MECHANISM FOR FOLLOW-UP ON
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
Eleventh Meeting of the Committee of Experts
25 to 30 June 2007
Washington, DC

REPUBLIC OF COSTA RICA

FINAL REPORT

(Adopted at the June 28, 2007 plenary session)
INTRODUCTION

1. Contents of the Report

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

Second, the report will examine follow-up to the recommendations that were formulated to the Republic of Costa Rica by the MESICIC Committee of Experts in the First Round, which are contained in the report on that country adopted by the Committee at its Seventh meeting, and published at the following web page: http://www.oas.org/juridico/english/mec_rep_hnd.pdf

2. Ratification of the Convention and adherence to the Mechanism

According to the official registry of the OAS General Secretariat, the Republic of Costa Rica ratified the Inter-American Convention against Corruption on March 29, 1996, and deposited the respective instrument of ratification on May 9, 1997.

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

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of the Republic of Costa Rica

The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Costa Rica, and in particular from the Office of the Prosecutor General, 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 Costa Rica sent the provisions and documents it considered pertinent.

For its review, the Committee took into account the information provided by the Republic of Costa Rica up to November 10, 2006, and that requested by the Secretariat and the members of the Review Subgroup, to carry out its functions in keeping with its Rules of Procedure and Other Provisions.

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1 This report was adopted by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on June 28, 2007, at its Eleventh meeting, held at OAS Headquarters in Washington D.C., United States, June 25-29, 2007.
2. Documents received from civil society organizations.

The Committee also received, within the deadline established in the Calendar for the Second Round adopted at its Ninth Meeting, a document from the civil society organization “Transparency International Costa Rica” (TI).

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 Costa Rica has a set of provisions related to the above systems, among which the following provisions related to the principal systems should be noted:

- Constitutional provisions applicable to public servants generally, such as Article 191, which provides that a civil service statute shall regulate the relationship between the State and public servants, for the purpose of ensuring efficient administration; and Article 192, which provides that, subject to constitutional exceptions, as well as exceptions in the civil service statute, civil servants shall be appointed based on proven suitability, and can only be removed for just cause, or in the case of a reduction in force.

- Legal provisions applicable to all public officials, such as those set out in the Law against Corruption and Illicit Enrichment in Public Service (Law No. 8422 of October 29, 2004), Article 3 of which prohibits favoritism and influence peddling in the appointment of public officials.

- Statutory provisions applicable to employees of the Executive branch, such as the Civil Service Statute, Law Number 1581 of May 30, 1953, Article 1 of which states that the purpose of the Statute is to ensure the efficiency of the public administration as well as to protect public servants; Articles 3 and 5 list those to whom the Statute does not apply; Article 4 lists those who are considered trust personnel, and to whom the Statute similarly does not apply; and Article 6 provides for a “Non-competitive Service” (Servicio sin Oposicion), and lists those who form part of that Service.

This Statute establishes: the Directorate General of the Civil Service as the body responsible for, inter-alia, reviewing and classifying Executive branch posts, selecting eligible candidates, establishing the procedures necessary to increase efficiency, and carrying out training for Executive branch personnel (Article 13); and the Civil Service Tribunal as the body responsible for hearing disputes resulting from dismissals, as well as challenges to decisions taken by the Directorate General or supervisors (Articles 10, 11, 14 and 190).

The Statute also contains various provisions related to entry into public service in the Executive branch, such as Article 20, which provides requirements for entry into the Civil Service; Article 16, which requires the Directorate General to prepare and maintain a Descriptive Manual of Civil Service

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2 This Meeting was held from March 27 to 31, 2006, at OAS Headquarters in Washington D.C., United States.
Posts, containing the functions, responsibilities and minimum requirements for each category of post within the Executive branch;

Article 22 through 31 of the Statute address various aspects of the personnel selection process, including, among others, the submission of evidence of suitability (Article 22); the request to fill a vacancy that is submitted to the Directorate General, which includes a description of the type of position to be filled and the requirements therefore, or indicating the title of the post as it appears in the Descriptive Manual of Civil Service Posts (Article 25); the ranking, by the Directorate General, of the most suitable candidates for the post in question, based on the results of a competition where necessary (Article 26); and the selection by the supervisor of the new employee from among the three highest ranked candidates (Article 27).

Article 9 of the Statute expressly regulates the requirements for entry into the civil service regime; it states that a candidate may not be related, by blood or by marriage in the direct or collateral line up to and including the third degree, to his/her immediate chief in the relevant department, office, or ministry, thereby ensuring that nepotism is prohibited in public service.

With respect to mechanisms for challenging decisions taken with regard to the recruitment and selection process, the response of Costa Rica notes that “The Civil Service Tribunal is authorized to consider petitions, complaints, dismissals and limitations. Statements by the “Minister” or “Ministry” shall be taken as being issued by the “Directorate” and the Tribunal shall hear any challenges against decisions (“recurso de impugnación”) related to the selection systems.”

- Regulatory provisions applicable to employees of the Executive branch, such as the Regulation of the Civil Service Statute, Executive Decree Number 21 of December 14, 1953, which expands upon the provisions of the Civil Service Statute, and contains detailed provisions regarding the personnel selection process for the Executive. Among its provisions, the Regulation provides requirements, prohibitions and impediments for entry into public service (Article 9); for the appointment of interim and emergency personnel for a maximum of six months (Article 10); for aspirants to the Executive branch to be tested via competition, investigation or examinations, and for those who achieve a score of at least 70% to be included in the register of eligible candidates (Article 11), for carrying out horizontal transfers of civil servants to fill vacant positions with those who are already members of the regime (Article 20).

- Statutory provisions applicable to employees of the Legislative branch, such as The Law for Personnel of the Legislative Assembly, Law Number 4556 of April 19, 1970, which contains provisions such as Article 2, which defines those who are considered employees of the Legislative Assembly; Article 9, which contains the general requirements for entry as an employee of the Legislative Assembly;

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3 Ibid, at p. 13. In addition, Article 43 of the Law for Personnel of the Legislative Assembly provides that the Civil Service Tribunal acts, in all applicable matters, based on the provisions of Articles 8, 9 and 10 of the Regulation of the Civil Service Statute.

4 Article 2 of the Law for Personnel of the Legislative Assembly provides: “For the purposes of this law, any employee of the Legislative Assembly appointed through a formal agreement by the Board of Directors and published in the Official Gazette (“Diario Oficial”) shall be considered a servant of the Legislative Assembly and classified as either an ordinary or trust employees. Trust employees shall be governed by the provisions of Chapter XV of this law.”
Legislative Assembly; and Chapter XV, Articles 44 to 54, which provide for trust personnel. In addition, the Law provides for an Administrative Directorate of the Legislative Assembly (Article 3(a)), headed by an Administrative Director charged, inter-alia, with planning, directing, coordinating and supervising the operations of the Legislative Assembly (Articles 3(b) and 5). According to Article 7 of the Law, the Directorate General of the Civil Service is responsible for the preparation and maintenance of the Job Description Manual for Legislative Assembly Posts and the classification of Legislative Posts; and Article 8 charges the Directorate General with responsibility for carrying out the recruitment and selection process for Legislative Assembly personnel, pursuant to statutory and regulatory provisions of the Civil Service Regime.

With respect to the selection process for Legislative branch employees, the above Law provides at Article 10, that in order to fill a vacancy (which will not be filled through promotion), the Administrative Director submits a personnel request, which includes the title of the post according to the Job Description Manual, as well as the indispensable requirements for the post, to the Directorate General. Article 11 provides that if there are no eligible candidates, the Directorate General will hold a competition, and forward the names of the three highest scoring candidates to the Administrative Director, who selects the winning candidate from among those three, pursuant to Article 12 of the Law.6

- Statutory provisions applicable to employees of the Judicial branch, such as the Judicial Service Statute, Law No. 5155 of January 10, 1973, Article 1 of which provides that the Statute regulates the relationship between the Judicial branch and its employees, in order to ensure efficiency in public service, as well as to protect employees.

The Statute divides those who work for the Judicial branch into two main categories, employees “servidores”, which includes those who have been appointed by the Plenary of the Court and are paid by the salary system (Article 2); and those who form part of the Judicial Career service, which includes those who administer justice at all levels, with the exception of magistrates (Article 66).8

With respect to the selection of employees of the Judicial branch, Articles 7 and 18 contain requirements for entry into service in the Judicial branch; Articles 6 and 8 provide that the Personnel Department of the Judicial branch shall be headed by a Chief appointed by the plenary of the Court, responsible for, inter-alia, the analysis and classification of posts, the selection of candidates to enter service, and the preparation of lists of eligible candidates and the corresponding three-person short list; Article 11 creates the Personnel Council as an oversight body; and Article 12 charges the

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5 Article 44 of the Law for Personnel of the Legislative Assembly, provides that the Person Secretary of the President of the National Assembly, as well as the employees of the different political groups, are trust personnel.
6 See also, the Response of Costa Rica to the questionnaire, at p. 13.
7 It should be noted that Article 66 of the Judicial Service Statute refers to this same type of official as service officers (“funcionarios de servicio”).
8 Article 66 of the Judicial Service States provides that “There shall be a service within the Judicial branch called the ‘Judicial Careers’, for the purpose of achieving suitability and the perfectoning of the administration of justice. The judicial career shall have the purpose of regulating, through background competitions and by opposition, the entry, transfers and promotions of the officials who administer justice, with the exception of Magistrates, from the lowest tanked posts to the those of the highest level within the Judicial branch. Judicial career officers shall be those who are incorporated therein pursuant to the provisions of this Chapter. The remaining, appointed to their posts for the period specified by law, shall be service officers.”
Personnel Council, *inter-alia*, with hearing challenges presented with respect to decisions taken by the Personnel Department and determining the policies of the Personnel Office.

With respect to the category of employee, the Judicial Service Statute also contains provisions related to entry into service in the judicial branch, such as Article 14, which requires the Personnel Department to prepare and maintain a Post Classification Manual, containing a description of and minimum requirements corresponding to each category of post; Article 23 which charges the Personnel Department with the selection of those candidates eligible to hold judicial posts; Article 24, which provides that the selection of candidates shall be carried out through competitions of background comparison *“concursos de oposicion y de antecedents”*, Article 26, which requires supervisors to request a three person short-list from the Personnel Department whenever a vacancy occurs, indicating the type of position to be filled, as well as the necessary requirements for the post, or by indicating the title of the position as it appears in the Post Classification Manual; Article 28, which requires the Personnel Department to submit a short-list of the most suitable candidates, and the requesting supervisor to recommend one of those candidates; and Article 30, which provides that the plenary of the Court shall then vote on which of the three short-list candidates is the winner of the competition.

With respect to those who comprise the Judicial Career service, Article 67 contains the main requirements for entry. Articles 71 and 72, respectively, create the Judicial Council, and charge it, *inter-alia*, with determining the components that will be evaluated in each competition as well as carrying out that evaluation, sending the three person short-list to the Supreme Court of Justice or to the Superior Council of the Judicial Branch, as appropriate, and holding competitions to fill the register of eligible candidates. Article 73 requires announcements of competitions to be published in the Judicial Bulletin as well in the press, and outlines the information to be made available.9

The foregoing Statute also contains specific provisions regarding the selection of those who administer justice, such as Article 77, which requires the Secretariat of the Supreme Court or the Superior Council of the Judicial Branch, as appropriate, to inform the Judicial Council of vacancies that occur, in order the latter to provide a three person short-list of candidates from among those included in the register of eligible candidates.

- The Organic Law of the Public Ministry, Law No. 7442 of October 25, 1994, which provides at Article 1 that the Public Ministry is an organ of the Judicial branch. In addition, Article 25 provides that the Prosecutor General *“Fiscal General”* has, among his or her functions, making and revoking appointments, promotions and transfers of prosecutors; Article 27 includes requirements that the Prosecutor General must consider in the appointment from a list, *“por nomina”* of assistant prosecutors, prosecutors, and auxiliary prosecutors; and Article 39 provides for a Training and Supervision Unit within the Public Ministry, responsible, *inter-alia*, for the organizing programs on selection, entry and training for Public Ministry employees.

- The Law on Salaries and the Merit Regime of the Comptroller General of the Republic, Law No. 3724 of August 8, 1966, which contains the basic requirements for entry as an employee in the

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9 Article 73 of the Judicial Service Statute provides that *“The Judiciary Council must periodically hold competitive examinations for candidates who wish to enter the judiciary career or achieve promotion within it. Entrance and promotion examinations may be held simultaneously or separately and must be announced so that a list of eligible candidates can be drawn up, whether or not there is a current vacancy. Such announcements must be published in the Judicial Bulletin and in a major national newspaper, specifying the following, location, salary, requisites, elements to be graded and deadline for the receipt of applications.”*
Comptroller General’s office (Article 2); provisions providing for a Personnel Office charged with, *inter-alia*, maintaining a Descriptive Manual of Posts and recruiting personnel (Articles 4 and 5); and provisions providing for the Comptroller General to select candidates from a list submitted by the Personnel Office, containing the names of candidates along with the respective scores obtained by each through competition (Article 3).

- Other statutory provisions which allow for challenges to be made with respect to the selection and recruitment process, such as the Law Regulating Contentious Administrative Jurisdiction, Law No. 3667 of March 3, 1966, which allows interested parties to seek judicial review of administrative actions or decisions that are allegedly contrary to law or which constitute an abuse of power.¹⁰

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

With respect to the constitutional and legal provisions that refer to the principal systems of government hiring that the Committee has examined, and based on the information available to it, they constitute, as a whole, a body of measures relevant to promoting the purposes of the Convention. Notwithstanding, the Committee considers it appropriate to formulate certain observations on the advisability of developing and complementing certain legal provisions that refer to those principal systems.

- With respect to the Executive branch, the Committee considers it convenient to formulate the following observations with respect to the Civil Service Statute and its Regulations:

  - Article 27 of the Statute provides that the authorized minister or chief shall select the new employee from among the first three names on the list of eligible candidates submitted by the General Directorate of the Civil Service. In this regard, the Committee considers that it would be convenient to have mechanisms in place which impart objectivity with respect to that final decision. Consequently, the Committee will issue a recommendation. (See Recommendation 1.1.1(a) in section 1.1 of Chapter III of this Report.)

