

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

FINAL REPORT

(Adopted at the December 15, 2006 plenary session)

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

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

INTRODUCTION

1. Contents of the Report

This report presents, first, a review of the implementation in the Republic of Nicaragua 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 the Republic of Nicaragua 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_nic.pdf.

2. Ratification of the Convention and adherence to the Mechanism

According to the official records of the OAS General Secretariat, the Republic of Nicaragua ratified the Inter-American Convention against Corruption on March 17, 1999, and deposited the respective instrument of ratification on May 6, 1999.

In addition, the Republic of Nicaragua 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 the Republic of Nicaragua

The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Nicaragua, and in particular from the office of the Executive Director of the Office of Public Ethics, which was evidenced, *inter alia*, in the response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its response, the Republic of Nicaragua sent the provisions and documents it considered pertinent.

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

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

2. Documents received from civil society organizations

The Committee also received, within the time limit established in the schedule for the second round adopted at its ninth meeting,² a document sent by Transparency International, drawn up under the coordination of the Ethics and Transparency Civic Group (*Grupo Cívico Ética y Transparencia, EyT*) and with the participation of the Association of Internal Auditors of Nicaragua (AAIN), the Association of Jurists and Litigators of Nicaragua (AJALNIC), *Probidad*, and the National Academic Law Commission (CONADER).³

II. REVIEW OF IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE SECOND ROUND

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

1.1. SYSTEMS OF GOVERNMENT HIRING

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

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

- Constitutional provisions applicable to all public servants, such as the one found in Article 130 of the Constitution,⁴ which sets a general ban on the appointment of chief officials in the fourth degree by blood or the second by marriage, except “*those appointments in compliance with the Civil Service and Administrative Career Law, the Teaching Career Law, the Judicial Career Law, the Foreign Service Career Law, and any other similar laws as may be enacted.*” This ban is to be regulated by law. Similarly, Article 131 states that the Civil Service and the Administrative Career are also to be regulated by a specific law.

- Legislative provisions applicable to all public servants,ⁱ such as those contained in Law No. 438 of 2002 (State Civil Servants’ Probity Law),⁵ of which Article 8 (c) bans the appointment, in any branch of government or state agency or dependency thereof, of persons related by up to the fourth degree by blood or the second by marriage, but is not applicable to appointments under the Civil Service and Administrative Career Law, the Teaching Career Law, the Judicial Career Law, the Foreign Service Career Law, and any other similar laws as may be enacted. In addition, Article 11 of the Law specifies the causes of disqualification from exercising public functions.

- Legislative provisions and sundry other provisions applicable to most public servants,^{ii,iii,6} such as the following:

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

³ This document was received in electronic format on July 17, 2006, and can be consulted on the internet at: http://www.oas.org/juridico/spanish/mesicic2_nic_inf_sc_sp.pdf

⁴ <http://www.asamblea.gob.ni/constitu.htm#titulo1>

⁵ [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/819EFA95BC55D5A5062570BC005E869A?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/819EFA95BC55D5A5062570BC005E869A?OpenDocument)

⁶ The Organic Law of the Office of the Attorney General does not create a special career law for said Office. Accordingly, the exception contained in Article 77, paragraph 3 of Law 476 of 2003 does not apply to said entity, which, therefore, is covered by the latter Law.

Law No. 476 of 2003 (Civil Service and Administrative Career Law),⁷ which in Articles 28, 78, 79, and 80 enshrines the principles of equality, merit, ability, and equity for entry to the Administrative Career and ensures the participation of officials, internal employees, and external candidates in the allocation of positions by means of a single process; in Articles 81, 82, and 83, respectively, establishes the general eligibility requirements for admission to the Administrative Career, the publication of vacancy announcements, and the content required of such announcements; and in Articles 15, 16, 17, 18, 19, 20, and 21, establishes the governing bodies of the Civil Service⁸ and defines the powers of each; and in Article 90 specifies mechanisms for appealing the results of the selection process.

Decree No. 87-2004 (Regulations of Law 476, the Civil Service and Administrative Career Law),⁹ which in Articles 52, 80, 81, and 84 enshrines the principles of merit, equality, ability, and equity for position allocation processes and ensuring merit as the fundamental principle behind policies for managing and developing the Administrative Career system; in Articles 4, 87, 88, and 89, respectively, sets the eligibility requirements for entry into the Civil Service and for participation in the position allocation process, and regulates the publication and content of vacancy announcements; in Articles 9, 10, 11, 12, 23, 24, 25, 26, 27, 28, 29, 34, 35, 38, and 85 regulates the composition of the governing bodies of the Civil Service,¹⁰ their structure and organization, the specific functions of some of their members; and in Articles 14, 15, 16, 17, 18, 19, 20, 21, 22, and 96 regulates the various appeals mechanisms and procedures available.

- Legislative provisions applicable to all Municipal Career servants,^{11,12} such as those contained in Law No. 502 of 2004 (Municipal Administrative Career Law),^{13,iv} which in Articles 3, 47, 48, and 49 enshrines the principles of equality, uniformity, merit, ability, and disclosure for entry to the Municipal Administrative Career and ensures the participation of officials and internal employees of the municipality and of external candidates in the allocation of positions by means of a single process; in Articles 46, 50, 51, and 57, respectively, establishes the general requirements for admission to the Municipal Administrative Career, the publication of vacancy announcements, the contents of such announcements, and the requirements for joining the Municipal Administrative Career; in Articles 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 establishes the bodies responsible for enforcing the Law^v and defines the powers of each; and in Articles 3 and 55 establishes the right to challenge vacancy announcements and the appointment of officials and employees.

⁷ http://www.hacienda.gob.ni/hacienda/Proyectos/sisec/LEY_476.pdf

⁸ These are: the Civil Service Appeal Commission, the National Civil Service Commission, the Ministry of the Treasury and Public Credit, and the human resource offices.

⁹ [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/8C07E0DA2B6610E0062570A100584358?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/8C07E0DA2B6610E0062570A100584358?OpenDocument)

¹⁰ These are: the Civil Service Appeal Commission, the National Civil Service Commission, the Ministry of the Treasury and Public Credit, and the human resource offices.

¹¹ Under Article 2 of Law No. 502 of 2004 (Municipal Administrative Career Law), that Law applies to those who provide services on a permanent basis and officials and employees of the municipalities and are paid from the municipal budget.

¹² Article 5 of Law No. 502 of 2004 states that it does not apply to publicly elected officials, personnel of trust, and temporary employees.

¹³ [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/1DB9BBEF3892C99C062570A100583CEE?Open](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/1DB9BBEF3892C99C062570A100583CEE?Open)

- Legal provisions applicable to the Judicial Career,^{vi} such as those contained in Law No. 501 of 2005 (Judicial Career Law),¹⁴ which in Article 2 states that the Judicial Career is to be governed by the principles of merit, responsibility, equality, disclosure, stability, impartiality, independence, and specialization; in Articles 8, 9, 10, 11, 12, 13, 14, 15, and 18 sets out the prerequisites for participation in the merit competitions and the formal requirements for entry into the Judicial Career, together with the publication and content of contest announcements and the rules for those processes, and defines the criteria to be used in assessing applicants' merits; in Articles 4, 5, 6, and 7 creates the National Judicial Administration and Career Council as the governing body of the Judicial Career and defines its powers; in Articles 16 and 17 sets out appeals remedies whereby citizens with objections regarding the suitability of Judicial Career candidates can file duly grounded challenges with the Examining Tribunal; and in Article 23 allows the possibility of seeking a review of the score obtained and of filing an appeal against resolutions denying such review requests.

- Legal provisions applicable to Nicaraguan professionals and technicians hired for public sector programs and projects financed with funding from governments or international agencies, such as those contained in Law No. 505 of 2005,¹⁵ which regulates the preferential hiring of the services of Nicaraguan professionals and technicians for the preparation and execution of public sector programs and projects that contemplate funding from loans extended by national or international governments or agencies, or in those private sector programs and projects in which the State serves as an intermediary or guarantor for the funding (Article 1). Article 8 of this law states that the procedure for hiring such professional or technical services shall be in accordance with the State Contracting Law, through a public call for applications based on a merit competition (Article 9), and allowing appeals and challenges to be made against the results (Article 10). Finally, Article 13 states that the Office of the Comptroller General of the Republic is to be responsible for overseeing hiring issues.

- Legal provisions applicable to employees of Oversight Bodies, such as those contained in Law No. 346 of 2000 (Organic Prosecution Service Law),¹⁶ applicable to employees of the prosecutor general's office, and which in Article 22 sets out the requirements for departmental and autonomous region prosecutors, and for auxiliary prosecutors; in Article 37, paragraph III, stipulates that until the Prosecutorial Career Law is enacted, the selection of prosecutors is to be effected by means of public competitions organized by the Prosecutor General, after publication of the corresponding announcement, which is to indicate the requirements and tests applicable to candidates. It also states that the selection system is to be governed by the principles of equality, merits, and ability.

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 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 series of comments regarding the usefulness of the country giving consideration to the expansion, development, and adaptation of certain provisions related to those systems.

¹⁴ <http://legislacion.asamblea.gob.ni/Normaweb.nsf/0/DCF5C170E0D0300C062570A100584BC7?OpenDocument>

¹⁵ [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/3D5FEBCCA1023011062570A100583D1B?Open](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/3D5FEBCCA1023011062570A100583D1B?Open)

¹⁶ [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/D2EC1BA7D623812F062570A10058074E?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/D2EC1BA7D623812F062570A10058074E?OpenDocument)

- As regards measures applicable to all the State's entities,¹⁷ the Committee believes that:

First of all, to support the established oversight mechanisms, the Committee believes the country under review should consider adopting the declaration of background and interests instrument, to provide it with the information necessary to prevent access to public functions by persons who, by reason of their past history, could undermine trust in the integrity of public officials, or those who, by reason of their personal interests, do not offer the necessary guarantee that the public interests over which they would have responsibility if hired would receive due protection. To that end, the Committee believes that the country under review should use the Civil Service Information System (SISEC) established in Article 32 of Law No 476 of 2003, or a similar system, to facilitate consultation by the people who handle the selection processes. The Committee will make a recommendation on this point. (See Recommendation 1.1.1, paragraph (a), in section 1.1 of Chapter III of this Report.)

Secondly, as regards the merit-based competitive examinations process, the Committee notes that Article 95 of the Regulations to Law No. 476 of 2003 states that the immediately superior official in the area where the vacancy exists, when a candidate is chosen to occupy that vacancy, shall communicate the decision to the human resources office. However, it does not state that the decision has to be grounded, nor does it indicate the evaluation criteria to be used. The Committee will make a recommendation on this point. (See Recommendation 1.1.1, paragraph (b), in section 1.1 of Chapter III of this Report.)

Thirdly, regarding disclosure of public servant selection processes, the Committee notes that Articles 82 and 83 of Law No. 476 of 2003 (and Articles 88 of 89 of its Regulations) require vacancy announcements and post requirements to be published in such media outlets as necessary for maximum exposure. However, the Committee notes that it does not specify a minimum period of notice for the publication of announcements prior to the commencement of the competitive process; the Committee will make a recommendation on this point. (See Recommendation 1.1.1, paragraph (c), in section 1.1 of Chapter III of this Report.)

Finally, with regard to the exceptions provided for in Articles 9, 11 and 77 of Law No. 476 of 2003, the Committee believes that both those who are not a part of the Civil Service and those who work at state-owned public companies, universities and centers of higher technical education should have a regulatory framework to govern career entry systems based on the principles of merit, equity, and equality, with provisions on the establishment of oversight mechanisms and governing or administrating authorities; systems for administrative or judicial challenges intended to clarify, modify or revoke substantial actions in personnel selection processes; and the development of mechanisms for the timely dissemination of vacancy opportunities, making use of the mass media. The Committee will make a recommendation on this point. (See Recommendation 1.1.1, paragraph (d), in section 1.1 of Chapter III of this Report.)

- As regards municipal administrative bodies, the Committee believes that:

First of all, the Committee notes that Article 139 of Law No. 502 of 2004 (Municipal Administrative Career Law) provides an exception to the Municipal Administrative Career entry requirements for those officials holding a position when that law came into effect, provided that they meet the position's academic requirements and have been in the position for at least one year.

¹⁷ See note 5 *supra*.

Based on the comments above, in order to uphold the principle of equality enshrined in the Convention, and also bearing in mind that Law No. 502 of 2004 sets out the principles of equality, uniformity, merit, and ability for entry into the Municipal Administrative Career, the Committee will formulate a recommendation suggesting that the Republic of Nicaragua consider regulating Article 139 of Law No. 502 of 2004 to establish that the only possibility whereby the public servant may enter the municipal civil service is to apply for a position for which they meet the necessary requirements through participation in the vacancy application process. (See Recommendation 1.1.2, paragraph (a), in section 1.1 of Chapter III of this Report.)

Secondly, the Committee believes the country under review should enact Regulations for Law No. 502 of 2004, in order to ensure its effective enforcement. The Committee will make a recommendation on this point. (See Recommendation 1.1.2, paragraph (b), in section 1.1 of Chapter III of this Report.)

