

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

FINAL REPORT

(Adopted at the June 29, 2007 plenary session)

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

**FINAL REPORT ON IMPLEMENTATION IN THE MEXICO OF THE CONVENTION  
PROVISIONS SELECTED FOR REVIEW IN THE SECOND ROUND, AND ON FOLLOW-  
UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY IN THE  
FIRST ROUND<sup>1</sup>**

**INTRODUCTION**

**1. Contents of the Report**

This report presents, first, a review of the implementation in Mexico 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 examines the follow-up to the implementation of the recommendations that were formulated to Mexico by the MESICIC Committee of Experts in the first round of review, as contained in the report on that country adopted by the Committee at its fourth meeting and published at the following web page: [http://www.oas.org/juridico/spanish/mec\\_inf\\_mex.pdf](http://www.oas.org/juridico/spanish/mec_inf_mex.pdf)

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

According to the official records of the OAS General Secretariat, Mexico deposited its instrument of ratification of the Inter-American Convention against Corruption on June 2, 1997.

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

**I. SUMMARY OF THE INFORMATION RECEIVED**

**1. Response of Mexico**

The Committee wishes to acknowledge the cooperation that it received throughout the review process from Mexico, and in particular from the Civil Service Secretariat, 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, Mexico sent the provisions and documents it considered pertinent. That response, and those provisions and documents may be consulted on the following Internet web page: [http://www.oas.org/juridico/spanish/mesicic2\\_mex\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic2_mex_sp.htm)

For its review, the Committee took into account the information provided by Mexico up to November 10, 2006, together with the information requested by the Secretariat and the members of the review subgroup to carry out their functions in keeping with the Rules of Procedure and Other Provisions.

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

## **2. Documents received from civil society organizations**

The Committee also received, within the time limit established in the schedule for the second round adopted at its ninth meeting,<sup>2</sup> a document sent by civil society organization Transparency Mexico, which was submitted by email by Transparency International.<sup>3</sup>

### **I. REVIEW OF IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE SECOND ROUND**

#### **A. SCOPE OF THIS REPORT**

Mexico responded to the sections of the questionnaire concerning government hiring and procurement of goods and services and described what it considered to be the main systems in those respects at the federal level. The country also referred to all the specific aspects about which the questionnaire particularly requested information. It also attached a matrix containing a great variety of information provided by its federal states in these areas.

This report mainly analyzes the Federal Public Administration. However it is deemed necessary in this case to acknowledge Mexico's efforts in taking joint steps with its federal states to obtain information on implementation of the Convention and for providing them with technical assistance to that end, as Chapter IV (A) of this report shows. In that respect, the Committee encourages the country under review to continue to adopt such actions and to strengthen cooperation and coordination between the federal authorities and the authorities of the federal states to ensure effective implementation of the Convention, and to provide them with such technical assistance as they might need for that purpose (see Recommendation in Chapter III (A) of this report).

#### **B. REVIEW OF IMPLEMENTATION BY THE FEDERAL GOVERNMENT OF MEXICO 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**

At the federal level, Mexico has a set of provisions related to the above-mentioned systems, among which the following, dealing with the main, should be noted:

- Constitutional provisions applicable to all public servants, such as the one found in Article 89(II) of the Constitution, which recognizes the power of the President, *inter alia*, to appoint and remove freely the secretaries of the Cabinet, diplomatic agents and high-level employees of the Treasury, and to appoint and remove freely all other employees of the Union whose appointment or removal is not otherwise provided for in the Constitution or by law; and in Article 123(B)(VII), provides that the appointment of personnel shall be made by systems which permit a determination of the skills and

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

<sup>3</sup> This document was received by email on November 10, 2006, and may be consulted on the Internet at: [http://www.oas.org/juridico/spanish/mesicic2\\_mex\\_inf\\_sc\\_sp.doc](http://www.oas.org/juridico/spanish/mesicic2_mex_inf_sc_sp.doc)

aptitudes of applicants, and, at subsection XIV, that the law shall determine what positions are to be regarded as those of trust.

- Legislative provisions and provisions of a varying legal nature applicable to most public servants of the federal executive branch, such as the following:

- The Federal Civil Service Career Law (LSPCAPF), published in the Official Gazette of the Federation of April 10, 2003, Article 1 of which provides that its purpose is to lay the foundations for the organization, workings, and development of the professional career system in the different centralized federal government agencies;<sup>i</sup> Article 2 defines that system as a mechanism to ensure equal opportunity of access to the civil service based on merit, and provides that said access shall depend on the head of the federal executive branch, that it shall be under the direction of the Civil Service Secretariat, and that each government agency shall be responsible for its operation.<sup>ii</sup> The law defines legality, efficiency, objectivity, quality, impartiality, equality and merit-based competence as the basic principles of the civil service career.

Article 4 of the Law divides career civil servants into two categories: temporary and tenured. The former category covers first entry-level employees in their first year of service and those who have joined as a result of the special circumstances mentioned in Article 34 of the Law<sup>iii</sup> or under an agreement.<sup>iv</sup> Furthermore, Article 5 of the law provides that the system shall cover the ranks of Director-General, Area Director, Deputy Area Director, Chief of Department, and Liaison, and that these ranks also encompass the levels of adjunct, counterpart, or any other equivalent rank regardless of its designation.<sup>v</sup>

Article 13 of the Law provides that the system shall include the subsystems of Human Resource Planning, Entrance, Professional Advancement, Training and Skills Certification, Performance Review, Removal from Office, and Control and Evaluation. Articles 21 to 34 of the Law concern the Entrance Subsystem, and Article 21 contains the entrance requirements designed to prevent the recruitment of anyone who is ineligible or legally barred from being so; Article 23 provides that recruitment will be carried out through open public vacancy notices for first entry-level positions in the system; Article 24 stipulates that the selection mechanism to fill vacancies in non first entry-level positions shall be designed by the Committee in accordance with the procedures set forth in this Law, its regulations, and other relevant provisions. Article 30 provides that the Civil Service Secretariat shall issue general guidelines on the design and application of evaluation mechanisms and tools employed by Committees for the various civil servant selection methods in keeping with the precepts contained in the Law and its Regulations.<sup>vi</sup> Article 32 states that each agency, in coordination with the Secretariat, shall determine the basic selection requirements for qualification for each position,<sup>vii</sup> and that candidates who do not meet the basic qualifications established shall not be eligible to advance to subsequent stages of the selection procedure.<sup>viii</sup> Furthermore, public servants in the same office shall have preference under equal conditions, with the principle of gender equity always observed.

The above-mentioned law also provides, at Article 76, that interested parties may lodge appeals with the Secretariat seeking the revocation of decisions issued in the selection procedure in accordance with this Law. Under Article 78 of the Law, such appeals shall be concerned exclusively with questions of procedure and not with any of the evaluation criteria used. Furthermore, the Fourth Transitory Article of the Law provides that each agency, in keeping with the guidelines issued by the Secretariat, shall bring the System into operation gradually, in keeping with the study on

characteristics, conditions, requirements, and profiles, without exceeding the maximum time limit of three years from the entry into force of this Law.<sup>ix</sup>

- The Regulations on the Federal Civil Service Career Law (RLSPCAPF), published in the Official Gazette of the Federation on April 3, 2004, provide at Article 23 that the processes that comprise the Entrance Subsystem are recruitment and candidate selection, and that recruitment shall be carried out by means of open public vacancy notices issued by the Selection Committee of the government office in question,<sup>x</sup> the contents of which shall include at least the minimum contents stipulated by this law,<sup>xi</sup> and shall be published in the Official Gazette of the Federation, on the Internet site of the relevant agency and of the Secretariat, as well as being displayed in its public attention modules and the most publicly visible place on the agency's premises. According to this provision, all notices shall be displayed at these websites, modules, and places for at least 10 calendar days counted from the date of their publication in the Official Gazette of the Federation.

Article 25 of the aforesaid Regulations provides that the selection process shall consist of the following stages: review of curriculum vitae,<sup>xii</sup> capacity evaluation (composed of the stages of assessment of the public service vision capacities and the management and technical skills required for each post),<sup>xiii</sup> and interviews by the Selection Committee.<sup>xiv</sup> Article 31 provides that the Committee shall meet in session, discuss, and select the candidate to fill the vacancy, and that the direct supervisor may, on their exclusive liability, veto any or all of the finalist candidates during the deliberations, duly recording the reasons for their decision in the respective minutes.<sup>xv</sup> Article 32 states that the Committee may, taking into consideration the circumstances in each case, declare a selection process void if at least three candidates fail to obtain the established minimum scores or when, after completing the interviews to evaluate the pre-finalist candidates, it concludes that none of them meet the basic requirements to fill the vacancy. The provision adds that in both situations a new vacancy notice shall be issued.

The aforesaid Regulations also provide, at Article 37, that prior to issuing a vacancy notice, agencies may provisionally fill their vacancies for up to one year with staff from federal, local, or municipal government institutions, or from government or private entities with which they have agreements for the exchange of human resources under the terms of Article 43 of the Law (LSPCAPF), when the requirements it mentions are met,<sup>xvi</sup> in which case, the appointment issued to the candidate who satisfies said requirements shall be that of a temporary civil servant, who, in order to be permanently appointed to that position, must be selected to fill it through an open competition. This provision also mentions that in the event of a tie in the selection process for that position, the temporary civil servant shall be accorded preference.

Article 101 of the above-mentioned Regulations provides that anyone may register an objection with the Unit (Civil Service Professional Career and Human Resources Unit of the Civil Service Secretariat) against acts or omissions committed by Career Development and Selection Committees or any other body empowered to implement the System, and that civil servants may register such objections in order to determine if decisions relating to the operation of the system are in accordance with the provisions contained in the Law, its regulations, and other administrative rules issued in that respect by the Secretariat. Article 105 of the Regulations states that appeals for revocation shall be admissible against selection procedure decisions which are contrary to the interests of persons applying for entrance to the system or to career civil servants who take part in public vacancy competitions. This Article adds that appeals for revocation may be challenged before the Tax and Administrative Court in accordance with the applicable legal provisions.

- Legislative provisions and provisions of a varying legal nature applicable to most public servants in the federal legislative branch, such as the following:

- The Organic Law of the Congress of the United Mexican States (LOCGEUM), published in the Official Gazette of the Federation on September 3, 1999, which, with respect to the House of Deputies, provides at Articles 49 and 51 that the Secretariat of Parliamentary Services (technical assistance, meetings, committees, agenda, archive, library) and the Secretariat of Administrative and Financial Services (human resources, treasurer's office, material resources, general services, information technology, legal services, security, medical services and health care), are staffed by career officials; Article 53 states that the House has its own Internal Auditor; Article 56 provides that the Statutes on the organization and workings of the secretariats and career systems shall set out, as a minimum, the structure of each secretariat and their management and supervisory relations, as well as the tasks of the House departments, offices, centers and units that comprise the career system. For its part, Article 57 sets out the guidelines to be met by the rules and procedures for creation of parliamentary as well as administrative and financial career services.

Furthermore, with respect to the Senate, the aforesaid Organic Law provides, at Articles 114 and 115, that the civil service career was established to professionalize and increase the efficiency of the parliamentary support and administrative services provided to the Senate; that the members of that service shall be considered trusted employees; and that their labor relations shall be governed in accordance with Article 123(B)(XIV) of the Constitution, by this Law, and applicable provisions.<sup>xvii</sup>

- The guidelines on administration and control of the human resources of the House of Deputies, adopted by the plenary of the House at its sessions of April 20 and 25, 2006, provide, at Article 1, that their purpose is to govern the overall administration and control of the human resources of said House, as well as the obligations and prohibitions that apply to all of its staff; Article 4 states that the Human Resources Department is responsible for the administration and control of staff recruitment, selection, assignment, salaries, promotion, training, and development; Article 9 describes the basic aspects that the General Catalogue of Positions in the House should contain, including the academic and professional requirements for filling each position; Article 10 provides that the categories contained in said catalogue shall include at least those of Regular Employees, Trusted Operational Employees, and Middle Management, Senior Management and equivalents; Article 25 stipulates that applicants for a position in the House must meet the necessary requirements and undergo the requisite psychometric, knowledge, and skills tests to meet the profile of the position in question. Finally, Articles 26 and 29 refer to persons who are ineligible for employment.

- According to Paragraph I of the guidelines on the organization and functions of parliamentary, administrative, and financial services, and on temporary appointment of trusted employees, adopted by the Conference for Supervision and Programming of Legislative Work on June 20, 2006, the purpose of said guidelines is to determine provisionally the organizational and operational structure of some of its agencies,<sup>xviii</sup> until the legal reforms referred to in Preambular Paragraph Three<sup>xix</sup> are adopted and the amendments to the Statutes on the Technical and Administrative Organization of the House of Deputies Service Career are enacted; those guidelines also set forth the principles, criteria, bodies, and procedures for appointments to present and future vacancies of directors general and other trusted employees in the parliamentary, administrative, and financial services of said House until the aforementioned conditions are met.

Paragraph IV of the above guidelines contain the criteria for the appointment of directors general and other officials; Paragraph V identifies the technical body that evaluates candidates for vacancies;

Paragraph VI deals with the legal nature of the positions to be filled, saying that staff appointed to positions in the areas of parliamentary, administrative, and financial services shall be considered of trust until the appropriate measures are adopted for their inclusion in the House of Deputies Career Service. Finally, Paragraph VII of the guidelines sets out the civil servant selection and appointment procedures.

- The Senate Civil Service Career Statutes, published in the Official Gazette of the Federation on November 22, 2002, provide, at Article 5, that the operations and development of the Civil Service shall be based on equality of opportunities, the necessary knowledge, suitable performance, permanent evaluation, transparency in procedures, adherence to the guiding principles of the civil service, and competency of its members; Article 8 provides that the Executive Board shall be in charge of organization and supervision of civil service functions and that, for the purposes of its operations and development, it shall have a Permanent Training and Capacity Building Center (CECAFP).<sup>xx</sup> Article 21 provides that the career staff shall be composed of trusted public servants in accordance with the catalogue approved by the Executive Board; Article 25 mentions that the Catalogue of Civil Service Posts shall contain sufficient elements to determine the profile of these posts as well as the specific requirements to fill them; Article 30 establishes that entrance to the civil service in order to fill vacancies and newly created positions shall be through open competitions; Article 31 bars entrance to anyone who is legally ineligible; Article 33 provides that the procedures and requirements for entry and vacancy competitions shall be established in the decisions and vacancy notices issued by the CECAFP, following approval from the Executive Board; Article 37 stipulates that said vacancy notices shall be published and disseminated in the Senate buildings and at least two nationally distributed daily newspapers; finally, Article 38 stipulates the minimum elements that they should contain.<sup>xxi</sup>

- Constitutional and legal provisions applicable to most public servants in the federal judicial branch, such as the following:

- Article 95 of the Constitution of the United Mexican States (CPEUM) sets out the requirements to be elected minister of the Supreme Court of Justice; Article 96 establishes the procedure for the appointment of ministers of the Supreme Court of Justice; Article 97 provides that circuit magistrates and district judges shall be appointed and assigned by the Federal Judicature Council, based on objective criteria and in accordance with the requirements and procedures established by law. Finally, Article 100 provides that the law shall lay the foundations for the training and refresher training of public officials, which shall be governed by the principles of excellence, objectivity, impartiality, professionalism, and independence.

- The Organic Law of the Federal Judiciary (LOPJF), published in the Official Gazette of the Federation on May 26, 1995, provides, at Article 68, that administration, oversight, discipline, and careers in the federal judiciary, except for the Supreme Court of Justice and the Electoral Tribunal, shall be under the supervision of the Federal Judicature Council; Article 105 provides that entrance and promotion of judicial public servants in the federal judiciary shall be through the judicial career system, which shall be governed by the principles of excellence, professionalism, objectiveness, impartiality, independence, and seniority, as applicable; Article 110 describes the categories that comprise said career system;<sup>xxii</sup> Article 112 provides that entrance and promotion to the categories of circuit magistrate and district judge shall be through internal and open competitive examinations and that access to the other categories shall require an aptitude test; Article 114 sets out the procedure for open and internal competitive examinations for entrance to the categories of circuit magistrate and district Judge. Finally, Article 115 provides that aptitude tests for other categories shall be held and

organized by the Judicature Institute in accordance with the terms and conditions determined by the Federal Judicature Council, pursuant to the provisions contained in this Law and the respective rules of procedure.<sup>xxiii</sup>

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

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

Notwithstanding the foregoing, the Committee believes it would be appropriate for it to offer a number of comments regarding the advisability that the country give consideration to the expansion, development, and adaptation of certain provisions related to those systems.

- As regards the federal executive branch, the Committee observes the following:

The Committee notes that in Article 74 of the Federal Civil Service Career Law (LSPCAPF) and Article 31 of its Regulations (RLSPCAPF) direct supervisors of areas for which vacancy notices are issued are empowered, on their exclusive liability, to veto any or all of the finalist candidates in the respective selection process, duly providing the reasons for their decision in the respective minutes.

With regard to the foregoing, the Committee believes it advisable to ensure that the supervisor exercise that power based on the principles of probity equity, and efficiency, and avoid running the risk of unwarranted disregard of the objective results of a selection process carried out in accordance with the legally prescribed evaluation mechanisms and tools. Accordingly it will make a recommendation to the country under review that it consider regulating this power so that its exercise is subject to predetermined grounds and based on reasons of probity, equity, and efficiency (see Recommendation 1.1.1) in Chapter III, Section 1.1(a) of this report).

- As regards the federal legislative branch, the Committee observes the following:

In the guidelines on administration and control of the human resources of the House of Deputies, while Article 25 stipulates that applicants for a position in the House must meet the necessary requirements and undergo the psychometric, knowledge, and skills tests required for the profile of the position in question, no kind of merit-based selection procedure is provided to fill the career staff vacancies mentioned in Articles 49 and 51 of the Organic Law of the Congress of the United Mexican States (LOCGEUM). The Committee believes that it would be advisable for the country under review to consider adopting, through the appropriate authority, such a selection procedure for those positions in light of their essentially technical nature, taking into account to that end the principles of openness, equity and efficiency provided in the Convention. The Committee will make a recommendation in this regard (see Recommendation 1.1.2 (a) in Chapter III, Section 1.1 of this report).

The Committee considers it appropriate to mention as a good precedent for the aforementioned suggestion the information contained in the response of the country under review with respect to the fact that,<sup>4</sup> "... by a decision of February 2005, the Policy Coordination Board -the collegiate body through which attempts are made to reach understandings and consensus on policy with such entities

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<sup>4</sup> Response of Mexico to the Questionnaire, p. 10.

and organs as may be necessary- determined that new vacancies arising in the House Study Centers should be filled through a competitive process.”

Paragraph I of the guidelines on the organization and functions of parliamentary, administrative, and financial services, as well as the temporary appointment of trusted employees to fill vacancies in the House of Deputies, mentions that such appointments are provisional until the legal reforms mentioned are adopted and the amendments to the Statutes on the Technical and Administrative Organization of the House of Deputies Service Career are enacted. The Committee believes that it would be advisable, given the importance of those Statutes to the aforementioned System, for the country under review to consider enacting those amendments, through the appropriate authority and within a reasonable time, bearing in mind to that end the principles of openness, equity and efficiency provided in the Convention. The Committee will make a recommendation in this regard (see Recommendation 1.1.2(b) in Chapter III, Section 1.1 of this report).

Paragraph VI of the aforementioned guidelines states that staff appointed to positions in the areas of parliamentary, administrative, and financial services shall be considered of trust until the appropriate measures are adopted for their inclusion in the House of Deputies Career Service. The Committee believes that it would be advisable for the country under review, through the appropriate authority, to consider those positions as included in the House of Deputies Career Service in light of their essentially technical nature and the provisions contained in Articles 49 and 51 of the Organic Law of the Congress of the United Mexican States (LOCGEUM). The Committee will make a recommendation in this regard (see Recommendation 1.1.2(c) in Chapter III, Section 1.1 of this report).

- As regards the federal judicial branch, the Committee observes the following:

Article 115 of the Organic Law of the Federal Judiciary (LOPJF) provides that those who pass the aptitude test required to enter categories of judicial career positions other than those of circuit magistrate and district judge (who, pursuant to Article 112 of the said law are selected and promoted by competition), shall be included in the list that the Federal Judicature Council shall prepare, in order to be taken into account for vacancies that arise in any of those categories. However, there is no merit-based selection procedure for choosing persons to fill vacancies from that list. The Committee believes that it would be advisable for the country under review to consider adopting, through the appropriate authority, a merit-based selection procedure for these job categories in light of their essentially technical nature, bearing in mind to that end the principles of openness, equity and efficiency provided in the Convention. The Committee will make a recommendation in this regard (see Recommendation 1.1.3 in Chapter III, Section 1.1 of this report).

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

In first place, Mexico supplied the following information in its response to the Questionnaire on results in the framework of the federal executive branch:<sup>5</sup>

“In April 2004 the electronic portal ([www.trabajaen.gob.mx](http://www.trabajaen.gob.mx)) was launched as the only means to participate in entrance competitions. Initially, this portal had 1,857 registered users, announced four vacancy competitions, and provided tools for online evaluation of management skills and public service vision that operate in a decentralized manner through the portal.” The statistical data of the aforesaid electronic portal (“trabajen”) are:

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<sup>5</sup> Response of Mexico to the Questionnaire, pp. 14 and 15.

From 2004 to May 11, 2006, with respect to the number of applications (206,018 in 2004; 789,375 in 2005; and 339,567 as of May 2006, for a total of 1,334,960); the number of registered candidates (40,202 in 2004; 111,185 in 2005; and 37,062 as of May 2006, for a total of 188,449); the number of candidates who competed (17,808 in 2004; 65,470 in 2005; and 42,131 as of May 2006, for a total of 125,409); the average number of competitions per person (12 in 2004; 12 in 2005; and 8 as of May 2006); the total number of competitions (555 in 2004; 2,930 in 2005; and 1,364 as of May 2006, for a total of 4,849); the number of competitions won (122 in 2004; 1,654 in 2005; and 720 as of May 2006, for a total of 2,496); and the number of competitions declared void (206 in 2004; 868 in 2005; and 416 as of May 2006, for a total of 1,490).

In its response, Mexico then mentioned that “according to the above report, as of May 11, 2006, there were a total of 1,334,960 applications to participate in different vacancy competitions submitted by 125,409 candidates who competed, of a total of 188,449 registered users. The foregoing means that each candidate participated in an average of 12 competitions in 2004 and 2005, and in eight in 2006. Of the 4,849 competitions held in total, 2,496 were won by one of the candidates and 1,490 were declared void; there were a variety of reasons why there was no winner in the latter, which, therefore, must be repeated until a winner is declared.”

