

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

FINAL REPORT

(Adopted at the December 15, 2006 plenary session)

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

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

INTRODUCTION

1. Contents of the Report

This report presents, first, a review of implementation in the Republic of Honduras 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 Honduras 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 Honduras ratified the Inter-American Convention against Corruption on May 25, 1998, and deposited the respective instrument of ratification on June 2, 1998.

In addition, the Republic of Honduras signed the Declaration on the Mechanism of Follow-up on Implementation of the Inter-American Convention against Corruption on December 18, 2001.

I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of the Republic of Honduras

The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Honduras, and in particular from the Superior Court of Accounts, 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 Honduras sent the provisions and documents it considered pertinent.

For its review, the Committee took into account the information provided by the Republic of Honduras up to July 17, 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.

¹ This report was adopted by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on December 15, 2006, at its tenth meeting, held at OAS Headquarters in Washington D.C., United States, December 11-16, 2006.

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,² a document from the “Permanent Forum of Civil Society Organizations” (FPOSC). In addition, the Committee also received a document prepared by the “Association for Participative Citizenship” (ACI PARTICIPA) and presented by Transparency International.³

3. Other documents

The Committee also consulted the February, 2005 Country Procurement Assessment Report, prepared by the Inter-American Development Bank and the World Bank (“WB/IDB-CPAR”).⁴

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 Honduras 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 256, which provides that the Civil Service Regime regulates the relationships of employment and public functions between the State and public servants, grounded in the principles of suitability, efficiency and honesty, and that personnel management shall be based on the merit system; Article 257, which provides that the law shall regulate the Civil Service and in particular, the conditions for entry into the public service, merit and aptitude based promotions and advancement, guarantee of permanence, transfers, suspensions and guarantees, the duties of public servants and appeals with respect to decisions that affect them; and Article 259, which extends the above-mentioned constitutional provisions to employees of the decentralized and municipal institutions.

- Statutory provisions applicable to employees of the Executive branch, such as the Civil Service Law, Decree Number 126 of 1968, which has among its stated purposes those of: creating the administrative career system based on merit (Art. 1(1)), offering equal opportunities for all citizens to serve the public administration based on suitability and aptitudes (Art. 1(2)), training, making responsible, protecting and dignifying public servants (Art. 1(3)), and increasing the efficiency of the public service (Art. 1(4)). The Law establishes the Directorate General of the Service as the body

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

³ These documents were received in electronic format on July 17, 2006 and are available at <http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/juridico/english/flightcur.html>

⁴ This document is available in electronic format, at:

http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2005/06/29/000160016_20050629134543/Rendered/PDF/327910HN0CPAR01r0official0use0only1.pdf

responsible for its enforcement (Articles 5 and 7); and creates the Civil Service Council as the body responsible for development of the personnel administration policy as well as for hearing and resolving disputes that arise with respect to the enforcement of the Law and its Regulation (Article 8), including decisions taken by the Directorate General (Article 10).

The above Law also contains other provisions related to entry into service in the Executive branch, such as Article 11, which contains a list of entry requirements; Article 12, which requires the Directorate General to prepare and maintain a Post Classification Manual containing the description of all posts as well as the corresponding duties, responsibilities, and the most important requirements for each post; Article 3, which contains exceptions to the application of the law;ⁱ Article 24, which requires the Directorate General to publicize vacancies that are to be filled; and Article 28, which provides that the Directorate General shall select the candidates to fill vacancies based on the following order of priorities: (1) those with the right to promotion in the same class and from the same dependency, (2) those with the right to promotion in the same class, but a different dependency, (3) those on the list for re-entry into service, and (4) candidates to enter service.

- Regulatory provisions applicable to employees of the Executive branch, such as those found in the Regulation of the Civil Service Law, Agreement Number 175 of 1976, which expands upon the provisions of the corresponding Law and contains detailed provisions with respect to the personnel selection regime for the Executive. Among its provisions, the following should be highlighted: Article 1, which details those who are considered in the Service through Competition “*Servicio por Oposición*”, and to whom the provisions of the Law and Regulation apply; Article 21, which contains the list of those to whom the Civil Service Law and Regulation do not apply;ⁱⁱ Article 34, which establishes the Department of Recruitment and Selection as a department within the Directorate General of the Civil Service, responsible for administration of the personnel system as well as for personnel management (See Article 35); Article 107, which requires that all Service by Opposition posts must be filled through Suitability Exams “*Exámenes de Idoneidad*” or by means of Background Comparison “*Oposición de Antecedentes*”; Articles 111 through 121, which outline the selection procedure; Article 112, which requires the publication of vacancies to be filled at least thirty days in advance;

- Statutory provisions applicable to the employees of the Legislative branch, such as the Labor Statute for Legislative Branch Employees,ⁱⁱⁱ Decree Number 151 of 1993, which provides that the selection of personnel is handled by the Personnel Office of the National Congress (Article 9), and sets requirements for applying for positions in the Legislative branch (Article 4); and contains exceptions to the applicability of the Statute (Article 3).

- Statutory provisions applicable to employees of the Judicial branch, such as those contained in the Law on Judicial Careers, Decree Number 953 of 1972, Article 2 of which states that the selection of employees based on personal merit and equal opportunities stimulates the entry of the most qualified individuals; Articles 8 and 9, which create the Council on Judicial Careers as a dependency of the Supreme Court of Justice, and charge it with assisting with personnel management policies as well as hearing and resolving conflicts or complaints that arise as a result of the application of this Law and its Regulation; Article 10, which creates the Directorate of Personnel Administration headed by a Director appointed by the Supreme Court of Justice, and makes the Directorate responsible for the enforcement of the Law and Regulation; and Article 13, which creates the Personnel Selection Commission is an auxiliary body to the Directorate of Personnel Administration.

The foregoing law also includes provisions related to entry into service in the Judicial branch, such as Article 14, which requires the Directorate of Personnel Administration to prepare and maintain a Manual of Post Classifications, containing the description of all posts as well as the corresponding duties, responsibilities, and the most important requirements for each; Article 23, which contains a list of requirements for entry into Judicial service; Article 24, which prohibits certain persons from holding any positions in the Judicial branch; Article 27, which requires publication of the vacancy along with the requirements for the post; Articles 28, 29 and 30, which address the percentage ranking for qualified applicants, the process whereby the Supreme Court appoints the winning candidate from among the three qualified candidates selected by the Personnel Selection Commission, and the priority list based on which the Commission selects the three candidates to be submitted to the Supreme Court for appointment; and Article 33, which allows the Supreme Court to make emergency appointments to be made in the event that serious damage would occur if the appointment were not made.

- Regulatory provisions applicable to employees of the judicial branch, such as those contained in the Regulation of the Law on Judicial Careers, issued in 1987, which expands upon the provisions of the corresponding Law and provides additional details on the personnel selection regime for the Judiciary. Among its provisions, the following should be noted: Articles 9 to 19, which divide posts in this branch into Regular Service, to which the Law and Regulation apply, and Exempted Service,^{iv} with respect to which only those provisions in the Law and Regulation regarding duties, incompatibilities, and rights apply; and Articles 150 and 151, which provide for emergency and interim appointments.

- Regulatory provisions applicable to the bodies charged with oversight of the personnel administration regime, such as the Internal Regulation of the Council of Judicial Careers, issued in 1998, Article 7 of which sets forth the functions of the Council; and Articles 24 to 34, which establish, *inter alia*, the requirements for filing complaints regarding the personnel administration and selection system, and the time frame within which and the process whereby the Council resolves those complaints.

- Legal provisions applicable to oversight bodies, such as the Statute of Public Ministry Careers, Agreement Number 002 of 1994, Articles 3 and 4, which provide for a merit-based selection and recruitment system; Article 6, which excludes certain posts from the Public Ministry Career System;^v Article 7, which provides that the Personnel Council and the Human Resources Division are organs of the Career System; Article 10, which sets out the functions of the Council; Article 14, which makes the Human Resources Division the body responsible for, *inter alia*, creating the standards and criteria for personnel selection, carrying out the competitions for posts, and implementing a training system to update knowledge by those subject to the Statute of the functions of their post; and Articles 21 to 23, which set out the requirements for and impediments to entry into service.

- Other provisions applicable to oversight bodies, such as the Regimen of Careers of Officials and Employees of the Superior Court of Accounts, issued by the Superior Court of Accounts in November, 2003, which calls for a merit-based selection system (Article 2); establishes requirements for and impediments to entering service (Articles 28 and 29, respectively); and establishes the Human Resources Directorate as the entity responsible for personnel management (Article 7), including *inter alia*, the preparation of a Post Classification Manual and carrying out competitions for posts and training programs (Article 8). In addition, the Regimen contains detailed provisions on the personnel selection process, such as Articles 22 to 24, which provide for internal or external competitions; and Article 27, which provides for emergency appointments.

- Other statutory provisions allowing challenges to be made with respect to the selection process in the absence of a specific law, such as the Administrative Procedure Law, Decree Number 152 of 1987, which allows interested parties to request the nullification of any administrative action which is contrary to law (Article 35); and the Law on Contentious Administrative Jurisdiction, Decree Number 189 of 1987, which allows for judicial review of administrative actions, provided that all administrative means of review have been exhausted (Article 28).

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. In addition, the Committee notes the initiative demonstrated by Honduras to remedy any existing deficiencies via the Public Servants Regime Bill, which is currently before Congress.

Notwithstanding the foregoing, 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 regarding the existing Civil Service Law and its Regulation:

- Article 28 of the Law provides that vacancies are to be filled in accordance with a priority list, giving preference to those who are already in service, then to those waiting to re-enter service, and ending finally with those who are still waiting to enter service. The Committee is concerned that if this process is not carried out in a transparent manner, all potential candidates may not become aware of the opportunities available or not available to them. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1.1(a) in Section 1 of Chapter III of this report).

- Although the Law charges the General Directorate with the maintenance of the Post Classification Manual, there is no indication that this Manual is made public, or that it is readily accessible to the public in general upon request. (See Recommendation 1.1.1(b) in Section 1 of Chapter III of this report).

- Although the Committee notes the existence of procedures for challenging decisions taken in the Executive branch at both the administrative and judicial levels, which conceivably encompass decisions taken with respect to the personnel selection process, the Committee notes an absence of provisions explicitly granting the Civil Service Council, as the body responsible for hearing and resolving disputes, the power to overturn the results of a particular competition, in the event that some aspect thereof was carried out contrary to the Law or its Regulation. (See Recommendation 1.1.1(c) in Section 1 of Chapter III of this report).

- The Committee also considers that audits of competitions, appointments, hiring, promotions, discipline, and dismissals would possibly reveal questionable practices and allow for administrative remedial measures such as increased training or non-criminal sanctions. (See recommendation 1.1.1(d) in Section 1 of Chapter III of this report)

- The Committee is of the view that the exception contained in Article 22 of the Law, which allows posts to be filled through Background Comparison "*Oposición de Antecedentes*" rather than through

competitive examination “*exámenes por oposición*” in those cases where it is not convenient to do so due to the specialized knowledge required of the post or due to its nature, could be complemented by objective criteria which allow a determination to be made as to why a particular applicant was selected. This would also allow for challenges to be made with respect to the selection process for those posts. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1.1(e) in Section 1 of Chapter III of this report).

The existing law covering permanent employees of the Legislative branch does not contain any detailed provisions regarding the permanent personnel selection process; provide for permanent personnel selection to be carried out based on merit; nor does it provide any mechanism for the publication of vacancies.