  - In addition, the Committee has found no provisions requiring the Descriptive Manual of Civil Service Posts to be published or otherwise made available to the public. The Committee will formulate a recommendation on these points. (See Recommendation 1.1.1(b) in Section 1 of Chapter III of this report)

  - Similarly, the Committee notes an absence of provisions requiring or providing for the publication of vacancies or the main requirements thereof in the Executive branch. (See Recommendation 1.1.1(c) in Section 1 of Chapter III of this report)

- With respect to the Legislative branch, the Committee considers it convenient to formulate the following observations with respect to the Law for Personnel of the Legislative Assembly:

  - As occurs with certain provisions related to the executive branch, and with respect to Article 12 of the Law for Personnel of the Legislative Assembly, the Committee considers that it would be

¹⁰ As of January 1, 2008, the Law Regulating Contentious Administrative Jurisdiction will be replaced by the Contentious Administrative Procedural Code, Law No. 8508 of April 28, 2006, which enters into force on that day, and which also provides for judicial review of administrative actions and decisions.
convenient to have mechanisms in place which impart objectivity with respect to the final selection decision made by the Administrative Director of the Assembly, from the three-name shortlist submitted by the General Directorate. (See Recommendation 1.1.2 (a) in section 1.1 of Chapter III of this report).

- In addition, the Committee has found no provisions requiring the Job Description Manual for Legislative Assembly Posts to be published or otherwise made available to the public. (See Recommendation 1.1.2(b) in Section 1 of Chapter III of this report).

- Similarly, the Committee notes an absence of provisions requiring or providing for the publication of vacancies or the main requirements thereof in the Legislative branch. (See Recommendation 1.1.2(c) in Section 1 of Chapter III of this report).

- With respect to the Judicial branch, the Committee notes as follows with respect to the Judicial Service Statute:

  - While Article 73 of the Judicial Service Statute provides for publication of vacancy announcements, the Committee notes that Article 73 refers specifically to the publication of competitions within the career service, which would seemingly exclude competitions for those who fall within the category of employees. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1.3(a) in Section 1 of Chapter III of this report).

  - Similarly, the Committee notes an absence of provisions related to publicizing the Post Classification Manual. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1.3(b) in Section 1 of Chapter III of this report).

- With respect to the Public Ministry, the Committee makes the following observation:

The Committee notes the absence of provisions requiring or providing for the publication of vacancies in the Public Ministry. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1.4 in Section 1 of Chapter III of this report).

- With respect to the Office of the Comptroller General, the Committee formulates the following observations:

The Committee considers that Article 3 of the Law on Salaries and the Merit Regime of the Comptroller General of the Republic, may potentially allow the Comptroller General a high degree of discretion, insofar as it does not require the Comptroller to choose the highest scoring candidate, but rather, seemingly allows for a selection of any candidate included on the list presented by the Personnel Office. The Committee believes that the Republic of Costa Rica could benefit from the establishment of objective criteria for those selection processes. (See Recommendation 1.1.5(a) in Section 1 of Chapter III of this report).

In addition, the Committee notes an absence of provisions which require the publication of vacancy announcements or the Descriptive Manual of Posts; or mechanisms for challenging or appealing decisions taken with respect to the hiring and selection process. The Committee will formulate recommendations in this regard. (See Recommendations 1.1.5(b) and (c) in Section 1 of Chapter III of this report).
1.1.3. Results of the legal framework and/or other measures

With respect to results in this field, the response of Costa Rica provides in pertinent part as follows: “By comparison, the Judiciary has a total of 7,863 public officials. Some autonomous institutions (decentralized sector) also have a fairly large staff. Examples are Social Security (Caja Costarricense de Seguro Social) which has a total of 43,014 civil servants (8,486 temporary and 34,528 permanent); Electricity (Instituto Costarricense de Electricidad), with a total of 13,003 public employees (10,906 permanent and 2,097 temporary), which together account for the bulk of the civil servants employed in this sector, compared to the average for small institutions, such as Radiography (Radiográfica Costarricense), with 288 public employees.”

Considering that the Committee does not have any other information on the results in this field, nor data related to the Executive and Legislative branches, processed in such a way as to allow for a comprehensive evaluation of the results in this field, it will formulate a recommendation in this regard. (See general recommendation 4.2 in Chapter III of this report)

1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES

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

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

- Constitutional provisions applicable to all branches of government, such as Article 182, which provides that “Contracts for performance of public works entered into by State Branches, Municipal Governments and autonomous institutions, purchases made with funds of those entities, and sales or leases of their property shall be carried out by means of bidding proceedings, in accordance with the provisions of law governing the amount involved.”

Legal provisions of varying nature, applicable to all branches of government, such as those contained in the Law on Administrative Contracting, Law No. 7494 of May 2, 1995, and its Regulation, Executive Decree No. 33411 of September 27, 2006. Among the provisions of both the Law and its Regulation, the following should be noted:

- Article 1 of the Law, which provides that it applies to any procurement activity undertaken by the Executive, the Judiciary, the Legislative, the Supreme Elections Tribunal, the Office of the Comptroller General, the Public Ombudsman’s Office, the decentralized territorial and institutional sector, non-State public entities and public enterprises. Article 1 also provides that when public funds are either partially or entirely used, the contractual activities of any other kind of natural or legal persons shall be subject to the principles of the Law.

- Article 2 of the Law, which exempts the following type of contracting from the scope of its application, including the ordinary activity of the administration; contracts entered into with...
other States; contracting activity between public entities; contracting activity which, due to its nature or the circumstances, cannot be submitted to public competition, such as when there is only one provider, or owing to special security reasons or other qualified reasons; purchases made with petty cash; contracts for foreign construction, installation or provision of offices or services; those activities that are excluded pursuant to law or international agreements; activity, which due to its small amount, should not be submitted to ordinary contracting activity, pursuant to Article 27 of the Law. Article 2 also exempts contracting related to employment relationships; public “empréstitos”; activity falling under a specific contracting regime; procurement by public non-state entities if fifty percent of their financing derives from their own funds, or contributions from their union membership; and public companies if the majority of shareholders are individuals and not the public sector.

- Articles 2bis of the Law, which contains additional exceptions to its applicability, including: complex or specialized works or services that can only be obtained from a limited number of providers; certain technological equipment; and other activity when sufficient detailed justification that it is necessary to satisfy the general interest or avoid damage to the public interest.

- Article 80 of the Law, which allows formal contracting to be waived, with prior authorization from the Office of the Comptroller General of the Republic, in urgent cases necessary to prevent damage to the public interest, or to prevent serious damage to people or property.

- Article 4 of the Law, which provides that all activity related to administrative contracting is to be based on the principles of effectiveness and efficiency; Article 5, which provides for the principles of equal participation and competition to all potential offerors; and Article 6, which provides, inter-alia, for the publication of contracting procedures, and for all interested parties to have the right to access to contracting files and accompanying information.

- Article 46 of the Law, which provides that each contracting agency shall maintain a Registry of Providers interested in contracting with the state, and requires an invitation to be published in La Gaceta at least once a year, inviting the public to form part of that registry.

- Articles 116 through 124 of the Regulation address the Registries of Providers, and provides, inter-alia, the information that must be included by interested providers (Article 117); that the administration must use the Registry in strict chronological order, pursuant to the date of the providers’ request to be incorporated therein (Article 121); and the bases for exclusion from the Registry (Article 124).

- Article 12 of the Law, which allows the Administration to increase or decrease the amount of a given contract, up to a maximum of the original contract price, in the event that unforeseeable circumstances arise and the increase or decrease is the only way to properly satisfy the public interest.

- Article 30 of the Law, which provides that when a public procurement is unsuccessful, abbreviated bidding can then be utilized, and that when an abbreviated bidding process is unsuccessful, direct contracting can then be used. In order to make use of this provision, prior authorization from the Office of the Comptroller General is required.
- Article 101 of the Law, which requires the administration to submit reports on contracting activity to the Office of the Comptroller General, for it to carry out its control and audit functions.

- Provisions of the Law which provide for various forms of procurement,\(^{15}\) including:
  - Public bidding, which is used for contracts in excess of a certain sum,\(^{9}\) and depending on the size of the budget of the contracting agency (Article 27); in contracts concerning the transfer of rental of land or property, and in concession contracts for public facilities “concesión de instalaciones públicas” (Article 41).
  
  - Abbreviated bidding, which is used for contracts over a certain sum and below the respective monetary thresholds established for public bidding referred to in the preceding paragraph (Article 44). The process for abbreviated bidding is for five providers that are accredited in the respective Provider Registry to be selected to compete for the contract (Article 45). If five bidders are not available, the administration must issue an invitation published in the Official Diary “Diario Oficial”.
  
  - Direct contracting, when the sum falls below the respective monetary threshold established for abbreviated bidding (Article 27).
  
  - Public auction “remate”, for the sale or rental of public land or property, when it is the most appropriate method to achieve the interests of the administration (Article 49).
  
  - Financed bidding (Article 52).\(^{11}\)
  
  - Acquisition through public auction “adquisición por subasta a la baja”, for the purchase of generic products (Article 54).\(^{11}\)

- Article 81 of the Law on Administrative Contracting, which allows for objections to be submitted to the Comptroller General, with respect to the announcements for public bidding, and to the contracting entity with respect to announcements for abbreviated bidding; Article 84 of the same Law, which allows appeals of contract award decisions for large contracts to be presented to the Comptroller General; Article 92, which allows for requests for reversal of award decisions to be submitted to the office responsible for the decision, with respect to contracts that do not met the threshold for appeals to the Comptroller General provided for by Article 84 of the Law; Article 90, which allows for judicial challenge to be made to the Administrative Contentious Superior Tribunal, within three days of the exhaustion of administrative remedies. In addition, Article 3 of the Law on Administrative Contracting provides that the nullification regime provided for by the General Administrative Procedure Law applies to administrative contracting.

- Article 204 of the Regulations, which empowers the administration to unilaterally resolve contracts for reasons of noncompliance attributable to the contractor, and which also

\(^{15}\) It should be noted that prior to the most recent amendments to Costa Rica’s public procurement regime, which took effect on January 4, 2007, the Law on Administrative Contracting provided for the following main types of procurement: public bidding, international bidding, registry bidding, restricted bidding, and direct contracting.
provides for the imposition of fines on contractors; and Article 208, which sets out the process whereby contracts can be canceled.

- The Law Against Corruption and Illicit Enrichment in Public Service, Law No. 8422 of October 29, 2004, also contains provisions related to challenges to procurement decisions, such as Article 6, which provides that actions or contracts resulting from a fraud on the law (“fraude de ley”), shall be nullified. In addition, Article 6 also provides that at the administrative level, the declaration of nullity is issued by the respective public entity, or by the Office of the Comptroller General of the Republic, as appropriate.

- Legal provisions regarding contracting related to public works, such as Article 57 of the Law on Administrative Contracting, which provides that contracts for public works shall be entered into through public bidding, abbreviated bidding, or direct contracting, depending on the amount of the contract; Articles 58 through 62 of the Law and Article 147 to 152 of its Regulation, which contain additional details on the contracting and award process for public works, including the requirement for public works contracts to be preceded by the corresponding environmental impact studies (Article 59).

- The General Law on the Concession of Public Works with Public Services, Law No. 7762 of April 14, 1998, which pursuant to Article 2 thereof, applies to concession contracts for public works or works with public services. In addition, Article 6 of the Law creates the National Concessions Council as a decentralized body under the ministry of Public Works and Transport; and Article 8 charges it, inter-alia, with ensuring the transparency, appropriateness and legality of administrative actions taken by the Technical Secretariat of the Council (Article 8(a)), approving, rejecting or amending the bidding terms and conditions for concessions (Article 8(b)), and awarding and entering into the respective contract (Article 8(c)).

- Electronic forms of procurement, including:
  
  - The Integrated Contracting Activity System (SIAC), available at www.cgr.go.cr, which, according to the response of Costa Rica, is an information system developed by the Comptroller General of the Republic. Costa Rica’s response notes that Guideline no. D-4-2005-CO-DDI of December 14, 2005, establishes guidelines for the “registration, validation and use of information on contracts in the system, for use by the entities and agencies controlled and supervised by the Office of the Comptroller General, and makes them binding upon the whole of the Public Administration.”16

The response further notes that the system is made up of the following modules: the Contracting Procedures Module, which contains information on all procurements; the Reconsideration, Reversal and Appeals Module, which contains information on challenges to bidding terms, conditions and awards; the Internal Approval and Endorsement of Contracts, which contains documentation on contracts, which, due to their nature and amount, must be endorsed by the audit body to be legally effective, or else be given internal approval by the Administration; the Requests for Authorization for Direct Contracting Module; and the Consultation and Reports on Contracting Activity Module.17

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16 See the response of Costa Rica to the questionnaire, at p. 45.
17 Ibid.
• The Government Procurement System (CompraRED), available at https://www.hacienda.go.cr/Msib21/Espanol/DGABCA/OV_ST_CompraRed.htm, the purpose of which, according to Article 1 of the Regulation for the Use of the Government Procurement System, is to "...promote the transparency, efficiency, effectiveness and regional and global integration of procurement by the Costa Rican State so that requests for goods, works and services, and the stages decisions and results of procurement from start to finish, may be made available to potential suppliers, citizens and the government on line to guarantee compliance with basic administrative procurement principles. None of the foregoing shall affect the ability to comply with the requisites on statutory notification methods.

CompraRED is an official communication mechanism through which the Central Administration undertakes government procurement procedures on line. It may also be used by the rest of the Public Sector Institutions, provided they comply with the provisions of these Regulations and any other applicable legislation."

With respect to this system, Costa Rica’s response also notes that “Through CompraRED it is possible to send out invitations to bid, disseminate the bidding terms and conditions and amendments and clarifications thereto, receive offers and clarifications thereto, request, resolve and report on other procedures, including decisions.”

• The Integrated Financial Management Information system (SIGAF), created pursuant to Article 125 of the Law on Financial Administration and Public Budgets, which calls upon the Ministry of Finance to promote and support the development and smooth operation of such a system. SIGAF is described by Costa Rica as "an information system that provides the Central Government ministries with support in the field of administrative and financial management and functions for which the Ministry of Finance and the Office of the Comptroller General are responsible.”

According to Costa Rica’s response to the questionnaire, information available on SIGAF related to procurement processes is broken down into the following categories: Purchases, Bill of Materials, Information on Treatment of Registers, Treatment of Suppliers, Management of Samples, Evaluation of Suppliers, Requests for Orders, Manual of Profiles, Order, Invitations to Tender, Acceptance of Goods, Releases ("Liberaciones"), Procedures for Public Contracting, Printing, miscellaneous Functions; and Contracts.

