage scales, grades, and levels, based on functions and responsibilities, and with a uniform naming system, for identifying the minimum requirements in terms of experience, education, knowledge, skills, and competencies. According to Article 16, this post classification is to be reviewed every two years.

Article 24 establishes two procedures for entry to the legislative service career: the regular procedure^{viii} and the special procedure,^{ix} the requirements of which are listed in Articles 25 to 29 (regular admission procedure) and 31 (special admission procedure).

Article 9 creates the Council of the Legislative Service Career, and defines its composition. Article 11 defines that Council's functions, including proposing human resource policies to the President of the Legislative Assembly; resolving appeals lodged against rules and resolutions, and answering inquiries about other administrative decisions related to human resources when the persons involved are public servants belonging to the legislative service career; and approving the draft human resource administration regulations, and any amendments thereto, and submitting them to the consideration of the plenary of the Legislative Assembly.

Articles 12 to 14 regulate the Human Resources Directorate, the functions of which include designing a system for the administration of human resources; implementing and enforcing the Legislative Service Career Law and its regulations; and constantly updating the human resource controls, records, and statistics of the Legislative Assembly.

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

The legal provisions governing the main hiring systems for public officials in the country under review that the Committee has examined on the basis of the information made available to it can be seen to represent a set of measures that are relevant for pursuing the goals of the Convention.

However, the Committee believes it appropriate to express certain comments regarding the usefulness of the country giving consideration to the expansion, development, and adaptation of certain provisions related to those systems.

⁶ Article 21 of the Legislative Service Career Law establishes the following selection instruments: background competition, competitive examinations, entry evaluations, and any combination of those instruments.

- With respect to the administrative career, the Committee makes the following comments on the Administrative Career Law and its Regulations:⁷

- With reference to the special procedure for entry to the administrative career, although Article 24 of the Regulations to the Administrative Career Law states that entry to the administrative career is open only to serving public servants who meet the minimum requirements of the position held as set in the Post Classification Manual, Article 25 creates a system equating years of experience in the position with the minimum education necessary to hold it: for example, three years' experience in the position is equivalent to one year of university studies. Although it is an extraordinary mechanism, the Committee believes the special admission procedure should also be based on the principle of merit and, consequently, those entering the administrative career by means of it must meet all the minimum requirements for the position set out in the Post Classification Manual. The Committee will formulate a recommendation on this point. (See Recommendation 1.1.1 (a) in Chapter III of this Report.)

- Similarly, although the Law instructs the DIGECA to maintain the Post Classification Manual, there is no indication that the manual is being made public or easily accessible by those members of the general public wishing to do so. The Committee will formulate a recommendation on this point. (See Recommendation 1.1.1 (b) in Chapter III of this Report.)

- As for the regular procedure for entry to the administrative career, Articles 65 and 66 of the law (Articles 70 and 71 of the Regulations) state that the nominating authority is to select, at its discretion, the new public servant from among the first three names on the list of eligible candidates submitted by the DIGECA to the immediate superior of the vacant post in order for a personal interview to be conducted. The Committee believes it would be appropriate to seek out mechanisms to ensure the objectivity of that final decision. Consequently, the Committee will formulate a recommendation. (See Recommendation 1.1.1 (c) in Chapter III of this Report.)

- Similarly, without prejudice to the provisions of Article 57 of the Administrative Career Law (Articles 52 and 53 of the Regulations) regarding the publication of vacancy announcements, the Committee observes that the rules are not developed in such a way as to ensure the broad dissemination of such announcements by means of their publication in the mass media, such as major national newspapers or via the internet, etc. Consequently, the Committee will formulate a recommendation. (See Recommendation 1.1.1 (d) in Chapter III of this Report.)

- Article 44 of the Law (Article 42 of the Regulations) forbids the holding of public positions by persons related to the nominating authority of the relevant institution by up to the third degree by blood and the second degree by marriage.⁸ The Law does not, however, impose a ban on candidates related to the immediate superiors of vacant positions, who are responsible for interviewing candidates and for forwarding appointment recommendations to the nominating authority. The Committee also notes that the existing legislation does not provide for the revocation of appointments that constitute nepotism or which are made in contravention of its

⁷ The Committee notes that the Republic of Panama presented Law No. 24 of July 2, 2007, which amends and adds Articles to Law 9 of 1994 (the Administrative Career Law), after the deadline for presenting the response to the questionnaire. This is why no analysis was made of this rule.

⁸ Article 50 of the Administrative Career Law states that *"the nominating authority shall invariably be the maximum authority of the state institution in question, and it shall communicate to the General Directorate of the Administrative Career, for registration purposes, such appointments as it makes (...)."*

provisions. Consequently, the Committee will formulate recommendations on this point. (See Recommendations 1.1.1 (e) and (f) in Chapter III of this Report).

- Without prejudice to Article 55, whereby rejected candidates may lodge reconsideration requests, or to Article 63, which provides a general procedure for appealing against the results obtained by candidates in competitive examinations, the Committee notes an absence of mechanisms for challenging the substantive stages of the recruitment and personnel selections procedures, such as the rules for competitions, the results of the analysis of background personal histories conducted, the definition of shortlists, the selection of the winner, etc. In connection with that, the Committee urges the state under review to consider developing, by means of the relevant legal and administrative procedures and in consideration of the principle of due process, provisions to establish ordinary challenge mechanisms – be they administrative, judicial, or both – in order to clarify, amend or annul such acts, and to guarantee their timely, objective, impartial, and effective processing. The Committee will formulate a recommendation on this point. (See recommendation 1.1.1 (g) in Chapter III of this Report.)

- With respect to the judiciary, the Committee offers the following comments on Book XII of the Judicial Code and its Regulations:

- First of all, the Committee notes that there is no ban on nepotism in the selection process for admission to the judicial career. The Committee also notes that the current legislation does not allow for the revocation of appointments made in contravention of its provisions. (See Recommendation 1.1.2 (a), in section 1.1 of Chapter III of this Report.)

- Secondly, without prejudice to the terms of Article 29 of the Judicial Career Regulations regarding the publication of the announcement within the corresponding institution and its publication on one occasion in a national daily newspaper, the Committee believes that consideration should be given to increasing the level of dissemination of announcements through mechanisms such as the internet, etc. Consequently, the Committee will formulate a recommendation. (See Recommendation 1.1.2 (b) in Chapter III of this Report.)

- Thirdly, with reference to the candidate selection process, the Committee notes an absence of clear and objective criteria that would allow office heads to select a winner from the eligible candidates recommended in the Staff Commission's resolution. The Committee also sees that the power awarded to office heads by Article 34 of the Judicial Career Regulations establishes broad discretion by enabling them to choose any of the eligible candidates and not just the three candidates with the best results, as is the case with admissions to the administrative career. The Committee therefore urges the state under review to consider adopting, by means of the appropriate legal or administrative channels, clear and obligatory mechanisms to ensure the objectivity of those final decisions. (See Recommendation 1.1.2 (c), in section 1.1 of Chapter III of this Report.)

- Finally, without prejudice to the terms of Articles 32 and 33 of the Judicial Career Regulations regarding reconsideration remedies and appeals, the Committee sees an inadequate provision of mechanisms for challenging the substantive acts that make up personnel selection and recruitment processes, such as competition rules, the rejection of candidates, the preparation of the list of eligible candidates, the selection of the winner, etc. In connection with that, the Committee urges the state under review to consider developing, by means of the relevant legal and administrative procedures, provisions to establish ordinary challenge mechanisms – be they administrative, judicial, or both – in order to clarify, amend or annul such actions, and to guarantee their timely,

objective, impartial, and effective processing. The Committee will formulate a recommendation on this point. (See Recommendation 1.1.2 (d) in Chapter III of this Report.)

- The Committee wishes to make the following comments about the governing law of the legislative service career:

- Although the Legislative Service Career Law instructs the Human Resources Directorate of the Legislative Assembly to maintain a Post Classification Manual, there is no indication that the manual is being made public or easily accessible to those members of the general public wishing to consult it. The Committee will make a recommendation on this point. (See Recommendation 1.1.3 (a) in Chapter III of this Report.)

- As for the regular procedure for entry to the legislative service career, Articles 28 and 29 of the Legislative Service Career Law state that the nominating authority is to select, at its discretion, the new legislative career public servant from among the first three names on the list of eligible candidates submitted by the immediate superior of the vacant post, after a personal interview has been conducted. The Committee believes it would be appropriate to seek out mechanisms to ensure the objectivity of that final decision. Consequently, the Committee will make a recommendation. (See Recommendation 1.1.3 (b) in Chapter III of this Report.)

- In connection with that, the Committee notes that the Legislative Service Career Law does not require the publication of announcements, nor does it set minimum timeframes during which candidacies can be received. In addition, there are no provisions regarding challenges to the competition rules nor regarding regular procedures for challenging the results. Consequently, the Committee will make a recommendation. (See Recommendation 1.1.3 (c) in Chapter III of this Report.)

- Finally, the Committee notes that the Legislative Service Career Law contains no provisions prohibiting nepotism. The Committee will make a recommendation on this point. (See Recommendation 1.1.3 (d) in Chapter III of this Report.)

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

Regarding the results in this area, in its reply the Republic of Panama provided⁹ information obtained by means of a survey conducted among twenty public institutions^x on the topic of government hiring systems. The topics addressed by the survey included the following: the existence in those institutions of systems and mechanisms for hiring public servants; types of mechanisms for ensuring disclosure, equality, and efficiency in the institutions' public servant hiring system; authorities responsible for the institutional hiring system; access to the institutions through the merit-based system; existence of systems for publicizing the institutions' hiring of public servants; systems in place for challenging the selection system. However, since the results generated by this survey do not provide objective information for conducting a comprehensive review of the results in this field, the Committee will formulate a recommendation on this point. (See General Recommendation 4.2 in Chapter III of this Report.)

⁹ Response of the Republic of Panama to the second round questionnaire, pp. 50-66.

In addition, based on the “Progress with Activities/Accreditations” section on the DIGECA’s web page,¹⁰ the Committee notes the following information in connection with the administrative career accreditations process:

Accreditations to the Administrative Career System

Total number of permanent public servants	145,000
Number of administrative career positions	58,304
Public servants admitted after 1997 (45%)	26,236
Public servants admitted by competition	26,236
Public servants in career positions since before 1997 (55%)	32,068
Accredited public servants	11,707
Career positions pending accreditation	20,361
Accreditation goal for 2007	15,000
Accreditation goal for 2008	5,361

Based on this information, the Committee notes that the Republic of Panama currently has accredited, by means of the administrative career special admission procedure, a third of the public servants who entered the service prior to 1997. However, it also notes that ten years after the enactment of the Regulations to the Administrative Career Law, the state has made only limited progress with the administrative career special admission process, and it will formulate a recommendation on this point. (See recommendation 1.1.1 (h) in section 1.1 of Chapter III of this Report.)

In that regard, a diagnostic report on the Panamanian public administration, produced by the office of the Administration Attorney in 2004 and updated in July 2006, indicates the following information:^{x1}

“Although as a part of its development of the administrative career the DIGECA has defined the priority programs – these include: (i) post classification, (ii) salaries (iii) recruitment and selection, (iv) performance evaluation, (v) training and development, (vi) public servant welfare and labor relations, and (vii) personnel actions – the ones most completely developed to date are the areas of post classification and public servant welfare. Resources for addressing the other areas have not been available, as a result of which it has not been possible to consolidate the Administrative Career Law or to progress with its main subsystems: accreditation, post classification of posts, performance evaluation, etc., remain underdeveloped.”

“The DIGECA program is attached to the office of the President of the Republic and, as such, has neither budgetary autonomy or sufficient political leadership to promote human resource issues; most people believe this question has been delayed in favor of others with higher priorities. The fact that the DIGECA lacks autonomy could be leading to the fact that the question of human resources is so weakly positioned as a matter of state.”

Considering the above information and the importance of a DIGECA that is autonomous and independent of the executive branch, with the resources necessary for the full enforcement of the Administrative Career Law and its Regulations, the Committee will formulate a recommendation on this point. (See Recommendation 1.1.1 (i), in section 1.1 of Chapter III of this Report.)

¹⁰ http://www.presidencia.gob.pa/digeca/avances_act/acreditaciones.html (accreditations to the administrative career system).

In addition, with reference to those public servants admitted to the administrative career after 1997, the Committee observes a discrepancy between the information published in the “Progress with Activities/Accreditations” section of the DIGECA’s web page and the document from the Foundation for the Development of Civic Freedom, which states that:^{xii}

“The current way in which a position as a civil servant is secured is not based on merit systems, except for a number of cases in the areas of health, education, policing, the judiciary, etc. Since there are no open competitions based on personal histories and basic knowledge about the topic covered by the position, a method of profile-based accreditation is used. This mechanism involves comparing the position as described in the post classification manuals with the suitability of the serving public employee and the number of years that generate equivalence. Since the passage of the Law in 1994 and the Executive Decree in 1997, open public competitions have not been organized; consequently, the regular procedure for admission to the administrative career is based on free appointments. Civil servants hired since 1994 are in limbo, since they neither entered by means of a competition nor is the special admissions procedure, using the accreditation method already described, applicable to them. They therefore lack legal protection and are subject to changes in the political climate. Draft legislation exists to amend the current Administrative Career Law, the aims of which include organizing administrative career admission competitions within a specified period once the bill is passed and extending the deadline for the applying the special admission procedure to serving employees who occupy positions described as belonging to the administrative career.”¹¹

Finally, since it has no information other than what has already been cited or any details about the judicial career, the Committee cannot perform a comprehensive appraisal of the results in this area; it will consequently formulate a recommendation on this point. (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 Panama has a series of provisions regarding such systems, notably:

- Statutory and other types of legal provisions applicable to all government entities, such as those contained in Law No. 22 of June 27, 2006,¹² (in this section, “the Law”) and in Decree No. 366 of December 28, 2006,¹³ which regulates Law No. 22 of 2006 (in this section, “the Regulations”), applicable to public contracting by the central government, autonomous and semi-autonomous entities, and those financial intermediaries and limited corporations in which the state owns 51% or more of the stock or net worth. The exceptions to the Law are set out in Article 56^{xiii} (Articles 166 to 172 of the Regulations)^{xiv} and may only be used subject to a grounded resolution when the listed specific situations arise. The more notable provisions of these two legal instruments include the following:

¹¹ The Committee notes that the Republic of Panama presented Law No. 24 of July 2, 2007, which amends and adds Articles to Law 9 of 1994 (the Administrative Career Law), after the deadline for presenting the response to the questionnaire. This is why no analysis was made of this rule.