With respect to the preceding information, the Committee considers that Mexico should be commended on the progressive increase in the number of competitions held through the electronic portal since its launch. However, the Committee is surprised at the considerable number of competitions that have been declared void (1,490 of 4,849) and, accordingly, considers that it would be advisable, in order to take greater advantage of the selection processes carried out, for the country under review to consider examining the causes of this situation, in order to adopt the necessary corrective measures. The Committee will make a recommendation in this regard (see Recommendation 1.1.1) in Chapter III, Section 1.1(b) of this report).

Furthermore, the Transparency Mexico Document mentions the Professional Career System Comprehensive Evaluation Model (MIdESPC),<sup>6</sup> devised by the Civil Service Secretariat as a tool to evaluate the implementation of said system, and furnishes data taken from the 2005 Annual Operating Report of the Central Federal Public Administration Professional Career System, which serve to evaluate progress in implementation against the goals set for that purpose both in the 2004-2006 Professional Career System Program (PSPC) and in the 2005 Annual Operating Plan (POA).

According to the information supplied “the average goal set by the institutions’ programming was 640 points (outstanding), 40 points higher than the System goal, where 52% of the points projected were concentrated in the fourth quarter of the year. According to the results recorded by the MIdESPC in a consultation carried out on January 17, 2006, as of December 2005, overall the Professional Career System (SPC) had accumulated a total of 528 points, in other words, 88% of the goal of 600 points set for 2005 and 52.8% of the points projected for the combined 2005-2006 period.” The Committee considers it appropriate to commend the country under review for the progress in implementation of the professional career system, which came close to attaining the goals set for 2005, and believes it useful to encourage it to continue to monitor that progress in order to ensure that the goals set in that connection are met. The Committee will make a recommendation in this regard (see Recommendation 1.1.1) in Chapter III, Section 1.1(c) of this report).

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<sup>6</sup> Transparency Mexico Document, pp. 4-7.

Second, in its response to the Questionnaire,<sup>7</sup> Mexico supplied the following information on results obtained in the framework of the federal legislative branch:

- House of Deputies:

“Based on the February 2005 decision of the Policy Coordination Board of the House of Deputies, the following open public vacancy competitions have been announced: ...”

The above was followed by a statistical table that contained the number of open public vacancy notices for positions contested at the different Study Centers of the House of Deputies since 2005, which totaled 54. (This table can be consulted at the following “Internet” address: [http://www.oas.org/juridico/spanish/mesicic2\\_mex\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic2_mex_sp.htm))

Next it was mentioned that “The notices have been disseminated through different media: nationally distributed daily newspapers, the parliamentary gazette, the House Internet site, educational establishments, etc. The vacancy notices describe the conditions and requirements for participation, the academic and professional profile, the stages of the process, evaluation mechanisms, how results will be posted, and tie-breaker mechanisms. Selection processes by vacancy notices are validated by the Policy Coordination Board.”

The Committee finds that the foregoing information serves to show that competitions have been held at the different Study Centers of the House of Deputies to fill 54 positions through open public vacancy competitions. However, this information is not sufficient to perform a comprehensive appraisal of the objective results of the House of Deputies in the area under examination and, therefore, it will make a recommendation to this organ in that regard (see General Recommendation 4.2 in Chapter III of this report).

- Senate:

“The vast majority of public servants who worked in the Senate before the entry into force of the Statutes have taken part in training and career development programs in order to join the civil service career. Since the inception of the Senate civil service career in November 2002, nine civil service career positions have been filled through open public vacancy competitions. The chart below shows the main results achieved with the implementation of the civil service career in the Senate...” (This chart can be consulted at the following Internet address: [www.oas.org/juridico/spanish/mesicic2\\_mex\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic2_mex_sp.htm))

The above was followed by a chart, which can be consulted at the following “Internet” address: [http://www.oas.org/juridico/spanish/mesicic2\\_mex\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic2_mex_sp.htm), which among other aspects mentions (without elaborating) the launch of the Civil Service Career (2003-2004) and the Operation of the Civil Service Career (2005-2006), and, in a box titled “Measures and Results 2005-2006,” offers the following information:

“- Preparation and approval of seven sets of guidelines on various aspects of the operation and development of the Civil Service Career.

- Completion of Training (24 courses with 444 class hours) and Performance Review (processing of 1,488 documents on 218 public servants) processes.

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<sup>7</sup> Response of Mexico to the Questionnaire, pp. 15-17.

- Holding of three Open Public Vacancy Competitions in which 134 people competed for nine civil service career positions.

- At present, the Senate has 197 Civil Service Career positions.”

The Committee finds that the foregoing information serves to show that the Senate has carried out training and performance review processes as well as Open Public Vacancy Competitions. However, this information is not sufficient to perform a comprehensive appraisal of the objective results of the Senate in the area under examination and, therefore, it will make a recommendation to this organ in that regard (see General Recommendation 4.2 in Chapter III of this report).

Third, in its response to the Questionnaire,<sup>8</sup> Mexico supplied the following information on results obtained in the framework of the federal judicial branch:

“According to information contained in the work report for 2004 and 2005, the Federal Judicature Council held 22 aptitude tests for district and circuit court clerks in the federal judicial branch, in which, of the 7,935 applicants, 6,022 belonged to the federal judicial branch and 1,913 were external candidates.

In 2004 and 2005 approximately 8,000 people attended the training and refresher training courses for public officials, as well as seminars and conferences, whether physical or virtual, through outreach points all over the country.”

The Committee finds that the foregoing information serves to show that the federal judicial branch has held aptitude tests for the above-mentioned jobs in that branch, as well as organizing training activities for judicial officials. However, this information is not sufficient to perform a comprehensive appraisal of the objective results of this branch, and therefore, it will make a recommendation in that regard (see General Recommendation 4.2 in Chapter III of this report).

## **1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES**

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

Mexico has, at the federal level, a series of provisions regarding the systems referred to, notably:

- Constitutional provisions applicable to the management of federal public funds, such as those found in Article 134 of the Constitution of the United Mexican States (CPEUM), which, *inter alia*, provides that all procurement, lease and alienation of goods; provision of services of whatever nature; and contracts for works, shall be adjudicated or carried out through public competitive bidding; that public competitive bidding shall be held through public calls for bids freely submitted under seal and opened in public, in order to ensure for the State the best available conditions in terms of price, quality, financing, timeliness, and other relevant aspects; and that when a bidding process is not ideal for guaranteeing such circumstances, the bidding conditions, procedures, rules, requirements and other aspects shall be determined by law to certify the necessary economy, effectiveness, efficiency, impartiality and honesty so as to ensure the best possible conditions for the State.

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<sup>8</sup> Response of Mexico to the Questionnaire, p. 18.

- Legislative provisions and provisions of a varying legal nature applicable to the entities of the federal executive branch, such as the following:

- The Public Sector Procurement, Leasing and Services Law (LAASSP), published in the Official Gazette of the Federation on January 4, 2000, Article 1 of which provides that its purpose is to regulate activities connected with planning, programming, budgeting, contracting, expenditure, and control of the procurement and lease of movable property as well as the provision of services of whatever nature by the administrative units of the Office of the President of the Republic; federal government agencies and entities, including the Office of the Prosecutor General, decentralized entities and corporations in which the State has a majority interest; federal states when they engage in procurement paid for in full or in part with federal funds; and constitutionally autonomous entities to the extent permitted by their internal regulations.

Article 7 of the aforesaid Law provides that the Ministry of Finance and Public Credit, the Ministry of Trade and Industrial Development and the Office of the Comptroller General, within their respective purviews, shall be empowered to interpret this law for administrative purposes; Article 22 states that all agencies and entities shall create procurement, leasing and services committees, which shall carry out the functions stipulated in the Law; Article 26 indicates that agencies and entities may, on their liability, tender procurement, leasing and services contracts through public competitive bidding, calls for bids to at least three persons, or private contract; Article 27 says that procurement, leasing, and services contracts shall be awarded, as a general rule, through open competitive bidding by means of public calls for bids to be freely submitted under seal and opened in public, in order to ensure for the State the best available conditions in terms of price, quality, financing, timeliness, and other relevant aspects, as well as energy efficiency, responsible use of water, and other relevant circumstances, in accordance with the provisions of this Law; Article 29 contains provisions on the contents of calls from bids, while Article 30 requires them to be published in the Official Gazette of the Federation; Article 31 provides that the terms and conditions issued by agencies and entities for competitive bidding processes shall be made available to interested parties, both at the domicile stated by the conveners and via the electronic communication media created by the Civil Service Secretariat, from the publication date of the call for bids up to and including the sixth calendar day before the bid presentation and opening ceremony, and shall contain, *inter alia*, clear and detailed bid appraisal criteria pursuant to Article 36 of this Law; the requirements to be met by those wishing to take part; notification as to such licenses, authority, and permission that might be required under other provisions governing the procurement, lease or provision of the relevant goods or services; and notification that any physical or legal persons disqualified by decision of the Civil Service Secretariat shall be ineligible to participate.

The aforesaid Law also states, at Article 40, that in the circumstances recognized in Article 41, agencies and entities may, on their liability, opt not to tender contracts through public competitive bidding processes, calls for bids to at least three persons, or private contract, and adds that the choice of procedure that they select must, in accordance with the circumstances in each case, be founded on and motivated by criteria of economy, efficacy, efficiency, impartiality, and honesty, so as to ensure the best possible conditions for the State. Said Article further provides that the criteria and the justification of the reasons for exercising that option shall be set down for the record in writing and signed by the head of the area that uses or requests the goods and services.

The aforesaid Law also mentions, at Article 59, that any bidders or suppliers that violate its provisions shall be punished by the Office of the Comptroller General with a fine equivalent to between 50 and 1,000 times the general monthly minimum wage in force in the Federal District on

the date of the infraction; Article 60 stipulates that, in addition to the penalty mentioned in the preceding Article, the Civil Service Secretariat shall temporarily disqualify persons who commit any of the above-mentioned violations from participating in contracting procedures or entering into contracts governed by this Law; Article 65 of the Law provides that objections may be lodged with aforesaid Secretariat against acts in the procedure that contravene the provisions governing the subject matter of this Law when such acts are connected with aspects mentioned therein. Finally, Article 70 of the Law states that the objection decisions issued by the Office of the Comptroller General may be challenged by means of the appeal process available under the Federal Law of Administrative Procedure or before the appropriate judicial authorities.

- The Regulations on the Public Sector Procurement, Leasing and Services Law (RLAASSP), published in the Official Gazette of the Federation on August 20, 2001, Article 51 of which provides that when agencies and entities decide against a public competitive bidding process and instead issue a call for bids to at least three persons under the terms of Article 41 (VII) of the Law, irrespective of the persons they intend to invite, they shall display the call for bids in a visible public place at the offices of conveners so as to enable anyone interested in taking part to do so.

- The Public Works and Related Services Law (LOPSRM), published in the Official Gazette of the Federation on January 4, 2000, Articles 1; 8; 25; 28; 31; 32; 33; 41; 77; 78; 83; and 88 of which contain provisions with essentially the same content as the above-described provisions in Articles 1; 7; 22; 27; 29; 30; 31; 40; 59; 60; 65; and 70, respectively, of the Public Sector Procurement, Leasing and Services Law (LAASSP), and which, in the case of the LOPSRM, refer to contracting of public works and related services and take into account the particularities of such contracts. Furthermore, Article 38 of the LOPSRM sets out the bid appraisal criteria. For its part, Article 42 outlines the circumstances in which agencies and entities may, on their liability, decide against the public competitive bidding process and contract through calls for bids to at least three persons or through private contracts.

- The Regulations on the Public Works and Related Services Law (RLOPSRM), published in the Official Gazette of the Federation on August 20, 2001, which, at Article 11, mentions the aspects that must be verified before the execution of works or services may begin;<sup>xxiv</sup> Article 13 stipulates the proper composition of public works committees in agencies; Article 36 contains the aspects which, in general, should be included in technical evaluations of bids; Articles 69 to 80 contain provisions governing the amendment of contracts; Article 81 provides that agencies and entities may commence execution of works when the public servants who will act as the resident engineer and works superintendent, respectively, have been designated; Article 84 provides that the duties of the resident engineer include, *inter alia*, supervision, monitoring, control, and review of the works; Article 87 states that the works superintendent should be empowered by the contractor to hear and receive any kind of notification connected with the works, even those of a personal nature, and to have sufficient authority to adopt decisions with regard to all matters concerning contract performance; Articles 135 to 138 contain provisions concerning the acceptance of the works, while Articles 139 to 143 govern matters to do with the settlement and termination of contracts.

- The Decision published in the Official Gazette of the Federation on August 9, 2000, which sets out the provisions for the use of remote electronic communication media for the submission of bids in public competitive bidding processes staged by federal government agencies and entities, and for lodging objections by the same means. The decision also provides for the creation of the Government Electronic Procurement System (COMPRANET), a mechanism by which to publicize, expedite, and ensure transparency in federal government contracting processes in the areas of procurement,

services, and public works. The system also makes it unnecessary for bidders to go to the offices of the conveners by allowing them to submit their bids electronically; they may also present objections to federal government internal control organs in the same way.

- The Decision of December 10, 2004, establishing guidelines on the participation of “social witnesses” in contracting carried out by federal government agencies and entities. Those guidelines define such witnesses as physical persons -who may or may not belong to nongovernmental organizations- and nongovernmental organizations registered with the Civil Service Secretariat, which, by request of the agencies and entities, by mutual agreement, or by request of the Secretariat, may participate with the right to express an opinion in contracting processes carried out by federal government agencies and entities, at the end of which they issue a public attestation about the proceedings. This Decision contains provisions concerning appointment of “social witnesses” (Articles 8 to 11); their participation in contracting processes (Articles 12 to 23); and their obligations (Article 24).<sup>xxv</sup>

- Legislative provisions and provisions of a varying legal nature applicable to the entities of the federal legislative branch, such as the following:

- The House of Deputies Procurement, Leasing and Services Law, which came into force on February 7, 2006, Article 1 of which provides that its purpose is to regulate activities connected with planning, programming, budgeting, contracting, expenditure, implementation, and control of the procurement and lease of movable property and the provision of services, whatever their nature, by the House of Deputies of the Honorable Congress of the Union, the contracting procedure for which it is not specifically governed by other laws.

Article 7 of the aforesaid Law provides that the Policy Coordination Board or the Administration Committee, within their purview, are empowered to interpret this law for administrative purposes, subject to the opinion of the Office of the Comptroller General; Article 28 states that the Secretariat of Administrative and Financial Services, through the Services and Material Resources Unit, may tender procurement, leasing and services contracts through public competitive bidding, calls for bids to at least five participants, selection from three bids, and private contracts; Article 29 says that procurement, leasing and services contracts shall be awarded, as a general rule, through open competitive bidding by means of public calls for bids to be freely submitted under seal and opened in public, in order to ensure for the State the best available conditions in terms of price, quality, financing, timeliness, in accordance with the provisions of this Law; Article 31 contains provisions on the contents of calls for bids, while Article 32 requires them to be published for one day in the Official Gazette of the Federation, in two nationally distributed daily newspapers, and on the House Internet site until the deadline for the sale of the bidding conditions lapses; Article 33 provides that the terms and conditions for competitive bidding processes shall be made available to interested parties, both at the domicile stated by the conveners, on the Internet site, and via established electronic communication media until the fifth business day. Furthermore, a clarification meeting on the bidding conditions must be held at least four business days before the presentation of bids. Among other elements, the bidding conditions must also contain: the bid appraisal criteria in accordance with Article 38 of this Law; the requirements to be met by those wishing to take part; and notification as to such licenses, authority, and permission that might be required under other provisions for the procurement, lease or provision of the relevant goods or services.

The aforesaid Law also states, at Article 43, that in the circumstances recognized in Article 44<sup>xxvi</sup> the House may, on its liability, opt not to tender contracts through public competitive bidding processes

but, rather, contract or order services through calls for bids to at least five participants, selection from three bids, or private contracts, provided it has the approval of the Policy Coordination Board or the Administration Committee.

The aforesaid Law also provides, at Article 61, that the Office of the Comptroller General may, in exercise of its powers, audit at any time the procurement, leasing and services operations carried out under this law or other applicable provisions. Finally, Article 63 states that bidders who participate in the acts and procedures convened by the House and governed by Article 28, paragraphs I and II, of this law, may present objections in writing to the Office of the Comptroller General should they believe that said provisions have been violated to their detriment.

- The House of Deputies Public Works and Related Services Law, Articles 1; 7; 25; 27; 28; 29, and 70 of which contain provisions with essentially the same content as the above-described provisions in Articles 1; 7; 29; 31; 32; 33, and 61, respectively, of the House of Deputies Procurement, Leasing and Services Law, and which, in the case of the former, refer to contracting of public works and related services and take into account the particularities of such contracts. Furthermore, Article 22 of this Law says that the Secretariat of Administrative and Financial Services, through the Services and Material Resources Unit, may tender contracts for public works and related services through public competitive bidding,<sup>xxvii</sup> calls for bids to at least three participants,<sup>xxviii</sup> and private contracts;<sup>xxix</sup> Article 34 sets out the bid appraisal criteria. Finally, Article 38 states that in the circumstances provided for in Article 39,<sup>xxx</sup> the House, on its liability, may decide against the public competitive bidding process and instead contract or order services through calls for bids to at least three participants or private contracts, provided it has the approval of the Policy Coordination Board or the Administration Committee.

Article 50 of the aforesaid Law, provides that before work commences the House, through the Services and Material Resources Unit, shall appoint a public servant to serve as the works resident engineer, who shall represent it in dealings with the contractor and be directly responsible for supervision, monitoring, control, and review of the works, including approval of contractors' estimates. Article 72 states that bidders who participate in the acts and procedures convened by the House and governed by Article 22, paragraphs I and II, of this Law,<sup>xxxi</sup> may present objections in writing to the Office of the Comptroller General should they believe that said provisions have been violated to their detriment,

- The Rules on Senate Procurement, Leasing, Service Provision, and Public Works, published in the Official Gazette of the Federation on June 30, 2006, Paragraph II of which states that its overall purpose is to issue the regulations by which public servants of the Senate must abide in contracting goods procurement, leases, services of any kind, and public works, in executing the Senate budget, pursuant to the principles of economy, efficiency, effectiveness, impartiality, and honesty set down in Article 134 of the Constitution; Rule 9 provides that the Governing Bodies (Executive Board, Policy Coordination Board, Administration Committee) through the Secretariat (Secretariat of Administrative Services) shall interpret the Rules for administrative purposes; Rule 12 states that the units with authority to contract are the Secretariat and the Operations Unit; and Rule 15 provides that the Office of the Comptroller General shall verify compliance with the provisions contained in these Rules.

Rule 20 says that as a general rule procurement, leasing and services contracts shall be awarded through open competitive bidding in order to ensure for the Senate the best available conditions in terms of price, quality, financing, timeliness, and other relevant aspects, in accordance with these

Rules; Rule 21 provides that when public competitive bidding is not suitable for ensuring such conditions, procurement, and contracting of works and services may be carried out through calls for bids or private contracts without disregarding the necessary conditions of economy, effectiveness, efficiency, impartiality, and honesty to ensure that the best available conditions are obtained for the Senate, provided that any one of the circumstances mentioned exists;<sup>xxxii</sup> rule 26 provides that in public competitive bidding for procurement, leasing, provision of services, or public works and related services it is mandatory before the competition is convened for the requesting unit to be in possession of the exact characteristics and specifications of the goods to be procured or leased, the services to be hired, or the building work to be carried out and that furthermore, in connection with public works it must also have the necessary studies, plans, construction standards and specifications, as well as licenses and permits; Rule 29 stipulates that the competitive bidding process shall commence with the publication of the competition notice in the specialized section of the Official Gazette of the Federation and, as necessary, in a nationally distributed daily newspaper, as well as on the Senate Internet site.

Furthermore, Rule 30 sets out the minimum elements that bidding conditions should contain, including clear and detailed criteria for bid evaluation and award of contracts, requirements to be met by participants, and a notification that anyone who is ineligible or legally prevented from taking part shall not be permitted to do so; Rule 31 provides that the bidding conditions shall be made available to all interested parties for consultation and review; Rule 32 provides for the holding of a meeting to clarify the bidding conditions; Rule 44 mentions that in special circumstances the call for bids mechanism, rather than public competitive bidding, shall be used by the Operations Unit to award contracts, without need of a public notice; in such cases all the other provisions contained in the respective chapter on rules for contracting procedures shall apply, as appropriate, although the holding of a clarification meeting by the conveners is optional; Rule 45 indicates that the foregoing procedure shall be initiated with a written invitation from the Operations Unit to at least three suppliers, lessors, service providers or contractors who are suitable for the purposes of the contracting operation;<sup>xxxiii</sup> Rule 51 provides that in the special cases recognized in these Rules, a private contract is the procedure used by the Senate in order expedite the contracting of a suitable supplier, lessor, service provider or contractor previously selected by the Operations Unit or a Spending Unit.<sup>xxxiv</sup>

With respect to public works contracts, Rule 60 of the aforesaid Rules stipulates that, except in cases where the technical supervision is contracted out by the Senate owing to the scale of the work, the Operations Unit shall be directly in charge of technical supervision for the duration of the works carried out by contractors, which includes approval of estimates presented by the latter and of the conclusion of the work. Rule 60 also provides that in the event that the supplier, lessor, service provider, or contractor completely fails to meet the agreed obligations, they shall incur a contractual penalty equivalent to 15% of the aggregate value of the contract, not including value-added tax; Rule 92 indicates that any bidders taking part in acts and procedures governed by these Rules may present an objection in writing to the Office of the Comptroller General if they consider that a violation thereof has caused them injury. Finally, Rule 102 provides that complainants and injured third parties may appeal objection decisions issued by the Office of the Comptroller General shall within three business days after notification of the decision.

- Legislative provisions and provisions of a varying legal nature applicable to the entities of the federal judicial branch, such as the following:

- General Administrative Decision 6/2001 of the Office of the President of the Supreme Court of Justice of the Nation, published in the Federal Judicial Weekly in August 2001, Article 1 of which

states that its purpose is to set out the procedures that govern the contracting of procurement, uses, services, works, and divestiture of goods required by the Supreme Court of Justice of the Nation that are carried out with funds assigned to it in the federal budget; Article 8 indicates that once any of the procedures governed by this decision have been initiated they shall be subject to review by the Secretaries (the Secretary of the Comptrollership and Administrative Development and the Secretary of Finance and Administrative Services) and by internal audit; Article 9 provides that the President (of the Supreme Court) and the Committee (the Committee for Procurement and Services, Works and Divestiture) by unanimity are empowered to interpret this Decision, and the Secretaries shall issue the appropriate administrative provisions for application by the heads of the administrative areas within their purview.