- Legislative provisions establishing oversight bodies for the procurement system in general, including:

• The Organic Law on the Office of the Comptroller General of the Republic, Law No. 7428 of September 7, 1994. According to the response of Costa Rica, The Office of the Comptroller General "controls and inspects everything related to public contracting procedures in order to guarantee the proper use of public funds to satisfy the public interest, acting as an external oversight body authorized to remove inadmissible clauses from the bidding terms and conditions (following a remedy), annul an award announcement (in response to a

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18 Ibid, at p. 47.
19 Ibid, at p. 48.
20 Ibid.
remedy) or endorse a contract entered into by the Administration indicating to stop it from being executed. It also hears complaints concerning irregular acts committed during public contracting procedures by the Administration.”

In addition, Article 20 of the Law gives the Office of the Comptroller General the authority to approve contracts entered into by the State, as well as decide which type of contracts do not need such approval. Pursuant to Article 20, the absence of such approval with respect to contracts for which it is required results in a prohibition on executing the contract.

As also noted in the response of Costa Rica, pursuant to Articles 12, 24 and 37.6 of its Organic Law, the Office of the Comptroller General has the authority to “issue provisions, rules, laws, policies, guidelines and instructions that are binding upon the whole of the Public Administration which are necessary in order for the Auditing Entity to exercise its control and inspection functions.”

- The General Law on Internal Control, Law No. 8292 of July 31, 2002, Article 7 of which requires entities and organs subject thereto, to have an internal control system in place; and Article 3, which grants the Office of the Comptroller General the authority to issue those binding technical internal control rules that are necessary for the proper functioning of internal control systems.

- The Law on Financial Administration and Public Budgets, Law No. 8131 of September 18, 2001, Article 99 of which creates the Directorate General for the Administration of Goods and Public Procurement as the body responsible for the “System on the Administration of Goods and Public Procurement”, and charge it, inter-alia, with the periodic evaluation of contracting processes (Article 99(b)); directing the formulation of the Central Administration’s procurement programs; proposing necessary changes the system so that the standards and procedures protect the public interest (Article 99(d)); and supervising the Central Administration’s institutional supply agencies to ensure proper implementation of the processes for contracting goods (Article 99(e)). In addition, Article 100 authorizes the Directorate to decide on the guidelines for the evaluation of services contracted by the Administration.

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

With respect to the legal and regulatory provisions addressing the principal systems for government procurement of goods and services examined by the Committee, based on the information available to it, they constitute, as a whole, a body of measures relevant to promoting the purposes of the Convention.

Nonetheless, the Committee considers it appropriate to formulate certain observations regarding the advisability for the Republic of Costa Rica to consider complementing and developing the legal framework and the existing measures for the procurement of goods and services. In particular, the Committee notes as follows:

- The Committee observes the existence of a broad regime of exceptions to public bidding, and in this regard, considers that it might be beneficial for the Republic of Costa Rica to ensure the observance

21 Ibid, at p. 41.
22 Ibid.
of the public bidding regime, when public bidding is the procedure to be applied pursuant to law. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2.1, in section 1.2 of Chapter III of this Report).

- With respect to contracts for public works, the Committee notes an absence of provisions establishing citizen oversight mechanisms that cover all the different stages of public works procurement procedures, without prejudice to existing internal or external institutional controls. (See Recommendation 1.2.2 in Section 1 of Chapter III of this report).

- The Committee notes that Article 46 of the Law of Administrative Contracting provides that each contracting agency shall maintain a Registry of Providers. In this regard, the Committee considers that it would be convenient for the Republic of Costa Rica to consider the creation of a national Registry of Providers, which could be used by all of the entities of the Public Administration. (See Recommendation 1.2.3 in Section 1 of Chapter III of this report).

- With respect to CompraRED, the Committee notes that its use is mandatory for the Executive branch and optional for the remainder of the Public Administration. In this regard, the Committee considers that Costa Rica might benefit from considering the possibility of extending the use of CompraRED to include the other branches and entities of the Public Administration. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2.4 in Section 1 of Chapter III of this report).

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

With respect to results in this field, Costa Rica noted in its response that the Directorate General for the Administration of Goods and Public Procurement maintains statistical information on the goods and services procurement processes for the entire central administration, which are available at www.hacienda.go.cr. In this regard, Costa Rica provided various tables and charts, including the following two tables corresponding, respectively, to the procurements carried out by the Executive branch in the years 2005, as well as the percentage of contracting entered into via direct contracting, broken down by each sector within Costa Rica.

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23 See the response of Costa Rica to the questionnaire, at p. 52.
## Chart No. 1

**Procurement by Ministry**  
*(January to December, 2005)*

<table>
<thead>
<tr>
<th>MINISTERIOS</th>
<th>CD</th>
<th>LI</th>
<th>LP</th>
<th>LR</th>
<th>LT</th>
<th>Total</th>
<th>%</th>
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<td>Ministry of Culture Youth and Sport</td>
<td>207</td>
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<td>8</td>
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<td>10</td>
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<tr>
<td>Office of the Prosecutor General</td>
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<td>283</td>
<td>6.59</td>
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<tr>
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<td>2</td>
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<td>278</td>
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<tr>
<td>Ministry of Planning</td>
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<td>12</td>
<td>1</td>
<td>61</td>
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<tr>
<td>Ministry of the Environment and Energy</td>
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<td>0</td>
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<td>3</td>
<td>73</td>
<td>154</td>
<td>140</td>
<td>4,292</td>
<td>100</td>
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</tbody>
</table>

CD: Direct Contracting; LI: International Procurement; LP: Public Bidding; LR: Registry Bidding; LT: Restricted Bidding
With respect to the foregoing results, the Committee highlights that according to the first chart, in 2005, less than 2% of contracting processes were carried out via public bidding, with 89% being carried out through direct contracting.

However, the Committee also notes that the second chart indicates that in terms of overall expenditure, direct contracting was used in only 5.4% of procurements in Costa Rica in 2005.

In addition to the foregoing, the Committee notes an absence of results indicating the monetary amounts expended by the Republic of Costa Rica on direct contracting, broken down according to each of the provisions or exceptions contained in the Law on Administrative Contracting. In this regard, T.I. Costa Rica notes that “Law 7494 [the Law on Administrative Contracting] provides that the administration must submit quarterly reports to the Office of the Comptroller General, informing on the contracting activity carried out during that period (article 101)...It should be noted that neither the administration nor the Office of the Comptroller General keep figures on the amounts spent by the State on State purchases.”

T.I. Costa Rica also notes that the Integrated Contracting Activity System (SIAC), created by the Office of the Comptroller General, contains a registry which will purportedly include, inter-alia, information on award decisions, qualifications of contractors, and the purpose and amount of operations. The Committee considers that in this regard, it would be beneficial for the Republic of Costa Rica, to ensure that SIAC maintains results on how frequently each type of exception in the Law on Administrative Contracting is relied upon, in order for it to serve as a useful tool to measure the use of the various exceptions to the applicability of the Law. (See Recommendation 1.2.5 in Section 1 of Chapter III of this report).

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24 See the document submitted by T.I. Costa Rica, at p. 10.
25 Ibid.
In addition, in order to increase the transparency of procurement processes, the Committee suggests that the Republic of Costa Rica study the possibility of, when appropriate, publishing pre-bidding terms and conditions so that interested parties can find out about them and submit comments thereon. (See Recommendation 1.2.6 in Section 1 of Chapter III of this report).

Finally, considering that the Committee does not any information on the results in this field corresponding to the Legislative and Judicial branches, processed in such a way as to allow for a comprehensive evaluation of the results in this field, it will formulate a recommendation in this regard. (See general recommendation 4.2 in Chapter III of this report).

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

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

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

- The Law on Internal Control, Law No. 8292 of July 31, 2002, which at Article 6 requires the Office of the Comptroller General, the Administration and the internal audit units to maintain the confidentiality of the identity of citizens who report acts of corruption in good faith.

- The Law on Corruption and Illicit Enrichment of Public Servants, Law No. 8422 of October 29, 2004, which at Article 8 provides that the Office of the Comptroller General, the Administration and the internal audit units shall maintain the confidentiality of the identity of citizens who report acts of corruption in good faith, while allowing access to information by judicial authorities when there is a possibility that a crime against the honor of the accused has been committed; and Article 9, which provides that the Office of the Comptroller General shall determine procedures for the handling of complaints.

- The Regulations of the Law on Corruption and Illicit Enrichment of Public Servants, Law No. 32333 of April 12, 2005, Article 8 of which provides the right for citizens to report acts of corruption, in writing, verbally, or by any other means; Article 9, which requires public officials to report acts of corruption; Article 10, which guarantees the confidentiality of the identity of reporters, while allowing judicial authorities and others with a legitimate purpose access to relevant information, when there is a possibility that a crime against the honor of the accused has been committed; Article 18, which requires that the identity of the complainant be kept confidential at all stages of any investigatory or administrative procedure, as well as after the resolution of any such procedure; and Article 13, which provides that anonymous complaints will not be processed, but that in exceptional cases, a preliminary investigation may be commenced, when the evidence presented so merits.

- The Guidelines on filing Complaints with the Office of the Comptroller General of the Republic, Resolution R-CO-96-2005, Article 5 of which requires that the identity of the complainant be kept confidential; Article 6, which outlines the main requirements that complaints must contain; Article 9, which provides that unless anonymous complaints are sufficiently grounded and supported by evidence that allows for an investigation to be commenced, they will be filed.

- The Cooperation Agreement Between the Judiciary and the Ministry of Public Security, No. 24-CG-04, signed on March 4, 2005, which provides that the ministry of Public Security will provide the
necessary protection for prosecutors, judges, public defenders, judicial authorities, witnesses and victims in those trials, who, due to the nature of their testimony, require special protection.

With respect to mechanisms for requesting protection, the response of Costa Rica notes that “The mechanism for requesting individual protection is established in Agreement N° 3. Under this convention a request for protection must be justified and presented to the President of the Supreme Court of Justice, the Prosecutor General of the Republic or the Public Ombudsman’s Office and sent straight to the Minister of Security. The Ministry of Public Security reviews the request if it finds it to be in order, grants protection through a reasoned resolution which summarizes the reasons for such individual protection in order to activate the operation. This operation is undertaken jointly between the Unit of Immediate Intervention of the Ministry of Public Security and the Judicial Police and consists of determining the type of protection to be given, the pertinent studies, the time it will last, if the protection is personal, at home, for relatives of judges, prosecutors, public defenders, judicial officials, or else witness and victim protection.”

In addition, with respect to this area, Costa Rica’s response notes that “The Program for the Protection of Victims, Witnesses, Judicial Officers and others involved in criminal proceedings was introduced in March 2006 at the office for the Protection of Victims of Crime of the Public Prosecutions Service. This Program is intended to achieve a mixed system combining welfare and protection. Welfare includes legal aid, psychological help and social work, the latter two extending to victims in the trial. Protection is coordinated with the Ministry of Public Security which decides on the type of help to be given.

A filter is applied before protection is requested in order to determine the veracity of the fear. This filter is undertaken by a professional in the field of psychology. Next a Social Worker sees whether the victim is able to move elsewhere. Once these two situations are known, they coordinate with the Ministry of Public Security which will in turn provide three types of protection: police surveillance at close quarters (rounds through the community police), telephone or on-site monitoring (regular communication with the person under protection) and a bodyguard service. In the case of bodyguards, the person receiving protection has to cover the cost of meals for the police.”

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

With respect to the provisions addressing systems for the protection of public servants and private citizens who in good faith report acts of corruption that have been examined, the Committee considers that based on the information available to it, they constitute, as a whole, a set of measures relevant to promoting the purposes of the Convention.

Nonetheless, the Committee considers that it would be useful for the Republic of Costa Rica to consider adopting, through the appropriate authority, comprehensive regulations on the protection of public servants and private citizens who in good faith report acts of corruption, in accordance with the fundamental principles of its domestic system of laws, bearing in mind that Costa Rica notes in its response that “As far as mechanisms for reporting threats or retaliation are concerned, it must be pointed out that although there is no specific process for cases of corruption, our legislation generically criminalizes threats made to a public official or a private individual.”

The Committee

26 See Costa Rica’s response to the questionnaire, at p. 62.
27 Ibid, at p. 63.
28 Ibid, at p. 61. It should also be noted that Costa Rica has a comprehensive draft law on this matter, which has passed the preliminary stages, and which can be reviewed by the Committee once it has become law.
will formulate a recommendation in this regard. (See the Recommendation in Section 2 of Chapter III of this report).

In addition, the Committee notes that the Agreement in force between the Judiciary and the Ministry of Public Security is somewhat limited, insofar as it does not anticipate protection for those who have reported crimes, and more specifically, acts of corruption, unless they happen to be witnesses or victims in a judicial proceeding. Accordingly, the Committee considers that it would be useful for Costa Rica to implement specific provisions creating measures for protecting those who report acts of corruption in good faith, both at the administrative and judicial levels. The Committee will formulate a recommendation in this regard. (See paragraph (a) of the Recommendation in Section 2 of Chapter III of this report).

In addition to the foregoing, the Committee notes an absence of provisions which ensure that those who report acts of corruption in good faith will be protected from retaliation related to their employment, in those cases where the reporter is a public official. In this regard, the response of Costa Rica notes that “As regards retaliation, and above all reprisals in the workplace, since there is no legislation on the matter, the Labor Code and the General Law on Public Administration will be applied. These establish a series of measures regarding the provision of services, to protect workers.” The Committee considers that Costa Rica would benefit from implementing specific provisions which address this situation, including cases in which the reporters’ hierarchical superiors may be involved. The Committee will formulate a recommendation in this regard. (See paragraph (b) of the Recommendation in Section 2 of Chapter III of this report).

Finally, although the Committee notes that Costa Rica does have provisions which sanction an individual’s failure to report an act that he or she is required to report, the Committee also notes an absence of provisions providing for the imposition of administrative or criminal penalties for a failure to observe the rules and/or duties relating to protection. The Committee will formulate a recommendation in this regard. (See paragraph (c) of the Recommendation in Section 2 of Chapter III of this report).