Similarly, although the Statute names the Personnel Office of the National Congress as responsible for the personnel selection process, as noted above in section 1.1.1, there appears to be an absence of provisions regulating how this Office should function vis-à-vis the selection of personnel. Furthermore, the Statute does not provide any procedure for challenging decisions taken in particular cases, or any aspect of the selection process. Finally, it appears that despite Article 2 of the Statute, which provides that the Statute will regulate the employment relationship of Legislative branch employees, as established by the Statute and its Regulation, it does not appear that any such Regulation has been issued. Bearing these considerations in mind, the Committee will formulate the corresponding recommendations. (See Recommendations 1.1.2(a) to 1.1.2(g) in Section 1 of Chapter III of this report).

With respect to the judicial branch, the Committee considers that the existence and application of the Law on Judicial Careers and its Regulation constitute important progress towards achieving the purposes of the Convention. Nevertheless, the Committee believes that Honduras could further improve and enhance the system for the Judiciary by clarifying certain aspects of the personnel selection system by taking the following considerations into account.

- Although the Law on Judicial Careers and its Regulation generally provide for the selection of candidates through a merit-based process, the Committee considers that not unlike the selection system for the Executive branch, the priority ranking carried out by the Personnel Selection Committee may result in unequal treatment for different candidates. 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 is concerned with the wide discretion that the Personnel Selection Commission has with respect to the three names that it supplies to the Supreme Court for appointment from among all qualified candidates. For instance, there is no rule stating that the Commission will use objective criteria in selecting these three candidates, such as naming the three qualified candidates with the highest percentage score. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1.3(b) in Section 1 of Chapter III of this report).

- In addition, the Committee notes an absence of an express provision requiring the Post Classification Manual that is prepared and maintained by the Directorate of the Service to be made public, or that members of the public be readily granted access thereto. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1.3(c) in Section 1 of Chapter III of this report).

- Finally, the Committee notes an absence of provisions granting the Council on Judicial Careers, as the body charged with hearing and resolving disputes that arise as a result of the application of the Law or Regulation of Judicial Careers, or challenges to decisions taken by the Directorate of the Service, the power to overturn decisions taken in respect to the selection process. This is true of the Law and its Regulation, as well as the Internal Regulation of the Council itself. In this regard, the Committee will formulate the appropriate recommendation. (See Recommendation 1.1.3(d) in Section 1 of Chapter III of this report).

Concerning positions in the Public Ministry, the Committee notes the existence of a specific Statute addressing personnel selection for those posts. The Statute provides that the Personnel Council and the Human Resources Division are the oversight bodies responsible for developing and applying the personnel administration policy and its enforcement, respectively, Article 10 only authorizes the Personnel Council to resolve appeals presented with respect to disciplinary measures. Thus, outside of the provisions of the Administrative Procedure Law and the Law of Contentious Administrative Jurisdiction, no provision is made for either of the two oversight bodies to receive and/or resolve disputes that might arise with respect to the application of the personnel selection system. In this regard, the Committee will formulate the appropriate recommendation. (See Recommendation 1.1.4 in Section 1 of Chapter III of this report).

- With respect to the Regimen for Careers of Officials and Employees of the Superior Court of Accounts, the Committee notes an absence of provisions specifically allowing for challenges to be made to decisions taken with respect to the selection process. The Committee will formulate a recommendation in this regard. (See Recommendation 1.1.5(a) in Section 1 of Chapter III of this report).

- Finally, the Committee notes a need for additional training programs for those responsible for managing the selection and staffing processes, as well as for training and induction programs for those persons recently hired into public service. In this regard, the Committee will formulate a recommendation. (See general recommendation 4.3 in 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 Honduras states that “*There are no statistics in the country showing the results.*”⁵ The response further notes that “*In compliance with Article 4 of the Organic Budget Law requiring that the financial administration system of the Public Sector functions in a coordinated manner with other subsystems, including the Human Resource Management subsystem, the Integrated System for Human Resource Management of the Honduras Public Sector (SIARH) is being developed in order to guarantee a seamless process covering human resource requirements.*”⁶

While the Committee welcomes the development of the Integrated System for Human Resource Management, it is concerned that the Civil Service Law and its Regulation are only partially enforced. In this regard, ACI PARTICIPA notes in its submission that “*In Honduras, the principal obstacle to the system of human resource administration in general, and in particular, the system of Career Post Appointments, is not the absence of a legal framework, but the lack of enforcement of the laws.*”⁷ Telling of this situation is the fact that according to the information provided by ACI

⁵ See the response of Honduras to the Questionnaire, at p. 4.

⁶ Ibid, at p. 4.

⁷ See the document prepared by ACI PARTICIPA, at p. 15.

PARTICIPA,⁸ although the last competition for posts in the Judicial branch took place in November, 2005, the last competition that was held for posts in the Executive branch pursuant to either the Civil Service Law or its Regulation, was in October, 1976.

In addition, both Honduras' and the Permanent Forum for Civil Society Organizations responses allude to the fact that the noted law needs to be adjusted to the new conditions in order to allow the creation of the administrative career.⁹ The Committee does note, however, the Honduras' willingness to remedy the current situation, as reflected by the Public Servants Regime Bill, which is currently before Congress.^{vi}

The Committee does not have sufficient information processed in such a way as to allow for a comprehensive evaluation of the results in this field. The Committee will formulate recommendations in this regard. (See general recommendations in Section 4 of 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 Honduras 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 360, which provides that contracts with the State for the construction of public works, the acquisition of goods and services, purchasing, or the renting of goods, must be executed following bidding, competition or tenders, with the exception of those contracts that respond to emergency needs or those which, due to their nature, can only be entered into with a particular individual.

Legal provisions of varying nature, applicable to all branches of government, among which the following should be highlighted:

- The Law of State Contracting (Decree Number 74 of 2001), and its Regulation (Executive Agreement Number 055-2002), which apply to contracts for public works, the provision of goods and services, and consulting services entered into by the Centralized and Decentralized Public Administration organs in the Executive, as well as in the Legislative and Judicial branches. (Article 1). In addition, Article 8 sets out the exceptions to its applicability.^{vii} Among the provisions of both the Law and its Regulation, the following should be noted:

- Article 38 of the Law, which provides that public procurement shall be carried out through: (1) Public Tenders, (Articles 41 to 58); (2) Private Tenders, (Articles 59 and 60); (3) Public Competition, (Articles 61 and 62); (4) Private Competition (Articles 61 and 62); and Direct Contracting (Article 63). In addition, the Law also provides that procurements that are in excess of the amount established in the General Provisions of the General Budget of State Income and Expenditures, shall be carried out via public bidding (Articles 38, 59 and 61 Law of State Contracting).¹⁰

⁸ See the chart on p. 8 of the document prepared by ACI PARTICIPA.

⁹ See response of Honduras to the Questionnaire, at p. 4, as well as the document submitted by FPOSC, at p. 5.

¹⁰ See Articles 38, 59 and 61 of the Law on State Contracting.

- Article 30, 32 and 33 of the Law, which provide, respectively: for the creation of the Public Procurement Policy Office (ONCAE) as a technical and consultative body, responsible for issuing rules and instructions for the development or improvement of the operational aspects of the procurement systems, the provision of advisory services, and the coordination of those activities that guide and systematize the public procurement process; that the preparation, award, and execution of procurements is the responsibility of the entity carrying out the procurement;^{viii} and for the creation of a Evaluation Committee in each entity for the review and analysis of offers. In addition, Articles 132 to 141 provides for sanctions to both public servants and contractors for violations of the procurement laws and regulations.

External control of the national procurement system is exercised by the Superior Court of Accounts, pursuant to its Organic Law (Decree Number 2-2002), which charges the Court with, *inter-alia*, establishing opportunities and mechanisms for civil society participation of civil society in order to promote and strengthen transparency (Article 70); checking, of its own accord or at the request of ONCAE, that the selection and contracting procedures are carried out pursuant to law; (Article 54(4)); exercising concurrent control over the execution and supervision of public works, and the provision of goods, services and consulting services (Article 54(5)); and investigating the complaints submitted with respect to irregularities in the execution of contracts (Article 70).

The Organic Law of the Superior Court of Accounts also contains provisions related to internal control, such as Article 45(9), which charges the Superior Court of Accounts with, *inter-alia*, supervising and evaluating the efficiency of the internal control and issuing provisions of a general nature.

- Article 34 of the Law of State Contracting provides that ONCAE shall maintain a Registry of Suppliers and Contractors, and allows the entities of the decentralized administration to have their own registries where necessary; and Article 35 provides that contracts current and past contracts shall also be included in the Registry. Decree Number 010 Of 2005 creates The Honduran System of Information on State Contracting and Procurement, “HONDUCOMPRAS”, which is publicly accessible at www.honducompras.gob.hn. Some of the information that may be accessed via HONDUCOMPRAS includes the Registry of Suppliers and Contractors, opportunities for contracting with State entities, the terms of reference for each opportunity, as well as the date on which bids will be opened. In addition, the website allows a search of current and executed contracts; contractors that are registered or who have in the past been registered with the State; or who are or have contracted with the State in the past, including a reference as to whether a particular contractor has been sanctioned. Information on the registration procedure and a registration form can also be accessed via the website.
- Article 7(j) of the Regulation of the Law of State Contracting, which defines public work contracts;^{ix} Article 43 of the Law and Article 87 of its Regulation, which require pre-qualification for public works that are to be awarded based on public bidding; Article 82 of the Regulation, which provides a list of prerequisites for the award of public works contracts; and Articles 87 through 97 of the Regulation, which contain detailed provisions on the contracting and award process for public works contracts.
- Provisions which guide the application of the selection process, such as Article 5 of the noted Law, which sets forth the principle of efficiency; Article 6, establishing the principles of

publicity and transparency; and Article 7, setting forth the principle of equity and open competition.

- Provisions related to mechanisms for appealing procurement decisions, such as Article 3, which provides that the decisions taken with respect to the types of procurement covered by the Law, fall within the ambit of Administrative Law, and as such, are subject to review pursuant to the Law on Contentious Administrative Jurisdiction.^x

- The Agreement Between the Government of the Republic of Honduras and the United Nations Development Program (PNUD), Decree Number 33 of 1995, which, as noted by Honduras in its response, allows State institutions to sign a document or agreement with the UNDP so that national or international bidding processes or private bids can be conducted within the framework of the UNDP.¹¹

- As noted by Honduras in its response, the “... ‘fiduciary fence’ applied to purchases financed by international cooperation agencies. Standards, procedures and specific procurement systems are applied by each cooperation agency for such procedures.”¹² In this regard, Article 1 of the Law on State Contracting provides that “If an international treaty or agreement to which the State is party or an agreement concluded with an external financing agency provides otherwise, then the clauses of those documents shall take precedence over the provisions of this law; in all other respects, if no such contradiction exists, contracting shall be governed by the provisions of this Law.”

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 State 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 Honduras 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:

- With respect to the differing methods of procurement provided for in the Law on State Contracting, the Committee notes the need for Honduras to improve the procedures regarding the announcement of and publication of awards in those cases where direct contracting is used. The Committee will formulate a recommendation in this regard. (See Recommendations 1.2.1(a) and 1.2.1(b) in Section 1 of Chapter III of this report)

- With respect to Article 9 of the Law of State Contracting, which defines the type of emergency situations wherein direct contracting may be used pursuant to Article 63(a) of the same Law, may allow for too much discretion, in that it refers to, among other types of emergency situations, “...other exceptional circumstances that could significantly affect the continuity of public services or their timely and efficient provision...” (See Recommendation 1.2.1(c) of Section 1.2 of Chapter III of this report).

