

MECHANISM FOR FOLLOW-UP ON THE  
IMPLEMENTATION OF THE INTER-AMERICAN  
CONVENTION AGAINST CORRUPTION  
Twelfth Meeting of the Committee of Experts  
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REPUBLIC OF EL SALVADOR

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

**INTRODUCTION**

**1. Contents of the Report**

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

Second, the Report will examine the follow-up to the recommendations that were formulated to the Republic of El Salvador by the MESICIC Committee of Experts in the first round of review, 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\\_slv.pdf](http://www.oas.org/juridico/english/mec_rep_slv.pdf)

**2. Ratification of the Convention and adherence to the Mechanism**

According to the official register of the OAS General Secretariat, the Republic of El Salvador ratified the Inter-American Convention against Corruption on July 9, 1998, and deposited the instrument of ratification on March 18, 1999.

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

**I. SUMMARY OF INFORMATION RECEIVED**

**1. Response of the Republic of El Salvador**

The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of El Salvador, and in particular from the Executive Secretariat of the National Council for Sustainable Development, which was evidenced, *inter alia*, in the Response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its Response, the Republic of El Salvador sent the provisions and documents it considered pertinent.

For its review, the Committee took into account the information provided by the Republic of El Salvador 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 the Rules of Procedure and Other Provisions.

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<sup>1</sup> 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,<sup>2</sup> a document submitted by email from the National Foundation for Development (FUNDE), the Social Initiative for Democracy (ISD), the Foundation for Studies for the Application of Law (FESPAD), and the University Institute of Public Opinion of the Central American University.<sup>3</sup>

## **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. SYSTEMS OF GOVERNMENT HIRING**

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

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

- Constitutional provisions applicable to public servants in general,<sup>4</sup> such as Article 162, which empowers the President of the Republic to appoint, remove, accept resignations from, and dismiss Ministers and Vice-Ministers, as well as the Chief of Public Security and the Chief of State Intelligence; Article 169, which provides that the appointment, removal, acceptance of resignation, and dismissal of officials and employees of the public administration and the armed forces shall be governed by the internal regulations of the executive branch or other applicable laws and regulations, as appropriate; and Article 219,<sup>1</sup> which establishes the civil service career system and states that the law shall govern the civil service and, in particular, conditions for admission thereto; promotion on the basis of merit and aptitude; transfers, suspension, and termination of employment; duties of public servants, and right of appeal against decisions that affect them; the law shall also ensure tenure for public sector employees.

- Statutory provisions applicable public servants in general,<sup>ii</sup> such as those contained in Article 6(c) and (g) of the Government Ethics Law,<sup>5</sup> which, respectively, on ethical grounds prohibit public servants from holding two or more positions simultaneously in the public sector, except where otherwise permitted by law, or from appointing relatives within the fourth degree of consanguinity or the second of affinity to serve in an entity over which they preside or in which they serve.

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<sup>2</sup> This meeting was held from March 27 to 31, 2006, at OAS headquarters in Washington, DC, USA.

<sup>3</sup> This document was received by email on May 25, 2007, and may be consulted on the Internet at: [www.oas.org/juridico/spanish/mesicic2\\_slv\\_inf\\_sc\\_sp.doc](http://www.oas.org/juridico/spanish/mesicic2_slv_inf_sc_sp.doc)

<sup>4</sup> Available at: <http://www.asamblea.gob.sv/constitucion/index1983.htm>

<sup>5</sup> Available at:

[www.csj.gob.sv/leyes.nsf/3006af217f96ecd786256d48006ecfd8/e379220654cd88a8062571990072f4be?OpenDocument](http://www.csj.gob.sv/leyes.nsf/3006af217f96ecd786256d48006ecfd8/e379220654cd88a8062571990072f4be?OpenDocument)

- Statutory provisions applicable to most public servants, among which the following should be noted:

- The Civil Service Law,<sup>6</sup> the specific purpose of which is to govern relations between the State and the municipality on one hand, and their officials and employees on the other; ensure protection for the latter and efficiency in public and municipal administration, and organize the civil service career system through staff recruitment and promotion based on merit and aptitude (Article 1). Article 4 of the Law identifies the officials and public sector employees who are not encompassed by the civil service career system,<sup>iii</sup> notwithstanding that they shall be bound by the duties and prohibitions set forth in said Law, and be subject to the liabilities established therein (Article 5). The Law creates the Civil Service Commissions and the Civil Service Tribunal as the bodies responsible for the Law's administration (Article 6). Article 7 provides that each agency of the public administration shall have a civil service commission, which, among other powers, shall select eligible candidates to enter the civil service career system (Article 12). The Civil Service Tribunal shall enjoy the powers granted by Article 13, which shall include examination of appeals for review and reversal presented against final decisions of Civil Service Commissions, as well as any challenges lodged against other decisions adopted by civil service commissions or agency chiefs. Article 20 of the Law provides that recruitment of civil service personnel shall be done by means of suitability tests under which only applicants who meet the requirements set forth in Article 18 shall be admitted,<sup>iv</sup> except in the case of the positions for which the law expressly states otherwise.<sup>7</sup> For their part, Articles 21, 22, and 23 contain the recruitment procedure, from the call for applications to selection of the successful applicant. Furthermore, Article 68 of the Law provides that any appointment made in contravention of the provisions it contains shall be void, and that the Civil Service Tribunal is the organ with jurisdiction to decide such cases.

- The Municipal Civil Service Law,<sup>8</sup> which applies to all municipalities in the State (Article 4). One of its purposes is to ensure the recruitment of suitable personnel into the municipal civil service on the basis of merit and aptitude, through procedures that allow for participation on an equal footing for anyone who aspires to a position in the municipal civil service (Article 23). Chapter I of Title IV of the Law governs the admission process and employment relations in the Municipal Civil Service System, except with regard to the positions mentioned in Article 2.<sup>v</sup> this process shall be carried out by means of open competitions (Article 28) convened by the Municipal Council, the Mayor, or the highest administrative authority, as appropriate, based on the principles of equality, merit, capacity, and disclosure (Article 24); Municipal Committees are the organs responsible for conducting such processes (Article 25). Article 29 governs suitability tests, which shall be evaluated according to objective and impartial criteria based on predetermined parameters, while Article 31 sets out the candidate selection procedure. Articles 55 and 56 provide, respectively, for the creation of the National Registry of the Municipal Civil Service System and the Municipal Registries of the Municipal Civil Service System as the offices that collect all career information on municipal officials and employees as well as officials and employees of other entities covered by this Law. Furthermore, Articles 78 and 79 of the Law establish appeals for reversal and review, respectively, of administrative decisions. The former are lodged with Municipal Committees or labor courts with jurisdiction in this area, to uphold or overturn the decision challenged; and the second with the appropriate Chamber, to confirm, amend, or overturn the challenged judgment or decision.

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<sup>6</sup> Available at: [www.cnj.gob.sv/Documentos/Leyes/Ley%20de%20Servicio%20Civil.pdf](http://www.cnj.gob.sv/Documentos/Leyes/Ley%20de%20Servicio%20Civil.pdf)

<sup>7</sup> See endnote iv.

<sup>8</sup> Available at:

[www.csj.gob.sv/leyes.nsf/3006af217f96ecd786256d48006ecfd8/0ab8a9638409a53a062571990073891d?OpenDocument](http://www.csj.gob.sv/leyes.nsf/3006af217f96ecd786256d48006ecfd8/0ab8a9638409a53a062571990073891d?OpenDocument)

- The Labor Code,<sup>9</sup> which governs not only labor relations between employers and workers in the private sector, but also labor relations between the State, municipalities, autonomous and semiautonomous official institutions and their workers. The provisions contained in this Code do not apply when the relationship between the State and its employees is of a public nature and originates from an administrative act or arises from a professional or technical services contract (Article 2).

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

- The Internal Regulations of the Legislative Assembly,<sup>10</sup> Article 147 of which provides that the Officers of the Legislative Assembly shall appoint the employees of the different offices of the Assembly in accordance with the Salaries Law and may also enter into contracts, according to the needs of each area.

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

- The Judicial Career Law,<sup>11</sup> the purpose of which, *inter alia*, is to govern the manner and conditions of entry of judicial officials and employees to the career system based on merit and aptitude. Articles 15 and 16 of the Law provide that candidates to jurisdictional and non-jurisdictional posts shall be subject to technical selection procedures, which shall ensure an objective selection, equal opportunity for candidates, as well as the suitability of those selected. Such procedures shall include competitive examinations and instruction at the Judicial Training School.

- The National Judicature Council Law,<sup>12</sup> which provides that one of the purposes of this agency is to contribute as a collaborating body in the administration of the judicial career system, as well as to enhance efficiency, modernity, and integrity in the judiciary, in order to ensure the aptness, competence, efficiency, and honesty of judiciary personnel. Furthermore, the articles contained in Title III, Chapters I and II of the Law provide that the selection procedure for members of the Supreme Court of Justice, appeal court judges, trial court judges, and justices of the peace shall entail preparation of lists of candidates who meet the requirements and conditions set forth in the Constitution and the law; the final choice is selected by the Legislative Assembly or the Supreme Court, as appropriate, from a shortlist of three names, in accordance with the Selection Guidelines created by the National Council, which set out the principles and techniques meant to ensure objectiveness, equality, and suitability in the selection process and composition of candidate shortlists (Article 63).

- The General Regulations on the Judicial Career Law,<sup>13</sup> Article 13 of which provides that the requirements to hold positions in the judicial career system shall be determined by the Constitution,

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<sup>9</sup> Available at:

[www.csj.gob.sv/leyes.nsf/ed400a03431a688906256a84005aec75/46004eae5770911c06256d05005d7c3f?OpenDocument](http://www.csj.gob.sv/leyes.nsf/ed400a03431a688906256a84005aec75/46004eae5770911c06256d05005d7c3f?OpenDocument)

<sup>10</sup> Available at:

[www.csj.gob.sv/leyes.nsf/d99c058e0c4c391306256a8400738426/387b653f07fa67680625715500572794?OpenDocument](http://www.csj.gob.sv/leyes.nsf/d99c058e0c4c391306256a8400738426/387b653f07fa67680625715500572794?OpenDocument)

<sup>11</sup> Available at:

[www.csj.gob.sv/leyes.nsf/573c31a9ec6b1be386256d4800712a63/94b50beeb8c8c6540625644f00688c6b?OpenDocument](http://www.csj.gob.sv/leyes.nsf/573c31a9ec6b1be386256d4800712a63/94b50beeb8c8c6540625644f00688c6b?OpenDocument)

<sup>12</sup> Available at:

[www.csj.gob.sv/leyes.nsf/573c31a9ec6b1be386256d4800712a63/c0f8b8f55b87f8b9062567f5007b08c7?OpenDocument](http://www.csj.gob.sv/leyes.nsf/573c31a9ec6b1be386256d4800712a63/c0f8b8f55b87f8b9062567f5007b08c7?OpenDocument)

<sup>13</sup> Available at:

[www.cnj.gob.sv/Documentos/Leyes/REGLAMENTO%20GENERAL%20DE%20LA%20LEY%20DE%20LA%20CARRE%20RA%20JUDICIAL.pdf](http://www.cnj.gob.sv/Documentos/Leyes/REGLAMENTO%20GENERAL%20DE%20LA%20LEY%20DE%20LA%20CARRE%20RA%20JUDICIAL.pdf)

applicable laws, and the conditions set down in the Job Classification Manual. For its part, Chapter IV of these Regulations establishes the basic rules on selection and entry to the judicial career system applicable in the absence of any special regulations that provide a different procedure (Article 14).

- The Regulations on the National Judicature Council Law,<sup>14</sup> of which Title III, Chapters I and II, contain the rules governing the statutory selection procedures for members of the Supreme Court of Justice, appeal court judges, trial court judges, and justices of the peace, as well as the process for filling vacant executive or technical positions in the Council by means of public competitions (Article 106), without prejudice to the possibility beforehand of internal selection processes among officials and employees who have already been appointed or hired by the Council and meet the job requirements, in the interests of a sound personnel development and promotion policy (Article 107).

- The Judicial Branch Job Classification Manual,<sup>15</sup> the specific objectives which are to define the job categories that encompass all positions in the judicial branch; establish a classification system for the titles of existing positions grouped under generic categories, in order to facilitate their identification and management; prepare general job descriptions, stipulating minimum requirements, responsibilities, powers, and hierarchical relations; establish the necessary guidelines for the inclusion of positions and staff in the system of benefits arising from the Judicial Career Law; and serve as the basis for the creation of the seniority listing and pay grades, in order to ensure good salary administration.

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

- The Court of Accounts Law,<sup>16</sup> Article 7 of which provides that the President of the Court shall appoint, remove, grant leave to, and accept the resignations of the Court's officials and employees, and shall also contract on a temporary basis professionals and experts with specialized knowledge to perform specific tasks or provide support in the Court's operations, except as determined at Article 196 (3) of the Constitution. Article 12 says that the President of the Court shall adopt the Staff Rules, which shall include the duties, rights and powers, seniority listing, job ratings, and career schedule for entry, tenure, and promotion of Court employees, bearing in mind that entry into the service of the Court shall be prohibited to anyone who is a relative within the fourth degree of consanguinity or second of affinity of the President of the Court or the judges of the Court of Second Instance thereof, or their advisers, directors, deputy directors, audit judges, department chiefs, or any other official of similar rank. (Article 10).

- The Organic Law of the Office of the Prosecutor General,<sup>17</sup> Article 46 of which creates the Prosecutor's Career System<sup>vi</sup> to government employment relations between the institution and its officials, as well as Article 49, which provides that the regulations governing the prosecutor's career system shall apply, in particular, to aspects such as selection, entry, and hiring of personnel by means of public competition.