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

With respect to the results in this field, the response of Costa Rica notes as follows:

“1.- Cases have been handled in all the provinces and are coordinated from the office in the First Judicial Circuit of San José.

2.- From 2006 up to November 7, protection has been given to 78 people. This required a total of 544 appointments (legal, psychological, administrative or protection program).

3.- During 2005 only 2 cases of protection were handled.

4.- Between 2000 and 2004 not one case of protection was handled, because only a welfare model was applied because the protection program did not exist at the time.

5.- The greatest limitation has been the time it takes the Ministry of Public Security to respond (from 1 to 10 days)
6.- As of April 2006, the Victim Assistance Office initiated the process for receiving and recording the information. It is hoped in the short term to generate statistical data on this.

7.- The program needs more economic and human resources at the Public Prosecution Service and the Ministry of Public Security.

8.- The Office for the Attention of Victims of Crime has not received any requests for protection arising from crimes of corruption.\(^{30}\)

Costa Rica also included in its response various charts and graphs, as well as additional information regarding the results in this field. Among those results, the Committee highlights the following information:

“Between April 2004, when the Office of the Public Ethics Prosecutor began to function, and November 1, a total of 120 complaints against public officials for acts of corruption committed or lack of transparency in the exercise of their functions. In each and every case care has been taken to maintain the confidentiality of persons who in good faith report corrupt acts, and so far there have been no threats or reprisals against whistleblowers in any of the investigations. It is thus unnecessary to apply any witness protection mechanism.

During 2004, when the Office of the Public Ethics Prosecutor was created and began to operate, it investigated 47 complaints about acts of corruption. Although in 2005 the Office received 29 less reports, up to November 1 of this year it had handled 53 complaints.

Out of the 47 acts of corruption reported from April to December 2004, 73% were dismissed for the reasons given in Article 17 of the Regulations to the Law on Corruption, in 4% of the cases recommendations were made to the bodies reported; although the investigations did not prove that crimes had been committed, it was considered that the institution should endeavor to make its functions more transparent. Two percent of the complaints were sent to the Public Prosecutions Service after a preliminary investigation had determined that there was sufficient evidence to bring a case against the person reported. The remaining 4% of all the reports were redirected to other bodies or institutions which, given the nature of the complaint, have the authority to process them.

As indicated above, in all the cases the identity of the persons who in good faith reported the acts of corruption was kept confidential and no security measures were taken to protect them.

As can be seen in the figure, 29 complaints were received in 2005 and 37% of them were filed or dismissed. In 14% of the cases a recommendation was made and a further 14% were redirected to other institutions, 21% were rejected and the remaining 14% are still under investigation. The identity of informants was kept confidential and it was not necessary to apply any mechanism to protect either the witnesses or the whistleblowers.

Between the beginning of this year and November 1, the Office of the Public Ethics Prosecutor received 53 complaints. The majority of them (64%) are still under investigation in an effort to determine whether or not a public official was effectively involved in an act of corruption or lack of

\(^{30}\) Ibid, at. p. 63.
transparency. To date it has not been necessary to take any measures to protect witnesses or whistleblowers from threats or reprisals. Additionally their identity was kept confidential."31

### Division of Operational and Evaluation Inspection

#### Status of complaints admitted during 2004

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<th>Status</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
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<th>%</th>
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<td><strong>785</strong></td>
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**External transfer**: Reports that reach the CGR and are transferred externally to other institutions: the Internal Auditors or the Active Administration.

**Resolved**: Reports that reach the CGR and are resolved directly by the Complaints and Sworn Declarations Area.

**Filed**: Copies or anonymous complaints that reach the CGR and are sent to the Archive and Communications Unit through a document headed “Reason for Filing” indicating the grounds for the decision to file them.

**FOE Transfer**: Complaints that reach the CGR and are transferred to the Operations and Evaluations Inspection Areas after appraisal by the Complaints Area.

**Internal Transfer**: Complaints that reach the CGR and are transferred to other Divisions or Units of the CGR (e.g, Advice and Legal Management Division) after appraisal by the Complaints Area.

**Direct entry**: Complaints that reach the CGR, generally go straight to the Audit Office and are then sent on to the DFOE Area, Divisions or Internal Units, for attention as required. The function of the Complaints Area is to input them into the databases for statistical and follow-up purposes.

**Investigation**: Complaints that reach the CGR and are under review by the Complaints Area.

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The Committee considers that the foregoing information indicates that in Costa Rica a significant number of complaints are being received and processed with respect to acts of corruption. However, the Committee notes that the above results do not indicate the results of any requests for or measures taken to protect whistleblowers. In this regard, the Committee notes, as pointed out by Costa Rica in its response and transcribed above, there have not been any threats or reprisals against whistleblowers, and as a result, there has not been a need for witness protection measures.

Notwithstanding, the Committee considers that once provisions regulating whistleblower protection process have been implemented, it would be useful for Costa Rica to consider compiling results on the operation of the system. The Committee will formulate a recommendation in this regard. (See general recommendation 4.2 in Chapter III of this report)

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

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

The Republic of Costa Rica 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 highlighted:

- Article 2 of the Law against Corruption and the Illicit Enrichment of Public Servants, which states that “For the purposes of this law, a “public servant” shall mean any person who works for the organs and entities of the public administration, both state and non-state, on its behalf and account and as a part of it organization, by reason of an investiture therein, and with full independence of the imperative, representative, remunerated, permanent, or public nature of the corresponding activity. The terms public official, servant, and employee shall be equivalent for the effects of this law. The provisions of this law shall apply to de facto officials and to persons working for state-owned companies of any kind and for public entities entrusted with tasks subject to common law; and to the representatives, administrators, managers, and designees of bodies corporate that safeguard, administer, or exploit funds, goods, or services of the public administration, under any title and by any form of management.”
- Article 340 of the Criminal Code, which provides that “A public official who for himself or other persons receives a gift or an improper advantage or accepts the promise of these as compensation in exchange for acting outside the remit of his functions, shall be sentenced to six months to two years in prison.”

- Article 348 of the Criminal Code, which provides “A public official who, abusing of his office or of his functions, requires or induces another to give or improperly promise, for himself or for a third party, goods or property, shall be imprisoned from two to eight years,”

- Article 349 of the Criminal Code, which provides that “A public servant who, abusing of his office, demands or requires the payment or granting of a contribution, an undue right, or more than he is entitled to, shall be imprisoned for one month to one year.

- Article 341 of the Criminal Code, which provides that “A public official who for himself or other persons receives a gift or accepts the indirect or indirect promise of a gift or advantage, in exchange for an act or omission in the performance of his duties, shall be sentenced to two to six years in prison and disqualified from exercising public positions or taking public employment for a period ranging from ten to fifteen years.”

- Article 343 of the Criminal Code, which provides “Acceptance of gifts in return for favors. Any public official who without having been promised a reward, accepts a gift or any other improper advantage for taking or failing to take action in his official capacity, shall, depending on the case, be sanctioned with the penalties established in Articles 338 and 339, reduced by one third.”

- Article 343bis of the Criminal Code, which provides “The offering or granting of a gift or compensation. Anyone who directly or indirectly offers or grants a gift, compensation or another unfair advantage to a public official of another State in exchange for any act or omission in the performance of his public functions shall be sentenced to two to six years in prison.”

- Article 340 of the Criminal Code, which provides that “A public official who for himself or other persons receives a gift or an improper advantage or accepts the promise of these as compensation in exchange for acting outside the remit of his functions, shall be sentenced to six months to two years in prison.”

- Article 348 of the Criminal Code, which provides “A public official who, abusing of his office or of his functions, requires or induces another to give or improperly promise, for himself or for a third party, goods or property, shall be imprisoned from two to eight years,”

- Article 45 of the Law Against Corruption and Illicit Enrichment in Public Service, which provides “Illicit Enrichment. Anyone who, personally or through any third party, illicitly exercises public functions or has custody over, utilizes, users or administers public funds, services or assets, in any capacity or through any method in order to increase his assets, acquire goods, enjoy rights, pay off debts or extinguish obligations that affect his capital or the capital of companies in which he has a direct or indirect shareholding, shall be sentenced to three to six years in prison.”
- Article 48 of the Law Against Corruption and Illicit Enrichment in Public Service, which provides “Any public official who sanctions, passes, authorizes signs or votes in favor of laws, decrees, agreements, acts or administrative contracts that directly benefit himself, his/her spouse, partner or common-law partner, relatives by blood or marriage up to and including the third degree, or benefit companies in which the official, his spouse, partner or common-law partner or relatives by blood or marriage up to and including the third degree have a financial interest, either directly or through other bodies corporate that participate in them financially, as attorneys-in-fact or as members of social bodies, shall be sentenced to one to eight years in prison.

The same sentence will apply to a public official who favors his/her spouse, partner or common-law partner or relatives by blood or marriage up to and including the third degree, with capital assets contained in collective bargaining agreements in whose negotiation he/she has participated on the employer side.”

- Article 49 of the Law Against Corruption and Illicit Enrichment in Public Service, which provides “Irregular Overpricing. Anyone who, for the purpose of obtaining some advantage or benefit for himself or a third party, significantly less or more – whichever is applicable – than the actual or real price of a service or product, or the price established on the basis of its quality or specialized use for the purchase, transfer, concession or lien of goods, works or services in which the State, other public entities or enterprises, municipalities or private individuals who administer or have custody over public assets or funds, in any capacity or through any method, have an interest, shall be sentenced to three to ten years in prison.”

- Article 50 of the Law Against Corruption and Illicit Enrichment in Public Service, which provides “Fraudulent acceptance of contracted goods and services. Any public official, consultant or servant thereof, contracted by the respective entity, who forges or manipulates information on the execution or contracting of public works, or on the existence, quantity, quality or nature of the goods and service contracted, or of the works delivered under concession, for the purpose of satisfactorily accepting the service or the work, shall be sentenced to two to eight years in prison. If this conduct hampers the service provided or prevents the public entity from using the work or using the service contracted adequately to meet the needs for which the services was contracted, the lowest and highest penalties shall be increased by one third.”

- Article 52 of the Law Against Corruption and Illicit Enrichment in Public Service, which provides “Traffic of influence. Anyone who influences a civil servant directly or through someone by using his position or any other circumstance derived from his personal relationship or seniority over that or another civil servant, be it real or simulated, so that he makes, delays or omits to make an appointment, award, concession, contract, act or resolution in the performance of his public functions, in order to produce an illicit economic benefit or advantage, directly or indirectly, for himself or another person, shall be sentenced to two to five years in prison.”

- Article 47 of the Law Against Corruption and Illicit Enrichment in Public Service, which provides “Receipt, legalization or concealment of assets. Anyone who conceals, ensures, transforms, invests, transfers, has custody of, administers, acquires assets or rights, or feigns the legitimacy thereof, aware that they are the proceeds of illicit enrichment or criminal activities of a public official committed while in office and as a result of the means and opportunities provided thereby, shall be sentenced to one to eight years in prison.”

With respect to paragraph (d) of Article VI(1):
- Article 54 of the Law Against Corruption and Illicit Enrichment in Public Service, which provides “Appropriation of assets given to the State. Public officials who appropriate or keep gifts or donations that they must deliver to the State, pursuant to Article 20 of this Law, shall be sentenced to one to two years in prison.”

- Article 355 of the Criminal Code, which provides “Culpable facilitation of misappropriation. Public officials who, through their negligence or fault, facilitated or enabled another person to misappropriate assets such as those referred to in the previous article, shall be liable to payment of thirty to one-hundred and fifty “fine days” (días de multa).”

- Article 323 of the Criminal Code, which provides “Receiving stolen goods. Anyone who acquires, receives or conceals money, items or goods which are the proceeds of a crime, even though he did not participate in the crime and was not involved in the acquisition, acceptance or concealment of said money, items or good, shall be sentenced to six months to three years in prison and liable to payment of thirty “fine days” (días de multa).

The respective security measure shall be applied if the perpetrator makes a profession out of receiving stolen goods.”

- Article 325 of the Criminal Code, which provides “Accessories after the fact. Anyone who attempted to help or who helped another get rid of, conceal or alter the traces, evidence or instruments of a crime or secure or reap advantage of the product thereof, without receiving a promise before the crime but in exchange for a promise after it crime was committed, shall be sentenced to three months to two years in prison

This provision shall not apply to someone who was in any way involved in the crime or if culpable evasion existed.”

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

- Article 45 of the Criminal Code, which provides “Principal: Anyone who participates in a punishable act on his own behalf or uses another or others, and coprincipals who commit a punishable act with the principal.”

- Article 46 of the Criminal Code, which provides “Instigators: Anyone those who intentionally leads another to commit a punishable act.”

- Article 47 of the Criminal Code, which provides “Accomplices: Anyone who in any way helps or cooperates with the principal in the commission of the punishable act.”

- Article 48 of the Criminal Code, which provides “Partners in Crime will be liable from the moment the commission of the offense commences, as provided for in Article 19. If the offense proved to be more serious than they originally intended it to be, whoever accepted this as a probable consequence of the action carried out, shall be rendered accountable.”

- Article 49 of the Criminal Code, which provides “Knowledge of the circumstances: The personal qualities associated with the offense are also attributable to the partners in crime who do not have those qualities, if they were known to them. The relations, circumstances and personal qualities whose effect would be to reduce or exclude the penalty, will only apply to the partners in the crime with those qualities.”
The material circumstances that aggravate or attenuate the offense will only be taken into account inasmuch as they relate to people who knowingly collaborated.”

- Article 24 of the Criminal Code, which provides “Attempt to commit a crime. This exists when a person or persons start to execute a crime through acts leading directly up to its commission but, for reasons unrelated to the agent, the crime is not committed. The penalty applicable for attempting to commit a crime shall not be applied if it was absolutely impossible to commit it.”

- Article 274 of the Criminal Code, which provides “Criminal Association. Anyone who takes part in an association of two or more people in order to commit crimes, will be subject to imprisonment, solely by reason of being a member of the association.

The punishment will be from six to ten years is the objective of the association is to commit acts of terrorism or kidnapping and extortion.”

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

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

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

With respect to objective results in this field, the response of Costa Rica includes several charts. In this regard, the response notes that “The first of the two statistical tables shown below illustrates the cases brought before the judicial system between 2000 and 2005 in relation to violations of the duties of public servants; the second table shows the number of people who were sentenced by the criminal courts and the type of resolution reached, during that same period.

