MECHANISM FOR FOLLOW-UP ON THE IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION
Twenty-Second Meeting of the Committee of Experts
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Washington, D.C.

REPUBLIC OF PANAMA

FINAL REPORT

(Adopted at the September 13, 2013 plenary session)
SUMMARY

This report contains a comprehensive review of the implementation in the Republic of Panama of Article III, paragraph 9, of the Inter-American Convention against Corruption, covering “oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts,” which was selected by the MESICIC Committee of Experts for the fourth round; of the best practices reported by those bodies; and of the follow-up of the implementation of the recommendations formulated to the state in the First Round.

The review was conducted in accordance with the Convention, the Report of Buenos Aires, the Committee’s Rules of Procedure, and the methodologies it has adopted for conducting on-site visits and for the Fourth Round, including the criteria set out therein for guiding the review based on equal treatment for all states parties, functional equivalence, and the common purpose of both the Convention and the MESICIC of promoting, facilitating, and strengthening cooperation among the states parties in the prevention, detection, punishment, and eradication of corruption.

The review was carried out taking into account Panama’s Response to the Questionnaire, information gathered by the Technical Secretariat, and, as a new and important source of information, the on-site visit conducted from April 17 to 19, 2013, by the members of the review subgroup for Panama, comprising Bolivia and Trinidad and Tobago, with the support of the Technical Secretariat. During that visit, the information furnished by Panama was clarified and expanded and the opinions of civil society organizations, the private sector, professional associations, academics, and researchers on issues of relevance to the review were heard. This provided the Committee with objective and complete information on those topics.

The review of the oversight bodies was intended, in accordance with the terms of the methodology for the Fourth Round, to determine whether they have a legal framework, whether that framework is suitable for the purposes of the Convention, and whether there are any objective results; then, taking those observations into account, the relevant recommendations were issued to the country under review.

The following bodies in Panama are reviewed in this report: the Public Prosecution Service (PGN), the Office of the Comptroller General of the Republic (CGR); the Court of Accounts, and the Supreme Court of Justice (CSJ).

Some of the recommendations formulated to Panama for its consideration in connection with the aforementioned bodies are aimed toward objectives, such as the following:

With regard to the PGN, the objective is to consider the possibility of re-empowering it to file complaints with the Supreme Court of Justice regarding offences allegedly committed by principal or substitute members of parliament; and to consider amending Law 59 of December 29, 1999, with a view to eliminating the need for preliminary evidence in cases of illicit enrichment and achieving better coordination of the work of the Public Prosecution Service and that of the Office of the Comptroller General of the Republic (CGR) in investigating these crimes. The PGN should be allowed to remit complaints to the CGR and appeal decisions taken to archive an investigation.

In connection with the analysis of the CGR, the objective is to consider adopting legislative or other appropriate measures to formally establish an internal audit system in public sector entities centered on the CGR as the core organ or technical governing body, thereby regulating the functional and/or administrative dependency of the internal audit units in those entities on the
CGR, meaning that those units will be subject to the guidelines and provisions issued by the CGR; and to consider establishing a multidisciplinary forensic audit team specializing in more complex financial or other audits, in coordination with the Public Prosecution Service (Procuraduría General de la Nación).

As for the Court of Accounts, the goal is to consider taking legislative and other steps to expedite audit proceedings and prevent their effects from being illusory, by seeking, as appropriate, to enter into cooperation agreements with institutions whose information is required for the Court of Accounts to adopt precautionary measures, and to establish appropriate administrative sanctions against public or private entities that put off delivering information requested by the Court of Accounts in connection with those proceedings; and to draw up a complete statistical record of amounts paid to the Treasury in each of the past five years as a result of compliance with the Court of Accounts’ resolutions. That record should contain not just information regarding payment agreements, but also the amounts actually recovered through the coercive collection efforts of the National Revenue Authority, in order to be able to identify challenges and recommend corrective measures.

As regards the CSJ, the objective is to conduct a study on the number of complaints of corruption cases allegedly involving members of the National Assembly actually received and processed by the Supreme Court of Justice in order to identify the impact of the entry into force of Law 55 of 2012, and, if necessary, to consider extending the deadline for concluding the investigation; and to consider adopting measures aimed at establishing a functionally autonomous disciplinary body in the Judiciary, capable of conducting preventive, concurrent, and ex-post oversight of magistrates, judges and other officers in the Judiciary.

The best practice described by Panama refers, basically, to the Use of the “IberRed”, a tool established by Central Authorities and national contacts with a goal to optimize civil and criminal judicial assistance instruments and strengthen ties of cooperation among our countries. Additionally, the PGN and the Ministry of the Interior (Ministerio de Gobierno) of Panama also form part of the OAS Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition (“Criminal Matters Network”).

Regarding follow up to the recommendations made to Panama in the First Round, which the Committee thought needed additional attention in the Second and Third Round reports, based on the Fourth Round methodology and taking into account the information provided by Panama in its reply to the questionnaire and during the on-site visit a decision was made as to which recommendations had been satisfactorily implemented; which required additional attention; and which needed to be reformulated; and a list was made of those that remain in effect, which is attached to the report as Annex I.

Three major advances considered by the Committee in implementation of the recommendations were: The Repeal of Executive Decree 124 of May 21, 2002, deemed to annul the principles upheld in the Transparency Law (Law 6 of January 22, 2002); the implementation of a Sworn Declaration System, which verifies whether the public servants required to present their sworn statement of income, assets and liabilities are in compliance with their duty, under the penalty of having their salaries withheld; and the adoption of Law 33 of April 25, 2013, which establishes the National Authority on Transparency and Access to Information, as the functionally and administratively autonomous policy-making body in the area of the right to petition and access public information.