¹² Available at: http://www.panamacompra.gob.pa/Leyes/Ley_No.22_27-06-2006.pdf

¹³ Available at: http://www.asamblea.gob.pa/NORMAS/2000/2006/2006_550_1839.PDF

- Article 38 of the Law, which states that public procurement is to be carried out by means of the following procedures: (a) minor contracting (Article 39 of the Law, and Articles 71 to 80 of the Regulations);¹⁴ (b) competitive bidding (Article 40 of the Law and Articles 81 to 89 of the Regulations);^{xv} (c) best value bidding (Article 41 of the Law and Articles 90 to 101 of the Regulations);^{xvi} (d) bidding for framework agreements (Article 42 of the Law and Articles 102 to 118 of the Regulations);^{xvii} and (e) reverse auction bidding (Article 43 of the Law and Articles 119 to 126 of the Regulations).¹⁵
- Articles 8 and 9 of the Law (Articles 18 and 19 of the Regulations), which, respectively, create and determine the authorities of the General Public Procurement Directorate (DGCP) as an autonomous and independent body, with the power to regulate, interpret, oversee and advise contractor selection procedures. Thus, Article 10 of the Law (Article 20 of the Regulations) provides that institutional purchasing departments and directorates are to serve as liaison points between the DGCP and their institutions' offices and to be responsible, *inter alia*, for carrying out public procurement processes in accordance with the Law.
- Article 104 of the Law creates the Administrative Tribunal for Public Procurement, as an independent and impartial agency with exclusive responsibility for hearing single-instance challenges brought against any award made in contract selection procedures, together with the other jurisdictional powers granted to it by Article 319 of the Regulations.
- As regards oversight mechanisms, Article 19 of the Law (Article 5 of the Regulations) prohibits public servants from entering into contracts, either directly or through third parties, with the entity or institution for which they work, and from participating in any contract as company owners, partners, or shareholders or as the manager, director, or legal representative of a bidder in a public auction. Article 19 of the Law also provides that public servants are to be legally responsible for their illegal actions and omissions, irrespective of additional criminal or administrative liability. In the latter case, improper behavior is deemed a serious administrative misdemeanor.
- Article 15 of the Law (Article 16 of the Regulations), which places a ban on contracting with state entities on individuals and corporations that, *inter alia*: (a) were involved, in any way, in the preparation, evaluation, awarding, or organization of a contractor selection procedure, or in an exception thereto; (b) have been disqualified from contracting, or convicted by a court to the accessory punishment of legal interdiction or disqualification^{xviii} from the exercise of public functions. Article 102 of the Law (Articles 371 and 372 of the Regulations) provides that disqualified contractors may not participate in any contractor selection procedure nor enter into contracts with the state for as long the disqualification remains in force, which shall be a period of between three months and three years, depending on whether it is a first offense, on the value of the contract, and on the seriousness or the level of harm suffered by the state by reason of its noncompliance. Article 102 of the Law also states that individuals or corporations guilty of falsehood or fraud during the contractor selection process, in direct contracting, or during the execution

¹⁴ Minor contracting is the procedure for the acquisition of goods, works, and services for amounts of not more than thirty thousand balboas (B./30,000.00), subject to compliance with a minimum of formalities as set out in the Law and the Regulations.

¹⁵ Reverse auction bidding is a contractor selection procedure in which, during a previously set period of time, bids and improved bids may be made over the prices originally proposed until the institution(s) involved secures the best price for a good, a service, or a works project.

of the contract, its addenda, or the purchase order, as evidenced in the administrative resolution process of the contract or purchase order, shall be disqualified for a minimum period of two years.

- Articles 117 to 123 of the Law (Articles 197 to 203 of the Regulations), which establish provisions for the cancellation of deeds and contracts. Thus, the grounds for absolute cancellation are set out in Article 118 of the Law (Article 198 of the Regulations),^{xix} whereas Article 119 of the Law (Article 199 of the Regulations) sets out the grounds for relative cancellation.^{xx} In turn, Article 123 of the Law (Article 264 of the Regulations) sets the grounds for absolute cancellation in public contracts.^{xxi}
- Article 126 of the Law (Articles 313 to 317 of the Regulations), which creates the register of bidders, managed by the DGCP. This is for the registration, either electronic or manual, of all bidders wishing to participate in a contract selection procedure for amounts in excess of thirty thousand balboas (B/.30,000.00) and conducted by means of electronic media, as well as of bidders favored in a contractor selection procedure and with whom a contract is signed. Similarly, Article 374 of the Regulations establishes the register of disqualified participants, which is also kept by the DGCP and is intended to identify all disqualified individuals and corporations and the duration of those disqualifications.
- Article 124 of the Law (Article 306 of the Regulations), which creates the PanamaCompra electronic public procurement system as a support tool for public contracting that can be consulted by civil society as a whole. Article 124 of the Law also states that the use of PanamaCompra is obligatory for all institutions required to abide by the terms of the Law^{xxii} and those enforced by the Law on a supplementary basis. Article 312 of the Regulations also requires those entities to publish, in the system and on their notice boards, all resolutions they adopt within contractor selection processes and during the execution of the contract, together with those issued by the Administrative Tribunal for Public Procurement. In addition, Articles 30 to 36 (Articles 40 to 58 of the Regulations) regulate, respectively, matters relating to the announcement, its publication, and the deeds recording the public procurement announcement, the preliminary and standardization meetings notifications (when required), and any modifications to the terms of the request for tenders.
- Articles 75 to 78 of the Law (Articles 229 to 238 of the Regulations), which set special regulations for public works contracting^{xxiii} and set the requirements prior to beginning work. Thus, prior to issuing the order for work to proceed, the contracting entity must check that everything at the site where the work is to take place is in order from the legal, budgetary, technical, and physical points of view, in order to allow the uninterrupted development of the project.
- Article 16 of the Law, which states that the principles of efficiency, effectiveness, transparency, due process, disclosure, economy, and responsibility are the criteria that must govern public contracting.
- Articles 111 and 112 of the Law (Articles 298 to 305 and 365 to 367 of the Regulations), which set the deadlines and requirements for individuals or corporations to lodge complaints about any illegal or arbitrary act or omission during a contractor selection process and prior to the award of the corresponding public contract. Similarly, Article 114 of the Law (Articles 340 to 353 of the Regulations) provides for the filing of challenges against any award arising from a contractor selection procedure and regulates the terms, requirements, and processing thereof. In turn, Articles 359 to 364 of the Regulations govern

remedies against administrative resolutions awarding contracts. Finally, Article 116 of the Law (Article 358 of the Regulations) stipulates that once the resolution resolving the challenge remedy has been published on PanamaCompra, administrative channels are exhausted and the only admissible remedy is to take the case to the Third Administrative Chamber of the Supreme Court of Justice.^{xxiv}

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

With respect to the constitutional and legal provisions governing public procurement systems, the Committee notes that, on the basis of the information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

However, the Committee believes it would be useful to offer a series of comments regarding the possibility of the Republic of Panama expanding, developing, and adapting the legal framework and the measures it has in place regarding state purchases of goods and services in consideration of the following issues:

First of all, Article 1 of the Law states that it does not apply to contracting entered into by municipalities, local and communal committees, and the Social Security Fund, in which it applies solely on a supplementary basis. The Committee believes the country under review should consider continuing taking steps to prevent the fragmentation of the general procurement system caused by excluding those entities and to ensure harmony in the management of various procurement regimes, guiding itself in that by the principles of disclosure, equity, and efficiency enshrined in the Convention. The Committee will formulate a recommendation on this point. (See Recommendation 1.2 (a) in section 1.2 of Chapter III of this Report.)

Secondly, in connection with electronic media and information systems for public procurement, the Committee acknowledges the efforts of the Republic of Panama with the development of the web page of the *PanamaCompra* electronic public procurement system (www.PanamaCompra.gob.pa), which allows, *inter alia*, the publication of all information relating to minor contracting, contractor selection procedures, direct contracting, and during the contractual phase: in other words, from the publication of the request for tenders and any amendments thereto up to publication of the contract award announcements and any amendments subsequently made thereto. The Committee therefore urges the state to continue developing and strengthening actions of this kind intended to ensure transparency, disclosure, equity, and efficiency in systems for carrying out public works and procuring goods and services. (See recommendation 1.2 (b) in section 1.2 of Chapter III of this Report.)

The Committee also recognizes the efforts of the Republic of Panama in establishing a modern regime for public works contracting, reflected in both Law No. 22 of 2006 and in its Regulations. However, since the existence of mechanisms for citizen oversight of contracting – such as qualified citizen watchdogs – would assist the consolidation of a comprehensive, effective, and efficient oversight system, the Committee will serve a recommendation on that point to the country under review. (See Recommendation 1.2 (c), in section 1.2 of Chapter III of this Report.)

Finally, it should be noted that the document from Foundation for the Development of Civic Freedom¹⁶ states that: “*Requests for tenders must establish the evaluation criteria, the points*

¹⁶ Document from the Foundation for the Development of Civic Freedom, Panamanian Chapter of Transparency International, pp. 13-14.

allotted to each, and the weighting method to be used to obtain the points for each criterion. However, neither the Law nor the Regulations set uniform criteria or formulas for assessing prices, quality, or technical suitability, thereby leaving the setting of such criteria, points, and methods to the discretion of each institution.” In this regard, the Committee believes it would be useful to adopt, when appropriate, uniform criteria and evaluation methods for bids, based on the principles of equity and efficiency set out in the Convention, in order to prevent the use of different criteria and methods for similar procurement options. (See Recommendation 1.2 (d) in section 1.2 of Chapter III of this Report.)

1.2.3 Results of the legal framework and/or of other measures

Regarding the results attained in this area, based on PanamaCompra Information Bulletin No. 3 of June 2007,¹⁷ the Committee notes the following information:

Process	Number of processes	%	Amount (in balboas)	%
(a) Urgent Minor Purchase	1,006	6.47	5,407,406.12	7.73
(b) Minor Purchase from B./1,000.00 to B./5,000.00	4,383	28.17	9,206,973.96	13.16
(b) Minor Purchase from B./5,000.00 to B./30,000.00	1,838	11.81	19,421,833.80	27.76
(d) Minor Purchase for up to B./1,000.00	7,895	50.74	2,946,010.44	4.21
(e) Competitive Bidding	290	1.86	29,850,972.38	42.67
(f) Catalogue Purchase	93	0.6	301,200.29	0.43
(g) Best Value Bidding	9	0.06	1,202,186.64	1.72
(h) Direct Contracting	46	0.29	1,620,227.22	2.32
TOTAL	15,560	100	B./69,956,810.85	100

From this information it can be seen that between December 28, 2006, and May 31, 2007, the state under review entered into a total of 15,560 public purchases and contracts. Of these, 1,006 (6.47%) were urgent minor purchases; 4,383 (28.17%) were minor purchases for amounts between one thousand (B./1,000.00) and five thousand balboas (B./5,000.00); 1,838 (11.81%) were minor purchases for between five thousand (B./5,000.00) and thirty thousand balboas (B./30,000.00); 7,895 (50.74%) were minor purchases for less than one thousand balboas (B./1,000.00); 290 (1.86%) were competitive bidding procedures; 93 (0.6%) were catalogue purchases; and 9 (0.06%) were best value bidding processes. With this information, the Committee sees that minor purchases of up to one thousand balboas (B./1,000.00) accounted for the majority of procurement operations during the period in question, with only 46 (0.29%) of the state's contracts being carried out by means of direct contracting.

In terms of the amounts awarded during this period, competitive bidding procedures accounted for 42.67%; minor purchases for between five thousand (B./5,000.00) and thirty thousand balboas (B./30,000.00) accounted for 27.76%; minor purchases for amounts between one thousand (B./1,000.00) and five thousand balboas (B./5,000.00) accounted for 13.16%; urgent minor purchases, for 7.73%; minor Purchases for less than one thousand balboas (B./1,000.00) for 4.21%; direct contracting for 2.32%; best value bidding processes for 1.72%; and catalogue purchases for 0.43%. This information indicates that the majority of the amounts awarded by the state were by means of bidding procedures.

Accordingly, the Committee takes note of the information presented by Panama in its comments to the Draft Preliminary Report¹⁸ regarding the training programs when using the PanamaCompra

¹⁷ Available at: <http://panamacompra.gob.pa/BoletinNo3Junio.pdf>.

system and in the procedures for selecting contractors. Therefore the Committee acknowledges the efforts made and urges the Republic of Panama to consider continuing to develop and implement this type of action to train the staff involved in government procurement procedures and to endeavor to publicize, handle and apply them appropriately. (See general recommendation in paragraph 4.1., Chapter III of this report).

Finally, as indicated above in section 1.1.3, in its reply the Republic of Panama supplied¹⁹ information obtained by means of a survey conducted among twenty public institutions regarding state systems for the procurement of goods and services. The topics addressed by the survey included the following: the existence in the institution of systems regulating purchases of goods and services; systems used to contract for goods and services, with and without competitive bidding; governing authority for the public contracting system within the institution; systems for contracting public works; systems for contractor registration; use of electronic media and information systems for public procurement; identification of criteria for selecting contractors; and remedies for filing challenges. However, since the results of this survey do not provide the objective information needed for a comprehensive review of the results in this area, together with the fact that the currently applicable legal framework was only adopted recently, the Committee believes the Republic of Panama would do well to consider conducting regular comprehensive assessments to evaluate the use and effectiveness of the public sector contracting system and, using the results thereof, define and consider adopting additional specific measures to ensure its transparency, disclosure, equity, and efficiency. (See Recommendation 1.2 (i), in section 1.2 of Chapter III 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)

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

Regarding the existence of systems for protecting public servants and private citizens who, in good faith, report acts of corruption, in its response the Republic of Panama indicates²⁰ that:

“Currently our country does not have a specific law establishing measures and systems to protect public officials and private citizens who, in good faith, report acts of corruption.”