The statistics show that after the Law against Corruption and Illicit Enrichment of Public Servants, No 8422 of October 6, 2004, which came into effect on October 29 of that year, the number of corruption-related complaints increased significantly.

As a result of the efforts of the Jurisdiction Specializing in Crimes of Corruption during 2005, the number of cases resolved rose from 115 in 2004 to 189 in 2005.”

32 Ibid, at p. 77.
### Criminal Cases brought before the judicial system by heading under the Criminal Code and type of complaint 2000-2005

<table>
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<tr>
<th>Heading and type of complaint</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
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<td>4</td>
<td>4</td>
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Prepared by: Statistics Section, Planning Department

| Persons sentenced by the criminal courts by crime and how resolved 2000-2005 |

<table>
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<th>Breach of official duties</th>
<th>Total</th>
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<tr>
<td>Graft</td>
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<td>Aggravated corruption</td>
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<tr>
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</table>
With respect to the foregoing results, the Committee takes note, as mentioned by Costa Rica in its response, that the statistics show that the number of corruption related complaints increased significantly after the entry into force of the Law Against Corruption and Illicit Enrichment in Public Service.

In addition to the above, the response also includes the following charts provided by the Public Prosecutions Service, corresponding to the 540 cases filed before it regarding alleged acts of corruption, for the period January to November 1, 2006. According to the response, these include offenses under the Criminal Code and the Law Against Corruption and Illicit Enrichment in Public Service.
The Committee considers that the above results indicate that the existing provisions in Costa Rica which criminalize several of the acts referred to in Article VI of the Convention, have been applied to concrete cases. The Committee considers that this is a positive step towards implementation of the Convention.

However, considering that the Committee does not have information processed in such a way as to allow for a comprehensive evaluation of the results in this field, it will formulate recommendations in this regard. (See general recommendations in Section 4 of Chapter III 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 formulates the following conclusions and recommendations with respect to the implementation, in the Republic of Costa Rica, of the provisions contained in Articles III(5) (systems of government hiring and for the procurement of goods and services); III(8) (systems for protecting public servants and private citizens who, in good faith, report acts of corruption); and VI (acts of corruption) of the Convention, which were selected 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 Costa Rica 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 makes the following recommendations to the Republic of Costa Rica:

1.1.1 Strengthen the hiring systems for employees of the Executive branch. To comply with this recommendation, the Republic of Costa Rica could take the following measures into account:

a. Enact guidelines in order to enforce Article 27 of the Civil Service Statute, with objective criteria. (See Section 1.1.2 of Chapter II of this report).

b. Continue with efforts and strengthen the provisions required for the publication of the Descriptive Manual of Civil Service Posts, as well as updates thereto, via the internet. (See Section 1.1.2 in Chapter II of this report).

c. Continue with efforts and strengthen the provisions required for the publication of the Executive branch vacancy announcements, through the development of an electronic system which allows for the publication and dissemination of such vacancies to the public at large. (See Section 1.1.2 in Chapter II of this report).

1.1.2 Strengthen the hiring systems for employees of the Legislative branch. To comply with this recommendation, the Republic of Costa Rica could take the following measures into account:

a. Enact guidelines in order to enforce article 12 of the Law for Personnel of the Legislative Assembly, with objective criteria. (See Section 1.1.2 of Chapter II of this report).

b. Continue with efforts and strengthen the provisions required for the publication of the Job Description Manual for Legislative Assembly Posts, as well as any updates thereto, such as by electronic publication via the internet. (See Section 1.1.2 in Chapter II of this report).

c. Continue with efforts and strengthen the provisions required for the publication of vacancies in the Legislative branch, through the development of an electronic system which allows for the publication and dissemination of such vacancies to the public at large. (See Section 1.1.2 in Chapter II of this report)

1.1.3 Strengthen the hiring systems for employees of the Judicial branch. To comply with this recommendation, the Republic of Costa Rica could take the following measures into account:
a. Continue with efforts and strengthen the provisions required for the publication of vacancies for those who fall within the category of employee/service official ("servidores"/"funcionarios de servicio") in the Judicial branch, as is the case with vacancies for those who comprise the career service. These vacancies, together with career service vacancies may be published by means of an electronic system which allows for their dissemination to the public at large, possibly via the internet. (See Section 1.1.2 in Chapter II of this report).

b. Continue with efforts and strengthen the provisions required for the publication of the Post Classification Manual, as well as any updates thereto, via the internet. (See Section 1.1.2 in Chapter II of this report)

1.1.4 Strengthen the hiring systems for Public Ministry employees. To comply with this recommendation, the Republic of Costa Rica could take the following measure into account:

- Continue the efforts required for the publication of vacancies via the Internet. (See Section 1.1.2 in Chapter II of this report)

1.1.5 Strengthen the hiring systems for Comptroller General employees. To comply with this recommendation, the Republic of Costa Rica could take the following measures into account:

a. Enact guidelines in order to enforce Article 3 of the Law on Salaries and the Merit Regime of the Comptroller General of the Republic, with objective criteria. (See Section 1.1.2 of Chapter II of this report).

b. Continue efforts and strengthen the provisions required for the publication of vacancies in the Office of the Comptroller General, via the internet. (See Section 1.1.2 in Chapter II of this report).

c. Continue efforts and strengthen the provisions required for the publication of the Descriptive Manual of Posts, as well as any updates thereto, via the internet (See Section 1.1.2 in Chapter II of this report).

1.2. Government systems for the procurement of goods and services

The Republic of Costa Rica 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 Costa Rica consider the following recommendations:

1.2.1. Ensure observance of the public bidding regime, when public bidding is the procedure to be applied pursuant to law. (See Chapter II, section 1.2.2 of this report).

1.2.2. Strengthen the systems for the contracting of public works by implementing provisions addressing the following:
- Provisions which develop and implement a comprehensive citizen oversight mechanism that covers all the different stages of public works procurement procedures, without prejudice to existing internal or external institutional controls. (See Chapter II, section 1.2.2 of this report).

1.2.3. Consider the creation of a national Registry of Providers, which could be used by all of the entities of the Public Administration. (See Chapter II, section 1.2.2 of this report).

1.2.4. Consider the possibility of extending the use of CompraRED to include the other branches and entities of the Public Administration. (See Chapter II, section 1.2.2 of this report).

1.2.5. Continue with efforts to ensure that SIAF maintains information on the results of the use of the exceptions to the applicability of the Law on Administrative Contracting, which allow an evaluation of how frequently each of those exceptions is relied upon. (See Section 1.2.3 in Chapter II of this report)

1.2.6. Establish guidelines which encourage the dissemination, prior to publication, of bid documents or invitations to participate in bidding processes, so that suggestions can be received from the private sector. (See Section 1.2.3 in Chapter II of this report).

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

The Republic of Costa Rica 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 Costa Rica consider strengthening the systems for protecting public servants and private citizens who in good faith report acts of corruption. To comply with this recommendation, the Republic of Costa Rica could take the following measure into account:

- Adopt, through the respective authority, a comprehensive regulation on protection of public servants and private citizens who in good faith report acts of corruption, in accordance with the fundamental principles of its domestic legal order, which could include, among others, the following aspects:

  a. Protection for persons who report acts of corruption subject to investigation in administrative or judicial proceedings. (See Section 2 in Chapter II of this report).

  b. Protective measures aimed not only at protecting the physical integrity of the informant and his or her family, but also at protecting their employment situation, especially in the case of public servants, especially in cases where the acts of corruption may involve his or her hierarchical superior or colleagues. (See Section 2 in Chapter II of this report).

  c. Provisions which sanction the failure to observe the rules and/or duties relating to protection. (See Section 2 in Chapter II of this report).
d. A simplified whistleblower protection application process.

e. Mechanisms which facilitate international cooperation in the foregoing areas, when appropriate, including the assistance and cooperation provided for by the Convention, as well as the exchange of experiences, training and mutual assistance.

f. The respective competence of judicial and administrative authorities with respect to this area, clearly distinguishing one from the other.

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

The Republic of Costa Rica has adopted measures intended to criminalize the acts of corruption provided for by Article VI(1) of the Convention, as discussed in Section 3 of Chapter II of this report.

The Committee did not formulate recommendations in this section.

4. GENERAL RECOMMENDATIONS

Based on the review and comments made throughout this report, the Committee suggests that the Republic of Costa Rica consider the following recommendations:

4.1 Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, provisions, measures, and mechanisms considered in this report, for the purpose of ensuring that they are adequately known, managed, and implemented.

4.2. Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, provisions, measures, and mechanisms considered in this report, and to verify follow-up on the recommendations made herein.

5. FOLLOW-UP

The Committee will consider the periodic update Reports submitted by the Republic of Costa Rica on their progress in implementing previous recommendations, within the framework of the plenary meetings of the Committee and in accordance with 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 Article 29 of the Rules of Procedure and Other Provisions.

IV. OBSERVATIONS IN RELATION TO THE PROGRESS IN THE IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE REPORT FROM THE FIRST ROUND

The Committee offers the following observations with respect to the implementation of the recommendations made to the Republic of Costa Rica in the report from the First Round of review, based on the information available to it:
1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

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

- **Recommendation 1.1**

Consider 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 bringing all public servants under a general regime with a single set of rules, which would assist public servants as well as the general public to understand more accurately their rights and duties, and overcome the existing disparity. Such a move should be without detriment to regimes governing specific sectors that by their nature may require specialized treatment or the establishment of more restrictive rules.**

  b. **Strengthen the system of recruitment into the public administration and the existing rules governing incompatibility and disqualification, taking into account the following aspects, in light of the scope of legislation and the positions identified by law:**

    i. **Supplement the rules of entry into the public service by strengthening the preventive mechanisms that facilitate detection of possible conflicts of interest that might impede such entry, including senior public positions.**

    ii. **Develop other mechanisms to identify or detect any unexpected cause that could occur in the performance of public duties which could give rise to a conflict of interest.**

    iii. **Consider the possibility of implementing measures as appropriate to establish and put into effect systems and mechanisms of a preventive nature for detecting conflicts of interest in the public service. Among other alternatives, consideration could be given to the feasibility of creating instruments such as the declaration or registry of interests or activities for certain public posts, either as part of the system of declarations of income, assets and liabilities, or as an independent instrument, and of having that instrument periodically updated, as well as creating and maintaining databases for search and consultation by the competent organs.**

  c. **Consider the possibility of incorporating into the legal system a rule that limits participation by former public servants, including those of senior rank, in the management of certain acts and in general in situations that could involve taking undue advantage of one’s status as a former public servant, within a reasonable period of time and without resulting in an absolute restriction on their constitutional right to work. (See section 1.1.2 of this Report).**

  d. **Maintain duly up-to-date, expand and improve the registry of persons disqualified for public service under the Civil Service Regime, so that it may constitute, if it is not already, an effective instrument for preventing and detecting appointments to the public service that might be contrary to the provisions on prohibitions and disqualifications. Consider the**
possibility of requiring consultation of this register prior to the appointment of public servants of specified rank and category.

e. The Committee urges the Republic of Costa Rica to continue with the amendments that it believes pertinent in the justice administration system, in order to speed up judicial procedures pertaining to violations of the standards of conduct for public servants.

f. Continue designing and implementing mechanisms for making all public servants aware of the rules of conduct, including those relating to conflicts of interest, and continue to provide training and periodic refresher courses on those rules.

g. Compile information on cases of conflicts of interest so as to establish mechanisms of evaluation for verifying results on this issue (see section 1.1.3 of this Report).

h. Analyze the possibility of inserting the necessary clarifications in the relevant regulatory framework to ensure a clear differentiation between conflicts of interest and disqualifications and incompatibilities, where appropriate.

In its response, the Republic of Costa Rica 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 enactment of the Law Against Corruption and Illicit Enrichment of Public Servants No. 8422, dated October 6, 2004, which includes a single text addressing conflicts of interest; and Article 53 of the Law which covers “Prohibitions after leaving the public service”.

- Chapter II of Law No. 8422, which establishes a regime for preventing conflicts of interest, incompatibilities and disqualifications.

- The Regulations to Law No. 8422, which entered into force in 2005, and covers such aspects as, conflicts of interest, incompatibilities and disqualifications, complaints by citizens and confidentiality of the identity of whistleblowers.

- General Guideline No. D-2-2004 CO, published by the Office of the Comptroller General of the Republic, which addresses issues such as ethical principles and statements to be observed by senior and lower ranking public officials and officials of the Comptroller General’s Office, internal auditors and public servants in general.

- Executive Decree No. 33146 of May 24, 2006, which establishes the guidelines on the ethical principles that public servants must follow when exercising their functions, as well as such principles as efficiency, efficacy, transparency, probity and integrity. This Decree also regulates conflicts of interest and provides that all public servants in the Central Administration must perform their functions ethically.

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33 See the response of Costa Rica to the questionnaire, at p. 83.
34 Ibid, at p. 84.
35 Ibid, at p. 83
36 Ibid.
37 Ibid.
38 Ibid.
- The Judicial Registry of Offenders, a dependency of the Judiciary, the main functions of which include checking the criminal records of citizens, cooperating with public agencies and offices, recording the sentences for citizens convicted of fraudulent or negligent crimes, as well as breaches and violations. In accordance with Article 50 of the Criminal Code and Article 59 of the Law on Corruption and Illicit Enrichment, in addition to the penalty envisaged for that offense, public officials who commit offenses in the course of their public duties could be disqualified from holding public office as an accessory punishment.\textsuperscript{39}

- The increase of the budget of the Public Prosecutions Service during the period 2004-2005, and the creation of four new Prosecutor’s Offices specializing in the investigation of crimes involving corruption were created to speed up corruption proceedings. Additionally, a Ministry of Finance Criminal Jurisdiction was created, and specializes in crimes covered by the Law on Corruption and Illicit Enrichment of Public Servants.\textsuperscript{40}

- The various seminars held in 2005 by the Office of the Comptroller General of the Republic and the Attorney General’s Office on the Law on Corruption and Illicit Enrichment of Public Servants, in such areas as conflicts of interest, incompatibilities, complaints by citizens, confidentiality of the identity of whistleblowers and the system of sworn declarations of income, assets and liabilities applicable to civil servants; the 2006 seminar given by the Office of the Comptroller General of the Republic “Regime of responsibilities of public officials.”; and the three training activities held by the Ministry of Finance on the Law on Corruption and Illicit Enrichment.\textsuperscript{41}

In addition to the foregoing, the response of Costa Rica notes that: “Although the Civil Service Regime has a register of officials or persons disqualified from public service, it must be strengthened as recommended by the Committee of Experts, even if the resources needed are lacking.