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<sup>14</sup> Available at:

[www.csj.gob.sv/leyes.nsf/d99c058e0c4c391306256a8400738426/625639683ddc1f2706256e1d00636889?OpenDocument](http://www.csj.gob.sv/leyes.nsf/d99c058e0c4c391306256a8400738426/625639683ddc1f2706256e1d00636889?OpenDocument)

<sup>15</sup> Available at:

[www.csj.gob.sv/leyes.nsf/ed400a03431a688906256a84005aacc75/4953a508b74ceb5e0625644f0067f95c?OpenDocument](http://www.csj.gob.sv/leyes.nsf/ed400a03431a688906256a84005aacc75/4953a508b74ceb5e0625644f0067f95c?OpenDocument)

<sup>16</sup> Available at: [www.cortedecuentas.gob.sv/documentos/leyes/ley\\_cdc.html](http://www.cortedecuentas.gob.sv/documentos/leyes/ley_cdc.html)

<sup>17</sup> Available at: [www.fgr.gob.sv/sitio/leyorganica.asp](http://www.fgr.gob.sv/sitio/leyorganica.asp)

- The Court of Accounts Staff Rules,<sup>18</sup> Chapter IV of which sets out staff recruitment and selection procedures. Article 12 provides that the following phases shall be observed in staff recruitment: determination of staffing needs, staff requisition request, determination of recruitment sources, and call for candidates. For its part, Article 13 provides that having received the staff requisition request, the Personnel Department shall hold a competition open only to Court staff and, if there is only one candidate, he or she shall be promoted directly; if none of the existing staff are suitable, an external competition shall be held. With respect to competitive selection, the following phases shall be observed in sequence: competitive evaluation of minimum requirements according to the Job Description Manual; interview; background check; knowledge test; psychological and technical aptitude test; preparation of lists of eligible candidates; medical examination; technical interview; selection; three-month probation period, and permanent appointment (Article 14).

- The Prosecutor's Career Regulations,<sup>19</sup> Chapter IV applies to staff recruitment and selection processes; Article 29 sets out the factors to be evaluated, such as existence of a vacancy or a new position; the genuine need for staff; written staff requisition request; determination of recruitment sources and call for potential candidates. With respect to the selection procedure, this shall contain the stages for competitive evaluation of minimum requirements in accordance with the job description manual; psychological and technical aptitude and technical knowledge tests; interviews; background checks; preparation of lists of eligible candidates; hiring proposal presented to the Prosecutor General; hiring on condition of completion of a probation period; report on performance during the three-month probation period; and permanent hiring and entry to the prosecutor's career system upon termination of contract (Article 31).

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

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

Notwithstanding, the Committee considers it appropriate to make a number of observations regarding the advisability that the country under review consider complementing, developing, and adapting certain legal provisions that refer to those systems.

- With respect to the majority of public servants, the Committee notes the following:

Due to its general application and direct treatment of the issue, the Civil Service Law is the body of rules with the greatest scope as regards government hiring systems. Its core objectives are, *inter alia*, to ensure the entry of suitable personnel to the public administration on the basis of merit and aptitude through procedures that allow participation on equal terms for anyone who aspires to join the civil service. However, the Committee notes, without prejudice to the contents of Chapter IV, a deficit of provisions on development of the different stages of the personnel recruitment and selection procedures, which could be detrimental to the objectiveness, efficiency, and transparency of government hiring systems in the Republic of El Salvador. Accordingly, the Committee draws attention to the importance that the country under review consider developing, through appropriate legal and administrative procedures, the different stages that comprise the personnel recruitment and selection processes in the public administration, through adoption of clearly defined provisions and

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<sup>18</sup> Available at: [www.cortedecuentas.gob.sv/documentos/reglamentos/reg\\_interno.html](http://www.cortedecuentas.gob.sv/documentos/reglamentos/reg_interno.html)

<sup>19</sup> Available at:

[www.csj.gob.sv/leyes.nsf/d99c058e0c4c391306256a8400738426/dd1137fbb2464cc4062572fa0058ef3d?OpenDocument](http://www.csj.gob.sv/leyes.nsf/d99c058e0c4c391306256a8400738426/dd1137fbb2464cc4062572fa0058ef3d?OpenDocument)

guidelines, in particular on calls for candidates, as well as the requirements, content and dissemination thereof; staging of processes, terms and conditions, and assessment of suitability tests, as well as selection of candidates and their subsequent appointment as new employees, ensuring the principles of openness, equity, and efficiency provided in the Convention (See Recommendation 1.1.1(a) in Chapter III, Section 1.1 of this Report).

The foregoing notwithstanding, the Committee calls attention to the provisions contained in Article 4, paragraph (m), of the Civil Service Law, which provides that not subject to the regulations of the law are any persons that provide any sort of service to the public institutions under contract. With respect to these persons, the Committee understands that their rights and obligations would be governed by the provisions contained in Article 2(b) of the Labor Code, unless the employment relationship is of a public nature and originates from an administrative act. In this connection, the Committee is concerned at the situation of private citizens who are employed in the public administration under work contracts without clear and established rules governing their employment relations, functions, and the liability rules in keeping therewith. In that regard, the Committee emphasizes the importance that the country under review have standards and mechanisms governing employment in the public administration of staff under work and professional services contracts, so as to ensure reliable verification of aptness, merits, competencies, and attitudes suitable for the exercise of the functions corresponding to the position to be held, based on the principles of openness, equity, and efficiency provided in the Convention. (See Recommendation 1.1.1(b), in Chapter III, Section 1.1 of this Report).

With respect to the bodies responsible for implementing the Civil Service Law (Civil Service Commissions and Tribunal) described in the preceding section, the Committee notes that the set of provisions contained in Chapter II of this Law constitute an adequate framework for the administration and control of government hiring systems. Nonetheless, the Committee urges the Republic of El Salvador to consider continuing to strengthen those bodies and ensure that they have available the necessary support and resources, should they be insufficient, to perform their functions properly, as well as consider developing and, as appropriate, consider strengthening mechanisms for the effective institutional coordination of their actions. (See Recommendation 1.1.1(c), in Chapter III, Section 1.1 of this Report).

Notwithstanding the provisions contained in Article 68 of the Civil Service Law on the nullity of any appointment in contravention of said Law, the Committee observes an inadequacy of mechanisms to challenge substantive decisions in staff recruitment and selection procedures, such as terms and conditions of competitions, rejection of applicants, selection of the winner, shortlist selection, grading of suitability tests, etc. In this connection, the Committee urges the country under review to consider strengthening and ensuring the proper dissemination of the provisions that establish, through administrative and judicial channels, challenge mechanisms for the purpose of clarification, modification, or revocation of the substantive acts that make up personnel recruitment and selection procedures, and consider ensuring timely, and objective, impartial, and effective processing. (See Recommendation 1.1.1(d), in Chapter III, Section 1.1 of this Report).

- With respect to the public servants in the municipal civil service, the Committee notes the following:

The Municipal Civil Service Law is the body of rules with the broadest scope in terms of hiring systems at this level of government. Like the Civil Service Law, the purposes of this law are, *inter alia*, to ensure the entry of suitable personnel to the municipal civil service on the basis of merit and

aptitude, through procedures that allow participation on equal terms for anyone who aspires to join the civil service. However, with respect to the candidate selection process provided at Article 31 of the Law, the Committee notes an absence of clear and objective criteria for selecting the winning competitor from the shortlist proposed by the Municipal Commission to the Municipal Council, the mayor, or the highest ranking administrative authority. In this connection, the Committee urges the country under review to consider adopting, through appropriate legal or administrative procedures, clear and compulsory mechanisms that ensure objectiveness in final decisions. (See Recommendation 1.1.2(a), in Chapter III, Section 1.1 of this Report).

Articles 55 and 56 of the Law provide, respectively, for the creation of the National Registry of the Municipal Civil Service System and the Municipal Registries of the Municipal Civil Service System. In view of the advisability of having both types of registry, the Committee urges the country under review to consider promoting their strengthening and to consider granting the Salvadoran Institute for Municipal Development the necessary oversight powers to monitor proper compliance with this obligation. (See Recommendation 1.1.2(b), in Chapter III, Section 1.1 of this Report).

- With respect to the legislative branch, the Committee notes the following:

As mentioned in the foregoing section, Article 147 of the Internal Regulations of the Legislative Assembly provides that the Officers of the Legislative Assembly shall appoint the employees of the different offices of the Assembly, in accordance with the Salaries Law and by means of contracts entered upon in accordance with the needs of each area. With respect to this point, and reiterating the observations made in connection with the majority of public servants, the Committee draws attention to the importance that the Republic of El Salvador State consider strengthening, through appropriate legal and administrative procedures, government hiring systems in the legislative branch, ensuring their openness, equity, and efficiency. In this regard, the Committee suggests that the Republic of El Salvador consider adopting clear and specific provisions to govern the legislative branch recruitment system based on the principles of merit, equality, and transparency, including control mechanisms and governing or administrative authorities to monitor compliance with selection standards and employment opportunity dissemination mechanisms, as well as challenge mechanisms for the purposes of clarification, modification, or revocation of substantive decisions in legislative branch hiring processes. (See Recommendation 1.1.3 in Chapter III, Section 1.1 of this Report).

- With respect to the judicial branch, the Committee notes the following:

The Republic of El Salvador has an up-to-date, specific set of rules on government hiring in the judicial branch, as evinced by the Judicial Career System and National Judicature Council Laws and their respective regulations, as well as by the Judicial Branch Job Classification Manual, which are cited in the preceding section. That said, the Committee deems it appropriate to reiterate its comments with respect to the majority of public servants as regards the importance that the country under review consider strengthening this system through adoption of provisions setting out the obligation to announce through mass media, such as national newspapers and/or Internet websites, vacancies in the judicial branch, as well as the content and form thereof, and the amount of advance notice required in their publication, in accordance with the principle of openness recognized in the Convention. (See Recommendation 1.1.4 in Chapter III, Section 1.1 of this Report).

- With respect to oversight bodies, the Committee notes the following:

As in the case of the judicial branch, the country under review has an up-to-date government hiring system where its oversight bodies are concerned. The hiring systems of these agencies, in particular the Court of Accounts and the Office of the Prosecutor General, are mainly contained, respectively, in the Court of Accounts Law and its Staff Rules and in the Organic Law of the Office of the Prosecutor General and the Prosecutor's Career Regulations. Nevertheless, in both systems, the Committee notes the existence of inadequate provisions setting out the obligation to announce through mass media, such as national newspapers and/or Internet websites, vacancies to be filled in those institutions and the amount of advance notice required in their publication. By the same token, Committee is unable to identify specific provisions containing mechanisms to challenge substantive decisions in staff recruitment and selection procedures in the Office of the Prosecutor as well as in the Court of Accounts. Consequently, the Committee will make a recommendation to the country under review that it consider strengthening its hiring system in both oversight bodies, through adoption, in either system, of provisions that provide for the compulsory publication of vacancies or positions to be filled and the content and form thereof, as well as implementation, based on the principles of due process and legality, of challenge mechanisms by which to ensure openness, equity, and efficiency in both systems in accordance with the Convention. (See Recommendation 1.1.5 (a) and (b) in Chapter III, Section 1.1 of this Report).

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

The Republic of El Salvador did not supply information on results in this area. Accordingly, in addition to highlighting the importance of providing a complete response to the questions on results in the Questionnaire, the Committee will make a recommendation in this regard. (See Recommendation 1.1.6 in Chapter III, Section 1.1 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 El Salvador has a set of provisions related to the above-mentioned systems, among which the following should be noted:

- Constitutional provisions, such as those found in Article 234, which provides that when the State, including its municipalities, has to enter into contracts in order to carry out works or procure goods and services for which public funds or assets are to be committed, such works or supply contracts shall be submitted to public tender except where the law determines otherwise.

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

- Government Procurement and Contracting Law (*Ley de Adquisiciones y Contrataciones de la Administración Pública - LACAP*)<sup>20</sup> and its Regulations,<sup>21</sup> applicable to all procurement and contracting procedures carried out by state organs, offices, auxiliary agencies, entities, and

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<sup>20</sup> Available at: [www.comprasal.gob.sv/moddiv/HTML/docs/LACAP.pdf](http://www.comprasal.gob.sv/moddiv/HTML/docs/LACAP.pdf)

<sup>21</sup> Available at: [www.mh.gob.sv/moddiv/HTML/docs/REGTOLACAP.doc](http://www.mh.gob.sv/moddiv/HTML/docs/REGTOLACAP.doc)

municipalities, except those mentioned in Article 4 of the Law.<sup>vii</sup> Notable among these provisions are the following:

- Article 39 of the Law,<sup>viii</sup> which mentions that the modalities of contract governed by this Law (public works, supply, consulting, concessions, and property lease),<sup>22</sup> shall be entered into by: a) Open public tender or competition (Articles 59 to 65 of the Law and 36 to 50 of the Regulations); b) Limited public tender or competition (Articles 66 and 67 of the Law and 51 of the Regulations); c) freely negotiated contract (Articles 68 to 70 of the Law and 52 and 53 of the Regulations);<sup>23</sup> d) direct contracting (Articles 71 to 73 of the Law and 54 and 55 of the Regulations),<sup>ix</sup> and, e) Equity market.<sup>24</sup> Article 24 (additional provision) provides that outside of the aforementioned contracts, institutions may engage in contracts in accordance with the rules provided by common law and, as applicable, subject to the provisions of this Law concerning their preparation, award, and performance.
- As to the amounts that determine which of the above-mentioned procurement modalities are appropriate and applicable in each instance, Article 40 of the Law provides: a) open public tender: for amounts in excess of the equivalent of six hundred thirty-five (635) times the urban minimum wage<sup>25</sup>; b) limited public tender: for amounts equivalent to between eighty (80) and six hundred thirty-five (635) times the urban minimum wage; c) freely negotiated contracts: for amounts less than the equivalent of eighty (80) times the urban minimum wage, including a comparison of quality and prices and in which at least three bidders must be involved, except where the procurement or contracting operation does not exceed the equivalent of ten (10) times the urban minimum wage and when the operation involves a single bidder or specific brands in which a single bidder shall suffice; a reasoned resolution shall be issued in that regard. There shall be no ceiling on amounts in direct contracting, bearing in mind the special nature of the grounds on which they are based. In this regard, Article 58 of the Law provides that government procurement and contracting operations may not be subdivided in order to modify the amount thereof and, thus, evade the requirements established for the different modalities of contracting governed by this Law, on pain of nullity and imposition of the applicable statutory penalties.
- Articles 6, 9 and 20 of the Law which create, respectively, the Government Procurement and Contracting Regulatory Unit (UNAC) as the regulatory authority of the Government Procurement and Contracting System (SIAC), which is an agency of the Ministry of Finance (Articles 7 and 8 of the Law and 4 of the Regulations); the Institutional Procurement and Contracting Units (UACI), in each government institution to be in charge of operational decentralization and all activities connected with the management of government procurement

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<sup>22</sup> See Article 22 de the Government Procurement and Contracting Law.