Nevertheless, the Republic of Panama has a number of provisions dealing with such systems, the most notable of which include the following:

- Law No. 48 of August 30, 2004, which criminalizes the offenses of gang activity and possessing and trafficking in prohibited weapons, and Article 6 of which amends the Panamanian Judicial Code by establishing measures to protect the identity of witnesses involved in judicial proceedings.

This rule can be applied to public officials or private citizens who assist the judicial authorities in investigating and sanctioning acts of corruption.

¹⁸ Observations to the Draft Preliminary Report of Panama prepared by the Technical Secretariat of MESICIC, p. 9-10.

¹⁹ Response of the Republic of Panama to the second round questionnaire, p. 83-92.

²⁰ *Ibid.*, p. 93.

Article 2121-A of the Judicial Code contains measures to protect the identity of third parties involved in judicial proceedings, allowing for general information or information that would identify a witness to be omitted and allowing witnesses to appear in court with devices and/or clothing that would prevent them from being recognized. Witnesses are also allowed to give the court room address as that of their residential address.

- Mechanisms for making accusations, such as those established in: Resolution No. 10 of August 22, 1996, from the Office of the Attorney General of the Nation, creating the Accusation Reception Center; Decree No. 083-DDRH of April 5, 2006, from the Office of the Comptroller General of the Republic, creating the National Directorate for Citizen Accusations; Resolution No. 50 of July 12, 2005, from the Office of the Attorney General, which empowers Anticorruption Prosecutors to directly receive accusations made regarding areas under their jurisdiction; and Executive Decree No. 179 of October 27, 2004, creating the National Anticorruption Transparency Council, the executive secretariat of which is tasked with conducting administrative investigations, either on an ex officio basis or following complaints lodged by the public, into acts that could constitute acts of corruption.²¹

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

Based on the above information, and notwithstanding the existence of mechanisms for protecting witnesses in court proceedings in general and various mechanisms for making accusations, the Committee believes the Republic of Panama would do well to consider the possibility of adopting, through the relevant legal and administrative procedures, specific systems to protect public officials and private citizens who in good faith report acts of corruption, including protecting the identities of such public officials and private citizens, in accordance with its Constitution and the basic principles of its domestic legislation. The Committee thus suggests, for example, the enactment of a legal instrument to establish those systems (see Recommendation in section 2 of Chapter III of this Report).

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

The absence of objective results in this area prevents an appraisal from being made. In light of that circumstance, the Committee will formulate the corresponding recommendations. (See General Recommendation 4.2 in Chapter III of this Report.)

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

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

The Republic of Panama has a set of provisions related to criminalization of the acts of corruption cited in Article VI (1) of the Convention, among which the following should be noted:

- With reference to paragraph (a) of Article VI.1:
 - Articles 339 and 340 of the Republic of Panama's new Criminal Code, adopted by means of Law No. 14 of May 18, 2007, which provide:

²¹ For further information on those mechanisms, refer to pages 93-97 of the Response of the Republic of Panama to the second round questionnaire.

“Article 339. *A prison term of between two and four years shall apply to any public servant²² who, either personally or through a third party, commits any of the following acts:*

1. *Accepts, receives, or requests a donation, promise, money, or any other benefit or advantage for performing, omitting to perform, or delaying an action in violation of his obligations, or who accepts the same as a result of failing to observe those obligations.*
2. *Accepts, receives, or requests a donation, promise, money, or any other undue benefit or advantage for performing an act inherent to his position or post, without neglecting his obligations, or as a result of an action already performed.”*

“Article 340. *Any public servant who, while serving as a member of the judiciary or of the Public Prosecution Service, administrative authority, arbitrator, or any other position responsible for deciding on a matter known to him or for which he has competence, either personally or through the offices of another, accepts, receives, or requests a donation, promise, money, or any other benefit or advantage in exchange for favoring or harming one of the parties in the process, or as a result of having harmed or favored one of them, shall be punished with a prison term of between four and eight years (...).”*

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

- Article 341 of the new Criminal Code of the Republic of Panama, which states that:

“Article 341. *Any person who, by means of any mechanism, offers, promises, or gives a public servant a donation, promise, money, or any benefit or advantages for performing, omitting to perform, or delaying an action inherent to his position, or in violation of his obligations, shall be punished by a prison term of between three and six years.”*

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

- Articles 332, 333, 334, 335, 342, 343, 346, 347, and 348 of the new Criminal Code of the Republic of Panama, which state:

“Article 332. *A public servant who in any way steals or embezzles, or allows another to in any way secure for himself, steal, or embezzle, money, securities, or assets for the administration, reception, or custody of which he is responsible by reason of his position shall be punished by a prison term of between four and ten years.”*

“Should the amount taken exceed the amount of one hundred thousand balboas (B/.100,000.00), or should the secured money, securities, or assets have been intended for social assistance purposes or for development or social support programs, the punishment shall be a prison term of between eight and fifteen years.”

“Article 333. *A public servant who, in the performance of his functions and availing himself of another’s error, secures, steals, or uses, for his own benefit or that of another, national or municipal money, securities, or assets shall be punished by a prison term of between four and eight years.”*

²² Article 299 of the Panamanian Constitution defines public servants as “persons appointed either temporarily or permanently to positions within the executive, legislative, and judicial branches of government, or within municipalities and autonomous or semi-autonomous agencies, and, in general, those receiving remunerations from the state.”

“Article 334. *A public servant who knowingly allows the loss or misplacement of money, securities, or assets for the administration, reception, or custody of which he is responsible by reason of his position, or who allows another person to steal, use, or secure such items of value, for his own benefit or that of a third party, shall be punished by a prison term of between three and six years (...).”*

“Article 335. *A public servant who, for purposes unrelated to his service, uses to his own benefit or that of third parties, or allows another to use, money, securities, or assets that are under his control by reason of his function or entrusted to him, shall be punished by a prison term of between one and three years, or the corresponding fine in days’-equivalent or weekend arrest.”*

“The same punishment shall apply to a public servant who uses official works or services for his own benefit or allows another to do so.”

“Article 342. *A public servant who uses, for his own benefit or that of another, information or data that is of restricted access, reserved, or confidential of which he is aware by reason of his position shall be punished by a prison term of between four and eight years.*

“Article 343. *A public servant who accepts an appointment to a public position or receives remuneration from the state without providing the corresponding service, without good reason, shall be punished by a fine of between one hundred and fifty and three hundred days’- equivalent or community work.”*

“Article 346. *A public servant who induces another to improperly give or promise money or other items to his benefit or that of a third party shall be punished by a prison term of between three and six years.”*

“Article 347. *A public servant who collects a nonexistent tax, levy, duty, fee, or quota shall be punished by a prison term of between three and six years. If the payment is legal but a means not authorized by law is used, the punishment shall be a prison term of between six months and one year or the corresponding fine in days’-equivalent or weekend arrest.”*

“Article 348. *Any person who, using his influence or pretending to have it, receives, requests, or accepts a promise of, or promises, to his own benefit or that of another, any money, goods, or any over economic or legal effect, with the aim of securing a benefit from a public servant or a foreign civil servant belonging to an international organization in a matter with which he is dealing or could deal, shall be punished by a prison term of between four and six years.”*

“The prison term shall rise to between five and eight years if the person exercising influence or pretending to do so is a hierarchical superior to the person dealing with or who could deal with the matter in question.”

- With reference to paragraph (d) of Article VI.1:

- Articles 248, 249, 250, 251, 252, and 253 of the new Criminal Code of the Republic of Panama, which state:

“Article 248. *Anyone who, either personally or through the offices of another, receives, deposits, transacts with, transfers, or converts money, titles, securities, goods, or other financial resources while reasonably assuming they come from activities related to international bribery, crimes against intellectual property and related rights, against industrial property rights, or against*

humanity, drug trafficking, conspiracy for committing drug-related crimes, qualified fraud, financial crimes, illegal weapons trafficking, human trafficking, kidnapping, extortion, embezzlement, paid assassination or homicide, environmental crimes, corruption of public servants, illegal enrichment, acts of terrorism, funding of terrorism, pornography and corruption of minors, commercial sexual exploitation and trafficking, theft or international trafficking of vehicles, in order to hide, conceal, or disguise the illicit origin thereof, or who assists in the avoidance of the legal consequences of such offenses, shall be punished by a prison term of between five and twelve years.”

“Article 249. *The punishment established in the previous Article shall also apply to any person who:*

1. Without having participated in but with awareness of its origins, hides, conceals, or prevents the identification, origin, location, destination, or ownership of money, property, security title certificates, or other financial resources, or assists in ensuring the benefits thereof, when they come from or have been obtained, either directly or indirectly, from any of the illicit acts indicated in the previous article or, in any way, assists in ensuring the benefits thereof.

2. Conducts transactions, either personally or through the offices of a third party, be it an individual or a corporation, at a banking, financial, commercial, or other establishment, with money, security title certificates, or financial resources arising from any of the activities indicated in the previous article.

3. Either personally or through the offices of a third party, be it an individual or a corporation, provides another person or banking, financial, commercial, or other establishment with false information for the opening of a bank account or for transactions with money, security title certificates, property, or financial resources arising from any of the activities indicated in the previous article.”

“Article 250. *Any person who, with awareness of its origin, receives or uses money or any financial resource derived from money laundering in the funding of a political or other campaign shall be punished by a prison term of between five and ten years.”*

“Article 251. *Any person who, with awareness of its origin, uses his authority, position, or profession to authorize or allow the crime of money laundering, as described in Article 248 of this Code shall be punished by a prison term of between five and eight years.”*

“Article 252. *A public servant who conceals, alters, removes, or destroys evidence of a crime related to money laundering, or who assists the escape of a person who has been arrested, detained, or sentenced, or who receives money or another benefit in exchange for favoring or harming any of the parties in a proceeding shall be punished with a prison term of between three and six years.”*

“Article 253. *For the purposes of this chapter, transactions shall be taken as meaning, inter alia, those made in or from the Republic of Panama, such as deposits, purchases of cashiers’ checks, credit, debit, and pre-paid cards, wires, certificates of deposit, travelers’ checks or any other negotiable instrument, transfers and payment orders, purchases and sales of foreign currency, stocks, bonds, or any other certificate or security by the client, provided that the amount of such transactions is received in the Republic of Panama in money, kind, or representative certificate.”*

- With reference to paragraph (e) of Article VI.1:

- Articles 43, 44, 45, 46, 47, 48, 323, and 383 of the new Criminal Code of the Republic of Panama, which state:

“Article 43. The principal is the person who performs, either by himself or through the offices of another, the action described in the definition of the offense.”

“Article 44. The primary accomplice is a person who takes part in the execution of the punishable action or who provides the principal with assistance without which the crime could not have been committed.”

“Article 45. The following are secondary accomplices;

1. Any person who assists, in any way, the principal(s) in the execution of the punishable action; or,

2. Any person who, in any way, provides assistance or conceals the product of the crime, in fulfillment of a promise made prior to execution.”

“Article 46. Should the punishable action be more serious than the one that the accomplice(s) wished to commit, only those accomplices who accepted it as a probable consequence of the action undertaken shall be held answerable.”

“Article 47. The instigator is a person who makes another or others commit a crime.”

“Article 48. An attempted crime takes place when execution of the crime begins by means of appropriate actions taken towards its consummation but it is not executed on account of reasons unrelated to the actor’s will.”

“Article 323. When three or more persons conspire with the aim of committing crimes, each shall be punished for that act alone by a prison term of between three and five years.”

“The prison term shall rise to between six and twelve years if the conspiracy is to commit culpable homicide, murder, kidnapping, extortion, larceny, vehicular theft and associated offenses, crimes related to drug trafficking, money laundering, financial crimes, rape, child pornography, trafficking in human lives, terrorism, or arms trafficking.”

“Article 383. Any person who, after a crime has been committed and who did not participate in it, helps to secure its benefits, to avoid the authorities’ investigations, or to evade the actions of the authorities or the serving of a conviction shall be punished by a prison term of between one and three years or a fine equivalent thereto in days’-equivalent or weekend arrest.”

“No crime is committed by a person who so protects a close relative.”²³

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

The provisions related to the criminalization of the acts of corruption covered by Article VI(1) of the Convention that the Committee has examined on the basis of the information made available to it, can be said to constitute a set of measures that are relevant to the pursuit of the objectives of the Convention.

²³ According to information presented by Panama at the XII Plenary Meeting of the MESICIC Committee of Experts, under Article 25 of the Constitution of the Republic of Panama, a close relative is defined as “a spouse or relatives of up to the fourth degree by blood or second by marriage.”

Nevertheless, the Committee believes the state under review should adapt and expand its legal framework in light of the following comments:

- Article 299 of the Constitution of the Republic of Panama provides a definition for public servant. However, the Committee notes that this definition, in terms of application to criminal law, does not contemplate private citizens who perform public functions or who manage public funds in any capacity or form. (See Recommendation 3.1, in section 3 of Chapter III of this Report.)

- Articles 339 and 340 of the new Criminal Code do not include the possibility of the donation, promise, money, or other benefit or advantages being requested or accepted on behalf of a person or entity other than the official or public servant. (See Recommendation 3.2 (a) in section 3 of Chapter III of this Report.)

- Article 341 of the new Criminal Code does not include the possibility of the donation, promise, money, or other benefit or advantage being offered or granted to another person or entity in exchange for the official or public servant performing or failing to perform any action as a part of his public functions. (See Recommendation 3.2 (b), in section 3 of Chapter III of this Report.)

- Finally, the Committee believes that Article 323 of the new Criminal Code, which is related to paragraph (e) of Article VI(1) of the Convention, could be amended to require a minimum of two people for commission of the crime of illicit association. (See Recommendation 3.3 (c), in section 3 of Chapter III of this Report.)

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

The response of the Republic of Panama to the questionnaire (Annex: Anticorruption Attorneys' Statistics)²⁴ contains statistical data from the offices of the Anticorruption Prosecutors that show the relevant results attained over the past five years as regards legal investigation proceedings and regarding the convictions and acquittals handed down in connection with the crimes indicated below:

“Crimes Against State Assets” (*theft, retention, undue appropriation, damage, larceny, unspecified fraud, theft of livestock*); “Crimes Against the Public Administration” (*embezzlement, corruption, abuse of authority, violation of seals and removal, bidding fraud, graft and exaction, against authorities, impersonation*); and “Crimes Against the Public Record” (*falsification of documents, falsification of seals, issuing bad checks*).