At the same time, some of the recommendations made to Panama in the First Round which are still in effect or were reformulated are aimed at, for instance: Consider adopting rules that
specifically regulate conflict of interest situations for senior positions in Panama’s public administration, as well as for members of the National Assembly and their alternates. Furthermore, regulate the prevention and resolution of said conflicts of interest, by establishing rules on incompatibilities, the corresponding sanctions, and appropriate mechanisms for imposing them; Consider amending Law No. 59 of December 29, 1999 to empower the Office of the Comptroller-General of the Republic to effectively verify the contents of the sworn statement of income, assets, and liabilities and to enable them to be used to detect and avoid conflicts of interests, as well as to detect and verify significant and unjustified changes in the wealth of the officials required to file declarations, taking into account the verification procedures and other relevant aspects established in the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions.”;¹ and Ensure that all institutions subject to Law 6 of 2002 have a unit or at least an information officer and that they also have the resources and training needed to perform the functions established in Article 8 of Law 33 of 2013.

¹ Text posted at: http://www.oas.org/juridico/PDFs/ley_modelo_declaracion.pdf
INTRODUCTION

1. Content of the Report

[1] This report presents, first, a comprehensive review of the Republic of Panama’s implementation of the provision of the Inter-American Convention against Corruption that was selected for review by the Committee of Experts of the Follow-up Mechanism (MESICIC) for the Fourth Round. That provision appears in Article III (9) of the Convention, pertaining to “Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts.”

[2] Second, the report will examine the best practices that the country under review has voluntarily expressed its wish to share in regard to the oversight bodies under review in this report.

[3] Third, as agreed by the Committee of Experts of the MESICIC at its Eighteenth Meeting, in compliance with recommendation 9(a) of the Third Meeting of the Conference of States Parties to the MESICIC, this report will address the follow-up of implementation of the recommendations that the Committee of Experts of MESICIC formulated to the Republic of Panama in the First Round and that it deemed to require to require additional attention in the reports it adopted for that country in the Second and Third Rounds, which are available at: http://www.oas.org/juridico/spanish/pan.htm.

2. Ratification of the Convention and adherence to the Mechanism


I. SUMMARY OF THE INFORMATION RECEIVED

1. Response of the Republic of Panama

[6] The Committee wishes to acknowledge the cooperation that it received, throughout the review process from the Republic of Panama and in particular from the Executive Secretariat of the National Council for Transparency against Corruption (CNTCC), which was evidenced, inter alia, in the Response to the Questionnaire and in the constant willingness to clarify or complete its contents, and

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2. This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on September 13, 2013, at its Twenty Second Meeting, held at OAS Headquarters, September 9-13, 2013.
in the support for the on-site visit to which the following paragraph of this report refers. Together with its Response, Panama sent the provisions and documents it considered pertinent. The Response as well as the provisions and documents may be consulted at: http://www.oas.org/juridico/spanish/mesicic4_pan.htm.

[7] The Committee would also like the record to show that the country under review gave its consent for the on-site visit, in accordance with provision 5 of the Methodology for Conducting On-Site Visits. As members of the preliminary review subgroup, the representatives of Bolivia and Trinidad and Tobago conducted the on-site visit from April 17 through 19, 2013, with the support of the MESICIC Technical Secretariat. The information obtained on that visit is included in the appropriate sections of this report, and its agenda of meetings is appended thereto, in keeping with provision 34 of the Methodology for Conducting On-Site Visits.

[8] For its review, the Committee took into account the information provided by the Republic of Panama up to April 19, 2013, the date on which the on-site visit ended, as well as that provided and requested by the Secretariat and the members of the review subgroup to carry out its functions, in keeping with the Rules of Procedure and Other Provisions; the Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round; and the Methodology for Conducting On-Site Visits. This information may be consulted at the following webpage: http://www.oas.org/juridico/english/FightCur.html

2. Information received from civil society organizations and/or, inter alia, private sector organizations; professional associations; academics and researchers

[9] The Committee also received, within the deadline set by the Committee in the Schedule adopted for the Fourth Round, a document from the “Fundación para el Desarrollo de la Libertad Ciudadana [Foundation for the Development of Citizen Freedom] – Panamanian Chapter of Transparency International”. This document was submitted by the organization pursuant to Article 34(b) of the Committee’s Rules of Procedure.4

[10] Moreover, during the on-site visit to the country under review, information was gathered from civil society and private sector organizations, professional associations, academics and researchers, who were invited to participate in the meetings held for that purpose, pursuant to provision 27 of the Methodology for Conducting On-Site Visits. A list of invitees is included in the agenda of the on-site visit, which has been annexed to this report. This information is reflected in the appropriate sections of this report.

II. REVIEW, CONCLUSIONS, AND RECOMMENDATIONS REGARDING THE STATE PARTY’S IMPLEMENTATION OF THE CONVENTION PROVISION SELECTED FOR THE FOURTH ROUND

OVERSIGHT BODIES, WITH A VIEW TO IMPLEMENTING MODERN MECHANISMS FOR PREVENTING, DETECTING, PUNISHING, AND ERADICATING CORRUPT ACTS (ARTICLE III (9) OF THE CONVENTION)

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3. Document SG/MESICIC/doc.276/11 rev. 2, which may be consulted at the following webpage: http://www.oas.org/juridico/english/met_onsite.pdf
4. This document was submitted in electronic format on December 12, 2012, and may be found at: http://www.oas.org/juridico/spanish/mesicic4_pan.htm
The Republic of Panama has a set of oversight bodies charged with developing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts, including, in particular: the Public Prosecution Service (PGN), the Office of the Comptroller General of the Republic (CGR), the Court of Accounts, the Supreme Court of Justice (CSJ), the Financial Analysis Unit (UAF), the Public Procurement Administrative Tribunal, and the Ministry of Public Security.

The following is a brief description of the purposes and functions of the four bodies selected by the Republic of Panama that are analyzed in this report.

The Public Prosecution Service (PGN) exercises criminal action; defends the interest of the State or the Municipality; promotes compliance with or the enforcement of laws, judicial sentences and administrative provisions; monitors the professional conduct of government officials and takes care to ensure that they all duly discharge their duties; prosecutes crimes and violations of constitutional or legal provisions and the functions established by law.

The Office of the Comptroller General of the Republic (CGR) is a supervisory (“watchdog”) body in the public administration, established by the Political Constitution of the Republic of Panama and Law 32 of November 8, 1984, “Adopting the Organic Law of the Office of the Comptroller General of the Republic,” and its amendments. It is responsible for supervising, regulating, and monitoring movements of public funds and property, and for examining, intervening and closing accounts relating to them, in addition to keeping the National Accounts, prescribing the accounting methods and systems to be used by government offices, and directing and compiling National Statistics.