- As regards the country's judicial branch of government, the Committee believes that:

Firstly, the Committee notes that Article 84 of Law No. 501 of 2005 (Judicial Career Law), in dealing with the requirements for category C and D judicial secretaries, establishes an exception to the Judicial Career entry requirements for those officials who were already serving when the Law came into effect.

Based on the comments above, in order to uphold the principle of equality enshrined in the Convention, and also bearing in mind that Law No. 501 of 2005 sets out the principles of merit and equality for entry into the Judicial Career, the Committee will formulate a recommendation suggesting that the Republic of Nicaragua consider amending Article 84 of Law No. 501 of 2005 to exclude the possibility of entry to the Judicial Career by any means other than the merit system. (See Recommendation 1.1.3, paragraph (a), in section 1.1 of Chapter III of this Report.)

Secondly, the Committee notes that Article 15 of Law No. 501 of 2005 describes how the rules for competitions for filling vacancies by means of the merit-based selection system are to be set, stating that the requirements are to be determined by the National Judicial Career Council.

In connection with this, the Committee believes that in order to implement guarantees in addition to those provided for in the merit-based selection system, and to emphasize the principles of equity and efficiency enshrined in the Convention, the Republic of Nicaragua would do well to consider the adoption, by the National Judicial Career Council, of a Requirements Manual covering those positions that make up the Judicial Career and the scores corresponding to each item, so that the appraisal of requirements need not be determined every time a vacancy is to be covered and in each individual selection process, but is instead established ahead of time in a general and publicly available document. The Committee will make a recommendation on this point. (See Recommendation 1.1.3, paragraph (b), in section 1.1 of Chapter III of this Report.)

Thirdly, the Committee believes the country under analysis should consider including the internet as a channel for publishing competition announcements. The Committee will make a recommendation on this point. (See Recommendation 1.1.3, paragraph (c), in section 1.1 of Chapter III of this Report.)

- As regards the country's Public Prosecution Service, the Committee believes that:

The Committee notes that Article 37, paragraph III, of Law No. 346 of 2000 (Organic Public Prosecution Service Law) establishes a system for the selection of departmental prosecutors until

such time as a Prosecutorial Career Law is enacted. However, that law contains no provisions identifying oversight mechanisms for the system, or regulations governing the publication of announcements or of any challenges available. The Committee will make a recommendation on this point.^{vii} (See Recommendation 1.1.4 in section 1.1 of Chapter III of this Report.)

Finally, in connection with all the provisions cited above, the Committee notes that they do not provide for the use of judicial channels as a mechanism for resolving remedies filed by a candidate for a public position regarding the decisions reached in the corresponding selection process. The Committee will make a recommendation on this point. (See Recommendation 1.1.1, paragraph (h), in section 1.1 of Chapter III of this Report.)

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

The Republic of Nicaragua's reply¹⁸ states that "*the legal provisions governing the Administrative Career of public officials and hiring systems are relatively new,*" and that, in connection with that, the country is "*creating the technical bases for the gradual introduction of the Civil Service and Administrative Career.*"

This notwithstanding, in its response Nicaragua furnishes information on the activities of the Ministry of the Treasury and Public Credit's General Public Function Directorate;¹⁹ notable among these are the activities carried out under the "Civil Service Reform Project," such as:

- (a) Strengthening the technical and organizational capacities of the Civil Service Oversight Body and of the human resources offices through training courses given to a total of 4,281 participants from 357 institutions between September 2000 and March 2005:^{viii}

The Committee believes that the information on those training activities set out in the response²⁰ indicates that the Republic of Nicaragua has been training the country's public officials in the transition and application of the new Civil Service system. Because of the importance of these initiatives, the Committee encourages Nicaragua to continue with those efforts, expanding the number of participants in order to cover the various bodies with responsibilities for the system. The Committee will make a recommendation on this point. (See Recommendation 1.1.1, paragraph (e), in section 1.1 of Chapter III of this Report.)

- (b) Implementation of the position classification system at 24 state institutions:²¹

The Committee sees that the Republic of Nicaragua has made progress with implementing Law No. 476 of 2003 with the introduction of the position classification system at 24 state institutions, and it believes the country under review should continue with these efforts in order to comply with the provisions of Articles 22 *et seq.* of Law No. 476 of 2003. The Committee will make a recommendation on this point. (See Recommendation 1.1.1, paragraph (f), in section 1.1 of Chapter III of this Report.)

¹⁸ Response of the Republic of Nicaragua to the second round questionnaire, p. 13.

¹⁹ Response of the Republic of Nicaragua to the second round questionnaire, p. 13.

²⁰ Response of the Republic of Nicaragua to the second round questionnaire, pp. 13-14 and Annexes 1 and 2.

²¹ The Committee notes the following updated information sent by Nicaragua in its comments on the draft preliminary report: "*To date the Classification process has been conducted in 30 Government Institutions*".

(c) The progressive implementation of the Civil Service and Administrative Career regime:

The Republic of Nicaragua's reply reports progress with the introduction of the Civil Service and Administrative Career regime. More specifically, it provides general details on progress with the introduction of the Administrative Career through the special process for accrediting public servants.

The reply also contains general information indicating that various institutions have issued public announcements for the selection, classification, and hiring of their officials.²² A review of Annex Four of the response indicates that the Public Prosecution Service, in particular, has made four vacancy announcements: one internal and three public. However, this information is not sufficiently broken down to allow a comprehensive analysis, bearing in mind, chiefly, the observations made in the previous section regarding the Public Prosecution Service's legal framework in this area. The Committee will make a recommendation on this point. (See Recommendation 1.1.4, in section 1.1 of Chapter III of this Report.)

It should also be noted that the agencies responsible for enforcing Laws No 476 of 2003, No 502 of 2004 and No 501 of 2004 have not yet been set up.²³ The Committee will make recommendations on this point. (See Recommendations 1.1.1 (g), 1.1.2 (c), and 1.1.3 (d) in section 1.1 of Chapter III of this Report.)

In addition, the Committee recognizes that notwithstanding the difficulties it encountered in achieving results in this area and identified in its reply,²⁴ the Republic of Nicaragua has shown its willingness to make progress with introducing the Civil Service and Administrative Career.

Finally, since it has no information other than what is cited above that is processed in such a way as to allow a comprehensive appraisal of the results obtained in this area, the Committee will issue a recommendation regarding this point. (See General Recommendation 4.2 in Chapter III of this Report.)

1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES

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

The Republic of Nicaragua has a series of provisions regarding the systems referred to, notably:

- Constitutional provisions applicable to all government entities, such as those found in Article 130 of the Constitution, which are intended to establish rules for preventing conflicts of interest in the performance of public functions and stipulate that no public officials from any branch of government may receive any concessions from the State. Neither may they serve as proxies or representatives of public or private companies, be they domestic or foreign, in contracts with the State. The Constitution sets two types of sanction for infractions of this rule: first, it revokes the concessions or advantages so obtained and, second, it orders the power of representation and the position to be surrendered.

- Legislative and other types of provisions applicable to all government entities, such as those contained in Law No. 323 of 2000 (State Contracting Law),²⁵ and its amendments,^{ix} (in this section,

²² Response of the Republic of Nicaragua to the second round questionnaire, p. 15.

²³ Document from *Grupo Cívico Ética y Transparencia* (Coord.), p.11

²⁴ Response of the Republic of Nicaragua to the second round questionnaire, pp. 14-15.

“the Law”), and in Decree No. 21-2000,²⁶ which regulates Law No. 323 of 2000 (State Contracting Law) (in this section “the Regulations”), applicable to public procurement procedures carried out by state entities, organs, companies, and municipalities, with the exception of those indicated in Article 3 of the Law.^x The more notable provisions of these two legal instruments include the following:

- Article 25 of Law (Art. 51 of the Regulations), which states that public procurement shall be carried out by means of the procedures^{xi} of: (a) public bidding (Articles 50 and 51 of the Law and 64 to 85 of the Regulations); (b) bidding by registration (Articles 52 to 54 of the Law and 86 to 89 of the Regulations); (c) restricted bidding (Articles 55 to 57 of the Law and 90 to 94 of the Regulations); and (d) purchasing by quote (Articles 58 of the Law and 95 to 99 of the Regulations).
- Articles 12, 13, and 14, which place, *inter alia*, bans on contracting with the State by senior public officials and by all public officials with the specific agencies where they work, as well as a general ban on contracting with corporations in which any of the aforesaid public officials holds a stock interest. In addition, the Law states that public officials with a commercial or personal interest, those who participated in the design of the bidding process, and their relatives up to the third degree by blood and their spouses may not be state suppliers or participate in any stage of the bidding, and it also places a ban on subdividing or expanding contracts.
- Articles 15, 16, and 17 of the Law, which create, respectively, the Purchasing Units^{xii} (Articles 23 to 27 of the Regulations); the Bidding Committees, responsible for intervening in all stages of the public bidding and registration bidding procedures (Articles 28 to 31 of the Regulations); and the Procurement Directorate of the Ministry of the Treasury and Public Credit, as the oversight unit of the public sector procurement system²⁷ (Article 32 of the Regulations).
- Articles 83 to 97 of the Law which, among other provisions and without prejudice to any criminal and/or equity responsibilities that might arise (Article 84), establish administrative sanctions for public officials, suppliers, and contractors who commit any of the actions set out in those articles. Investigations may proceed on an *ex officio* basis or following a complaint filed by a private citizen (Article 133 of the Regulations).
- Articles 19 and 20 of the Law, which create, respectively, the Contracting System Information Register^{xiii} (Articles 33 to 36 of the Regulations) and the Register of Suppliers^{xiv} (Articles 21 to 24 of the Law and 37 to 50 of the Regulations), both of which are publicly accessible and are managed by the Procurement Directorate of the Ministry of the Treasury and Public Credit.
- Article 10 of the Regulations, which requires the public sector, through each entity and agency subject to the State Contracting Law, to inform all potential bidders of their contracting needs during a given budgetary period through the publication of their purchasing

²⁵ <http://www.ucresep.gob.ni/Ley323-Regla21-Ley349-v03-07feb02.pdf>

²⁶ <http://www.ucresep.gob.ni/Ley323-Regla21-Ley349-v03-07feb02.pdf>

²⁷ Its powers are defined in Article 18 of Law No. 323 of 2000.

program in the Official Journal *La Gaceta* or in two national daily newspapers.²⁸ It also states that the Procurement Directorate of the Ministry of the Treasury and Public Credit will work to keep purchasing programs accessible to electronic access.

- Articles 59 to 65 of the Law (Articles 112 to 117 of the Regulations), which set special regulations for public works contracts^{xv} and stipulate the requirements to be met before the commencement of public works procedures^{xvi} and project execution. In the latter, the contracting agency must check that all circumstances are in order from the legal, budgetary, technical, and physical points of view at the site where the contracted work is to be carried out, in order to guarantee the uninterrupted execution of the work.
- Articles 5, 6, and 7 of the Law, which enshrine, respectively, the principles of efficiency,^{xvii} disclosure and transparency,^{xviii} and equality and free competition^{xix} as the criteria that govern public contracting (Articles 9 to 13 of the Regulations).
- Articles 106 to 113 of the Law (Articles 149 to 168 of the Regulations), which cover various types of remedies (for clarifications, challenges, and revocations), the applicable deadlines, and the competent venues for hearing them (the Bidding Committee, the supreme authority of the executing agency or entity, and the Office of the Comptroller General of the Republic, respectively). In addition, the Regulations provide for another form of remedy: objections filed with the Bidding Committee against the basic document and conditions (Articles 150 to 153 of the Regulations).

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

With respect to the constitutional and legal provisions governing public procurement systems, 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.

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

The Committee believes that the country under review could usefully consider supplementing the legal framework and the government procurement measures now in force, in light of the following:

- With respect to the regime of exceptions for the bidding procedure set out in Article 3 of Law No. 323 of 2000 (as amended), the Committee notes that paragraphs (j) and (k) do not define the scope of the terms “emergency,” “urgency,” “security,” and “public interest.” The failure to define and develop these situations could lead to bidding procedures being ignored on the basis of those ambiguous exceptions that, by lacking a clear definition, could easily admit discretionary decisions and lead to contracting on the basis of those exceptions becoming the general rule within the Nicaragua’s public sector procurement system. Consequently, and in order to increase the transparency of the bidding process exceptions regime, the Committee urges the State under review to consider the possibility of elaborating on the circumstances

²⁸ Direct purchases, contracting conducted without following regular procedures, and operations carried out under emergency or urgency provisions are excluded from this requirement (Article 10 of the Regulations, final paragraph).

covered by paragraphs (j) and (k) of Article 3 of Law No. 323 of 2000 (as amended). (See Recommendation 1.2.1, paragraph (a), in section 1.2 of Chapter III of this Report.)

Further to the above, it should be noted that the document submitted by Transparency International offers the following observation:²⁹

“... the failure to clarify the terms of urgency and emergency; no part of the Law establishes the grounding, clear rules, cases, or limitations according to which exclusions of this kind are to be handled.”