Of this information, the Committee centers its attention on the crimes of embezzlement, corruption, bidding fraud, graft, and exaction, since they are the offenses most closely related to some of the acts of corruption described in Article VI.1 of the Convention.

In line with this, the Committee believes that the information dealing with cases received by the offices of the anticorruption prosecutor over the period 2002 to 2006 serves to indicate that numerous investigations have begun into “crimes against the public administration.” However, the information on convictions and acquittals is not broken down by offense, which makes the corresponding analysis impossible, and neither does it indicate the reasons for the acquittals (such as statutory limitations or preclusion). In light of that situation, and also because the Committee

²⁴ This annex to Panama’s Response to the questionnaire can be found on the internet at: http://www.oas.org/juridico/spanish/mesicic2_pan_sp.htm

does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results related to those offenses in the country under review in connection with the acts of corruption described in Article VI.1 of the Convention, the Committee will make a recommendation on this point. (See General Recommendation 4.2 in Chapter III of this Report.)

III. CONCLUSIONS AND RECOMMENDATIONS REGARDING THE IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED FOR THE SECOND ROUND

Based on the review conducted in Chapter II of this report, the Committee formulates the following conclusions and recommendations regarding the implementation, in the Republic of Panama, of the provisions contained in Articles III (5), systems for government hiring and state procurement of goods and services, III (8), systems for protecting public servants and private citizens who, in good faith, report acts of corruption, and VI, acts of corruption, of the Convention, which were selected in the framework of the second round.

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

1.1. Government hiring systems

The Republic of Panama has considered and adopted measures for creating, maintaining, and strengthening hiring systems for public officials, as indicated in section 1.1 of Chapter II of this report.

In view of the comments made in that section, the Committee suggests that the Republic of Panama consider the following recommendations:

- 1.1.1 Strengthen the systems for the hiring of administrative career public officials. To comply with this recommendation, the Republic of Panama could give consideration to the following measures:²⁵
- (a) Amend the Regulations of the Administrative Career Law to eliminate the possibility of equating years of experience in the post with years of study in the administrative career special admission process. (See section 1.1.2 of Chapter II of this Report.)
 - (b) Establish provisions requiring the publication of the Post Classification Manual so it can be consulted by any person. (See section 1.1.2 of Chapter II of this Report.)
 - (c) Require the nominating authority, in selecting a particular candidate, to leave a written record explaining its decisions in regular procedures for admission to the

²⁵ The Committee notes the assertion by the Republic of Panama that with the enactment of Law No. 24 of July 2, 2007, which amends and adds Articles to Law 9 of 1994 (the Administrative Career Law), it has complied with measures (a), (c), (d), (e), (f) and (h) of the recommendation in section 1.1 on government hiring systems. The Committee acknowledges the efforts made by the Republic of Panama in implementing a new set of regulations on the hiring systems of the administrative career. The Committee 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) and consequently, it not been able to assess whether the new law complies with the requirements contained in Article III, paragraph 5, of the Convention.

administrative career, so that selection procedures for such positions can be challenged. (See section 1.1.2 of Chapter II of this Report.)

(d) Develop rules to guarantee the broad dissemination of public announcements for all vacancies. (See section 1.1.2 of Chapter II of this Report.)

(e) Extend the ban on holding public positions to persons related by up to the third degree by blood and second by marriage with the immediate superior of the vacant post. (See section 1.1.2 of Chapter II of this Report.)

(f) Specifically establish in the legislation that appointments made in violation of law shall be null and void. (See section 1.1.2 of Chapter II of this Report.)

(g) Develop, by means of the relevant legal and administrative procedures and bearing in mind the principle of due process, provisions that establish ordinary mechanisms, be they administrative, judicial, or both, for challenges intended to clarify, amend, or annul the substantial actions that make up the recruitment and personnel selection procedures, ensuring that they are processed in a timely, objective, impartial, and effective fashion. (See section 1.1.2 of Chapter II of this Report.)

(h) Terminate the special admission procedure for those public servants who joined prior to the enactment of the Administrative Career Law Regulations, and ensure that, following the application of the special admission procedure, vacant posts are filled by means of the regular admission procedure. (See section 1.1.3 of Chapter II of this Report.)

(i) Strengthen the General Directorate of the Administrative Career, making it autonomous and independent of the executive and providing it with the resources necessary for the full implementation of the Administrative Career Law and its Regulations. (See section 1.1.3 of Chapter II of this Report.)

1.1.2 Strengthen the systems for the hiring of public officials in the judicial career. To comply with this recommendation, the Republic of Panama could give consideration to the following measures:

(a) Specifically establish in the legislation the ban on nepotism and the invalidity of appointments made in breach of Title XII of the Judicial Code and of the Judicial Career Regulations. (See section 1.1.2 of Chapter II of this Report.)

(b) Amend Article 34 of the Judicial Career Regulations to expand the dissemination of announcements by using such channels as the internet. (See section 1.1.2 of Chapter II of this Report.)

(c) Require that office heads, in selecting a particular candidate, leave a written record justifying the decisions taken in selection procedures for admission to the judicial career, so that selection procedures for such positions can be challenged. (See section 1.1.2 of Chapter II of this Report.)

(d) Develop, by means of the relevant legal and administrative procedures and bearing in mind the principle of due process, provisions that establish ordinary mechanisms, be they administrative, judicial, or both, for challenges intended to

clarify, amend, or annul the substantial actions that make up the recruitment and personnel selection procedures, ensuring that they are processed in a timely, objective, impartial, and effective fashion. (See section 1.1.2 of Chapter II of this Report.)

1.1.3 Strengthen the systems for hiring public employees assigned to the Legislative Service Career. To comply with this recommendation, the Republic of Panama could give consideration to the following measures:

(a) Establish provisions requiring the publication of the Post Classification Manual so it can be consulted by any person (See section 1.1.2 of Chapter II of this Report.)

(b) Require the nominating authority, in selecting a particular candidate, to leave a written record explaining its decisions in regular procedures for admission to the legislative service career, so that selection procedures for such positions can be challenged. (See section 1.1.2 of Chapter II of this Report.)

(c) Develop the Legislative Service Career Law in order to introduce provisions for deadlines, publication methods, challenges to competition rules, and challenges to competition results. (See section 1.1.2 of Chapter II of this Report.)

(d) Specifically establish in the legislation the ban on nepotism and the invalidity of appointments made in breach of those provisions. (See section 1.1.2 of Chapter II of this Report.)

1.2. Government systems for the procurement of goods and services

The Republic of Panama has considered and adopted measures for creating, maintaining, and strengthening systems for the procurement of goods and services by the state, as indicated in section 1.2 of Chapter II of this Report.

In view of the comments made in that section, the Committee suggests that the Republic of Panama consider the following recommendation:

- Strengthen systems for the procurement of goods and services by the government. To comply with this recommendation, the Republic of Panama could give consideration to the following measures:
 - a) Continue to take steps to adapt or amend the entities excluded from the application of Law No. 22 of 2006, in order to prevent the fragmentation of the general procurement system and to ensure harmony in the management of various procurement regimes, guiding itself in that by the principles of disclosure, equity, and efficiency enshrined in the Convention. (See section 1.2.2 of Chapter II of this Report.)
 - b) Continue developing and strengthening the PanamaCompra electronic public procurement system (www.PanamaCompra.gob.pa) in order to ensure the transparency, disclosure, equity, and efficiency that the Convention requires in systems for the procurement of goods and services by the state. (See section 1.2.2 of Chapter II of this Report.)
 - c) Make the pertinent modifications to establish citizen oversight mechanisms for contracting activities, such as citizen watchdogs, and to continue strengthening the

principles of disclosure, equality, and efficiency enshrined in the Convention. (See section 1.2.2 of Chapter II of this Report.)

- d) Study the possibility of establishing, when appropriate, uniform criteria and evaluation methods for bidding processes, in line with the principles of equity and efficiency set forth in the Convention. (See section 1.2.2 of Chapter II of this Report.)
- e) Continue to conduct regular comprehensive assessments to gauge the usage and effectiveness of the public sector procurement system and, using the results of that effort, define and consider the adoption of specific measures to ensure transparency, disclosure, equity, and efficiency in its operations. (See section 1.2.3 of Chapter II 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 Panama has not yet considered the adoption of measures for creating, maintaining, and strengthening systems for protecting public servants and private citizens who, in good faith, report acts of corruption, as set out in section 2 of Chapter II of this Report.

In view of the comments made in that section, the Committee recommends that the Republic of Panama consider the following recommendation:

Create a system for protecting public servants and private citizens who, in good faith, report acts of corruption. To comply with this recommendation, the Republic of Panama could give consideration to the following measure:

Enact, through the relevant legal and administrative procedures, a legal instrument to establish systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including identity protection, in accordance with its Constitution and the basic principles of its domestic legal system (see section 2.2 in Chapter II of this report). This could cover, *inter alia*, the following:

- (a) Protection for those who report acts of corruption that can be investigated through either administrative or judicial venues.
- (b) Protection measures, covering not only the physical integrity of the whistleblower and his family, but also his employment status, particularly for public officials who report acts of corruption that could involve superiors or workmates.
- (c) Provisions to punish noncompliance with the rules and/or obligations applicable to protection measures.
- (d) Simplifying formalities for requesting protection for whistleblowers.
- (e) Reporting mechanisms, such as anonymous complaints and identity-protected complaints, to guarantee the personal security and identity confidentiality of public officials and private citizens who, in good faith, report acts of corruption.

- (f) Mechanisms for reporting threats or reprisals made against whistleblowers, indicating the authorities responsible for processing protection requests and the agencies responsible for providing such protection.
- (g) Mechanisms to facilitate, when appropriate, international cooperation in the above areas, including the technical assistance and reciprocal cooperation described in the Convention, along with exchanges of experiences, training, and mutual assistance.
- (h) The competence of the judicial and administrative authorities regarding these matters, clearly distinguishing one from the other.

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

The Republic of Panama has taken steps toward the criminalization of the acts of corruption described in Article VI(1) of the Convention, as indicated in section 3 of Chapter II of this report.

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

3.1 Study the possibility of amending the legislation in place in the Republic of Panama, in particular criminal legislation, so that the definition of public servant is expanded, under criminal law, to include those private citizens who perform public functions or who manage public funds in any capacity or form. (See Section 3.2 of Chapter II of this report).

3.2 Modify and/or complement the new Criminal Code, in order to expand the coverage to meet the requirements of Article VI(1) of the Inter-American Convention against Corruption. To comply with this recommendation, the Republic of Panama could take the following measures into account:

- a) Articles 339 and 340 of the new Criminal Code could be complemented by the inclusion of the element “for himself or another person or entity”. (See Section 3.2 of Chapter II of this report).
- b) Article 341 of the new Criminal Code could be complemented by the inclusion of the element “for himself or another person or entity”. (See Section 3.2 of Chapter II of this report).
- c) Amend Article 323 of the new Criminal Code to require a minimum of two people for commission of the crime of illicit association. (See Section 3.2 of Chapter II of this report).

4. GENERAL RECOMMENDATIONS

Based on the review and comments made in this report, the Committee suggests that the Republic of Panama give due consideration to the following recommendations:

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

- 4.2. Select and develop procedures and indicators, when appropriate and when they do not yet exist, for analyzing the results of the systems, norms, measures and mechanisms considered in this report, and for monitoring compliance with the recommendations it contains. (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 Panama 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 Panama 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 THEM (ARTICLE III, PARAGRAPHS 1 AND 2, OF THE CONVENTION)

1.1. Standards of conduct to prevent conflicts of interest and mechanisms to enforce compliance

Recommendation 1.1.1:

Strengthen the implementation of laws and regulatory systems concerning conflicts of interest, so as to permit the practical and effective application of a system of public ethics.

Measures suggested by the Committee:

- a) *Consider the possibility of amending existing legislation to reflect a uniform concept of public servant or official, consistent with the definition of that term provided by the States Parties in Article I of the Convention.*
- b) *Establish rules governing the system of incompatibilities, impediments, disqualification, and prohibitions with respect to the positions referred to in Articles 150, 152, 175, and 191 of the Political Constitution (in order: legislators and their alternates, President and Vice President of the Republic, and Ministers of State), recognizing the importance and the special features of those provisions, and providing mechanisms for enforcing them. Evaluate the possibility of amending the First Additional and Final Provision of Law 27815 (Code of Ethics in Public Administration Act) to eliminate its supplemental character in the case of lower ranking provisions.*
- c) *Give effect to the provisions of Article 27 of Law 6 of January 22, 2002, which requires "all State dependencies or agencies, including those belonging to the executive,*

- legislative and judicial branches, the decentralized, autonomous, and semiautonomous entities, municipalities, local governments, and community councils" to promulgate their codes of ethics.*
- d) *Review and examine the possibility of achieving and ensuring greater consistency with respect to the applicable legal framework in the content of the codes of ethics, in order to guide public officials in the correct performance of their duties.*
 - e) *Consider the possibility of implementing the Single Curriculum Vitae Form for public servants as regulated by Law No. 39, Article 32 and concordant articles.*
 - f) *Implement effective mechanisms for preventing conflicts of interest and ensuring the proper use of resources entrusted to public servants, pursuant to Article 37 of Law 39, which requires that, if grounds for incompatibility or disqualification should arise after a public servant is appointed or takes office, he must immediately report that fact to the entity for which he is working.*
 - g) *Implement mechanisms for monitoring and enforcing compliance with Article 298 of the Political Constitution, as well as articles 894 and following of the Administrative Code (prohibiting public servants from earning two or more salaries paid by the State, except in special cases determined by law), in such a way as to include officials under contract.*
 - h) *Ensure that penalties are applicable to public servants who violate the rules governing conflicts of interest.*
 - i) *Review and examine the possibility of incorporating rules and regulations to limit or prohibit participation by former officials in certain government matters, and in general to assist in preventing situations that could lead to inappropriate exploitation of a person's status as a former official.*
 - j) *Design and implement mechanisms to disseminate, and train all public servants in, standards of behavior, including rules governing conflicts of interest, and provide periodic further training and refresher courses in respect of those standards.*
 - k) *Gather information regarding cases of conflicts of interest (see section 1.1.3 of this report), with a view to establishing evaluation mechanisms that will make it possible to verify results in this area.*
 - l) *Consider the possibility of giving new impetus to the National Integrity Plan with broad social participation.*

In its Response, the Republic of Panama 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 adoption of Executive Decree No. 246 of December 15, 2004, "*Issuing the Uniform Code of Ethics for Public Servants Employed in Agencies of the Central Government.*"²⁶
- The approval of Resolution No. 002 of July 21, 2006, "*Which establishes payment by electronic bank transfer as the payment method in the General Directorate of the Treasury of the Ministry of Economics and Finance.*"

²⁶ Response of the Republic of Panama to the second round questionnaire, p. 120.