Article 15 of the aforesaid Decision prescribes the composition of the Committee and provides that its decisions shall be adopted by a majority vote or unanimity, and be reasoned and set down for the record in detailed minutes drawn up at each session; Article 17 sets out the powers of the Committee, which include, approval of procurement operations rated of major value; urgent, provided that they fall within its purview; and special, and to submit to the President for consideration and approval by reasoned opinion the proposed award of contracts classified as of a superior amount; urgent; and special, provided that they are within his purview to approve on the basis of amount; Article 30 rates procurement operations according to their estimated cost based on their value in Udis;<sup>xxxv</sup> Article 31 governs urgent procurement operations;<sup>xxxvi</sup> Article 32 covers special procurement operations;<sup>xxxvii</sup> Article 68 provides that the award procedure to be used in the procurement of goods, uses, services, and public works shall be public competitive bidding, unless that procedure is not suitable due to reasons of economy, efficiency, effectiveness, timeliness, quality, security, and possession of exclusive rights, and that, therefore, procurement may be tendered through public competitive bidding,<sup>xxxviii</sup> restricted calls for bids,<sup>xxxix</sup> and private contracts;<sup>xl</sup> Article 70 provides that procurement shall be tendered through public competitive bidding when the amount involved is rated superior, that restricted calls for bids shall be held for procurement operations rated of major or median value, and that private contracts shall be used when the procurement is rated of intermediate, minor, or minimal value; urgent or special; by imprest fund, for the purchase or use of real property, or with public institutions.

The aforesaid Decision also stipulates, at Article 74, the elements that public competitive bidding notices should contain and provides that they shall be published on one occasion only in the specialized section of the Official Gazette of the Federation, a nationally distributed daily newspaper, and on the Internet site of the Supreme Court at [www.scjn.gob.mx](http://www.scjn.gob.mx) following their publication in the aforementioned daily newspapers; Article 75 governs the contents of the bidding conditions, which should include, *inter alia*, the requirement that participants mention if they are registered in the Suppliers Catalogue,<sup>xli</sup> the grounds for disqualification, which include any past non-performance, and notification that the decision is not open to appeal; Article 77 provides that the bidding conditions shall be made available to interested parties for consultation and sale and that a clarification meeting will be held to clear up any doubts or queries that participants might have; Article 79 notes that the decision shall mention the technical and financial conditions of the proposed winning bid, which must satisfactorily guarantee performance of the respective obligations, and that if two or more bids are the same, preference shall be given to the bidder that presents the lowest financial bid or offers the best conditions.

Article 122 of the aforesaid Decision states that contractual penalties may be agreed for suppliers, service providers, or contractors for partial nonperformance of certain obligations under the contract; Article 123 provides that when a supplier, service provider, or contractor refuses to pay the agreed

financial penalties for nonperformance as a result of causes imputable to them, the Committee, after examining the report submitted by Procurement and Services, shall punish them by striking them from the Catalogue, so as not to enter into further contracts with them, and shall bring said breach of contract to the attention of the other organs of the federal judicial branch and the Secretariat of Control and Administrative Development for the purposes provided in Articles 60 of the Public Sector Procurement, Leasing and Services Law and 78 of the Public Works and Related Services Law.

- General Decision 75/2000 of the Plenary of the Federal Judicature Council (amended by General Decision 53/2005 thereof), which establishes the bidding conditions for procurement, leasing, services provision, and public works in the Federal Judicature Council so as to ensure their consistency with the guidelines contained in Article 134 of the Constitution, identifies at Article 15 the organs with authority to enter into contracts; mentions at Article 18 that the Office of the Comptroller General is empowered to monitor and inspect compliance with the provisions contained in this Decision; and states at Article 19 that the Committee on Procurement, Leasing, Public Works, and Services of the Federal Judicature Council is established as a permanent multidisciplinary body specifically dedicated to the procurement of goods and services, leasing, and public works required by the Council, and that it is vested with the powers set forth in Article 21 of this Decision.

The aforesaid Decision provides at Article 35 that procurement, leasing, services provision, and public works shall be tendered through public competitive bidding in order to ensure that bids are freely submitted under seal and opened in public, so as to ensure for the Council the best available conditions in terms of price, quality, financing, timeliness, and other relevant aspects, and adds that when public competitive bidding is not suitable for ensuring such conditions, in accordance with the provisions contained in Chapter V of this Decision, they shall be tendered through restricted calls for bids to at least three persons or through private contracts. Article 37 sets out the cases in which contracts may be awarded without the need for public competitive bidding;<sup>xlii</sup> Article 42 contains the impediments against contracting; Article 46 covers the bidding conditions and mentions that they must notify suppliers and contractors of the bid appraisal criteria; Article 47 describes the minimum elements that public competitive bidding notices should contain and stipulates that they shall be published in the Official Gazette of the Federation; Article 48 indicates that the bidding conditions shall be made available to any interested party for consultation and review; article 49 provides for the holding of a meeting for clarification of the bidding conditions.

The Decision also provides, at Articles 110 and 111, for contractual penalties; regulates at Article 114 to 119 the Catalogues of Suppliers and Contractors; and states at Article 120 that any suppliers and contractors that demonstrate a legal interest may submit objections in writing to the Office of the Comptroller General against any acts in the procedure that they consider to be in contravention of the provisions of this Decision. This article also states that the decisions adopted by the Committee in the tendering processes covered by this Decision shall be final and irrevocable.

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

With respect to the constitutional, legal and other provisions governing the principal public procurement systems at the federal level in the country under review, the Committee sees that, on the basis of the information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

Notwithstanding the foregoing, the Committee believes it would be appropriate for it to offer a number of comments regarding the advisability that the country give consideration to the expansion, development, and adaptation of certain provisions related to those systems.

- As regards the federal legislative branch, the Committee observes the following:

In first place, the Committee notes that the House of Deputies Procurement, Leasing and Services Law and the House of Deputies Public Works and Related Services Law list the cases in which procurement need not be restricted to public competitive bidding; however those Laws do not contain a general provision regarding the need to provide a reasoned decision to employ procurement procedures other than public competitive bidding. Accordingly, the Committee believes that it would be advisable for the country under review to consider the inclusion of such a provision, in order to promote the principles of openness, equity and efficiency recognized in the Convention. The Committee will make a recommendation in this regard (see Recommendation 1.2.2. (a) in Chapter III, Section 1.2 of this report).

In connection with the foregoing, both the Public Sector Procurement, Leasing and Services Law (LAASSP) and the Public Works and Related Services Law (LOPSRM), which are in force in the framework of the federal executive branch and the guidelines of which are mostly mirrored in the aforementioned laws of the House of Deputies, contain provisions in the sense recommended above by the Committee, such as those contained in Article 40 of the LAASSP outlined in the preceding section of this report.

In second place, the Committee notes that the House of Deputies Procurement, Leasing and Services Law, the House of Deputies Public Works and Related Services Law, and the Rules on Senate Procurement, Leasing, Service Provision, and Public Works, provide for penalties to be imposed on contractors who fail to perform their contractual obligations; however, there is no provision for penalties to be imposed on providers, bidders and contractors who violate the provisions contained in the aforesaid laws and rules, such as fines or disqualification from contracting. The Committee, bearing in mind that the existence of such penalties would help to strengthen effective enforcement of those provisions, will make a recommendation to the country under review in that sense (see Recommendation 1.2.2. (b) in Chapter III, Section 1.2. of this report).

In third place, the Committee notes that the House of Deputies Procurement, Leasing and Services Law, the House of Deputies Public Works and Related Services Law, and the Rules on Senate Procurement, Leasing, Service Provision, and Public Works lack a societal oversight system to monitor procurement, which could enhance the institutional oversight mechanisms provided in said laws and rules. Bearing in mind that the existence of societal oversight mechanisms to monitor procurement, such as citizen oversight offices, would be of benefit for an effective and efficient comprehensive oversight system, the Committee will make a recommendation in this regard al country under review (see Recommendation 1.2.2. (c) in Chapter III, Section 1.2 of this report).

In regard to the two preceding paragraphs, it should be noted that in the context of the federal executive branch, penalties are provided for providers, bidders, and contractors that violate its procurement rules, such as those established in Articles 59 and 60 of the LAASSP. There is also a societal oversight system to monitor contracting by the federal government agencies, which is implemented through so-called “Social Witnesses” and is governed by the laws described in the preceding section of this report.

In fourth place, the Committee notes that the House of Deputies Procurement, Leasing and Services Law and the House of Deputies Public Works and Related Services Law offer interested parties the possibility of lodging an objection with the Office of the Comptroller General against acts and procedures convened by the House of Deputies in connection with the procurement procedures governed by Articles 28 (I) and (II) and 22 (I) and (II) of those Laws, respectively. However, no provision is made for the possibility of contesting decisions adopted by the Office of the Comptroller General on objections. The Committee believes that it would be advisable, in order to strengthen the effectiveness of challenge mechanisms, for the country under review to consider allowing an appeal process to contest the aforesaid decisions of the Office of the Comptroller General, and it will make a recommendation to it in that regard (see Recommendation 1.2.2. (d) in Chapter III, Section 1.2 of this report).

With respect to the foregoing, it should be noted that in the framework of the federal executive branch, its procurement standards include provisions of the sort recommended above by the Committee, such as those set forth in Article 70 of the LAASSP. A provision in that regard also exists in Rule 102 of the Rules on Senate Procurement, Leasing, Service Provision, and Public Works.

- As regards the federal judicial branch, the Committee observes the following:

The Committee notes that both General Administrative Decision 6/2001 of the Office of the President of the Supreme Court of Justice of the Nation and General Decision 75/2000 of the Plenary of the Federal Judicature Council, lack a societal oversight system to monitor procurement, which could enhance the institutional oversight mechanisms provided therein. Bearing in mind that the existence of societal oversight mechanisms to monitor procurement, such as citizen oversight offices, would be of benefit for an effective and efficient comprehensive oversight system, the Committee will make a recommendation in this regard al country under review (see Recommendation 1.2.3. in Chapter III, Section 1.2 of this report).

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

In first place, in its response to the Questionnaire,<sup>9</sup> Mexico provides information on results obtained in the framework of the federal executive branch, among which attention should be drawn to the contents of the paragraphs cited below in inverted commas:

“COMPRANET receives 21,000 visitors a day; 40,000 providers and contractors use it on a regular basis; 14,000 bidding documents are obtained daily, and 18,000 bidding conditions are purchased every month. In 2001, of the 32,690 bidding procedures held, in only 2% did interested parties participate through electronic media; by May 2006 that figure had risen to 51%, which represents a very substantial increase in the use of electronic systems as a mechanism, *inter alia*, to promote transparency and reduce participation costs for bidders in processes of this type. Its Internet address is <http://www.compranet.gob.mx>. Although COMPRANET had already been developed by the start of 2001, steps were taken to promote its use for the electronic bid submission, due to the fact that this tool, among other things, promotes transparency and cuts participation costs for bidders in procedures of this nature.”

“At the beginning of the 2001-2006 administration only 70% of contracts were tendered through competitive bidding, while the remaining 30% were awarded through calls for bids to at least three

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<sup>9</sup> Response of Mexico to the Questionnaire, pp. 34-39.

persons and through private contracts. By 2005, 82% of contracts were awarded through public competitive bidding; 5% through calls for bids to at least three persons; and 13% through private contracts, as the table below shows.”

Year	2004		2005	
	Amount	%	Amount	%
<b>Procedures</b>				
Public competitive bidding	205,664	74	249,143	82
Call for bids to at least three persons	14,882	5	14,326	5
Private contract	57,131	21	40,433	13
<b>Total</b>	<b>277,677</b>	<b>100</b>	<b>303,902</b>	<b>100</b>

Source: CompraNet.

Design: Regulations Unit on Procurement, Public Works, Services, and Federal Assets.- Civil Service Secretariat.

Amounts are stated in millions of Mexican pesos

“As regards government procurement, 47% of institutions have implemented this process; implementation is underway in 29%; there are delays in 18%; and the process is not applicable to 6%. With respect to Electronic Bidding, a total of 47% of institutions have put it into practice; the process is underway in 6%; there are delays in 41%; and the process is not applicable to 6%. The most common reasons with respect to the institutions to which the process does not apply or in which there are delays concerned technical problems, the fact that the amount of competitive bidding is negligible, or because they have not yet taken steps to install a Certified Unit to hold public competitive bidding processes.”

The statistical table below, which can be consulted at the following “Internet” address: [http://www.oas.org/juridico/spanish/mesicic2\\_mex\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic2_mex_sp.htm), shows the increase in electronic bidding, in respect of which Mexico notes the following:

“The Civil Service Secretariat received 13,332 objections between December 1, 2000 and December 31, 2005. In that period 13,268 objections were disposed of. Of those, 2,995 (22.5%) were upheld, 6,329 (47.7%) were dismissed, and no examination of merits was conducted in 3,994 (29.8%) cases. Federal government agencies and entities staged 147,544 public competitive bidding processes in the 2001-2005 period. Accordingly the 13,332 objections lodged in the same period represent 9% of the total number of competitive bidding processes. The table below covers the years 2004 and 2005:”

Year	2004		2005	
	Quantity	%	Quantity	%
Competitive bidding processes	28,050	100	28,857	100
<b>Objections received</b>	2,658	9.5	2,661	9.2
Resolved	3,200	11.4	2,561	8.8
Upheld	666	2.4	704	2.4
Dismissed	1,458	5.2	1,241	4.3
No examination of merits	1,076	3.8	616	2.1

Source: [www.compranet.gob.mx](http://www.compranet.gob.mx) and Objections Bureau.

Design: Regulatory Unit on Procurement, Public Works, Services, and Federal Assets.

With respect to the foregoing information, the Committee notes, in first place, that it reflects a progressive increase in the use of the Government Electronic Procurement System (COMPRANET) for the purposes for which it was intended, in particular with respect to public competitive bidding processes through electronic media.

By the same token, the Committee notes that, according to the above-cited information, public competitive bidding has been the most used procedure in the framework of the federal executive branch in the years that said information covers, which is in keeping with the provisions contained in the regulations on procurement in that ambit.

Another positive aspect to which the Committee would like to draw attention is that Mexico has supplied information to demonstrate the use and processing of the objection procedure provided in federal executive branch regulations.

Based on the information supplied by Mexico, in particular that which comes after the statistical table on the use of procurement procedures in 2004 and 2005,<sup>10</sup> there are still institutions in the federal executive branch that have not yet implemented government procurement or electronic bidding processes, due, according to the country under review, to “technical problems, the fact that the amount of competitive bidding is negligible, or because they have not yet taken steps to install a Certified Unit to hold public competitive bidding processes.” Given the importance of completing said implementation, the Committee considers it useful to encourage the country under review to overcome the circumstances that prevent it and to ensure that electronic bidding is put into practice wherever appropriate. The Committee will make a recommendation in this regard (see Recommendation 1.2.1. in Chapter III, Section 1.2 of this report).

Furthermore, the Transparency Mexico Document contains information on the efficiency of the COMPRANET system and,<sup>11</sup> with respect to penalties imposed on bidders, providers, and contractors, in the context of the federal executive branch, notes the following:

“With respect to penalties imposed on bidders, providers, and contractors for alleged violation of the provisions, from January to August 2006, the Regulatory Unit on Procurement, Public Works, Services, and Federal Assets (UNAOPSPF), issued 174 decisions, of which 169 were acquittals and the other five resulted in disqualification from participation in procurement procedures governed by the two laws and fines for the violations committed, which depended on the gravity of the offence, the injuries caused, and whether or not the act or omission that constituted the violation was intentional. Temporary disqualification runs from a minimum of three months to a maximum of five years. For the sake of transparency, the names of all penalized bidders, providers, and contractors are published on regulatory page of the Civil Service Secretariat Internet site at <http://www.funcionpublica.gob.mx/unaopspf/unaop1.htm>.

The UNAOPSPF disposed of 285 cases from January to June 2006 and adopted 136 decisions of which seven imposed punitive measures and 129 were acquittals (no penalty).

The UNAOPSPF punitive system obtained ISO 9001:2000 certification in 2004, which it retains at present. The Civil Service Secretariat institutionalized training on penalties for bidders, providers and contractors. In 2004 and 2005, training was provided to 411 persons attached to Internal Control Organs (OICs).

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<sup>10</sup> Response of Mexico to the Questionnaire, p. 35.

<sup>11</sup> Transparency Mexico Document, pp. 10 and 11.

In 2005, OICs disposed of 6,048 cases and in 2006, 10,423; 2,858 decisions were issued, of which 498 imposed penalties and 2360 were acquittals. Against the decisions that imposed punitive measures, 187 appeals were lodged, in which the decisions of the OICs were endorsed in 40 cases.”

The Committee finds that the foregoing information serves to show that Mexico, in the framework of the federal executive branch, has enforced the system of punitive measures provided for bidders, providers, and contractors in the regulations on procurement in that ambit in the years covered by said information.

In second place, in its response to the Questionnaire,<sup>12</sup> Mexico provides information on results obtained in the framework of the federal legislative branch concerning the Senate, in which it mentions that in 2006, 64 contracts were legalized, of which 31 were tendered through national public competitive bidding process, 13 through calls for bids, and 20 through private contracts, which, according to the graph provided, means that public competitive bidding accounted for 49%, calls for bids for 20%, and private contracts for 31%.

The information also includes graphs, which can be consulted at the following “Internet” address: [http://www.oas.org/juridico/spanish/mesicic2\\_mex\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic2_mex_sp.htm), that show the type of agreements concluded through private contracts and how the number of recommendations issued by the Internal Auditor in the various audit reviews has declined from 2000 to 2005; there is also a table on objections received from 2000 to 2006. It is also mentioned that the Senate did not contract any public works in 2006.

The Committee concludes from the foregoing information that in the framework of the Senate of the federal legislative branch, in 2006, which is the period that it covers, a considerable proportion of procurement was carried out through the public competitive bidding process provided in the regulations on procurement in that ambit. However, no information is furnished on what proportion of total funds was executed through this and the other procurement procedures governed by these regulations.

Another aspect which the Committee wishes to underscore is that said information serves to demonstrate the use and processing of the objection remedy provided in the regulations of the Senate in the framework of the federal legislative branch.

In third place, with respect to the federal judicial branch,<sup>13</sup> Mexico mentions the following in its response to the Questionnaire:

“At its Internet site ([www.cjf.gob.mx](http://www.cjf.gob.mx)), the Judicature Council publishes a quarterly report on procurement processes carried out during the period, thereby ensuring their openness. The public bidding processes carried out assure equity.

At its Internet site ([www.scjn.gob.mx](http://www.scjn.gob.mx)), the Supreme Court of Justice of the Nation publicizes competitive bidding processes, contracts, and notices, which may be consulted by month or by quarter.”

The Committee finds that the foregoing information serves to show that the Federal Judicature Council and the Supreme Court of Justice of the Nation publicize procurement, competitive bidding

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<sup>12</sup> Response of Mexico to the Questionnaire, pp. 39 and 40.

<sup>13</sup> Response of Mexico to the Questionnaire, pp. 40 and 41.

processes, and notices. However, this information is not sufficient to perform a comprehensive assessment of the objective results of said organs in the matters under review. Accordingly it will make a recommendation to them in that regard (see General Recommendation 4.2 in Chapter III of this report).

Finally, in addition to highlighting the importance of providing a complete response to the questions on results in Questionnaire, the Committee, in view of the fact that it has no information regarding the House of Deputies of the federal legislative branch that would enable it to perform a comprehensive assessment of the results of that organ in this area, will make a recommendation to it in that regard (see General Recommendation 4.2 in Chapter III of this report).

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

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

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

- The Federal Law on Administrative Liability of Civil Servants (LFRASP), Article 8 (XXI) of which, contains the obligation for civil servants to, *inter alia*, abstain from any acts that would impede the presentation of complaints, or from any acts or omissions that would prejudice the interests of those who formulate or present such complaints; Article 21, section V, provides the possibility of provisional suspension of those presumed responsible, as well as the conduct or continuation of an investigation; Article 13 provides penalties for administrative misconduct to be imposed on anyone who violates such obligations.

- The Federal Law on Transparency and Access to Public Information (LFTAIPG), Article 18 of which considers as confidential any information which is furnished as such by private citizens to regulated persons, in addition to any personal data, the disclosure, distribution or commercialization of which requires the individual's consent.

- The Federal Criminal Code, Article 219 (I) of which provides that the crime of intimidation is committed when a civil servant, or a person acting on their behalf, uses physical violence or moral aggression to intimidate another person in order to prevent them from reporting, lodging a criminal complaint, or providing information concerning the alleged commission of conduct punished by the criminal laws or the LFRASP; Article 282, on threats, provides that anyone who in any way threatens harm to another person, their property, their reputation, or their rights, or the person, reputation, property, or rights of anyone with ties to them shall be liable to the penalty of three days to one year of imprisonment or a fine of 180 to 360 days of income; as shall be anyone who uses threats of any nature with the intention of preventing another person from exercising their rights.

- The Federal Code of Criminal Procedure, of which Article 2 (V), concerning preliminary investigations and criminal proceedings pursued by the Office of the Attorney General, provides that its functions are, *inter alia*, to order such measures and arrangements as may be necessary to provide security and assistance to victims; Article 141 covers the rights of the victim or injured party in all criminal proceedings with respect to the following: I. To receive legal counsel and to be informed, on request, of the progress of the preliminary investigation or the trial; II. Cooperation with the Office of

the Attorney General; III. To be present at all procedural acts in which the accused has this right; IV. To receive emergency medical and psychological care whenever required; V. to be notified in person of the dismissal of the criminal action, and, VI. All other rights recognized by law.

- The Federal Law against Organized Crime (LFCDO), Article 1 of which states that its purpose is to establish rules on the investigation, prosecution, trial, punitive measures, and enforcement of penalties for crimes committed by members of criminal organizations; Article 34 provides that the Office of the Prosecutor General shall provide sufficient assistance and protection to judges, expert witnesses, witnesses, victims, and other persons whenever required by reason of their involvement in a criminal proceeding on crimes recognized in this Law.

- The Citizen Assistance Technical and Operating Guidelines issued by the Civil Service Secretariat on April 1, 2002, which establish the procedure for dealing with complaints and reports lodged by any person, provide for the possibility of anonymous complaints and reports, and establishes the treatment to which they shall be subject.

- The mechanisms made available by the Civil Service Secretariat, through the Citizen Assistance Department, to file reports, including those that concern threats or reprisals, in which the whistleblower may either provide their particulars or choose to remain anonymous, for instance, by sending an official or ordinary letter by post, or by presenting it directly at the offices of the Secretariat or to the Internal Control Organ at each government agency; by electronic mail to [quejas@funcionpublica.gob.mx](mailto:quejas@funcionpublica.gob.mx); by telephone; via the Citizen Assistance Switchboard (SACTEL); or by Internet, at the sites [www.tramitanet.gob.mx](http://www.tramitanet.gob.mx) or <http://www.funcionpublica.gob.mx>; or by means of the Simulated User Strategy (EUS).