- The Committee also notes that Article 42 of Law No. 323 of 2000 (as amended) only allows for the recommencement of a competitive bid when an request for tenders is declared unanswered or fruitless. Noting that this could indicate that direct contracting could equally be used in such cases, the Committee believes the Republic of Nicaragua would do well to consider amending this paragraph of Article 42 of the Law to require, when a request for bids is declared unanswered or fruitless, the commencement of a new bidding process if it is decided to proceed with the contract, with any necessary modifications to the basic document and conditions. The Committee will make a recommendation on this point. (See Recommendation 1.2.1, paragraph (b), in section 1.2 of Chapter III of this Report.)
- In its reply to the questionnaire, the Republic of Nicaragua indicates³⁰ the existence of a Draft Municipal Contracting Law, currently being processed by the National Assembly, and states that: *“The current law for state contracting regulates municipal procurement as regards the resources municipalities receive from the national General Budget but not the municipalities’ own funds. Additionally, the current state contracting legislation entails complex and bureaucratic procedures for municipal administrations, which serve to hinder the work of municipal governments and the promotion of local development; since social and economic development has not been equal for all the country’s municipalities, the legislators have been forced to categorize them according to the income levels and particular characteristics of each, and the demands of the law currently in force are not equally applicable to all municipalities.”* The Committee, however, believes that the future law covering this area, while adapted to the economic and social reality of the country’s different municipalities, should contain provisions regarding disclosure, equity, and efficiency; contracting systems both with and without public bidding processes; bodies to govern or administer oversight systems and mechanisms; registration of contractors; electronic media and information systems for public procurement; contracts for public works; identification of criteria for selecting contractors; and procedures for filing challenges; and enable an electronic hiring system to be developed. (See Recommendation 1.2.1, paragraph (c), in section 1.2 of Chapter III of this Report.)
- With reference to the use of electronic media for public contracting, the Committee believes the Republic of Nicaragua should consider the possibility of strengthen and increase the scope of use of electronic communications, such as the internet,³¹ for publicizing the main developments in contract processes of a certain magnitude or importance, in the phases

²⁹ Document from *Grupo Cívico Ética y Transparencia* (Coord.), p. 12.

³⁰ Response of the Republic of Nicaragua to the second round questionnaire, p. 20.

³¹ The Committee notes the updated information submitted by Nicaragua on the existence of the official website www.nicaraguacompra.gob.ni, which is free to use and compulsory for publishing any of the stages of the government procurement processes.

of preparations, contractor selection, contract award, and execution of the contract. (See Recommendation 1.2.3, paragraph (a), in section 1.2 of Chapter III of this Report.) The Committee also believes that the Republic of Nicaragua should consider the possibility of using electronic media for conducting the State's contractual activities, allowing procurement processes for goods and services to be conducted through those channels. (See Recommendation 1.2.3, paragraph (b), in section 1.2 of Chapter III of this Report.)

- With respect to challenges, the Committee notes that Law No. 323 of 2000 (as amended) does not allow the use of judicial venues as a mechanism for resolving challenges lodged by bidders in connection with decisions in the bidding process and the awarding of contracts. The Committee will make a recommendation on this point. (See Recommendation 1.2.4 in section 1.2 of Chapter III of this Report.)
- Finally, the Committee applauds the efforts of the Republic of Nicaragua in establishing a modern regime for public works contracting, reflected in both Law No. 323 of 2000 (as amended) and in its Regulations. However, it would be useful for the State under review to expand that regime, including measures such as the following:
 - The implementation of oversight systems for each individual public works contract which, in consideration of the size of each project, will provide for interventions or direct supervision of contract execution by the contract executor or its appointee; allow civic oversight or citizen control; demand regular reporting on contract progress. (See Recommendation 1.2.5, paragraph (a), in section 1.2 of Chapter III of this Report.)
 - Take the necessary steps regarding unforeseen circumstances that would justify amending public works contracts, including those cases in which the State or the contractor might be due indemnification payments. (See Recommendation 1.2.5, paragraph (b), in section 1.2 of Chapter III of this Report.)

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

The Republic of Nicaragua's reply³² contains, *inter alia*, information on the training of state officials, the imposition of sanctions on suppliers, the oversight activities of the Office of the Comptroller General of the Republic, the use of requests for exemptions from public contracting procedures, and the main problems and constraints facing the public procurement system.

Regarding the training activities, the response³³ states that "*currently under development is the central module of the Diploma Course in Purchasing and Procurement, which is being used to train 400 officials from Institutional Procurement Units. There are also plans to train Institutional Technical Areas (users) and suppliers. Additionally, through this diploma course, the government's Procurement Directorate, attached to the Ministry of the Treasury and Public Credit, plans to provide public officials with training on ethics and values, with support from the Office of Public Ethics.*" The response also indicates that General Procurement Directorate provides assistance with planning, evaluating, and following up on contracts entered into by state agencies responsible for significant amounts of public procurement, together with some municipalities. The Committee applauds the efforts made and urges the Republic of Nicaragua to continue with actions of this kind, which further the professionalization of the officials involved in public procurement procedures and

³² Response of the Republic of Nicaragua to the second round questionnaire, pp. 20-23.

³³ Response of the Republic of Nicaragua to the second round questionnaire, p. 21.

ensure that those procedures are understood, handled, and enforced correctly. (See General Recommendation 4.1 in Chapter III of this Report.)

With respect to the imposition of administrative sanctions, information is provided³⁴ about a total of 15 case files dealing with suppliers subjected to reviews for breaches of the State Contracting Law between October 2004 and November 2005, mostly for altering documents and failing to comply with the purpose of their contracts, as well as for noncompliance with the contract itself and for making false claims in the contracting process. Of these, ten were sanctioned with a temporary suspension of the right to be awarded state contracts (for periods between 3 months and 1 year); one received the irrevocable cancellation of his activities; and four were not sanctioned. In spite of the above, the Committee has no additional information that would allow it to offer a comprehensive interpretation of those figures, other than recognizing that sanctions have been imposed on state suppliers by the General Procurement Directorate in connection with activities carried out under contract.

With regard to the oversight activities of the Office of the Comptroller General of the Republic, in its response the country under analysis states³⁵ that *“between 2000 and 2005 it analyzed 63 annulment filings and 43 no objections; it has also reviewed 1,656 contracts and 7 basic documents, answered 295 consultations and 42 annulment remedies applied to processed contracts, and concluded 37 opinions.”* In that regard, the Committee reiterates the comments it made in the previous section, indicating that it has no additional information that would allow it to offer a comprehensive interpretation of those figures, other than recognizing the actions of the Office of the Comptroller General of the Republic in its oversight role.

Regarding the requests for exemptions from the contracting procedures set out in the State Contracting Law, both the response of the country under review³⁶ and the document submitted by Transparency International³⁷ indicate a constant increase in the use of the exception mechanism provided for in Article 3 (k) for reasons of “urgency,” “security,” and/or “public interest,” which, as noted above, are not defined with sufficient clarity (see section 1.2.2 above). The Committee also notes that in 2000, the Office of the Comptroller General of the Republic received 53 exception requests, whereas in 2005 the figure was 226. The Committee also notes the low percentage of such requests that are refused: an average of 14% between 2000 and 2005.

Bearing in mind that the total amount covered by exceptions and authorized for direct contracting between 2000 and 2005 was 702,534,427.98 *córdobas*, plus 146,786,739.55 U.S. dollars, plus 894,257.76 euros, the absence of information on the total value of the public biddings conducted in that period impedes an effective comparison of the amounts awarded by the State in order to assess whether or not public bidding is the general rule for state contracting; however, the Committee is concerned that the amounts awarded under direct contracting were justified on the grounds of exceptions. For that reason, the comments made in the previous section should again be emphasized: the Republic of Nicaragua should consider elaborating on the circumstances covered by Article 3, paragraphs (j) and (k), of Law No. 323 of 2000. (See Recommendation 1.2.1, paragraph (a), in section 1.2 of Chapter III of this Report.)

³⁴ Response of the Republic of Nicaragua to the second round questionnaire, p. 21.

³⁵ Response of the Republic of Nicaragua to the second round questionnaire, p. 22.

³⁶ Response of the Republic of Nicaragua to the second round questionnaire, pp. 22-23.

³⁷ Document from *Grupo Cívico Ética y Transparencia* (Coord.), p. 15 and Annex 4.

The Republic of Nicaragua also describes in its reply to the questionnaire³⁸ problems with the public contracting system, notably the need for greater dissemination of bidding process results and for greater fluidity in process information sent to the General Procurement Directorate by the state institutions' purchasing unit; also, the inadequate budget of the General Directorate which "*has prevented the adoption of an effective information registration system for identifying weaknesses and taking steps to strengthen procurement procedures.*" The Committee will make recommendations on this point. (See Recommendations 1.2.2 and 1.2.3, paragraph (a), in section 1.2 of Chapter III of this Report.)

Finally, and bearing in mind that current legal framework in this area is relatively recent, the Committee believes the Republic of Nicaragua should consider conducting regular comprehensive assessments to gauge the usage and effectiveness of the public sector procurement system and, using the results of that effort, identify and consider the adoption of specific measures to ensure transparency, disclosure, equity, and efficiency in its operations. (See Recommendation 1.2.6 in section 1.2 of Chapter III of this Report.)

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

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

Regarding the existence of systems for protecting public servants and private citizens who, in good faith, report acts of corruption, in its response the Republic of Nicaragua indicates³⁹ the following: "*Our country's ordinary legislation governing corruption contains a vacuum regarding the establishment of protective measures for public employees or private citizens who report, in good faith, acts of corruption. Our laws do not provide special treatment for those making such reports; in general there are no programs, much less a protection system, for public officials or citizens who denounce acts of corruption. In contrast, the laws do require public officials to make reports when they become aware of irregularities or anomalies committed by civil servants, to furnish any information requested by the Oversight Bodies, and to appear as witnesses in procedures to investigate alleged acts of corruption.*"

"In particular, the Organic Law of the Comptrollership General of the Republic contains a legal provision that protects the internal auditors of public institutions and agencies. This provision stipulates that responsible officers at the internal auditing units of public agencies cannot be dismissed from their positions without first informing the Office of the Comptroller General for it to issue the corresponding authorization and only in that case may the dismissal proceed. This measure is intended exclusively to protect the auditors, so as to guarantee their independence in the correct performance of their duties, which are also applicable to the financial officers of public agencies. Other than this provision, in general the existing rules simply specify the obligation of assisting and providing information in connection with alleged acts of corruption and other irregularities in the handling of state resources."

³⁸ Response of the Republic of Nicaragua to the second round questionnaire, p. 22.

³⁹ Response of the Republic of Nicaragua to the second round questionnaire, p. 24.

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

Based on the foregoing information, which is what was made available to it, the Committee believes the Republic of Nicaragua would do well to consider the possibility of adopting, through the applicable legal and administrative procedures, systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protecting the identity of public officials and private citizens in accordance with its Constitution and the basic principles of its domestic legal system. The Committee suggests, for example, the adoption of a legal instrument establishing those systems (see the recommendation in section 2 of Chapter III of this report), which could include, *inter alia*:

- Reporting mechanisms, such as anonymous complaints and identity-protected complaints, to guarantee the personal security and identity confidentiality of public officials and private citizens who, in good faith, report acts of corruption. (See recommendation in section 2 of Chapter III of this Report.)
- Protection measures, 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. (See recommendation in section 2 of Chapter III of this Report.)
- Mechanisms for reporting the threats or reprisals that whistleblowers may face, indicating the authorities responsible for processing protection requests and the agencies responsible for providing such protection. (See recommendation in section 2 of Chapter III of this Report.)
- Mechanisms for the protection of witnesses, providing them with the same guarantees as public officials and private citizens. (See recommendation in section 2 of Chapter III of this Report.)
- Mechanisms to facilitate international cooperation in the above areas, when appropriate. (See recommendation in section 2 of Chapter III of this Report.)^{xx}

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

Bearing in mind the above remarks, together with the statements contained in the Republic of Nicaragua's reply to the questionnaire,⁴⁰ a comprehensive appraisal of the results in this area cannot be carried out; consequently, the Committee will formulate a recommendation in this regard. (See General Recommendation 4.2 in Chapter III of this Report.)

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

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

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

⁴⁰ Response of the Republic of Nicaragua to the second round questionnaire, pp. 24-25.

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

- Article 2 of Law No. 581 of 2006,⁴¹ which states: *“The crime of passive bribery is committed by any authority, official, or public employee^{xxi} who solicits, receives, or accepts, either directly or indirectly, any object of monetary value or other benefit, such as gifts, favors, promises, or advantages, for himself or for another person, in exchange for performing or refraining from performing any action in the pursuit of his public functions, and s/he shall be punished with a prison term of four to six years and absolute disqualification from holding public office or employment for the same period.”*

“Should the perpetrator be a prosecutor, government attorney, judicial secretary, judge, or magistrate, the punishment shall rise to five to eight years in prison and absolute disqualification for the same period.”