The Committee takes note of the steps taken by the Republic of Panama to proceed with the implementation of measure (d) of the recommendation with the adoption of the Uniform Code of Ethics for Public Servants Employed in Agencies of the Central Government; this represents progress in ensuring greater consistency between the contents of the Codes of Ethics of central government agencies and offices. The Committee also takes note of the steps taken by the Republic of Panama to proceed with the implementation of measure (g) of the recommendation, through the establishment of the payment of public servants' salaries by electronic bank transfer, which aims to improve the efficiency of public administration, thus increasing control over the payment of salaries in the public sector and reducing the possibility of a public official wrongly receiving two or more salaries from the State.”

In addition, regarding the implementation of the above recommendation, the NGO “*Foundation for the Development of Civic Freedom*” stated that: “*Nothing has been done to strengthen the implementation of laws and regulatory systems concerning conflicts of interest so that they permit practical and effective application of the public ethics system. Although the Uniform Code of Ethics for Public Servants was adopted on December 15, 2004, by means of Executive Decree No. 246, it is not properly enforced. It does not regulate conflicts of interest that may arise for former public servants. Although copies of the Code of Ethics have been massively distributed, if it is not enforced with the rigor that the public expects, then no progress in that area can be detected.*”²⁷

Without embarking on a detailed analysis of this text, and since the response of the Republic of Panama to the questionnaire did not address the other elements contained in this recommendation, 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 the Republic of Panama to continue giving attention to the implementation of this recommendation.

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

Recommendation 1.2.1:

Strengthen the Government Property Directorate (Dirección de Responsabilidad Patrimonial) of the Office of the Comptroller General and other competent bodies in this sphere so that they can fulfill their duty in processing complaints of irregularities in the management, safekeeping, administration, and use of public funds and assets, as discussed in section 1.2 .3.

In its Response, the Republic of Panama 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 submission to the National Assembly of Bill No. 174 on November 12, 2005, “*developing the accounting jurisdiction provided for in Articles 280, section 13, and 281, of the Constitution,*” which proposes the creation of an Accounting Tribunal and an Accounting Attorney’s Office to assist in corruption prevention and control.²⁸

²⁷ Document submitted by the nongovernmental organization “*Foundation for the Development of Civic Freedom,*” Annex 1, p. 1.

Available at: http://www.oas.org/juridico/spanish/mesicic2_pan_com_ce_oea_sp.doc

²⁸ Response of the Republic of Panama to the second round questionnaire, p. 128.

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 the Republic of Panama to continue giving attention to the implementation of this recommendation. The Committee also takes note of the difficulties mentioned by the country under review in implementing this recommendation,²⁹ and the information provided regarding the internal agencies that have been involved in that recommendation's implementation process.³⁰

Recommendation 1.2.2:

Design and implement mechanisms to disseminate, and train all public servants in, the standards of behavior referred to in this section, and to respond to their queries regarding them, and provide periodic further training and refresher courses in respect of those standards.

In its Response, the country under review submitted information regarding a survey conducted among twenty institutions of the Panamanian State, stating that 60% of the surveyed institutions had provided their staffs with training on this topic.³¹ However, the information submitted does not describe the actions taken in designing and implementing mechanisms for informing and training all public servants, nor does it address the other elements of the recommendation, such as mechanisms for responding to inquiries made by public servants.

In this regard, the Committee takes note of the need for the country under review to give additional attention to its implementation.

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

Recommendation 1.3.1:

Strengthen existing mechanisms in the Republic of Panama for requiring government officials to report to the competent authorities any acts of corruption in the performance of public office of which they may become aware.

Measures suggested by the Committee:

- a) *Issue regulations to facilitate such reporting, and establish requirements that will not inhibit potential whistleblowers. Regulate and implement mechanisms for protecting those who report acts of corruption.*
- b) *Facilitate such reporting through the use of appropriate electronic and other means of communication they deem appropriate.*
- c) *Train government officials in their responsibility to report to the competent authorities any acts of corruption in the performance of public office of which they may become aware.*

²⁹ *Ibid.*, p. 128. "This bill has not yet been passed by the National Assembly; consequently, emphasis must be placed on debating and adopting the draft legislation to create the Accounting Tribunal."

³⁰ *Ibid.*, p. 128. These are: the National Assembly and the executive branch.

³¹ *Ibid.*, p. 129. The list of the institutions surveyed can be found on page 168 of that document.

In its Response, the Republic of Panama 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 adoption of Decree No. 083-DDRH by the Office of the Comptroller General of the Republic on April 5, 2006, creating the National Directorate for Citizen Accusations.³²
- The establishment of electronic channels for presenting anonymous and non-anonymous accusations and complaints, such as the web sites of the National Directorate for Citizen Accusations (www.denunciaciudadana.gob.pa/publico) and the Executive Secretariat of the National Anticorruption Transparency Council. (<http://www.setransparencia.gob.pa:8000/amparito/index>).³³

The Committee takes note of the steps taken by the country under review to proceed with the implementation of measure (b) of the recommendation, regarding the use of electronic media such as the web pages of the National Directorate for Citizen Accusations and the Executive Secretariat of the National Anticorruption Transparency Council, which allow public officials and members of the general public to lodge complaints, either anonymously or non-anonymously.

In addition, regarding the implementation of section (c) of the above recommendation, the NGO “*Foundation for the Development of Civic Freedom*” stated that: The Panama City municipality, the Office of the Attorney General of the Nation, and Transparency International Panama “*signed a cooperation agreement in January 2006 for the conduction of an awareness campaign on the importance of reporting acts of corruption at the Public Prosecution Service’s Complaints Reception Center. This initiative involved placing advertisements on the issue at fifty bus stops and a number of billboards located in the capital.*”³⁴

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 the Republic of Panama to continue giving attention to the implementation of this recommendation. The Committee also takes note of the difficulties mentioned by the country under review in implementing this recommendation,³⁵ and the information provided regarding the internal agencies that have been involved in that recommendation’s implementation process.³⁶

Recommendation 1.3.2:

Take the necessary decisions to expand the existing rules, and make it an explicit, punishable offense for public servants to fail to report to the competent authorities acts of corruption in the performance of public office of which they become aware. Ensure that the scope of this obligation refers not only to punishable acts of which they become aware by reason of, on the occasion of, or in the exercise of public office, but also acts of corruption of which they become aware even without such exercise.

³² *Ibid.*, p. 130.

³³ *Ibid.*, p. 130.

³⁴ Document submitted by the nongovernmental organization “*Foundation for the Development of Civic Freedom*,” Annex 1, p. 1.

Available at: http://www.oas.org/juridico/spanish/mesicic2_pan_com_ce_oea_sp.doc

³⁵ Response of the Republic of Panama to the second round questionnaire, p. 130. “*The failure to protect those who report acts of corruption – in particular, public servants – is the major obstacle. Similarly, a significant percentage of institutions have not yet implemented training programs in this area.*”

³⁶ *Ibid.*, p. 130. Namely: the Office of the Comptroller General of the Republic, the National Anticorruption Transparency Council, the executive branch, and all other government agencies.

In its Response, the country under review submitted the following information regarding the above recommendation:

“In this recommendation, no progress has taken place toward adopting a specific provision making it a punishable infraction for a public servant to fail to report acts of corruption.”³⁷

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 the Republic of Panama to continue giving attention to the implementation of this recommendation. The Committee also takes note of the difficulties mentioned by the country under review in implementing this recommendation,³⁸ and the information provided regarding the internal agencies that have been involved in that recommendation’s implementation process.³⁹

Recommendation 1.3.3:

Continue with the promulgation of codes of ethics, taking into account, pursuant to Article 27 of Law 6, that they must at a minimum include, among other aspects, “the obligation to report acts of corruption to a superior”, as discussed in section 1.1.1.

In its Response, the Republic of Panama 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 adoption of *Executive Decree No. 246 of December 15, 2004*, “*Issuing the Uniform Code of Ethics for Public Servants Employed in Agencies of the Central Government.*”⁴⁰

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the recommendation, in the adoption of the Uniform Code of Ethics for Public Servants Employed in Agencies of the Central Government, one of the articles of which establishes the obligation of reporting, to either a superior or the competent authorities, actions that could harm the State or constitute crimes.

Without embarking on a detailed analysis of this text, 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 the Republic of Panama to continue giving attention to the implementation of this recommendation.

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

Recommendation 2.1:

Create and establish a mechanism for publication of declaration of income, assets and liabilities. In meeting this recommendation, the Republic of Panama could consider the following measure:

³⁷ *Ibid.*, p. 131.

³⁸ *Ibid.*, p. 131. “No emphasis has been place on the decisions necessary to punish noncompliance with the obligation incumbent on public servants, both in the performance of their duties and in other situations, to inform the competent authorities of any acts of corruption in public life of which they are aware.”

³⁹ *Ibid.*, p. 130. Namely: the National Assembly and the executive branch.

⁴⁰ *Ibid.*, p. 131-132.

Measure suggested by the Committee:

- *Issue regulations governing the conditions, procedures, and other appropriate aspects of public disclosure, where necessary, of sworn statements of income, assets, and liabilities.*

In its Response, the country under review submitted the following information regarding the above recommendation:

“Panama does not have an obligatory mechanism for publishing sworn statements of net worth (income, assets, and liabilities). Nevertheless, the Office of the People’s Defender set up, on its web site www.defensoria.gob.pa, an area for those public servants feeling the need to publish their notarized sworn statements of net worth.”⁴¹

The Committee takes note of the need for the country under review to give additional attention to its implementation.

Recommendation 2.2:

Take the necessary decisions to ensure that the obligation of public officials pursuant to Article 299 of the national Constitution and Law 59 of December 29, 1999, regulating those declarations, as well as the enforcement mechanisms established in Article 3 and following of that Law, are applicable to other important officials; or that provisions similar to those of Article 299 of the National Constitution are established, and that they cover all persons performing public functions, together with effective mechanisms for punishing violations.

In its Response, the country under review submitted the following information regarding the above recommendation:

“No additional regulations other than Law No. 59 of 1999 have been established regarding sworn statements of net worth (...). Emphasis has not been placed on making decisions that would extend the obligation of making sworn statements of net worth to other ranking public officials, or to public servants in general.”⁴²

The Committee takes note of the need for the country under review to give additional attention to its implementation.

Recommendation 2.3

Establish systems for effectively and efficiently reviewing the content of sworn statements of income, assets, and liabilities, establishing the relevant deadlines and circumstances, and measures for overcoming obstacles to access to the sources of information required; and take the necessary decisions to ensure cooperation between the Comptroller General’s Office and other sectors, such as the financial and taxation sectors, so as to facilitate the exchange of information for verifying the contents of such statements.

In its Response, the country under review submitted the following information regarding the above recommendation:

⁴¹ *Ibid.*, p. 132.

⁴² *Ibid.*, p. 133.

“Panama has not emphasized the implementation of effective mechanisms to verify the content of public servants’ declarations of net worth.”⁴³

The Committee takes note of the need for the country under review to give additional attention to its implementation.

Recommendation 2.4

Make use of sworn statements of income, assets, and liabilities to detect and punish illicit acts.

In its Response, the country under review submitted the following information regarding the above recommendation:

“The Republic of Panama’s Anticorruption Attorneys ask the Office of the Comptroller General to conduct special audits in cases of corruption that are investigated; these include a detailed analysis of the net worth statements of the individuals involved. In addition, the anticorruption attorneys’ offices have an interdisciplinary auditing department that helps clear up matters under investigation and that uses all the necessary tools for detecting illicit acts, including analyses of net worth statements. These analyses are conducted as a part of the audits and then incorporated into the files of each individual case.”⁴⁴

The Committee takes note of the need for the country under review to give additional attention to its implementation. The Committee also takes note of the difficulties mentioned by the country under review in implementing this recommendation,⁴⁵ and the information provided regarding the internal agencies that have been involved in that recommendation’s implementation process.⁴⁶

Recommendation 2.5

Use the sworn statements of income, assets, and liabilities to detect and avoid conflicts of interest, as well as to detect illicit enrichment.

In its Response, the country under review submitted the following information regarding the above recommendation:

“The Office of the Comptroller General of the Republic conducts special audits in cases where unjustified enrichment is suspected. If evidence of the unjustified enrichment of a public official is found, the Comptroller’s office forwards the documentation to the Office of the Attorney General of the Nation so that an investigation for illegal enrichment can be pursued. Similarly, the Republic of Panama’s Anticorruption Attorneys ask the Office of the Comptroller General to conduct special audits in cases of conflicts of interest that are investigated; these include a detailed analysis of the net worth statements of the individuals involved. In addition, the Anticorruption Attorneys’ Offices have an interdisciplinary auditing department that helps clear up matters under investigation and that uses all the necessary tools for detecting illicit

⁴³ *Ibid.*, p. 132.

⁴⁴ *Ibid.*, p. 135.

⁴⁵ *Ibid.*, p. 135. *“The greatest difficulty encountered in these analyses of sworn statements is the fact that making them is not binding on all public servants. On many occasions, public servants not included on the list are investigated; because they are not included, their income, assets, and liabilities cannot be verified in order to detect and punish illicit acts.”*

⁴⁶ *Ibid.*, p. 135. Namely: the offices of the Comptroller General of the Republic and of the Anticorruption Attorneys.

*enrichment and conflicts of interest, including analyses of net worth statements. These analyses are conducted as a part of the audits and then incorporated into the files of each individual case.*⁴⁷

In addition, regarding the implementation of the above recommendation, the NGO “*Foundation for the Development of Civic Freedom*” stated that: “*It is still necessary to amend Law 59 of 1999 to authorize the office of the Comptroller of the Republic to perform audits of net worth statements and to eliminate the requirement of submitting summary evidence before an investigation into illegal enrichment can be opened.*”⁴⁸

The Committee takes note of the need for the country under review to give additional attention to its implementation. The Committee also takes note of the difficulties mentioned by the country under review in implementing this recommendation,⁴⁹ and the information provided regarding the internal agencies that have been involved in that recommendation’s implementation process.⁵⁰

Recommendation 2.6:

Install a registry of those required to present a sworn statement of income, assets, and liabilities, ensuring that there are mechanisms for periodically updating it.