The Court of Accounts is an adjudicatory, autonomous, and independent institution fully empowered to order through a lawsuit involving valuable property indemnification for damages to the State resulting from misconduct committed by civil servants and private individuals acting as employees or handling agents (agentes de manejo), in accordance with the provisions of the aforementioned Law.

The Supreme Court of Justice (CSJ) is the body responsible for settling disputes in an independent, swift, and reliable manner, while ensuring observance of the Constitution and of the laws of the Republic, protection of citizens’ freedoms and guarantees, and the defense of core democratic values.

1. THE PUBLIC PROSECUTION SERVICE (PGN)

1.1. Existence of a legal framework and/or other measures.

The Public Prosecution Service (PGN) has a set of provisions in its legal framework, as well as other measures that refer, inter-alia, to the following:

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5. The methodology approved for the Fourth Review Round (document SG/MESICIC/doc.289/11 rev.2) establishes in Section IV, with reference to Article III (9) of the Convention (on oversight bodies) that: “With respect to the foregoing provision, the review shall consider if the measures adopted by the States Parties in this respect are designed “to create, maintain and strengthen” oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts, as provided in Article III (9) of the Convention. To that end, first, note will be made of the oversight bodies in the country concerned that would be relevant for the purposes of the above provision of the Convention, that is, for preventing, detecting, punishing, and eradicating corrupt acts. Second, bearing in mind that in the States Parties to the MESICIC there are numerous oversight bodies that have been assigned the aforementioned purposes, each country will select four or five such bodies, taking into account their institutional importance and that their assigned functions encompass one or more of the purposes of preventing, detecting, punishing, and eradicating corrupt acts that trigger disciplinary; administrative; financial or civil; and criminal responsibility.”
Article 219 of the Political Constitution of Panama establishes that the Public Prosecution Service (Procuraduría General de la Nación) and the Office of the Solicitor-General (Procuraduría de la Administración) form part of Panama’s Office of the Attorney General (Ministerio Público).

The functions of the Office of the Attorney General include, in particular: 1. Defending the interests of the State or the Municipality; 2. Promoting compliance with or the enforcement of laws, court judgments, and administrative provisions; 3. Monitoring the professional conduct of public servants and ensuring that all duly perform their public duties, to which end they shall institute all necessary proceedings, ex officio or at the request of an interested party; 4. Investigating breaches of constitutional or legal provisions and take appropriate legal action; 5) Prosecuting and investigating crimes, bringing actions derived from them before the appropriate courts and tribunals; 6) Hearing the complaints lodged against public servants in its jurisdiction, attempting to put a stop to the grounds for them, if any, and instituting the corresponding actions, adopting to that end such proceedings and measures as it deems necessary; 7. Issuing resolutions suspending or shelving the prosecution of cases, except for drug-related cases; and 8. The other functions assigned to it in laws (Political Constitution, Article 220 and the Judicial Code, Article 347).

Pursuant to Article 348 of the Judicial Code, the Attorney General also has, inter alia, the following special powers: 1. To investigate and exercise before the Supreme Court of Justice actions corresponding to crimes committed by public servants which that body is responsible for trying; 2. To institute preliminary proceedings and, in general, exercise criminal action in proceedings for cases of crimes heard by the Supreme Court of Justice or its Criminal Division; 3. To ensure that the other public servants in the Office of the Attorney General faithfully perform their duties and render them accountable for any faults or crimes they commit, and to exercise the corresponding actions; and 4. To freely appoint and remove employees directly answerable to him pursuant to the Judicial Career Act.

As for the autonomy of the Office of the Attorney General, according to Panama’s reply to the Fourth Round questionnaire, “its autonomy and independence transpire from the content of the following articles, which precludes conflicts of competence in the exercise of its functions.”

As regards exceptions to the scope of its functions, Article 1952 of the Judicial Code guarantees a monopoly of criminal action to the Office of the Attorney General, except in cases expressly indicated in that Code. As we were told during the on-site visit to Panama, the exception refers to the proceedings established in Articles 2478 to 2492 of the Judicial Code against the President of the Republic and Magistrates of the Supreme Court of Justice, who are denounced directly by citizens before the Legislative Assembly to be tried, where applicable, for acts committed in the exercise of their functions that are detrimental to the free exercise of public authority or that violate the Constitution or the law. Law 55 of September 21, 2012, “which amends and adds articles of the Code of Criminal Procedure, regarding proceedings against members of the National Assembly,” also establishes an exception to the functions of the Office of the Attorney General when it determines that it is incumbent upon the Supreme Court of Justice sitting in banc to investigate and try criminal and illegal (policivos) acts allegedly committed by members of the Assembly and their substitutes.

According to Article 341 of the Judicial Code, the powers of the Office of the Attorney General in the exercise of its functions extend to the whole of the national territory, through its officers who have authority over their particular district.

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6 See Panama’s reply to the Fourth Round questionnaire, p. 6.
The PGN comprises the Attorney General, the Assistant Attorney General (Fiscal Auxiliar de la República); the Special Senior Prosecutor (Fiscal Superior Especial), the Deputy Prosecutors (Fiscales Delegados) of the Attorney General’s Office; the Senior Prosecutors of the Judicial District, who have competence at the national level; the Circuit Prosecutors, who have competence within their respective provinces; and the Municipal Attorneys, who have competence within their district.\(^7\)

The Judicial Code establishes the particular powers of each member of the PGN: the Attorney General (Article 348); the Assistant Attorney General (Articles 349 and 350); Deputy Prosecutor I of the PGN (Articles 351 and 352); Deputy Prosecutor II of the PGN (Articles 353 to 359);\(^8\) Judicial District Prosecutors (Article 360); Circuit Prosecutors (Article 361); and Municipal Attorneys (Article 362).

The Attorney General is appointed with the same requirements and disqualifications as those established for Magistrates of the Supreme Court of Justice, through an agreement of the President of the Republic with the Cabinet Council,\(^9\) subject to the approval of the Legislative Body, for a 10-year term (Political Constitution, Articles 203 and 224).