“In addition to the sanctions indicated, a fine equal to three times the value of the item or benefit sought or received shall be imposed.”

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

- Article 3 of Law No. 581 of 2006, which states: *“The crime of active bribery is committed by a private citizen who offers, gives, or grants, either directly or indirectly, to an authority, official, or public employee, any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person, in exchange for any act or omission in the performance of his public functions. It is punishable by between three and five years in prison and a fine equal to three times the value of the item or benefit offered, given or granted to the authority, official, or public employee.”*

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

- Article 435 of the Criminal Code of the Republic of Nicaragua,⁴² amended by Law No. 419 of 2002,⁴³ which states: *“The crime of embezzlement is committed by: (1) An authority, official, or public employee who removes or allows another person to remove funds, valuables, or public assets for which he is responsible by reason of his position in the public administration, organs and offices, deconcentrated, decentralized, and autonomous agencies, and state, municipal, and autonomous region companies. It is punishable by between three and five years in prison and absolute disqualification for the same period. (2) If the removed objects have been declared of historical value or if they were funds, valuables, or goods intended to assist in any public disaster, the punishment rises to between eight and twelve years in prison and absolute disqualification for the same period. (3) These provisions shall also apply to the managers or safekeepers of funds, valuables, or goods handed over by a competent authority even though they belong to private persons.”*

- Article 406 of the Criminal Code of the Republic of Nicaragua, amended by Law No. 419 of 2002, which states that: *“Any authority, official, or public employee who, in pursuit of personal gain or that of others and causing serious harm to the public good, makes private use of the funds, assets, or*

⁴¹[http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/CE9BEFC7E4DED81D0625715B00604978?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/CE9BEFC7E4DED81D0625715B00604978?OpenDocument)

⁴²[http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/643CC814A8E2E2C4062570A600648D01?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/643CC814A8E2E2C4062570A600648D01?OpenDocument)

⁴³[http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/18FA60EE8520CCAC062570A100581099?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/18FA60EE8520CCAC062570A100581099?OpenDocument)

resources belonging to the public administration, to decentralized, deconcentrated, or autonomous state bodies, agencies, entities, or state, municipal, or autonomous region corporations made available to them in the course of their duties shall be liable to a prison term of between one and three years and an absolute disqualification for the same length of time.”

- Article 415 of the Criminal Code of the Republic of Nicaragua, amended by Law No. 419 of 2002, which states that: *“Any authority, official, or public employee who, in the contracts, supply operations, public auctions, bidding processes, competitive tendering processes, and all other operations in which he is involved by reason of his position or special commission, defrauds or allows the defrauding of the public administration, bodies, offices, deconcentrated, decentralized, autonomous agencies, or state, municipal, or autonomous region corporations, shall be punished by a prison term of between four and eight years and absolute disqualification for the same period.”*

- Articles 438, 439, and 440 of the Criminal Code of the Republic of Nicaragua,^{xxii} which state: Article 438: *“The crime of exaction is committed by the person in charge of a public service who, in that capacity and styling it a tax, levy, duty, wage, or remuneration, demands on his behalf or that of another person, money, valuables, services, or any other thing that he knows is not due, or in an amount greater than allowed for by law”*; Article 439: *“Cases of exaction committed by public officials and employees shall be punishable by their removal from their positions or disqualification from obtaining another for a period of between two and six years and a fine equal to twice the amount received illegally; if the amount exceeds one hundred córdobas, a prison term of between three months and two years shall be imposed”*; and Article 440: *“The sanctions in the previous article shall also apply to the appointed or commissioned by a public servant who, acting under those instructions, commit the crime of exaction.”*

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

- Article 352-bis of the Criminal Code of the Republic of Nicaragua, expanded by Law No. 419 of 2002, which states that: *“1. A prison term of between one and three years shall be imposed on any person who, knowing that a crime was committed and not having been involved therein as a perpetrator or participant, does so following its execution in one of the following fashions:*

(a) Assisting the perpetrators or participants in benefiting from the proceeds, price, or benefit earned through the crime.

(b) Concealing, altering, or rendering unusable the accessories, effects, or instruments of a crime to prevent their discovery.

(c) Assisting those responsible for a crime to evade investigations carried out by the authorities or their agents, or to avoid location and capture.

4. If the concealer in doing so abuses public functions, a prison term of three to five years and absolute disqualification for the same period shall be imposed.

5. In no instance may a prison term longer than that applicable to the concealed crime be imposed. If the concealed crime is not punishable by a prison term, the sanction shall be replaced by the fine that corresponds to the concealed crime, in which case the guilty party shall pay the minimum limit of the fine amount applicable to the main crime.

6. *Criminal responsibility does not apply to those who conceal the actions of their spouses or common-law partners, their forebears or progeny, or their siblings.*”

- Articles 61, 62 and 63 of Law No. 285 “Law on Narcotic, Psychotropic, and Controlled Substances; money laundering and the proceeds of illicit activities” of April 16, 1999, which is transcribed below:

“Article 61.- The following are guilty of money laundering and laundering the proceeds of illicit activities referred to in this Law, or of common related crimes detrimental to the State.”

“a) Anyone who personally or through a third party, with other persons or Banking, Financial, Commercial or any other type of establishment, carries out mercantile acts or operations derived from or obtained through illicit activities.”

“b) Anyone who personally or through a straw man or front corporation, conceals, secures, transforms, invests, transfers, takes into custody, manages or acquires money or material objects or the product thereof and gives the money and the proceeds of illicit activities that appear to be legal.”

“Anyone who commits such a crime shall be sentenced to between four and twenty years in prison, and fined twice the value of the amount obtained. If the crime was committed through corporations, in addition to the penalty applicable to individuals, an order may be issued for the institution to be placed under court supervision.”

“Article 62.- Other activities. The following shall also be guilty of money laundering:”

“a) Any third party, owner, administrator or legal representative or person in charge of an establishment who authorizes, allows or carries out a transaction in the knowledge that the money or product was illicitly obtained.”

“b) Anyone who personally or through a third party takes part in real or simulated acts or contracts to acquire, own, transfer or manage goods or securities with the intention of concealing, hiding or disguising the proceeds of illegal activities.”

“In both cases the penalty established for the crime foreseen in the previous Article shall be applied.”

“c) Anyone who personally or through a third party, aware of the illicit source of the money or proceeds, authorizes, allows or undertakes the transactions connected with money laundering, taking advantage of his functions, employment or office, shall be sentenced to five to ten years in prison and fined the equivalent of twice the value of the money or proceeds that were laundered.”

“d) Any associated director or political candidate who knowingly and in any way accepts the proceeds of the crimes foreseen in this Law will be sentenced to twenty-five years in prison and fined twice the amount of money received.”

“Article 63.- Any government official, public employee, or official in charge of the investigation, trial or custody of persons involved in crimes or offenses provided for in this Law who obtains impunity for the crime or conceals, alters or removes confiscated items or substances or helps the person captured, detained or sentenced to escape, or gives instructions for evidence to be changed, will be sentenced to between six and seven years in prison and disqualified for the term of the sentence.”

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

- Article 22 of the Criminal Code of the Republic of Nicaragua, amended by Law No. 419 of 2002, which states that: *“1. Perpetrators and participants are criminally liable for their crimes. 2. Perpetrators can be direct perpetrators, intermediated perpetrators, or joint perpetrators. Participants are those who induce the action, those who are its necessary cooperators, and its accomplices. However, for sanctioning purposes, the two first groups shall be considered perpetrators. 3. Participants shall have accessory liability with respect to the action of the perpetrator. 4. A person who, acting as the director, de facto or de jure manager, or organ of a body corporate, or in the name of or as the legal or voluntary representative of another, commits an act that other than as regards the identity of the perpetrator is tantamount to a crime or offense, shall respond personally in accordance therewith, even though the conditions, qualities, and relations required by the crime or offense for such a person to be considered the active subject, if those circumstances exist in the entity or body on whose behalf or representation the action was taken.”*

- Article 23 of the Criminal Code of the Republic of Nicaragua, amended by Law No. 419 of 2002, which states that: *“Direct perpetrators are those who carry out the crime themselves; joint perpetrators are those who carry out the crime by means of another person acting as an instrument. For offenses, only the perpetrators are criminally liable.”*

- Article 24 of the Criminal Code of the Republic of Nicaragua, amended by Law No. 419 of 2002, which states that: *“For sanction purposes, the following shall be considered perpetrators: (1) Those persons who willfully and directly induce another or others to commit the action. (2) Those persons who willfully cooperate in its execution with an action without which it would not have been effected.”*

- Article 25 of the Criminal Code of the Republic of Nicaragua, amended by Law No. 419 of 2002, which states that: *“In crimes of omission, those individuals who fail to do as the law orders are considered liable.”*

- Article 26 of the Criminal Code of the Republic of Nicaragua, amended by Law No. 419 of 2002, which states that: *“Accomplices are those who willfully provide any previous or simultaneous assistance to the commission of the action, provided they are not covered by Articles 23 and 24.”*

- Article 493 of the Criminal Code of the Republic of Nicaragua, which states that: *“Any person who is a part of an association or gang of three or more persons organized with the permanent aim of committing crime by means of common accord and reciprocal assistance among the members thereof shall be punished by a prison term of between one and three years, without prejudice to the sanctions applicable for the crimes committed. This punishment shall be increased by up to one-third for those who serve as the heads or directors of such associations.”*

3.2 Adequacy of the legal framework and/or other measures

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

Nevertheless, the Committee believes the State undergoing review should adapt and expand its legal framework in light of the following comment:

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

The Committee notes that fraudulent use is not criminalized.

Taking the foregoing into account, the Committee will formulate a recommendation to the country under review. (See recommendation in section 3 of Chapter III of this report).

3.3 Results of the legal framework and/or other measures

The Republic of Nicaragua's reply⁴⁴ states that: *"The country does not have a single national information system involving all the agents of the justice administration system that would allow an assessment of the entire investigative and judicial process implicit in the enforcement of the proceeding provisions, from the reporting and investigation of the alleged corruption crime, the dismissal of the same on merit grounds by the Public Prosecution Service or the filing of charges before the competent courts until the issuing of a irrevocable judicial ruling on the process; institutional records do exist that allow the management of some statistical data, but there is no specialized information system dealing with crimes of corruption, or one that provides the necessary data about them for monitoring and assessing the enforcement and effectiveness of the applicable provisions."*

Finally, since it has no information other than what is cited above that is processed in such a way as to allow a comprehensive appraisal of the results obtained in this area, the Committee will issue a recommendation regarding this point. (See General Recommendation 4.2 in Chapter III of this Report.)

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

Based on the analysis conducted in Chapter II of this report, the Committee formulates the following conclusions and recommendations regarding the implementation, in the Republic of Nicaragua, of the provisions contained in Convention 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), which were selected in the framework of the second round.

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

1.1. Systems of Government Hiring

The Republic of Nicaragua has considered and adopted measures intended to establish, maintain, and strengthen the systems of government hiring, as indicated in Section 1.1 of Chapter II of this report.

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

⁴⁴ Response of the Republic of Nicaragua to the second round questionnaire, p. 30.

1.1.1 Strengthen government hiring systems. To comply with this recommendation, the Republic of Nicaragua could take the following measures into account:

- (a) Consider adopting the declaration of background and interests instrument for candidates for positions in the Civil Service, together with the usefulness of using the Civil Service Information System (SISEC), established in Article 32 of Law No 476 of 2003, or a similar system, to facilitate consultation by the people who handle the selection processes. (See section 1.1.2 of Chapter II of this Report).
- (b) Establish the obligation of leaving due record of the evaluation criteria used and the basis for the decisions adopted in the final selection of those who are to be admitted to the Administrative Career at the end of the competitive selection process. (See section 1.1.2 of Chapter II of this Report).
- (c) Establish a reasonable minimum period of notice for the publication of announcements prior to the commencement of the competitive process. (See section 1.1.2 of Chapter II of this Report).
- (d) Adopt a regulatory framework for those who work in state-owned public companies, universities, and centers of higher technical education, to regulate career entry systems based on the principles of merit, equity, and equality; implement provisions regarding the establishment of control mechanisms and governing or administrating authorities; systems for administrative or judicial challenges intended to clarify, modify or revoke substantial actions in personnel selection processes; and develop mechanisms for the timely dissemination of vacancy opportunities, making use of the mass media. (See section 1.1.2 of Chapter II of this Report).
- (e) Continue with the training activities on the legal framework of the Civil Service and Administrative Career Law, increasing the number of participants to cover the various agencies responsible for the system. (See section 1.1.3 of Chapter II of this Report).
- (f) Continue with the development and implementation of the position classification system within state agencies, in order to uphold the provisions of Article 22 *et seq.* of Law No. 476 of 2003. (See section 1.1.3 of Chapter II of this Report).
- (g) Establish, as appropriate, the agencies responsible for enforcing Law No. 476 of 2003. (See section 1.1.3 of Chapter II of this Report).
- (h) Adopt and implement rules and mechanisms to allow the use of judicial channels as a mechanism for resolving appeals filed by a candidate for a public position regarding the decisions reached in the corresponding selection process. (See section 1.1.2 of Chapter II of this Report).