In its Response, the country under review submitted the following information regarding the above recommendation:

“The Office of the Comptroller General of the Republic is the entity in charge of maintaining the registry of the compulsory periodical and updated sworn statements of all public servants who must comply with that requirement.”

*“Therefore the Office of the Comptroller General of the Republic has drawn up a request for a Sworn Declaration of Assets - (when entering and leaving the civil service), in order for officials responsible for managing public institutions, and public servants who are in charge of handling public funds, to submit their sworn statements of assets in keeping with the provisions of Article No. 4 of Law 59 of December 29, 1999 which regulates Article No. 299 of the Constitution and issues other provisions against administrative corruption. However the requests registered by the Office of the Comptroller General of the Republic are not available to the public.”*⁵¹

In addition, regarding the implementation of the above recommendation, the NGO “*Foundation for the Development of Civic Freedom*” stated that: “*Under the administration of the previous*

⁴⁷ *Ibid.*, p. 136.

⁴⁸ Document submitted by the nongovernmental organization “*Foundation for the Development of Civic Freedom*,” Annex 1, p. 2.

Available at: http://www.oas.org/juridico/spanish/mesicic2_pan_com_ce_oea_sp.doc

⁴⁹ Response of the Republic of Panama to the second round questionnaire, p. 136. “*The greatest difficulty encountered in these analyses of sworn statements is the fact that making them is not binding on all public servants. On many occasions, public servants not included on the list are investigated; because they are not included, their income, assets, and liabilities cannot be verified in order to detect and punish illicit acts. Furthermore, the fact that net worth statements are not accessibly and obligatorily published hinders the detection of conflicts of interest within the different state agencies.*”

⁵⁰ *Ibid.*, p. 136. Namely: the offices of the Comptroller General of the Republic and of the Anticorruption Attorneys.

⁵¹ *Ibid.*, p. 137.

Comptroller General of the Republic, Dani Kuzniecky a data base of officials obliged by law to present a sworn statement of assets was set up, which brought the number of officials who fulfilled their duty from 505 to 2,117. The system is also designed to ensure that if someone fails to comply with this obligation, that person's check will be withheld.”⁵²

The Committee takes note of the need for the country under review to give additional attention to its implementation. The Committee also takes note of the difficulties mentioned by the country under review in implementing this recommendation.⁵³

Recommendation 2.7:

Implement the procedures needed for effective monitoring of compliance, in accordance with item 2.6.

In its Response, the country under review submitted the following information regarding the above recommendation:

“The Republic of Panama has not implemented any measures related to effective oversight over the compliance described in the above recommendation.”⁵⁴

The Committee takes note of the need for the country under review to give additional attention to its implementation.

Recommendation 2.8:

Implement an appropriate set of sanctions and penalties for those who fail to comply with this obligation; including, furthermore, the possibility of punishing failure to comply with this obligation by a former civil servant, whose failure to comply with obligations established occurs after he has left office.

In its Response, the country under review submitted the following information regarding the above recommendation:

“Panama has not emphasized the implementation of a regime of penalties and punishments for those to fail to comply with the obligation of publishing their staff's statements of net worth.”⁵⁵

The Committee takes note of the need for the country under review to give additional attention to its implementation.

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

⁵² Document submitted by the nongovernmental organization “Foundation for the Development of Civic Freedom,” Annex 1, p. 8.

Available at: http://www.oas.org/juridico/spanish/mesicic2_pan_com_ce_oea_sp.doc

⁵³ Response of the Republic of Panama to the second round questionnaire, p. 137: “The Republic of Panama has not emphasized the implementation of an obligatory, periodic, and up-to-date register of its public officials' net worth statements within each institution, nor ensuring that it is available for public access”.

⁵⁴ *Ibid.*, p. 137.

⁵⁵ *Ibid.*, p. 138.

Recommendation 3.1:

Strengthen the oversight bodies, and, as appropriate, harmonize and coordinate their functions with respect to monitoring effective enforcement of the provisions of paragraphs 1, 2, 4 and 11 of the Convention.

The Republic of Panama did not describe specific efforts intended to strengthen its oversight agencies and, when appropriate, to harmonize and coordinate their operations. Nevertheless, in its response to the second round questionnaire, the Republic of Panama informed of the creation of the National Council for Transparency Against Corruption.⁵⁶

The Committee takes note of the need for the country under review to give additional attention to its implementation.

Recommendation 3.2:

Conduct a comprehensive assessment of the functions currently performed by the National Anticorruption Directorate, and consider creating a new national office of governmental ethics, as the State mentioned in the update to its response, or making other regulatory or institutional arrangements to ensure that there is an oversight body with competence to enforce the standards of the Convention selected for review in the first round.

The Committee takes note of the steps taken by the country under review to proceed with the implementation of this recommendation with the creation of the National Anticorruption Transparency Council by means of Executive Decree No. 179 of October 27, 2004, to serve as a consultation and advisory body for the executive in connection with public policies in the fields of transparency and preventing corruption.

In addition, regarding the implementation of the above recommendation, the NGO “*Foundation for the Development of Civic Freedom*” stated that: “*On May 23, 2007, by means of Executive Decree No. 110, the Ministry of the Presidency amended Executive Decree No. 179 of October 27, 2004, which had created the CNTCC. The most significant changes were the inclusion of the Minister of Economics and Finance as a member of the Council and the elimination of the Executive Secretary’s power to conduct administrative investigations. In addition, the Council no longer has as its chief duty guiding the executive in the establishment of public anticorruption policies; instead, it merely advises it in the design or implementation of national plans for promoting transparency in the public administration, among other functions.*”⁵⁷

Without embarking on a detailed analysis of the content of this regulatory text, 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 the Republic of Panama to continue giving attention to the implementation of this recommendation. The Committee also takes note of the

⁵⁶ *Ibid.*, p. 138-139.

⁵⁷ Document submitted by the nongovernmental organization “*Foundation for the Development of Civic Freedom*,” Annex 1, p. 3.

Available at: http://www.oas.org/juridico/spanish/mesicic2_pan_com_ce_oea_sp.doc

difficulties mentioned by the country under review in implementing this recommendation,⁵⁸ and the information provided regarding the internal agency that has been involved in that recommendation's implementation process.⁵⁹

Recommendation 3.3:

Ensure that the National Anticorruption Directorate (or its successor institution), the Ombudsman's Office, the Public Ministry, the Comptroller General's Office and its Government Property Directorate, and the Attorney General's Office have, where appropriate, greater support in the performance of their duties, and establish, in appropriate cases, mechanisms for the coordination and continuing assessment and monitoring of their efforts to develop modern mechanisms for preventing, detecting, punishing, and eradicating corrupt practices.

In its Response, the country under review submitted the following information regarding the above recommendation:

*"Panama does not have a continuous coordination and evaluation mechanism for following up on its anticorruption efforts."*⁶⁰

Nevertheless, in its comments to the Draft Preliminary Report, the Republic of Panama informed that *"there is cooperation between all the public institutions mentioned as regards the performance of their functions"*.⁶¹

The Committee takes note of the need for the country under review to give additional attention to its implementation.

Recommendation 3.4

Draw up information about the functions performed by oversight bodies, with a view to establishing evaluation mechanisms in this area.

In its Response, the country under review submitted the following information regarding the above recommendation:

*"The web site of the Executive Secretariat of the National Anticorruption Transparency Council www.setransparencia.gob.pa has gathered together and published all the information on the Council's activities to date, its functions, and the areas of its competence."*⁶²

The Committee takes note of the need for the country under review to give additional attention to its implementation. The Committee also takes note of the difficulties mentioned by the country

⁵⁸ Response of the Republic of Panama to the second round questionnaire, p. 140. *"As with the previous recommendation, we can say that a lack of budgetary resources for corruption prevention and correction work is one of the difficulties we face."*

⁵⁹ *Ibid.*, p. 130. The internal agency involved with implementing the recommendation is the National Anticorruption Transparency Council.

⁶⁰ *Ibid.*, p. 142.

⁶¹ Observations to the Draft Preliminary Report of Panama prepared by the Technical Secretariat of MESICIC, p. 19.

⁶² Response of the Republic of Panama to the second round questionnaire, p. 142.

under review in implementing this recommendation,⁶³ and the information provided regarding the internal agency that has been involved in that recommendation's implementation process.⁶⁴

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

4.1. General participation mechanisms

Recommendation:

Design and put in place programs to disseminate mechanisms for participating in monitoring public administration and, where appropriate, providing training to civil society, nongovernmental organizations, and government officials and employees, along with the tools they need to use those mechanisms. Included in these programs would be education and training of civic leaders to boost the use of those mechanisms and generate public awareness of the importance of reporting acts of corruption in the public sector.

In its Response, the Republic of Panama 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 signing of the Cooperation Agreement for Anticorruption and Improved Transparency by the National Anticorruption Transparency Council and Georgetown University in June 2006, and the organization of the course on “*Public policies for improving the public administration, transparency, and institutional strengthening of the State,*” by means of which 28 executive professionals from public and private agencies and civil society received training.⁶⁵
- The organization of the first and second Transparency Weeks, on August 16 to 19, 2005, and October 9 to 13, 2006, respectively.⁶⁶
- The January 2006 campaign entitled “*Corruption Stains; Don't Let It Touch You,*” aimed at raising public awareness about the importance of reporting acts of corruption.⁶⁷

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 the Republic of Panama to continue giving attention to the implementation of this recommendation. The Committee also takes note of the difficulties mentioned by the country under review in implementing this recommendation,⁶⁸ and the information provided regarding the internal agencies that have been involved in that recommendation's implementation process.⁶⁹

⁶³ *Ibid.*, p. 142: “*The difficulties encountered include the creation of effective measurement tools to enable us to identify transparency indicators that can measure and assess the work carried out by the National Anticorruption Transparency Council.*”

⁶⁴ *Ibid.*, p. 142. The internal agency involved with implementing the recommendation is the National Anticorruption Transparency Council.

⁶⁵ *Ibid.*, p. 143.

⁶⁶ *Ibid.*, p. 143.

⁶⁷ *Ibid.*, p. 143.

⁶⁸ *Ibid.*, p. 144. “*Panama requires international technical cooperation in order to implement this recommendation.*”

⁶⁹ *Ibid.*, p. 145. Namely: The National Anticorruption Transparency Council, the Office of the Attorney General of the Nation, and organized civil society.

4.2. Mechanisms for access to information

Recommendation 4.2.1:

Institute legal rules and measures to support access to public information.

Measures suggested by the Committee:

- a) *Develop procedures for receiving requests, for responding to them in a timely manner, and for handling appeals in cases where such requests are denied, and establish penalties for failure to observe the obligation to provide information, while making more general use of consultation offices and so-called information kiosks.*
- b) *Introduce a broader definition of active legitimization for the subjective scope of application of Law 6 of January 22, 2002. Consider eliminating the restrictive definition of the term "interested person" contained in Article 8 of Executive Decree 124 of May 21, 2002, recognizing: the importance of providing citizens with the broadest possible access to information; the apparently restrictive rule of Article 11 of that decree; the juridical supremacy of a law over a decree; and the frequency of acts of corruption with respect to "information on the contracting and appointment of public officials, payrolls, representation expenses, travel costs, per diem and other allowances or payments to public officials at any level, or to other persons performing public functions," covered by Article 11*
- c) *Consider revising the provision of Article 5 of Executive Decree 124, whereby the remuneration of public servants is considered privileged information, to bring it into line with Law 6, in Article 11 which characterizes as public, and provides free access to persons interested in, "information regarding the hiring and designation of public officials ... payment for per diem subsistence allowances and others of public officials regardless of their rank..." and Article 14, which expressly defines which information must be considered confidential or restricted, as discussed in section 4.2.2.*
- d) *Strengthen the guarantees for exercising the right to public information, so that access to such information cannot be denied for reasons or criteria other than those stipulated by law.*
- e) *Conduct a comprehensive assessment of the use and effectiveness of the recourse of habeas data, identifying the reasons why so few appeals are accepted, and, in light of that assessment, adopt measures to promote, facilitate, consolidate or ensure the effectiveness of that recourse.*

In its Response, the Republic of Panama 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 repeal of Executive Decree No. 124 of May 21, 2001 (the regulations to Law No. 6 of January 22, 2002, the Transparency Law), in September 2004, which restricted the enforcement of some of the articles of the Transparency Law and curtailed its effectiveness as regards access to information about the public administration.⁷⁰
- The official launch of the web pages "*PanamaCompra*" and "*PanamaTramita*," in December 2005 and May 2006, respectively.⁷¹

⁷⁰ *Ibid.*, p. 146.

⁷¹ *Ibid.*, p. 146.

- The development and implementation of digital government programs, such as the on-line edition of the Official Gazette of Panama.⁷²
- The creation of the Secretariat of the Presidency for Government Innovation, in September 2004 and the ‘Conéctate al Conocimiento’ (Connect to Knowledge) Program.⁷³
- The approval of Law No. 5 of January 11, 2007, which speeds up the process for setting up companies and creates the “Panama Emprende” www.panamaemprende.gob.pa system and Internet portal.⁷⁴

With regard to the implementation of the measures of the above recommendation, the document submitted by the nongovernmental organization “*Foundation for the Development of Civic Freedom*” states that: “*On September 1, 2004, by means of Executive Decree No. 335, President of the Republic Martín Torrijos Espino repealed Executive Decree No. 124 of May 21, 2002, the regulations to Law 6 of January 22, 2002, which hindered its effective enforcement, thereby fulfilling one of this campaign promises. With reference to the observance of this law, public institutions should keep on their web sites the updated information indicated in Law 6 of January 22, 2002, in addition to installing consultation offices or information kiosks, but so far most institutions have not met those requirements.*”⁷⁵

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 the Republic of Panama to continue giving additional attention to the implementation of this recommendation. The Committee also takes note of the difficulties mentioned by the country under review in implementing this recommendation,⁷⁶ and the information provided regarding the internal agencies that have been involved in that recommendation’s implementation process.⁷⁷

Recommendation 4.2.2:

Observe with satisfaction that various Codes of Ethics include among their provisions standards concerning society’s right to information and to be duly informed about the activities carried out by each institution.