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

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

Notwithstanding the foregoing, the Committee notes that the protection measures provided in the Federal Law against Organized Crime (LFCDO) only apply in the case of offences committed by criminal organizations recognized in said Law, and that the Federal Code of Criminal Procedure, only addresses the rights in criminal proceedings of victims or injured parties but does not refer to the rights of whistleblowers and witnesses or include among those rights the possibility to seek protection for their physical integrity and that of their families.

With respect to the foregoing, in its response, the country under review mentions the following:<sup>14</sup> “In Mexico, of all those involved in criminal proceedings, only the victims and injured parties are recognized the right to request the measures and arrangements that the law provides for their safety and assistance. The Federal Code of Criminal Procedure, at Article 141, recognizes rights to victims and injured parties but does not afford them the possibility to seek measures and arrangements for their safety and assistance. Article 2 of the same Law, which outlines the functions of the Office of the Attorney General and the procedures that its agents are required to follow in the preliminary investigation, contains at Paragraph V provisions with regard to all the measures and arrangements to be ordered to provide security and assistance to victims. Accordingly, a wide range of steps are

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<sup>14</sup> Response of Mexico to the Questionnaire, pp. 44 and 45.

provided for the protection of victims, the only shortcoming, all things considered, being observance of the rights of the accused.”

Further to the foregoing, the Committee considers it advisable for Mexico to establish protection measures, in addition to those provided by the Federal Law on Administrative Liability of Civil Servants (LFRASP), for public servants or private citizens who report acts of corruption that might not be recognized as crimes but could be subject to administrative investigation, and, also, provisions on workplace protection for whistleblowers who are public servants, which would contribute to the achievement of the purposes of the Convention, to the extent that they encourage public servants to fulfill their duty to report acts of corruption without fear of a possible deterioration in their working conditions.

Based on the foregoing, the Committee will formulate a recommendation to the country under review (see recommendation, measures (a) through (e), in Chapter III, Section 2 of this report), to the effect that it consider the adoption, by the appropriate authority, of a comprehensive regulation on the protection of public servants and private citizens who in good faith report acts of corruption, including protecting their identities, in keeping with its Constitution and the fundamental principles of its domestic legal system, which could include, among others, the following aspects:

- a) Additional measures of protection for those who report acts of corruption that may or may not be defined as criminal offenses, but which could be subject to judicial or administrative investigation.
- b) Additional measures of protection, targeting not just the protection of the physical integrity of whistleblowers and their families, but also the protection of their positions of employment, particularly for public officials and when the acts of corruption could involve their superiors or coworkers.
- c) A simplified whistleblower protection application process.
- d) Additional Mechanisms for the protection of witnesses, providing them with the same guarantees as public officials and private citizens.
- e) Mechanisms to facilitate international cooperation in the above areas, when appropriate.

The Committee wishes to expressly recognize the efforts made by Mexico to have a comprehensive regulation on protection of persons who report acts of corruption, as evidenced by its response to the Questionnaire,<sup>15</sup> in which it mentions the existence of a bill to enact the Federal Law on Administrative Justice for Public Servants as well as a bill to reform the Public Security and Criminal Justice System presented by the federal executive branch on March 31, 2004 to the Senate of the Republic.

It should be added that the Transparency Mexico Document,<sup>16</sup> in its “General Conclusions and Recommendations,” notes the following in this regard: “The legal framework in force, as well as the law bills and formal recommendations for the introduction of legislative measures on protection of persons who report corruption are clear evidence of progress in this area. The issue is part of the work agenda of the executive and legislative branches. The main shortcoming in these endeavors,

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<sup>15</sup> Response of Mexico to the Questionnaire, pp. 47 and 48.

<sup>16</sup> Transparency Mexico Document, p. 18.

however, is the creation of a similar system to that provided in the Federal Law against Organized Crime (LFCDO), with respect to the reporting of acts classified as fraud, bribery, influence peddling, and illicit enrichment, among others included in the conceptual umbrella of acts of corruption. The problems with regard to widening the frame of protection provided in the LFCDO are clear: the sheer volume of reports concerning acts of corruption would entail allocating considerable funds to this area. The fiscal or financial constraints, as well as others limitations associated with the operation and implementation of a similar program or system, do nothing to diminish the feeling that increasing the protection and safety of witnesses remains essential for encouraging and offering incentives to whistleblowers. – In particular, the fact that public servants are bereft of protection mechanisms, especially any that protect “informants” from unfair dismissal or reprisals, reduce the incentives to report acts of corruption, even for those required by law to do so. The Mexican government should consider implementing an adequate protection system since it permits a more favorable environment for both private citizens and public servants to report acts of corruption.”

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

Mexico’s response to the questionnaire,<sup>17</sup> provides the following information on results in this area in the federal executive branch:

“The application of the aforementioned legal framework means that, in practice, when complaints or reports submitted by any person, be they a private citizen or a public servant, are received and processed, due protection for any personal information provided is guaranteed; the same is true in the case of anonymous complaints and reports, where special care is taken to ensure anonymity and the confidentiality of personal information is ensured.

The Civil Service Secretariat has taken the necessary steps to encourage protection of the personal information of whistleblowers by issuing internal regulations on measures to be adopted by Internal Control Organs.

The number of anonymous complaints and reports received account for more than 10% of all complaints and reports, as the following statistical table shows:

YEAR		TOTAL	ANONYMOUS	%
January - December	2005	12435	1305	10.49
January - June	2006	6396	725	11.34
TOTAL		18831	2030	10.78

Source: Electronic Citizen Assistance System

In 2005 and from January to June 2006, 30 anonymous reports were received, the results of which are shown in the following table:”

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<sup>17</sup> Response of Mexico to the Questionnaire, p. 46.

<b>Anonymous Reports Received</b>		
<b>Year</b>	<b>Number of reports</b>	<b>Measures and Results</b>
2005	18	Of the 18 reports received, three led to the mounting of anti-corruption operations, which gave rise to the same number of administrative proceedings against the public servants involved.
2006	12	As of June 2006, investigations led to one operation that gave rise to an administrative proceeding against the public servant involved.

With respect to the foregoing information, the Committee notes that it serves to show that the reporting mechanisms provided for in the regulations of the federal executive branch, including those concerning anonymous reporting, are made available and are used by persons to report acts of corruption.

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

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

Mexico has a set of provisions regarding criminalization of the acts of corruption provided for in Article VI(1) of the Convention, among which special mention should be made of the following:

- As regards Article VI(1)(a):

- Article 222 of the Federal Criminal Code, which provides: “The crime of bribery is committed when: I. A public servant,<sup>xliii</sup> or a person acting on their behalf, improperly requests or receives, for themselves or on behalf of another person, money or any other gift, or accepts a promise in exchange for doing or omitting to do something legal or illegal related to their duties.” (Solicitation or acceptance of bribes). This provision also sets out penalties in this regard, providing at its fourth paragraph that: “When the amount or value of the gift or promise does not exceed the equivalent of five hundred times the current daily minimum wage in the Federal District at the time the offense is committed, or when it cannot be valued, the penalty shall be a prison term of between three months and two years, a fine of between thirty and three hundred days’ equivalent (salary), and dismissal and disqualification from holding any other public employment, position, or mandate for between three months and two years.”

- As regards Article VI(1)(b):

- Article 222 of the Federal Criminal Code, which provides: “The crime of bribery is committed when: II.- A person spontaneously gives or offers money or any other gift to the persons mentioned in the foregoing paragraph, in order that a public servant might do or omit to do something legal or illegal related to their duties.” (Offering of bribes). This provision also sets out penalties in this regard, such as the provisions of its fourth paragraph, which is transcribed above in connection with section I of Article 222.

- As regards Article VI(1)(c):

- Article 215 of the Federal Criminal Code, which provides: “The crime of abuse of authority is committed by public servants who engage in any of the following conducts: VIII. When they arrange for the delivery to them of funds, securities or anything else that has not been entrusted to them and

which they unduly dispose of or appropriate. – IX. When, on whatever pretext, they obtain from a subordinate part of the salary of the latter, gifts, or other services.” (Abuse of authority). This provision also sets out penalties in this regard.

- Article 217 of the Federal Criminal Code, which provides: “The crime of misuse of powers is committed when: I. A public servant improperly: a) Awards concessions for the provision of a public service or for operation, development and use of federal assets; b) Grants permits, licenses or authorizations for economic use; c) Grants franchises, exemptions, deductions, or subsidies on taxes, rights, products, benefits or social security fees or quotas, in general, on the tax income and prices and tariffs of the goods and services produced or given by the Federal Public Administration and the Federal District. d) Grants, carries out or contracts public works, credits, acquisitions, leases, alienation of goods or services, placement of funds and securities with public economic resources. - II. Any person that unduly requests or promotes, or takes part in the illegal performance, granting or contracting of the operations referred to in the foregoing paragraph, and, III. A public servant who, being in charge of public funds, knowingly makes an illegal payment or allocates such public funds to a use other than to the one for which they were originally intended.” This provision also sets out penalties in this regard.

- Article 220 of the Federal Criminal Code, which provides: “The crime of abuse of office is committed when: A public servant, in the performance of their employment, post or commission, themselves or through a third party, unduly grants contracts, concessions, permits, licenses, authorizations, franchises, or exemptions; purchases or sells or carries out any legal act that yields an economic benefit for them or their spouse, descendants or ascendants, relatives to the fourth degree of consanguinity or marriage, for any third party with whom they have affective, economic, or administrative dependence ties, for shareholders, or for companies in which the public servant or any of the aforementioned persons above are part.

- Article 225 of the Federal Criminal Code, which provides: “Crimes against the administration of justice are committed by public servants who: VII. Commit acts or omissions that cause an injury or grant someone an undue advantage.” This provision also sets out penalties in this regard.

- As regards Article VI(1)(d):

- Article 400 Bis of the Federal Criminal Code, which provides: “A penalty of five to fifteen years of imprisonment and a fine from 1,000 to 5,000 days of minimum wage shall be imposed on anyone who by themselves or through a third party engages in any of the following conducts: purchases, sells, administers, warrants, exchanges, deposits, gives as surety, invests, transports or transfers (within Mexico, or from Mexico to outside Mexico, or vice versa) resources, rights or assets of any nature in the knowledge that they proceed or represent the product of an unlawful activity, for any of the following purposes: concealing, disguising or attempting to conceal or disguise the origin, whereabouts, destination, or ownership of said resources, rights or assets, or encourages any illicit activity” (Dealing in resources of illicit origin).

- As regards Article VI(1)(e):

- Article 13 of the Federal Criminal Code, which refers to “persons with responsibility in crimes” and states the following: “The following are authors of or participants in an offence: I. Those who agree to or prepare the offense. II. Those who carry out the offense; III. Those who commit the offense in a joint manner; IV. Those who carry out the offense through a third party; V. Those who intentionally

cause another individual to commit the offense; VI. Those who intentionally help or assist another person to commit the offense; VII. Those who after the commission of the offense assist the offender in fulfillment of a promise made prior to its commission, and, VIII. Those who without prior agreement, participate with others in the commission of the offense, in cases where the results produced by each person cannot be specified. - Each of the authors or participants referred to in this Article shall be liable for their own guilt.- Those individuals referred to in sections VI, VII, and VIII of this Article shall be punishable under the provisions of Article 64 bis of this Code.”

- Article 400 of the Federal Criminal Code, which refers to “concealment” and provides the following: “A sentence of three months to three years and a fine of 15 to 60 days shall be imposed on anyone who: I. In order to profit, after the commission of the offense and without having taken part in its commission, in knowledge of the fact receives or conceals the proceeds thereof. – If the person that received the item in sale, as surety, or for any other purpose, was unaware of its illegal origin because they failed to take due precautions to ensure that the person from whom they received it had the right to dispose of it, the penalty shall be reduced by as much as half; II. By agreement after the commission of the offense, assists or otherwise cooperates with the perpetrator of a crime in knowledge thereof; III. Conceals or helps to conceal someone responsible for a crime, or the effects, objects or instrumentalities thereof, or obstructs its investigation; IV. When requested to do so by the authorities, fails to cooperate in the investigation of crimes or in the prosecution of criminals; and, V. Does not seek, by all legal means within their power and without risk to their person, to prevent the consummation of crimes when they know that they are going to be committed or are in progress, unless they have the duty to face the risk, in which case the provisions of this and other pertinent articles shall apply.”

- Article 164 of the Federal Criminal Code, which refers to “Conspiracy”, and states the following: “Anyone who is part of a criminal organization or gang of three or more individuals assembled in order to commit a crime, shall be liable to a penalty of one to eight years of imprisonment and a fine from thirty to one hundred days’ minimum wage.- When the member of the organization is or has been a public servant in any police force, the penalty mentioned in the preceding paragraph shall be increased by half and they shall be dismissed from their public employment, post or commission and disqualified for one to five years from holding another. If the member of the organization is a retired, reserve or serving member of the Mexican armed forces, the penalty shall also be increased by half. Furthermore, they shall be permanently discharged from the branch of the armed forces to which they belong and be disqualified for one to five years from holding a public post or commission.”

- Article 216 of the Federal Criminal Code, which refers to “Public Employee Conspiracies,” and which provides as follows: “The crime of public employee conspiracy is committed by public employees who collude in order to take actions contrary to a law or regulation, or to prevent the enforcement thereof, or in order to leave their posts with the aim of hindering or halting any branch of the public administration. The offense is not committed by workers associating in exercise of their constitutional rights or making use of the right to strike.” The provision also sets out the applicable sanctions.

- In addition to the offenses indicated above, the second paragraph of Article 212 of the Federal Criminal Code provides that: “The same sanctions as established for the offense in question shall be applied to any person who participates in the commission of any of the offenses covered by this Title (X: Offenses Committed by Public Servants) or the following Title (XI: Crimes against the Administration of Justice).”

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

With respect to the provisions criminalizing the acts of corruption provided for in Article VI(1) of the Convention, the Committee sees that, on the basis of the information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

The Committee considers that although the elements “favors” and “advantages” provided for by paragraph (a) of Article VI.I of the Convention are not literally set out in the first two paragraphs of Article 222 of the Federal Criminal Code, which deals with the crime of bribery, an analysis of the fourth paragraph of that Article indicates that the concept of “any other gift or promise” mentioned therein does include those elements, considering that the punishment is also applicable when the gift or promise “cannot be valued,” with would therefore cover immaterial objects.

With regard to the foregoing, the Committee also took into account the jurisprudential interpretation of the federal judiciary made available to it by the country under review.<sup>xliv</sup>

The Committee also notes that Article 222, section II, of the Federal Criminal Code states that the crime of bribery (active bribery) is committed by “a person who spontaneously gives or offers money or another gift”; thus, with the inclusion in that definition of the element of spontaneity, which does not appear in paragraph (b) of Article VI.I of the Convention, no offense is defined with respect to the person who gave the money or the gift when requested.

In this regard, the Committee gave consideration to the goal of Mexico’s criminal law in this regard, as far as encouraging, within society in general, the formulation of complaints against those public servants who depart from the principles of legality, honesty, loyalty, and impartiality in discharging their functions, to which end it believes it is useful not to inhibit those who could potentially report acts of corruption, so that such actions can be duly punished. Nonetheless, the Committee considers it advisable to formulate a recommendation to Mexico in the sense that it evaluate the need to modify the definition of the crime of bribery provided for by Article 222, section II of the Federal Criminal Code, insofar as it refers to the element of spontaneity, in light of what is provided for by paragraph (b) of Article VI.I of the Convention. (See the recommendation in Section 3 of Chapter III of this report).

The Committee also considers that although Article 222, section II, of the Federal Criminal Code does not expressly state that this offense can be carried out through the participation of a third party, Article 212 of the Federal Criminal Code, which covers general situations related to offenses committed by public servants, provides at its second paragraph, that “the same punishments that are applicable to the offense in question shall apply to any person who participates in the commission of any of the crimes set out in that Title (X: Offenses Committed by Public Servants) or the next Title (XI: Crimes against the Administration of Justice).”

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

Mexico supplied the following information in its response to the Questionnaire on results in this area:<sup>18</sup>

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<sup>18</sup> Response of Mexico to the Questionnaire, pp. 58 and 59.

“The information provided by the Specialized Unit for Investigation of Crimes Committed by Public Servants and against the Justice Administration under the Office of the Assistant Attorney for the Investigation of Federal Crimes of the Office of the Prosecutor General, indicates that the Unit has had a mechanism in place to receive anonymous complaints since 2004 (when it was included in the Internet site of the Office of the Prosecutor General at [www.pgr.gob.mx](http://www.pgr.gob.mx) ), and that it has received 733 complaints alleging all manner of criminal conduct. Since the start of its operations (on July 24, 2003), the judicial authority has opened 80 preliminary investigations all connected with crimes recognized in Titles Ten and Eleven of the Federal Criminal Code. - As regards criminal proceedings initiated in the country in connection with corruption-related offences, there are 58 ongoing at present, of which 45 are at the pre-trial stage, three are at the indictment stage, three have been suspended, and seven have gone to appeal. – For its part, in the framework of the Office of the Prosecutor General, the Office of the Special Prosecutor against Corruption reports that a total of 279 public servants have been connected with acts of corruption in preliminary investigations opened between October 30, 2004, and June 2005, which include 11 enquiries on 26 public servants of the institution and one public servant in the Federal District Government, in the following categories: Two assistant area directors; one administrative coordinator; five agents of the Office of the Federal Attorney General; five employees of the Federal Intelligence Agency; nine members of the former Federal Judicial Police; one aircraft maintenance coordinator; two aircraft maintenance technicians; and one public servant of the Secretariat of Public Security of the Federal District.”

The Transparency Mexico Document<sup>19</sup> contains data obtained through requests for information presented to the Office of the Prosecutor General (PGR) and the Office of the Special Prosecutor against Corruption (FECCI) concerning the number of public servants under preliminary investigation, charged, prosecuted, sentenced and convicted in connection with the above-described offences between 2001 and 2006.

With respect to the foregoing information, the Committee considers that it serves to show that in Mexico, criminal investigations have been undertaken with respect to the acts of corruption provided for by Article VI(1) of the Convention that are criminalized by Mexico, with the above-described results.

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

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

#### **A. COOPERATION OF FEDERAL GOVERNMENT AUTHORITIES WITH THE FEDERAL STATES**

In keeping with what is stated in Chapter II(A) of this report, the Committee encourages Mexico to continue to undertake joint with its federal states actions aimed at obtaining information on the implementation of the Convention, and strengthening the cooperation and coordination between the

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<sup>19</sup> Transparency Mexico Document, pp. 23 and 24 and Appendix III.

federal government and the federal states for its effective implementation, and at providing them with the technical assistance they may need to that end.

## **B. CONCLUSIONS AND RECOMMENDATIONS AT THE FEDERAL LEVEL**

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

#### **1.1. Systems of government hiring**

**Mexico has considered and adopted measures to create, maintain, and strengthen systems for hiring public servants, as indicated in Chapter II, Section 1.1 of this report.**

In light of the comments made in this section, the Committee suggests that Mexico consider the following recommendations:

1.1.1 Strengthen the systems for hiring public servants in the federal executive branch. To carry out this recommendation, Mexico could take the following measures into account:

- a. Regulate the power that Articles 74 of the Federal Civil Service Career Law (LSPCAPF) and 31 of its Regulations (RLSPCAPF) grants to direct supervisors of areas for which vacancy notices are issued to veto any or all of the finalist candidates in the respective selection process, so that its exercise is subject to predetermined grounds and based on reasons of probity, equity, and efficiency (See Chapter II, Section 1.1.2 of this report).
- b. Examine the reasons why a considerable number of competitive selection processes have been declared void, in order to adopt the necessary corrective measures (See Chapter II, Section 1.1.3 of this report).
- c. Continue to monitor progress in the implementation of the professional career system in order to ensure that the goals set in that connection are met (See Chapter II, Section 1.1.3 of this report).

1.1.2 Strengthen the systems for hiring public servants in the federal legislative branch. To carry out this recommendation, Mexico could take the following measures into account:

- a. Adopt, through the appropriate authority, a merit-based selection procedure to fill the career staff vacancies in the House of Deputies mentioned in Articles 49 and 51 of the Organic Law of the Congress of the United Mexican States (LOCGEUM) in light of their essentially technical nature, taking into account to that end the principles of openness, equity and efficiency provided in the Convention (see Chapter II, Section 1.1.2 of this report).
- b. Enact, through the appropriate authority and within a reasonable time, the amendments to the Statutes on the Technical and Administrative Organization of the House of Deputies Service Career, bearing in mind to that end the principles of openness, equity and efficiency provided in the Convention (see Chapter II, Section 1.1.2 of this report).

- c. Consider, through the appropriate authority, positions in the areas of parliamentary, administrative, and financial services of the House of Deputies, as included in the House of Deputies Career Service, bearing in mind their essentially technical nature and the provisions contained in Articles 49 and 51 of the Organic Law of the Congress of the United Mexican States (LOGGEUM) (see Chapter II, Section 1.1.2 of this report).

- 1.1.3 Strengthen the systems for hiring public servants in the federal judicial branch. To carry out this recommendation, Mexico could take the following measures into account:

- Adopt, through the appropriate authority, a merit-based selection procedure for judicial career positions other than those of circuit magistrate and district judge, in light of their essentially technical nature, bearing in mind to that end the principles of openness, equity and efficiency provided in the Convention (see Chapter II, Section 1.1.2 of this report).

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

**Mexico has considered and adopted measures aimed at creating, maintaining, and strengthening systems for government procurement of goods and services in keeping with what is stated in Chapter II, Section 1.2 of this report.**

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

- 1.2.1 Strengthen the systems for government procurement of goods and services in the federal executive branch. To carry out this recommendation, Mexico could take the following measure into account:

- Adopt the measures necessary to overcome the circumstances preventing the complete implementation of government procurement in electronic format in federal executive branch institutions where that is pending.(see Chapter II, Section 1.2.3 of this report).

- 1.2.2. Strengthen the systems of government procurement of goods and services in the federal legislative branch. To carry out this recommendation, the Mexico could take the following measures into account:

- a. Enhance, through the appropriate authority, the House of Deputies Procurement, Leasing and Services Law and the House of Deputies Public Works and Related Services Law, with the inclusion of a general provision regarding the need to provide a reasoned decision to employ procurement procedures other than public competitive bidding, in order to promote the principles of openness, equity and efficiency recognized in the Convention (see Chapter II, Section 1.2.2 of this report).

- b. Enhance, through the appropriate authorities, the House of Deputies Procurement, Leasing and Services Law, the House of Deputies Public Works and Related Services Law, and the Rules on Senate Procurement, Leasing, Service Provision, and Public Works, with the inclusion of penalties to be imposed on providers, bidders and contractors who violate the provisions contained in the aforesaid laws and rules, in order to strengthen their effective enforcement (see Chapter II, Section 1.2.2 of this report).