¹¹ See the response of Honduras to the questionnaire, at p. 6.

¹² Ibid.

- The Committee is similarly concerned that Article 63(4) of the Law on State Contracting, which allows for direct contracting “when the circumstances require that the operations of the Government be kept secret”, may be too broad, in that it does not define what type of situations might give rise to this need for secrecy. The Committee will formulate a recommendation in this regard. (See recommendation 1.2.1(d) in Section 1 of Chapter III of this report).
- The Committee also notes an absence of provisions requiring government entities to notify interested parties on the outcome of the evaluation of bids prior to the final selection decision, which would allow for comments, observations, or challenges prior to award. (See Recommendation 1.2.1(e) in Section 1 of Chapter III of this report).
- In the case of private tenders, the Committee notes an absence of provisions governing the selection of suppliers to be invited to participate in a particular tender. This issue is also noted in the WB/IDB-CPAR.¹³ In light of this situation, the Committee will formulate a recommendation. (See Recommendation 1.2.1(f) in Section 1 of Chapter III of this report).
- The Committee also notes an absence of provisions allowing any person to have access to the contract award justification documents. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2.1(g) in Section 1 of Chapter III of this report).
- With respect to electronic means of procurement, the Committee considers that a certain amount of confusion may be created by the fact that only certain entities use HONDUCOMPRAS for all of their procurement needs. Thus, while in theory, the vast majority of procurements employing the national system should be publicized on HONDUCOMPRAS, in practice this is not the case. In addition, it appears that some entities use both HONDUCOMPRAS as well as their own internet portal for publicizing procurements. In this regard, the Committee will formulate a recommendation. (See recommendation 1.2.2 in Section 1 of Chapter III of this report).
- With respect to mechanisms for challenges or appeals to the bid process, and notwithstanding the opportunity to challenge aspects of particular procurements via the Administrative Procedure and the Law on Contentious Administrative Jurisdiction, the Committee considers that there is a need for a specific procedure allowing for complaints at the administrative level, as well as a written procedure as to how government entities should receive and respond to challenges or complaints. In this area, the WB/IDB-CPAR notes “...the lack of a comprehensive, effective and transparent mechanism for bidders to challenge their complaints and protests...complaints do not traditionally succeed, because the executing units usually do not follow-up on claims and delay the final response to the process.”¹⁴ In light of these considerations, the Committee will formulate a recommendation. (See Recommendation 1.2.3.a in Section 1 of Chapter II of this report)

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

With respect to results in this field, the response of the Republic of Honduras notes as follows: “Taking into consideration that HonduCompras was created only recently (October 2005) and that it

¹³ See the February, 2005 Country Procurement Assessment Report, prepared by the Inter-American Development Bank and the World Bank (“WB/IDB-CPAR”), at p. 22, available in electronic format at: http://www-wds.worldbank.org/external/default/WDSContentServer/TW3P/IB/2005/06/29/000160016_20050629134543/Rendered/PDF/327910HN0CPAR01r0official0use0only1.pdf

¹⁴ Ibid, at p. 22.

coincides with a recent changeover in Government authorities, and that at the same time this dissemination system is in the process of being developed and implemented, we do not have very much statistical data at present. Once we have achieved the objectives we will be able to obtain all the statistical information required which will enable ONCAE, through HonduCompras, to identify and orient public procurement policies.”¹⁵

The information submitted by Honduras indicates, *inter-alia*, that with respect to procurements carried out through HONDUCOMPRAS since October 2005, 102 procurements (55%) were done through public tenders, 16 (9%) were done through private tenders, 43 (23%) were done through public competitions, 1 (0.5%) was done through private competition, 11 (6%) were done via prequalification, i.e., public works, and 13 (6.5%) were done through “quotes”.

With respect to the foregoing results, considering that the Committee does not have any other 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 recommendation 4.2 in Section 4 of Chapter III of this report).

Notwithstanding the foregoing, the Committee is concerned, as noted by Honduras in its response, of the existence of a “fiduciary fence” applied to purchases financed by international cooperation agencies, which, according to the response submitted by Honduras, allowed for more efficient and transparent procurement for major contracts during the 2002-2006 administration, but which admittedly “*may have held back the development of a strong national system.*”¹⁶ According to the 2005 WB/IDB-CPAR Report, this fiduciary fence applies to “*a significant share of public investment in Honduras (approximately 75%)...The procurement local system under the [Law on State Contracting] is presently applied to a non significant share of public procurement and it is difficult to monitor and evaluate its real impact on budget implementation.*”¹⁷ The WB/IDB-CPAR further notes that “*With a few exceptions...the national system is not used for either major capital investments or a large portion of current expenditures.*”¹⁸

Based on the foregoing, the Committee is concerned that in spite of the relatively recent enactment of a modern Law on State Contracting and its Regulation, these legal texts have only been partially implemented. In light of this situation, the Committee considers it necessary to express the following considerations:

- The Committee takes note of the view expressed by the WB/IDB-CPAR, that full implementation and enforcement of the Law on State Contracting is a basic requirement for the development of an adequate and transparent national procurement system. Accordingly, and cognizant of the existence of the above-described fiduciary fence, the Committee nonetheless feels that the Republic of Honduras should take the steps necessary to fully implement the provisions of the existing Law and its Regulation, so that the national system can be applied to the majority, if not all public procurement within Honduras. In this regard, the Committee will formulate recommendations, keeping in mind the following conclusions of the WB/IDB-CPAR: (See Recommendation 1.2.4 in Section 1 of Chapter III of this report).

¹⁵ See the Response of Honduras, at p. 10.

¹⁶ Ibid, at p. 6.

¹⁷ See the WB/IDB CPAR, at p. 6.

¹⁸ Ibid, at p. 12.

- ONCAE needs to be put into full operation and must be endowed with sufficient resources to carry out its various prescribed functions. In this regard, the WB/IDB-CPAR notes that “*to date, it has remained largely unstaffed...*”¹⁹ and that “*The lack of sufficient budgetary resources and qualified staff have prevented ONCAE (and to a lesser extent [the Superior Court of Accounts], from becoming fully operational, and hence from undertaking critical responsibilities for procurement policy formulation and oversight much needed to advance the effective implementation of the LCE and the management of the public procurement system.*”²⁰

In addition, the CPAR notes that “*Critical aspects of the public procurement system reform depend on the ONCAE’s effectiveness...A well functioning ONCAE is sine qua none for (i) establishing procurement units within the ministries and consolidation of [the Project Implementation Units]; adopting guidelines and oversight to ensure consistent use of planning resources, bidding documents, operational manuals, and other implementing tools; and (iii) training of procurement staff responsible for the public procurement.*”²¹ In light of the foregoing considerations, the Committee will formulate a recommendation. (See Recommendation 1.2.4.a in Section 1 of Chapter III of this report).

- A second aspect that is critical to the development of a sound national procurement system is the need for fully operational and functional external and internal control systems. In this regard, the WB/IDB-CPAR’s notes that budgetary and personnel constraints have played a role in preventing the Superior Court of Accounts, the external control of the national procurement system, from becoming fully operational. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.2.4.b in Section 1 of Chapter III of this report).
- With respect to internal audits, the available information does not indicate whether each entity within the respective entities and organs in all three branches of government has put into operation an internal audit unit. In this regard, the Committee notes that the Superior Court of Accounts has issued Internal Audit General Standards in this regard, pursuant to Article 45 of its Organic Law. Moreover, Article II of these General Standards requires that each public sector entity have an internal audit unit in place, unless a particular law provides otherwise.

The Committee considers that it is important for each entity to have an internal audit unit in place as required by law, and for each such entity to apply the Internal Audit General Standards issued by the Superior Court of Accounts. The Committee will formulate a recommendation in this regard. (See Recommendations 1.2.4.c and 1.2.4.d in Section 1 of Chapter III of this report).

- The Committee is also concerned that the Agreement between the Government of Honduras and the United Nations, cited by Honduras in its response, and which allows State entities to have their procurements operated through the UNDP’s procurement framework, may similarly inhibit proper development of Honduras’ national procurement system. As a result, the Committee considers that once the foregoing control mechanisms have been established, where possible, efforts should be

¹⁹ Ibid, at p. 18.

²⁰ Ibid, at p. 19.

²¹ Ibid.

made to utilize the national procurement system. (See Recommendation 1.2.5 in Section 1 of Chapter III of this report).

- Finally, taking into account that the existing legal framework in this area is of relatively recent creation, the Committee believes that the Republic of Honduras lacks a mechanism for periodic evaluations, which will allow for measurement of the use and effectiveness of the national procurement system, and based on those results, define and consider the adoption of specific measures which ensure transparency, publicity, equity and efficiency of the system. (See Recommendation 1.2.6 of section 1.2 of Chapter III of this report).

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

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

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

- The Code of Criminal Procedure, Article 5 of which establishes that the State will provide the required assistance and protection for victims, witnesses and others who intervene in criminal proceedings; Article 237, which provides that when the responsible entity considers that a grave danger exists for a witness or his family as a result of testimony that is to be given, it should adopt the protection measures deemed necessary, including keeping their names confidential, allowing them to testify in such a way that they cannot be visually identified, and listing their address as the address of the entity responsible for the matter; and Article 270, which provides that those who report crimes have the right to have their identity kept secret.

- The Organic Law of the Superior Court of Accounts, Article 72 of which states that public servants and others (as provided for by the Article) who report infractions or illegality in public service, are entitled to protection pursuant to law.

- The Regulation of the Organic Law of the Superior Court of Accounts, Article 110 of which allows those who report to have their name and identity kept secret.

- With respect to existing mechanisms in this area, the document presented by FPOSC notes that the Inter-Institutional Commission of Criminal Justice has implemented a temporary strategy, which *“must be carried out by all those in criminal justice. The measures to be taken have been classified according to their place in the various phases of the criminal justice process, at every level: the police, the public prosecutor’s office, and the courts. The strategy stipulates that the Secretariat of Security shall be charged with creating special units for working with witnesses, from the time the forces of law and order appear at the crime scene; the public prosecutor’s office is charged with creating a special file in which to record the general information on all victims, witnesses, experts and others involved in the case and who are under protection; the Judiciary shall appoint administrators of sentencing courts and combined courts, who are to be trained in witness protection. Lastly, the strategy provides that in the case of persons to whom security measures are being provided to protect their physical safety, the police, the public prosecutor’s office and the judiciary*

*shall plan the access routes that such persons will use, how long they will stay and the particulars of their appearance.”*²²

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.

In addition, the Committee recognizes the positive steps that have been undertaken, as demonstrated by the temporary measures that have already been implemented, as detailed by the civil society organization ACI PARTICIPA.