In its Response, the Republic of Panama 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 inclusion of a provision relating to society’s right to information in Executive Decree No. 246 of December 15, 2004, “*Issuing the Uniform Code of Ethics for Public Servants Employed in Agencies of the Central Government.*”⁷⁸

⁷² *Ibid.*, p. 146.

⁷³ *Ibid.*, p. 146.

⁷⁴ *Ibid.*, p. 145.

⁷⁵ Document submitted by the nongovernmental organization “*Foundation for the Development of Civic Freedom*,” Annex 1, pp. 3-5.

⁷⁶ Response of the Republic of Panama to the second round questionnaire, p. 154. “*Emphasis has not been placed on the adoption of a new Decree to regulate Law No. 6 of 2002 (the Transparency Law).*”

⁷⁷ *Ibid.*, p. 154. “*All the institutions were involved in the implementation of the recommendation.*”

⁷⁸ *Ibid.*, p. 155.

The Committee takes note that the country under review has satisfactorily considered the foregoing recommendation, and takes note the information provided regarding the internal agencies that have been involved in the implementation of this recommendation.⁷⁹

4.3. Mechanisms for consultation

Recommendation:

Establish procedures, as appropriate, to allow for public consultation prior to the approval of new legal measures.

Measures suggested by the Committee:

- a) *Increase the publication and dissemination of draft legal measures, and institute transparent proceedings for consulting interested sectors of society during the preparation of draft laws, decrees, and resolutions of the executive branch.*
- b) *Hold public hearings or use other suitable mechanisms for obtaining public feedback in other areas than those already covered.*

In its Response, the Republic of Panama 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 holding of public consultations on the adoption of legal provisions, among which are the public consultation regarding the adoption of the Criminal Code (held in the National Assembly at the beginning of 2007); the ongoing public consultation of citizens on the project to amend the rules on the Judicial Career, Book I of the Judicial Code on matters concerning the judicial career (carried out by the Supreme Court of Justice); and the consultation held regarding the amendment of the Electoral Code (formulated by the National Electoral Reform Commission.)⁸⁰
- The holding of activities in order to learn of the needs of the community and to define goals for development, such as the holding of fifteen Consultative Community Councils and for Accountability, promoted by the Presidency of the Republic; and the Process of National Development Cooperation Process, convened by the President of the Republic, Martin Torrijos, on August 16, 2006.⁸¹

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 the Republic of Panama to continue giving additional attention to the implementation of this recommendation. The Committee also takes note of the difficulties mentioned by the country under review in

⁷⁹ *Ibid.*, p. 155. Namely: the National Assembly and the executive branch.

⁸⁰ *Ibid.*, p. 155-156.

⁸¹ *Ibid.*, p. 155-156.

implementing this recommendation,⁸² and the information provided regarding the internal agencies that have been involved in that recommendation's implementation process.⁸³

4.4 Mechanisms for encouraging participation in the public administration

Recommendation:

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

Measures suggested by the Committee:

- a) *Give effect to Article 4 of Executive Decree 99 of September 13, 1999, which empowers the National Anticorruption Directorate to create mechanisms for encouraging participation by civil society and nongovernmental organizations in efforts to prevent corruption.*
- b) *Order the publication of draft official acts, where their importance so warrants, prior to their adoption, so that, within a specified time limit, civil society and nongovernmental organizations may make comments and recommendations, which must be evaluated by the competent authorities.*
- c) *Establish mechanisms for strengthening participation by civil society and nongovernmental organizations in efforts to prevent corruption and to develop a public awareness of the issue.*
- d) *Design and implement programs to publicize mechanisms for encouraging participation in public administration and, when appropriate, provide the necessary facilitation tools and training in their use to civil society and nongovernmental groups, as well as public officials and employees.*
- e) *Bearing in mind the problems referred to in section 4.4 with respect to "desacato" laws, make any necessary decisions in order to analyze and amend those provisions to prevent them from posing an obstacle or inhibition to participation by civil society and nongovernmental organizations in efforts to prevent corruption.*

In its Response, the Republic of Panama 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 passage of Law No. 22 of June 29, 2005, which repealed the *desacato* contempt laws.⁸⁴
- The publication, by the judiciary, of two draft laws for citizen consultation, on its Internet website, <http://www.organojudicial.gob.pa/contenido/proyectos/CE/reformas.htm>. One of the projects consulted is the amendment of Book 1 of the Judicial Code and the

⁸² *Ibid.*, p. 157. "The scope of the community consultations can be expanded, thus creating mechanisms to facilitate the inclusion of citizens' wishes in the legislative and executive measures under discussion."

⁸³ *Ibid.*, p. 157. Namely: the Public Services Authority, the executive, the National Assembly, the National Environmental Authority, and the judiciary.

⁸⁴ *Ibid.*, p. 158.

- regulations to the Judicial Career and the Plan of action to prevent, detect and sanction corruption in the Judiciary.⁸⁵
- The creation of the State Commission for Justice in 2005, made up of all the sectors linked to the administration of justice; and the preparation of an analytical document that has been agreed upon and which contains goals for the execution of judicial reform in Panama.⁸⁶

In addition, as regards the implementation of the measures contained in the above recommendation, the document submitted by the nongovernmental organization “*Foundation for the Development of Civic Freedom*” states, in connection with measure (a), that: “*The committee of experts had recommended enforcing Article 4 of Executive Decree No. 99 of September 13, 1999, which empowers the National Anticorruption Directorate to create mechanisms intended to encourage participation by civil society and nongovernmental organizations in anticorruption efforts. The fact is that this decree was repealed and replaced by Executive Decree No. 179, creating the National Anticorruption Transparency Council, which was amended by Executive Decree No. 110 of May 23, 2007. The power to create mechanisms for encouraging participation by civil society and nongovernmental organizations in anticorruption efforts was not included among the functions of the CNTCC,*”⁸⁷

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation, in particular measures (b), (c) and (e). In addition, since the response of the Republic of Panama to the questionnaire did not address the remaining elements of this recommendation, the Committee takes note of the need for the country under review to give additional attention to its implementation.

4.5 Participation mechanisms for follow-up of public administration

Recommendation:

Strengthen and continue implementing measures to encourage civil society and nongovernmental organizations to participate in the follow-up of public administration.

Measures suggested by the Committee:

- a) *Provide means whereby persons performing public functions can enable, facilitate, or help civil society and nongovernmental organizations to participate in monitoring their management of public affairs.*
- b) *Implement dissemination programs for civil society and nongovernmental organizations regarding the matters addressed in sections 4.1 to 4.5.*

In its Response, the Republic of Panama 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 launch, in December 2006, of the “*SÍGUEME*” case file control and management system by the Office of the Comptroller General of the Republic.

⁸⁵ *Ibid.*, p. 157.

⁸⁶ *Ibid.*, p. 157.

⁸⁷ Document submitted by the nongovernmental organization “*Foundation for the Development of Civic Freedom*,” Annex 1, pp. 3-5.

- The passage of Law No. 22 of June 27, 2006, which regulates government procurement and enacts other provisions, and of its regulations by means of Executive Decree No. 366 of December 28, 2006.

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 the Republic of Panama to continue giving attention to the implementation of this recommendation. The Committee also takes note of the difficulties mentioned by the country under review in implementing this recommendation,⁸⁸ and the information provided regarding the internal agencies that have been involved in that recommendation's implementation process.⁸⁹

5. ASSISTANCE AND COOPERATION (ART. XIV)

Recommendation 5.1:

Identify and prioritize specific areas in which the Republic of Panama feels it needs technical cooperation from other States Parties for strengthening its capacities to prevent, detect, investigate, and punish acts of corruption.

In addition, the Republic of Panama could identify and prioritize requests for reciprocal assistance in the investigation and prosecution of corruption cases.

In its Response, the Republic of Panama 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 signing of the Declaration of Guatemala for a Region Free of Corruption and for Technical Transparency and Anticorruption Cooperation among the countries of Central America, Panama, and the Dominican Republic, on November 15, 2006, intended to eradicate corruption and devise policies on strategic aspects to guide Central American integration.⁹⁰
- The holding, on January 25, 2006, of an international dialogue called "Latin American Experiences on Investigating Crossborder Corruption Cases," organized by the Office of the Attorney General of the Nation, in conjunction with the World Bank's Global Development Learning Network and the transparency program of the United States Agency for international development (USAID/Panama).⁹¹
- The holding of the regional workshop for ministers of justice and attorney generals, under the slogan "Definition and Adoption of Effective Strategies for the Criminal Prosecution of Corruption," and the issuing of the "Commitment Declaration," signed by authorities from the nine countries present at the event.⁹²

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 the Republic of Panama

⁸⁸ Response of the Republic of Panama to the second round questionnaire, p. 160. *"The difficulties encountered include the fact that the internet access that Panamanian citizens enjoy is limited; thus, not all Panamanians can follow the public administration by means of the mechanisms created for the purpose."*

⁸⁹ *Ibid.*, p. 160. Namely: the Office of the Comptroller General of the Republic and the executive.

⁹⁰ *Ibid.*, p. 160.

⁹¹ *Ibid.*, p. 160.

⁹² *Ibid.*, p. 160.

to continue giving attention to the implementation of this recommendation, since the Republic of Panama's response to the questionnaire did not address all the elements of the recommendation. The Committee also takes note of the difficulties mentioned by the country under review in implementing this recommendation,⁹³ and the information provided regarding the internal agencies that have been involved in that recommendation's implementation process.⁹⁴

Recommendation 5.2:

Design and implement a comprehensive program of familiarization and training targeted specifically at competent authorities, to ensure that they understand and can apply, in the investigation and prosecution of corruption cases, the provisions concerning mutual legal assistance found in the Convention and other treaties that Panama has signed.

In addition, it would be advisable to train the officials competent in this sphere in order to elicit the broadest possible mutual technical and legal cooperation in preventing, detecting, investigating, and punishing acts of corruption.

In its Response, the country under review submitted the following information regarding the above recommendation:

“The more salient measures adopted in connection with this recommendation include the signing of the Montevideo Consensus in June 2006, at the VIII Ibero-American Conference of Public Administration and State Reform Ministers, which approved the adoption of the Ibero-American Code of Good Government and the creation of the ‘Ibero-American School of Public Administration and Policy,’ and agreed to promote, within the nations of Ibero-America, the permanent training of executives and public officials to increase the governmental effectiveness and quality of public administration.”⁹⁵

In its Response, it also states that: *“Pending implementation is a comprehensive outreach and training program for the competent officials who enforce the mutual assistance provisions in the investigation and prosecution of acts of corruption, instead of isolated training efforts. Similarly, the members of the Panamanian judiciary have not yet undertaken specialized studies on trials for acts of corruption.”⁹⁶*

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 the Republic of Panama to continue giving additional attention to the implementation of this recommendation.

Recommendation 5.3:

Design and implement an information program that would enable authorities of the Republic of Panama to permanently follow up on requests for legal assistance regarding acts of corruption and in particular those acts envisaged in the Inter-American Convention against Corruption.

⁹³ *Ibid.*, p. 161. “The greatest challenge is to expand training in the prevention, detection, investigation, and punishment of acts of corruption for public servants in all agencies of the government.”

⁹⁴ *Ibid.*, p. 161. Namely: the executive and the Office of the Attorney General of the Nation.

⁹⁵ *Ibid.*, pp. 161-162.

⁹⁶ *Ibid.*, p. 162.

The Republic of Panama did not describe specific efforts relating to the design and implementation of an information program that would allow the Republic of Panama's authorities to conduct permanent follow-up of requests for legal assistance related to acts of corruption.

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 the Republic of Panama to continue giving additional attention to the implementation of this recommendation.

6. CENTRAL AUTHORITIES (ART. XVIII)

The Committee served no recommendations on the country under review in connection with this provision of the Convention; it therefore notes with satisfaction that the Republic of Panama fulfilled the terms of Article XVIII by naming the Fourth Regular Business Chamber of the Supreme Court of Justice as its central authority for the purposes of the international assistance and cooperation described in the Convention.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1:

Design and implement, when appropriate, training programs for public servants responsible for applying the systems, standards, measures, and mechanisms considered in this report, in order to ensure that they are thoroughly understood and properly applied.

In its Response, the Republic of Panama 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 organization of the First Forum on Control and Accountability on May 23, 2006, intended to set the foundations for a process of improvements to the public administration based on the principles of transparency and accountability, organized by the Executive Secretariat of the National Anticorruption Transparency Council.⁹⁷
- The reorganization of the National Professional Training Institute (INAFORP), which was turned into the National Institute for Professional Training for Human Development (INADEH) by means of Law No. 8 of February 15, 2006. This agency is to coordinate, with all the institutions of the public sector, exchanges of information on the training programs they carry out and the resources allocated for those purposes and other actions.⁹⁸
- The organization of the seminar-workshop, "Results-based public management: Strategic planning, institutional evaluation, and building indicators for transparency and integrity," focusing on training and prevention, which was held on April 16 to 20, 2007. One of the objectives of the exercise was to train human capital to enable agencies to work in accordance with results-based management and accountability to civil society.⁹⁹
- The holding, on May 10, 2007, of the workshop "Good government and presentation of the exploratory study on the management model at Panamanian public institutions," organized by the Executive Secretariat of the National Anticorruption Transparency

⁹⁷ *Ibid.*, p. 163.

⁹⁸ *Ibid.*, p. 163.

⁹⁹ *Ibid.*, p. 163.