Pursuant to Article 221 of the Political Constitution, in order to become Attorney General the same requirements have to be met and the same disqualifications apply as for Magistrates on the Supreme Court of Justice (Political Constitution, Articles 203, 204, and 221). Criminal proceedings against the Attorney General are heard by the Supreme Court of Justice and the investigation is to be heard by the Solicitor-General (New Code of Criminal Procedure, Article 484).

The other officials in the Office of the Attorney General are to be appointed by their superiors in the hierarchy. Junior staff members are to be appointed by the corresponding prosecutor or attorney (Political Constitution, Article 224 and Judicial Code, Article 330).

Articles 14 to 16 of the Career Law for the Office of the Attorney General (Law 1 of January 6, 2009) establish the requirements\(^10\) and general procedure for a career in the institution. The rights, duties, and prohibitions applicable to members of the Office of the Attorney General are set forth in Articles 55 to 57. The disciplinary rules applicable to them are governed by Articles 58 to 72, it being up to the Disciplinary Council\(^11\) to investigate any violations committed by staff of the Office of the Attorney General that might give rise to the penalties of suspension and dismissal, to be imposed by the appointing authority after reviewing the Disciplinary Council’s report.

\(^7\) According to Article 335 of the Judicial Code, in the First Judicial District there will be four Senior Prosecutors; one in the Second Judicial District; two in the Third Judicial District; and one in the Fourth Judicial District. For its part, Article 336 establishes the minimum number of Circuit Prosecutors’ offices in each of the provinces.

\(^8\) According to Article 353 of the Judicial Code, the Deputy Prosecutor II of the PGN is the only one to have the important powers to “ban trading of the property of the State, municipalities, community councils, autonomous and semi-autonomous institutions and, in general, of any public entity, in order to recover it and restore it to the possession or ownership of the entity it belongs to” and to “ban the trading of the property of individuals derived from a punishable act under investigation.”

\(^9\) The Cabinet Council is the meeting of the President of the Republic, who chairs it, or the person whom the President appoints to represent him, with the Vice President of the Republic and the Ministers of State. (Article 199 of the Political Constitution).

\(^10\) The requirements for a career in the Office of the Attorney General are: “1. Be a Panamanian national with full enjoyment of civil and political rights; 2. Meet the minimum qualifications in suitability, academic achievement, age, and experience required for the job, according to this Law and the Job Description Manual, and; 3. Not be disqualified by law from exercising the office.” (Career Law of the Office of the Attorney General, Article 14).

\(^11\) According to Article 63 of the Career Law of the “Ministerio Público,” the Disciplinary Council of the PGN shall comprise the Secretary General, who shall chair it, the Administrative Secretary, the Director of Human Resources, the Secretary for Legal Affairs, and a representative of the other members of the Institution’s staff.
According to Article 5 of the Career Law for the Office of the Attorney General, career staff members are those who hold positions because they meet the legal requirements. Those staff members enjoy job stability and, consequently, may not be transferred, suspended, or dismissed except according to the procedures and on the grounds established in the aforementioned Law. On the other hand, so-called acting staff members (servidores en funciones) are those who, upon entry into force of this law, hold what has been classified as a permanent position until they either acquire the status of career civil servants of the Office of the Attorney General or are separated from public service (Career Law for the Office of the Attorney General, Article 6). Article 4 of the Law also establishes which employees are excluded from the career service, and may be freely appointed and dismissed.

As regards guarantees for the performance of their functions, the same provisions apply to officials of the Office of the Attorney General that the Political Constitution establishes for judicial officers in Articles 205, 208, 210, 211, 212 and 216 (Political Constitution, Article 223). Thus, they have the same rights and prerogatives and are subject to the same obligations and disqualifications as members of the judiciary. The provisions on impediments and recusal of magistrates and judges (Judicial Code, Article 395) also apply to officials in the Office of the Attorney General.

Officials of the Office of the Attorney General also perform their functions independently, being subject only to the Constitution and the law. However, junior staff members are obliged to abide by and comply with decisions of their superiors in the hierarchy when revoking or amending, because of legal appeals, resolutions issued by those officials (Political Constitution, Article 223 and the Judicial Code, Article 331.

Article 1992 of the Judicial Code also provides that “whenever an official of the Office of the Attorney General is notified by any means that a crime has been committed in the territory in which he or she exercises office, he/she shall immediately initiate the respective preliminary investigative proceedings, unless the crime is such that an action must be brought prior to starting preliminary proceedings.” In cases in which preliminary investigation officials in the Office of the Attorney General decide not to bring a criminal action, they shall do so by means of a resolution explaining their reasons, which shall be kept in the corresponding preliminary proceedings agency for sixty working days in order to allow the informer or complainant time to present the corresponding objections (Judicial Code, Articles 1954 and 1993).

The following are excluded from the career service: the Attorney General and the Solicitor-General; 2. The Secretaries-General of both their offices; 3. Staff appointed for a definite amount of time or for fixed periods established by law and those who work ad honórem; 4. Secretariat and service staff directly attached to noncareer civil servants; and 5. In the case of the Public Prosecution Service (PGN), the following are also excluded from the career service: the Administrative Secretary, the Director-General of the Institute of Forensic Medicine and Sciences, the Director of Human Resources, the Head of General Services, the Head of Information and Public Relations, the Head of Security, the Executive Secretary of the National Commission for the Study and Prevention of Drug-related Crimes, and the Executive Secretary of the National Commission for the Prevention of Sexual Exploitation Offences.

12 Articles 1956 and 1957 of the Judicial Code list the crimes for which an action has to be brought prior to initiating criminal proceedings, even when they are crimes to be prosecuted ex officio. These crimes are: abduction, rape, corruption of minors, indecent assault, conversion, calumny, injurious behavior or libel, non-fulfillment of family duties, and unfair competition. However, there is no need for a prior action to be brought before proceeding in a case of conversion (apropiación indebida), if the property of any public entity is affected. (Judicial Code, Article 1958).