- c. Enhance, through the appropriate authorities, the House of Deputies Procurement, Leasing and Services Law, the House of Deputies Public Works and Related Services Law, and the Rules on Senate Procurement, Leasing, Service Provision, and Public Works, establishing societal oversight mechanisms to monitor procurement, such as citizen oversight offices, in order to strengthen control of those activities (see Chapter II, Section 1.2.2 of this report).
- d. Enhance, through the appropriate authority, the House of Deputies Procurement, Leasing and Services Law and the House of Deputies Public Works and Related Services Law, by establishing a mechanism for contesting decisions adopted by the Office of the Comptroller General on objections lodged under those Laws, in order to strengthen the effectiveness of challenge mechanisms (see Chapter II, Section 1.2.2 of this report).

1.2.3. Strengthen the systems of government procurement of goods and services in the federal judicial branch. To carry out this recommendation, the Mexico could take the following measure into account:

- Enhance, through the appropriate authorities, General Administrative Decision 6/2001 of the Office of the President of the Supreme Court of Justice of the Nation and General Decision 75/2000 of the Plenary of the Federal Judiciary Council, by establishing societal oversight mechanisms to monitor procurement, such as citizen oversight offices, in order to strengthen control of those activities (see Chapter II, Section 1.2.2 of this report).

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

**Mexico has considered and adopted certain measures aimed at creating, maintaining, and strengthening systems to protect public servants and private citizens who in good faith report acts of corruption, as described in Chapter II, section 2 of this report.**

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

- Strengthen the systems for protecting public servants and private citizens who in good faith report acts of corruption. To carry out this recommendation, Mexico could take the following measure into account:
  - Adopt, through the respective authority, a comprehensive regulation on the protection of public servants and private citizens who in good faith report acts of corruption, including protecting their identity, in accordance with the provisions of the Constitution of Mexico and the fundamental principles of its domestic legal order, which could include, among others, the following aspects:
    - a. Additional measures of protection for those who report acts of corruption that may or may not be defined as criminal offenses, but which could be subject to judicial or administrative investigation.

- b. Additional measures of protection, targeting not just the protection of the physical integrity of whistleblowers and their families, but also the protection of their positions of employment, particularly for public officials and when the acts of corruption could involve their superiors or coworkers.
- c. A simplified whistleblower protection application process.
- d. Additional Mechanisms for the protection of witnesses, providing them with the same guarantees as public officials and private citizens.
- e. Mechanisms to facilitate international cooperation in the above areas, when appropriate.

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

**Mexico has adopted measures aimed at defining as criminal offenses the acts of corruption provided for at Article VI(1) of the Convention, as described in Chapter II, section 3 of this report.**

In view of the comments made in that section, the Committee formulates the following recommendation to Mexico:

- Evaluate the need to modify the definition of the crime of bribery provided for by Article 222, section II of the Federal Criminal Code, insofar as it refers to the element of spontaneity, in light of what is provided for by paragraph (b) of Article VI.I of the Convention. (See Chapter II, Section 3.2 of this report)

### **4. GENERAL RECOMMENDATIONS**

Based on the review and comments made throughout this report, the Committee suggests that Mexico 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 the said systems, provisions, measures and mechanisms 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 follow-up on the recommendations made herein (see Chapter II, Sections 1.1.3.; 1.2.3.; and 3.3 of this report).
- 4.3. Design and implement public awareness campaigns in transparency, targeting the public and those who take part in political activities, with respect to the issues referred to in this report.

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

The Committee will consider the periodic updated Reports submitted by Mexico on its 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.

Similarly, the Committee will review the progress of Mexico 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 PROGRESS IN IMPLEMENTING THE RECOMMENDATIONS MADE IN THE FIRST ROUND**

The Committee offers the following observations with respect to the implementation of the recommendations made to Mexico in the report from the First Round of review, based on the information available to it:

##### **A. COOPERATION OF FEDERAL GOVERNMENT AUTHORITIES WITH THE FEDERAL STATES**

▪ Recommendation:

*“...the Committee recommends that the country under review consider having the federal authorities promote the relevant cooperation mechanisms with State Entities, in order to obtain information on the issues corresponding to the Convention within the scope of the State governments, as well as provide technical assistance for the effective implementation of the Convention.”*

In its response, the State under review presents information with respect to the above recommendation. In this regard, the Committee highlights the following steps noted by Mexico, and which led to its conclusion that the recommendation has been satisfactorily considered, such as the following:

- The measures adopted by the Civil Service Secretariat, in representation of the Federal Government, to collect information from the federal states on implementation of the Convention provisions selected for review in the First and Second Rounds of the MESICIC, with which two information matrices were prepared in that connection.<sup>20</sup>

- The specific measures promoted by the Civil Service Secretariat for the purposes of cooperation and to provide information on Convention-related issues, in the framework of the Permanent Committee of State and Federal Comptrollers, which brings together the officers in charge of the control and administrative development organs in the country.<sup>21</sup>

- The efforts made by the Civil Service Secretariat, through the Transparency Linkage Unit and in coordination with the Office of the Assistran Prosecutor for Legal and International Affairs of the Office of the Prosecutor General (PGR), to bring about the inclusion by the National Prosecutors Conference [*Conferencia Nacional de Procuración de Justicia*] in its 2005 work agenda of specific commitments to disseminate the guidelines and recommendations on the Inter-American Convention against Corruption, among all 32 State Prosecutor's Offices.<sup>22</sup>

The Committee takes note of the satisfactory consideration by the State under review of the above-transcribed recommendation, which, by its nature, requires a continuation of efforts; of the

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<sup>20</sup> Response of Mexico to the Questionnaire, p. 60. The matrices mentioned on this page are contained in Annexes I and II of the second part (Section II) of its response.

<sup>21</sup> Response of Mexico to the Questionnaire, pp. 60-62.

<sup>22</sup> Response of Mexico to the Questionnaire, p. 60.

difficulties that arose in its implementation,<sup>xlv</sup> and of the information furnished about the internal agencies that have been involved in that recommendation's implementation.<sup>xlvi</sup>

## **B. RECOMMENDATIONS AT THE FEDERAL LEVEL**

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

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

▪ Recommendation:

*Strengthen the implementation of laws and codes of conduct concerning conflicts of interest.*

▪ Measures suggested by the Committee:

- a. *Based on the Code of Ethics of Federal Public Administration Civil Servants, encourage each of the agencies and entities of the Federal Public Administration to devise and issue a specific Code of Conduct defining the actions of its public employees in concrete situations, in accordance with the functions and activities inherent to each institution, as provided for in the relevant provisions (see Chapter II, Section 1.1.2 of this report).*
- b. *Provide all civil servants with training in the standards of conduct and the mechanisms for preventing conflicts of interest and carry out a widespread dissemination of those standards and mechanisms.*

In its response, Mexico 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:

- With respect to measure a. of the recommendation, the State under review provides the following information:<sup>23</sup>

“As regards recommendation ‘a,’ in order to provide information on the progress made by federal government agencies and entities with respect to implementation of codes of conduct and follow-up on measures for their enforcement in the framework of their functions, in accordance with the National Program to Combat Corruption and Promote Transparency and Administrative Development 2001-2006, the Civil Service Secretariat sent an official letter to all 220 Internal Control Organs by electronic mail on July 25, 2005, and February 27, 2006, respectively, in which it requested information on progress in this area.

From August 2005 to March 2006, the Civil Service Secretariat received 199 responses from Internal Control Organs, which yielded the following data:

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<sup>23</sup> Response of Mexico to the Questionnaire, pp. 64 and 65.

<b>Questions</b>	<b>Affirmative responses</b>	<b>Negative responses</b>	<b>Did not specify</b>	<b>% of affirmative responses</b>
Does the agency or entity have a code of conduct?	187	12		<b>93.9%</b>
Does the code contain a mechanism for its enforcement?	147	49	3	<b>73.8%</b>
Has the Internal Control Organ taken steps, or does it intend, to implement a code of conduct?	192	7		<b>96.4%</b>
Does the code of conduct provide for conflicts of interests?	168	23	8	<b>84.4%</b>

Based on the following, 93.9% of federal government agencies or entities have a code of conduct, in keeping with Articles 48 and 49 of the Federal Law on Administrative Liability of Civil Servants (...).”

The Committee also takes note of the information provided on measure a. of this recommendation in the Transparency Mexico Document, one section of which says the following:<sup>24</sup>

“To summarize, codes of conduct have been widely promoted among federal government entities and agencies. However, it would be recommendable to make an effort to establish standards with regard to content and ensure the quality and registration of codes of conduct.”

- With respect to measure b. of the recommendation, the State under review provides the following information:<sup>25</sup>

Two training programs implemented by the Civil Service Secretariat on responsibilities and regulations: one for staff attached to oversight and control organs and the other for federal government employees and interested nongovernmental organizations.

The development of a dissemination system that can be accessed via the Civil Service Secretariat Internet page.

The Comprehensive Training Program for Oversight and Control Organs 2006

The number of training events and the number of participants in training courses imparted by the Under-Secretariat for Citizen Assistance and Regulations of the Civil Service Secretariat from 2000 to June 30, 2006.

The Committee takes note of the steps taken by Mexico to advance in the implementation of measures a. and b. of the foregoing recommendation and the need for it to continue paying attention thereto, bearing in mind, with respect to measure a., that some federal government entities and agencies have yet to prepare and issue a code of conduct as mentioned by that measure, and that

<sup>24</sup> Transparency Mexico Document, p. 27.

<sup>25</sup> Response of Mexico to the Questionnaire, pp. 66 and 67.

some of the codes issued need to cover conflicts of interests; and, with respect to measure b., that according to the information provided by the State under review,<sup>26</sup> there is a need to increase participation in training programs and for all public servants involved in the issues on which training is being provided to attend the training courses, and they should have flexible work hours without purpose.

The Committee also takes note of the difficulties that arose in the process of implementing measure b. of this recommendation which the State under review has mentioned;<sup>xlvii</sup> and of the information provided on the internal agencies that have participated in the process of implementing that recommendation.<sup>xlviii</sup>

**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:

*Strengthen the implementation of legal provisions and codes of conduct with respect to the proper conservations and use of public resources.*

▪ Measures suggested by the Committee:

a. *Based on the Code of Ethics of Federal Public Administration Civil Servants, encourage each of the agencies and entities of the Federal Public Administration to devise and issue a specific Code of Conduct defining the actions of its public employees in concrete situations, in accordance with the functions and activities inherent to each institution, as provided for in the relevant provisions (see Chapter II, Section 1.1.2 of this report).*

b. *Disseminate the provisions related to the conservation and use of public resources.*

In its response, Mexico 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:

- With respect to measure a. of the recommendation, the State under review provides the following information:<sup>27</sup>

“As regards recommendation ‘a,’ based on the information provided by the 199 Internal Control Organs in the period from August 2005 to March 2006, the following progress has been recorded:

<b>Questions</b>	<b>Affirmative responses</b>	<b>Negative responses</b>	<b>Did not specify</b>	<b>% of affirmative responses</b>
Does the code of conduct cover proper use of public resources?	171	21	7	<b>85.9%</b>

<sup>26</sup> Response of Mexico to the Questionnaire, pp. 66 and 68 (Difficulties in implementation).

<sup>27</sup> Response of Mexico to the Questionnaire, pp. 68 and 69.

The fact that 85.9% of the answers were affirmative in the sense that the code of conduct of the agency or entity in question does cover the proper use of public resources, suggests that, based on its importance, internal regulations have included this issue.”

- With respect to measure b. of the recommendation, the State under review provides the following information:<sup>28</sup>

The information on the proper use and conservation of public resources, which federal public institutions have a permanent duty to disclose under the Federal Law on Transparency and Access to Public Information, in addition to the obligations in that respect contained in the Federal Law on Administrative Liability of Civil Servants, and the Federal Law on Budget and Financial Responsibility.

Dissemination through the Official Gazette of the Federation of all provisions on the execution and use of public resources.

The “*Normateca*” computer tool developed by the Civil Service Secretariat as an instrument designed to encourage and facilitate dissemination and consultation of laws, decisions, regulatory standards, guidelines, and other generally applicable provisions in federal government agencies and entities.

The various reports periodically submitted by the federal executive branch to the federal legislative branch to provide information on the results of government policy.

The training courses carried out by federal government agencies and entities to disseminate provisions on the proper use and conservation of federal public resources.

The Committee takes note of the steps taken by Mexico to advance in the implementation of measures a. and b. of the foregoing recommendation and the need for it to continue paying attention thereto, bearing in mind, with respect to measure a., that some federal government entities and agencies have yet to prepare and issue the code of conduct as mentioned in that measure, and that some of the codes issued need to cover the proper use of public resources; and, with respect to measure b., and that according to the information provided by the State under review,<sup>xlix</sup> there is a need to increase participation in training programs and for all public servants involved in the issues on which training is being provided to attend the training courses, and they should have flexible work hours without purpose.

The Committee also takes note of the difficulties that arose in the process of implementing measure b. of this recommendation which the State under review has mentioned,<sup>29</sup> and of the information provided on the internal agencies that have participated in the process of implementing that recommendation.<sup>1</sup>

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<sup>28</sup> Response of Mexico to the Questionnaire, pp. 70-73.

<sup>29</sup> Response of Mexico to the Questionnaire, p. 73. This page contains a reference to the information provided on pages 67 and 68 (Difficulties in implementation).

**1.3. Measures and systems requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.**

▪ Recommendation:

*Strengthen the mechanisms Mexico has to require public officials to report acts of corruption in public office of which they are aware to the appropriate authorities.*

▪ Measures suggested by the Committee:

- a. *Based on the Code of Ethics of Federal Public Administration Civil Servants, encourage each of the agencies and entities of the Federal Public Administration to devise and issue a specific Code of Conduct defining the actions of its public employees in concrete situations, in accordance with the functions and activities inherent to each institution, as provided for in the relevant provisions (see Chapter II, Section 1.3.2 of this report).*
- b. *Disseminate the provisions related to the measures and systems that require public officials to report acts of corruption in public office of which they are aware.*
- c. *Adopt and implement protective measures for civil servants who report acts of corruption, thus safeguarding them from the threats or retaliation that might be directed at them on account of having complied with that obligation.*

In its response, Mexico 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:

- With respect to measure a. of the recommendation, the State under review provides the following information:<sup>30</sup>

“As regards recommendation ‘a,’ based on the information provided by the 199 Internal Control Organs in the period from August 2005 to March 2006, the following progress has been recorded:

<b>Questions</b>	<b>Affirmative responses</b>	<b>Negative responses</b>	<b>Did not specify</b>	<b>% of affirmative responses</b>
Does the code of conduct cover reporting of acts of corruption by public officials?	141	51	7	<b>70.8%</b>

- With respect to measure b. of the recommendation, the State under review provides the following information:<sup>31</sup>

The request sent by electronic mail on June 26, 2006, to the heads of the internal control organs of the public administration, requesting them to disseminate among the public servants of their agencies an electronic poster prepared by the Civil Service Secretariat, in which it draws attention to the obligation of public servants to report crimes committed to the detriment of the Civil Service, in

<sup>30</sup> Response of Mexico to the Questionnaire, pp. 74 and 75.

<sup>31</sup> Response of Mexico to the Questionnaire, pp. 76 and 77.

particular cases of bribery under the terms of article 117 of the Federal Code of Criminal Procedure, which is essentially recognized in most of the Criminal Procedural Codes of the federal states of Mexico.

The request sent by the head of the Civil Service Secretariat toward the end of August 2006 to the governors of all 32 federal states and to the chief administrative officers of all federal government agencies and entities, requesting them to distribute the electronic poster outlining the aforementioned obligation among state and federal public servants, respectively.

The electronic mail message sent on September 4, 2006 to all 32 State Comptrollers of the Governments of the States of the Republic, enclosing the aforementioned electronic poster and requesting them to bring the information contained in it to the attention of all state public servants.

- With respect to measure c. of the recommendation, the State under review provides the following information:<sup>32</sup>

The request sent by the Bureau of Financial Holdings and Responsibilities of the Civil Service Secretariat, by means of official letter DG/311/700/2006 of August 14, 2006, to the heads of the internal control organs of all federal government agencies and entities, asking for their cooperation in disseminating among the administrative units of the government institutions to which they are assigned, the duty of public servants to abstain from any acts that would impede the presentation of complaints, or from any acts or omissions that would prejudice the interests of those who formulate or present such complaints, under the terms of Article 8 (XXI) of the Federal Law on Administrative Liability of Civil Servants.

The Committee takes note of the steps taken by Mexico to advance in the implementation of measures a. , b. and c. of the foregoing recommendation and the need for it to continue paying attention thereto, bearing in mind, with respect to measure a., that some federal government entities and agencies have yet to prepare and issue a code of conduct as mentioned in said measure, and that some of the codes issued need to cover reporting of acts of corruption; with respect to measure b., that, according to the information provided by the State under review,<sup>33</sup> the need has been detected to promote an increase in the number of training courses on the Federal Law on Administrative Liability of Civil Servants; and, with respect to measure c., the aforementioned protective measures are confined to the provisions contained in Article 8, paragraph XXI of said Law.

The Committee also takes note of the difficulties that arose in the process of implementing measure b. of this recommendation which the State under review has mentioned;<sup>li</sup> and of the information provided on the internal agencies that have participated in the process of implementing that recommendation.<sup>lii</sup>

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

### **▪ Recommendation:**

*Strengthen the systems for registration of income, assets and liabilities.*

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<sup>32</sup> Response of Mexico to the Questionnaire, p. 77.

<sup>33</sup> Response of Mexico to the Questionnaire, p. 77 (Difficulties in implementation).

▪ Measures suggested by the Committee:

- e. *Strengthen the mechanisms whereby the competent authority can verify the content of statements of net worth, as set forth in Federal Law on the Administrative Responsibilities of Civil Servants (LFRASP), establishing systems to facilitate and perform such verification on a timely basis (see Chapter II, Section 2.2 of of this report).*
- f. *Regulate the conditions, procedures, and other aspects relating to the public disclosure, as appropriate, of declarations of income, assets and liabilities, subject to the Constitution and the fundamental principles of law.*
- g. *Strengthen the strategic plans for verifying and analyzing the statements of net worth presented.*
- h. *Maximize the use of the systems for analyzing the content of the statements of income, assets, and liabilities for the purpose of strengthening them, as a useful tool for the detection of possible cases of unjust enrichment, and when appropriate, of conflicts of interest.*
- i. *Continue the awareness campaigns for public officials about their legal and ethical duty to report truthful data on their statements of net worth.*

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

- As regards measures a. and d. of the recommendation, the State under review provides the following information:<sup>34</sup>

“As regards recommendations ‘a’ and ‘d,’ in order to strengthen the provisions on verification of the contents of statements of net worth, in April 2006, the Civil Service Secretariat began work on updating the “Net Worth Information System,” a computerized tool that permits quicker and more efficient analysis of statements of net worth submitted by public servants.

One notable characteristic of the “System” is that at an initial stage it can analyze only the information contained in statements of net worth presented by public servants -without requiring additional data- and therefore, on the basis of those preliminary findings, there would be sufficient evidence to open a formal investigation into public servants for whom inconsistencies are detected -in particular those assigned to areas identified as sensitive to corruption or those for whom the inconsistencies have a direct impact on their net worth (bank accounts, real estate, debts)-. The “Net Worth Information System” would also provide access to statements of net worth filed electronically, with the attendant time saving in data capture from filings.”

- With respect to measure b. of the recommendation, the State under review provides the following information:<sup>35</sup>

“As regards recommendation ‘b,’ paragraph 3 of Article 40 of the Federal Law on Administrative Liability of Civil Servants provides that the public disclosure of information relating to net worth shall require express authority in advance from the public servant concerned (...).

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<sup>34</sup> Response of Mexico to the Questionnaire, pp. 78 and 79.

<sup>35</sup> Response of Mexico to the Questionnaire, p. 79.

In this connection, the Civil Service Secretariat, in April and May 2006 distributed posters and leaflets concerning the obligation of public servants to file statements of changes in net worth in May, under the banner heading, ‘Remember, transparency benefits us all, so why not make your financial information public?’ in order to encourage civil servants to permit public disclosure of data on their net worth.”

“Another mechanism used by the Civil Service Secretariat to encourage civil servants to commit the disclosure of their net worth information were training courses imparted in April to public servants of various federal government agencies and entities, as well as the internal control organs assigned to them, in order to advise them on the correct completion of statement forms.”

- With respect to measure c. of the recommendation, the State under review provides the following information:<sup>36</sup>

“With regard to recommendation ‘c,’ at present, most investigations of changes in net worth are opened as a result of a report filed by an internal control organ.

In this connection, it has been deemed necessary that investigations in this area be conducted not only in response to reports, but also ex officio and with particular attention to, *inter alia*, areas identified as sensitive to corruption, public servants whose duties bring them into contact with the public, who manage or administer federal public resources, and who grants concessions, permission, or licenses, with a view to their investigation by the Civil Service Secretariat in order to examine movements in their net worth during their service as government employees.

In this connection, it is anticipated that once the “Net Worth Information System” is fully operational, it would be possible to identify public servants who show a high number of inconsistencies in their statements of net worth, so as to determine which could be formally investigated, in order to ascertain whether or not their net worth clearly exceeds their legitimate income. To determine which areas are sensitive or prone to corruption, the assistance will first be sought of the Inter-Secretarial Committee for Transparency and the Fight against Corruption.

Furthermore, in coordination with the internal control organs of government institutions identified as sensitive to corruption, a review would be conducted to determine which areas and, therefore, which public servants, should be made the subject of an investigation with respect to changes in net worth, in order to draw up a list of all the public servants to be formally investigated (perhaps a sample of 10 persons per year. By the same token, it is intended that a review be conducted to determine which international legal instruments signed by the United Mexican States could be suitable tools for soliciting information on overseas bank holdings of public servants under investigation, since having these documents would strengthen the analysis of their holdings.”

- With respect to measure e. of the recommendation, the State under review provides the following information:<sup>37</sup>

“As regards recommendation ‘e,’ under Article 8 (XV) of the Federal Law on Administrative Liability of Civil Servants, the latter are required to present timely and accurate statements of net worth (...).

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<sup>36</sup> Response of Mexico to the Questionnaire, pp. 79 and 80.

<sup>37</sup> Response of Mexico to the Questionnaire, pp. 80 and 81.

In this connection, in order to guide public servants on fulfillment of their duty, before each year's annual filing -in May- the Civil Service Secretariat organizes a number of training workshops for civil servants in federal government agencies and entities, as well as in the Office of the Prosecutor General and the Internal Control Organs assigned to those institutions, in order to show them how to complete their statements correctly.”

The Committee takes note of the steps taken by Mexico to advance in the implementation of measures a. , b., c. and d. of the foregoing recommendation and the need for it to continue paying attention thereto, bearing in mind, with respect to measures a., c. and d., that according to the information provided by the State under review,<sup>38</sup> updates reflected to “Net Worth Information System” are not yet fully operational; that, furthermore, with respect to measure c., according to the State, it is necessary to adopt measures to ensure that investigations of changes in net worth of public servants are opened *ex officio*, not only when a report is lodged; and, with respect to measure b., that, also according to the State under review, despite awareness campaigns, there have been difficulties persuading the vast majority of civil servants to make their statements of net worth public.