<sup>23</sup> Freely negotiated contracts are the procedure by which institutions procure goods and services for their regular needs that are publicly available at national and international warehouses, manufacturing centers, or shopping malls. This procedure shall also be applied in contracts for works and individual consultants where the amount does not exceed eighty (80) times the urban minimum wage (Article 68 LACAP).

<sup>24</sup> Contracting operations in the equity market are defined as those carried out by institutions in operations conducted on legally constituted exchanges, when advisable for public interests. Procurement operations conducted in this way shall be regulated by specific laws, such as the Securities Market Law (*Ley del Mercado de Valores*), the Business Code (*Código de Comercio*), and the Book-Entry Securities Law (*Ley de Anotaciones Electrónicas de Valores en Cuenta*).

<sup>25</sup> The unit of measure is the “urban minimum wage,” which is set by executive order issued by the President of the Republic on the recommendation of the National Minimum Wage Board (*Consejo Nacional de Salario Mínimo*). At present, the urban minimum wage comes to US\$5.81 for a regular day’s work performed during daytime hours by workers in commercial and services sectors anywhere in the Republic (Executive Order 83/2006).

and contracting (Articles 10 to 13 of the Law and 7 and 8 of the Regulations); and the Bid Appraisal Commissions in charge of grading bids in national and international, open and limited public tenders and competitions. Furthermore, Article 18 of the Law provides that the head of the government agency in question shall be the competent authority that awards contracts and approves the terms and conditions of tenders and competitions,<sup>x</sup> as well as the person responsible for ensuring strict observance of this Law. It should also be noted that under Article 18, the competent authority may, subject to the appropriate legal formalities, appoint another person to formalize the awarding of procurements and contracts that do not exceed the limit for freely negotiated contracts, as may the executive councils or boards of autonomous institutions, in order to facilitate their administration.

As regards control mechanisms, without prejudice to the imposition of appropriate punitive measures arising from criminal and/or administrative proceedings, Articles 150 to 157 of the Law provide a system of penalties for government officials and employees who commit any of the infringements and/or prohibited conduct mentioned in the Law. These penalties include: a) dismissal (Article 152 of the Law); written reprimand (Article 153 of the Law); and suspension without pay (Article 154). Furthermore, in the case of private citizens, Article 158 of the Law provides for disqualification from government contracts for a period of one to five years depending on the seriousness of the fault, without prejudice to the appropriate criminal and/or administrative punitive measures in each case. Article 159, for its part, provides that no new contract shall proceed until the bidder has paid any outstanding fines, shortfalls, or damages that may have arisen due to the total or partial nonperformance of a previous contract. The competent authority to impose the aforementioned penalties is the head of the institution concerned, and where the infringement is attributable to them, the appropriate superior shall take up the matter (Article 156 of the Law).

- Article 7(i) of the Law, which provides that one of the functions of the UNAC is to create and keep current a National Government Procurement Registry, which shall be of public interest and include up-to-date information on the nature, status, value, and performance by bidders of their obligations under government contracts. For its part, Article 5 of the regulations provides that this national registry shall constitute the statistical basis for government contracting for state purposes and shall include up-to-date information on any individuals and legal persons who have breached their contractual obligations and been excluded by government institutions, as well as providing specific details regarding the length of their disqualification and the nature of the breach.

Article 12(1) of the Law provides that one of the functions of UACIs is to keep an up-to-date registry of contractors, in particular when works, goods, or services do not meet the terms of the contract or the contractor commits any breach, based on contract performance evaluations. Furthermore, Article 13 of the Law also makes it an obligation for UACIs to create and keep up-to-date a database containing basic information on bidders and their performance history in government contracts. At the same time, all institutions, through the UACI, are required to keep a registry of bidders and contractors, so as to have a record of information on nonperformance and other aspects that might be relevant for the purposes of future contracts or disqualifications (Article 14 of the Law). Finally, UACIs shall also keep a record of all contracts undertaken over the previous 10 years, in order to permit evaluation and oversight by competent agencies and authorities (Article 15 of the Law).

- Article 7(f) of the Law, which states that one of the functions of the UNAC is to support implementation of measures of a general nature designed to enhance administrative, operational, technical, and economic aspects of the Government Procurement and Contracting System (SIAC). In that connection, the information technology component of the SIAC, known as COMPRASAL ([www.comprasal.gob.sv](http://www.comprasal.gob.sv)) was created in order to enhance transparency in government contracting processes, make information about government procurement available to the public, offer providers the possibility to access information, make processes more efficient, and create a saving in transaction costs, lowering prices and increasing competitiveness. At present only the first module of this electronic portal, known as MODDIV (which stands for dissemination module (*módulo de divulgación*)) is online. This module may be consulted for information on calls for bids and the results thereof, database of ineligible contractors, procurement plans, opportunities and legal instruments for management of government purchases through freely negotiated contracts, frequently asked questions on how the system operates, up-to-date news on government purchases, as well as links to the UACIs at various government institutions.
- Article 104 of the Law (Article 68 of the Regulations),<sup>xi</sup> which sets out the rules governing public works contracts, the obligations of which shall be governed by the contract clauses, contract documents, the provisions of this Law and applicable common law provisions. Article 105 of the Law, for its part, provides that turnkey contracts<sup>xii</sup> shall be permitted, subject to verification of the advantages offered by this modality of contract over the others stipulated in the Law, or in the case of especially complex projects.

The rules on public works contracts provided in the Law include provisions regarding preparation of prior engineering studies on the land where the project is to be constructed (Article 107 of the Law); precautions and suspension of the project (Article 108 of the Law); modifications to ongoing contracts by means of changes ordered due to verified unforeseen circumstances (Article 109 of the Law); follow-up on project execution and contract performance (Article 110 of the Law); works schedule (Article 111 of the Law); withholdings as guarantee against any liability arising from full or partial nonperformance of contractual obligations, and their repayment (Article 112 of the Law); conclusion of the project by the guarantor (Article 113 of the Law); provisional delivery, period of review and final delivery of the project (Articles 114 al 116 of the Law); redemption of guarantees (Article 117 of the Law); and hidden defects in the finished work (Article 118 of the Law).

- Article 27 of the Law (Article 24 of the Regulations), which sets out the grading elements for selecting potential bidders, bearing in mind, at least the following criteria: a) experience and results achieved in other similar works, including the history of subcontractors, when the contract entails subcontracting; and quality assurance certificates, subject to availability; b) suitable personnel, installed capacity, available plant and equipment in optimal conditions for carrying out the project; c) legally attested solid financial position; and, d) existence of other contractual obligations and the status thereof. For the purposes of bid appraisal, Article 55 of the Law (Article 48 of the Regulations) states that the appropriate commissions shall evaluate their technical and economic-financial aspects, based on the criteria set down in the terms and conditions of the tender or competition, which shall be objective, measurable or quantifiable, and non arbitrary.

For its part, Article 2 of the Regulations provides that government procurement and contracting shall be governed by the principles of openness; free competition and a quality; rationality in public spending and centralized standards, as well as decentralized operation.

- Articles 76 and 77 of the Law, which address, respectively, the propriety and processing of appeals for review as mechanisms to challenge any decision issued in procurement procedures that impair the rights of private individuals.

Furthermore, Article 101 of the Law provides for the nullity of any contracts governed by the law in the event of any of the following circumstances in preparatory acts or award of the contract: a) incapacity under this Law; b) commission of an infringement or prohibited conduct expressly punished with nullity; c) any excess committed in any of the established amounts for contracting; and, d) any other applicable grounds recognized by common law.

- The Organic Law of the State Financial Administration System (*Ley Orgánica de la Administración Financiera del Estado*),<sup>26</sup> the purpose of which is to govern and harmonize financial management in the public sector as well as to create the integrated financial administration system which encompasses the budget, Treasury, public credit, and government accounting subsystems. Article 42 of this Law prohibits disposal and use of funds for which there are no uncommitted budget balances, all for purposes other than those provided in the budget. Article 43 prevents both heads and officials in public sector entities and institutions from entering into negotiations, adopting commitments, or signing contracts that commit public funds not provided in the budget. All commitments adopted or contracts signed in contravention of the Law shall be null and void.

- The Procurement Management Manual applicable to the Central Government, Autonomous State Institutions and Municipalities,<sup>27</sup> issued by the UNAC, the purposes of which are to set the frame of reference in which each institution should proceed with respect to procurement and contracting; defying responsibilities; serve as an oversight and control tool, and facilitate development and simplification of working practices and procedures with a view to standardizing procurement procedures and forms; facilitate implementation of corrective measures in the event of discrepancies between standards and decisions adopted; encourage unification of criteria among institution staff, and provide support for processes and ensure transparency therein

- The Rules on Registration of Disqualified Persons (UNAC Guideline 2/2005),<sup>28</sup> the objective of which is to guide institutions in the registration of disqualified bidders and contractors for the purposes of reporting them to the UNAC for inclusion in the relevant database, pursuant to Articles 7(c), 12(q), and 158 of the LACAP.

- The Rules on Registration of Violations Committed by Bidders and Contractors (UNAC Guideline 3/2005),<sup>29</sup> the aim of which is to guide institutions in the registration of violations by bidders and contractors in compliance with standards and to keep said registry current, pursuant to Articles 7(c), 12(l), 13 and 14 of the LACAP.

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<sup>26</sup> Available at: [www.mop.gob.sv/archivo/pdf/ley\\_administracion\\_financiera.pdf](http://www.mop.gob.sv/archivo/pdf/ley_administracion_financiera.pdf)

<sup>27</sup> Available at: [http://intranet.mag.gob.sv/asp/adquisiciones/goes/docs/MANUAL\\_UACI.pdf](http://intranet.mag.gob.sv/asp/adquisiciones/goes/docs/MANUAL_UACI.pdf)

<sup>28</sup> Available at: [www.mh.gob.sv/moddiv/HTML/docs/Instructivo%20Registro%20de%20excluidos\\_1\\_.pdf](http://www.mh.gob.sv/moddiv/HTML/docs/Instructivo%20Registro%20de%20excluidos_1_.pdf)

<sup>29</sup> Available at: [www.mh.gob.sv/moddiv/HTML/docs/Instruct.%20Registro%20de%20incumplidos%20aprobado.pdf](http://www.mh.gob.sv/moddiv/HTML/docs/Instruct.%20Registro%20de%20incumplidos%20aprobado.pdf)

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

With respect to the legal and regulatory provisions governing the principal government procurement systems in the country under review, the Committee notes that, on the basis of the information available to it, they may be said to constitute a set of measures that are relevant for promoting the purposes of the Convention.

Due to their general application and direct treatment of the issue, the Government Procurement and Contracting Law (LACAP) and its Regulations constitute the legal framework with the greater scope as regards government procurement systems. The core objectives of both bodies of laws are, *inter alia*, to ensure that the procurement and contracting operations of government institutions are carried out in a transparent, prompt, and timely manner, assuring suitable and equitable procedures subject to open public tender, except where provided otherwise by the law, in accordance with Article 234 of the Constitution. Notwithstanding the foregoing, the Committee believes it would be appropriate for it to offer a number of comments regarding the advisability that the Republic of El Salvador give consideration to reinforcing the legal framework and measures that it has in place in this area by taking the following into account:

In first place, as regards the governing bodies of the Government Procurement and Contracting System (SIAC) described in section 1.2.1, the Committee finds that the set of provisions that the Republic of El Salvador has in place constitute an adequate framework for the management and control of the system. Having said that, it is pertinent to draw attention to the importance that the country under review consider continuing to strengthen those bodies so that they have available the necessary support and resources, should they be insufficient, to perform their functions properly, and that it develop and, as appropriate, consider strengthening mechanisms for the effective institutional coordination of their actions as well as the ongoing evaluation and follow-up thereof. In this connection, the Committee believes that this strengthening should center in particular on the Government Procurement and Contracting Regulatory Unit (UNAC), the SIAC regulatory authority, as well as on the Institutional Procurement and Contracting Units (UACIs), bearing in mind the importance of their functions and responsibilities. (See Recommendation 1.2.1. in Chapter III, Section 1.2 of this Report).

In second place, as regards mechanisms of control, the Committee notes the existence of a system of penalties for private citizens and government officials who fail to comply with or violate any of the provisions that govern goods procurement, works construction, and non-personal services contracting processes contained in the LACAP. However, in order to have more control mechanisms in place, the Committee believes that the Republic of El Salvador could consider developing and implementing provisions that provide for the selection of an entity to carry out the work of auditing, control, and oversight of contracts of a certain amount and/or complexity, as well as consider creating citizen oversight offices to carry out monitoring and follow-up on pre-contractual processes and on the execution of those contracts, having regard to their nature, importance and/or magnitude. Furthermore, with respect to periodic accountability by providers and contractors, as well as by persons or entities directly in charge of supervision, control, and oversight of contract performance, the Committee finds that the standards in this regard are inadequate and, therefore, suggests the development of provisions governing implementation and disclosure of mechanisms connected with these aspects, which would constitute a significant stride in promoting the purposes of Article III(5) of the Convention. (See Recommendation 1.2.2 (a), (b), and (c), in Chapter III, Section 1.2 of this Report).