\textit{Notwithstanding the above, Executive Decree N° 33146 dated May 24, 2006, which stipulates the ethical principles that public servants must adhere to, states that incumbents in government positions or executive functions, must first declare any conflict of interest in writing and step down if a Criminal Court issues a ruling against them for allegedly committing any crime against duties in the public service under the Criminal Code and Chapter V of the Law on Corruption and Illicit Enrichment in the Public Service, N° 8422, notwithstanding any other sanctions agreed upon by the Administrative or Judicial Authorities. This Decree also establishes the creation of an Ethics Commission.}\textsuperscript{42}

The Committee takes note of the steps taken by Costa Rica to proceed with the implementation of the above recommendation, through compliance with measures (a), (c), (f), (g), and (h) thereof, and the need for those steps to continue.

The Committee also takes note of the steps taken by Costa Rica towards compliance with measures (b), (d), and (e) and of the need for Costa Rica to give further attention to them.

\textsuperscript{39}Ibid, at p. 84.  
\textsuperscript{40}Ibid, at. p. 85  
\textsuperscript{41}Ibid.  
\textsuperscript{42}Ibid, at. p. 84.
Additionally, the Committee takes note of the difficulties encountered by Costa Rica with respect to the implementation of the foregoing recommendation, particularly with respect to the lack of resources necessary to strengthen the Civil Service Regime.\footnote{Ibid.}

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

- **Recommendation 1.2.1**

The Committee recognizes with satisfaction that the Republic of Costa Rica has rules of conduct and mechanisms for ensuring the preservation and proper use of resources entrusted to public servants in the performance of their duties, and it welcomes the efforts that have been made in recent years to improve its public legal system and the principles of efficiency, efficacy, transparency and accountability as essential elements of public management. It encourages the Republic of Costa Rica to continue improving those rules and mechanisms.

In its response, the Republic of Costa Rica 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 implementation of various rules, including Rules on the use of computer equipment, programs and accessories (Agreement No. 43 of the Board of Directors of the Legislative Assembly); Rules on the Administration of alcoholic Beverages in the Legislative Assembly (Agreement No. 43 of the Board of Directors of the Legislative Assembly); rules of Procedure of the Administrative Registry Tribunal’s government procurement processes (Decree DE-32384-J); Rules on the assignment, use, custody, conservation and control of telephone, radio paging devices and telephone tariff recognition belonging to the officials of the Ministry of the Interior and Police (Decree DE-32582-G); Rules on payment of per diems and travel expenses to officials of the Ministry of Public Works and Transport (DE- 32441-MOPT); Rules on the use of petty cash of the San José county sports and recreation committee; and Resolution 71 dated September 4, 2006 of the Comptroller General’s Office regulating the table of travel and transportation expenses for public officials.\footnote{Ibid, at p. 87.}

The Committee takes note of the satisfactory consideration of the foregoing recommendation, without prejudice to the fact that because it is of a continuous nature, it should continue to be developed.

- **Recommendation 1.2.2**

Continue designing and implementing mechanisms for making all public servants aware of the rules of conduct, and for answering any questions with regard to the same, including those relating to conflicts of interest, and continue providing training and periodic refresher courses on those rules.

In its response, the Republic of Costa Rica 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:

\footnote{Ibid.}
- The nationwide training seminars and courses given by the Office of the Comptroller General of the Republic and by the Office of the Public Prosecutor, the subjects of which are available at www.cgr.go.cr and www.pgr.go.cr, respectively.  

The Committee takes note of the satisfactory consideration of the foregoing recommendation, without prejudice to the fact that because it is of a continuous nature, it should continue to be developed.

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

- Recommendation 1.3

Strengthen existing mechanisms that require public servants to report to the appropriate authorities acts of corruption in the public service of which they are aware.

- Measures suggested by the Committee

  a. Regulate the presentation of these reports, facilitating even more their presentation and establishing requirements for presentation that do not inhibit potential informers. Implement mechanisms for protecting public servants who report acts of corruption, including the confidentiality of the identity of informers.

  b. Assess the relevance of offering greater protection to civil servants who report acts of corruption, especially in cases where their hierarchical superiors are involved in the acts being reported.

  c. Facilitate the presentation of reports by using the most appropriate means of communication, including electronic means.

  d. Advance, even further, in efforts intended to train civil servants as to the existence and purpose of their responsibility to report acts of corruption of which they are aware to the appropriate authorities, including the system for protecting witnesses in these cases and to urge the Republic of Costa Rica to consolidate progress already made in this direction by the Office of the Public Ethics Prosecutor.

In its response, the Republic of Costa Rica 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 Law Against the Corruption and Illicit Enrichment of Public Servants, as well as its Regulation, which contain provisions addressing the confidentiality of the identity of complainants, as well as provisions allowing for complaints to be filed by various means, including in person, by telephone, and by email.

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45 Ibid.
46 Ibid, at p. 88.
47 Ibid.
Resolution R-Co-96-2005, which contain guidelines issued by the Office of the Comptroller General of the Republic on the handling, channeling and investigation of complaints.

The Guide on the Handling of Complaints, issued by the Office of the Public Ethics Prosecutor.48

Bill No. 15745, the purpose of which is "To protect and encourage citizens to fight corruption in the public service", and which is pending approval by the Legislative Assembly. In addition, Costa Rica notes that "It contemplates safeguards for civilians who report public officials, guaranteeing them and their families personal protection and protection in their work and formal and informal related activities, as a result of the complaint filed."49

The training provided to officials from the Central and Decentralized Administration as well as Municipalities by the Office of the Public Ethics Prosecutor and by the Office of the Comptroller General of the Republic.50

Training provided by the Public Prosecutor’s Office entitled “The Challenges of Public Administration vis-à-vis the Code of Administrative Procedure” and “Essential Aspects of Administrative Procedure”, respectively, which were each attended by approximately three-hundred people.51

The Committee takes note of the steps taken by Costa Rica to proceed with the implementation of the above recommendation, through compliance with measures (a), (c) and (d) thereof, and the need for those steps to continue.

The Committee also takes note of the steps taken by Costa Rica towards compliance with measure (b), and of the need for Costa Rica to give it further attention.

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

Recommendation 2.1

Improve the systems for supervising and evaluating the contents of declarations of income, assets and liabilities, and regulate their publication.

Measures suggested by the Committee

a. Define clearly the objective of this instrument, either as a means to promote greater transparency in the functions of public servants as a way of detecting illicit enrichment or other criminal behavior, and as an instrument for detecting, preventing and punishing conflicts of interest.

b. Implement a system for the declaration of capital and other assets, liabilities and interests for use in detecting, avoiding, and punishing conflicts of interest, illicit enrichment, and other illicit acts.

48 Ibid.
49 Ibid.
50 Ibid, at p. 89.
51 Ibid.
c. Continue to take the decisions necessary to ensure that the obligation to file a declaration, and the mechanisms for enforcing this obligation, can be extended to other public servants who hold positions that may, by their nature, facilitate or generate illicit enrichment or other illegal acts against the public interest, for example some of the popularly elected positions that are not covered by the current rules.

d. Regulate the conditions, procedures and other aspects relating to the public disclosure, as appropriate, of declarations of income, assets and liabilities, subject to the Constitution and the fundamental principles of law.

e. Establish systems for the effective and efficient verification of the contents of sworn declarations of income, assets and liabilities, establishing occasions and time limits for such verifications, strengthening the powers of the CGR for scheduling verifications, ensuring that the verification applies to a representative number of declarations, and establishing actions to overcome obstacles to required sources of information; and take the necessary decisions to ensure cooperation between the CGR and other sectors, such as the financial and taxation authorities, to facilitate the exchange of information for verifying the contents of these declarations.

f. Strengthen the CGR, as necessary, to ensure that it has the material and human resources needed to perform its work of managing the system of sworn declarations of income, assets and liabilities.

g. Expand the current system of penalties and violations applied to former public officials who fail to fulfill the requirements in this respect upon leaving office.

h. Strengthen existing programs, or implement new ones, to train public servants in the provisions governing application of the system for declarations of income, assets and liabilities; design and introduce mechanisms to disseminate the system among the public servants who are required to enforce it, to ensure their thorough familiarity with the applicable provisions.

i. Make best efforts to optimize and improve compliance with the income, asset and liabilities declaration requirement by the public servants concerned, taking into account regulatory or other adjustments that may be necessary for this.

In its response, the Republic of Costa Rica 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 following:

- The Law against Corruption and Illicit Enrichment, which establishes the system of sworn declarations of income, assets and liabilities;\(^{52}\) provides for the Office of the Comptroller of the Republic to receive declarations from approximately 10,000 public officials, ensure that they are submitted on time, verify their content and pinpoint any abnormalities that are detected;\(^{53}\) expands the

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\(^{52}\) Ibid.

\(^{53}\) Ibid, at p. 90.
list of those required to file declarations to include, among others, “deputies of the Legislative Assembly”; expands the system of sanctions for public officials;

- Resolution RC-66-2004 of July 4, 2004, issued by the Comptroller General of the Republic, which merged the office in charge of complaints and the department in charge of sworn declarations into a new area with the material and human resources necessary for it to manage the system of sworn declarations.

- Resolution R-CO-66, of July 4, 2005, amending the Organic Regulations of the Office of the Comptroller General of the Republic, which establishes the functions and attributions of the new department described above.

- Training provided by the Office of the Comptroller General of the Republic and by the Office of the Office of the Prosecutor General on the Law against Corruption and Illicit Enrichment, which are available at www.cgr.go.cr and www.pgr.go.cr, respectively.

The Committee takes note of the of the steps taken by Costa Rica to proceed with the implementation of the above recommendation, through compliance with measures (a), (b), (c), (f), (g), (h) and (i) thereof, and the need for these steps to continue.

The Committee also takes note of the steps taken by Costa Rica towards compliance with measures (d) and (e), and of the need for Costa Rica to give them further attention.

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

- Recommendation 3.1

Strengthen the Offices of the Comptroller General, the Public Ethics Prosecutor, the Ombudsman, and the Attorney General as oversight bodies, in their functions relating to enforcement of Articles 1, 2, 4 and 11 of the Convention, in order to ensure that such control is effective; give them greater support and the resources necessary to carry out their functions; and establish mechanisms for coordinating their activities, as appropriate, and for their continuous evaluation and monitoring.

In its response, the Republic of Costa Rica 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 approval of an increase in the budget of the Office of the Prosecutor General for the year 2004 to 2005, including the specialized office responsible for the investigation of crimes involving corruption, as well as the Office of the Attorney General of the Republic for public ethics.

- The creation of the Department of complaints and declarations of the Office of the Comptroller General of the Republic.

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54 Ibid, at p. 91.
55 Ibid, at p. 94.
56 Ibid, at p. 93.
57 Ibid.
58 Ibid, at p. 94.
59 Ibid, at p. 95.
- The Inter-institutional Agreement on Mutual Cooperation and Assistance between the Comptroller General of the Republic, the Office of the Prosecutor General and the Public Ministry, which is intended to serve as an inter-institutional alliance to deal with crimes of corruption involving the Public Administration.61

The Committee takes note of the steps taken by Costa Rica to proceed with the implementation of the foregoing recommendation, and of the need for Costa Rica to continue giving further attention to its implementation.

- **Recommendation 3.2**

  Compile information on their functioning so that evaluation mechanisms can be implemented.

In its response, the Republic of Costa Rica 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 periodic evaluation meetings held between the heads of the Offices of the Comptroller General, Prosecutor General and the Attorney General.62

- The various tasks carried out by the Office of the Comptroller General, including the investigation of acts of corruption and illicit enrichment, the digitalization of those statements, and the creation of a database to allow auditing procedures to be automated.63

- The initial study on the quality of the information submitted by public officials in their sworn statements.64

The Committee takes note of the steps taken by Costa Rica to proceed with the implementation of the foregoing recommendation, as well as the need for Costa Rica to continue giving attention to its implementation.

The Committee also takes note of the difficulties encountered by Costa Rica with respect to its implementation, particularly the legal technical limitations which prevent digital signatures to be incorporated into the database of sworn statements.65

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

4.2. Mechanisms for access to information

- **Recommendation 4.2.1**

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

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60 Ibid.
61 Ibid.
62 Ibid.
63 Ibid, at p. 96.
64 Ibid.
65 Ibid.
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• Measures suggested by the Committee

a. Institute training and refresher programs to ensure that public officials understand and can apply, in a proper and timely manner, the rules and provisions protecting access to public information, and that they recognize the consequences, both for the administration and for themselves, when they deny such access without justification.

b. Consider the advisability of integrating and systematizing in a single regulatory text the provisions that guarantee access to public information.

c. Continue to create and to strengthen the Departmental Comptrollers’ Offices, giving them the necessary human, technical and financial resources and publicizing the system and the services it offers, consistent with the study that the country conducted.

d. Strengthen the mechanisms that guarantee the right of access to public information, so that it cannot be denied for reasons other than those determined by law, or on the basis of rules other than those established, establishing for this purpose, among other aspects, the following: i) procedures for accepting requests and responding to them on a timely basis; ii) requirements on admissibility and consequences when such requirements are not met; iii) reasons why a request may be denied; iv) method for communicating with 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; and vi) increase the number of sanctions so as to cover a broader spectrum of circumstances that could hamper, delay or prevent the exercise of this right and that involve the conduct of public servants.

e. Continue strengthening and expanding information systems in the form of institutional web pages, as an effective means of publicizing the management of government affairs. The Committee recognizes the wide spectrum of electronic resources that the Republic of Costa Rica is developing to permit broad public access to information.