14 The grounds on which Office of the Attorney General officials may abstain from bringing criminal action are set forth in Article 1953 of the Judicial Code. Exceptions to the provisions of that Article are “offences against public administration” or offences that were detrimental to State property or that of municipalities or autonomous or semi-autonomous institutions.
As regards manuals describing the functions performed by its staff, the Office of the Attorney General has a Position Classification Manual,\textsuperscript{15} which specifies the functions and requirements of each position, as well as various handbooks and procedural guidelines documenting its staff’s tasks and functions.\textsuperscript{16}

With respect to human resources, according to information requested during the on-site visit, there are 2,725 officials working for the Office of the Attorney General including 2,102 permanent staff, 606 interim staff, and 2 temporary employees (with a limited-time contract). Of the 2,727 officials, 15 are career officers and 2,710 are officials that can be freely appointed and dismissed.

We were also told during the on-site visit that the Office of the Attorney General has four prosecutor’s offices specializing in combating corruption as well as the Ninth Anti-Corruption Prosecutor's Office in Panama's First Circuit, which deals with crimes against public administration in which the amount missing is less than one hundred thousand dollars (US$100,000). Those four Anti-corruption Prosecutor’s Offices employ 49 officials. All the anti-corruption prosecutors have at least 20 years of service in the Office of the Attorney General. None of the officials working in the Anti-corruption Prosecutor’s Offices is a career service officer.

Each of the Anti-corruption Prosecutor’s Offices has its own attorneys, judicial secretary, assistants, investigators and drivers, except the Fourth Prosecutor’s Office, which has officials seconded from other offices.\textsuperscript{17} In that sense, as we were told during the on-site visit, the Anti-Corruption Prosecutor’s Offices are managed like corporations and share a team of 26 investigators and two consultant auditors who help interpret and analyze information furnished by the Office of the Comptroller General of the Republic (CGR).

Training for officials in the Office of the Attorney General is provided by the Judicial Academy (Escuela Judicial), which serves both the Judiciary and the Office of the Attorney General.\textsuperscript{18} According to information elicited during the on-site visit, there is not yet any Academy specifically responsible for ongoing training of Office of the Attorney General staff. However, there is a Training and Development Department in the Office of the Attorney General responsible for coordinating and holding seminars for the staff (Career Law of the Office of the Attorney General, Article 24).

To keep citizens informed of its activities, the Office of the Attorney General has a website,\textsuperscript{19} through which it also posts special services for citizens, such as an Informer’s Guide and the telephone numbers of the Secretariat of the Center for the Reception of Complaints,\textsuperscript{20} as well as a transparency section containing statistics and other information regarding the work of the Office of the Attorney General.\textsuperscript{21} During the on-site visit we were also told that the Office of the Attorney General also has an Office for Attending to Citizens established through Resolution No. 25 of March 19, 2013, which will be in charge of processing complaints and whistleblowers’ denunciations.

\textsuperscript{15} Available at: \url{http://www.ministeriopublico.gob.pa/minpub/NuestraOrganizacioacuten/Manuales.aspx}

\textsuperscript{16} For a complete list, see Panama’s Reply to the Fourth Round Questionnaire, pp. 10 to 13. The texts of all the manuals and guides are posted on the institution’s website, under “Nuestra Organización” in the “Manuales” section, at: \url{http://www.ministeriopublico.gob.pa/minpub/NuestraOrganizacioacuten/Manuales.aspx}

\textsuperscript{17} The PGN’s Fourth Anti-corruption Prosecutor’s Office was established by Resolution No. 2 of January 12, 2010. It has nationwide jurisdiction and hears cases that are serious or notorious enough to be deemed sensitive or high-profile criminal cases, especially Offences against Public Administration and those detrimental to State property or that of autonomous or semi-autonomous institutions, the municipalities, community councils and, in general, any other public entity.

\textsuperscript{18} \url{http://www.organojudicial.gob.pa/escuela-judicial/}

\textsuperscript{19} \url{http://www.ministeriopublico.gob.pa/minpub/}

\textsuperscript{20} \url{http://www.ministeriopublico.gob.pa/minpub/Denuncias.aspx}

\textsuperscript{21} \url{http://www.ministeriopublico.gob.pa/minpub/transparencia/Inicio.aspx}
against civil servants working for the Office of the Attorney General, as well as suggestions of an administrative nature. The Office of the Attorney General also subscribes to the 311 Center for Attending to Citizens, a free hotline center for citizens seeking redress, information, guidance, and support from government institutions.

[40] In addition, pursuant to Article 347.12 of the Judicial Code, the PGN is required to present an annual report on administration of justice in the Executive Branch, with a special section devoted to the work of the Anti-corruption Prosecutor’s Offices in the national territory in terms of criminal investigation, the exercise of criminal actions and the outcomes of criminal proceedings.22

[41] With respect to accounting, financial, budgetary, operational and property-related oversight, the Office of the Attorney General has an internal Control and Oversight Secretariat (Secretaría de Control y Fiscalización), established by Resolution No. 28 of July 25, 2012 to perform the steering and monitoring functions of the Public Prosecution Service vis-à-vis the other staff of the Office of the Attorney General and to make recommendations regarding the standardization of working procedures designed to enhance the operational efficiency of the various departments within the Office of the Attorney General. In addition, the Secretariat supports the Institution’s efforts to detect and corroborate possible breaches of the disciplinary code and any failures to comply with the duties of Office of the Attorney General staff.

[42] As for the guarantees of funding to cover its operating expenses, Article 214 of the Political Constitution establishes that “The Supreme Court of Justice and the Attorney General shall draw up the budgets of the Judiciary and the Office of the Attorney General, respectively, and shall remit them in good time to the Executive for inclusion in the proposed Public Sector Budget. The President of the Court and Attorney General may substantiate their respective budget at every stage. Combined, the budgets of the Judiciary and the Office of the Attorney General shall not amount to less than two percent of Central Government current revenue. However, should that amount exceed what is needed to cover the fundamental needs proposed by the Judiciary and the Office of the Attorney General, the Executive shall include the excess amount under other expense or investment headings in the proposed Central Government Budget, so that the National Assembly can decide on the best course of action.” According to information requested and received during the on-site visit, the total annual budget allocated to the PGN in the past three years was as follows: $190,848 (2009); $191,862 (2010); $222,837 (2011); $469,983 (2012); and $462,345 (2013).