The Committee also deems it appropriate that the Republic of El Salvador study the possibility of establishing mechanisms to prevent disqualified corporations from changing their designation or trade name in order to re-enable them to contract with the State. (See Recommendation 1.2.2, (e) in Chapter III Section 1.2 of this Report).

As to registration of contractors, the Committee notes that there are various provisions in force, contained in the LACAP and its Regulations, that address the issue and provide for the creation and maintenance of a series of registries with different objectives and functions. These include the National Government Procurement Registry kept by the UNAC; the registries of bidders and contractors (Articles 12(1) and 14 of the Law); the database (Article 13 of the Law); and the register of contracts undertaken over the previous 10 years for the purpose of oversight of bidders and contractors (Article 15 of the Law) to be kept by UACIs. In this connection, bearing in mind all the different characteristics and information that each of these registries contain, as well as other practical aspects that could improve their updating and consultation, the Committee believes that the Government Procurement and Contracting System of El Salvador could benefit from the development and implementation of a single registry of bidders, procurement, and contracts that contains all the data from the different registries mentioned in the LACAP and its Regulations, using, for instance, information technology for its formation, updating, consultation, and dissemination. (See Recommendation 1.2.3 in Chapter III, Section 1.2 of this Report).

In reference to the use of electronic media and information systems for government procurement, the Committee recognizes the efforts of the Republic of El Salvador in developing the information technology component of the Government Procurement and Contracting System, COMPRASAL ([www.comprasal.gob.sv](http://www.comprasal.gob.sv)) and, in particular, the dissemination module (MODDIV), which permits, *inter alia*, publication of information on procurement and contracting operations undertaken by government institutions, as well as of calls for bids and the results thereof. In this regard, the Committee urges the country under review to consider continuing to develop and strengthen measures of this type, the purpose of which is to ensure transparency, openness, equity, and efficiency in goods and services procurement systems, to which end it could give consideration to the observations in this regard contained in the Country Procurement Assessment Report (CPAR) on El Salvador prepared by the World Bank in collaboration with the Inter-American Development Bank (IDB) and the Salvadoran government.<sup>30</sup> (See Recommendation 1.2.4 in Chapter III, Section 1.2 of this Report).

Furthermore, for the purpose of imbuing contracting processes with greater transparency, the Committee suggests that the Republic of El Salvador consider examining the possibility of publishing, when appropriate, preliminary bidding terms and conditions so that interested parties might examine and submit observations on them. (See Recommendation 1.2.5 in Chapter III, Section 1.2 of this Report).

Finally, the Committee recognizes the efforts of the Republic of El Salvador to put in place a modern public works contracting system, as reflected in the LACAP and its Regulations. However, it would be useful for the country under review to consider strengthening this system through implementation of control systems for each individual public works contract, which enable civic inspections or citizen oversight activities; entail the obligation to submit periodic reports on the progress of the contract; and make it possible to determine if the expected cost-benefit ratio was actually achieved

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<sup>30</sup> Republic of El Salvador, Country Procurement Assessment Report, public document prepared by the World Bank and the Inter-American Development Bank, May 2006, available at: [idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1046135](http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1046135)

and if the quality of the work met the terms of the contract. (See Recommendation 1.2.6. in Chapter III, Section 1.2 of this Report).

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

With respect to results in this area, the Republic of El Salvador provided the following information:<sup>31</sup>

Table 1  
Information on Government Contracting and Procurement of Goods and Services  
(October 12, 2005 to May 11, 2007)

<b>Registered Users</b>	<b>Quantity</b>
Registered Potential Bidders	1,102
Contacted Suppliers	6,311
Disqualified Suppliers	13

Source: COMPRASAL Dissemination Module

Table 2  
Calls for Bids  
(October 12, 2005 to May 11, 2007)

<b>Type of Contract</b>	<b>Quantity</b>	<b>Amount in US\$</b>
Freely Negotiated Contracts	13,778	10,013,602.13
Public Contracting Processes	4,403	692,483,164.42
Total	18,181	702,496,766.55

Source: COMPRASAL Dissemination Module

Table 3  
Breakdown of Public Contracting Processes  
(October 12, 2005 to May 11, 2007)

<b>Purpose of Contract</b>	<b>Quantity</b>	<b>Amount in US\$</b>
Works	389	91,380,119.90
Goods	2,378	336,975,131.98
Services	1,636	264,127,912.54
Total	4,403	692,483,164.42

Source: COMPRASAL Dissemination Module.

The above information provided by the State shows that in the period mentioned calls for bids were announced in 18,181 public contracting and procurement processes, of which 13,778 (75.78%) corresponded to freely negotiated contracts and 4,403 (24.22%) were conducted by means of open public tender, public competition, limited public tender, limited public competition, and direct contracts. Based on this information, the Committee notes that the usual form of contracting in the period mentioned was through freely negotiated contracts. However, 98.57% of the amounts awarded probably pertain to processes other than freely negotiated contracts. Furthermore, the Committee draws attention to that the fact that, according to information available in the “contracting and

<sup>31</sup> Response of the Republic of El Salvador to the Questionnaire, p. 70. Available at: [www.oas.org/juridico/spanish/mesicic2\\_slv\\_resp\\_sp.doc](http://www.oas.org/juridico/spanish/mesicic2_slv_resp_sp.doc)

procurement consultation” section of the MODDIV, the number of direct contracts was less than 0.5% of the total procedures conducted over the same period.

As regards objective results with respect to penalties imposed on contractors, the “MODDIV” “disqualified persons database” shows that as of May 2007,<sup>32</sup> there were 13 contractors ineligible as a result of conduct provided in Article 158 of the LACAP. However, the Committee does not have further information that might enable it to perform a comprehensive interpretation of those figures, other than to recognize that sanctions have been imposed by the competent authority in the framework of the contracting activities carried out.

Lastly, bearing in mind that the legal framework in force in this area is relatively recent, the Committee believes it advisable for the Republic of El Salvador to consider periodic comprehensive evaluations in order to assess the use and effectiveness of the Government Procurement and Contracting System and, based on its findings, identify and consider adoption of specific measures by which to ensure the transparency, openness, equity, and efficiency thereof. (See Recommendation 1.2.7 in Chapter III, Section 1.2 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**

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

- The Special Victim and Witness Protection Law (LPVT),<sup>33</sup> which governs protection and assistance measures for victims, witnesses, and any other person at risk or in danger as a result of their direct or indirect involvement in the investigation of a criminal offense or a judicial proceeding, or because of family ties to a person involved therein. Under Articles 10, 11, and 12, depending on the need of the beneficiary, these measures may be ordinary,<sup>xiii</sup> special,<sup>xiv</sup> and assistance measures.<sup>xv</sup> Articles 16 to 25 set out the procedure for the application of such measures, while Articles 26 and 27, respectively, provide appeals for reversal and review of decisions that grant, modify, deny, suppress, or terminate such measures, as well as of decisions that exclude a protected person from the Victim and Witness Protection Program. The governing and administrative bodies for the program shall be, respectively, the Justice Sector Coordinating Committee (Article 5) and the Justice Sector Executive Technical Unit (Article 6).

- The Government Ethics Law,<sup>34</sup> Article 31(c) of which provides that one of the rights of private citizens under the system of rules that applies to them in dealings with the public administration is to have “their identity protected when they have reported acts of corruption committed by any public servant.”

- The Code of Criminal Procedure,<sup>35</sup> Article 13(10) and (11) of which provide that the prerogatives of the victims include nondisclosure of their identity, or that of their relatives when: (a) if the victim is a

<sup>32</sup> See [www.mh.gob.sv/moddiv/HTML/docs/Inhabilitados2007.xls](http://www.mh.gob.sv/moddiv/HTML/docs/Inhabilitados2007.xls)

<sup>33</sup> Available at: [www.fespad.org.sv/porta/html/Archivos/Descargas/LPVT.pdf](http://www.fespad.org.sv/porta/html/Archivos/Descargas/LPVT.pdf)

<sup>34</sup> *Supra*, note 5.

<sup>35</sup> Available at:

[www.csj.gob.sv/leyes.nsf/c8884f2b1645f48b86256d48007011d2/5456de9f805990ee06256d02005a406d?OpenDocument](http://www.csj.gob.sv/leyes.nsf/c8884f2b1645f48b86256d48007011d2/5456de9f805990ee06256d02005a406d?OpenDocument)

minor; (b) when such disclosure would entail a clear danger to them; and (c) whenever the victim so requests; and to receive protection at special shelters both for themselves and their next of kin, should the police, State prosecutor, or judge deem it advisable, based on the complexity of the circumstances or the presumed risk to the persons concerned.

- The “*Sistema 122*” anonymous telephone reporting system created by the National Civilian Police,<sup>36</sup> the purpose of which, *inter alia*, is to protect the identity of the whistleblower and the information they provide, as well as the “Online Reporting” system at the website of the Office of the Prosecutor General (<http://www.fgr.gob.sv/denuncias>).

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

With respect to the legal provisions and other measures related to the principal systems for protecting public servants and private citizens who in good faith report acts of corruption that the Committee has examined based on the information available to it, they may be said to constitute a set of measures that are relevant for promoting the purposes of the Convention.

Due to the fact that it specifically addresses this issue, the Special Victim and Witness Protection Law (LPVT) constitutes the legal framework with the broadest scope as regards protection systems for persons who report acts of corruption in the Republic of El Salvador. The reason for this is that, as mentioned in the preceding section, its principal purpose is to govern protection and assistance measures for victims, witnesses, and any other person at risk or in danger as a result of their involvement in the investigation of a criminal offense or a judicial proceeding. However, the Committee believes it advisable for the Republic of El Salvador to consider increasing the possibility of applying statutory protection and assistance measures provided for public officials or private citizens who report acts of corruption that might not be recognized as crimes and be subject to an administrative investigation, which would help to accomplish the purposes of the Convention. (See Recommendation 2.1(a) in Chapter III, Section 2 of this Report).

The Committee also considers that the Victim and Witness Protection Program could be strengthened through adoption of mechanisms designed to facilitate, where relevant, international cooperation, including the technical assistance and mutual cooperation for which the Convention provides, as well as experience sharing, training, and mutual assistance in the area of protection for whistleblowers, victims, and witnesses, in addition to development of provisions that provide for administrative sanctions for violations of the standards and/or obligations in force in the area of protection. The Committee also believes it would be useful for the country under review to expressly identify public official as being subject to protection, including protection for the official’s identity, as the Government Ethics Law provides for private citizens who report acts of corruption. (See Recommendations 2.1(b), (c), (d) and (e) in Chapter III, Section 2 of this Report).

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

The Republic of El Salvador did not provide information on results in this area. Nonetheless, in addition to highlighting the importance of providing a complete response to the questions on results in Questionnaire and, bearing in mind that the legal framework was created relatively recently, the Committee urges the country under review to consider periodic comprehensive evaluations in order to assess the use and effectiveness of the Victim and Witness Protection Program and the Government Ethics Law and, based on their findings, identify and consider adoption of specific

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<sup>36</sup> See [www.pnc.gob.sv/emergencias/denuncias\\_122/denuncias\\_122.html](http://www.pnc.gob.sv/emergencias/denuncias_122/denuncias_122.html)

measures by which to ensure the effective application thereof. (See Recommendation 2.2. in Chapter III, Section 2 of this Report).

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

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

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

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

- Article 327 (extortion) of the Criminal Code,<sup>37</sup> which provides: *“Any public official or employee, government agent, or public authority who,<sup>xvi</sup> in abuse of their position or office, obliges another to give or promise to them or a third party money or any other benefit, shall be punished with three to six years of imprisonment and disqualification from public office or employment for the same period of time.”*

- Article 328 (illicit transactions), second paragraph, of the Criminal Code, which provides: *“Any public official or employee who, being involved by reason of their position in any contract, provision operation, tender, or auction in which the Treasury has an interest, accepts commissions or percentages in money or other gifts offered to him by the interested parties or intermediaries shall be punished with two to five years of imprisonment. Should the public official or employee solicit such commissions or percentages, the penalty may be increased by up to one third of its maximum term...”*

- Article 330 (bribery for violation of official duties) of the Criminal Code, which provides: *“Any public official or employee, government agent, or public authority, who themselves or through another person, solicits or receives a gift or any other undue benefit, or accepts the promise of a reward of the same nature, in order to perform an act in violation of their duties, or not to perform or to delay a due act that pertains to their duties, shall be punished with three to six years of imprisonment and disqualification from public office or employment for the same period of time.”*

- Article 331 (bribery for performance of official duties) of the Criminal Code, which provides: *“Any public official or employee, government agent, or public authority who, themselves or through another person, solicits or receives a gift or any other undue benefit, or accepts the promise of a reward of the same nature in order to perform an act that pertains to their duties or for an act already performed in accordance with their duties, shall be punished with two to four years of imprisonment and disqualification from public office or employment for the same period of time.”*

- Article 25 (solicitation or acceptance of bribes) of the Special Law against Customs Violations,<sup>38</sup> which provides: *“Any official or employee of any of the agencies in charge of control and oversight of foreign trade operations who, themselves or through another person, solicits or receives a gift, payment, reward, or any other undue benefit, or accept the promise of a reward of the same nature,*

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<sup>37</sup> Available at:  
[www.csj.gob.sv/leyes.nsf/ed400a03431a688906256a84005acc75/29961fcd8682863406256d02005a3cd4?OpenDocument](http://www.csj.gob.sv/leyes.nsf/ed400a03431a688906256a84005acc75/29961fcd8682863406256d02005a3cd4?OpenDocument)