1.1.2 Strengthen the systems for hiring public officials at municipal administrative entities. To comply with this recommendation, the Republic of Nicaragua could take the following measures into account:

- (a) Regulate Article 139 of Law No. 502 of 2004 to establish that the only possibility whereby the public servant may enter the municipal civil service is to apply for a position for which

they meet the necessary requirements through participation in the vacancy application. (See section 1.1.2 of Chapter II of this Report.)

- (b) Enact Regulations for Law No. 502 of 2004, in order to ensure its effective enforcement. (See section 1.1.2 of Chapter II of this Report.)^{xxiii}
- (c) Establish, as appropriate, the agencies responsible for enforcing Law No. 502 of 2004. (See section 1.1.3 of Chapter II of this Report.)

1.1.3 Strengthen the systems for hiring public officials within the judicial branch. To comply with this recommendation, the Republic of Nicaragua could take the following measures into account:

- (a) Amend Article 84 of Law No. 501 of 2005 to exclude the possibility of entry to the Judicial Career by any means other than the merit system. (See section 1.1.2 of Chapter II of this Report.)
- (b) The adoption, by the National Judicial Career Council, of a Requirements Manual covering those positions that make up the Judicial Career and the scores corresponding to each item, so that the appraisal of requirements need not be determined every time a vacancy is to be covered and in each individual selection process, but is instead established ahead of time in a general and publicly available document. (See section 1.1.2 of Chapter II of this Report.)
- (c) Consider including the internet as a channel for publishing vacancy competition announcements. (See section 1.1.2 of Chapter II of this Report.)
- (d) Enact regulations for the enforcement of Law No. 501 of 2005. (See section 1.1.3 of Chapter II of this Report.)

1.1.4 Strengthen the systems for hiring public officials within the Public Prosecution Service. To comply with this recommendation, the Republic of Nicaragua could take the following measure into account:

- Adopt a regulatory framework for application within the Public Prosecution Service, to regulate the systems for career entry based on the principles of merit, equity, and equality; to implement provisions regarding the establishment of control mechanisms and governing or administrating authorities; systems for administrative or judicial challenges intended to clarify, modify or revoke substantial actions in personnel selection processes; and to develop mechanisms for the timely dissemination of vacancy opportunities, making use of the mass media. (See sections 1.1.2 and 1.1.3 of Chapter II of this Report.)^{xxiv}

1.2. Government systems for the procurement of goods and services

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

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

- Strengthen systems for the procurement of goods and services by the government. To comply with this recommendation, the Republic of Nicaragua could take the following measures into account:
 - 1.2.1 Strengthen procedures for contracting through public bidding and through public competitions for offers. To meet this recommendation, the State undergoing review could consider the following measures:
 - (a) Elaborate on the circumstances covered by Article 3, paragraphs (j) and (k), of Law No. 323 of 2000 (as amended), establishing the grounds and limitations according to which the exclusions contained therein are to be handled. (See sections 1.2.2 and 1.2.3 of Chapter II of this Report.)
 - (b) Amend the final paragraph of Article 42 of Law No. 323 of 2000 (as amended) to require, when a request for bids is declared unanswered or fruitless, the commencement of a new bidding process if it is decided to proceed with the contract, with any necessary modifications to the basic document and conditions. (See section 1.2.2 of Chapter II of this Report.)
 - (c) Take the steps necessary to ensure that the law to be enacted on municipal contracting contains provisions dealing with disclosure, equity, and efficiency; contracting systems both with and without public bidding processes; bodies to govern or administer oversight systems and mechanisms; registration of contractors; electronic media and information systems for public procurement; contracts for public works; identification of criteria for selecting contractors; and procedures for filing challenges; and enable an electronic hiring system to be developed. (See section 1.2.2 of Chapter II of this Report.)
 - 1.2.2 Continue strengthening the governing bodies of the public sector procurement system, particularly the General Procurement Directorate and the purchasing units, as regards the roles they play in managing and overseeing the system, providing them with the resources necessary for due compliance with their duties, and establishing mechanisms to allow institutional coordination of their actions and their continuous evaluation and follow-up. (See section 1.2.3 of Chapter II of this Report.)
 - 1.2.3 Extending the use of electronic media for publicizing public contracts. To meet this recommendation, the State undergoing review could take the following measures into account:
 - (a) Strengthen and increase the scope of use of electronic communications, such as the internet for publicizing the main developments in contract processes of a certain magnitude or importance, in the phases of preparations, contractor selection, contract award, and execution of the contract. (See sections 1.2.2 and 1.2.3 of Chapter II of this Report.)
 - (b) Consider the possibility of using electronic media for conducting the State's contractual activities, allowing procurement processes for goods and services to be conducted through those channels. (See section 1.2.2 of Chapter II of this Report.)
 - 1.2.4 Strengthen procedures for lodging challenges. To meet this recommendation, the State undergoing review could give take the following measure into account:

- Adopt and implement rules and mechanisms to allow the use of judicial channels as a mechanism for resolving challenges filed by bidders regarding the decisions reached in bidding and contract award processes. (See section 1.2.2 of Chapter II of this Report.)

1.2.5 Expand the public works contracting regime set out in Law No. 323 of 2000 (as amended) and its Regulations. To comply with this recommendation, the State under review could take the following measures into account:

- (a) Consider the implementation of oversight systems for each individual public works contract which, in consideration of the size of each project, will provide for interventions or direct supervision of contract execution by the contract executor or its appointee; allow civic oversight or citizen control; demand regular reporting on contract progress. (See section 1.2.2 of Chapter II of this Report).
- (b) Take the necessary steps regarding unforeseen circumstances that would justify amending public works contracts, including those cases in which the State or the contractor might be due indemnification payments. (See section 1.2.2 of Chapter II of this Report.)

1.2.6 Conduct regular comprehensive assessments to gauge the usage and effectiveness of the public sector procurement system and, using the results of that effort, identify and consider the adoption of specific measures to ensure transparency, disclosure, equity, and efficiency in its operations. (See section 1.2.3 in Chapter II of this Report.)

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

The Republic of Nicaragua has not yet considered the adoption of measures for establishing, maintaining, and strengthening systems for protecting public servants and private citizens who, in good faith, report acts of corruption, as set out in section 2 of Chapter II of this Report.

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

- Create a system for protecting public servants and private citizens who, in good faith, report acts of corruption. To comply with this recommendation, the Republic of Nicaragua could take the following measure into account:
 - Enact, through the relevant legal and administrative procedures, a legal instrument to establish systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including identity protection, in accordance with its Constitution and the basic principles of its domestic legal system (see section 2.2 in Chapter II of this report). This could cover, *inter alia*, the following:
 - Reporting mechanisms, such as anonymous complaints and identity-protected complaints, to guarantee the personal security and identity confidentiality of public officials and private citizens who, in good faith, report acts of corruption. (See section 2.2 of Chapter II of this Report.)

- Protection measures, 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. (See section 2.2 of Chapter II of this Report.)
- Mechanisms for reporting the threats or reprisals that informants may face, indicating the authorities responsible for processing protection requests and the agencies responsible for providing such protection. (See section 2.2 of Chapter II of this Report.)
- Mechanisms for the protection of witnesses, providing them with the same guarantees as public officials and private citizens. (See section 2.2 of Chapter II of this Report.)
- Mechanisms to facilitate international cooperation in the above areas, when appropriate. (See section 2.2 of Chapter II of this Report.)

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

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

In light of the comments made in that section, the Committee offers the following recommendation for the Republic of Nicaragua:

- Criminalize fraudulent use pursuant to paragraph (d) of Article VI.1. (See section 3.2 of Chapter II of this Report.)

4. GENERAL RECOMMENDATIONS

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

- 4.1. Design and implement, when appropriate, training programs for the civil servants responsible for enforcing the systems, standards, measures, and mechanisms referred to in this report, in order to ensure that they are adequately understood, managed, and put into practice.
- 4.2. Select and develop procedures and indicators, when appropriate and when they do not yet exist, for analyzing the results of the systems, norms, measures and mechanisms considered in this report, and for monitoring compliance with the recommendations it contains.

5. FOLLOW-UP

The Committee will examine the periodical reports from the Republic of Nicaragua on progress with implementing the above recommendations within the framework of its plenary meetings, in accordance with Article 31 of the Rules of Procedure and Other Provisions.

In addition, the Committee will review the progress made in implementing the recommendations offered in this Report, in accordance with the provisions of Article 29 of the Rules of Procedure and other provisions.

IV. OBSERVATIONS REGARDING PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN THE FIRST ROUND REPORT

With reference to the implementation of the recommendations issued to the Republic of Nicaragua in the report on the first round of analysis and on the basis of the information made available to it, the Committee notes the following:^{xxv}

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE THEM (ARTICLE III (1 & 2) OF THE CONVENTION)

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

Recommendation 1.1.1:

Strengthen the implementation of laws and regulatory systems concerning conflicts of interest so that they permit practical and effective application of the public ethics system.

Measures suggested by the Committee:

- *Ensure the applicability of sanctions to public servants who violate the norms that govern conflicts of interests, in accordance with the aims of the Civil Service Probity Law. (See section 1.1.2 of Chapter II of the Report.)*
- *Regulate certain eventualities that may encompass conflicts of interest and that due to its importance it would be convenient to treat with greater detail and specificity. (See section 1.1.2 of Chapter II of the Report.)*
- *Establish adequate restrictions for those public servants who have recently left their public positions. (See section 1.1.2 of Chapter II of the Report.)*
- *Design and implement mechanisms to publicize and provide training on the standards of conduct, including those involving conflicts of interest, to all government officials and employees, and to answer inquiries made in connection therewith by those persons, and to provide further training or periodic updating regarding those standards.*

In its reply, the State undergoing review submitted information with respect to this recommendation; from this information, the Committee draws particular attention to the following steps taken to further progress with implementation:

- Enactment of the Civil Service and Administrative Career Law⁴⁵ and its regulatory decree,⁴⁶ and the enactment of the Municipal Administrative Career Law⁴⁷ and of the Judicial Career Law,⁴⁸

⁴⁵ Response of the Republic of Nicaragua to the second round questionnaire, p. 34.

⁴⁶ Response of the Republic of Nicaragua to the second round questionnaire, p. 34.

⁴⁷ Response of the Republic of Nicaragua to the second round questionnaire, p. 34.

⁴⁸ Response of the Republic of Nicaragua to the second round questionnaire, p. 34.

which contain specific provisions on conflicts of interest for the different careers that make up Nicaraguan public service;⁴⁹

- The training activities conducted by the Office of Public Ethics for public servants from the executive branch, dealing with public ethics and anti-corruption legislation.⁵⁰

Additionally, in connection with the implementation of this recommendation, the document submitted by Transparency International states:⁵¹ *“The Office of Public Ethics (OEP) has signed a partnership agreement with the PROBIDAD organization to provide training on transparency and corruption for executive-branch officials. Under this agreement, training events have been held with officials from the Interior Ministry (MINGOB) and from the Office of the Attorney General of the Republic (PGR), which dealt with topics relating to ethics in public functions and at which the participants were given a document titled, “Basic Manual of the Public Servant.” As of the drafting of this report, 18 training events have been held for approximately 300 public officials (less than 5% of the country’s total).(...)*

Currently, both the Supreme Court of Justice (CSJ) and the OEP⁵² are pursuing consultation processes regarding their corresponding codes of ethics in order to regulate certain major eventualities that could constitute conflicts of interest.

The Efficiency and Transparency Program within the Ministry of the Treasury and Public Credit, (MHCP) is working on a Public Sector Administrative Contracting Bill that would amend and expand the State Contracting Law (Law No. 323) as regards the restrictions applicable to those who leave public positions. In conjunction with the Universidad Americana (UAM), this institution is also organizing a diploma course on public policy for state employees.”

The Committee notes that the Republic of Nicaragua has satisfactorily addressed the recommendation’s measures related to the regulation of certain eventualities that could constitute conflicts of interest and that, on account of their importance, should be detailed with in greater detail and more specifically, with the adoption of the Civil Service and Administrative Career Law and the associated regulatory decree, and the enactment of the Municipal Administrative Career Law and of the Judicial Career Law, without venturing to offer an in-depth analysis of their contents.

The Committee also notes the steps taken by the Republic of Nicaragua toward implementation of the recommendation’s measures regarding providing public servants with training on standards of conduct, including those governing conflicts of interest, which, by its nature, requires a continuation of efforts.

In addition, the Committee notes the need for the Republic of Nicaragua to pay additional attention to the further implementation of the recommendation transcribed above. The Committee also notes the problems in the process of implementing this recommendation that have been reported by the State undergoing review,^{xxvi} and it notes the information furnished about the internal agencies that have been involved in that recommendation’s implementation process.⁵³

⁴⁹ At the Tenth Meeting of the Committee of Experts of MESICIC Nicaragua informed that the *Public Prosecution Service Career Law*, published in Official Gazette No. 192, entered into force on October 4, 2006.