[43] As regards coordination mechanisms for harmonizing functions with those of other oversight bodies or government authorities, we were told during the on-site visit that there are no interagency anti-corruption cooperation arrangements or agreements. Nevertheless, it was mentioned that “there are harmonious relations regarding cooperation to guarantee anti-corruption controls and accountability.”

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

[44] The PGN has a set of provisions and/or other measures suited to the purposes of the Convention, some of which have already been summarized briefly in Section 1.1. Nonetheless, the Committee considers the following comments worth making:

[45] First, the Committee notes an important exception to the powers of the PGN with respect to the investigation and the presentation of complaints regarding crimes allegedly committed by principal or substitute parliamentary representatives (diputados de la República). According to

22 http://www.ministeriopublico.gob.pa/minpub/Estadisticas/FiscaliasAnticorrupcion.aspx
Article 1 of Law 55 of September 21, 2012, it is incumbent upon the Supreme Court of Justice (CSJ), sitting in banc, to investigate and try such cases. Furthermore, pursuant to Article 2 of the same law, the accusation or denunciation must be advanced in writing, through an attorney, with an indication of the identity, address, and signature of the informer or complainant, with appropriate evidence of the punishable offence alleged to have been committed by the accused.23

[46] The Committee considers that, in amending Article 488 of the New Code of Criminal Procedure (Law 63 of August 28, 2008), Law 55 of 2012 places too heavy a burden on an individual citizen to substantiate a complaint of acts of corruption leveled at a Panamanian parliamentary representative. In general, citizens lack sufficient means to produce the appropriate evidence required by Law 55 of 2012. Furthermore, they need to have enough resources to hire an attorney, as a pre-condition for filing their complaint or accusation with the CSJ. This, combined with the fact that Panama does not yet possess either legislation or robust mechanisms for protecting those who, in good faith, denounce acts of corruption,24 could well discourage potential whistleblowers. That being so, the Committee considers it important that the power to file such complaints with the CSJ be returned to the PGN as the entity responsible for bringing criminal actions in Panama, so that possible acts of corruption committed by members of the National Assembly are investigated and do not go unpunished. The Committee will formulate a recommendation in that regard. (See Recommendation 1.4.1 in Section 1.4 of this report).

[47] Regarding the above, it is worth mentioning that, during the on-site visit, this subject was underscored by the representative of the civil society organization Alianza Ciudadana Pro Justicia25 as a major challenge for effectively investigating and trying deputies and members of the Central American Parliament (PARLACEN).

[48] Second, the Committee ascertained the existence of a Career Law for the Office of the Attorney General Law 1 of January 6, 2009). However, as the Committee was told by representatives of the PGN during the on-site visit, the Law has not yet been implemented. We were also told that a commission of the Office of the Attorney General had prepared a draft organic Law of the Office of the Attorney General, which is currently being reviewed for subsequent presentation to the appropriate bodies. That draft was said to address the organization, modus operandi, duties, and rights of officials.

23 On the subject of appropriate evidence, the Supreme Court of Justice, sitting in banc, ruled as follows through a resolution handed down on June 21, 2011: “Having concluded our examination of the complaint in the accusation, the Court notes failure to accredit the functional status of the accused and the omission of their particulars. Moreover, the evidence adduced does not point to even circumstantial evidence regarding the alleged commission of a crime because it is not the appropriate evidence required by law. Given that the accusation does not meet the requirements for judgment, by law it must be rejected outright, pursuant to Article 448 of the CCP…” Likewise, in its Resolution of January 22, 2013, the CSJ, sitting in banc, ruled that: “As Guillermo Cabanellas points out in his work Diccionario Jurídico Elemental, evidence is a procedural activity designed to prove the truth of an affirmation, the existence of a thing, or the reality of a fact. From that it follows that evidence is not itself the fact that is investigated, that is to say, one thing is the evidence and another is the known fact, which is why evidence consists of verifying a fact. That being so, the element of proof adduced by the complainant must be capable of producing certain or probable knowledge regarding the charges levelled against the member of parliament.”


Although this topic was reviewed in the Second Round of the MESICIC, the Committee considers that, given the very small number of career staff in the Office of the Attorney General (barely 15 of the 2,725 officials in the Office of the Attorney General are career civil servants), it is important, from an institution-building point of view, that permanent staff and, above all, the “acting staff” working in the Anti-Corruption Prosecutor’s Offices, are able, through procedures to be established, to acquire the status of career civil servants in the Office of the Attorney General and the labor guarantees needed to ensure enhanced performance of their duties. The Committee will formulate recommendations in that regard. (See Recommendations 1.4.2 and 1.4.3 in Section 1.4 of this report).

Third, the Committee notes that the total budget of the four Anti-Corruption Prosecutor’s Offices in the past three years has amounted to less that 1% of the PGN’s overall budget. Furthermore, it was told during the on-site visit, that the Fourth Anti-Corruption Prosecutor’s Office operates only with funds shared with the other Anti-Corruption Prosecutor’s Offices, the reason being that it was never approved by the Ministry of Economy and Finance, despite the fact that every year the Office of the Attorney General has included the Office in its preliminary draft Budget. The Committee also takes note of the scant human resources at the disposal of the Anti-Corruption Prosecutor’s Offices, which, for instance, have only two advisors to help the prosecutors analyze and understand complex auditors’ reports. It was also reported that the initial salary of these advisors was considered relatively low and that once they acquired a little experience at the institution, many of them left it to work in private companies or other institutions, such as the Panama Canal Authority, which offered far higher financial rewards.

In light of the above, and bearing in mind the importance of the PGN’s work, especially that of its Anti-Corruption Prosecutor’s Offices and the circuit prosecutor’s offices that handle these matters, as well as the need for them to have the human and financial resources they need for the proper performance of their duties, the Committee will formulate a recommendation in that regard. (See Recommendation 1.4.4 in Section 1.4 of this report).