<sup>38</sup> Available at:  
[www.csj.gob.sv/leyes.nsf/f568d854e286d05c86256d48006f34e8/d0f9511850e9ba6306256d02005a3d63?OpenDocument](http://www.csj.gob.sv/leyes.nsf/f568d854e286d05c86256d48006f34e8/d0f9511850e9ba6306256d02005a3d63?OpenDocument)

*in order to perform an act in accordance with, or in violation of, their duties, or in order not to perform or to delay a due act, shall be punished with three to six years of imprisonment.”*

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

- Article 335 (offering of bribes) of the Criminal Code, which provides: *“Anyone who, themselves or through another person, promises, offers, all delivers a gift or any other undue benefit to a public official or employee, in order to perform an act in violation of their official duties, all in order not to perform or to delay a due act shall be punished with six to ten years of imprisonment.*

*If the offense consists of their performance of an act that pertains to their official duties or is the consequence of an act already performed in accordance with their duties, they shall be punished with two to four years of imprisonment.”*

- Article 26 (offering of bribes) of the Special Law against Customs Violations, which provides: *“Anyone who, themselves or through another person, offers or delivers any gift, payment, reward, or any other benefit or advantage of the same nature to an official or employee of any of the government agencies in charge of control and oversight of foreign trade operations, so that said official might perform an act in accordance with, or in violation of, their duties, or in order not to perform or to delay a due act, shall be punished with the same penalty mentioned in the preceding article for said officials and employees.”*

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

- Article 231 (Revelation or disclosure of industrial secrets) of the Criminal Code, which provides: *“Anyone who reveals or divulges an invention for which a patent has been applied or an industrial or trade secret which they are legally or contractually bound to keep secret, shall be punished with six months to two years of imprisonment.*

*If the secret is used for personal gain, the penalty shall be increased by up to one third of its maximum term.*

*If the perpetrator is a public official or employee and the offense is carried out in the course of their duties they shall also be disqualified from the respective position or employment for six months to two years.”*

- Article 240-A (public fraud) of the Criminal Code, which provides: *“The theft, appropriation, or misappropriation of assets of any kind from credit institutions or ancillary organizations, insurance companies, cooperatives, housing construction organizations, land developers, cooperative associations, or any other kind of organization that operates with monies or securities belonging to the public, which is committed or consented to by those who in any capacity are in charge of their management, administration, control, or audit, shall be punished with five to fifteen years of imprisonment. Consent is understood to have been committed by anyone who should have known about the acts or deeds in question, but was unaware of them or failed to prevent them through lack of diligence.”*

- Article 251 (incitement and conspiracy) of the Criminal Code, which provides: *“Incitement or conspiracy to commit any Treasury fraud crimes shall be punished with two to four years of imprisonment.*

*When incitement or conspiracy to commit any Treasury fraud crime is committed by a public official or employee, the penalty shall be four to six years of imprisonment.”*

- Article 270 (liability of public officials or employees) of the Criminal Code, which provides: “*Any public official or employee who, by reason of their duties, is required to report the commission of offenses against collective security and fails to do so, or who submits false reports in order to favor the perpetrators, shall be punished with six months to one year of imprisonment and disqualification from public office or employment for the same period of time.*”

- Article 310 (malfeasance in office) of the Criminal Code, which provides: “*Any judge who knowingly issues a decision that violates the law or is based on falsehoods, for self gain or because they have been bribed to do so, shall be punished with three to six years of imprisonment and disqualification from public office for the same period of time.*”

*If the judgment is a conviction in a criminal proceeding the penalty shall be three to ten years of imprisonment.*

*The provisions contained in the first paragraph shall be applicable, to the extent appropriate, to arbitrators.*

*A judge or clerk shall be deemed to have been committed malfeasance if they, directly or through another person, instruct the party concerned or the litigants in a trial or proceedings being conducted in the court in which they serve or in any other court.*

*Anyone who commits this offense shall be punished with one to three years of imprisonment.*

*Any judge who, out of negligence or unjustifiable ignorance, issues a manifestly unjust judgment shall be punished with two to four years of imprisonment.”*

- Article 325 (embezzlement) of the Criminal Code, which provides: “*Any public official or employee, or person in charge of a public service who, for their own benefit or that of another person, appropriates money, securities, government or municipal revenue stamps, or any other assets, the administration, collection, custody, or sale of which they are in charge by virtue of their duties or position, or who gives occasion to the commission of the offense, shall be punished with imprisonment in accordance with the following rules:*

*For embezzlement of up to 100,000 colones the penalty shall be six to eight years of imprisonment.*

*For embezzlement of more than 100,000 colones but less than or equal to 500,000 colones, the penalty shall be eight to 10 years of imprisonment.*

*For embezzlement in excess of 500,000 colones the penalty shall be 12 to 15 years of imprisonment.*

- Article 329 (illegal exaction) of the Criminal Code, which provides: “*Any public official or employee, government agent, or public authority who, taking advantage of their position or office, imposes or obtains for the public or municipal administration fees, duties, contributions, municipal taxes, or any other payment in the knowledge that they are not legal, or, being legal, for the collection of which they resort to harassment or oppressive methods not legally authorized or falsely invoke the authority of a superior, a court order, or any other legitimate authority, shall be punished with six months to two years of imprisonment.”*

- Article 332 (misappropriation) of the Criminal Code, which provides: “*Any public official or employee who uses the funds or effects that they administer for a purpose other than that for which they are intended by law shall be punished with a fine of between 50 and 100 days’ wages.*”

*If the act results in personal gain for themselves or a third party the penalty shall be one to three years of imprisonment and disqualification from public office or employment for the same period of time.”*

- Article 333 (illicit enrichment) of the Criminal Code, which provides: “*Any official, public authority, or public employee who, in the exercise of their official duties, obtains an unjustified increase in net worth shall be punished with three to ten years of imprisonment.*”

*Any third party who disguises an unjustified increase in net worth shall incur the same penalty.*

*In all cases those responsible shall also be disqualified from public office or employment for the same period of time.”*

- Article 336 (influence peddling) of the Criminal Code, which provides: “*Anyone who, simulating or taking advantage of their influence with a public official or employee, receives or obtains a promise, for themselves or for another person, of money or any other benefits as an incentive or reward for their mediation with that person, or for the purpose of purchasing favors or remunerating benefits, shall be punished with one to three years of imprisonment and a fine of between 50 and 100 days’ wages.*”

*If the person who commits the offense is a public official or employee, they shall also be disqualified from public office or employment for the same period of time.”*

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

- Article 308 (concealment) of the Criminal Code, which provides: “*Whomsoever, in the knowledge that a crime has been committed, commits any of the following acts without conspiracy to do so shall be punished with six months to three years of imprisonment: 1) Helps a person to evade the investigations of the authorities or elude prosecution; 2) Seeks or helps someone to bring about the disappearance, concealment, or alteration of the signs, evidence, or instrumentalities of the crime, or to secure or profit from the proceeds thereof; and, 3) Acquires, receives, or conceals money, things, or effects proceeding from a crime or takes part in their acquisition, receipt, concealment.*”

*If the preceding conduct is carried out in respect of the offenses of extortion or abduction the penalty shall be four to eight years of imprisonment.*

*The penalty shall not be applied in the cases of paragraphs 1) and 2) to those who conceal an ascending, descending, adoptive, or adopted relative, sibling, spouse, common-law spouse, or a person with whom they have similar affective ties.”*

- Article 4 (money laundering) of the Anti-Money Laundering Law,<sup>39</sup> which provides: “*Whomsoever deposits, withdraws, converts, or transfers funds, assets, or related rights that proceed directly or indirectly from criminal activities, in order to conceal or disguise their illicit origin, or who helps*

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<sup>39</sup> Available at:

[www.csj.gob.sv/leyes.nsf/c8884f2b1645f48b86256d48007011d2/371d55199e32913706256d02005a3c38?OpenDocument](http://www.csj.gob.sv/leyes.nsf/c8884f2b1645f48b86256d48007011d2/371d55199e32913706256d02005a3c38?OpenDocument)

*anyone who has participated in the commission of said criminal activities to elude the legal consequences of their acts, shall be punished with five to fifteen years of imprisonment and a fine of 50 to 2,500 times the minimum wage in force in the commerce, industry, and services sectors at the time the respective judgment is issued.*

*Money laundering shall also be defined as any operation, transaction, act, or omission intended to conceal the illicit origin of and legalize properties and assets proceeding from crimes committed in or outside the country.*

*In the case of legal persons, penalties shall be applied to individuals over the age of 18 who have committed or agreed to commit the deed that constitutes money laundering.*

*Individuals who, themselves or through legal representatives, provide information in a timely manner on the activities and offenses governed by the instant law, shall not incur any kind of liability.*

- Article 5 (special money laundering cases) of the Anti-Money Laundering Law which provides: *“For the purposes of criminal law, the following acts shall also be construed as money laundering and punished with eight to twelve years of imprisonment and a fine of 50 to 2,500 times the monthly minimum wage calculated as described in the preceding article: a) to conceal or otherwise disguise the nature, origin, location, destination, movement or the seemingly legal nature of funds, assets, or rights relating thereto, that proceed directly or indirectly from criminal activities; and, b) Acquire, possess, and use funds, assets, or rights relating there to in the knowledge that they derive from criminal activities, in order to give them a legitimate appearance.”*

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

- Article 23 (incitement and conspiracy) of the Criminal Code, which provides: *“Incitement occurs when a person who has resolved to commit an offense requests another person or persons to commit it or to aid them in its commission.*

*Conspiracy exists when two or more people arrange to commit an offense and resolve to do so.*

*Incitement and conspiracy are only punishable in the cases expressly recognized in this Code.”*

- Article 24 (unconsummated or attempted crime) of the Criminal Code, which provides: *“An unconsummated or attempted crime exists when the principal initiates or carries out all of the steps tending toward its commission by means of acts directly intended or appropriate to bring about its consummation and the latter does not occur for reasons beyond his or her control.”*

- Article 32 (criminally liable persons) of the Criminal Code, which provides: *“The principals, instigators, and accomplices in an offense that has been committed incur criminal liability for such offense. The principals may be the direct perpetrators or abettors. In crimes that result from negligence or imprudence, each person shall be liable for their own acts.”*

- Article 33 (direct perpetrators or accomplices) of the Criminal Code, which provides: *“Direct perpetrators are those who commit a crime themselves or conjunction with others.”*

- Article 34 (abettor) of the Criminal Code, which provides: *“An abettor is one who commits a crime through another person, whom they use as an instrument.*

*If the law requires certain personal qualities or that the acts be carried out in particular circumstances of a subjective nature, it shall be necessary and sufficient for said qualities or circumstances to be present in the abettor.”*

- Article 35 (instigator) of the Criminal Code, which provides: *“An instigator is one who, with criminal intent, causes another to commit a crime.”*

- Article 36 (accomplice) of the Criminal Code, which provides: *“An accomplice is: 1) one who lends necessary cooperation to the principal or principals, such that, without it, the crime could not be committed; and, 2) one who otherwise lends their cooperation in the commission of a crime, though it be in the form of the promise of assistance following the consummation thereof.*

*With respect to crimes committed through the press, radio, television, or any other similar broadcasting bodies, in no case shall liability be incurred by persons who, by reason of the work they perform, are materially involved in the production or diffusion of the text or program.”*

- Article 37 (commencement and extent of liability of participants) of the Criminal Code, which provides: *“The criminal liability of participants commences from the moment at which the commission of the crime begins, and each one shall be held to liability to the extent that the deed committed is at least criminalized or unlawful.”*

- Article 38 (action on behalf of another) of the Criminal Code, which provides: *“Whomsoever acts as an executive or administrator of a legal person, or in name or legal or voluntary representation of another, shall be held personally liable, even should they not have present in them the conditions, qualities, or relations that the respective definition of the crime requires in order for them to be considered a principal therein, when such circumstances are present in the person in whose name or representation they act.*

*Whatever the case, the legal person shall incur special ancillary civil liability. The foregoing notwithstanding, in crimes of bribery for violation of official duty, bribery for performance of official duty, offering of bribes, and transnational bribery, the legal person shall be held to joint and several liability for any injury caused under the terms of Article 118 of this Code.”*

- Article 68 (penalties for attempted crimes) of the Criminal Code, which provides: *“The penalty for an attempted crime shall be set at between half the minimum and half the maximum penalty provided for the consummated offense.”*

- Article 345 (illicit groups) of the Criminal Code, which provides: *“Whomsoever is part of an illicit group, association, or organization shall be punished with three to five years of imprisonment. The organizers, chiefs, leaders, or ringleaders shall be punished with six to nine years of imprisonment.*

*Temporary or permanent illicit groups, associations, or organizations are those which are composed of two or more persons with some degree of organization, the objective, or one of the objectives, of which is to commit crimes, as well as those that perform violent acts or in which violence is used as a means for their members to enter, remain in them, or leave them.*

*Should the perpetrator or participant be a public authority, government agent, or a public official or employee, the penalty shall be increased by up to one third of the maximum as well as complete disqualification from office for the same period of time.*

*Whomsoever promotes, cooperates with, facilitates, or encourages the formation or continued existence of the illicit group, association, or organization, shall be punished with six months to two years of imprisonment.*

*Incitement and conspiracy to commit this crime shall be punished with six months to two years of imprisonment.*

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

With respect to the provisions related to the criminalization of the acts of corruption provided for in Article VI(1) of the Convention that have been examined by the Committee, based on the information available to it, including the review conducted in the framework of the technical cooperation project for ratification and implementation of the Convention, which was carried out by the OAS with financial support provided by the Inter-American Development Bank (IDB) and the participation of the Office of the Vice President of the Republic and the National Council for Sustainable Development,<sup>xvii</sup> the Committee sees that they may be said to constitute, as a whole, a set of provisions that are relevant for promoting the purposes of the Convention.