Nonetheless, the Committee notes an absence of provisions and mechanisms specifically designed to protect whistleblowers. In this regard, the response of Honduras notes that *“The same mechanisms used to report acts of corruption apply for reporting acts or actions involving threats of retaliation for reporting acts of corruption. However, no specific procedure has been determined for this in the case of threats or retaliation and some isolated or temporary measures that could be applied by the authorities might be considered in such cases. Hence, it can be concluded that generally speaking there is a lack of legal rules and regulations and mechanisms to guarantee protection, other than reserving the person’s identity which might avoid retaliation, and come legal provisions on how to guarantee protection”*^{xi}

The foregoing consideration is reinforced by the comments provided by ACI PARTICIPA, which notes that *“As of now, Honduras does not have a Special Witness Protection Law. This vacuum in the law is compensated by applying the Criminal Procedure Code... In years past, the measures used have been purely a matter of common sense rather than an established witness protection system. An example of such a common sense measure would be to change the domicile of the witness. The only problem is if the jurisdictional body fails to act quickly, the witness simply takes matters into his or her own hands and leaves the country in order to avoid reprisals.”*²³

Additionally, and notwithstanding the existing provisions establishing the right to protection, the committee notes an absence of provisions establishing clear procedures for requesting such protection.

In keeping with its Constitution and the fundamental principles of its domestic legal system, and based on the foregoing considerations, the Committee will formulate a recommendation to Honduras to the effect that its relevant authorities consider the adoption of a comprehensive regulation on the protection of public servants and private citizens who in good faith report acts of corruption. (see Recommendation 2.1 in section 2, chapter III of this report)

Finally, the Committee finds that the Republic of Honduras lacks the necessary bodies to receive and respond to requests for protection at the administrative level, as well as ensure the provisions of the necessary measures of protection. The committee will formulate a recommendation in this regard. (See Recommendation 2.2 in Section 2 of Chapter III of this report).

²² See the document submitted by FPOSC, at p. 11.

²³ See the Document submitted by ACI PARTICIPA, at. p. 21.

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

With respect to results in this field, the Republic of Honduras notes that *“There are no indicators available to reflect this mechanism’s effectiveness or objectivity. However, the number of complaints filed has increased quite notably, as have the responses to them, the facilities for filing them, the methods for doing so, etc. This, in combination with the administrative sanctions and penalties applied under the criminal legislation in force, reflects a positive view of this method of preventing acts of corruption and is considered an effective means of protecting identity, determining liabilities and applicable sanctions, and facilitating the reporting process.”*²⁴

With respect to concrete results, the report further notes as follows:²⁵

- *In the last four years the Office of the Special Anti-Corruption Prosecutor brought 104 lawsuits, leading to 13 guilty verdicts, 12 temporary dismissals and 12 definitive dismissals.*
- *The following movement was registered for the General Inspectorate of Courts and Courts, which comes under the Supreme Court of Justice during 2005:*

Reports Received	Dealt with	Pending	Admitted	Remitted to the Public Prosecutions Service
707	511	199	152	59

- *Between January 2005 and June 30, 2006, the Citizen Participation Directorate, which comes under the Court of Accounts received 160 complaints, of which 72 were dealt with, 50 were transferred to other dependences of the Court, 22 were pending investigation and 16 were rejected.*
- *According to the Report of the National Anti-Corruption Council (created in 2005), four complaints were received and transferred to the Court of Accounts. The court follows up the cases reported involving corruption or lack of transparency in the written press on a monthly basis. Between January and April 2006, eighty-six cases of corruption were reported by the media.*

With respect to above results, considering that the Committee does not have any 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).

²⁴ See the Response of Honduras, at p. 14.

²⁵ Ibid.

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 Honduras 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:

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

- Article 361 of the Criminal Code, which states that *“Any public official or employee who solicits, receives or accepts, either on his own or through third parties, handouts, gifts, offers, promises or any other undue advantage in exchange for performing any act that violates his or her duties and constitutes a crime shall be punished with imprisonment for a period of five (5) to seven (7) years, plus absolute disqualification from public office for double the period of his or her incarceration, separate and apart from the penalty incurred by reason of the crime committed in exchange for the handout or promise.”*²⁶

- Article 362 of the Criminal Code, which states that *“Any public official who directly or indirectly solicits, receives or accepts handouts, gifts, offers, promises or any other undue advantage to perform an unjust but not criminal act relative to his or her office shall face imprisonment for a period of two (2) to five (5) years. If the act is never consummated, then the defendant shall receive a sentence of one (1) to three (3) years. In either case, the official shall be disqualified from public office for double the period of his or her incarceration.”*

- Article 363 of the Criminal Code, which states: *When the handout or gift solicited, received or promised is in exchange for the public official or employee not performing a function that is his or her legal obligation to discharge, the punishment shall be imprisonment for two (2) to five (5) years, plus special disqualification for double the period of his or her incarceration.”*

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

- Article 366 of the Criminal Code, which states in pertinent part: *“DOMESTIC BRIBERY. Any natural person who, either directly or indirectly, intentionally gives some public official or person discharging public functions an object having monetary value or some other benefit such as promises or advantages, whether they be for that person or for others, in exchange for that public official performing or not performing one of his or her official functions or obligations, shall face punishment of five (5) to seven (7) years, plus absolute disqualification for double the period of his or her incarceration, over and above any punishment that the crime committed by virtue of that handout or promise carries.”*

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

- Article 370 of the Criminal Code, which provides that *“Any public official or employee who steals cash, property or effects that, by virtue of his or her office or position, he or she was entrusted with administering, receiving or holding or who –even if not so entrusted- had a hand in stealing said*

²⁶ According to Article 2 of the Organic Law of the Superior Court of Accounts, a “public servant” (*“servidor publico”*) is any employee of the State or its entities, including those who have been selected, appointed, hired, or elected to perform activities or functions in the name of the State or at its service, at all hierarchical levels.

cash, property or effects, shall be imprisoned for two (2) to five (5) years if the value of the stolen money or property is one thousand Lempiras (L.1,000) or less, and six (6) to twelve (12) years if the value of the stolen property is more than one thousand Lempiras (L. 1,000). He or she shall also face absolute disqualification for double the period of incarceration.”

- Article 372 of the Criminal Code, which provides that *“Any public official or employee who uses money, property or effects for a purpose other than one for which they were intended but in so doing does not harm the assets of the State, shall face a fine of fifty thousand (L. 50,0000) to one hundred thousand Lempiras (L.100,000) and special disqualification for a period of three (3) to five (5) years.”*

- Article 374 of the Criminal Code, which provides that *“Any public official or employee who, either directly or through another person, or through fraudulent acts, takes a stake, for the sake of personal profit, in any contract or operation to which he or she is party by virtue of his or her position or office, shall face imprisonment for a period of three (3) to six (6) years, and absolute disqualification for double the period of his or her incarceration.”*

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

- Article 32 of the Criminal Code, which provides that *“Authors shall refer to anyone who takes direct part in the commission of the deed or those who directly force or induce others to commit the deed using means without which the deed would not have been committed.”*

“In crimes of omission, the authors are those who fail to do what the law requires, cause the omission or cooperate therein.”

- Article 33 of the Criminal Code, which provides that *“Accomplices are those who have aided and abetted the commission of the crime through acts performed prior to or at the same time as the crime.”*

“If the particular circumstances of the case reveal that the party accused of being an accomplice was not a willing accomplice to the crime committed by the author, but was a willing accomplice to a lesser crime, the penalty applied to the accomplice shall be the penalty for the act that it was his intention to commit.”

- Article 366 of the Criminal Code, which provides in pertinent part that *“The penalty for any natural person who aids, instigates or conspires in the commission of the acts described in the preceding paragraph shall be half the period of incarceration, plus special disqualification for a period equal to the period of incarceration.”*

“Legal persons who take part in any of the acts described above shall face the following penalties:(1) Those established under paragraph two of Article 369 of the Penal Code, or (2) A fine of one hundred thousand (L.100,000) to one million Lempiras (L.1,000,0000) depending on the seriousness of the offense; or double the benefit obtained, or (3) A combination of the two.”

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.

Firstly, the Committee notes, with respect to Article VI(1)(a), that although Article 361 of the Criminal Code refers to “public officials and employees”,²⁷ Article 362 refers only to “public officials”. In addition, the Committee considers that in order to more fully comply with the provisions of the Convention, Articles 361, 362 and 363 of the Criminal Code, which refer to the solicitation or acceptance of bribes in exchange for an act or omission connected to the performance of public functions, should extend not only to public officials and employees, but also to those who perform public functions, as provided for by Article VI(1)(a).

In addition, the Committee observes that neither Articles 361 nor 362 refer specifically to the solicitation or acceptance of favors, nor to the solicitation or acceptance of bribes either for personal benefit or for the benefit of third parties. (See Recommendation 3.1 in Section 3 of Chapter III of this report).

In addition to the foregoing, the Committee notes an absence of provisions addressing the situation where a public official or employee solicits or accepts a bribe in exchange for committing an act in the performance of his public functions, where that act is neither illicit or unjust, as required by Article VI(1)(a). In this regard, the Committee notes that the study prepared within the framework of a technical cooperation project for the ratification and implementation of the Convention, executed by the OAS with financial cooperation from the Inter-American Development Bank and with the participation of the National Anticorruption Council and the Department of Administrative Probity, titled “Adapting Honduras Criminal Legislation to the Inter-American Convention against Corruption”, makes the same observation. Taking the foregoing into consideration, the Committee will formulate a recommendation. (See Recommendation 3.2 in Section 3 of Chapter III of this report).

With respect to Article VI(1)(c) of the Convention, the Committee recognizes that Honduras has provisions, as transcribed above in section 3.1, which relate to this paragraph. Notwithstanding, the Committee notes the absence of provisions that specifically address and sanction particular acts or omissions by public officials or employees with respect to their functions, committed with the purpose of illicitly obtaining benefits for themselves or another. In this regard, the Committee will formulate a recommendation. (See Recommendation 3.3 in Section 3 of Chapter III of this report)

With respect to Article VI(1)(d), the Committee notes an absence of provisions addressing or sanctioning the fraudulent use or concealment of property derived from any of the acts referred to in Article VI. In this regard, the Committee will formulate a recommendation. (See Recommendations 3.4 in Section 3 of Chapter III of this report).

With respect to Article VI(1)(e) of the Convention, the Committee observes that with the exception of Article 362 of the Criminal Code, which criminalizes the attempted solicitation or acceptance of a bribe in exchange for carrying out an unjust act, there is an absence of provisions criminalizing the attempted commission of the other corruption offenses provided for by Article VI.1. Similarly, other than Article 366, the Committee notes that there do not appear to be any provisions covering collaborations to commit corruption offenses, as also called for by Article VI(1)(e) of the

²⁷ Article 2 of the Organic Law of the Superior Court of Accounts, defines public servant as “Any officer of the state or its agencies, including those who have been selected, appointed, contracted, or elected to perform functions and activities on behalf of the State or at the service of the State at any of its hierarchical levels.”

Convention. The Committee will formulate a recommendation in this regard. (See Recommendation 3.5 in Section 3 of Chapter III of this report).

Similarly, the Committee notes that Article 366 of the Criminal Code does not refer to those individuals who act as an accessory after the fact with respect to corruption offenses, as required by Article VI(1)(e) of the Convention. The Committee will formulate a recommendation in this regard. (See recommendation 3.6 in Section 3 of Chapter III of this report).

In addition, the Committee notes that while Article 366 of the Criminal Code criminalizes assisting, instigating, or conspiring to bribe a public official, there is an absence of provisions addressing participation in the form of assisting, instigating, or serving as an accessory after the fact, in the commission or attempted commission of the solicitation or acceptance of bribes (Article VI(1)(a)), as required by Article VI(1)(e) of the Convention. The Committee will formulate a recommendation in this regard. (See Recommendation 3.7 in Section 3 of Chapter III of this report).