The Committee also takes note of the satisfactory consideration by Mexico, of measure c., which, by its nature, requires a continuation of efforts.

The Committee also takes note of the difficulties that arose in the process of implementing this recommendation which the State under review has mentioned;<sup>liii</sup> and of the information provided on the internal agencies that have participated in the process of implementing that recommendation.<sup>liv</sup>

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

#### **▪ Recommendation:**

*“...the Committee suggests that Mexico consider continuing the coordination between its oversight bodies with respect to their functions relating to oversight of effective compliance with the provisions of paragraphs 1, 2, 4 and 11 of the Convention, in order to ensure the effectiveness of that oversight and of the mechanisms that allow for institutional coordination of their actions and ensure an ongoing evaluation and follow-up thereof.”*

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

Los General Coordination Guidelines on Requests for Intervention of Internal Control Organs, agreed by the Civil Service Secretariat and the Office of the Auditor General, which are set down in the document signed by those control organs on April 15, 2005, in the framework of a Technical Cooperation and Information Exchange Agreement.<sup>39</sup>

The steps taken by the aforementioned control organs in implementing the foregoing.<sup>40</sup>

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<sup>38</sup> Response of Mexico to the Questionnaire, p. 81 (Difficulties in implementation).

<sup>39</sup> Response of Mexico to the Questionnaire, p. 82 and Annex 8 of the second part of the Response (Section II), regarding the “General Coordination Guidelines on Requests for Intervention of Internal Control Organs.”

<sup>40</sup> Response of Mexico to the Questionnaire, p. 82.

The Committee also takes note of the information provided on this recommendation in the Transparency Mexico Document, one section of which says the following:<sup>41</sup>

“In the framework of the Technical Cooperation and Information Exchange Agreement and the General Coordination Guidelines on Requests for Intervention of Internal Control Organs, the Civil Service Secretariat, and the Office of the Auditor General have continued to make substantive cooperation efforts.”

The Committee takes note of the satisfactory consideration by Mexico of the above-transcribed recommendation, which, by its nature, requires a continuation of efforts; of what it has said with respect to difficulties that arose in the process of implementing this recommendation,<sup>lv</sup> and of the information provided on the internal agencies that have participated in that process.<sup>lvi</sup>

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

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

No recommendations were formulated by the Committee in this section

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

▪ Recommendation:

*Strengthen the mechanisms for ensuring access to public information.*

▪ Measures suggested by the Committee:

- a. *Continue with its efforts to ensure that those agencies and entities that are required to do so by the provisions governing the right of public information publish on their WebPages, the information indicated as obligatory in those provisions (see Chapter II, Section 4.2.3 of this report).*
- b. *Continue encouraging, subject to the autonomy of the local and municipal governments, the adoption by the nation's States and Municipalities legislation to guarantee access to public information.*
- c. *Continue encouraging, subject to the autonomy of the local and municipal governments, the adoption by the nation's States and Municipalities legislation to guarantee access to public information*
- d. *Continue to take steps to optimize the archive systems of the agencies and entities identified in section 4.2.3 of Chapter II of this report, to facilitate access to public information.*
- e. *Continue developing training and dissemination programs dealing with the mechanisms for public information access, in order to help civil servants and citizens understand them and to optimize the use of available technology to that end.*

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<sup>41</sup> Transparency Mexico Document, p. 33.

In its response, Mexico 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:

- With respect to measure a. of the recommendation, the State under review provides the following information:<sup>42</sup>

“As regards recommendation ‘a,’ the Federal Institute for Access to Public Information (IFAI) evaluated the transparency portals of 237 agencies and entities, and rated the level of compliance of each to determine if the information in question was adequately disseminated in a periodic manner, in accordance with the transparency obligations set forth in the Law.

The first public review of the transparency obligations was carried out from February 23 to April 12, 2004, and it showed that the average level of compliance in the federal public administration was 62.8%. It is important to point out that in June 2004 a permanent evaluation program was set up that updates the level of compliance of each agency and entity at different times; that is, the agencies and entities are not all evaluated over the same period of time. Under the permanent evaluation system, as of December 31, 2005, the level of compliance in the federal public administration increased to 95.9%, which represents a significant advance compared to the end of 2004 when average compliance was recorded as 80.6%.”

- With respect to measure b. of the recommendation, the State under review provides the following information:<sup>43</sup>

“With regard to recommendation ‘b,’ one of the core functions of the IFAI is to design and implement strategies for the creation, strengthening, and formalization of ties of cooperation and support with state and municipal governments, in order to promote interagency relations on communication and coordination by which to broaden the exercise and awareness of the right of access to information.

In 2005, the IFAI reorganized its executive structure so as to give greater coherence to the promotion and linkage policy in Mexico, which was aimed under the leadership of a single body at establishing a high-level dialogue with state and municipal governments.”

“Steps have also been taken in the following areas:...” The State under review then proceeds to refer in detail to the following activities: transparency training workshops; promotion and establishment of cooperation relations with state and municipal governments; training for civil servants and the design of promotional aids in the federal states; and implementation of the Mexican Information System (Infomex).

- With respect to measure c. of the recommendation, the State under review provides the following information:<sup>44</sup>

“As regards recommendation ‘c,’ pursuant to Article 32 of the LFTAIPG, the General Archive of the Nation, in coordination with the IFAI, prepared Guidelines on Archive Organization and Conservation in Federal Government Agencies and Entities, which were published in the Official

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<sup>42</sup> Response of Mexico to the Questionnaire, pp. 84 and 85.

<sup>43</sup> Response of Mexico to the Questionnaire, pp. 85-87.

<sup>44</sup> Response of Mexico to the Questionnaire, pp. 87-91.

Gazette of the Federation on February 20, 2004, resulting in the following measures: ...”. The State under review then proceeds to refer in detail, *inter alia*, to the following: preparation of various directives on these matters; the creation of a 2001-2006 accountability form to record progress in obligations with respect to archive keeping; an agreement signed between the General Archive of the Nation and the National Librarianship and Archive-Keeping School (ENBA) to establish collaboration mechanisms, together with other assistance agreements with different institutions; registration of the appointment of federal government archive coordinators, and the creation of a communication channel for distributing the General Archive of the Nation Newsletter and other publications; direct advisory services to 12 federal states for implementation of their archive systems; and the development of the Document Classification System, which is distributed to assist compliance with the guidelines on archive organization and conservation within federal government agencies and entities.

In addition to the foregoing, the State under review also provides information in its response on the Archive Consultation and Control Instrument Automated Integration System (SICCA); on the confidential file indexes registry; on handling of consultations by the federal public administration on matters pertaining to archives and classification of public information; and on verification of compliance with the Guidelines on Archive Organization and Conservation in federal government agencies and entities.

- With respect to measure d. of the recommendation, the State under review provides the following information:<sup>45</sup>

“As regards recommendation ‘d,’ in order to implement training and awareness programs on public information access mechanisms, the IFAI has promoted and carried out training for public servants on information access and personal data protection. From January to December 2005, the Institute staged a large number of training events (on-site workshops as well as video conferences and their retransmission) on core aspects in this area. These events were attended by 1085 civil servants from 240 agencies and entities. Furthermore, pre-recorded audiovisual training materials were screened for an audience of some 1500 civil servants. At different agencies and entities the Institute has continued to develop training materials that on different themes for both federal and state civil servants, as well as civil society organizations. These materials will be made available through the Institute’s distance education system in 2006.”

In addition to the foregoing, the State under review provides information in its response on a variety of activities to provide guidance on and promote a culture of transparency and the right of access to public information, including: the TELEFAI telephone advisory service; promotion of the right of access to information in Mexican society; the Program on Promotion and Linkage with Academic Institutions; the program to contact and establish ties with civil society organizations; linkage with “other regulated persons” under the Federal Law on Transparency and Access to Public Information; National Transparency Week; the Citizen Monitoring Program; Citizen Monitoring and Information Access training workshops; pilot projects publicly announced in April 2006; monitoring exercises in 2006, and efforts to raise financing for those exercises.

The Committee takes note of the steps taken by Mexico to advance in the implementation of measures a. and c. of the foregoing recommendation and the need for it to continue paying attention thereto, bearing in mind, with respect to measure a., that a number of entities and agencies have yet to

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<sup>45</sup> Response of Mexico to the Questionnaire, pp. 91-98.

comply with the obligation to publish information on their Internet portals, despite being required to do so under the laws on the right of access to information; and, with respect to measure c, that, according to the information provided by the State under review,<sup>46</sup> “As of December 31, 2005, the proportion of agencies and entities that published all their consultation instruments as required by the Guidelines on Archive Organization and Conservation in federal government agencies and entities came to 74.9%, which reveals that more needs to be done to promote an institutional culture of archive organization, one of the tasks pending for the IFAI.”

The Committee takes note of the satisfactory consideration by Mexico of measures b. and d. in the above-transcribed recommendation, which, by their nature, requires a continuation of efforts.

The Committee also takes note of the difficulties observed in the process of implementing the recommendation which the State under review has mentioned;<sup>lvii</sup> and of the information provided on the internal agencies that have participated in the process of implementing that recommendation.<sup>lviii</sup>

### **4.3. Consultative Mechanisms**

▪ Recommendation:

*Complement existing mechanisms of consultation, establishing procedures, when appropriate, so as to allow for making public consultations prior to designing public policies and prior to the final adoption of legal provisions.*

▪ Measures suggested by the Committee:

*Continue consultation with interested sectors of civil society and non-governmental organizations regarding the design of public policies and the drafting of laws, decrees and resolutions by the executive branch.*

In its response, Mexico presents information with respect to the above recommendation. In this regard, the Committee highlights the following steps noted by Mexico, and which led to its conclusion that the recommendation has been satisfactorily considered, such as the following:<sup>47</sup>

The new public-private dialogue scheme for setting priorities in the area of regulation announced by the President of the Republic in August 2005, which got underway in April that year when the Enterprise Coordination Council (CCE), the Mexican Competitiveness Institute (IMCO) and the Federal Commission for Regulatory Improvements (COFEMER) met to discuss the best way to set regulatory improvement priorities.

The “Decision establishing guidelines on presentation of regulatory improvement programs 2005-2006,” issued on August 11, 2005 by the President of the Republic, which contains concrete regulatory improvement measures to stimulate competitiveness that were identified as regulatory improvement priorities in various areas; and the scheme designed for public monitoring, by means of remote information systems, of government agency progress commitments ([www.cofemer.gob.mx](http://www.cofemer.gob.mx)).

The Committee takes note of the satisfactory consideration by Mexico of the above-transcribed recommendation, which, by its nature, requires a continuation of efforts; of what it has said with

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<sup>46</sup> Response of Mexico to the Questionnaire, p. 98 (Difficulties in implementation).

<sup>47</sup> Response of Mexico to the Questionnaire, pp. 99 and 100.

respect to the occasional difficulties that arose in its implementation,<sup>48</sup> and of the information provided on the internal agencies that have participated in the process of implementing that recommendation.<sup>49</sup>

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

▪ Recommendation:

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

▪ Measures suggested by the Committee:

- a. *Continue to adopt mechanisms that strengthen the participation of civil society and nongovernmental organizations in anticorruption efforts.*
- b. *Set quantitative and qualitative indicators that will help determine the impact of citizen participation on the final proposed law (see Chapter II, Section 4.4.3. of this report).*

In its response, Mexico 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:

- With respect to measure a. of the recommendation, the State under review provides the following information:<sup>48</sup>

“With regard to recommendation ‘a,’ the Civil Service Secretariat has instituted a variety of mechanisms to encourage civil society participation in anticorruption efforts, among which the following should be noted: ...” The State under review then proceeds to refer in detail to different activities, including those carried out under a Cooperation Agreement with the Supreme Court of Justice of the Nation; the event, ‘Citizen Monitoring of Quality of Public Services’; a presentation on ‘Tools for Citizen Participation in the Fight against Corruption’; articles published in the magazine *Contaduría Pública* (2005); online dialogue with federal civil servants; the program, ‘Valuable Families: Ideas for strengthening values between parents and children’; Annual Award for Corruption Investigation in Mexico; Homage to Integrity, Transparency, and Gender Equity in Civil Society Organizations; First National Symposium on ‘Transparency As Policy in the Democratic State’; and the ‘*Cineminutos* Campaign’.

The Committee also takes note of the information provided on this recommendation in the Transparency Mexico Document, one section of which notes the following:<sup>49</sup>

“The Civil Service Secretariat promotes honesty and transparency measures to consolidate a culture of lawfulness, accountability, and fight against corruption in the country, with the support of citizens and civil society organizations.”

- With respect to measure b. of the recommendation, the State under review provides the following information:<sup>50</sup>

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<sup>48</sup> Response of Mexico to the Questionnaire, pp. 101-103.

<sup>49</sup> Transparency Mexico Document, p. 38.

Mexico draws attention to the regulatory improvement process implemented by COFEMER and notes that “Despite the foregoing, it considers that it is technically difficult to perform a quantitative evaluation of the impact that citizen consultation has had on rulemaking. In any event, the results would have to be examined from the point of view of the quality of the rules issued, with a casuistic review to determine if they were open to opinion and, if so, if the opinions advanced by private citizens modified the final versions of the corresponding provisions in the terms indicated.” The State then adds that COFEMER keeps a quarterly indicator on the percentage of preliminary draft rules with fulfillment costs for individuals with at least one comment, which it then shows in a table that covers the quarters January-March 2003 and April-June 2006.

The State also mentions that, “Inasmuch as this matter has to do with qualitative indicators, COFEMER has a clear legal obligation to take into account each and every comment offered by private citizens. Accordingly, the degree of influence is absolute and, therefore, we believe there would be little sense in establishing qualitative indicators in that respect.”

The Committee takes note of the steps taken by Mexico to advance in the implementation of measure b. of the foregoing recommendation and the need for Mexico to continue giving attention to the implementation of this recommendation, bearing in mind that it concerns the setting of quantitative and qualitative indicators that will help determine the impact of citizen participation on the final proposed law, and that the measures considered by the State under review refer only to the regulatory improvement process being carried out by COFEMER (Federal Regulatory Improvement Committee).

The Committee also takes note of the satisfactory consideration by the State under review of measure a. of the recommendation, which, by its nature, requires a continuation of efforts; and of the information furnished about the internal agencies that have been involved in that recommendation’s implementation.<sup>lxii</sup>

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

▪ Recommendation:

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

▪ Measures suggested by the Committee:

- a. *Promote new forms of social oversight – such as citizen oversight groups for the supervision of public activities and projects – and providing civil society with training and advice for making proper use thereof.*
- b. *Continue work on implementing the Integral Societal Oversight System (SICS), expanding it into a larger number of offices and programs of the Federal Public Administration.*
- c. *The competent authorities should raise awareness of the mechanisms that make up the Integral Societal Oversight System (SICS) disseminate a mechanism for setting up the Societal Oversight and continue implementing existing plans.*

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<sup>50</sup> Response of Mexico to the Questionnaire, pp. 103 and 104.

In its response, Mexico 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:

- With respect to measure a. of the recommendation, the State under review provides the following information:<sup>51</sup>

- Measures carried out in application of the guidelines that govern the participation of “Social Witnesses” in procurement processes carried out by federal government agencies, published in the Official Gazette of the Federation in December 2004, such as approval of their Composition and Operations Manual; registration of three legal persons and nine physical persons as “Social Witnesses” in an important procurement process cited as an example.

- The “Letters of Commitment to the Citizenry” (CCC), by which the senior management and involved staff of a federal government agency or entity publicly undertake to meet a series of conditions in connection with the provision of services, transparency of information on a particular procedure or service, and efficiency in the use of resources. Users can also visit a web page where they can take a survey to quickly and anonymously rate different aspects of the procedure or service they have just received, *inter alia*, in terms of treatment, promptness, honesty, information about requirements, facilities, and in addition to which they can suggest improvements.

“The first 11 letters were made public in 2003 and by the beginning of 2006, 230 had been published in connection with an equal number of procedures and services with a high public impact provided at around 6000 user contact points. The activities connected with this program can be found at the following web page: <http://www.serviciosdecadidad.gob.mx/>.”

- With respect to measures b. and c. of the recommendation, the State under review provides the following information:<sup>52</sup>

“As regards recommendations ‘b’ and ‘c,’ in 2004, 23 federal states operated societal oversight schemes in six federal social development programs. In 2005, 30 federal states took part in societal oversight schemes in eight federal programs.

In 2006, 31 entities implemented societal oversight schemes in 12 programs, with aims to increase that number to 16 by the end of the year. The social development programs in which the Civil Service Secretariat and state oversight organs work in coordination to implement societal oversight measures are the ones with the greatest budgetary and social impact. The 12 programs in which these societal oversight mechanisms are currently in place are: Assistance to Agricultural Day Laborers, Temporary Employment -in two program: one implemented by the Ministry of Social Development and the other by the Ministry of Communications and Transport-, Senior Citizen Assistance, Regional Funds, Productive Organization for Indigenous Women, Human Development Opportunities, Habitat, Rural Supply (*Abasto Rural*) implemented by Diconsa, Micro Regions, Production Options, and 3X1 for Migrants.

The General Law on Social Development was approved in 2005 and it includes societal oversight as a surveillance mechanism for social program beneficiaries. The regulations on said Law were published this year and the Civil Service Secretariat is about to issue the relevant guidelines on

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<sup>51</sup> Response of Mexico to the Questionnaire, pp. 105-107.

<sup>52</sup> Response of Mexico to the Questionnaire, pp. 107 and 108.

compliance with the section on Social Oversight. The guidelines would enable the components of the Integral Societal Oversight System (SICS) to be applied to all social development programs. The “Municipalities for Transparency” program has also promoted implementation of the SICS in more than 300 municipalities in 18 federal states, helping local governments to carry out and improve transparency and societal oversight measures.”

The Committee takes note of the steps taken by Mexico to advance in the implementation of measure b. of the foregoing recommendation and the need for Mexico to continue giving attention to the implementation of this recommendation, bearing in mind that, according to the information provided by the State under review in reference to the General Law on Social Development,<sup>53</sup> “the regulations on said Law were published this year and the Civil Service Secretariat is about to issue the relevant guidelines on compliance with the section on Social Oversight.”

The Committee also takes note of the satisfactory consideration by the State under review of measures a. and c. of the recommendation, which, by their nature, require a continuation of efforts; of what it mentioned with respect to difficulties that arose in their implementation;<sup>lxii</sup> and of the information furnished about the internal agencies that have been involved in the recommendation’s implementation.<sup>lxiii</sup>

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

### ▪ Recommendation 5.1:

*Identify and prioritize specific areas in which Mexico considers that it needs the technical cooperation of other State Parties and international cooperation agencies in order to strengthen its capacity to prevent, detect, investigate and punish acts of corruption.*

### ▪ Recommendation 5.2:

*Continue its efforts to exchange technical cooperation with other State Parties regarding the most effective ways and methods for preventing, detecting, investigating and punishing acts of corruption.*

In its response, Mexico presents information with respect to the above recommendations. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendations, the measures taken with respect to:<sup>54</sup>

The initiative of the Mexican government to foment cooperation among states parties to the Inter-American Convention against Corruption through an “Internet micro-site” titled OEA, which was launched in July 2005 for the purpose of disseminating the commitments of Mexico in implementing the Convention at the national and regional levels. The site was made available by Mexico at the Eighth Meeting of the MESICIC Committee of Experts as a tool to publicize their best practices in the fight against corruption.

Cooperation among states parties to the Inter-American Convention against Corruption in connection with the work of the Group of Latin American and Caribbean States (GRULAC) and participation in the Public Ethics Network of the Americas and the Regional Forum on Good Governance.

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<sup>53</sup> Response of Mexico to the Questionnaire, p. 108 (Difficulties in implementation).

<sup>54</sup> Response of Mexico to the Questionnaire, pp. 109-114.

The technical cooperation measures (described in detail in the Response) carried out with the following states parties to the Inter-American Convention against Corruption: Argentina; Bolivia; Costa Rica; Guatemala; Nicaragua; Panama; Peru; St Vincent and the Grenadines.

The cooperation activities carried out with international agencies, including the IDB and World Bank, and collaboration with the public competition organized by the OAS to design an official logo for the “Inter-American Year against Corruption.”

The inclusion by the Mexican government in draft mutual legal assistance treaties of specific articles for the return of public funds obtained through acts of corruption as well as implementation of mechanisms to facilitate technical cooperation exchange through which to prevent, detect, investigate, and punish acts of corruption, as in the case of the draft mutual legal assistance treaty between the United Mexican States and the Federative Republic of Brazil, which is cited as an example.

The Committee takes note of the satisfactory consideration by the State under review of the above-transcribed recommendations, which, by their nature, require a continuation of efforts; of what it mentioned with respect to difficulties that arose in their implementation;<sup>lxiv</sup> and of the information furnished about the internal agencies that have been involved in the recommendation’s implementation.<sup>lxv</sup>

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

The Committee did not formulate recommendations on this provision of the Convention to the State under review, because it noted with satisfaction that Mexico complied with Article XVIII of the Convention, by appointing the Ministry of Foreign Affairs as the central authority for the purposes of the assistance and international cooperation provided for in the Convention.

## **7. GENERAL RECOMMENDATIONS**

### ▪ Recommendation 7.1:

*Design and implement, when appropriate, programs to train civil servants responsible for implementing the systems, standards, measures and mechanisms considered in this report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.*

### ▪ Recommendation 7.2:

*Select and develop procedures and indicators, when appropriate, that make it possible to verify follow-up on the recommendations made in this report, and report back to the Committee, through the Technical Secretariat, in this regard. For the purposes indicated, Mexico could consider taking into account the list of the most widely used indicators, applicable in the Inter-American system that were available for the selection indicated by the country under analysis, which has been published on the OAS website by the Technical Secretariat of the Committee, as well as information derived from the analysis of the mechanisms developed in accordance with recommendation 7.3, which follows.*

### ▪ Recommendation 7.3:

*Develop, when appropriate and where they do not yet exist, procedures for analyzing the mechanisms mentioned in this report, as well as the recommendations contained herein.*

In its response, Mexico presents information with respect to the above general recommendations. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendations, the measures taken with respect to:<sup>55</sup>

“As regards recommendation 7.1., training programs are being applied in measures adopted in response to several recommendations, such as, for instance, programs of this type implemented in the areas of responsibilities and standards of conduct (section 1.1. (b)); mechanisms to ensure access to public information and protection of personal data; mechanisms to design promotional aids for federal states, and preparation of archive control and consultation instruments, among other points (sections 1.1. (b), 4.2. (d), and 5.2).”