Nonetheless, the Committee urges the Republic of El Salvador to adapt and/or strengthen, as appropriate, its criminal laws so as to include in Articles 331 and 335 of the Criminal Code the element “or for another person or entity” as provided for in paragraphs (a) and (b) of Article VI(1) of the Convention. (See Recommendation 3.1(a) in Chapter III, Section 3 of this Report).

In addition, Article 39 of the Criminal Code establishes the categories covering public servants. However, the Committee notes that the language of that article does not include private citizens involved in the provision of public services or who manage public funds in any capacity or form. (See Recommendation 3.1(b) in Chapter III, Section 3 of this Report).

Regarding the offenses set out in Criminal Code Articles 270 (responsibility of public officials and employees), 325 (embezzlement), 328 (illicit business), 332 (misappropriation), 335 (active bribery), and 336 (influence peddling), the Committee urges the country under review to consider including in those provisions the terms “public authorities” and “government agents” referred to in Article 39 of the Criminal Code. (See Recommendation 3.2 in Chapter III, Section 3 of this Report).

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

The Republic of El Salvador did not provide information on results in this area. Accordingly, in addition to highlighting the importance of providing a complete response to the questions on results in the Questionnaire, the Committee will make a recommendation in this regard. (See Recommendation 3.3. in Chapter III, Section 3 of this Report).

## **III. CONCLUSIONS AND RECOMMENDATIONS IN RELATION TO THE IMPLEMENTATION OF THE PROVISIONS SELECTED IN THE FRAMEWORK OF THE SECOND ROUND**

Based on the review conducted in Chapter II of this Report, the Committee offers the following conclusions and recommendations regarding implementation by the Republic of El Salvador of the provisions contained in Article III(5) (systems of government hiring and for the procurement of goods and services); Article III(8) (systems for protecting public servants and private citizens who, in

good faith, report acts of corruption); and Article VI (acts of corruption) of the Convention, which were selected for review within the framework of the second round.

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

### **1.1. Systems of Government Hiring**

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

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

1.1.1 Strengthen government hiring systems. In meeting this recommendation, the Republic of El Salvador could take into account the following measures:

- a) Strengthen and develop, as appropriate, and through relevant legal and administrative procedures, the different stages that comprise the personnel recruitment and selection processes in the public administration, through adoption of clearly defined provisions and guidelines, in particular on calls for candidates, as well as the requirements, content and dissemination thereof; staging of processes, terms and conditions, and assessment of suitability tests, as well as selection of candidates and their subsequent appointment as new employees, ensuring the principles of openness, equity, and efficiency provided in the Convention. (See Section 1.1.2 in Chapter II of this Report).
- b) Develop, through appropriate legal and administrative procedures, standards and mechanisms governing the scope and limits of the employment in the public administration of staff under work contracts mentioned in Article 4, paragraph (m), of the Civil Service Law so as to ensure reliable verification of aptness, merits, competencies, and attitudes suitable for the exercise of the functions corresponding to the position to be held, based on the principles of openness, equity, and efficiency provided in the Convention.
- c) Continue to strengthen the bodies responsible for implementing the Civil Service Law, in particular the Civil Service Commissions and the Civil Service Tribunal, with respect to the functions that they perform in the areas of administration and control of government hiring systems, supplying them with the necessary resources to perform their functions properly and establishing mechanisms for the effective institutional coordination of their actions as well as the ongoing evaluation and follow-up thereof. (See Section 1.1.2 in Chapter II of this Report).
- d) Strengthen and ensure the appropriate dissemination of provisions establishing through administrative and judicial channels challenge mechanisms for the purpose of clarification, modification, or revocation of substantive decisions in staff recruitment and selection procedures. (See Section 1.1.2 in Chapter II of this Report).

1.1.2. Strengthen municipal government hiring systems. In meeting this recommendation, the Republic of El Salvador could take into account the following measures:

- a) Adopt, through appropriate legal or administrative procedures, clear and compulsory mechanisms that ensure objectiveness in candidate selection as provided in Article 31 of the Municipal Civil Service Law. (See Section 1.1.2 in Chapter II of this Report).
- b) Promote, in accordance with Articles 55 and 56 of the Municipal Civil Service Law, the strengthening of the National Registry of the Municipal Civil Service System and the Municipal Registries of the Municipal Civil Service System and grant the Salvadoran Institute for Municipal Development and the necessary oversight powers to monitor proper compliance with this obligation. (See Section 1.1.2 in Chapter II of this Report).

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

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

1.1.4. Strengthen government hiring systems in the judicial branch. In meeting this recommendation, the Republic of El Salvador could take into account the following measure:

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

1.1.5. Strengthen government hiring systems in oversight bodies. In meeting this recommendation, the Republic of El Salvador could take into account the following measures:

- a) Adopt, through appropriate procedures, mechanisms establishing clearly defined guidelines on announcement of employment opportunities and vacancies in Court of Accounts and in the Office of the Prosecutor General and the content and form thereof, as well as the amount of advance notice required in their publication, to which end mass media outlets may be used, such as national newspapers and/or Internet websites. (See Section 1.1.2 in Chapter II of this Report).
- b) Strengthen and ensure the appropriate dissemination of provisions establishing through administrative and judicial channels challenge mechanisms for the purpose of clarification, modification, or revocation of substantive decisions in staff recruitment and selection procedures in the Court of Accounts and the Office of the Prosecutor General, and ensure

timely, and objective, impartial, and effective processing. (See Section 1.1.2 in Chapter II of this Report).

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

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

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

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

- 1.2.1. Continue to strengthen the governing bodies of the Government Procurement and Contracting System (SIAC), in particular the Government Procurement and Contracting Regulatory Unit (UNAC), as well as the Institutional Procurement and Contracting Units (UACIs), with respect to the functions that they perform in the area of administration and control of the system, providing them with the resources necessary to perform their functions properly and developing mechanisms for the effective institutional coordination of their actions as well as the ongoing evaluation and follow-up thereof. (See Section 1.2.2 in Chapter II of this Report).
- 1.2.2. Strengthen oversight mechanisms in procurement processes for goods, construction projects, general services, and consultant services. In meeting this recommendation, the Republic of El Salvador could take into account the following measures:
  - a) Adopt, through the existing bodies, provisions that provide for the selection of an administrative unit that carries out work of auditing, control, and oversight of contracts of a certain amount and/or complexity that so require. (See Section 1.2.2 in Chapter II of this Report).
  - b) Encourage the creation of citizen review mechanisms to perform oversight and monitoring of the pre-contractual phase, and of the execution of those contracts, having regard to their nature, importance, and/or magnitude. (See Section 1.2.2 in Chapter II of this Report).
  - c) Develop provisions for the implementation of mechanisms or systems for the rendering of periodic accounts both by suppliers and contractors and by persons or entities directly responsible for supervision, control and oversight of contracts, ensuring the openness thereof. (See Section 1.2.2 in Chapter II of this Report).
- 1.2.3. Develop and implement the single Registry of bidders, procurement, and contracts that contains all the data from the different registries mentioned in the Government Procurement and Contracting Law and its Regulations, using, for instance,

information technology for its formation, updating, consultation, and dissemination. (See Section 1.2.2 in Chapter II of this Report).

1.2.4. Continue to develop and strengthen the information technology component of the Government Procurement and Contracting System, COMPRASAL ([www.comprasal.gob.sv](http://www.comprasal.gob.sv)), in order to ensure transparency, openness, equity, and efficiency in government systems for procurement of goods and services in keeping with the Convention. (See Section 1.2.2 in Chapter II of this Report).

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

1.2.6. Strengthen public works contracting systems. In meeting this recommendation the Republic of El Salvador could take into account the following measure:

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

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

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

**The Republic of El Salvador has considered and adopted certain measures intended to establish, maintain and strengthen systems for protecting public servants and private citizens who in good faith report acts of corruption, as discussed in Section 2 of Chapter II of this Report.**

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

- 2.1. Strengthen the systems for protecting public servants and private citizens who, in good faith report acts of corruption. In meeting this recommendation the Republic of El Salvador could take into account the following measures:
  - a) Increase the possibility of applying protection and assistance measures provided in the Special Victim and Witness Protection Law for public officials or private citizens who report acts of corruption that might not be recognized as crimes and be subject to an administrative investigation.

- b) Hasten, under the aegis of the Special Victim and Witness Protection Law, implementation of mechanisms to facilitate, where relevant, international cooperation, including the technical assistance and mutual cooperation for which the Convention provides, as well as experience sharing, training, and mutual assistance.
  - c) Expand the legal and administrative protection measures, including those for the work place for public servants and private citizens who in good faith report acts of corruption.
  - d) Expressly recognize the entitlement of public servants to protection, including the protection of their identity as contemplated under the Government Ethics Law for private citizens who report acts of corruption.
  - e) Establish provisions that provide for administrative sanctions for noncompliance of protection rules and/or obligations;
- 2.2. Perform periodic comprehensive evaluations in order to assess the use and effectiveness of the Victim and Witness Protection Program, and the Government Ethics Law and, based on their findings, identify and consider adoption of specific measures by which to ensure the effective application thereof. (See Section 2.3 in Chapter III of this Report).

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

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

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

- 3.1. Adapt and/or strengthen, as appropriate, criminal laws so as to include the elements of acts of corruption provided in Article VI(1) of the Convention. In meeting this recommendation the Republic of El Salvador could take into account the following measures:
  - a) Include, in the offenses defined in Articles 331 and 335 of the Criminal Code, the phrase “or for another person or entity” contained in paragraphs (a) and (b) of Article VI.1 of the Convention. (See section 3.2 of Chapter II of this Report.)
  - b) Study the possibility of amending Article 39 of the Criminal Code to expand the notion of public official to cover those private citizens involved in the provision of public services or who manage public funds in any capacity or form. (See section 3.2 of Chapter II of this Report.)
- 3.2. Include the terms “public authorities” and “government agents” referred to in Article 39 of the Criminal Code in the criminalization of the offence of offering bribes described in Articles 270, 325, 328, 332, 335 and 336 of said Code. (See Section 3.2 in Chapter II of this Report).
- 3.3. Select and develop, through the Judicial Branch and the Office of the Prosecutor General and other relevant government entities, procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, provisions, measures, and

mechanisms considered in Chapter II, Section 3 of this Report. (See Section 3.3 in Chapter II of this Report).

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

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

- 4.1. Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, standards, measures and mechanisms considered in this Report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.
- 4.2. Select and develop procedures and indicators, when appropriate and where they do not presently exist, to analyze the results of the systems, standards, measures and mechanisms considered in this Report, and to follow-up on the recommendations made herein. (See Chapter II, Sections 1.1.3 and 1.2.3).

#### **5. FOLLOW-UP**

The Committee will consider the periodic update Reports submitted by the Republic of El Salvador 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 IN RELATION TO THE PROGRESS IN THE IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE REPORT FROM THE FIRST ROUND**

Based on the information made available to the Committee on the implementation of the recommendations formulated for the Republic of El Salvador in the Report in the First Round of Review, the Committee observes the following:

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

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

▪ Recommendation:

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

▪ Measures suggested by the Committee:

- a. *Consider the possibility of legislating, through the appropriate legal and administrative procedures, conduct aimed at preventing conflicts of interest so as to ensure the correct, honorable, and proper fulfillment of the public functions referred to in the Convention, including, among others, adopting a legal instrument applicable to all public officials, which enables them to know their duties and rights in precise terms. This is irrespective of the fact that given the doctrine of the separation of powers and the existence of autonomous bodies, consideration could be given to the establishment of specific regimes aimed at particular sectors which, on account of their specializations and spheres of competence, could require the establishment of especially restrictive norms that define their duties and rights.*
- b. *Consider the possibility of creating or strengthening preventive mechanisms in the access to public-sector positions, applicable to all public officials, in accordance with the scope determined in the law itself, and in relation to the positions it may determine, taking into account the following aspects:*

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

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

- ii. *Develop other mechanisms that identify those cases that may arise in the course of the performance of public functions, and which could constitute conflicts of interest.*
- c. *Consider the possibility of creating and implementing mechanisms that make it possible to determine in specific cases whether those who perform public functions have conflicts of interest, and which at the same time make it possible to take the measures needed to protect the public interest, such as separation from their functions, official repudiation of the matter, their renouncing any private interests in the conflict, or the invalidity of the decisions by those who are in such a position.*
- d. *Consider strengthening appropriate and relevant restrictions for those who cease to hold public positions and the measures for the enforcement thereof, upholding due balance with an individuals' constitutional right to freedom of employment, for a reasonable period (see section 1.1.2 of Chapter II of this report) and considering, inter alia, the following possibilities:*
  - i. *Establish terms and conditions on how a former employee may use information or documents to which he or she had access in public service.*
  - ii. *Refrain from participating in matters directly related to the formerly held position.*
  - iii. *Consider the possibility for the oversight body to provide former public employees with guidance and to clarify any doubts that might arise from the specific activities in which they are engaged.*

- e. *Consider the possibility of establishing, implementing or improving, as appropriate, mechanisms to disseminate and train all public servants in the standards of conduct with a view to preventing conflicts of interest in the performance of public functions, and providing training and periodic updating with respect to those standards.*
- f. *The Committee encourages the Republic of El Salvador to continue supporting the work of the Court of Accounts by establishing indicators that make it possible to determine its results more precisely.*
- g. *Compile information regarding conflict-of-interest cases, to establish mechanisms of evaluation that make it possible to verify the results in this area.*

In its response,<sup>40</sup> the country under review presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to the adoption of the Government Ethics Law, which was passed by Legislative Decree 1038 adopted by the Legislative Assembly on April 27, 2006.