Fourth, during the on-site visit, representatives of the Office of the Attorney General reported that the Adversarial Criminal System (Sistema Penal Acusatorio) would enter into force and be phased in gradually, in order to take account of the specific characteristics of Panamanian administration of justice. Thus, the Committee was told that the New Code of Criminal Procedure in Panama (Law 63 of August 28, 2008) was being gradually implemented and was currently in effect in two judicial districts (the Second and Fourth) and in cases heard by the Supreme Court of Justice sitting in banc and in the Criminal Division, as a court of sole instance, as well as by the National Assembly (Article 556 of the New Code of Criminal Procedure). Implementation in all other districts was postponed by Law 8 of March 6, 2013 and will end with its implementation in the First Judicial District (Panama Province, Colón, and Kuna Yala) on September 2, 2016.

27 The First Judicial District comprises the provinces of Panama, Colón, Darién and the District of San Blas; the Second Judicial District comprises the provinces of Coclé and Veraguas; the Third Judicial District comprises the provinces of Chiriquí and Bocas del Toro; and the Fourth Judicial District comprises the provinces of Herrera and Los Santos.
28 Law 8 of March 6, 2013 amended Article 556 of the New Code of Criminal Procedure and established the following schedule for implementing the Adversarial Criminal System in Panama: “2. From September 2, 2011, it shall be applied only to deeds occurring in the Second Judicial District and its respective judicial circuits. 2. As of September 2, 2012, it shall be applied to deeds occurring in the Fourth Judicial District and its respective judicial circuits. 3. As of September 2, 2015, it shall be applied to deeds occurring in the Third Judicial District and its respective judicial circuits. 4. As of September 2 2016, it shall be applied to deeds occurring in the First Judicial District and its respective judicial circuits. 5. As of September 2, 2011, it shall be applied in cases heard by the Supreme Court of Justice sitting in banc and in the Criminal Division, as a court of sole instance, as well as by the National Assembly. “
[53] It was also explained during the on-site visit that the Anti-corruption Prosecutors play an active part in the Adversarial Criminal System because, having nationwide jurisdiction, they are called upon to act in the jurisdictions of Coclé, Veraguas, Herrera, and Los Santos. The Committee was also shown the efforts made by the PGN to provide specific training in the Adversarial Criminal System.\(^{29}\) The Committee considers that the PGN should offer its staff such training courses on an ongoing and more extensive basis so as to ensure that its official are fully versed in the Adversarial Criminal System, as well as in other facets of the investigation into acts of corruption.

[54] Accordingly, the Committee considers that the Regional Anti-corruption Academy (ARAC) for Central America and the Caribbean, inaugurated in Panama toward the end of 2012, could prove highly useful for exchanges of experiences with investigation into acts of corruption for members of Panama’s Office of the Attorney General and their counterparts in the region. The Committee will formulate a recommendation in that regard. (See Recommendation 1.4.5 in Section 1.4 of this report).

[55] Fifth, as for the website of the Office of the Attorney General, the Committee found that many of the links do not work. Some of them are in the complaints section, such as the link to the Guidelines for Denouncing Acts of Corruption,\(^{30}\) while others are in the section on transparency,\(^{31}\) such as the links to In-house Regulations, the Strategic Plan, the Procedures Manual, the Organizational Chart, the Description of Forms, Rules of Procedure, Institutional Projects and Programs, Statistics, Hiring and Appointment of Staff, and Representation Allowances.

[56] Nor did the Committee find a link on the website of the Office of the Attorney General to the institution’s management reports or to the annual reports provided for in Article 347.12 of the Judicial Code on development in the administration of justice. The Committee will formulate recommendations in that regard. (See Recommendations 1.4.6 and 1.4.7 in Section 1.4 of this report).

[57] Finally, with respect to internal controls within the Office of the Attorney General, the Committee was notified that the Control and Oversight Secretariat, established in July 2012 and financed under a contingency heading in the Budget, had been closed that same year for lack of funds, and then reactivated in 2013 by the new Attorney General. Accordingly, the Committee considers that it is important that the Office of the Attorney General guarantee the existence of a permanent internal oversight body within the institution and it will formulate a recommendation in that regard. (See Recommendations 1.4.8 in Section 1.4 of this report).

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

[58] Through the on-site visit to the country under review, information was gathered regarding the results obtained by the PGN and the following, in particular:

[59] The 2011-2012 Statistical Report of the Anti-corruption Prosecutor’s Offices\(^{32}\) provides information regarding the PGN’s anti-corruption activities between January 2011 and September 2012, according to which 1, 418 case files were registered from January to December 2011, followed by a further 988 between January and September 2012, i.e. a grand total of 2,406 case

\(^{29}\) See [http://www.oas.org/juridico/PDFs/mesicic4_pan_pgn1.pdf](http://www.oas.org/juridico/PDFs/mesicic4_pan_pgn1.pdf)

\(^{30}\) [http://www.ministeriopublico.gob.pa/minpub/Denuncias/Corrupci%C3%B3n.aspx](http://www.ministeriopublico.gob.pa/minpub/Denuncias/Corrupci%C3%B3n.aspx)


files. Of those, 1,862 were forwarded to the courts with various requests (1,316 in 2011 and 726 in the first nine months of 2012).

[60] Regarding the discrepancy between the number of files registered and the number forwarded, the aforementioned Report states: “[…] it is necessary to point out that the difference in the number of files moved to the courts is largely explained by the fact that the heavy backlog of cases in the courts means that, with all their different phases, including appeals and incidental pleas, they cannot keep up with the volume of new cases registered.33

[61] Of the 1,862 case files forwarded, 577 (31%) requested a summons to trial; 266 (14%) recommended that the case be archived (petición de archivo); 382 (21%) requested temporary stays; 344 (18%) requested dismissal; 74 (4%) requested relinquishment of jurisdiction (con auto inhibitorio); and 229 (12%) were accompanied by petitions for extensions, attorney impediments, internal objections as to jurisdiction, and requests for joinders.

[62] Of the files remitted to the courts with requests for a summons to trial, 148 resulted in convictions and 43 in acquittals; in other words the PGN successfully brought criminal action in approximately 77% of 191 the cases that went to trial.