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

With respect to results in this field, the response of Honduras to the questionnaire notes as follows:

"The effect on the investigation and punishment of the acts of corruption covered by our legislation and the acts related to the forms of corruption listed in Article VI 1. of the Convention has been quite positive.

The cases currently under way and those already brought by the Office of the Special Anti-Corruption Prosecutor, a dependency of the Public Prosecutions Service, total 104 in the last four years, 13 of which have resulted in guilty verdicts, 12 (129 temporary in temporary stays and 12 in definitive stays.

According to the information provided by the Supreme Court of Justice, during the 2002-2006 period a total of 2,486 corruption-related cases were tried in the courts of first instance. These are broken down as follows:

<i>Breach of Trust</i>	<i>21</i>
<i>Illicit Enrichment</i>	<i>134</i>
<i>Misappropriation of Public Funds</i>	<i>212</i>
<i>Bribery</i>	<i>480</i>
<i>Abuse of Authority</i>	<i>60</i>
<i>Infringements of duties by Officials</i>	<i><u>1,031</u></i>
<i>TOTAL CASES</i>	<i>2,486</i>

Tables covering the same period 2002-2006 on the cases tried in the courts of first instance are attached, as are statistics on corruption-related cases (See annexes)²⁸

²⁸ See the Response of Honduras, at p. 18.

The above results indicate that the existing provisions in Honduras 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 Honduras, 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 Honduras 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 Honduras:

- 1.1.1 Promote the effective implementation of the Civil Service Law and its Regulations, and review the consistency of the civil service hiring system for Executive Branch employees and officials with the Constitution and the Inter-American Convention against Corruption. To comply with this recommendation, the Republic of Honduras could take the following measures into account:
 - a) Amend the Civil Service Law and its Regulations to ensure equity among those applying for a civil service position, ensuring that no provision will distort the application of objective criteria of suitability in the selection of the employee; in particular, weigh experience in civil service as one more factor among many of equal or greater importance, according to the hierarchy of positions established in the Job Classification Manual and the operational advisability of issuing vacancy notices open to the general public or restricted to those already in the civil service (see Chapter II, Section 1.1.2 of this report);
 - b) Implement provisions requiring publication of the Post Classification Manual, so that anyone can consult it these provisions should contemplate, among other issues, dissemination of the rights and obligations of public employees, information on regarding proper offices for and mechanisms for filing complaints or appeals, . (See Section 1.1.2 of Chapter II of this report);

- c) Implement provisions which specifically grant the Civil Service Council, as the body charged with hearing and resolving disputes regarding decisions taken by the Directorate General, the power to overturn the results of a particular selection or take other appropriate action, when a violation of the law or irregularity has taken place. (See Section 1.1.2 of Chapter II of this report);
- d) Implement provisions or mechanisms which strengthen audits of competitions, appointments, hiring, promotions, discipline, and dismissals in the Republic of Honduras. (See Section 1.1.2 of Chapter II of this report);
- e) Require the official making the selection of a particular candidate to leave a written record justifying his decisions, in those cases where posts are filled through background comparison “*oposición de antecedentes*”, so that challenges can be made with respect to the selection process for those posts. (See Section 1.1.2 of Chapter II of this report);
- f) Analyze the advisability of including express provisions in the Civil Service Law to ensure the impartiality of the members of the body rating those applying to enter the civil service (See Section 1.1.2 of Chapter II of this report);
- g) Stipulate in the Law or in its Regulations minimum periods for advertising notices of civil service entry examinations, as well as minimum periods during which registration can be accepted from applicants; and include in the content of notices the schedule established and places where registrations are accepted and where more information can be obtained regarding the notice. (See Section 1.1.2 of Chapter II of this report).

1.1.2 Modify the civil service hiring system for Legislative Branch employees and officials, so as to improve their consistency with the Constitution and the Inter-American Convention against Corruption. To implement this recommendation, the Republic of Honduras could consider the following measures:

- a) Issue Regulations corresponding to the Labor Statute for Legislative Branch Employees. (See Section 1.1.2 of Chapter II of this report);
- b) Implement provisions requiring the filling of posts in the Legislative Branch to be carried out based on the principles of merit and equity. (See Section 1.1.2 of Chapter II of this report);
- c) Implement provisions detailing the functions and operation of the Personnel Office of the National Congress, and provide the Office with the resources necessary to fully carry out those functions and operations. (See Section 1.1.2 of Chapter II of this report);
- d) Develop mechanisms for advertising public service vacancy announcements, including through the use of mass media, such as the Internet, and also provide minimum periods for advertising notices of civil service entry examinations, as well as minimum periods during which registration can be accepted from applicants; and include in the content of notices the schedule established and places where registrations are accepted and where more information can be obtained regarding the notice. (See Section 1.1.2 of Chapter II of this report);
- e) Implement systems allowing for challenges to be made to decisions taken by the Personnel Office of the National Congress, both at the administrative and judicial level, in particular, with respect to the selection process. (See Section 1.1.2 of Chapter II of this report);

- f) Issue provisions which provide that the selection of permanent personnel in the Legislative Branch shall be based on merit. (See Section 1.1.2 of Chapter II of this report);
- g) Issue a Posts and Salaries Manual for permanent positions in the Legislative Branch. (See Section 1.1.2 of Chapter II of this report).

1.1.3 Evaluate the consistency of the civil service hiring system for Judicial Branch employees and officials with the Constitution and the Inter-American Convention against Corruption. To implement this recommendation, the Republic of Honduras could consider the following measures:

- a) Amend the Judicial Career Law to ensure equity among those seeking a position in that career, ensuring that no provision is discriminatory or distorts the application of objective criteria of suitability in the selection of the employee; in particular, weigh experience in civil service as one more factor among many of equal or greater importance, according to the hierarchy of positions established in the Job Classification Manual and the operational advisability of issuing vacancy notices open to the general public or restricted to those already in the career (see Chapter II, Section 1.1.2 of this report);
- b) Eliminate the wide discretion enjoyed by the Personnel Selection Commission, by establishing objective criteria governing the manner in which the Commission chooses the three candidates that are submitted to the Supreme Court for appointment, from among qualified candidates. (See Section 1.1.2 of Chapter II of this report);
- c) Implement provisions requiring publication of the Post Classification Manual, so that the principal requirements for posts are available and can be seen by anyone who wishes to enter public service. (See Section 1.1.2 of Chapter II of this report);
- d) Implement provisions which specifically grant the Council of Judicial Careers, as the body charged with hearing and resolving disputes regarding decisions taken by the Directorate of the Service, the power to overturn the results of a particular selection or take other appropriate action, when a violation of the law or irregularity has taken place. (See Section 1.1.2 of Chapter II of this report);
- e) Include, in the content of personnel selection notices, indication of a location where interested parties may obtain more information, as well as indication of an Internet site and electronic address for making the same query and possibly obtaining registration forms and other application documents needed. (See Section 1.1.2 of Chapter II of this report).

1.1.4 Strengthen the systems of government hiring for employees and officials of the Public Ministry. (See Section 1.1.2 of Chapter II of this report).

1.1.5 Strengthen the systems of government hiring for employees and officials of the Superior Court of Accounts. To comply with this recommendation, the Republic of Honduras could take the following measure into account:

- Implement systems specifically allowing challenges to be made with respect to personnel selection decisions, both at the administrative and judicial levels. (See Section 1.1.2 of Chapter II of this report)

1.2. Government systems for the procurement of goods and services

The Republic of Honduras 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 Honduras consider the following recommendations.

- 1.2.1. Strengthen the procurement systems with and without public tenders. To comply with this recommendation, the Republic of Honduras could take the following measures into account:
 - a) Evaluate the possibility of incorporating in the Law on State Contracting a provision establishing a consultation procedure that would consist of making available to the public for a specific period of time, prior to publication of a call for bids, the draft Bidding Terms and Conditions and Specifications, so that any interested person could submit comments. (See Section 1.2.2 of Chapter II of this report);
 - b) Improve the procedures regarding the announcement of and publication of awards in those cases where direct contracting is used (See Section 1.2.2 of Chapter II of this report);
 - c) Review Article 9 of the Law on State Contracting, so as to eliminate the broad discretion allowed with respect to a determination of an emergency situation. (See Section 1.2.2 of Chapter II of this report);
 - d) Review Article 63(4) of the Law on State Contracting, so as to define the types of situations that may give rise to a decision that government operations should remain secret, and thus, that direct contracting should be used. (See Section 1.2.2 of Chapter II of this report);
 - e) Consider the convenience of implementing provisions requiring government entities to notify interested parties on the outcome of bid evaluations, prior to the final selection decision, in order to allow those parties to submit objections prior to the award (see Chapter II, Section 1.2.2 of this report);
 - f) Implement provisions regulating the selection of suppliers that will be invited to participate in a tender, in the cases of private tender or private competition. (See Section 1.2.2 of Chapter II of this report);
 - g) Implement provisions allowing anyone to access the contract award justification documents. (See Section 1.2.2 of Chapter II of this report).
- 1.2.2. Strengthen HONDUCOMPRAS, by ensuring where possible, that State entities that use the national procurement system, publish all of their available procurements through the HONDUCOMPRAS portal. (See Section 1.2.2 of Chapter II of this report)
- 1.2.3. Strengthen the mechanisms for challenging aspects of the procurement process. To comply with this recommendation, the Republic of Honduras could take the following measures into account:

- Implement specific provisions allowing for challenges to the procurement process at the administrative level, which detail the procedure to be followed by government entities in handling and responding to such challenges and appeals, notwithstanding the procedures provided for by the Administrative Procedure Law and the Law on Contentious Administrative Jurisdiction. (See Section 1.2.2 of Chapter II of this report)

1.2.4. Strengthen the national procurement system. To implement this recommendation, the Republic of Honduras could take the following into account:

- a) Ensure that the Procurement Policy Office (ONCAE) is fully operational, and that it has the personnel and resources necessary to adequately carry out its prescribed functions. See Section 1.2.3 of Chapter II of this report);
- b) Ensure that the Superior Court of Accounts has sufficient resources to carry out its functions, particularly those related to external control of the national procurement system. (See Section 1.2.3 of Chapter II of this report);
- c) Ensure that each public sector entity has an operational internal audit unit to manage public works, supply, and consulting contracts. (See Section 1.2.3 of Chapter II of this report);
- d) Ensure that the internal control units in each public sector entity apply the Internal Audit General Standards and verify that Specific Internal Control Standards have been issued, based on the Internal Audit General Standards and other provisions regarding their operation issued by the Superior Court of Accounts. (See Section 1.2.3 of Chapter II of this report).

1.2.5. Make best efforts with respect to external funds, to move toward elimination of the fiduciary fence that applies to contracts funded therefrom, to allow full implementation of the Law on State Contracting and its Regulation. (See Section 1.2.3 of Chapter II of this report);

1.2.6. Carry out periodic evaluations which allow measurement of the use and effectiveness of the national procurement system, and based on those results, define and consider the adoption of specific measures which ensure transparency, publicity, equity and efficiency of the system. (See Section 1.2.3 of Chapter II of this report).