Insofar as the Government Ethics Law is concerned, without venturing an in-depth analysis of the contents of said law, the Committee takes note that the country under review has satisfactorily considered the measure in the recommendation with respect to legislating conduct aimed at preventing conflicts of interest so as to ensure the correct, honorable, and proper fulfillment of the public functions referred to in the Convention.

The Committee also takes note that the country under review has satisfactorily considered measure (e) in the recommendation regarding provision of training to public servants in the standards of conduct on conflicts of interest, without prejudice to the fact that it is of a continuous nature and should continue to be developed.

The Committee also takes note of the steps taken by the country under review to proceed with implementation of the measures (b), (c), (d), (f) and (g) in the above recommendation as well as the need for the Republic of El Salvador to continue giving attention to their implementation.

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

- Recommendation:

*“Strengthening the implementation of statutes and regulatory systems with respect to the control of resources of the public administration.”*

- Measures suggested by the Committee:

- a. *Consider the possibility of legislating, taking into account the appropriate procedures, conduct aimed at ensuring the proper conservation and use of resources entrusted to government officials in the performance of their functions, including aspects such as preparing a legal instrument that offers the Republic of El Salvador a uniform legal regime*

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<sup>40</sup> Response of the Republic of El Salvador to the Questionnaire, pp. 104 to 107.

*on the basis of normative conditions that are adapted to the specificities, degree, and practical requirements of each of the entities that makes up the public administration, and which also provides equal treatment in regulating the conduct of public servants, providing legal security in the performance of public functions and to the proper conservation and use of government property.*

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

- b. Design and implement mechanisms for disseminating and training all public servants on the standards of conduct to ensure the proper conservation and use of public resources, and to resolve their consultations in this respect, as well as to provide training and periodic updating with respect to those standards.*
- c. Perform an evaluation of the use and effectiveness of the standards of conduct for ensuring the proper conservation and use of public resources and of the mechanisms for compliance with them in the Republic of El Salvador, and instruments for preventing corruption and, based on the results of that evaluation, consider adopting measures to promote, facilitate and consolidate or ensure the effectiveness of them, for that purpose.*

In its response,<sup>41</sup> the country under review presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to the adoption of the Government Ethics Law, which was passed by Legislative Decree 1038 adopted by the Legislative Assembly on April 27, 2006.

Insofar as the Government Ethics Law is concerned, without venturing an in-depth analysis of the contents of said law, the Committee takes note that the country under review has satisfactorily considered measure (a) in the recommendation with respect to legislating conduct aimed at ensuring the proper conservation and use of resources entrusted to government officials in the performance of their functions.

The Committee also takes note that the country under review has satisfactorily considered measure (b) in the recommendation regarding provision of training to public servants in the standards of conduct to ensure the proper conservation and use of public resources entrusted to government officials in the performance of their functions, without prejudice to the fact that it is of a continuous nature and should continue to be developed.

The Committee also takes note of the steps taken by the country under review to proceed with the implementation of the other elements of the measure (c) in the above recommendation as well as the need for the Republic of El Salvador to continue giving attention to their implementation.

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<sup>41</sup> Response of the Republic of El Salvador to the Questionnaire, pp. 108 to 109.

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

▪ Recommendation:

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

▪ Measures suggested by the Committee:

- a. *Facilitate the performance of the obligation to report acts of corruption through the means it deems appropriate, and in particular, regulate the submission of such reports so as to further facilitate their submission, establishing requirements that do not cause potential whistleblowers to become inhibited, and including the possibility that these reports keep confidential the names of the whistleblowers during administrative proceedings.*
- b. *Consider adopting and implementing measures of protection for public officials who report acts of corruption in good faith, including those who report corruption by their superiors, such that they find assurances in the face of the threats or reprisals to which they may be subject as a result of carrying out this obligation.*
- c. *Provide that the scope of the obligation contained in Article 312 of the Criminal Code refer both to punishable acts the public servant learns of in the performance of public functions, and on occasion of them, and acts of corruption that they become aware of not in the performance of said functions.*
- d. *Advance in efforts aimed at training public officials in relation to the existence and purpose of the responsibility to report to the appropriate authorities acts of corruption in the performance of public functions of which they are aware, including the corresponding protection regime in these cases, and to motivate the Republic of El Salvador to consolidate the advances in this regard already made by the Citizen Participation Section of the Court of Accounts.*
- e. *Consider the possibility of strengthening those administrative and legal proceedings related to the effective application of the applicable sanctions to those public officials and employees who engage in acts of corruption.*
- f. *Compile information on the submission of reports of acts of corruption by public officials or employees that make it possible to verify the results in this area (see section 1.3.3. above).*

In its response,<sup>42</sup> the country under review presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to the adoption of the Government Ethics Law, which was passed by Legislative Decree 1038 adopted by the Legislative Assembly on April 27, 2006 and of the Special Victim and Witness Protection Law, which was passed and then by Legislative Decree 1029 adopted by the Legislative Assembly on April 26, 2006.

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<sup>42</sup> Response of the Republic of El Salvador to the Questionnaire, pp. 110 to 112.

Insofar as the Government Ethics Law and the Special Victim and Witness Protection Law are concerned, without venturing an in-depth analysis of the contents of said law, the Committee takes note that the country under review has satisfactorily considered measure (a) in the recommendation with respect to adopting regulations on reporting acts of corruption in the performance of public functions.

The Committee also takes note that the country under review has satisfactorily considered measure (d) in the recommendation regarding provision of training to public servants in standards of conduct and mechanisms related to measures and systems that require government officials to report to the appropriate authorities acts of corruption in the performance of public of which they are aware, without prejudice to the fact that they are of a continuous nature and should continue to be developed.

Finally, the Committee takes note of the need for the country under review to give additional attention to the implementation of the other elements of measures (b), (c), (e) and (f) in the foregoing recommendation.

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

### ▪ Recommendation:

*“Expanding and complementing the systems for registering the income, assets and liabilities, and regulate their publication, as appropriate, through pertinent provisions”*

### ▪ Measures suggested by the Committee:

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

- f. *Implement training programs for public servants on the regulations applicable to the system for registering income, assets, and liabilities, and design mechanisms for disseminating that system among the public servants obligated to comply with it, to assure that the current regulations are known.*
- g. *Implement the procedures needed to perform effective control of compliance with the obligation to submit these declarations, so as to make it possible to verify the results in this area.*

In its response,<sup>43</sup> the country under review presents information with respect to the above recommendation. In this connection, the Committee takes note of the need for the country under review to give additional attention to its implementation.

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

- Recommendation 3.1:

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

- Recommendation 3.2:

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

- Recommendation 3.3:

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

In its response,<sup>44</sup> the country under review presents information with respect to the above recommendations. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendations, the measures taken with respect to the creation of the Government Ethics Tribunal in accordance with the Government Ethics Law.

In this respect, the Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendations as well as the need for the republic of El Salvador to continue giving attention to the implementation of the recommendations.

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<sup>43</sup> Response of the Republic of El Salvador to the Questionnaire, pp. 113 to 115.

<sup>44</sup> Response of the Republic of El Salvador to the Questionnaire, p. 116.

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

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

The Committee did not make any recommendations in this section.

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

▪ Recommendation:

*“Institute legal provisions and measures to support access to government information”*

▪ Measures suggested by the Committee:

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

In its response,<sup>45</sup> the country under review presents information with respect to the above recommendation.

Furthermore, the document prepared by the National Foundation for Development (FUNDE), the Social Initiative for Democracy (ISD), the Foundation for Studies for the Application of Law (FESPAD), and the University Institute of Public Opinion of the Central American University notes, with respect to the above recommendation, that “*examples of partial progress are the inclusion of the prohibition to ‘refuse to provide information about public functions’ in the Government Ethics Law; and the approval, in December 2006, of the reform of the Municipal Code. This reform includes a chapter ‘on transparency’ which recognizes the right of members of the public ‘to request information, to be informed of the decisions of the Council, to know how the municipal government functions and its administration is managed.’*”<sup>46</sup>

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

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

▪ Recommendation:

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

▪ Measure suggested by the Committee:

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

In its response,<sup>47</sup> the country under review presents information with respect to the above recommendation.

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<sup>45</sup> Response of the Republic of El Salvador to the Questionnaire, pp. 118 and 119.

<sup>46</sup> Document prepared by FUNDE, ISD, FESPAD and the University Institute of Public Opinion of the Central American University, p. 40.

<sup>47</sup> Response of the Republic of El Salvador to the Questionnaire, pp. 121 to 136.

Furthermore, the document prepared by FUNDE, ISD, FESPAD, and the University Institute of Public Opinion of the Central American University mentions, with respect to the above recommendation, that *“at the central government level, one area of in which there has been progress is the Legislative Assembly. Through the Committee on Municipal Affairs, this organ, for the first time in the history of the country issued, in December 2006, a public call for contributions for the purpose of drafting the Decentralization Law. This year, this parliamentary committee has also held different subnational consultations on the Land-Use Planning Law and sent out a questionnaire to 60 civil society and academic organizations in the country. At the municipal level there are a considerable number of governments that implement diverse citizen participation mechanisms. The aforementioned study on participation and transparency, for example, records that in the last 10 years, initiatives in participatory planning and budgets have been implemented in 71% of municipalities; local development committees in 51%; public hearings in 47%; public town meetings in 41%; accountability meetings in 31%; and open sessions of the municipal council in 28%. In addition, in a recent survey 24% of those interviewed said that they had had the opportunity to attend a town meeting, municipal council session, or some other meeting called by the Office of the Mayor over previous 12 months.”*<sup>48</sup>

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

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

▪ Recommendation:

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

▪ Measures suggested by the Committee:

- a. *Consider the possibility of adopting, through the respective mechanisms and procedures, measures such as those provided for in the Draft Executive Decree for the establishment of the Ethics Commission for the Public Function.*
- b. *Consider the advisability of creating and implementing laws and mechanisms to encourage the participation of civil society and nongovernmental organizations in efforts to prevent corruption, including aspects of participation in addition to those that already exist.*
- c. *Take actions which encourage the prevention and reporting of acts of corruption, and which allow the Government to identify those areas in which such acts are likely to arise more frequently.*

In its response,<sup>49</sup> the country under review presents information with respect to the above recommendation.

Furthermore, the document prepared by FUNDE, ISD, FESPAD, and the University Institute of Public Opinion of the Central American University mentions, with respect to the above

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<sup>48</sup> Document prepared by FUNDE, ISD, FESPAD and the University Institute of Public Opinion of the Central American University, pp. 41 and 42.

<sup>49</sup> Response of the Republic of El Salvador to the Questionnaire, pp. 121 to 136.

recommendation, that *“the most significant progress with respect to these recommendations has been the approval of the Government Ethics Law and the creation of Ethics Committees. However, mention should also be made of the drawback that the only channel of communication between this tribunal and civil society is for the latter to file complaints since no other mechanisms, such as consultation or training, is provided.”*<sup>50</sup>

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

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

▪ Recommendation:

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

▪ Measures suggested by the Committee:

- a. *Consider applying mechanisms of participation in monitoring public administration at the national level, similar to those contemplated in the municipal regime, in those areas where the State considers they may be useful, including the possibility of such mechanisms being convoked by civic initiative at the local and national levels.*
- b. *Consider the implementation of awareness and training programs directed at civil society and nongovernmental organizations on the aspects dealt with in sections 4.1 to 4.5 of this report.*

In its response,<sup>51</sup> the country under review presents information with respect to the above recommendation.

Furthermore, the document prepared by FUNDE, ISD, FESPAD, and the University Institute of Public Opinion of the Central American University mentions, with respect to the above recommendation, that *“there has been no substantial progress in the creation of mechanisms to encourage civil society and non-governmental organizations to participate in follow-up on management of public affairs in the executive branch, although there has been some in the legislative branch, such as invitations for contributions and consultations on the drafting of the Decentralization and Land-Use Planning Laws. At the municipal level, the increase and institutionalization of these mechanisms has occurred in particular in the framework of the implementation of the Municipal Code reforms, which is supported by the association of municipalities and civil society organizations.”*<sup>52</sup>

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

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<sup>50</sup> Document prepared by FUNDE, ISD, FESPAD and the University Institute of Public Opinion of the Central American University, p. 42.

<sup>51</sup> Response of the Republic of El Salvador to the Questionnaire, pp. 121 to 136.

<sup>52</sup> Document prepared by FUNDE, ISD, FESPAD and the University Institute of Public Opinion of the Central American University, pp. 42 and 43.

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

### ▪ Recommendation 5.1:

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

### ▪ Recommendation 5.2:

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

### ▪ Recommendation 5.3:

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

### ▪ Recommendation 5.4:

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

The country under review did not refer to the above-noted recommendations in its Response.

In view of the foregoing, the Committee takes note of the need for the Republic of El Salvador to give additional attention to their implementation.

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

### ▪ Recommendation 6.1:

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

### ▪ Recommendation 6.2:

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

### ▪ Recommendation 6.3:

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

In its response,<sup>53</sup> the country under review presents information with respect to the above recommendations. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendations, the designation of the Department of Legal Affairs and Human Rights of the Ministry of Foreign Affairs as the central authority in charge of the receipt and follow-up of requests for international assistance and cooperation in keeping with the Inter-American Convention against Corruption.

The Committee takes note that the country under review has satisfactorily considered recommendation 6.1 and of the need for it to notify the OAS General Secretariat of this designation, in accordance with the prescribed formalities.<sup>54</sup>

## 7. GENERAL RECOMMENDATIONS

### ▪ Recommendation 7.1:

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

### ▪ Recommendation 7.2:

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

### ▪ Recommendation 7.3:

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

The country under review did not refer to the above-noted recommendations in its Response.

In view of the foregoing, the Committee takes note of the need for the Republic of El Salvador to give additional attention to their implementation.