“With respect to recommendation 7.2., as emerges from the information contained in the response to the questionnaire on the provisions selected for review in the framework of the first round and on the attention given to the recommendations contained in this document, Mexico already has in place several indicators which have been incorporated in the activities of each of the government agencies in charge of the different issues. With respect to the points contained in the questionnaire for the first round, the following should be mentioned:...” The State under review then proceeds to mention indicators in connection with each of the provisions selected for review in the first round.

“With regard to recommendation 7.3., the procedures for analyzing the mechanisms mentioned in this report and recommendations contained therein, have already been established based on the powers of the Civil Service Secretariat and the Ministry of Foreign Affairs under the Organic Law of the Federal Public Administration and their internal regulations, since the former is in charge of collecting all the information necessary for follow-up on compliance with the recommendations, to which end it submits request for assistance to all the different areas involved in the Federal government, the legislative and judicial branches, and the federal states, while the latter functions as the authority responsible for processing the aforesaid recommendations (Annex 16).”

The Committee takes note of the steps taken by Mexico to advance in the implementation of recommendation 7.2 and the need for Mexico to continue giving attention to the implementation of this recommendation, bearing in mind that it mentions in this respect,<sup>56</sup> “that on occasion the indicators cannot be assembled quickly because the information they should contain does not flow properly; therefore, systematization is needed to facilitate their integration, consultation and dissemination.”

The Committee also takes note of the satisfactory consideration by the State under review of recommendations 7.1 and 7.3, which, by their nature, require a continuation of efforts; of the difficulties that arose in the process of implementing recommendation 7.2;<sup>lxvi</sup> and of the information furnished about the internal agencies that have been involved in the recommendation’s implementation.<sup>lxvii</sup>

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<sup>55</sup> Response of Mexico to the Questionnaire, pp. 115-119.

<sup>56</sup> Response of Mexico to the Questionnaire. p. 119 (Difficulties in implementation).

## ENDNOTES

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<sup>i</sup> The second paragraph of Article 1 of that Law (LSPCAPF) indicates that the parastatal entities provided for therein may establish their own professional career systems based on the principles enshrined in that Law. It further provides at Article 8 that the system shall not include personnel who render services in the Office of the President of the Republic or the Ministry of Foreign Affairs, or who hold the rank of Cabinet Secretary, Administrative Department Chief, Undersecretary, Chief Administrative Officer, Unit Chief or Head, or a position of equivalent rank; members of the armed forces, the public and national security services, or the Mexican Foreign Service, and those assimilated therein; teaching staff at the preschool, elementary, secondary, and tertiary levels; members of the medical profession, paramedics, and related groups; support staff, any person covered by the legal provisions of a civil service career system, or those who perform services for a fee under contract to federal government agencies.

<sup>ii</sup> Article 67 of this Law (LSPCAPF) provides that the following organs of the System shall enforce the provisions contained in the Law: The Secretariat (Civil Service Secretariat), which supervises the operation of the system in each agency; the Board (System Advisory Board), which is an auxiliary body of the Secretariat, offers general recommendations and puts forward opinions on guidelines, policies, strategies, and lines of action to ensure and facilitate the development of the System; and the Committees (Technical Committees for Career Development and Selection in each agency), which are the collegiate bodies that implement the System in each agency based on the rules and regulations issued by the Secretariat for that purpose.

<sup>iii</sup> This norm provides that in special circumstances and when the social order, public services, health, safety, or the environment is at risk or altered in any area or region of the country as a result of disasters caused by natural phenomena, acts of God, or *force majeure*, or circumstances exist that might cause substantial losses or additional costs, agency heads or the respective Chief Administrative Officer or their equivalent may, on their own liability, authorize the temporary appointment of a person to occupy any position, vacancy, or newly created post, regarded as pertaining to any public servant, without the need to abide by the recruitment and selection procedure mentioned in this Law. The provision adds that such staff shall not create new rights with respect to entry to the system and that when approval is issued it shall be brought to the attention of the Secretariat within not more than 15 working days, together with information as to the reasons that warrant the exercise of this power and the duration of the appointment.

<sup>iv</sup> Article 43 of this Law (LSPCAPF) stipulates that government agencies, in accordance with the provisions that the Secretariat issues to that end, may enter into agreements with federal, state, municipal and Federal District authorities, as well as with government or private agencies, for the exchange of human resources once the required profiles have been met, in order to strengthen the professional development of career civil servants and to widen their experience.

<sup>v</sup> By Decision of June 3, 2004, the Civil Service Secretariat established the general guidelines to be observed by the federal government agencies and their decentralized bodies in determining which special positions may be freely appointed, along with the procedure for their approval by the Civil Service Secretariat.

<sup>vi</sup> By Decision of September 17, 2003, the Civil Service Secretariat set out the guidelines for the installation and powers of the Technical Committees for Career Development and Selection, among which Paragraph 5(VI) provides that, *inter alia*, those Committees may hold examinations and develop selection mechanisms for persons seeking to enter the institution, and determine the elements to be taken into consideration in setting the basic grading parameters in selection processes, in accordance with the approved evaluation rules or scoring system registered with the Civil Service Secretariat. The Secretariat also established, by Decision of June 3, 2004, the guidelines to be observed for the Entrance Subsystem, as well as the design and application of evaluation mechanisms and tools for selection processes; Paragraph 5 of said Decision provides that, as determined by the Secretariat, human resources departments shall draw up a description, profile, and evaluation of the positions subject to the provisions of the LSPCAPF and submit such descriptions, profiles, and evaluations to the appropriate Career Development Committee for validation. The Secretariat issued the "Position description, profile, and evaluation rule" on April 25, 2005.

<sup>vii</sup> The guidelines for the application of the Entrance Subsystem and for the design and application of the evaluation mechanisms and tools for selection processes, which were established by the Civil Service Secretariat by its Decision of June 3, 2004, provide, at Paragraph 26, that the Selection Committee at each

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agency shall set the scoring parameters for grading evaluation results as follows: a) For management skills, a minimum pass mark of 70% and a maximum score of 100%; b) for technical skills, a minimum pass mark of 60% and a maximum score of 100%. Paragraph 31 mentions that the interview conducted by the Selection Committee shall examine the expertise and knowledge of the candidate and also evaluate in greater depth aspects of aptitude and attitude to public service and its guiding principles, and that at the end of each interview each member of the Committee shall draft a report that includes, *inter alia*, an overall assessment of the candidate. Paragraph 31 further provides that the Committee shall select a shortlist of three finalist candidates by consensus and award them a score on a scale of zero to 10 with fractions to two decimal places. Paragraph 32 of this Decision provides that the Committee shall select the winning candidate, preferably by consensus, and that if no consensus is reached, the grades shall be determined by calculating the mathematical average of the grades awarded by each member of the Selection Committee on a scale of zero to 10 with fractions to two decimal places.

<sup>viii</sup> Article 67 of this law (LSPCAPF) provides that the results of knowledge examination, experience, and aptitude in candidates in positions immediately below the vacancy shall carry significant weight in the evaluation of candidates to career positions, and that the result of the knowledge examination shall not be the only element assessed except when candidates fail to score above the minimum pass mark.

<sup>ix</sup> On July 11, 2005, the President of the Republic issued the Executive Order that approved the so-called Civil Service Professional Career Program 2004-2006, Article 2 of which provides for the preparation each year of an Annual Operating Plan for the Professional Career System by the Civil Service Secretariat in coordination with each agency. Furthermore, Article 4 of the Executive Order provides that the aforesaid Secretariat, with the appropriate participation of the Ministry of Finance and Public Credit, shall periodically determine the progress of the approved Program, the results of its implementation, and its impact on the attainment of the objectives and priorities of the National Development Plan 2001-2006, and, furthermore, take the necessary steps to correct any deviations detected and, as appropriate, propose the apposite reforms to said Program.

<sup>x</sup> Under Article 2 (III) of these Regulations (RLSPCAPF), the term Selection Committee is understood to refer to the Career Development and Selection Committee when it acts as the body that directs the recruitment and selection processes, as well as deciding the results of those processes in each agency. When it acts in this capacity, the Committee shall be composed as determined by the second paragraph of Article 74 of the Law (LSPCAPF), which provides that said Committee shall consist of a career official representing the agency's human resources department, a representative of the Secretariat, and the Chief Administrative Officer or their equivalent, who shall chair the Committee, and that in the absence of the Chief Administrative Officer, their place shall be taken by the direct supervisor of the area in which the institutional need or vacancy has arisen, who shall have the right to vote and to a reasoned veto of the candidate approved by the other members. This provision adds that in these decisions, the representative of the Secretariat shall certify the proceedings and their end result.

<sup>xi</sup> Those contents are as follows: The particulars of the agency issuing the vacancy notice; the vacant position or positions, stating the name, amount, administrative level, duties, regular salary and assignment; the profile to be met by applicants for the position or positions in the vacancy competition, as well as the character, legal, academic, labor, and any other requirements stipulated; the bidding conditions set by the Selection Committee; place, dates, and form of delivery of requests to applicants and, as applicable, of information and documentation on the competition, as well as agendas to prepare for the respective examinations; place, date and form in which interested parties should submit their applications and other required documentation (in no circumstances shall the deadline for the submission of applications by candidates be less than 10 working days); place, dates, and form in which the curriculum vitae review, general knowledge exams, skills assessments, and candidate interviews will be held; and place, date and form of publication of the results.

<sup>xii</sup> Article 26 of these Regulations (RLSPCAPF) provides that the Human Resources Departments shall review the curriculum vitae of candidates in order to determine who meets the necessary requirements and profile for the position under the terms of the vacancy announcement. To that end, they shall implement a curriculum vitae a review mechanism which shall generate a registry of candidates that automatically assigns the appropriate registry entry numbers in order to avoid duplication of curricula and the acceptance of time-barred applications.

<sup>xiii</sup> Article 27 of these Regulations (RLSPCAPF) provides that in the capacity evaluation stage, assessment tools and mechanisms shall be applied that enable candidates to demonstrate or accredit the following capacities: I.

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Public service and vision, and II. The two management skills and two technical skills selected by the relevant Career Development Committees as the most important for discharging the duties of the position in question, in accordance with its description. This provision adds that the Secretariat shall issue general guidelines on the design and application of evaluation mechanisms and tools in the selection process employed, which shall be confidential, objective, impartial, reliable, and ensure the anonymity of candidates until their evaluation by the Selection Committee. This Article also provides that agencies, through their human resources department, shall be responsible for applying said mechanisms and tools, which shall give particular attention to the level of expertise, as well as the skills, attitudes, knowledge, and experience of candidates. For its part, Article 29 of the aforesaid Regulations provides that human resources departments shall prepare the list, in order of precedence, of the candidates who have passed the capacity evaluation stage, which they shall present to the Selection Committee in order for the latter to select, in accordance with that order, the pre-finalist candidates whom it will assess in an interview, and who may number up to 10 per vacancy.

<sup>xiv</sup> Article 26 of these Regulations (RLSPCAPF) provides that in the interview stage, the Selection Committee shall meet as many times as necessary to evaluate and grade the group of pre-finalist candidates, to which end it may appraise, *inter alia*, their potential for learning other technical skills connected with other positions within the agency. This provision further states that the Committee shall select up to three finalist candidates based on the results of its appraisals.

<sup>xv</sup> This provision of the aforementioned Regulations (RLSPCAPF) also provides that in the event that the immediate supervisor only vetoes one of the finalist candidates, the Committee shall select the person to occupy the post from the remaining finalist candidates, and that if he or she vetoes the entire group, the Committee shall select a new group of up to three candidates from the pre-finalists in order to choose the person to occupy the position. The provision adds that the Committee shall seek to ensure that its decision in this respect is issued within not more than 90 calendar days after the publication of the vacancy notice, and that the direct supervisor may only exercise their veto in respect of one candidate or group in each selection process in which they take part.

<sup>xvi</sup> The requirements mentioned in this provision of the RLSPCAPF (Article 37), are as follows: that the vacancy is that of department chief, director-general or positions of equivalent rank; that the candidate for the vacancy is of equivalent rank and seniority; that the candidate meets the profile required for the vacancy they intend to occupy; that the candidate expresses their consent to occupy the vacancy; that the candidate has no impediment to occupy the vacancy under the terms of the Federal Law on Administrative Liability of Civil Servants or other applicable legal provisions; that the federal, local, or municipal government institution, or public or private agency in question, approves the transfer of the candidate; and that the Selection Committee of the agency issues a favorable decision on the entrance of the candidate, following an opinion issued by the Human Resources Department.

<sup>xvii</sup> Article 123(B)(XIV) of the Constitution provides that the law shall determine what positions are to be regarded as those of trust. Persons who hold such positions shall be entitled to the benefits of measures for the protection of wages and social security. The Federal Law on Workers in the Service of the State, which regulate the aforesaid constitutional rule, determines at Article 5 which positions are considered of trust.

<sup>xviii</sup> Paragraph I(a) of these guidelines concerns the provisional determination “of the organic and operational structure of the General Secretariat, the Secretariats of Parliamentary Services and of Administrative and Financial Services, the Office of the General Coordinator of Social Communication, and the Internal Auditor, as well as the technical and administrative units that currently exist, with their human resources and powers, pursuant to Articles 49, 50, 51, 52, 53, and 54 of the Organic Law of the Congress of the United Mexican States, until the legal reforms referred to in Preambular Paragraph Three are adopted and the amendments to the Statutes on the Technical and Administrative Organization of the House of Deputies Service Career are enacted.”

<sup>xix</sup> Preambular Paragraph Three of these Guidelines states, “On March 9, 2006, the Plenary of the Honorable House of Deputies adopted reforms to Articles 35(2); 47; 48; 49; 51; and 56(1)(b); the addition of a paragraph 2 to Article 34; and of a subparagraph e) to Article 38 (1), with the current paragraph 4 becoming paragraph 3, of the Organic Law, the respective bill being referred to the Honorable Senate for the purposes prescribed by the Constitution.”

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<sup>xx</sup> Article 17 of the Senate Statutes provides that the Dispute Review and Settlement Unit is an auxiliary organ of the Executive Board charged with the examination and resolution at final instance of appeals lodged by civil servants against decisions of the CECAFP.

<sup>xxi</sup> Those contents include: I) The vacancies in contention, candidate requirements, procedures, time frames and deadlines for each stage of the selection process and dissemination of their results; II) Schedule for specific procedures, verification of requirements, examinations, and notification of results at each stage of the selection process; III) Tie-breaker mechanisms, including notification that preference will be given to internal candidates who already have labor relations with the Senate, over external candidates; Any other information that the Executive Board chooses.

<sup>xxii</sup> Article 110 of the LOPJF state that the judicial career is composed of the following categories: I. Circuit Magistrate; II. District Judge; III. Registrar General of the Supreme Court Justice; IV. Deputy Registrar General of the Supreme Court Justice; V. Minister's Clerk; VI. Supreme Court Chamber Registrar; VII. Supreme Court Chamber Deputy Registrar; VIII. Circuit Court Clerk; IX. District Court Clerk; and, X. Federal Court Clerk.

<sup>xxiii</sup> Article 115 of the LOPJF adds the following: Aptitude tests shall be held at the request of the head of the organ that needs to make the respective appointment, who shall give preference to those who are in the immediately junior categories. Aptitude tests may also be requested by persons interested in entering the categories mentioned in the first paragraph of this Article, who, if they pass, shall be included in the list that the Federal Judicature Council shall prepare, in order to be taken into account in the event that a vacancy arises in any of the categories mentioned in paragraphs III to X of Article 110. – The Federal Judicature Council shall adopt general provisions establishing the maximum amount of time that those who pass in the terms of the preceding paragraph may remain on the aforesaid list. - Before designating the person to occupy the position, the Supreme Court of Justice, its President, the Chambers, minister, magistrate, or judge, as appropriate, shall request from the Federal Judicature Council the list of persons who are fit to occupy the vacancy. - In the case of minister's clerks, at least two thirds of the positions under each minister must be held by persons who have served for at least two years in category VIII and/or IX of Article 110 of this Law.

<sup>xxiv</sup> Article 11 of the RLOPSRM states, "Before agencies and entities may commence execution of works or services, whether on force account or by contract, the following must be verified: I. Subject to the type of contract, that the following are in place: The architectural and engineering studies and plans; the appropriate general and specific technical specifications and quality standards; the total and annual budgets for the works, as appropriate; the implementation schedule, and the schedules for the supply of materials, labor, machinery and equipment and, as appropriate, permanently installed equipment, whether they are to provided by the conveners or the contractors. In the case of services, the following must be in place: The terms of reference, the service provision schedules, the workforce and organization chart, and the works budget; II. That the contract or force account agreement has been secured and executed; and, III. That the resident engineer and the works superintendent have been designated in writing. - Provision must be made in construction projects for any economic, social, and environmental impact that might be caused by their execution; if the construction project is carried out in or near a populated area it must be consistent with legally prescribed urban development programs and, to that end, have the necessary approval; except in the cases mentioned in paragraphs II, IV and V of Article 42 of the Law."

<sup>xxv</sup> Article 24 of this 2004 decision provides that, "Social Witnesses shall be required to: a) Propose to agencies and entities, as well as to the Secretariat, improvements to strengthen transparency, impartiality, and legal provisions in the area of procurement, leasing, services, and public works and related services; b) Monitor implementation of recommendations arising from their participation in the contracting process; c) Issue the relevant attestation at the end of their participation, a copy of which is to be delivered to the Secretariat. Said attestation shall be published on the Internet website of the respective agency or entity within five business days after their participation concludes. - In no circumstances shall the issuance of the attestation release the public servants involved in contracting processes from liability for any unlawful acts that they might have committed."

<sup>xxvi</sup> Article 44 of the House of Deputies Procurement, Leasing and Financial Services Law provides that, "In tendering procurement, leasing and services contracts, the Services and Material Resources Unit need not restrict itself to public competitive bidding, but may opt for calls for bids to at least five participants, selection from three bids, or private contracts when: I. In the case of works of art, or goods or services for which no

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technically feasible alternatives or substitutes exist, the contract or services order may only be done with a particular person because they own or have the exclusive license over the patents, copyright, or other exclusive rights; II. Duly justified circumstances exist that might restrict the adequate progress of activities in the House or occasion substantial loss or added cost; III. They concern information of a confidential nature for the House. IV. As a result of an act of God or *force majeure*, it is not possible to obtain goods and services through public competitive bidding in the time needed to confront a given contingency; in such circumstances, the amounts or items shall be limited strictly to those needed to confront it; V. The respective contract has been rescinded or the services order cancelled on grounds imputable to the provider who was the successful bidder in the process. In these cases the House may award the contract or services order to the bidder who submitted the next lowest acceptable bid, provided that the difference in price compared to the bid that would have won originally is not more than ten percent. - In the case of contracting procedures in which a system of points and percentages has been used to evaluate the bids, the contract may be awarded to the bid with the highest score after that of the winner; VI. Two competitive bidding processes or calls for bids have been held and declared void, provided that the basic requirements mentioned in the bidding conditions are unchanged; VII. There are justified reasons for the procurement or lease of a certain brand of goods; VIII. They concern consultant, advisory, study and research, or training services because it is in the best interests of the House; IX. The goods to be procured come from persons who are not the usual providers but offer goods in favorable conditions because they are in the process of liquidation or dissolution, or else in receivership; X. They concern professional services furnished by an individual, provided that they are performed by the person in question and do not require the use of more than one specialist or expert; XI. They concern maintenance services for goods in which it is not possible to determine their exact scope, amounts of work, or the relevant specifications; XII. The goods procurement or services provision is accepted in lieu of payment, under the terms of the Federal Treasury Law; XIII. They concern the procurement of perishable goods; basic, semi-processed, and processed food products; catering services and the goods and services connected with the provision thereof; XIV. They concern any transportation service for the adequate progress of activities in the House.”

<sup>xxvii</sup> Article 22 (a), of the House of Deputies Public Works and Related Services Law provides: “Through public competitive bidding.- For this procedure the amount involved must be in excess of the equivalent of 900 times the monthly minimum wage in force in the Federal District, plus value-added tax, at the time the competition notice is published.”

<sup>xxviii</sup> Article 22 (b), of the House of Deputies Public Works and Related Services Law provides: “Through calls for bids to at least three participants. When the cost is between 145 plus on peso and 900 times the monthly minimum wage in force in the Federal District plus value-added tax.”

<sup>xxix</sup> Article 22 (c), of the House of Deputies Public Works and Related Services Law provides: “Through private contracts.- In cases where the cost of the public works or related services is between one peso and the equivalent of 145 times the monthly minimum wage in force in the Federal District plus value-added tax.”

<sup>xxx</sup> Article 39 of the House of Deputies Public Works and Related Services Law provides that “In tendering contracts for public works and related services, the Services and Material Resources Unit need not restrict itself to public competitive bidding, but resort to calls for bids to at least three participants, or private contracts when: ...”. The Article then mentions the same scenarios provided for in sections I to VI of Article 44 of the House of Deputies Procurement, Leasing and Financial Services Law, and then adds the following articles: “VIII. When they concern the maintenance, restoration, repair, or demolition of buildings in which it is not possible to determine precisely their scope, the list of items, amounts of work, the relevant specifications, or draw up an execution schedule; IX. They concern services relating to public works furnished by an individual, provided that they are performed by the person in question and do not require the use of more than one specialist or expert; X. The execution of the work is accepted in lieu of payment, under the terms of the Federal Treasury Law.”

<sup>xxxi</sup> Paragraphs I and II of Article 22 of the House of Deputies Public Works and Related Services Law refer, respectively, to public competitive bidding and calls for bids to at least three participants.

<sup>xxxii</sup> Rule 21 of the Rules on Senate Procurement, Leasing, Service Provision, and Public Works lists these circumstances and adds that in those mentioned in Paragraphs II, III, XII, XV, XVI, XVII, XVIII, XXIII, and XXIV, the Requesting Unit, with support from the relevant Technical Unit, shall draw up an opinion justifying

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and providing the reasons for the circumstances in each case, and that in each case the Operations Unit shall furnish the Committee with a monthly report on any operations carried out.

<sup>xxxiii</sup> Rule 48 of the Rules on Senate Procurement, Leasing, Service Provision, and Public Works reads as follows: “In issuing its decision, the Operations Unit shall consider the following: I. the expert opinion prepared by the Requesting Unit, with support from the Technical Unit, which shall set out the assessment of the bids presented, indicating which ones meet the requirements contained in the respective bidding conditions; II. A comparative chart, drawn up by the Operations Unit, of the technically qualified bidders financial bids; and III. The contract shall be awarded to the person taking part in the call for bids that meets the requirements set forth in the bidding conditions, guarantees performance of the obligations established, and satisfies the conditions of timeliness, quality, guarantee, and price. If the financial appraisal produces a tie in the price offered by two or more bids, the contract shall be awarded to the bidder who wins the manual drawing of lots (*insaculación*) held by the conveners at the award ceremony, in which a slip for each tied bid is deposited in an urn, from which the slip of the winning bidder is then drawn. Provision must be made for this procedure in the bidding conditions.”