In its response, the Republic of Costa Rica 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:

- Training provided to more than three hundred public servants by the Office of the Prosecutor General, regarding citizens’ right to access public information, its purpose, limitations, guarantees and protection.66

- The “Redesign of processes and simplification of procedures” workshop, which trained sixty-one public servants employed at the Offices of the Departmental Comptroller’s Offices.67

- Training provided by the Public Ombudsman’s Office on the rights and duties of public officials.68

- The Bill on Transparency and Access to Public Information, the purpose of which is to regulate the mechanism for access to information.69

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66 Ibid.
67 Ibid.
68 Ibid.
69 Ibid.
- The strengthening of the Departmental Comptroller’s Office, via activities including the implementation of training activities on quality of service and customer service, the redesign of processes and the simplification of procedures.\textsuperscript{70}

- The creation of a Database on Work Reports and the First National Fair of Departmental Comptroller’s Offices in June, 2005, at which explanations of service were provided as well as information regarding the Bill on the Creation of Departmental Comptroller’s Offices, which is pending approval by the Legislative Assembly.\textsuperscript{71}

- Rulings of the Constitutional Court, which have determined the scope of the right to information, and which are binding “\textit{erga omnes}”\textsuperscript{72}

- The improvement of the information available online at the websites of the various oversight bodies, including the Civil Service Directorate, the Ombudsman’s Office, the Office of the Comptroller General, the Second Court Supreme Court of Justice, and the Public Prosecutor’s Office, among others.\textsuperscript{73}

The Committee takes note of the steps taken by Costa Rica to proceed with the implementation of the above recommendation, through compliance with measures (a) and (e) thereof, and the need for those steps to continue.

The Committee also takes note of the steps taken by Costa Rica towards compliance with measures (b), (c), and (d), and of the need for Costa Rica to give them further attention.

- **Recommendation 4.2.2**

\textit{The Committee welcomes the work of the Constitutional Chamber of the Supreme Court of Justice, in which the recourse of amparo offers an open, dynamic and effective remedy for protecting the right of free access to public information.}

- **4.3. Mechanisms for consultation**

- **Recommendation 4.3**

\textit{Supplement existing consultation mechanisms, establishing, as appropriate, procedures that will offer greater opportunities to hold public consultations before designing public policies and approving legal provisions.}

- **Measures suggested by the Committee**

  \textit{a. Create greater opportunities within the Legislative Assembly for civil society to express an opinion during debate and approval of legislation, and make such hearings mandatory when the matters discussed are sufficiently important or sensitive, with due regard to maintaining}

\textsuperscript{69} Ibid.
\textsuperscript{70} Ibid, at p. 97.
\textsuperscript{71} Ibid, at p. 98
\textsuperscript{72} Ibid, at p. 99.
\textsuperscript{73} Ibid, at p. 100.
a proper balance between the need to encourage such participation and the need to maintain the efficient functioning of the Legislature.

b. Applying at the national level, consultation instruments similar to those of the Municipal Regime, and allowing those instruments to be convened, locally and nationally, by popular initiative, for issues where this is considered useful.

c. Using instruments similar to those already in place in specific areas, such as the environment and urban planning, for consultation in other matters, or develop other suitable mechanisms for consultations in further areas.

d. The possibility of formulating specific provisions within the current constitutional and legal framework to promote the creation and recognition of bodies representing civil society organizations and institutions at the municipal level, authorized to review and to propose public policies in specified areas, establishing at the same time the right to obtain information as appropriate.

e. The possibility of formulating specific provisions within the current constitutional and legal framework to incorporate, organize, and recognize urban community institutions (neighborhood councils or committees) with the authority and right to present initiatives and requests for municipal works and services for their neighborhoods.

In its response, the Republic of Costa Rica 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 creation of the people’s initiative office by the Legislative Assembly, which allows any person to submit suggestions, proposals, or preliminary bills, which are then channeled to the deputies, reviewed and processed. In addition, a free telephone number has been created in order to encourage the general public to contact the office.74

- The Law on Popular Initiative, Law No. 9491 of March 9, 2006, which allows citizens or groups of citizens to present bills or proposals for constitutional reforms to the legislative assembly.75

- The amendment to the Municipal Code, Law N. 7794 of April 30, 1998, by Article 66 of Law No. 8422 of October 6, 2004, which allows voters to call for a plebiscite to remove a municipal mayor.76

The Committee takes note of the steps taken by Costa Rica to proceed with the implementation of the above recommendation, through compliance with measures (a), (b), and (c) thereof, and the need for those steps to continue.

The Committee also takes note of the need for Costa Rica to give additional attention to the implementation of measures (d) and (e) of the foregoing recommendation.

75 Ibid, at p. 102.
76 Ibid, at p. 103.
4.4. Mechanisms to encourage participation in public administration

Recommendation 4.4

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

Measures suggested by the Committee

a. Establish additional mechanisms that strengthen the participation of civil society organizations in public management and especially in efforts to prevent corruption, and promote awareness of those mechanisms and their use.

b. Determine that the result derived from the exercise of these mechanisms be considered a vital contribution to the decision-making process.

c. Continue to promote and strengthen programs with objectives similar to those of the Office of Popular Initiative created by the Legislature.

d. Design and implement programs to disseminate mechanisms for encouraging participation in public management and, as appropriate, provide training and the necessary tools to civil society, and nongovernmental organizations, and public officials and employees for using those mechanisms.

In its response, the Republic of Costa Rica 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 strengthening of citizens’ ability to file complaints, through the passage of the Law Against Corruption and Illicit Enrichment of Public Servants.\(^{77}\)

- The design of the Strategic Operating Plan (PAO) for 2007-2010 by the Public Ethics Prosecutor. This Plan will include training programs for public officials and civil society, including the preparation and distribution of ethics guides in electronic format.\(^{78}\)

- The training projects planned for 2007, with respect to the dissemination of information on the procedures or services available to individuals from the Public Administration.\(^{79}\)

- The joint project being undertaken with the University of Costa Rica with support from the Office of the Vice-President of the Republic, for the creation of the Observatory of Corruption. This project is being coordinated under the Public Ethics Prosecutor, with the objective of offering concrete information compiled through studies and research.\(^{80}\)

The Committee takes note of the steps taken by Costa Rica to proceed with the implementation of the above recommendation, through compliance with measures (c) and (d) thereof, and the need for those steps to continue.

\(^{77}\) Ibid, at p. 104.
\(^{78}\) Ibid, at p. 105.
\(^{79}\) Ibid.
\(^{80}\) Ibid.
The Committee also takes note of the steps taken by Costa Rica towards compliance with measures (a) and (b), and of the need for Costa Rica to give them further attention.

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

**Recommendation 4.5**

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

**Measures suggested by the Committee**

a. *Promote additional methods, when appropriate, that will allow, facilitate and assist civil society organizations in the development of activities for the follow-up of public administration.*

b. *Consider the implementation of awareness and training programs, in addition to those that already exist, directed at civil society and nongovernmental organizations on the aspects dealt with in sections 4.1 to 4.5 of this Report.*

c. *The possibility of including specific provisions within the existing legal framework authorizing civil society institutions created and organized at the municipal level to oversee and monitor the allocation and use of public resources.*

d. *The convenience of establishing mechanisms within the existing legal framework, which grant civil and urban communities that are created and organized at the provincial level, functions and powers to monitor municipal works and services for the neighborhood, and the use of resources budgeted and allocated for that purpose.*

In its response, the Republic of Costa Rica 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 activities undertaken by State universities involving the study and analysis of legislation on corruption; the Apr, 2005 seminar on “Ethics, power and enterprise”, held at the University of Costa Rica; and the August, 2005 seminar on “Elites, policies and corruption, also held at the University of Costa Rica.81

- The October, 2005 State of the Nation Report, which developed a chapter on the topic of political corruption in Costa Rica.82

- As noted above, the passage of the Law on Popular Initiative, Law No. 9491 of March 9, 2006, and the existence of the Bill on Transparency and Access to Public Information.83

The Committee takes note of the steps taken by Costa Rica to proceed with the implementation of the above recommendation, through compliance with measures (a) and (c) thereof, and the need for those steps to continue.

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81 Ibid, at p. 106.
82 Ibid.
83 Ibid.
The Committee also takes note of the steps taken by Costa Rica towards compliance with measures (b) and (d), and of the need for Costa Rica to give them further attention.

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

- **Recommendation 5.1**

Determine those specific areas in which the Republic of Costa Rica sees the need for technical cooperation with other States party in order to strengthen its capacities to prevent, detect, investigate and punish acts of corruption. As well, the Republic of Costa Rica needs to determine and prioritize requests for mutual assistance in investigating or prosecuting cases of corruption.

In its response, the Republic of Costa Rica 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 analysis carried out, within the framework of the preparation of the Annual Operating Plan of the Office of the Public Ethics Prosecutor, on “the ability to fight corruption in terms of the budget, technology and human resources...” This analysis concluded that there was a “lack of interdisciplinary human resources for the long and medium term activities planned to prevent and detect weaknesses and shortcomings in this field”; “Insufficient budget for the long and medium term activities required for prevention and detection”, and the need for technical cooperation from other States for the training of officials.84

The Committee takes note of the satisfactory consideration of the foregoing recommendation, without prejudice to the fact that because it is of a continuous nature, it should continue to be developed.

In addition, the Committee also takes note of the need for technical cooperation from other States with respect to training of public officials, expressed by Costa Rica in its response.

- **Recommendation 5.2**

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

In its response, the Republic of Costa Rica notes as follows with respect to this recommendation, “In the field of international cooperation, the Ibero-American Network of Judicial Cooperation (Iberred), which began operating in November 2005, must be strengthened. Its objective is to optimize judicial cooperation in criminal and civil matters and gradually establish an information system on the different legal systems in Latin America, and keep it up to date.”85

The Committee takes note of the need for Costa Rica to give further attention to the implementation of the foregoing recommendation, while bearing in mind that, because it is of a continuous nature, it should continue to be developed on an ongoing basis.

- **Recommendation 5.3**

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84 Ibid, at p. 107.
85 Ibid, at p. 108.
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 subscribed by Costa Rica.

In its response, the Republic of Costa Rica 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 implementation, by the Public Prosecutions Service, of training courses for its officials, in order to “specialize the offices that prosecute corruption, economic and tax crimes.”

The Committee takes note of the satisfactory consideration of the foregoing recommendation, without prejudice to the fact that because it is of a continuous nature, it should continue to be developed.

- Recommendation 5.4

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

In its response, the Republic of Costa Rica 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 January 10, 2006, implementation of a system for recording requests for legal assistance or letters rogatory, and the creation of a database containing pertinent information, which allows for follow-up to requests on an ongoing basis.

The Committee takes note of the satisfactory consideration of the foregoing recommendation.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

- Recommendation 6.1

Conclude the formalities necessary to finalize the appointment of the Office of the Public Ethics Prosecutor as the Central Authority described in Article XVIII of the Convention for the purposes of the international technical assistance and cooperation set forth therein.

In its response, the Republic of Costa Rica 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:

- Executive Decree No. 32090 of April 21, 2004, which appoints the Public Ethics Prosecutor as the Central authority for channeling mutual assistance and technical cooperation provided for within the framework of the Inter-American Convention against Corruption.

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86 Ibid.
87 Ibid.
The Committee takes note of Costa Rica’s satisfactory compliance with the foregoing recommendation.

- **Recommendation 6.2**

*Inform the General Secretariat of the OAS of the appointment of the Office of the Public Ethics Prosecutor as the central authority, in accordance with established formalities.*

In its response, the Republic of Costa Rica 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 formal notification to the OAS on June 21, 2006, of the designation of the Public Ethics Prosecutor as the Central Authority for the provision of the international assistance and cooperation provided for by the Convention.  

The Committee takes note of the satisfactory consideration of the foregoing recommendation.

- **Recommendation 6.3**

*Ensure that, once the authority is designated, it has the resources necessary to fulfill its functions.*

With respect to this recommendation, the response of Costa Rica notes that “The Office of the Public Ethics Prosecutor has, to date, five prosecuting attorneys, six lawyers, one auditor and administrative support staff to help it to fulfill the purposes for which it was created.”

The Committee takes note of the satisfactory consideration of the foregoing recommendation.

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

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89 Ibid. See also, [http://www.oas.org/juridico/english/Sigs/b-58.html](http://www.oas.org/juridico/english/Sigs/b-58.html)
90 Ibid.
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.

With respect to the foregoing recommendations, the country under review notes that “…we are conscious of the need for continuity in programs of this nature, in order to fulfill the firm purpose of ensuring that the systems, provisions, measures, and mechanisms referred to in the Inter-American Convention against Corruption are adequately known, managed, and implemented by public servants. The foregoing notwithstanding, we have continued to impart training courses.”

In light of the foregoing, and considering that these recommendations are continuous in nature, the Committee takes note of the need for Costa Rica to continue to give attention to their implementation. To this end, Costa Rica might consider opportunities for technical assistance.
Article 3 of the Civil Service Statute provides as follows: “The following persons shall not be covered by this Statute: a) Officials elected through a popular vote; b) Members of the police forces (i.e. anyone who is no longer active in the armed services due to the nature of his/her present work or functions, except for personnel in the Department of Foreigners, Resident Identification, Migration and Passports (“Departamentos de Extranjeros y Cédulas de Residencia y de Migración y Pasaportes”) and in the Military Bands (“Bandas Militares”); and c) Civil servants and employees in presidential or ministerial positions of trust.”

Article 5 provides the following: “The following civil servants and employees are also exempted from this Statute: a) The National Treasurer. b) The Deputy National Treasurer. c) The Head of the Budget Office. d) Civil servants and employees in presidential or ministerial positions of trust, pursuant to the provisions of the Budget Law. (Sub-paragraph reworded as per Article 1 of Law No 6440 dated May 16, 1980 ). e) Temporary or free-lance workers who provide their services under special contract.. f) People who receive fees for professional services provided on a temporary basis or for other work undertaken through a superior-subordinate relationship. g) Physicians who provide the service mentioned in Article 66 of the Sanitary Code. h) Prospective primary school teachers (Article 1 of the Education Code) and secondary school supply teachers or prospective secondary school teachers (Article 280 of the Education Code). i) The Inspector General and Temporary Inspectors, of Authorities and Communications. (Sub-paragraph added as per Article 1 of Law No 2716 dated January 21, 1961 and subsequently reworded as per sole article of Law No 3451 dated November 5, 1964) j) The Director of Migration, the Head of the Department of Foreigners and the Administrative Director of the Higher Transportation Council (“Consejo Superior”). (Sub-paragraph added as per Article 1 of Law No 2716 dated January 21, 1961). k) Officials of the National Commission for Risk Prevention and Emergency Response, subject to Article 18(2) of its law.”