⁵⁰ Response of the Republic of Nicaragua to the second round questionnaire, p. 35.

⁵¹ Document from *Grupo Cívico Ética y Transparencia* (Coord.), pp. 29-30.

⁵² At the Tenth Meeting of the Committee of Experts of MESICIC Nicaragua informed that the Office of Public Ethics (OEP) has adopted its Code of Ethics.

⁵³ Response of the Republic of Nicaragua to the second round questionnaire, p. 36.

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

Recommendation 1.2.1:

Strengthen resource control systems within the public administration.

Measures suggested by the Committee:

- *Modernize or introduce a legal reform to the Organic Law of the Comptroller General in order to establish, among other things, simple procedures for application of penalties to violators of these standards of conduct and for obtaining restitution to the State for damages for which the violators may be liable.*
- *Make public, where appropriate, the reports of the Comptroller General of the Republic, as the Oversight Body of the cited standards of conduct.*
- *Design and implement mechanisms to publicize and provide training on the standards of conduct to all government officials and employees, and to answer inquiries made in connection therewith by those persons, and to provide further training or periodic updating regarding those standards.*

In its reply, the Republic of Nicaragua submitted information with respect to this recommendation; from this information, the Committee draws particular attention to the following steps taken to further progress with implementation:

- The preparation of a preliminary draft of Organic Law of the Comptrollership General of the Republic awaiting the assessment, discussion, and approval of the National Assembly.⁵⁴
- The publication, on the webpage of the Office of the Comptroller General of the Republic, of reports on audits carried out and other relevant information.⁵⁵
- The internal and external training activities carried out by the Office of the Comptroller General of the Republic for public officials, aiming at encouraging ethical behavior among public officials and at providing them with the legal and technical tools necessary for the correct performance of their functions.⁵⁶

The Committee notes the steps taken by the Republic of Nicaragua in making progress with implementing the above recommendation, along with the need for it to continue to pay attention to the matter. The Committee also notes the problems in the process of implementing this recommendation that have been reported by the State undergoing review,^{xxvii} and it notes the information furnished about the internal agencies that have been involved in that recommendation's implementation process.⁵⁷

⁵⁴ Response of the Republic of Nicaragua to the second round questionnaire, p. 38.

⁵⁵ Response of the Republic of Nicaragua to the second round questionnaire, p. 38.

⁵⁶ Response of the Republic of Nicaragua to the second round questionnaire, p. 38.

⁵⁷ Response of the Republic of Nicaragua to the second round questionnaire, p. 39.

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

Recommendation 1.3.1:

Strengthen the mechanisms that the Republic of Nicaragua has for requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

Measures suggested by the Committee:

- *Apply effectively, to those who violate this obligation, the sanctions provided in the corresponding punishment regimes. (See section 1.3.2 of Chapter II of the Report.)*
- *Train public officials concerning the existence and purpose of their responsibility to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.*

In its reply, the Republic of Nicaragua submitted information on the above recommendation as follows:

“With reference to this specific recommendation, practically no progress has been made with strengthening the legal mechanisms that were already in existence and that were identified during the first round. Currently there is a provision in the Public Officials’ Probity Law that requires public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware”⁵⁸

The Committee notes the need for the Republic of Nicaragua to pay additional attention to the implementation of the recommendation transcribed above. The Committee also notes the problems in the process of implementing this recommendation that have been reported by the State undergoing review,^{xxviii} and it notes the information furnished about the internal agencies that have been involved in that recommendation’s implementation process.⁵⁹

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

Recommendation 2.1:

Improve the systems for verification and use of the content of sworn financial declarations.

Measures suggested by the Committee:

- *Establish systems for the competent authority’s timely verification of the content of the sworn declaration. (See sections 2.1 and 2.2 of Chapter II of the Report.)*
- *Design systems that facilitate access to the information contained in the sworn declarations by those who are legally authorized to do so.*

⁵⁸ Response of the Republic of Nicaragua to the second round questionnaire, p. 38.

⁵⁹ Response of the Republic of Nicaragua to the second round questionnaire, p. 41.

- *Optimize the systems for analyzing the content of sworn asset declarations for the purpose of detecting and preventing conflicts of interest as well as for detecting possible cases of illicit enrichment.*

In its reply, the Republic of Nicaragua submitted information on the above recommendation as follows:

“The Office of the Comptroller General of the Republic reports that in the period from 2000 to January 2006, it received a total of 13,338 probity declarations from public officials, of which 11,670 (87.50%) were presented at the start of their mandate and only 1,668 (12.50%) when they left their positions. These statistics indicate a clear trend whereby public officials are failing to submit their probity declarations when they leave their positions, since there should be a proportional relationship between the number of public officials assuming office and the number leaving those same positions. (...)

Although the public officials identified in the Probity Law have been meeting the commitment of submitting statements of net worth or probity declarations more at the start of their terms in office than at the end of their mandates, the oversight efforts carried out by the Office of the Comptroller General of the Republic with respect to checking their content and using the results as a mechanism to prevent illegal enrichment and the commission of other crimes by public officials has been insignificant. There are no systems for the timely verification of those filings.”⁶⁰

The Committee notes the need for the Republic of Nicaragua to pay additional attention to the implementation of the recommendation transcribed above, in particular the first measure with respect to verification of the contents of statements of net worth. The Committee also notes the problems in the process of implementing this recommendation that have been reported by the State undergoing review,^{xxix} and it notes the information furnished about the internal agencies that have been involved in that recommendation’s implementation process.⁶¹

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

Recommendation 3.1:

Strengthen the Comptroller General’s Office, as the Oversight Body that undertakes the functions related to the effective compliance with paragraphs (1), (2), (4), and (11) of Article III of the Convention.

Measures suggested by the Committee:

- *Strengthen the Office of the Comptroller General, giving the office the necessary legal instruments and resources needed for full compliance with the new responsibilities that have been assigned to it in relation with the oversight provisions of the Convention.*
- *Guarantee the autonomy and independence of the internal audit units, and strengthen fulfillment of their responsibilities in the detection and prevention of illegal administrative activities.*

⁶⁰ Response of the Republic of Nicaragua to the second round questionnaire, pp. 39-40.

⁶¹ Response of the Republic of Nicaragua to the second round questionnaire, p. 43.

- *Make sure that the Comptroller General of the Republic has greater political and social support, and establish mechanisms that will allow coordination and continued evaluation and monitoring of its actions.*

In its reply, the Republic of Nicaragua submitted information with respect to this recommendation; from this information, the Committee draws particular attention to the following steps taken to further progress with implementation:

- The preparation of a preliminary draft of Organic Law of the Comptrollership General of the Republic awaiting the assessment, discussion, and approval of the National Assembly.⁶²
- Execution of the modernization program within the Office of the Comptroller General of the Republic, funded by the Inter-American Development Bank.⁶³

The Committee notes the steps taken by the Republic of Nicaragua in making progress with implementing the above recommendation, along with the need for it to continue to pay attention to the matter. The Committee also notes the problems in the process of implementing this recommendation that have been reported by the State,^{xxx} and it notes the information furnished about the internal agencies that have been involved in that recommendation's implementation process.⁶⁴

4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III (11) OF THE CONVENTION)

Recommendation 4.1:

Institute legal norms supporting public access to government information.

Measures suggested by the Committee:

- *Develop and issue regulations on procedures for acceptance of requests for information, for response to requests in a timely fashion, for appeal procedures in the case of denials, and for penalties concerning failure to comply with obligations to provide information.*

In its reply, the Republic of Nicaragua submitted information with respect to this recommendation; from this information, the Committee draws particular attention to the following steps taken to further progress with implementation:

- The establishment of a sponsoring group for the Access to Public Information Bill, made up of state agencies and civil society organizations.⁶⁵
- Development and launch of the first phase of the "Voluntary Information Access Strategy" (EVA) as a voluntary initiative for ensuring access to information at some state institutions.⁶⁶

⁶² Response of the Republic of Nicaragua to the second round questionnaire, pp. 43-45.

⁶³ Response of the Republic of Nicaragua to the second round questionnaire, p. 44.

⁶⁴ Response of the Republic of Nicaragua to the second round questionnaire, p. 46.

⁶⁵ Response of the Republic of Nicaragua to the second round questionnaire, pp. 46-47.

⁶⁶ Response of the Republic of Nicaragua to the second round questionnaire, p. 47.

Additionally, in connection with the implementation of this recommendation, the document submitted by Transparency International states:⁶⁷ “A group to sponsor the Public Information Access Law was established, comprising various state agencies and civil society organizations; this group has carried out a process of consultation, study, and analysis in connection with this legislative bill and it has held a forum with various public officials and representatives of civil society and donor organizations, at which the legal advisor to the President of the National Assembly was presented with the group’s contributions in order to assist its ruling on the bill. (...)”

The office of the President of the Republic is implementing the Voluntary Information Access Strategy (EVA). This strategy, preceding the enactment of a Public Informational Access Law, seeks to make public information available to the citizenry. For the implementation of the first phase of this strategy six institutions were selected, namely: General Revenue Directorate, Emergency Social Investment Fund, Ministry of Health, Ministry of the Treasury and Public Credit, Rural Development Institute, and National Statistics and Census Institute.”

The Committee notes the steps taken by the Republic of Nicaragua in making progress with implementing the above recommendation, along with the need for it to continue to pay attention to the matter. The Committee also notes the problems in the process of implementing this recommendation that have been reported by the State undergoing review,^{xxxix} and it notes the information furnished about the internal agencies that have been involved in that recommendation’s implementation process.⁶⁸

Recommendations 4.2, 4.3, and 4.4:

- 4.2 *Institute procedures, where appropriate, that provide an opportunity for consultation prior to the design of public policies and to the approval of legal norms.*

Measures suggested by the Committee:

- *Publish and disseminate the drafts of legal norms, and develop transparent processes in order to allow the consultation of interested sectors in relation to the drafting of laws, decrees and resolutions within the executive branch.*
- *Develop suitable mechanisms to allow for public consultation in areas other than those already considered.*

- 4.3 *Strengthen and further implement mechanisms that encourage civil society and nongovernmental organizations to participate in public administration.*

Measures suggested by the Committee:

- *Establish mechanisms to encourage civil society and nongovernmental organizations to participate in efforts to prevent corruption and to develop public awareness of the problem; and promote awareness of the mechanisms established for participation and explaining their use.*

- 4.4 *Strengthen and further implement mechanisms that encourage civil society and nongovernmental organizations to participate in monitoring public administration.*

⁶⁷ Document from *Grupo Cívico Ética y Transparencia* (Coord.), p. 30.

⁶⁸ Response of the Republic of Nicaragua to the second round questionnaire, p. 48.

Measures suggested by the Committee:

- *Promote additional ways, where appropriate, to allow, facilitate, and assist civil society and nongovernmental organizations in developing activities to monitor public administration.*
- *Design and carry out programs to publicize mechanisms for participation in monitoring public administration; and, where appropriate, train and enable civil society and nongovernmental organizations to have the necessary tools to use the said mechanisms.*

In its reply, the Republic of Nicaragua submits information with respect to the above recommendations; from this, as steps that represent progress with its implementation, the Committee underscores the measures adopted in connection with the following:

- Adoption of Law No. 475 of 2003 (Citizen Participation Law). *“This law is intended to promote the full exercise of citizenship in the political, social, economic, and cultural spheres, through the creation and operation of institutional mechanisms that allow fluent interaction between the Nicaraguan State and society.”*⁶⁹
- The establishment, in the National Development Plan, of the participation and consensus-building axis, creating a forum for dialogue between the public and private sectors.⁷⁰
- The opening of the Citizen Complaints Office within the office of the Attorney General of the Republic. Through this agency, citizens can report cases of corruption.⁷¹

Additionally, in connection with the implementation of this recommendation, the document submitted by Transparency International states:⁷² *“In January 2006, the PGR opened its Citizen Complaints Office, which has been designed as a forum for the citizenry. This office will remain open to the public on a permanent basis. (...)*

In conjunction with the OEP, the Ministry of Education, Culture, and Sport (MECD), and several of the country’s universities, the PGR will shortly be launching a campaign under the slogan ‘Zero Tolerance for Corruption,’ in order to heighten public awareness and involve citizens in the fight against corruption. (...)

Work is underway on the signing of a partnership agreement between the OEP and the PGR, for organizing joint training programs for public employees, students, and organized representatives of civil society in different national communities.”

Without conducting a detailed analysis of the content of Law No. 475 of 2003, the Committee notes the steps taken by the Republic of Nicaragua in making progress with implementing the above recommendation, along with the need for it to continue to pay attention to the matter. The Committee also notes the problems in the process of implementing this recommendation that have been reported by the State undergoing review,^{xxxi} and it notes the information furnished about the internal agencies that have been involved in that recommendation’s implementation process.⁷³

⁶⁹ Response of the Republic of Nicaragua to the second round questionnaire, p. 49.