<sup>xxxiv</sup> Rule 52 of the Rules on Senate Procurement, Leasing, Service Provision, and Public Works reads as follows: “The Operations Unit and, in special cases, a Spending Unit, shall opt for a private contract and select the suitable supplier, contractor, or service provider in terms of quality, price, timeliness, and other considerations.- The Operations Unit shall submit a monthly report to the Committee on all operations conducted under this Rule. The following procedure must be observed in private contracts concluded in the circumstances provided for in paragraphs II, XII, XV, XVII, XVIII, and XXIII of Rule 21: I. The Operations Unit shall propose the private contract procedure to the Committee, indicating the grounds stated by the Requesting Unit for the contract and its amount. - With said documents, the Operations Unit shall prepare the necessary report for evaluation by the Committee, which, should it deem it appropriate, shall approve the procedure; and II. With said approval, the Operations Unit shall proceed to sign the agreement.”

<sup>xxxv</sup> Under Article 2 (XXVII) of General Administrative Decision 6/2001 of the Office of the President of the Supreme Court of Justice of the Nation, “Udis” is the investment unit recognized in the Mexican financial system in which financial transactions, whether of a credit, investment, or mercantile nature, may be conducted, the peso value of which is determined by the Bank of Mexico and periodically published in the Official Gazette of the Federation. For its part, Article 30 of said Decision states the following: “Procurement operations are rated by their estimated cost in Udis as follows: I. Procurement by imprest fund. Where the estimated cost does not exceed the equivalent of 1,000 Udis, payment may be made by imprest fund, shall not require a contract and/or request, and shall be verified by means of the invoice or receipt that comply with the fiscal requirements established by law. Quotations shall not be required in such cases. II. Minimal procurement. Where the estimated cost does not exceed 14,500 Udis, or 7,250 Udis when conducted by the heads of the *Casas de la Cultura Jurídica*. III. Minor procurement. Where the estimated cost is more than 14,500 Udis but less than 48,200 Udis. IV. Intermediate procurement. Where the estimated cost is more than 48,200 Udis but less than 145,000 Udis. V. Median procurement. Where the estimated cost is more than 145,000 Udis but less than 290,000 Udis. VI. Major procurement. Where the estimated cost is more than 290,000 Udis but less than 900,000 Udis. VII. Superior procurement. Where the estimated cost exceeds 900,000 Udis.”

<sup>xxxvi</sup> Article 31 of General Administrative Decision 6/2001 of the Office of the President of the Supreme Court of Justice of the Nation, provides as follows: “A procurement shall be rated urgent, regardless of its amount, when the goods, services, uses, or public works are required immediately and one of the following circumstances is shown to exist: I. It is necessary to install and initiate activities immediately, due to the public service needs of an organ or area of the Supreme Court of Justice of the Nation. II. It would avert suspension of the activities of an organ or area of the Supreme Court of Justice of the Nation. III. When the property of the Supreme Court is damaged due to events of *force majeure* or acts of God and they need to be replaced or repaired, thereby averting further harm. IV. When required for security reasons, provided that it would avert imminent danger to persons or property.”

<sup>xxxvii</sup> Article 32 of General Administrative Decision 6/2001 of the Office of the President of the Supreme Court of Justice of the Nation, provides as follows: “Special procurement. Where, regardless of its amount, owing to unique characteristics, it is only possible to contract with a particular person, whether because of their professional qualities or because the procurement involves works of art, artisan labor, ownership of patents and trademarks, copyright, or other exclusive rights. - Procurement with manufacturers shall be rated special

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provided that it is accredited by expert opinion that the goods and services offer superior conditions in terms of price, delivery time, quality, and warranty compared with the other goods that exist in the market. - Procurement shall also be rated special when conducted with exclusive distributors, in which case the manufacturer or owner of the exclusive rights shall provide a letter on their letterhead setting out those circumstances. - Procurement shall also be rated special when it concerns national and international accommodation and transportation services required for official commissions entrusted to public servants of the Supreme Court of Justice of the Nation, as set down in the provisions of the General Administrative Decision of the Office of the President of the Supreme Court of Justice of the Nation establishing the procedure for granting accommodation, transportation, and per diem expenses in favor of public servants of the Supreme Court of Justice of the Nation by reason of official commissions.”

<sup>xxxviii</sup> Article 71 of General Administrative Decision 6/2001 of the Office of the President of the Supreme Court of Justice of the Nation, provides as follows: “Public competitive bidding. This is the contract tendering procedure for the procurement of goods, provision of uses and services, and execution of public works, which are rated by their amount as of superior value and are approved by the President. In such procedures the Supreme Court publicly invites all interested parties to participate by freely submitting sealed bids to be opened in public, in order to select the supplier, service provider, or contractor that offers the best conditions in terms of price, timeliness, quality, financing, and service, and enable the Supreme Court to observe the principles of economy, efficiency, effectiveness, fair competition, and honesty.”

<sup>xxxix</sup> Article 86 of General Administrative Decision 6/2001 of the Office of the President of the Supreme Court of Justice of the Nation, provides as follows: “The restricted call for bids is the tendering procedure used when the amount of the procurement is rated of major or median value, or when a prior public competitive bidding process is declared void. - The Committee or the Secretaries, through Procurement and Services, shall invite at least six suppliers, service providers, or contractors that, preferably, are listed in the catalogue of the Supreme Court or, if not listed, are determined, based on market research previously conducted by Procurement and Services, to have the capacity to supply the goods, provide the services, or carry out the public work. The number of persons invited to bid and their selection shall be determined by the Committee or the Secretaries. - Before issuing the call for bids, the Committee or the Secretaries shall familiarize themselves with the technical specifications of the goods to be procured or used, the services to be provided, or the public work to be carried out, in addition to the needs of the User Areas.” Article 87 of the Decision stipulates the contents of calls for bids, and mentions, *inter alia*, that they must indicate that the decision is not open to appeal.

<sup>xl</sup> Article 90 of General Administrative Decision 6/2001 of the Office of the President of the Supreme Court of Justice of the Nation, provides as follows: “Private contracts shall be authorized by decision of the public servant who approves them. That approval shall be duly reasoned with respect to the supplier, service provider, or contractor that receives the award. It shall also set out the reasons why the bid offers the best conditions in terms of price, quality, financing, timeliness, maintenance, service, and useful life, and that there is reason to be certain that the supplier, service provider, or contractor will perform the obligations under the contract on time and that the conditions meet the requirements of the Supreme Court based on their past history, assuming they are listed in the catalogue of the Supreme Court, or on the information collected by Procurement and Services. – In the case of purchases made by imprest fund, a decision by the public servant shall not be necessary; however, the public servant must submit a weekly report to the head of Procurement and Services detailing the funds appropriated for these purchases.”

<sup>xli</sup> Under Article 124 of General Administrative Decision 6/2001 of the Office of the President of the Supreme Court of Justice of the Nation, “The purpose of the Catalogue of Suppliers, Service Providers, and Contractors of the Supreme Court is to have a list of physical and legal persons with the appropriate legal, financial, fiscal, human, and material capacity who engage in commercial activities that ensure an adequate system of provision and supply of all the goods, services, and uses, as well as the execution of public works and related services that the Supreme Court might require.”

<sup>xlii</sup> Article 37 of General Decision 75/2000 of the Plenary of the Federal Judicature Council sets out these cases and adds that the contracting operations mentioned in this Article shall preferably be carried out through restricted calls for bids unless that is not possible or not appropriate for the interests of the Council. The Article also states that for the purposes of this Article approval must first be obtained from the Committee, to which

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end, the relevant Operations Area shall state the reasons justifying the use of the respective alternate procedure for the procurement.

<sup>xliii</sup> Article 212 of the Federal Criminal Code, provides as follows: “For the purposes of this title (X: Crimes Committed by Public Servants) and the one immediately following (XI: Crimes against the Administration of Justice), a public servant is any person employed, holding an office or carrying out a commission of any nature by, in or on behalf of the Central Federal Public Administration or the Federal District, decentralized bodies, enterprises in which the state has a majority interest, organizations or bodies assimilated thereto, public trusts, or persons in the Congress of the Union, or in the federal judicial branch or the judicial branch of the Federal District, or that manage federal public funds. The provisions contained in this Title are applicable to state governors, deputies of local legislatures, and judges of local courts who commit the crimes recognized in this title at the federal level. – The same penalties shall be imposed, as appropriate, on any person that participates in the commission of any of the offences provided for in this or the following title.”

<sup>xliiv</sup> At the request of the plenary of the 11th Meeting of the Committee of Experts of the MESICIC, Mexico reported the following information regarding the jurisprudence of its federal judiciary:

- “BRIBERY, OFFENSE OF. COMMITTED WHEN A GIFT IS REQUESTED, REGARDLESS OF WHETHER THE PASSIVE SUBJECTS ACTUALLY HAND OVER THE ITEM REQUESTED OR NOT. It is clear that bribery entails the request for a gift, regardless of whether the passive subject actually hands over the item requested or not; the request of a gift is enough for the offense to be deemed committed, because that is one of the ways in which the offense is committed, along with receiving money or gifts. It thus emerges that the offense in question covers three situations, in each of which the crime of bribery is committed: requesting a gift, receiving any item, and accepting a promise. The conclusion is that if a public employee requests a gift, it is clear that he does so because he is willing to receive it or, when applicable, to accept a promise that a gift will be provided. In such a situation, the offense is committed merely with the request, and it may not be said that if the public employee received the requested benefit or accepted a promise he again incurred in the offense, since such actions would be the consequence of the first, whereby the offense was perpetrated, and not autonomous offenses. It may therefore not be maintained that if a gift is requested, a part of it is received, and guarantees for the remainder are accepted, three different offenses are involved. COLLEGIATE CRIMINAL COURT OF THE FIRST CIRCUIT. Direct Amparo 337/84. Carlos Deluera Martínez (related to DP. 338/84). February 20, 1985. Unanimous. For the majority: Guillermo Velasco Félix. Secretary: María Cristina Jiménez Hidalgo.”

“BRIBERY AND EXTORTION. DIFFERENCES BETWEEN THEM (LEGISLATION OF THE STATE OF MÉXICO). The law of the State of México differentiates between the offenses of bribery and extortion: It states that bribery entails, according to the case, “requesting” or “obtaining” – or, alternatively, “offering,” “delivering,” or “promising.” Such circumstances involve the implicit nature of a willingness to request and accept, or to offer and deliver: in other words, bribery seeks to prevent the illegal behavior of both public employees and private citizens who, through acts of corruption, seek to resolve a conflict in order to benefit something other than the due exercise of public duties, thus leading to the commission of illicit acts or the omission of those legal acts that are expected to be performed. This is further corroborated with the use, in the definition of the crime of bribery, of the term “gift,” which by definition is related to the idea of freely granting, gifting, and presenting: an action that is neither forced nor involuntary, but expressly or implicitly accepted. For that reason the crime of bribery admits the possibility of the sanctions being applied to both those who receive or accept and to those who offer, promise, or deliver, covering both public employees and private citizens; also for that reason the Criminal Code for the State of México covers it in Chapter VII of Subtitle II, called “Crimes Against the Public Administration,” which falls under Title One, “Crimes Against the State”. In contrast, the crime of extortion addressed by Article 266 of the same Code punishes anyone who illicitly forces another to do, tolerate, or refrain from doing, thereby obtaining a benefit for himself or another, and is located in Subtitle Three, “Crimes Against Freedom and Security,” which falls under Title Three, “Crimes Against Persons.” Consequently, the nature of the two offenses is different: while the former punishes attempts to collude or perform acts of corruption to the detriment of the State and society, the latter is an offense against personal freedom, since the act of obtaining illicit advantage by forcing another to act (a concept that covers the handing over of goods or items of any kind) is understood as an act against the will of the passive subject: in other words, a demand or imposition by the active subject. SECOND COLLEGIATE CRIMINAL COURT OF THE

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SECOND CIRCUIT. Amparo Appeal 197/2004. January 21, 2005. Unanimous. For the majority: José Nieves Luna Castro. Secretary: Jorge Hernández Ortega.”

<sup>xlv</sup> Response of Mexico to the Questionnaire, p. 63. Here it states the following: “The chief difficulty in implementing the recommendations, in particular those that entail legal reforms in the framework of the State, has to do with the political and technical complexities faced by the officers in charge of State Control Organs in promoting those reforms in the legislatures of their federal states. Another major difficulty concerns the limited resources (economic, human, and technical) to which the Permanent Committee of State and Federal Comptrollers has access for its operations and to support reform processes in the federal states.”

<sup>xlvi</sup> Response of Mexico to the Questionnaire, p. 63. Here it states the following: “The following administrative units in this agency have been involved in the process of dissemination and support for the efforts of federal states with respect to the Inter-American Convention against Corruption: I. The Civil Service Secretariat, through the following administrative units: a) the Bureau of Regional Operations and Social Oversight, which coordinates activities with the federal states, and, b) The Transparency Linkage Unit, which is in charge, *inter alia*, of assisting compliance with international commitments for preventing and combating corruption. II. The federal states, through their comptrollers, based on the fact that, due to their powers, they have at their disposal analyzed information on implementation in our country of the Inter-American Convention against Corruption. III. The federal legislative branch, through its administrative units, based on the fact that due to its powers it has at its disposal analyzed information on implementation in our country of the Inter-American Convention against Corruption. IV. The federal judicial branch, through its administrative units, based on the fact that due to its powers it has at its disposal analyzed information on implementation in our country of the Inter-American Convention against Corruption.”

<sup>xlvii</sup> Response of Mexico to the Questionnaire, pp. 67 and 68. Here it states the following: “As regards recommendation ‘b,’ one of the main stumbling blocks in the implementation of training programs is that greater participation is needed. Indeed, it is necessary for all public servants involved in the issues on which training is being provided to attend the training courses, and they should be afforded flexible work hours for that purpose.”

<sup>xlviii</sup> Response of Mexico to the Questionnaire, p. 68. Here it states the following: “The Civil Service Secretariat and the internal control organs of federal government agencies or entities.”

<sup>xlix</sup> Response of Mexico to the Questionnaire, p. 73. This page contains a reference to the information provided on pages 67 and 68, which says “in relation to recommendation b., one of the main stumbling blocks in the implementation of training programs is that greater participation is needed. Indeed, it is necessary for all public servants involved in the issues on which training is being provided to attend the training courses, and they should be afforded flexible work hours for that purpose.”

<sup>l</sup> Response of Mexico to the Questionnaire, p. 74. Here it states the following: “The Civil Service Secretariat – The Ministry of Finance and Public Credit.”

<sup>li</sup> Response of Mexico to the Questionnaire, p. 77. Here it states the following: “As regards recommendation ‘b,’ it should be mentioned with respect to the Federal Law on Administrative Liability of Civil Servants, that the need has been detected to encourage an increase in the number of training courses so as to enable public servants to become better acquainted with that law.”

<sup>lii</sup> Response of Mexico to the Questionnaire, p. 78. Here it states the following: “The Civil Service Secretariat, the Governors of the 32 federal states and the Chief Administrative Officers of federal government agencies and entities.”

<sup>liii</sup> Response of Mexico to the Questionnaire, p. 81. Here it states the following: “As regards recommendation ‘c,’ the updated Net Worth Information System is not yet fully operational because it has been necessary to carry out pilot tests, which have delayed evaluation of its results.- Despite awareness campaigns, there have been difficulties persuading the vast majority of civil servants to make their statements of net worth public. This trend needs to be inverted through campaigns that achieve greater impact and acceptance of the benefits of disclosure of the information they contain.- Measures are needed to ensure that investigations of changes in net worth of public servants are opened *ex officio*, and not simply when a report is lodged, bearing in mind the areas identified as sensitive to corruption.”

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<sup>liv</sup> Response of Mexico to the Questionnaire, p. 81. Here it states the following: “The Bureau of Financial Holdings and Responsibilities and the Information Technology Office of the Under-Secretariat for Citizen Assistance and Regulations, both under the supervision of the Civil Service Secretariat.”

<sup>lv</sup> Response of Mexico to the Questionnaire, p. 83. Here it states the following: “With regard to the recommendations to which this section refers, it should be mentioned that there is adequate cooperation and information exchange between the Civil Service Secretariat and the Office of the Auditor General of the Federation, in accordance with the applicable law.”

<sup>lvi</sup> Response of Mexico to the Questionnaire, p. 83. Here it states the following: “The Civil Service Secretariat and the Office of the Auditor General.”

<sup>lvii</sup> Response of Mexico to the Questionnaire, p. 98. Here it states the following: “With respect to recommendations ‘a,’ ‘b,’ ‘c,’ and ‘d,’ the overall results of the review reflected broad compliance with the transparency obligations. However, the review only verifies the contents of the Internet sites according to the criteria set down in the review methodology, without taking into account the format in which information was presented, which is an important aspect where transparency is concerned. It should be pointed out that the low levels of compliance do not necessarily mean that the agencies and entities had omitted sizeable amounts of information. The poor results are due, in some cases, to the fact that agencies or entities omitted to publish certain elements specified in the review criteria connected with the execution of public funds. -Dissemination of awareness and exercise of the right of access to information in smaller municipalities where access to electronic systems is more limited poses a challenge for making this right readily available to the whole population. -As of December 31, 2005, the proportion of agencies and entities that published all their consultation instruments as required by the Guidelines on Archive Organization and Conservation in federal government agencies and entities came to 74.9%, which reveals that more needs to be done to promote an institutional culture of archive organization, one of the tasks pending for the IFAI (Annex 10). -The shortcomings that arise in the area of archive-keeping have to do with the archive keeping institutions themselves, which usually lack their own legal standing in the strict sense of the word, are usually attached to the office of the chief administrative officer, and are at the bottom of the organizational structure. Human resources are in short supply and, furthermore, require additional training in order to assign to them in due course activities that require a higher level of expertise. As regards salaries, they are among the lowest in the market. Fund appropriations are mainly used to cover staff wages; there is a shortage of resources necessary for overall sustained development (infrastructure, equipment, human resources); archive managers have difficulty influencing budget appropriations. It would be fair to say that problems of substandard material resources are the norm in government agency archives. It is a widely held view that in order to solve the problems of archive services it is necessary to automate and digitalize the document records. The IFAI will continue efforts to draw up a joint plan of action with the General Archive of the Nation, since the difficulties faced by agencies and entities owing to different interpretations of provisions on archive keeping or the refusal to use modern document management systems, obstructs the proper organization, modernization, and conservation of federal public administration archives. This is an historic opportunity that would make it possible to put archives at the forefront of a policy to promote accountability and create an historical and cultural heritage for future generations.”

<sup>lviii</sup> Response of Mexico to the Questionnaire, p. 81. Here it states the following: “The Federal Institute for Access to Public Information (IFAI), the General Archive of the Nation, and Civil Service Secretariat.”

<sup>lix</sup> Response of Mexico to the Questionnaire, p. 100. Here it states the following: “The plurality of participation, the technical work, and the high-level political support have been crucial for moving forward with this progress. The next step is to institutionalize public-private sector dialogue on improving competitiveness and continue the aforementioned program of action in the framework of the Federal Council for Regulatory Improvement, in order to give this effort a far-reaching scope. In that connection, at the 12th meeting of the Council, held on May 29, 2006, the CCE submitted for the Council's consideration the addition of Article 4 bis to its Rules of Procedure, in order to formalize the creation of a permanent forum for public-private sector dialogue designed to bring about concrete results in enhancing competitiveness and regulatory improvements for the national productive sector.- The amendment proposed by the CCE was approved by the Council and will provide it with two additional levels on which to operate: on one hand, the Executive Committee, which will have authority to analyze, design, and propose solutions on matters entrusted to it by the Council, and to

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propose regulatory improvement measures at the technical level; and, on the other, technical working groups charged with implementing any necessary specific regulatory improvement measures of a technical nature to comply with requests of the Executive Committee. There will be public and private sector involvement in both bodies.”

<sup>lx</sup> Response of Mexico to the Questionnaire, p. 101. Here it states the following: “In addition to COFEMER, the involvement should be mentioned of the CCE and the IMCO, as well as the Presidential Office for Public Policy, the Presidential Office for Government Innovation, and the various government ministries and public sector agencies taking part.”

<sup>lxi</sup> Response of Mexico to the Questionnaire, p. 105. Here it states the following: “In particular the Civil Service Secretariat and COFEMER.”

<sup>lxii</sup> Response of Mexico to the Questionnaire, p. 108. Here it states the following: “As regards recommendation ‘a’, one difficulty as regards consolidation of societal oversight schemes in federal social development programs was the lack of an adequate legal framework for such mechanisms. The General Law on Social Development and its regulations, would permit proper regulation of those societal oversight mechanisms (see Annex 15).”

<sup>lxiii</sup> Response of Mexico to the Questionnaire, pp. 108 and 109. Here it states the following: “The agencies involved in the implementation of societal oversight mechanisms are the Civil Service Secretariat through the Bureau of Regional Operations and Societal Oversight, the State Control Organs, and federal agencies that implement social development programs. - Regulatory provisions require agencies in charge of social programs to publicly disclose information about their societal oversight schemes on Internet web sites.”

<sup>lxiv</sup> Response of Mexico to the Questionnaire, p. 114. Here it states the following: “As regards recommendation 5.1., the difficulties that arose in the preparation of new case files on bribery in connection with money laundering were that, despite the existence of specific provisions in this regard, as yet there have been no successful individual cases that demonstrate the feasibility of the contents of those provisions. - Furthermore, with respect to cooperation among groups of countries, with other states parties to the Inter-American Convention against Corruption, and with international agencies, the occasional difficulties that arose had to do with the failure to apply in practice the agreements reached in the legal instruments.- With respect to recommendation 5.2., no problems have arisen as regards implementation because the drafts texts are still under negotiation.”

<sup>lxv</sup> Response of Mexico to the Questionnaire, p. 114. Here it states the following: “As regards recommendation 5.1., the internal agencies are the Transparency Linkage Unit of the Civil Service Secretariat and the Office of the Prosecutor General. - The internal Mexican government agencies that have participated in the negotiations on the treaties that include these articles against corruption have been the Office of the Prosecutor General, the Ministry of Foreign Affairs, and the Asset Management and Transfer Service of the Ministry of Finance and Public Credit.”

<sup>lxvi</sup> Response of Mexico to the Questionnaire, p. 119. Here it states the following: “As regards recommendation 7.2., on occasion the indicators cannot be assembled quickly because the information they should contain does not flow properly; therefore, systematization is needed to facilitate their integration, consultation and dissemination.”

<sup>lxvii</sup> Response of Mexico to the Questionnaire, pp. 119 and 120. Here it states the following: “The Civil Service Secretariat, the Ministry of Foreign Affairs, the Ministry of Finance and Public Credit, the Office of the Prosecutor General, IFAI, COFEMER, the General Archive of the Nation, and the Internal Control Organs at the various federal government agencies and entities. The legislative branch, judicial branch, and the governments of the federal states have also taken part.”