- Council (CNTCC) and attended by 75 directors and technicians from 43 offices of the central government and autonomous entities.¹⁰⁰
- The creation of the “Diploma course in public administration forensic auditing and oversight,” in partnership with the Specialized University of the Authorized Chartered Accountant (UNESCPA), intended for professionals from public agencies, mainly from the internal auditing area, which began on May 29, 2007.¹⁰¹
 - The participation of the Anticorruption Attorneys in various training courses, both at home and overseas, on topics relating to anticorruption efforts and the recovery of assets in corruption-related money laundering cases.¹⁰²
 - The Judicial School’s organization of a “Diploma course on strategies for investigating corruption cases,” taught to more than 20 officials from prosecutors’ offices and other agencies, and which lasted for a period of five months (October 14, 2006, to February 28, 2007).¹⁰³

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 the Republic of Panama to continue giving attention to the implementation of this recommendation. The Committee also notes the information provided regarding the internal agencies that have been involved in the implementation of this recommendation.¹⁰⁴

Recommendation 7.2:

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

In its Response, the country under review submitted the following information regarding the above recommendation:

“Panama must emphasize the technical training of the institutions’ human resources in the use of management and result indicators, in order to improve the system of accountability and to properly assess the performance of the public administration.”¹⁰⁵

The Committee takes note of the need for the country under review to give additional attention to its implementation.

¹⁰⁰ *Ibid.*, pp. 163-164.

¹⁰¹ *Ibid.*, p. 164.

¹⁰² *Ibid.*, pp. 164-165.

¹⁰³ *Ibid.*, p. 165.

¹⁰⁴ *Ibid.*, p. 165: “All the institutions were involved in implementing the recommendation, in particular the National Anticorruption Transparency Council and the Office of the Attorney General of the Nation.”

¹⁰⁵ *Ibid.*, p. 166.

Recommendation 7.3:

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

In its Response, the country under review submitted the following information regarding the above recommendation:

“Among the measures adopted for the development of procedures for analyzing the mechanisms and recommendations of this report, we have the following: Execution of the project ‘Lessons learned and best practices for integrity in the Panamanian public administration’ between May and August 2006, intended to lay the groundwork for introducing and promoting the concepts of integrity and transparency in public entities, in order strengthen actions associated with the anticorruption efforts of the Executive Secretariat of the National Anticorruption Transparency Council.

“This project involves a non-reimbursable technical cooperation agreement signed by the Republic of Panama and the Inter-American Development Bank (IDB) “Lessons learned and best practices for integrity in the Panamanian public administration” (PN-T1017). The IDB approved this project on January 20, 2006, and the contract was signed on March 27, 2006.”¹⁰⁶

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 the Republic of Panama to continue giving additional attention to the implementation of this recommendation.

ⁱ Article 299 of the Constitution defines public servants as persons appointed either temporarily or permanently to positions within the executive, legislative, and judicial branches of government, or within municipalities and autonomous or semi-autonomous agencies, and, in general, those receiving remunerations from the state. Similarly, Article 307 provides that the following are not members of public careers:

1. Those public servants whose appointment is regulated by the Constitution.
2. General Directors and Subdirectors of autonomous and semi-autonomous agencies, public servants appointed for specific periods of time or for fixed periods set by law, or those holding honorary positions.
3. Secretarial and service personnel immediately attached to public servants not belonging to any career.
4. Public servants with authority and jurisdiction not belonging to any career.
5. Professionals, technicians, and manual laborers needed for temporary or interim services in ministries or in autonomous and semi-autonomous agencies.
6. Public servants whose positions are regulated by the Labor Code.
7. Heads of diplomatic missions as identified in law.

ⁱⁱ Article 305 of the Constitution establishes the following careers within the civil service, in accordance with the principles of the merit system, and states that the law shall regulate their relevant structures and organization in accordance with the administration’s needs: (1) the Administrative Career; (2) the Judicial Career; (3) the Teaching Career; (4) the Diplomatic and Consular Career; (5) the Health Sciences Career;

¹⁰⁶ *Ibid.*, pp. 166-167.

(6) the Police Career; (7) the Agricultural Sciences Career; (8) the Legislative Services Career; (9) such others as the law may establish.

ⁱⁱⁱ Article 2 of the Administrative Career Law defines public servants as persons appointed either temporarily or permanently to positions within the executive, legislative, and judicial branches of government, or within municipalities and autonomous or semi-autonomous agencies, and, in general, those receiving remunerations from the state. This law further classifies public servants as:

1. *Career public servants.*
2. *Administrative career public servants.*
3. *Non-career public servants.*

“Career public servants: Those public servants admitted by means of the merit system to the public careers expressly identified in the Constitution or created by law, or that may be created by law at a future date.”

“Administrative career public servants: Those public servants who entered the administrative career in accordance with the provisions of this law who neither belong to any other career nor expressly excluded from the administrative career by the Constitution or law.”

“Non-career public servants: Those public servants not included in the public careers established by the Constitution or created by law, and in particular those excluded from public careers by the current Constitution.”

“Non-career public servants are classified as follows:

1. *Popularly elected.*
2. *Freely appointed and removable.*
3. *Appointments regulated by Constitution.*
4. *Selected.*
5. *On probation.*
6. *Serving.*
7. *Temporary.”*

“Popularly elected public servants: Those holding public office by reason of a popular election.”

“Freely appointed and removable public servants: Those working as secretarial, advisory, assistance, and service personnel immediately attached to public servants not belonging to any career and whose appointments, by the nature of those positions, are based on the trust of their superiors, with the loss of that trust leading to removal from the position held.”

“Public servants with appointments regulated by Constitution: Those in positions for which the appointment process is described in the nation’s Constitution. For the purposes of this law, the positions held by the following are considered appointments regulated by the Constitution: justices of the Supreme Court of Justice and of the Electoral Tribunal, Ministers of State, the Attorney General of the Nation, the Administration Attorney, the Comptroller General of the Republic, the Assistant Comptroller General of the Republic, the Electoral Prosecutor, and their deputies.”

“Selected public servants: Those who, subject to meeting the minimum requirements set by the Constitution and in law, are directors general and assistant directors general of decentralized entities, appointed at the discretion of the executive and ratified by the Legislative Assembly or by one of its permanent committees, for the period of time set by law. They may neither occupy those positions or perform those functions until they are ratified. Those ratified by the Administrative Career Technical Board are also considered selected public servants.”

“Public servants on probation: Those aspiring to enter the administrative career, from their appointment to a public position and until the evaluation that will determine, within a predetermined period of time, whether they are admitted as administrative career civil servants.”

“Serving public servants: Those who, when this law and its regulations come into force, hold a public position defined as permanent, until they acquire by means of the established procedures the status of administrative career public servants or leave public service.”

“Temporary public servants: Those performing functions in temporary public positions.”

^{iv} Article 61 of the Administrative Career Law states that the regular admission procedure is the normal procedure for admission to the administrative career and that it entails two main phases, to be duly assessed in accordance with the job’s requirements and communicated to the participants, which are: the background competition or competitive examination, and the entry evaluation.

^v Article 67 of the Administrative Career Law defines the special admission procedure as *“an extraordinary procedure, designed to regulate the incorporation of serving public servants into the administrative career regime following the entry into force of this Law’s Regulations.”*

^{vi} The judicial career applies to all officials of the judiciary (including the Public Prosecution Service), with the exceptions set forth in Article 270 of the Judicial Code (Article 7 of the Judicial Career Regulations): *“The following shall not be members of the judicial career: justices of the Supreme Court of Justice, the Attorney General of the Nation, the Administration Attorney, and the secretarial and service personnel immediately attached to public servants not considered members of the judicial career, including clerks, assistants, drivers, bailiffs, and ushers.”*

^{vii} Article 4 of the Legislative Service Career Law defines career employees of the legislative service as *“members of the regular staff comprising the technical and administrative services who enter the legislative service career and who meet the prior competition requirements and other requirements set by Law.”*

^{viii} Article 25 of the Legislative Service Career Law states that the regular admission procedure is the normal procedure for admission to the legislative career and that it entails two main phases, to be duly assessed in accordance with the job’s requirements and communicated to the applicants, which are: the background competition or competitive examination, and the entry evaluation.

^{ix} Article 30 of the Legislative Service Career Law defines the special admission procedure as *“an extraordinary procedure, designed to regulate the incorporation of permanent serving public servants into the legislative service career following the entry into force of this Law’s regulations.”*

^x According to the information submitted by the National Council for Transparency Against Corruption, the survey was sent to more than half the agencies of the state; however, only the following 20 institutions responded on time: 1. National Lottery; 2. Specialized University of the Americas; 3. Panamanian Food Safety Authority; 4. Superintendency of Banks; 5. Ministry of Housing; 6. National Institute of Professional and Human Development Training (INADEH); 7. Technological University of Panama; 8. Public Register of Panama; 9. National Bank of Panama; 10. Ministry of Public Works; 11. National Institute of Culture; 12. Agricultural Development Bank; 13. Office of the People’s Defender; 14. National Public Service Authority; 15. Electoral Tribunal; 16. Technical Judicial Police; 17. Ministry of the Interior and Justice; 18. National Securities Commission; 19. Ministry of Agricultural Development; 20. Office of the Comptroller General of the Republic.

^{xi} See: “Update of the Diagnostic Study of the Panamanian Public Administration,” p. 46. This document was prepared with the support of the Executive Secretariat of the Panama’s National Council for Transparency Against Corruption and the Inter-American Development Bank, and it can be found at: http://www.setransparencia.gob.pa/documentos/02_Actualizacion_Diagnostica_Administracion_Publica_2_006.pdf

^{xii} Document from the Foundation for the Development of Civic Freedom, Panamanian Chapter of Transparency International, pp. 5-6. This information is based on the “Report on the Career Civil Service in Latin America,” published in 2005 by the Inter-American Development Bank, which can be consulted on the internet at: <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=773223>

^{xiii} Article 56 of Law No. 22 of 2006 states that: *“the fundamental principle of public contracting is the contractor selection procedure; however, on an exceptional basis, that procedure need not be observed in the following cases:*

1. *Purchases or leases of goods or services in which there is no more than one bidder or those in which, according to a duly grounded official technical report, there is no appropriate substitute.*
2. *When there is a clear urgency, as indicated in Article 2 (47) of this Law, preventing the time needed for conducting the public contractor selection process.*
3. *When addressing exceptional situations related to emergencies or natural disasters, following a declaration to that effect by the Cabinet.*
4. *Those contracts authorized or regulated by special laws.*
5. *Those the state enters into with autonomous or semiautonomous institutions, municipal institutions or associations of municipalities, or of municipalities with other municipalities.*
6. *Contracts that are simple extensions of existing contracts, providing that the price is no higher than the amount agreed on and that the competent authorities grant their authorization.*
7. *Reallocation contracts for the purchases of real estate and items of property, subject to the corresponding valuation.*
8. *Deeds or contracts covering works of art or technical works, the execution of which may only be entrusted to artists of repute or to recognized professionals.*
9. *Merit-based contracts for science, technology, innovation, and culture, to be regulated by the execution through the Ministry of the Presidency.*
10. *Contracts relating to the civic and state security, and those deemed of urgent local interest or social benefit.”*

^{xiv} The Regulations expand on Article 56 of the Law, defining various legal terms contained therein for example, “duly grounded official technical report,” “clear urgency,” “simple extension,” etc. In some cases, as indicated in Article 172, the Regulations also require plans to use direct contracting to be published, using the *PanamaCompra* electronic public procurement system.

^{xv} Competitive bidding is the contractor selection procedure used for purchases of goods, works, and services for amounts greater than thirty thousand balboas (B./30,000.00) in which the price is the determining factor, once all the requirements and technical issues set out in the request for tenders have been met.

^{xvi} Best value bidding is the contractor selection procedure used for purchases of goods, works, and services for amounts greater than thirty thousand balboas (B./30,000.00) in which the price is not a the determining factor in light of the high level of complexity of the operation. After checking compliance with the minimum requirements and formal considerations set out in the request for tenders (technical, economic, administrative, and financial), the contract is awarded to the bid that secures the greatest number of points per the weighting method specified in the bidding rules.

^{xvii} Bidding for framework agreements is the contractor selection procedure used for purchases of goods and services that are used by the government massively and on a day-to-day basis; selected suppliers are contracted for a specific length of time by means of a framework agreement, which sets the prices and conditions that are to remain in force for a determined duration. These framework agreements are fed into the “Electronic Catalog of Products and Services,” which all public institutions are required to consult when they procure goods or services.

^{xviii} Article 102 of the Law (Articles 368 and 369 of the Regulations) states that the ability to disqualify contractors for noncompliance with contracts and purchasing order is a power of the representative of the contracting office or of the public servant appointed for that purpose, and that disqualification is to be ordered in the same deed as the administrative resolution of the contract is announced. Thus, Article 103 of the Law (Article 373 of the Regulations) stipulates that disqualification, when ordered by a contracting office or the DGCP, shall only have an effect on future operations.

^{xix} Under Article 118 of the Law, the following are grounds for absolute cancellation: *“acts indicated by the Constitution or by law; those that are impossible or that constitute offenses; those entered into under decisions issued by authorities without the power to make such an award; and those carried out without fully following the legally established procedure. These grounds for cancellation may be alleged at any time and by any person.”*

^{xx} Article 119 of the Law states: “*Other breaches of the law shall be merely cancelable, at the request of a person who has a subjective right or whose legitimate interests have been affected within the terms set by this Law for challenging administrative acts and, additionally, by general administrative procedure.*”

^{xxi} The following are grounds for the absolute cancellation of public contracts:

1. When they are entered into by individuals disqualified from contracting in the circumstances determined by the Law.
2. When they are entered into by public servants without absolute competence for contracting.
3. When they violate the Constitution or law, when their content is impossible or constitutes an offense, or when they are entered into without fully following the legally established procedure.
4. When the courts order the cancellation of the awarded contract. In this last instance, the cancellation of a given clause or clauses shall not invalidate the rest of the contract, except when it cannot be executed without the clause(s) in question. (Article 123 of the Law.)

^{xxii} Article 42 of the Regulations states that if the requesting entity is unable to publish the announcement of the bid on *PanamaCompra*, on account of a duly grounded reason or because it is not yet accredited to use it, it shall publish the announcements in a national daily newspaper, in two editions on consecutive days, and it shall also publish them in the location it uses to publish decrees and general announcements for the same length of time.

^{xxiii} Article 229 of the Regulations of Law No. 22 of 2006 defines works contracts as “*those entered into by entities for the construction, maintenance, repair, installation, and, in general, all other forms of material work on real estate and other items of property, irrespective of the form thereof and the payment.*”

^{xxiv} The laws governing contentious administrative jurisdiction are contained in Panama’s Administrative Code: Law No. 135 of 1943, as amended by Law No. 33 of 1946, and Law No. 38 of 2000, which regulates the ruling procedure and sets rules regarding the office of the Administration Attorney.