⁷⁰ Response of the Republic of Nicaragua to the second round questionnaire, pp. 50-51.

⁷¹ Response of the Republic of Nicaragua to the second round questionnaire, p. 52.

⁷² Document from Grupo Cívico Ética y Transparencia (Coord.), p. 30.

⁷³ Response of the Republic of Nicaragua to the second round questionnaire, p. 54.

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

Recommendation 5.1:

Determine and prioritize specific areas in which the Republic of Nicaragua feels it needs technical cooperation from other States Parties in order to strengthen its ability to prevent, detect, investigate, and punish corrupt acts.

In addition, the Republic of Nicaragua should determine and prioritize the requests for reciprocal assistance to investigate or adjudicate cases of corruption.

In its reply, the Republic of Nicaragua submitted information on the above recommendation as follows:

“The Office of the Attorney General of the Republic is the central authority for International treaties and conventions governing mutual legal and juridical assistance in criminal matters. Those instruments operate with respect to all crimes defined in our country. With regard to crimes of corruption, one of the offenses that has required the highest levels of activity from Nicaragua has been the crime of money laundering, in some of which officials of the previous government have been involved, such as in the cases involving Panama and the United States.

To date in 2006, the state of Nicaragua on one occasion failed to comply with the Inter-American Convention on Mutual Assistance in Criminal Matters, in respect of the petition lodged with the Nicaraguan judicial authorities by the competent authorities of the Republic of Panama requesting notification of the date of preliminary hearing of former President Arnoldo Alemán and other individuals involved in the criminal proceedings underway in that city for the crime of money laundering. In connection with this, and in spite of the multiple requests made by the Panamanian authorities through the Attorney General of the Republic in his capacity as the central authority for treaties and conventions on mutual legal assistance in criminal matters, the Supreme Court of Justice failed to process the corresponding notice and issued no ruling, either positive or negative, on the request..”⁷⁴

The Committee notes the need for the Republic of Nicaragua to pay additional attention to the implementation of the recommendation transcribed above.

Recommendation 5.2:

Continue the efforts of technical cooperation exchange with other state parties on the most effective ways and methods to prevent, detect, investigate, and sanction acts of corruption, taking advantage of the experience the Republic of Nicaragua has had in this field.

In its reply, the Republic of Nicaragua submitted information with respect to this recommendation; from this information, as steps taken to further progress with implementation, the Committee draws particular attention to organization of a training seminar on money-laundering crimes, based on the experiences of Panama’s First Anticorruption Prosecutor’s Office.

The Committee notes the steps taken by the State under review in making progress with implementing the above recommendation, along with the need for it to continue to pay attention to the matter. The Committee also notes the problems in the process of implementing this recommendation that have been

⁷⁴ Response of the Republic of Nicaragua to the second round questionnaire, p. 52.

reported by the State undergoing review,^{xxxiii} and it notes the information furnished about the internal agencies that have been involved in that recommendation's implementation process.⁷⁵

Recommendation 5.3:

Design and implement an integral program for dissemination and training directed specifically to competent authorities (in particular to, judges, magistrates, state attorneys and other authorities with judicial investigative functions), in order to ensure that they are knowledgeable of the provisions on mutual legal assistance in the Inter-American Convention against Corruption and in other related treaties signed by Nicaragua, and may apply them to concrete cases.

In its reply, the Republic of Nicaragua submitted information on the above recommendation, as follows:

*"No comprehensive program of the kind described in the recommendation exists; what there have been are independent training initiatives within each sector. For judges and magistrates of the judiciary, there are training programs organized, led, and carried out by the Judicial School of the Supreme Court of Justice; these are not, however, directed at disseminating the mutual legal assistance provisions contained in either the Inter-American Convention against Corruption or in other relevant treaties signed by Nicaragua."*⁷⁶

The Committee notes the need for the State under review to pay additional attention to the implementation of the recommendation transcribed above. The Committee also notes the problems in the process of implementing this recommendation that have been reported by the State undergoing review,^{xxxiv} and it notes the information furnished about the internal agencies that have been involved in that recommendation's implementation process.⁷⁷

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation 6.1:

Notify the OAS General Secretariat of the designation of the central authority, pursuant to the prescribed formalities.

In its reply, the State under review submitted information with respect to the above recommendation,⁷⁸ from which the Committee draws particular attention, as steps indicating that the recommendation has been satisfactorily addressed, the message sent to the OAS General Secretariat reporting the appointment of the Office of Public Ethics as the central authority for the purposes of international assistance and cooperation provided for in the Convention.

The Committee notes that the Republic of Nicaragua has paid satisfactory attention to the recommendation transcribed above.

Recommendation 6.2:

Give that central authority sufficient resources to properly perform its duties.

⁷⁵ Response of the Republic of Nicaragua to the second round questionnaire, p. 56.

⁷⁶ Response of the Republic of Nicaragua to the second round questionnaire, p. 54.

⁷⁷ Response of the Republic of Nicaragua to the second round questionnaire, p. 56.

⁷⁸ Response of the Republic of Nicaragua to the second round questionnaire, p. 57.

In its reply, the State under review submitted information on the above recommendation, as follows:

“Inadequate progress has been made with complying with this recommendation. This is because the Office of Public Ethics is working under a budgetary ceiling that fails to cover its real needs but instead depends on the availability of resources from the Nicaraguan state.”⁷⁹

Additionally, in connection with the implementation of this recommendation, the document submitted by Transparency International states:⁸⁰ *“A bill was submitted to the office of the President of the Republic with the goal of strengthening the OEP as the state body responsible for leading the fight against corruption. This bill is being reviewed by the executive prior to its submission to the National Assembly for review and approval.”*

The Committee notes the need for the Republic of Nicaragua to pay additional attention to the implementation of the recommendation transcribed above. The Committee also notes the problems in the process of implementing this recommendation that have been reported by the State undergoing review.^{xxxv}

7. GENERAL RECOMMENDATIONS

Recommendation 7.1:

Design and implement training programs for public servants who are responsible for implementing the systems, norms, measures and mechanisms considered in this report, in order to ensure that they are adequately known, managed and applied.

In its reply, the State under review submitted information with respect to this recommendation; from this information, as a step taken to further progress with implementation, the Committee draws particular attention to the measures adopted in connection with the various training activities carried out by the Office of the Comptroller General and the Office of Public Ethics.

The Committee notes the steps taken by the State under review in making progress with implementing the above recommendation, along with the need for it to continue to pay attention to the matter. The Committee also notes the problems in the process of implementing this recommendation that have been reported by the State undergoing review,^{xxxvi} and it notes the information furnished about the internal agencies that have been involved in that recommendation's implementation process.⁸¹

Recommendation 7.2:

Select, develop and report to the Technical Secretariat of the Committee procedures and indicators, where appropriate, that allow for verifying follow-up of the recommendations established in this report. For this purpose, the Technical Secretariat of the Committee will post on the OAS website a list of more general indicators applicable within the Inter-American system available for the selection indicated by the State under review.

In its reply, the Republic of Nicaragua submitted information on the above recommendation as follows:

⁷⁹ Response of the Republic of Nicaragua to the second round questionnaire, p.55.

⁸⁰ Document from Grupo Cívico Ética y Transparencia (Coord.), p. 30.

⁸¹ Response of the Republic of Nicaragua to the second round questionnaire, p. 59.

“The drafting and validation of the Plan of Action for the implementation of the recommendations issued by the Committee of Experts of the Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption has been completed. This plan sets out steps to be taken for implementing each of the specific recommendations issued; it also provides for the establishment of a Permanent Council of the Plan of Action, timetables for the measures to be implemented, and performance indicators.

Prior to the validation of this Plan of Action, the Office of Public Ethics sponsored and organized a meeting with representatives of civil society and universities in order to publicize the recommendations that the Committee of Experts extended to Nicaragua.”⁸²

The Committee notes the need for the State under review to pay additional attention to the implementation of the recommendation transcribed above. The Committee also notes the problems in the process of implementing this recommendation that have been reported by the State undergoing review,⁸³ and it notes the information furnished about the internal agencies that have been involved in that recommendation’s implementation process.⁸⁴

⁸² Response of the Republic of Nicaragua to the second round questionnaire, p. 57.

⁸³ Response of the Republic of Nicaragua to the second round questionnaire, p. 60. *“Failure to secure the funding necessary to conduct the situational analysis of the human resources (strengths, weaknesses, opportunities, threats) and to implement the national training program.”*

⁸⁴ Response of the Republic of Nicaragua to the second round questionnaire, p. 60.

END NOTES

ⁱ Under Article 3 of Law No. 438 of 2002 (Civil Servants' Probity Law), this law applies to public servants in the branches of the Republic's government, centralized, decentralized, or deconcentrated agencies of any kind, autonomous entities, entities created under the Constitution, municipal and autonomous region governments, and the Nicaraguan Army and National Police; directors, managers, administrators, or any person who represents the state at banks and financial institutions, companies and corporations in which the state holds stock; and all other individuals invested with public functions.

ⁱⁱ Under Article 8 of Law No. 476 of 2003 (Civil Service and Administrative Career Law), the "Civil Service" is taken as covering public officials and employees of the legislative, executive, judicial, and electoral branches of government, autonomous and governmental agencies, municipalities, and bodies of the Atlantic Coast Autonomous Regions.

ⁱⁱⁱ Similarly, under Articles 11 and 77 of Law No. 476 of 2003 the "Administrative Career" is defined as excluding – and, consequently, its provisions do not apply to – temporary officials and employees (Article 12); project officials and employees (Article 13); officials and employees in positions of trust (Article 14); members of the Teaching Career; staff and auxiliary personnel belonging to the Police Career; personnel covered by the Foreign Service Law and any public career organized by a law; and those not deemed part of the Civil Service. According to Article 9, the following are not members of the Civil Service: those who work and provide services to state-owned public companies, universities and centers of higher technical education, the army, and the senior public officials identified in the article.

^{iv} The Committee notes that Nicaragua presented the *Regulations on the Municipal Administrative Career Law (Decree 51-2005)*, published in Municipal Administrative Gazette No. 156 of August 12, 2005, after the deadline for submitting the response to the questionnaire had lapsed. For that reason this norm did not undergo an in-depth analysis.

^v The bodies responsible for enforcing the Municipal Administrative Career Law are: the National Municipal Administrative Career Commission; the Regional and Departmental Municipal Administrative Career Commissions; the Municipal Administrative Career Commissions; and the General Directorate of the Municipal Administrative Career.

^{vi} Under Article 3 of Law No. 501 of 2004 (Judicial Career Law), the Judicial Career covers the following positions: public defender, judicial secretary, chamber secretary, notifications official, local judge, district judge, magistrate of the appeals court, and secretary of the Supreme Court of Justice; it excludes the magistrates of the Supreme Court of Justice as a special category, governed by the terms of the Constitution and, as applicable and provided there are no contradictions, by the terms of the Judicial Career Law.

^{vii} The Committee notes that Nicaragua presented the new *Law on Careers in the Public Prosecutions Service* after the deadline for submitting the response to the questionnaire, because it came into force on the date it was published in *Gazette No 192* of October 4, 2006. That is the reason why no in-depth review of this Law was conducted.

^{viii} The Committee notes the following updated information sent by Nicaragua in its comments on the draft preliminary report: "*From September 2000 to September 2006 a total of 8,000 officials and employees of institutions have been trained and 300 training events have been held for a total of 206 institutions*".

^{ix} (a) Law Reforming Law No. 323 "State Contracting Law," Law No. 349, adopted on May 17, 2000, and published in *La Gaceta* No. 109 on June 9, 2000 (<http://www.ucresp.gob.ni/Ley323-Regla21-Ley349-v03-07feb02.pdf>), and (b) Law Reforming Law No. 323, "State Contracting Law," Law No. 427, adopted on April 25, 2002, and published in *La Gaceta* No. 110 on June 13, 2002 (http://www.presidencia.gob.ni/buscador_gaceta/BD/LEYES/2002/REFORMA%20A%20LA%20LEY%20No.%20323%20Ley%20de%20Contrataciones%20del%20Estado-LEY%20427.pdf).