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

The Republic of Honduras 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 Honduras consider the following recommendations:

Strengthen the systems for protecting public servants and private citizens who in good faith report acts of corruption. To carry out this recommendation, the Republic of Honduras could take the following measure into account:

- 2.1 Consider the creation and strengthening of systems for protecting public servants and private citizens who in good faith report acts of corruption, through the adoption of legal provisions specifically for their protection. (See Section 2.2 of Chapter II of this report) To comply with this recommendation, the Republic of Honduras could take the following mechanisms into account:
 - a) Protection for those who report acts of corruption that may or may not be defined as criminal offenses, but which may be subject to judicial or administrative investigation. (See Section 2.2 of 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 2.2 of Chapter II of this report)
 - c) Mechanisms to report the threats or reprisals to which the informant may be subjected, indicating the authorities that are competent to process the requests for protection and the offices or entities responsible for providing it. (See Section 2.2 of Chapter II of this report)
 - d) Mechanisms that facilitate international cooperation in the foregoing areas, when appropriate. (See Section 2.2 of Chapter II of this report)
 - e) Simplify the whistleblower protection application process. (See Section 2.2 of Chapter II of this report)
- 2.2 Ensure that the necessary bodies are either created or assigned the task of receiving and responding to requests for protection at the administrative level. (See Section 2.2 of Chapter II of this report)

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

The Republic of Honduras 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.

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

- 3.1. Modify and/or complement the Criminal Code, in order to expand the coverage to meet the requirements of Article VI(1) of the Inter-American Convention against Corruption. To comply with this recommendation, the Republic of Honduras could take the following measures into account:
 - a) Article 361 of the Criminal Code could be complemented by the inclusion of the elements “a person who performs public functions”, “any article of monetary value or other benefit”, “favours”, and “for himself or another person or entity”. (See Section 3.2 of Chapter II of this report);
 - b) Article 362 of the Criminal Code could be complemented by the inclusion of the elements “employee or a person who performs public functions”, any article of monetary value or

other benefit”, “favours”, and “for himself or another person or entity”. (See Section 3.2 of Chapter II of this report);

- 3.2. Criminalize the solicitation or acceptance of a bribe in exchange for any act in the performance of public functions, without the need for the act itself to be illicit or unjust, pursuant to Article VI(1)(a) of the Convention. (See Section 3 of Chapter II of this report);
- 3.3. Criminalize and sanction acts or omissions by public officials or employees with respect to their functions, committed with the purpose of illicitly obtaining benefits for themselves or a third party, as required by Article VI(1)(c) of the Convention. (See Section 3 of Chapter II of this report);
- 3.4. Criminalize the fraudulent use or concealment of property derived from any of the acts referred to in Article VI(1) of the Convention. (See Section 3 of Chapter II of this report);
- 3.5. Define the attempted commission of, as well as conspiracies to commit any of the corruption offenses referred to in Article VI(1) of the Convention, as required by Article VI(1)(e) thereof. (See Section 3 of Chapter II of this report);
- 3.6. Revise Article 366 of the Criminal Code, in order to specifically criminalize those who act as accessories after the fact with respect to corruption offenses, as required by Article VI(1)(e) of the Convention. (See Section 3 of Chapter II of this report);
- 3.7. Criminalize assisting, instigating, or serving as an accessory after the fact, in the commission or attempted commission of the solicitation or acceptance of bribes, as required by Article VI(1)(e) of the Convention. (See Section 3 of Chapter II of this report).

4. GENERAL RECOMMENDATIONS

Based on the review and comments made throughout this report, the Committee suggests that the Republic of Honduras 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.
- 4.3 Develop training programs for those responsible for managing public service selection and staffing processes, as well as strengthen training and induction programs for those who have recently entered the public service, so as to allow all employees to understand their duties and the functions expected of them, their responsibilities and obligations, as well as the consequences of non-compliance. (See Section 1.1.2 of Chapter II of this report)

5. FOLLOW-UP

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

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

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

The Committee offers the following observations with respect to the implementation of the recommendations made to the Republic of Honduras 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

Strengthen the implementation of laws and regulatory systems related to conflicts of interest.

Measures suggested by the Committee

- a. Regulate for all public servants, certain eventualities that could constitute conflicts of interest and which, in view of their importance, should be addressed in a detailed and specific manner, as well as mechanisms that promote compliance with any regulation that is issued. (see section 1.1.2. of chapter II of the report)*
- b. Establish appropriate restrictions for those who cease to hold a public office, such as the prohibition on working on cases in which they were involved by reason of their position or before entities with which they were recently associated.*
- c. Issue, through the competent authority, the regulation related to the establishment and operation of the Committees of Probity and Public Ethics, as provided for by the pertinent provisions. (see section 1.1.2. of chapter II of the report)*
- d. Increase the training programs for public servants in relation to the standards of conduct and mechanisms for preventing conflicts of interest*

In its response, the Republic of Honduras 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 Draft Civil Service Code of Conduct, which was presented to Congress on January 26, 2006, and which includes measures, such as those related to conflicts of interest and certain restrictions on persons who leave public office.²⁹

- Agreement No. 005/2006, approved by the Superior Court of Accounts on February 28, 2006, and published in the Official Gazette on April 8, 2006, providing the Rules of Procedure on the Integration and Functioning of the Probity and Public Ethics Committee, as suggested in measure “c”, above.³⁰

- The various seminars that were held in 2005 and 2006, which have been attended by a total of 1,235 civil servants; the establishment of links with local educational authorities, universities and municipalities, aimed at creating a new civic attitude to guarantee the proper use and management of State funds; the 2006 Municipal Training Project, through which representatives from the country’s 298 municipalities have been trained in various subjects, including probity and ethics; and the training that has been coordinated in conjunction with non-governmental organizations.³¹

The Committee takes note of the satisfactory consideration of measures (c) and (d) of recommendation 1.1, without prejudice to the fact that measure (d) is of a continuous nature and should continue to be developed.

In addition, the Committee takes note of the steps taken by Honduras to proceed with the implementation of measures (a) and (b).

The Committee also notes the need for Honduras to give further attention to the implementation of the foregoing recommendation, with respect to strengthening the implementation of laws and regulatory systems related to conflicts of interest.

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

Strengthen the implementation of laws and regulatory systems with respect to the conservation and proper use of public resources.

Measures suggested by the Committee

- a. *Consider the advisability of establishing mechanisms for the selection of the heads and personnel of the internal audit, such as through a merit-based competitive examination process open to the public, governed by pre-established rules and requirements; noting, when appropriate, the duration of the post and establishing the grounds for termination of employment, and requiring consultation with the Superior Court of Accounts before proceeding with terminations, so as to prevent employees from being afraid to perform their duties objectively, as required by law. (see section 1.2.2. of chapter II of the report)*

²⁹ See the Response of Honduras, at p. 20.

³⁰ Ibid.

³¹ According to the response of Honduras at p. 21, these nongovernmental organizations include FOPRIDE, FOSDEH, CIPRODEN and the Salvadoran organization, “Probidad”.

- b) *Adopt those measures that are considered necessary in order to achieve the effective observance of the Internal Control Standards and the Standards on Internal Audits issued by the Superior Court of Accounts. (see section 1.2.2. of chapter II of the report)*
- c) *Implement measures aimed at optimizing the use of technology in the area of public contracting, and at ensuring broad publication and dissemination of calls for bids, and greater participation of bidders offering goods and services.*
- d) *Increase training programs for public servants, in relation to the standards of conduct and mechanisms for conserving and ensuring the proper use of public resources.*

In its response, the Republic of Honduras 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 Branch Agreement no. 0419, published on June 3, 2005, issuing the Rules on the General Execution of the Organic Budget Law, which according to the response, provides that “*the internal audits of Public Sector institutions shall be subject to the provisions of the Organic Law of the Court of Accounts, the Manual on Internal Control Standards and General Auditing Standards, and any standards the Court of Accounts may issue in fulfillment of its attributions.*”³²

- The design, by the Superior Court of Accounts, of a National System for the Control of Public Resources (SINACORP).³³ The implementation of this project is now under way, and is beginning with an integral review of the internal control regulations and instructions on how the internal audits are to be conducted.³⁴

- The creation of the System of Information on Contracting and Acquisitions of the State of Honduras (www.honducmpras.gob.hn).³⁵

- The training provided to Honduras’ 298 municipalities by the Superior Court of Accounts; the 161 hour Diploma course in Procurement and Hiring, managed by ONCAE and targeting officials involved in government procurement, members of the private sector and oversight entities; and the 60 hour Intensive Course in Public Procurement, designed to provide new employees with the knowledge and tools necessary to develop their functions properly.³⁶

The Committee takes note of the steps taken by Honduras to proceed with the implementation of the foregoing recommendation, and the need for Honduras to continue giving attention to the implementation of this recommendation, particularly with respect to training in the proper conservation and use of public resources entrusted to public officials.

³² Ibid, at p. 22.

³³ The objective of SINACORP is to coordinate internal and external controls.

³⁴ See the Response of Honduras, at p. 22.

³⁵ Ibid, at p. 23.

³⁶ Ibid.

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 the mechanisms the Republic of Honduras has to require public officials to report to the competent authorities any acts of corruption in the performance of public functions of which they come to learn.

Measures suggested by the Committee

- a. Adopt and implement measures of protection for public servants who report acts of corruption, are protected against threats or reprisals to which they may be subjected as a result of complying with this obligation.*
- b. Increase the training programs for public servants, in relation to the responsibility to report to the competent authorities the acts of corruption of which they have knowledge.*

In its response, the Republic of Honduras 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 the units that receive complaints, partly through the system established by the Superior Court of Accounts for the online filing of complaints via the Internet website www.tsc.gob.hn.denuncias.³⁷
- The implementation of Article 2(5) of the Rules of the Integration and Functioning of the Probity and Public Ethics Committees, which requires the Court to “*instruct civil servants on their obligation to inform the Probity and Public Ethics Committee of their institution or the Court of Accounts of any other authority with competence to deal with acts of corruption or which they are aware that are committed in the performance of public functions of which they are aware that are committed in the performance of public functions...*”³⁸
- The training that has been provided since June 30, 2006, both for civil servants as well as organizations and civil society, as noted in the response to the questionnaire.³⁹

The Committee takes note of the steps taken by Honduras to proceed with the implementation of the foregoing recommendation, and the need for Honduras to continue giving attention to the implementation of this recommendation.

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

Recommendation 2

Strengthen the systems for the disclosure of income, assets, and liabilities.

³⁷ Ibid, at p. 25.

³⁸ Ibid.

³⁹ Ibid.