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<sup>53</sup> Response of the Republic of El Salvador to the Questionnaire, pp. 121 to 136.

<sup>54</sup> By means of Verbal Note No. OEA-389/2007 of November 1, 2007, the Permanent Mission of El Salvador to the OAS informed the General Secretariat of the appointment of the Department of Legal Affairs and Human Rights of the Ministry of Foreign Affairs as the Central Authority.

## ENDNOTES

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<sup>i</sup> Constitution, Article 219. The civil service career system is established. The law shall govern the civil service and, in particular, the conditions of admission thereto; promotion on the basis of merit and aptitude; transfers, suspension, and termination of employment; duties of public servants and right of appeal against decisions that affect them. The law shall also ensure tenure for public sector employees. The civil service career system shall not encompass officials or employees who occupy political posts or positions of trust, in particular, cabinet ministers and vice ministers, the Prosecutor General, the Attorney General, secretaries of the Office of the President, ambassadors, directors general, department governors and the private secretaries of the aforementioned officials.

<sup>ii</sup> Government Ethics Law, Article 2. This law applies to all full-time or part-time public servants, whether salaried or serving gratuitously, in any state or municipal entity, in or outside the territory of the Republic, who hold their position by virtue of an election, appointment, or contract issued by the appropriate authority. The exercise of any profession, entrepreneurial activity, art, or industry is compatible with public service. The only incompatible activities are those expressly recognized as such in the Constitution and laws.

<sup>iii</sup> Civil Service Law, Article 4.- The following officials and employees shall not be included in the civil service career system: a) officials elected by popular ballot; b) Ministers and Vice-ministers; c) the Prosecutor General, the Attorney General, the Attorney General for the Defense of Human Rights; Secretary Generals of Public Institutions and Assistant Attorneys; d) the Secretaries of the Office of the President, e) the Political Departmental Governors and the Secretaries of the Political Departmental Government of the Municipal Mayoralties; f) the President, Magistrates, Secretary General and Highest Official of the Supreme Court of Justice; the Magistrates, Highest Officials and Secretaries of the Chambers of Second Instance; the judicial officials that are Judges of First Instance, Justices of the Peace and their respective Secretaries; the Chiefs of the Sections of Probity, Notary, Professional Investigation, Judicial and Chiefs of the Sections of the Supreme Court of Justice and their respective Secretaries; g) the members of the Civil Service Tribunal, Supreme Electoral Tribunal, Internal Tax and Customs Appeal Tribunal and all the members of the National Council of the Judiciary and its Executive Secretariat; h) the President, Magistrates and Secretary of the Court of Accounts of the Republic; i) the President and Secretary of the Superior Council of Public Health, Superior Council of Labor and the National Council on Minimum Salary; j) the members of the Armed Forces and National Civil Police; k) the Chiefs, Commanders and Guards of the Central Prisons; Inspectors and Custodians of the Protective Centers for Minors and the Customs Agency of the Republic; the Delegates, Sub-Delegates of the General Department of Migration; the Customs Administrators, Sub-Administrators and their Secretaries; l) the public servants that work in the positions of Directors, Sub-directors and secretaries thereof; Managers, Heads of Departments, of Sections, Administrators, collectors, treasurers, cashiers, superintendent, warehousemen and Auditors in any dependency of the Public Institutions, as well as those that manage public or municipal funds or any other good under their custody, deposit or anyone who manages public or municipal funds or any other property held in safe-keeping, storage, or any other capacity by the State, or who in order to perform their functions are required to provide surety to the Treasury; and in general, those public servants that are responsible for processing payment orders; m) persons that that work any type of service through contract in the public Institutions.

<sup>iv</sup> Civil Service Law, Article 18.- In order to enter the civil service and belong to the administrative career system, a person must: a) be Salvadoran, or of Central American or foreign origin and meet the requirements set forth in the Constitution and supplemental laws; b) be over 18 years old, or have obtained a document that entitles them to occupy the post or position; c) undergo the suitability tests, examinations, or competitions provided in this law and the respective regulations; d) be physically able to occupy the post; e) provide evidence of good conduct, in particular by means of certificates issued by offices where they have previously served, or by education centers, in the case of aspirants who have not yet held employment; f) be selected for the post or position from a group of eligible candidates in the manner provided at Article 23; g) undergo a three-month probation period counted from the date on which they take up the post or position; and h) meet the other requirements stipulated by special laws.

<sup>v</sup> Municipal Civil Service Law, Article 2. The following officials and employees shall not be included in the Municipal Civil Service System: 1.- Officials elected by popular ballot. 2.- Employees or officials who occupy

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positions of trust, defined as those appointed by virtue of the high degree of trust deposited in them on the basis of personal loyalty. 3.- Persons hired on a temporary or part-time basis for studies, consultant work, advisory services, training, or specific work that does not constitute a continuous and regular activity of the contracting municipality or municipal entity and which requires technical or professional expertise that precludes its performance by the staff of said municipality or municipal entity. 4.- Officials or employees appointed on a pro tem basis, unless the appointee already belongs to the Municipal Civil Service System. 5.- Workers whose employment relationship with the municipality or municipal entity is not public but private in nature and whose post or position is not specifically named in the respective budget, as well as those hired on a temporary basis to perform construction projects, repairs thereto, or temporary work arising from special events or circumstances.

<sup>vi</sup> The Prosecutor's Career System covers all officials, auxiliary agents, and employees of the institution.

Given the temporary nature of their appointment, the Assistant Prosecutor General, Auditor, and Secretary General, shall be included in the career system for the duration of their tenure, unless they were already included therein when appointed. By reason of their temporary nature, subject to the same proviso as above, persons appointed to Special Commissions or as Special Prosecutors are not considered included in the career system (Article 5 of the Prosecutor's Career Regulations).

<sup>vii</sup> LACAP, Article 4.- Exclusions. The following are excluded from the scope of this Law: a) Procurement and contracting operations financed with funds provided under agreements or treaties that the State enters upon with other states or international agencies, when so determined by the agreement or treaty; otherwise this law shall apply; b) Agreements signed between state institutions provided they do not oppose the objectives of this law; c) Personal services contracted by government institutions, including those under the system of the Salaries, Contracts, or Daily Wage Law.

<sup>viii</sup> LACAP, Article 39.- Modalities. The modalities of contracting governed by this law are as follows: a) Open public tender or competition; b) Limited public tender or competition; c) Freely negotiated contracts; d) Direct contracting; and, e) Equity market.

The aforementioned modalities may involve national, national and foreign, or only foreign contractors, which shall be specified in each case, as appropriate. The tender procedure shall be used in the case of contracts for goods and construction works, and the competitive bidding procedure in the case of consultant services contracts.

Contracting operations in the equity market are defined as those carried out by institutions in operations conducted on legally constituted exchanges, when advisable for public interests. Procurement operations conducted in this way shall be governed by specific laws.

<sup>ix</sup> LACAP, Article 71.- Elements. Direct contracting is the modality by which an institution contracts directly with an individual or legal person without following the procedures set down in this law, yet abiding by competitive principles and adhering to preset technical specifications and conditions. This decision must be set down in a reasoned resolution issued by the head of the institution.

LACAP, Article 72.- Conditions. The direct contracting procedure may only be opted for in one of the following circumstances: a) If necessary in order to protect industrial or intellectual property rights, such as patents, copyright, or similar rights, when there is only one source or when the area of professional, technical, or artistic expertise to which the contractual obligations apply preclude a tender; b) When a tender or competitive bidding process has been declared void for a second time; c) When the contract has been rescinded and emergency reasons warrant preclusion of another tender; d) In the case of works, services, or supplementary supply of goods, or of accessories, components or spare parts for existing equipment or other previously purchased items, for which no other source exists; e) In the case of procurement of war equipment or materiel previously classified by the Minister of National Defense and approved by the President of the Republic; f) If classed as an emergency in accordance with the guidelines contained in this Law; and, g) In the event of an emergency arising from war, a public disaster, or a grave disturbance of public order.

<sup>x</sup> LACAP, Article 17.- Heads. For the purposes of this law, hereinafter the senior authority in an institution, whether that position originates from direct election, indirect election, or appointment, such as ministers or vice ministers, as appropriate, presidents of institutions, the Prosecutor General, the Attorney General, the Human Rights Attorney, directors of decentralized autonomous institutions, who are usually ascribed legal representation of the institution in question, and the Mayor, in the case of municipalities, shall be referred to as the head or heads.

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<sup>xi</sup> LACAP, Article 104.- Elements. A public works contract is one which an institution enters upon with a contractor, who, in return for the payment of a sum of money, undertakes to carry out works or constructions of general or administrative benefit or interest, be it through alteration of the land or subsoil, or through building, remodeling, repairs, demolition, or conservation, or any other means.

Obligations arising from a public works contract shall be governed by the contract clauses, specific documents termed contract documents, the provisions of this Law and applicable common law provisions.

Regulations of the LACAP, Article 68.- Scope of Public Works. For the purposes of the Law and these Regulations, public works are defined as works the purpose of which is to build, extend, adapt, restore, modify, rehabilitate, and rebuild buildings or any other type of physical infrastructure. The term public work also encompasses the following concepts: a) Turnkey projects, in which the contractor's obligations extend from the design of the project until its completion, including, as necessary, transfer of technology; b) Construction of artificial islands and platforms used directly or indirectly in the development of natural resources; c) Agricultural infrastructure works, such as, land development, irrigation and drainage projects, distribution canals, protection works; and, d) Environmental protection and risk mitigation works.

<sup>xii</sup> LACAP, Article 105.- Turnkey Contract. The decision to enter upon a turnkey contract shall be adopted by means of a reasoned resolution, subject to verification of the advantages offered by this modality of contract over the others stipulated in the Law, or in the case of especially complex projects in which it would be clearly advantageous to consolidate all the engineering, equipment supply, and construction services in a single contractor, in light of the advantages offered by this modality in comparison to what the project would cost under the regular form of contracting.

For turnkey contracts, the contractor shall be selected according to the same regulation manner or procedures as in other cases, and the contracting institution shall include in the agreement clauses by which to monitor and supervise progress and performance of contractual obligations. The introduction of change orders and price adjustments is prohibited in contracts of this type and, the completion deadline shall not be amended except in the event of *force majeure*.

<sup>xiii</sup> LPVT, Article 10.- Regular Protection Measures. Regular protection measures are as follows: a) Non-inclusion in administrative or judicial investigations of the particulars of the protected person, or any other information that might lead to their identification; they may be referred to only by a number or some other code. b) For the Technical Unit to designate an address as the domicile of the protected persons for the purposes of summonses and notices. c) To escort protected persons to any place necessary to conduct a proceeding or to their domicile in the manner prescribed by the Technical Unit. d) To accommodate protected persons in a reserved and guarded place for the duration of the time that they remain in places where proceedings are held. e) To adopt the necessary steps and means to prevent visual identification of protected persons when they appear at any proceeding. f) To ensure that protected persons are able to record their testimony by audiovisual means in order to facilitate its reproduction in public when necessary or whenever they are unable to appear. g) To change the telephone number of the protected person. h) To prevent the protected person from being photographed or otherwise have their image captured. i) To prohibit any one from revealing information that might permit the protected person to be identified. j) Any other measure in keeping with the principles contained in this Law.

<sup>xiv</sup> LPVT, Article 11.- Special Protection Measures. Special protection measures are as follows: a) To provide police security while the situation of danger remains. b) To provide temporary residence at the shelters or secret places. c) To facilitate a change of residence, workplace, or place of study. d) To facilitate departure from the country and residence abroad for protected persons when the aforementioned measures are insufficient to ensure that their safety. In this case, consideration may be given to the issuance of new identity documents, which shall be subject to special rules. e) Any other measure in keeping with the principles contained in this Law.

<sup>xv</sup> LPVT, Article 12.- Assistance Measures. Assistance measures are as follows: a) Provision of emergency medical and psychological care. b) Provision of medical or psychological treatment when the protected person is unable to afford them due to their socio-economic position. In this case, care may be arranged at state or private hospitals, where such measures as are deemed necessary to protect the safety and identity of the person shall be strictly observed. c) provision of the necessary resources for accommodation, food and general maintenance in the cases of paragraphs b) and c) of the preceding article, for the length of time that the

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Technical Unit considers appropriate, provided that such resources not consist of money in cash. d) Provision of support for help to secure placement in another position of employment or school. e) Provision of free legal counsel. f) Any other measure in keeping with the principles contained in this Law.

<sup>xvi</sup> Criminal Code, Article 39. Definition of official, public and municipal employee, public authority, and government agent. For the purposes of criminal law, 1) A public official is any person who provides military or civilian services, whether for consideration or free of charge, or on a permanent or temporary basis, in the public administration of the state, municipality, or any other autonomous official institution, which had been invested with legal authority to consider and decide any matter connected with the organization and performance of public services; 2) A public authority is any state official who in their own capacity or by virtue of their duties or office, or as a member of a tribunal, exercise their own jurisdiction. 3) Public and municipal employees are any servants of the State or its decentralized agencies that do not have decision-making powers and act by order or delegation of higher-ranking officials; and, 4) Government agents are agents of the National Civilian Police.

<sup>xvii</sup> This study was prepared by Dr. José Enrique Silva, Doctor at Law and Doctor of Social Sciences of *Universidad de El Salvador* in his capacity as national consultant. The study was published in the book, *“Adaptando la Legislación Penal de El Salvador a la Convención Interamericana contra la Corrupción”* [Aligning El Salvador's Criminal Laws with the Inter-American Convention against Corruption], Office of the Assistant Secretary for Legal Affairs, Department of Legal Cooperation and Dissemination of the OAS, 2001 (JL969.5.C6 A3 2001 (Sal) /// OEA/Ser-D/XIX.3 Add.11). Available at: <http://www.oas.org/juridico/spanish/agendas/salvadestpreindex.htm>