^x Law No. 323 of 2000 (as amended by Law 349 of 2000). "Article 3. Exclusions. The following operations are excluded from the application of the procedures provided for in this Law: (a) Purchases by the Ministry of Defense for the use of the National Army of the Republic made with exclusively military goals and necessary for safeguarding national integrity, independence, security, and defense. Excepted from this provision are those purchases for the provisioning of the Army in times of peace. Similarly, those purchases made by the National Police through the Interior Ministry related to exclusively police-related purposes and necessary to maintain public order and security. (b) Purchases made with petty-cash funds in accordance with the budgetary

expenditure rules and corresponding regulations as adopted by each institution, and the technical internal control rules enacted by the Ministry of the Treasury and Public Credit and the Office of the Comptroller General of the Republic. (c) Contracts entered into by and between public entities, except for supplies of goods and services provided under conditions of competition. (d) Relations between the state and the users of the services it provides in exchange for a generally applied tariff or fee. (e) Agreements entered into with other states or with bodies subject to public international law. (f) Purchases of goods or services and the execution of public works projects financed with loans from foreign governments, international organizations, external cooperation agreements, or based on international treaties, agreements, or conventions, shall be governed by the terms of the respective instruments and, when they do not specify the procedures to be followed, they shall be governed by the requirements and procedures set out in this Law and its Regulations. (g) Purchases by companies in which the government has an interest but in which the private sector controls more than fifty percent of the capital stock. (h) Purchases of goods made at public auction. The maximum price to be paid will be the one arising from the previously calculated valuation. (i) Purchases of fresh foodstuffs from markets, national agricultural and livestock depots, fairs, or directly from the producers, provided that such foodstuffs are not purchased for sale. For the purposes of this law, grains are not considered a fresh foodstuff. (j) When public emergencies and disasters arise and are recognized and declared as such in each case by the competent authority in accordance with applicable law, in order to justify dispensing with bidding for works projects, services of any nature, and purchases of goods related to the abnormal situation that the state seeks to remedy or to a harm it seeks to avoid. (k) When there are emergency, security, or other forms of situations of public interest not provided for in the paragraphs above, a duly grounded request may be made for authorization from the Office of the Comptroller General of the Republic for procurement to take place without following the procedures of this Law. The Office of the Comptroller shall have ten business days in which to grant its approval; if it makes no statement, the request shall be understood as having been granted.”

^{xi} Articles 26 of the Law and 51 and 100 of its Regulations establish additional forms of procedure, such as prequalification (Articles 101 to 107 of the Regulations), procedures with two or more evaluation phases (Article 109 of the Regulations), price negotiations (Article 110 of the Regulations), dutch auctions (Article 111 of the Regulations), and with funding granted by the contractor (Article 108 of the Regulations).

^{xii} Under Article 15 of Law No. 323 of 2000, those units are those within each public organ and entity subject to the law that are responsible for planning, advising, and monitoring administrative contracting procedures and for supporting the Bidding Committee. Under Article 24 of the Regulations of Law No. 323 of 2000, they are also empowered to conduct procurement procedures using the restricted bidding and purchase by quotation mechanisms, and are responsible for safekeeping and updating the procurement file, receiving and safekeeping bids, and drawing up the necessary technical reports.

^{xiii} Under Article 19 of Law No. 323 of 2000, the Information Register is intended to use the details that public sector agencies and entities are required to submit, from purchasing plans, sources of funding, execution of purchases, up to their conclusion, in order to keep statistical records and strengthen the oversight, transparency, and economy of the contracting process and comply with the state’s information needs. In addition, this register also includes specialized sections containing an updated list of those individuals and corporations that have been sanctioned by the Procurement Directorate or other competent body (Article 35 of the Regulations) and a list of individuals and corporations that have been disqualified from state contracts on the basis of the information that persons covered by the bans set out in Article 12 of Law No. 323 of 2000 are required to furnish (Articles 19 of the Law and 34 of the Regulations). Under this article, bans exist on:

^{xiv} Under Article 37 of the Regulations of Law No. 323 of 2000, in order to act as a provider of goods, services, or project work for the public sector, potential suppliers must enroll in the Register of Suppliers, the use of which is obligatory for agencies and entities subject to Law No. 323 of 2000 (Article 49 of the Regulations). The state’s Central Suppliers Register can be found on the internet at: <http://www.hacienda.gob.ni/hacienda/Zip/contrataciones/Lisat2006.zip>

^{xv} Article 59 of Law No. 323 of 2000 defines public works as “all works of engineering and/or architecture, construction, alteration, or expansion carried out directly or indirectly, partially or in whole, with state funds or external funding. This covers: the construction, installation, preservation, maintenance, repair, and demolition of the real property referred to in this article, including those projects intended to improve and make use of the country’s farm resources, as well as exploration, location, drilling, and extraction projects, industry services,

and similar operations intended for the exploitation and development of the natural resources found in the soil or subsoil. The construction, installation, preservation, maintenance, repair, and demolition of real property intended for public service or common use.”

^{xvi} Article 60 of Law No. 323 of 2000 states that before proceeding to contract a public works project, the contracting agency must: (a) draft a dossier setting out the need for the work and the usefulness of entering into the contract, (b) approve overall and detailed plans defining the work to be carried out, and (c) draw up a list of technical specifications, the detailed budget in accordance with the breakdown of work and unit prices, and the programming of the various phases needed to complete the project.

^{xvii} Article 5 of Law No. 323 of 2000 provides that the State is obliged to plan, schedule, organize, carry out, and supervise contracting activities so that its needs are satisfied on a timely basis and in optimal conditions of cost and quality, through procedures with measurable levels of speed, reasonableness, and efficiency.

^{xviii} Article 6 of Law No. 323 of 2000 states that contractors shall invariably be selected by means of bidding procedures, except for cases of contracting by quote. It also guarantees that interested parties may challenge the documents, reports, evaluations and decisions, and may receive timely notification of the commencement of a bidding process; it also allows bidders access to all the information related to the administrative contracting activity, except any that could give them an advantage over the others.

^{xix} Article 7 of Law No. 323 of 2000 states that “all potential bidders who meet the legal and regulatory requirements may participate in administrative procurement processes on an equal footing and subject to no restriction not arising from the technical specifications and inherent objectives of the good for which bids are being sought.”

^{xx} Without prejudice to the above, the State under review indicates in its reply (pp. 23-24): “*Nicaragua’s draft Criminal Code, passed by the National Assembly in general terms but not in its particulars, constitutes a step forward in the protection of whistleblowers, witnesses, and other individuals involved in the process. Its title ‘Crimes against the Administration of Justice,’ chapter on ‘Obstruction of Justice and Professional Disloyalty,’ contains an article that deals with improperly influencing the participants in proceedings. It provides that: ‘Any person who, with violence or intimidation, attempts to influence or influences, either directly or indirectly, a person who is the informant, participant, defendant, lawyer, prosecutor, expert, interpreter, or witness in proceedings to change their declaration, testimony, opinion, interpretation, translation, defense, or handling of a judicial proceeding shall be punishable by a prison term of between one and four years and a fine of between fifty and two hundred days’-equivalent.’ This same Article goes on to state that: ‘similar sanctions shall apply to any person who carries out an act that affronts the life, integrity, sexual freedom, or property of the individuals identified in the previous paragraph in reprisal for their actions in judicial proceedings.’”*

“This article of the draft Criminal Code, while it does not establish a protection mechanism as such, does provide a deterrent by criminalizing undue influence on or reprisals against a participant in proceedings. Other than this draft, there is no protection provision that takes into account the subsequent situation of the person making the denouncement or of the witness as regards their employment or physical and moral integrity.”

^{xxi} Article 434 of the Criminal Code of the Republic of Nicaragua, amended by Law No. 419 of 2002, states that:

“For criminal purposes, authorities, officials, and public employees shall be taken as meaning anyone who:

- 1. By the immediate order of law, or by direct or indirect election, or by appointment by a competent authority, or by contractual association, participates in the exercise of public functions, of the public administration, of organs, offices, deconcentrated, decentralized, and autonomous agencies, and state, municipal, and autonomous region companies.*

- 2. Holds a position or commission of any kind in: the public administration, organs, offices, deconcentrated, decentralized, and autonomous agencies, state, municipal, and autonomous region companies, and individuals who represent the state’s interests in those private companies in which it holds and interest.*

- 3. Administers property of the public administration, of organs and offices, of deconcentrated, decentralized, and autonomous agencies, and of state, municipal, and autonomous region companies.*

- 4. Belongs to the National Army of Nicaragua or to the National Police.”*

^{xxii} Article 439 of the Criminal Code of the Republic of Nicaragua: “Cases of exaction committed by public officials and employees shall be punishable by removal from their positions or disqualification from obtaining another for a period of between two and six years and a fine equal to twice the amount received illegally; if the amount exceeds one hundred cordobas, a prison term of between three months and two years shall be imposed.”

Article 440 of the Criminal Code of the Republic of Nicaragua: “The sanctions in the previous article shall also apply to the appointed or commissioned by a public servant who, acting under those instructions, commit the crime of exaction.”

^{xxiii} The Committee notes that Nicaragua presented the Regulations on the Municipal Administrative Career Law (Decree 51-2005), published in Municipal Administrative Gazette No. 156 of August 12, 2005, after the deadline for submitting the response to the questionnaire had lapsed. For that reason this norm did not undergo an in-depth analysis.

^{xxiv} The Committee notes that Nicaragua presented the new *Law on Careers in the Public Prosecutions Service* after the deadline for submitting the response to the questionnaire because it came into force on the date it was published in *Gazette No 192 of October 4, 2006*. That is the reason why no in-depth review of this Law was conducted.

^{xxv} The progress report referred to in Article 31 of the “Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC” and presented by the Republic of Nicaragua in the framework of the Tenth Meeting of the Committee of Experts, provided information with respect to the recommendations put forward in the country report adopted by the Committee in the first review round, the text of which is available for consultation at the following Internet address: http://www.oas.org/juridico/spanish/mec_avance_nicX.pdf

^{xxvi} Response of the Republic of Nicaragua to the second round questionnaire, p. 36. “The gradual implementation of the Civil Service and Administrative Career Law, together with the incipient enforcement of the other laws that regulate the careers of other specific sectors – the Judicial Career, the Prosecutorial Career, the Municipal Career, the Foreign Service Career, etc. – has not brought about an increase in the prevention and detection of breaches of the legal provisions governing conflicts of interest, neither is there a single information system to keep records on those offenses and the punishments applied. Adequate legislation imposing appropriate restrictions on those who leave public positions has not yet been enacted.”

^{xxvii} Response of the Republic of Nicaragua to the second round questionnaire, p. 39. “One of the main problems seen in the implementation of this Recommendation is the stagnation in the process of enacting the legislation needed for the approval and publication of the Organic Law of the Comptrollership General of the Republic. The preliminary draft was drawn up and discussions with various interested parties were held by the Office of the Comptroller General of the Republic; it was placed before the National Assembly as a bill; but the competent parliamentary commission has not yet issued its recommendation.”

^{xxviii} Response of the Republic of Nicaragua to the second round questionnaire, p. 41. “The lack of protective mechanisms for those public officials and private citizens who lodge reports is a factor that hinders effective compliance with this obligation, as a result of which many reports are made anonymously or through the mass media.”

^{xxix} Response of the Republic of Nicaragua to the second round questionnaire, p. 43. “The shortage of human and material resources in the Comptroller’s Office, together the absence of systems to check and analyze public officials’ probity declarations, preventing the completion of this important task in preventing and detecting cases of illegal enrichment and conflicts of interest. The objective verification of statements of assets has not been a priority within the modernization of the Comptroller’s Office. Another problem is the absence of forms of coercion or punishment that would effectively guarantee that public officials produce and submit statements of net worth when they leave office.”

^{xxx} Response of the Republic of Nicaragua to the second round questionnaire, p. 46. “A more thorough interactive process is needed among the various agencies jointly involved in anticorruption efforts – basically, the Office of the Comptroller General, the Office of Public Ethics, the Public Prosecution Service, and the Office of the Attorney General of the Republic.”

^{xxxi} Response of the Republic of Nicaragua to the second round questionnaire, p. 48. “State institutions lack appropriate information systems, documentation centers, structures, and procedures, which keeps them from

providing a satisfactory response to civil society's requests for information. In addition, many public officials still adhere to the idea of the rigorous and closed management of state information."

^{xxxii} Response of the Republic of Nicaragua to the second round questionnaire, pp. 53-54. *"The political polarization currently characterizing our society and the tendency toward entering into pacts among the top echelons of certain socially and politically important sectors in order to secure given areas of power makes it difficult to achieve full citizen participation, which requires a united effort on the part of all sectors involved, branches of government (executive, legislature, and judiciary), and regional and municipal governments."*

^{xxxiii} Response of the Republic of Nicaragua to the second round questionnaire, pp. 55-56. *"The absence of a central body to coordinate the implementation – at all the agencies involved, whether they belong to the executive or judicial branches or to other autonomous institutions – of the conventions signed and of the exchanges of experiences and mutual training agreed upon could well keep those efforts from reaching all the sectors involved."*

^{xxxiv} Response of the Republic of Nicaragua to the second round questionnaire, p. 56. *"The absence of a central agency to coordinate a program of this type that involves different bodies from three branches of government; the scope of the Office of Public Ethics is restricted to agencies of the executive branch."*

^{xxxv} Response of the Republic of Nicaragua to the second round questionnaire, p. 57. *"Inadequate progress has been made with complying with this recommendation. This is because the Office of Public Ethics is working under a budgetary ceiling that fails to cover its real needs but instead depends on the availability of resources from the Nicaraguan state."*

^{xxxvi} Response of the Republic of Nicaragua to the second round questionnaire, p. 59. *"Failure to secure the funding necessary to conduct the situational analysis of the human resources (strengths, weaknesses, opportunities, threats) and to implement the national training program."*