Measures suggested by the Committee

- a. *Regulate the conditions, procedures and other aspects relating to the public disclosure, as appropriate, of statements of income, assets and liabilities, subject to the fundamental principles of the legal order of the Republic of Honduras.*
- b. *Maximize the use of the systems for analyzing the content of the statements, and adopt the appropriate measures, so that they can also be a useful tool for detecting and preventing conflicts of interest, in addition to using them as a suitable instrument for detecting possible cases of illicit enrichment.*
- c. *Develop the provision contained in Article 56 of the Organic Law of the Superior Court of Accounts, incorporating the use of information technology for submitting the statements, so as to make it easier for declarants to comply with this obligation electronically, and at the same time the Court could tap the advantages offered by such technology for optimizing performance of its functions in this area.*
- d. *Strengthen the provisions regarding verification of the content of the statements by the Superior Court of Accounts, established in the Regulation of the Organic Law of that Court, such that one can have a system that makes it possible to give impetus to and timely perform such verification.(see section 2.3. of chapter II of the Report).*

In its response, the Republic of Honduras 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 presentation to the National Anti-Corruption Council of a list, which is now publicly available, of all officials who must submit a sworn statement and have not yet done so.^{40,41}
- The standard form for Sworn Statements of Income, Assets and Liabilities, which requests information which might be useful in detecting conflicts of interest.⁴²
- The website www.tsc.gob.hn/declaracionesjuradas.ht, which “contains information on the rules on sworn statements of income, assets and liabilities. Interested parties can download the form, print it out and fill it in. All statements submitted are kept on electronic file.”⁴³
- The use of the DECLARANET system by the Superior Court of Accounts, through which the institution’s human resources unit must submit a statement in electronic format, and which will allow an easy determination of who has complied with the obligation to file.⁴⁴
- The financial cooperation that has been obtained from the World Bank to support the establishment of an Automated System for Sworn Statements of Income, Assets and Liabilities.⁴⁵

⁴⁰ Ibid.

⁴¹ At the December 14, 2006 Plenary Session of the Committee of Experts, Honduras informed the Committee that this list refers only to senior government officials.

⁴² Ibid, at. p. 26.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

The Committee takes note of the steps taken by Honduras to proceed with the implementation of the foregoing recommendation, and the need for Honduras to continue giving attention to the implementation of this recommendation.

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

Recommendation 3

In view of the comments made in that section, the Committee suggests that the Republic of Honduras consider strengthening the oversight bodies in terms of their functions in relation to the provisions of Article III, paragraphs 1, 2, 4, and 11 of the Convention in order to ensure the effectiveness of such control, endowing them with the resources needed for the thorough performance of their functions; ensuring that they have greater political and social support; and establishing mechanisms that allow for the institutional coordination of their actions, and their continuous evaluation and monitoring.

In its response, the Republic of Honduras 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 by the National Congress of the creation of the Fund for Municipal Transparency, which provides financial resources for carrying out municipal audits.⁴⁶
- The mechanisms established by the Superior Court of Accounts, which enable information to be coordinated and exchanged with other oversight bodies, and the cooperation agreements entered into by the Court with other government entities in order to optimize the resources aimed at the exercise of control.⁴⁷

The Committee takes note of the steps taken by Honduras to proceed with the implementation of the foregoing recommendation, and the need for Honduras to continue giving attention to the implementation of this recommendation. In addition, the Committee takes note of the difficulties faced by the Republic of Honduras with respect to the implementation of this recommendation.⁴⁸

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

Implement laws which support access to public information.

⁴⁶ Ibid, at p. 27.

⁴⁷ Ibid.

⁴⁸ Ibid.

Measures suggested by the Committee

- a. *Develop and regulate processes for receiving requests, for answering them in timely fashion, for appeal in case such requests are denied, and that establish sanctions in those cases in which there is a failure to provide information.*
- b. *Implement training and dissemination programs on the mechanisms for access to information, so as to facilitate their understanding by public servants and citizens, and to optimize the use of the technology available to that end.*
- c. *Develop legal provisions that make the information and documentation related to the management of public sector organs and entities available to the public, not including those exceptions established by the legal system, establishing the right of access to the records of those organs and entities, and to obtain copies of the administrative documents and files, pursuant to the limitations established in the national legislation.*

In its response, the Republic of Honduras 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 presentation, by the Special Commission of National Congress, of its draft opinion on the Transparency and Access to Information Law, as well as the subsequent adoption of that draft opinion.⁴⁹

In addition, the Committee takes note the information provided by ACI-PARTICIPA, to the effect that “A strong effort is necessary to educate citizens with respect to facilitating access to public information demanded by citizens, and for citizens to respond to the consultations made by civil society or public organizations, in the study of public interest.”⁵⁰

The Committee takes note of the need for Honduras to give additional attention to the implementation of the foregoing recommendation.

4.3. Mechanisms for consultation

Recommendation 4.3

Complement existing mechanisms of consultation, establishing procedures, as appropriate, that make it possible to engage in public consultations prior to designing public policies and final approval of legal provisions.

Measures suggested by the Committee

- a. *Continue establishing procedures, when appropriate, for allowing the consultation of interested sectors of civil society and nongovernmental organizations in relation to the design of public policies and the preparation of proposed laws, decrees, or resolutions within the scope of the Executive branch.*

⁴⁹ Ibid, at p. 28. In addition, at the December 14, 2006 Plenary Meeting of the Committee of Experts, Honduras informed that this Law has been approved by Congress, and is pending publication in the Official Gazette.

⁵⁰ Document submitted by ACI-PARTICIPA as a civil society organization, at p. 26.

- b. *Hold public hearings or develop other suitable mechanisms that permit public consultations in other areas in addition to those already considered, when appropriate.*
- c. *Adopt, in accordance with its legal order and through the competent authority, the measures required so that the plebiscite and referendum mechanisms, introduced in the amendment to Article 5 of the Constitution, may be made available to citizens for their use, in the event that the amendment is ratified. At the same time, the Committee considers that in order to strengthen the legal institutional system of the country under review, it is advisable that during the amendment, consideration be given to the possibility of regulating the treatment given to these participation mechanisms, the areas or subjects in which they are to be obligatory.*

In its response, the Republic of Honduras presents information with respect to the above recommendation.⁵¹

- The enactment of the Law on Citizen Participation, which will facilitate and allow for public consultation.⁵²

The Committee takes note of the need for Honduras to give additional attention to the implementation of the foregoing recommendation.

4.4. Mechanisms to encourage participation in public administration

Recommendation 4.4

Strengthen and continue implementing mechanisms that encourage the civil society and nongovernmental organizations to participate in the public administration, and move to repeal provisions that may discourage that participation.

Measures suggested by the Committee

- a. *Establish mechanisms in addition to those that exist, to strengthen the participation of civil society and nongovernmental organizations in the efforts to prevent corruption.*
- b. *Move to repeal the “desacato laws”. (see section 4.4.2. of chapter II of the report).*
- c. *Support, through the Superior Court of Accounts and when appropriate, the establishment of opportunities and mechanisms for citizen participation, in conformity with Article 70 of the Organic Law of the Superior Court of Accounts.*
- d. *Design and implement, when appropriate, programs to disseminate the mechanisms of participation in the follow-up of public administration, and train and provide the tools needed to civil society and nongovernmental organizations to make adequate use of those mechanisms.*

⁵¹ See the Response of Honduras, at p. 29.

⁵² This law refers to aspects such as the principles on which citizen participation is based, and the mechanisms and opportunities for that participation.

In its response, the Republic of Honduras 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 agreement entered into by the Superior Court of Accounts with the National Anti-Corruption Council for a Strategic Alliance, and the Inter-Institutional Framework Agreement entered into with the Permanent Forum of Civil Society Organizations.⁵³

- Decree No. 3-2006, which “*establishes the process and mechanisms through which citizens can organize themselves and participate in State entities, in accordance with the Constitution of the Republic and Honduran legislation.*”⁵⁴

The Committee takes note of the steps taken by Honduras 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.

The Committee also takes note of the need for Honduras to give additional attention to the implementation of measures (b) and (d) of the foregoing recommendation.⁵⁵

The Committee takes note of the need for Honduras to give additional attention to the implementation of the foregoing recommendation.

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 monitoring the public administration.

Measures suggested by the Committee

- a. *Promote ways whereby those who perform public functions may, as appropriate, allow, facilitate, or help civil society and nongovernmental organizations develop activities to monitor their public activities.*
- b. *Design and implement programs to disseminate the mechanisms of participation in the follow-up of public administration, and train and provide the tools needed to civil society and nongovernmental organizations to make adequate use of those mechanisms.*

In its response, the Republic of Honduras 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 increase in “*The number of channels and websites available for citizens to file complaints on public administration...*”⁵⁶

⁵³ Ibid, at p. 30.

⁵⁴ Ibid, at p. 31.

⁵⁵ At the December 14, 2006 Plenary Session of the Committee of Experts, Honduras informed the Committee that the so-called “*desacato*” laws had been repealed, through Decree No. 202/2005, published in the Official Gazette on October 22, 2005.

- The Law on Citizen Participation Law and the Law on Transparency and Access to Public Service (once it becomes law), which “*will help civil society organizations to evaluate their management.*”⁵⁷

The Committee takes note of the steps taken by Honduras to proceed with the implementation of the foregoing recommendation, and the need for Honduras to continue giving attention to the implementation of this recommendation.

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

Recommendation 5.1

Determine and prioritize specific areas where the Republic of Honduras considers that technical cooperation from other States Parties is required to strengthen their ability to prevent, detect, investigate and punish acts of corruption. The Republic of Honduras must also determine and prioritize requests received for mutual assistance on investigating or trying cases of corruption.

Recommendation 5.2

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

In its response, the Republic of Honduras 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:

- Cooperation received from the Superior Court of Accounts, including agreements signed with, *inter-alia*, the Anti-Corruption Office of the Ministry of Justice of the Republic of Argentina, the Central American Bank for Economic Integration (BCIE) World Bank and the OCCEFS the United States Agency for International Development (USAID) the Spanish Agency for International Cooperation (AECI) the Dutch Agency for International Business and Cooperation, and the Inter-American Development Bank.⁵⁸

- The signature, by the heads of the Organization of Latin American and Caribbean State Audit Institutions (OLACEFS) within the framework of the International Seminar “Transparency Against Corruption”, of the Declaration of Cartagena de Indias, whereby the region undertakes to fight corruption and use appropriate measures and policies to prevent and punish it as well as mutual assistance and cooperation.^{59 60}

The Committee takes note of the steps taken by Honduras to proceed with the implementation of the foregoing recommendation, and the need for Honduras to continue giving attention to the implementation of this recommendation.

⁵⁶ Response of Honduras at p. 32.

⁵⁷ Ibid.

⁵⁸ Ibid, at p. 33.

⁵⁹ Ibid.

⁶⁰ On November 15, 2006, in Guatemala City, on the occasion of the 12th International Anti-Corruption Conference, the Heads of State and of Government of the Countries of the Integrated Central American System (SICA), signed the signed the GUATEMALA DECLARATION FOR A CORRUPTION FREE REGION.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation 6

Consider providing the Court of Accounts with the funding it needs to carry out its functions in the appropriate manner, as a central authority of the Convention, and in particular to design and implement an integral dissemination and training program for the appropriate authorities and officials, in order for them to be aware of, and in a position to apply, the provisions for mutual assistance for investigating and trying the acts of corruption provided for in the Convention and in other agreements entered into by the Republic of Honduras.

In its response, the Republic of Honduras 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 April 8, 2005 signature, by the Superior Court of Accounts, of an inter-institutional cooperation agreement with ACI-PARTICIPA, which provides for the latter to assist the Court in disseminating and publishing the Convention.⁶¹

- As noted in the response, “In the agreement entered into with the Permanent Forum of Civil Society Organizations, the Forum undertook to work with the Court to reproduce, disseminate and impart the anti-corruption instruments of the United Nations System and the Organization of American States and the instruments that are related to oversight by civil society. It also agreed to cooperate with the Court on the work undertaken to implement in the country the recommendations of the Committee of Experts on Implementation of the Inter-American Convention against Corruption.”⁶²

- The publication of the Organic Law of the Superior Court of Accounts, its Regulation, and the two international anti-corruption Conventions.⁶³

The Committee takes note of the steps taken by Honduras to proceed with the implementation of the foregoing recommendation, and the need for Honduras to continue giving attention to the implementation of this recommendation.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1

When appropriate, design and implement training programs for the civil servants responsible for the applying systems, standards, ensures and mechanisms considered in this report to ensure they are properly understood, handled and applied.