Article 4 of the Civil Service Statute provides as follows: “The following civil servants and employees are also exempted from this Statute: a) The National Treasurer. b) The Deputy National Treasurer. c) The Head of the Budget Office. d) Civil servants and employees in presidential or ministerial positions of trust, pursuant to the provisions of the Budget Law. (Sub-paragraph reworded as per Article 1 of Law No 6440 dated May 16, 1980 ). e) Temporary or free-lance workers who provide their services under special contract.. f) People who receive fees for professional services provided on a temporary basis or for other work undertaken through a superior-subordinate relationship. g) Physicians who provide the service mentioned in Article 66 of the Sanitary Code. h) Prospective primary school teachers (Article 1 of the Education Code) and secondary school supply teachers or prospective secondary school teachers (Article 280 of the Education Code). i) The Inspector General and Temporary Inspectors, of Authorities and Communications. (Sub-paragraph added as per Article 1 of Law No 2716 dated January 21, 1961 and subsequently reworded as per sole article of Law No 3451 dated November 5, 1964) j) The Director of Migration, the Head of the Department of Foreigners and the Administrative Director of the Higher Transportation Council (“Consejo Superior”). (Sub-paragraph added as per Article 1 of Law No 2716 dated January 21, 1961). k) Officials of the National Commission for Risk Prevention and Emergency Response, subject to Article 18(2) of its law.”

Article 6 of the Civil Service Statute provides as follows: “The Civil Service system will include a Service for which entry does not depend on a Competitive Examination, which will subject to the following two exceptions to this Statute: 1) To enter the Service without having to sit a Competitive Examination, it will suffice for the candidate chosen by the Minister to meet the minimum requisites for ascertaining his/her unsuitability, pursuant to the provisions indicated in detail in the regulations; and 2) Anyone in the Service who is not required to take a Competitive Examination shall not enjoy the right to permanence of employment conferred under Article 37(a) and Article 43 of this Statute. The following servants shall be included in the Service that is not subject to a Competitive Examination: a) Subordinates of heads of diplomatic missions; b) Consuls and other officials and employees of consular offices; c) Secretaries of Local Governments, Departmental Administrator’s Offices and Police Headquarters; d) Staff of the Office of the President of the Republic who do not report directly to the President; and e) Staff of the Office of the Commander in Chief who are still active in the armed services.”

END NOTES

1 Article 3 of the Civil Service Statute provides as follows: “The following persons shall not be covered by this Statute: a) Officials elected through a popular vote; b) Members of the police forces (i.e. anyone who is no longer active in the armed services due to the nature of his/her present work or functions, except for personnel in the Department of Foreigners, Resident Identification, Migration and Passports (“Departamentos de Extranjeros y Cédulas de Residencia y de Migración y Pasaportes”) and in the Military Bands (“Bandas Militares”); and c) Civil servants and employees in presidential or ministerial positions of trust.”

2 Article 5 provides the following: “The following civil servants and employees are also exempted from this Statute: a) The National Treasurer. b) The Deputy National Treasurer. c) The Head of the Budget Office. d) Civil servants and employees in presidential or ministerial positions of trust, pursuant to the provisions of the Budget Law. (Sub-paragraph reworded as per Article 1 of Law No 6440 dated May 16, 1980 ). e) Temporary or free-lance workers who provide their services under special contract.. f) People who receive fees for professional services provided on a temporary basis or for other work undertaken through a superior-subordinate relationship. g) Physicians who provide the service mentioned in Article 66 of the Sanitary Code. h) Prospective primary school teachers (Article 1 of the Education Code) and secondary school supply teachers or prospective secondary school teachers (Article 280 of the Education Code). i) The Inspector General and Temporary Inspectors, of Authorities and Communications. (Sub-paragraph added as per Article 1 of Law No 2716 dated January 21, 1961 and subsequently reworded as per sole article of Law No 3451 dated November 5, 1964) j) The Director of Migration, the Head of the Department of Foreigners and the Administrative Director of the Higher Transportation Council (“Consejo Superior”). (Sub-paragraph added as per Article 1 of Law No 2716 dated January 21, 1961). k) Officials of the National Commission for Risk Prevention and Emergency Response, subject to Article 18(2) of its law.”

3 Article 4 of the Civil Service Statute provides as follows: “The following civil servants and employees are also exempted from this Statute: a) The National Treasurer. b) The Deputy National Treasurer. c) The Head of the Budget Office. d) Civil servants and employees in presidential or ministerial positions of trust, pursuant to the provisions of the Budget Law. (Sub-paragraph reworded as per Article 1 of Law No 6440 dated May 16, 1980 ). e) Temporary or free-lance workers who provide their services under special contract.. f) People who receive fees for professional services provided on a temporary basis or for other work undertaken through a superior-subordinate relationship. g) Physicians who provide the service mentioned in Article 66 of the Sanitary Code. h) Prospective primary school teachers (Article 1 of the Education Code) and secondary school supply teachers or prospective secondary school teachers (Article 280 of the Education Code). i) The Inspector General and Temporary Inspectors, of Authorities and Communications. (Sub-paragraph added as per Article 1 of Law No 2716 dated January 21, 1961 and subsequently reworded as per sole article of Law No 3451 dated November 5, 1964) j) The Director of Migration, the Head of the Department of Foreigners and the Administrative Director of the Higher Transportation Council (“Consejo Superior”). (Sub-paragraph added as per Article 1 of Law No 2716 dated January 21, 1961). k) Officials of the National Commission for Risk Prevention and Emergency Response, subject to Article 18(2) of its law.”

4 Article 6 of the Civil Service Statute provides as follows: “The Civil Service system will include a Service for which entry does not depend on a Competitive Examination, which will subject to the following two exceptions to this Statute: 1) To enter the Service without having to sit a Competitive Examination, it will suffice for the candidate chosen by the Minister to meet the minimum requisites for ascertaining his/her unsuitability, pursuant to the provisions indicated in detail in the regulations; and 2) Anyone in the Service who is not required to take a Competitive Examination shall not enjoy the right to permanence of employment conferred under Article 37(a) and Article 43 of this Statute. The following servants shall be included in the Service that is not subject to a Competitive Examination: a) Subordinates of heads of diplomatic missions; b) Consuls and other officials and employees of consular offices; c) Secretaries of Local Governments, Departmental Administrator’s Offices and Police Headquarters; d) Staff of the Office of the President of the Republic who do not report directly to the President; and e) Staff of the Office of the Commander in Chief who are still active in the armed services.”
Article 20 of the Civil Service Statute provides that: “To enter the Civil Service, candidates must: a) Be morally and physically capable of performing the functions of the position. This will be verified through information on the lifestyle and certifications issued by the Judicial Register of Criminals, National Archives, Investigation Cabinet and the appropriate Department of the Ministry of Public Health. b) Sign a sworn statement of allegiance to the democratic system established in the Constitution of the Republic. c) Satisfy the special minimum requisites stipulated in the "Descriptive Manual of Civil Service Jobs" for the type of position in question. d) Prove their suitability through such tests, exams or competitions as are provided for in this law and its regulations. e) Be chosen from the list sent by the office in charge of staff recruitment. f) Complete the trial period; and g) Meet any other requisites indicated in the regulations and legal provisions on the matter.”

Article 9 of the Law for Personnel of the Legislative Assembly provides: “In order to enter the Legislative Assembly as an ordinary servant, candidates must: a) Be Costa Rican; b) Be morally and physically capable of performing the functions of the position; c) Fulfill the requisites established in the Manual; d) Prove their suitability through tests, exams or competitions organized by the General Directorate; e) Not be married or related by direct or collateral sanguinity up to and including the third degree of affinity, to ordinary servants of the Assembly or Deputies, and f) Complete the trial period established in the Manual.”

Article 7 of the Judicial Service Statute provides as follows: “In addition to the conditions stipulated in this law for all servants of the judiciary, the Head of the Personnel Department must meet the following requisites: a) Be Costa Rican and over 28 years of age; and b) Hold a Law Degree or have more than ten years experience in staff management in the Judiciary.”

Article 18 provides that “Entry into the Judiciary Service requires: a) Be of legal age. b) Be morally and physically capable of performing the functions of the position, which will be ascertained by the Personnel Department. c) Fulfill the requisites established in the Classification Manual for the category of position in question. d) Not be married or related, by direct or collateral sanguinity or affinity, up to and including the third degree of affinity, to any Magistrate, high court judge, judge, actuary, mayor, inspector general or assistance, or any other official who administers justice. e) Prove their suitability through such tests, examinations or competitions as are provided for in this law or determined by the Personnel Department. f) Be chosen from the list of three candidates sent by the Personnel Department, when applicable. g) Swear the oath as required by the Constitution. h) Complete the trial period.”

With response to this exception, the response of Costa Rica to the questionnaire notes in pertinent part as follows: “This case is understood as the direct supply of services to their user or recipient, pursuant to the law or the regulations on the matter. It covers the activity of the Administration which, due to the constant volume and movement, and the immediate relationship with users, is clearly incompatible with competitive bidding procedures. For instance, the ordinary activity of the institution in Costa Rica that operates telecommunications service as a monopoly (the Costa Rican Electricity Institute) is the sale of telephony services to users; the activity of the Costa Rican Waterworks Institute is to provide the population with a drinking water service; and the activity of the National Insurance Institute is to sell insurance policies to customers.

It is important to clarify that this is an exception. It is subject to restrictions and obviously does not cover purchases of all the goods and services the institution needs for the service it provides (i.e. in the case of a citizen-State relationship) which must be put out to tender. We should also make it clear that when services are provided directly by the Administration they can be considered part of its ordinary activity, but while there is an interest in transferring it to private individuals, they can be contracted through ordinary bidding procedures (for example, if a local government hires a private company to provide a garbage collection service to a community, or if the National Insurance Institute contracts insurance brokerage companies).”
exceed the economic limitations established in the previous sub-paragraph. 
f) Procurement undertaken for the construction, installation or provision of offices or services abroad. 
g) Activities that are excluded, in accordance with the law or international instruments in force in Costa Rica. 
h) Activities which, due to the small amount involved, do not warrant an ordinary bidding procedure, according to the provisions on limits contained in Article 27 of this Law. In such cases, the Administration will invite at least three potentially suitable suppliers, if these exist, and will award the contract to the lowest bidder, without ignoring other factors considered relevant to the evaluation, which will be defined in the invitation. The Administration will only consider offers from suppliers who were invited to bid. 
The following activities are exempted from the scope of this law: 
1.- Employer-employee relationships. 
2.- Public loans. 
3.- Other activities which, according to the legislation on the matter, are subject to a special contracting system. 
Non-state public entities if 50% of their capital consists of equity capital or contributions from their members, and public enterprises entities if the majority of their capital stock belongs to private individuals and not to the public sector."

15 “Article 2 bis.— Authorizations. When authorized by the Comptroller General of the Republic, the following contracts are excluded from the bidding procedures established under this Law: 
a) Contracts for goods, works or services which, given their complexity or specialized nature, can only be obtained from a limited number of suppliers or contractors. In such cases, for reasons of economy and efficiency, it would not be appropriate to apply the ordinary procedures. 
b) Contracts in cases where technological equipment has already been purchased and where the Administration decides to purchase more products from the same contractor, for reasons of uniformity or in order ensure compatibility with the technological equipment already in use, provided that the original contract met the needs of the awarding administration satisfactorily, that the price is reasonable and, especially, that the market could offer no better alternative. 
c) Other activities or specific cases where there are sufficient reasons to justify that this is the only way to satisfy the general interest and at the same time avoid damaging or jeopardizing the public interest. The request addressed to the Administration must contain a detailed justification of the circumstances leading to the application of the exceptions established in this article, as well as details of the method to be used to select the contractor. 
The Office of the Comptroller General shall reach a decision on the request within ten working days and may establish procedures to replace the ordinary ones. It will also specify the remedies applicable in such cases, as well as the timelines for filing them. 
The authorizations contemplated in this article do not exonerate the requesting administration from the outcome of the contracting process, or a mistaken judgment of the circumstances that may later be used to justify the request for an exception to the ordinary procurement procedures.”

x With respect to these sums, the response of Costa Rica to the questionnaire notes at p. 36, that: “Under the LCA [Law on Administrative Contracting], the Office of the Comptroller General of the Republic must prepare and send a list with the name of each administration and the amount of their budget they are authorized as support for the procurement of non-personal goods and services. This will be published in the official journal, La Gaceta by second half of February of each year at the latest. To establish that amount, the average of the sums budgeted during the current period and in the two preceding periods is taken account to support need to procure non-personal goods and services. 
The sums established are adjusted annually, taking as a reference, among other things, the percentage variation of the consumer price index. During the second half of February each year, at the latest, the Office of the Comptroller General of the Republic issues a resolution containing the increases and specifying the parameters in force for each body and entity covered by that Law.”

xi With respect to this form of procurement, Article 52 of the Law on Administrative Contracting, provides as follows: “Financed bidding. The Administration can use the financed bid method when, under the general competition conditions, the contractor must obtain a line of credit for the expenses incurred in the procurement process. On that assumption, the budget content requirement will be limited to the provision of sufficient funds to meet amortization and interest payments, related expenses incurred by the financing and allowance for inclusion in future budgets of the budgetary items necessary to repay the loan. 
Before commencing the financed bid, the Administration must obtain the authorizations required by law to enable it to borrow and use this mechanism.
In the case of a financed bid, when the Administration is offered a loan that is burdensome for the State or requires a guarantee from it, before starting to execute the work in question, it is essential to obtain a signature or guarantee from the Executive, in addition to the legislative approval referred to in Article 121(15) of the Constitution. In the event of failure to comply with these requisites, the Administration shall take no responsibility whatsoever.”

xii Article 54 also provides that the regulation of acquisition through auction must respect the principles for administrative contracting with particular attention to protecting transparency in negotiations.

xiii Article 2 of the General Law on the Concession of Public Works with Public Services defines these types of contracts as follows: “a) Public Works Concession: an administrative contract through which the Administration grants a concession to a third party, which may be a public, private or mixed entity, to plan, finance, construct, conserve, expand or repair any publicly owned real property, in exchange for charging the users of the work or the beneficiaries of the service, or in exchange for some form of compensation from the Administration granting the concession. b) Works Concession for Public Service: a government contract through which the Administration grants a concession to a third party, which may be a public, private or mixed entity, to plan, finance, construct, expand or repair any publicly owned real property, and to use it while providing the services envisaged in the contract, in exchange for charging the users of the work or the beneficiaries of the service or in exchange for some form of compensation from the Administration granting the concession.”