In its response, the Republic of Honduras presents information with respect to the above recommendations. In this regard, the Committee highlights the following steps noted by Honduras and which lead to the conclusion that the recommendation has been satisfactorily considered, such as the following:

⁶¹ Ibid.

⁶² Ibid, at p. 34.

⁶³ Ibid.

- The training provided by the Superior Court of Accounts, through the Department of Probity, of more than 1500 civil servants; by the Department of Public Ethics of more than 1900 civil servants; and by the Directorate of Citizen Participation of more than 3000 people.⁶⁴

- The agreement entered into with the Universidad Nacional Autonoma de Honduras, funded by the World Bank, pursuant to which more than 100 Superior Court of Account auditors were awarded diplomas after completion of an intensive higher education level course in auditing.⁶⁵

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

Recommendation 7.2

Select and develop procedures and indicators, when appropriate, to ascertain that the recommendations made in this report have been followed up and to report to the Committee, through the Technical Secretariat on the progress made. The list of indicators generally applied in the Inter-American system and available for the selection indicated by the State under review, which has been published by the Secretariat of the Committee on the OAS' website, could be used for that purpose, as well as information obtained from analyzing the mechanisms developed following recommendation 7.3 below.

Recommendation 7.3.

Develop procedures, when appropriate and if they do not yet exist, analyze the mechanisms mentioned in this report, as well as the recommendations contained in it.

The Committee notes that the Honduras' response does not refer to any steps taken with respect to the implementation of the two foregoing recommendations. In light of this fact, the Committee takes note of the need for Honduras to give additional attention to their implementation. To this end, Honduras might consider opportunities for technical assistance.

⁶⁴ Ibid.

⁶⁵ Ibid.

END NOTES

ⁱ Article 3 of the Civil Service Law states in pertinent part that the provisions of the Law will not apply to the following employees: a) Secretaries and Under-Secretaries of State and their trust employees; b) Personnel of the General Secretariat of the President of the Republic and to the other employees of the President to the Republic that are in trust positions; c) High-Officials of the Secretariats of State; d) Political Governors and the Members of the Central District Council; e) Members of the Diplomatic and Consular Core; f) Directors General; g) Members of the Civil Service Council; h) “*Provedor*” and “*Sub-Provedor*” General of the Republic; i) Military Personnel in active service as well as personnel in the Public Security Office; j) Treasurer and Sub-Treasurer General of the Republic and to the Tax and Customs Administrators; k) Directors, Mayors and Penitentiary Heads; l) Those who provide technical or specialized service pursuant to a special contract; ll) Those protected by the Organic Law of Education; m) Those that provide temporary services; n) Presidents and Vice-Presidents of the State Banks; ñ) Members of the National Electronics Council and Council personnel; o) Popularly Elected officials, including those elected by the National Congress; p) Members of the Boards of Directors of the decentralized Organisms; q) State workers paid under the payroll system;

ⁱⁱ Article 21 of the Regulation of the Civil Service Law exempts the following employees from the application of the Law and its Regulation: 1) Secretaries and Under Secretaries of State; 2) The following officials or employees in positions of trust within the offices of the Secretaries or Under Secretaries of State: a) Those who perform secretarial and clerical functions in those offices and whose positions under the budget are assigned to the units of the Secretaries and Under Secretaries; b) Any drivers whose positions the budget assigns to their units; c) The janitors assigned exclusively to their offices; d) The Administrative Officer in a Secretariat of State; e) Up to a maximum of five employees appointed by each of the Secretaries of State, following a directive from the Office of the General Director; 3) The staff of the Secretariat of State of the Office of the President of the Republic and the public servants who will fill the President’s positions of trust. For purposes of this paragraph, staff of the Secretariat of State of the Office of the President of the Republic and the President’s positions of trust, those who discharge their functions within the offices of the two officials and/or are under continuing contract with them; 4) The senior officials with the Secretariats of State; 5) The political governors and members of the Central District Municipal Board; 6) Members of the Diplomatic and Consular Corps; 7) The Directors General; 8) Members of the Civil Service Council; 9) The Purveyor and Deputy Purveyor General of the Republic; 10) The military in active service and staff of the Public Security Office; 11) The Treasurer General and Deputy Treasurer General of the Republic; 12) The Revenue and/or Customs Administrators; 13) The Directors, Mayors and Wardens of penal institutions; 14) Staff providing technical or specialized services under a special contract; 15) Personnel protected under the Organic Education Act; 16) Personnel who provide their services on an interim, provisional or emergency basis; 17) The Presidents and Vice Presidents of the State banks; 18) The members of the National Board of Elections and its other staff; 20) The popularly elected officials, including those elected by the National Congress; 21) The members of the Executive Boards of the decentralized agencies; 22) The State workers paid under the payroll system.

ⁱⁱⁱ Article 3 of the Statute exempts the following from its application: a) Those who provide temporary services and those who, due to the temporary nature of their work, are not employees of the Legislative branch; b) Those who are on a probationary period; c) Those workers paid by the payroll system.

^{iv} Pursuant to Article 13 of the Regulation of the Law of Judicial Careers, the following are exempted from the application of the Law and its Regulation: 1) Magistrates of the Supreme Court of Justice, 2) Contracted workers, 3) Those who provide emergency services, 4) Those who provide temporary and irregular services; 5) Those who provide seasonal services, 6) Medical surgeons, whose services are regulated by the Statutory Law of the Medical Employee, 7) Members of the Council on Judicial Careers, 8) Hourly employees of the Judicial School.

^v Article 6 of the Statute for Public ministry Careers exempts the following from its application: a) The Attorney General of the Republic and the Assistant Attorney General; b) The Directors of the Criminal Investigation Department, the Forensic Medicine Department, and the Drug Prevention Department; c) Those who were hired to perform professional or technical services; d) Trust personnel, who shall be identified in the Regulation, and; e) Those who were temporarily appointed.

^{vi} In this regard, citing the Plan of Government 2002 – 2006, the “Exposition of Motives” at the beginning of the Public Servants Regime Bill notes as follows: “*One issue that the present Administration has to address to strengthen democracy and good governance and thereby combat corruption is to ‘improve public administration and the conduct of public servants, within a framework of professionalization of the civil service and ethics so that public resources are used more efficiently.’ The goals are to establish a system that ensures transparency in the performance of public servants, a code of conduct for public servants and, in the area of modernization of the State, reforms in the public administration to make it more dynamic, efficient and transparent. The following are among the specific objectives: ‘To support the reform of the civil service, in all its modalities, and modernization of the systems to manage and control human resources and improve the command for planning, monitoring and evaluating the public sector’” Here, measures are planned in connection with the Civil Service Law and advancement of a general legal framework that ensures equal rights to all public servants. The objective is to enact a new law, reorganize the General Civil Service Department, and make public servants more efficient...*” (Office of the President of the Republic, 2002-2006 Government Plan, pp. 65-68; 72-74).”

“*In 2003, important sectors of society and representatives of government were convened for the Great National Dialogue and signed agreements in which they called upon the present and future administrations to use those agreements as a guide for working on a Country Project. Some of those agreements concern the efficiency of the State, and call for the ‘creation of a civil service for public officials and employees that guarantees their professionalism, efficiency and their awareness that they are servants of the peoples; and that their performance be evaluated by an outside corporate auditor... Enactment of a Law on the Accountability of the Public Servant and/or regulating article 327 and articles 321 – 326 of the Constitution of the Republic concerning the accountability of the State and its servants, so as to be able to hold them criminally and administratively liable... Enactment of a Civil Servants’ Code of Ethics ... Building a consensus on a new Civil Service Act, among various related sectors; and guaranteeing the wage and salary equity of public servants...” (the Great National Dialogue, Reforms, Policies and Efficiency of the State. Efficiency of the State and Public Servants).”*

^{vii} Article 8 of the Law on State Contracting excludes the following from its application: 1) The provision by natural persons of professional or technical services distinct from those regulated by Chapter VII of this Law; 2) The service relationships between public officials and employees, and those contracts regulated by labor legislation; 3) The relationships between the Administration and individuals resulting from the provision of public services *that involve payment of a tariff by the individuals or a flat rate*; 4) The activities carried out by the Administration with individuals for the *sale to the public of stamped or official paper, stamps or seals, alcohol or other revenue streams*; 5) Contracts or cooperative agreements between the Central Government and the decentralized institutions, municipalities or other public entities, or those between and among those entities; and 6) The loans or other public lending transactions regulated by the special law on the subject, and the financial services provided by the Central Bank of Honduras or by public finance agencies.

^{viii} In this regard, the response of the Republic of Honduras notes that “*In public administration, i.e., the Executive and its dependencies including the decentralized bodies attached thereto, autonomous institutions, decentralized institutions (municipalities) and the other bodies of centralized administration and the Legislative, represented by officials who may be Presidents, Secretaries of State, Directors, General Managers, and the Board of Directors of Steering Councils or their legal representatives.*” (p. 7)

In addition, the response notes that although each entity is responsible for its own procurement, “*...this does not exclude other State bodies from taking part in [those procurements]...ONCAE’s participation is derived from this precept. The control mechanisms would be implemented through Internal Audits of each institution and inspection bodies, such as the Attorney General’s Office, the Superior Court of Accounts and the Office of Public Prosecutions on certain occasions.*” (p. 7)

^{ix} Article 7(j) of the Regulation of the Law on State Contracting provides the following definition of public works contracts: “*A contract that the competent authorities conclude with one or more natural or legal persons to build, modernize, repair, preserve, maintain, enlarge or demolish a public work or to perform work that alters the form or substance of the soil or subsoil, for a price. This includes, most especially, dams, aqueducts, bridges, buildings, roads, ports, airports, electric power transmission lines, and other infrastructure works, as*

well as dragging, soundings, environmental impact corrections, injections and drilling of the subsoil and similar procedures.”

^x In this regard, the response of Honduras notes that “Pursuant to the provisions of the State Contracting Law, the Law on Administrative Procedures and the Law on Contentious Administrative Jurisdiction, potential bidders may contest: i) a call or invitation to participate in a tender for goods and services; ii) the conditions under which a bidder may participate in a bid; iii) the refusal to receive the application to participate in a bid; iv) the cancellation of a request or invitation to tender; v) the awarding of the contracts; or, vi) the termination of those contractors if the contesting party alleges that the contract was terminated because the decision to award it was based on error. Article 142^x of the State Contracting Law, regulates the mechanism for contesting decisions.” (p. 10)The response further notes that “In the Law on Contentious Administrative Jurisdiction, issues pertaining to Bidding or Competition are treated as a special action; as a result of which they are dealt with much faster, with the result that the court’s decision cannot be appealed against (Article 114 and 119 of the Law in question).” (p. 10)

^{xi} See the Response of Honduras, at p. 13. In this regard, the Committee recognizes, as noted by Honduras in its response, the existence of a bill now before Congress, for the Protection of Witnesses, Experts and others involved in Criminal Proceedings. With respect to the bill, Honduras’ response notes that “The bill was initially intended to apply to organized crime, but the Prosecutor General has the power to include other offenses in special cases which is why a crime involving corruption might require protection.”