[63] In examining these annual reports, the Committee observes that they serve to confirm that the PGN’s Anti-corruption Prosecutor’s Offices are fulfilling their duty of investigating acts of corruption. Nevertheless, the Committee observes a high number of archived cases and requests for stays or dismissals. There, the Anti-corruption Prosecutors’ own Report suggests the likely causes: “It must be noted that over half the requests to archive cases are due to the lack of preliminary evidence (prueba sumaria), specifically in cases involving misuse of authority. As for the requests for dismissal, over half were due to the absence of auditor’s reports by the Office of the Comptroller General of the Republic.”34

[64] As for the issue of the need for preliminary evidence,35 Article 2647 of the Judicial Code establishes that, in proceedings against public servants for abuse in the exercise of his or her official functions or for failure to comply with the official duties of the position, the person making the criminal accusation or complaint “must accompany [the complaint] with preliminary evidence in support of it. Otherwise, or if such proof is not confirmed by any other means, the complaint shall be dismissed. For the purposes of this Article, preliminary evidence (prueba sumaria) shall be construed to mean any means of proof accrediting the alleged punishable act.”

33 Ibid., p. 1.
34 Ibid., p. 2.
35 On this, the Supreme Court of Justice, sitting in banc, resolved as follows (Resolution of June 21, 2011): “(…) Preliminary evidence...is that which proves 'that the government official’s conduct matches the legislator’s description of that deed in criminal law, in other words, the existence of a typified action (Record, October 1997, page 200). Likewise, the Supreme Court of Justice has pointed out that “preliminary evidence has to be sufficiently effective and appropriate to achieve the purpose pursued.” (Judgment of August 25, 1998). The same Court also pointed out in its Judgment of October 22, 2002 that “it has systematically been maintained that procedural law requires that the documents be submitted in the form of notarized copies (not just simple photocopies) and that the evidence be pre-constituted, that is to say, they must accompany the complaint or accusation from the moment it is filed. That satisfies the conditions for appropriateness (idoneidad) and effectiveness needed to sustain the accusation and render it viable to open preliminary investigation proceedings against a civil servant, in cases contemplated in Article 2464 of the Judicial Code.” Likewise, in its judgment of August 26, 1998, the Supreme Court of Justice indicated that: “accompanying the preliminary evidence does not refer to the presentation of a number of documents just to meet the preliminary evidence requirement. The means of proof that must accompany the complaint or accusation must in themselves be sufficiently eloquent to accredit the punishable act the accused is alleged to have committed, that is to say, they must be ‘appropriate’ (…).”
The preliminary evidence requirement poses a significant challenge for the PGN in trials against public servants until the new Code of Criminal Procedure, which eliminates all references to that requirement, enters into force. However, the preliminary evidence requirement would remain in effect for cases of illicit enrichment governed by Law 59 of December 29, 1999. The Committee will formulate recommendations in that regard. (See Recommendations 1.4.9 and 1.4.10 in Section 1.4 of this report).

During the on-site visit, the civil society organization “Alianza Ciudadana Pro Justicia” had the following to say regarding the aforementioned topic:36

"Preliminary evidence has become the chief obstacle for combating corruption in Panama. (...) Although the Criminal Code establishes that preliminary evidence is only for misuse of authority offences, the requirement is currently applied to all crimes heard by the Chamber of Deputies and the Supreme Court of Justice, as well as to the crime of unjustified enrichment. (...)"

The Anti-corruption Prosecutor’s Offices may not investigate any government official for unjustified enrichment unless there is a report from the Office of the Comptroller General of the Republic, according to the Supreme Court’s interpretation of Law 59 of 1999.

The Public Prosecution Service is not empowered to forward to the Office of the Comptroller General of the Republic any complaint regarding unjustified enrichment nor can it appeal any decision the Comptroller General’s Office makes regarding the archiving of an investigation.

(...).The Public Prosecution Service may not take action in response to the commission of crimes of unjustified enrichment because, according to the Supreme Court’s interpretation of Law 59 of 1999, it cannot act until it is in possession of the report of the Office of the Comptroller General. (...)"

Furthermore, in crimes of embezzlement and damage to State property, the judges have converted audits and reports of the Office of the Comptroller General of the Republic into evidence that is a pre-requisite for issuing a conviction."

The Office of the Comptroller General of the Republic may not, ex officio, investigate any government official for unjustified enrichment unless it is provided with preliminary evidence of the punishable act.”

As regards the matter of stays and dismissals, the Committee was told during its on-site visit that the PGN depends on the auditor’s reports from the Office of the Comptroller General of the Republic (CGR) for cases involving investigation of unjustified enrichment and embezzlement. It was also informed that delays in producing the CGR’s auditor’s reports pose a major problem for the PGN, which finds itself forced to ask the judge for stays pending completion of the report and, if the report is not received on time, to ask for dismissal. Although this issue is analyzed in the section on the CGR, the Committee deems it necessary for institutional coordination and cooperation mechanisms to be established between the two agencies in a quest for consensus regarding the parameters governing their actions for the sake of their common cause, which is to ensure that efforts to combat corruption and impunity are

effective. The Committee will formulate a recommendation in that regard. (See Recommendation 1.4.11 in Section 1.4 of this report).

[74] The lack of effective coordination among the various players in criminal proceedings was underscored by civil society and academic participants during the on-site visit. Thus, one academic interviewed had the following to say:37

[75] One of the problems detected some time ago is the lack of integration and consistency in actions taken by the various players in criminal proceedings, from the time the police intervenes until enforcement of the criminal sanction. While it is true that each link in this chain has its own role to play and its own responsibilities, we also need to recognize that the ultimate goal of the criminal system is one and the same: to satisfy, as efficiently as possible, citizens' requirements for criminal justice (...).”

[76] For her part, the representative of the civil society organization “Alianza Ciudadana Pro Justicia” claimed that38 “The Anti-corruption Prosecutor’s Offices are technologically backward. They lack effective access to and exchanges of information among the various entities and the Prosecutor’s Offices, using modern I.T. connectivity. There is a huge backlog in the preparation of the auditor’s reports of the Office of the Comptroller General, causing unnecessary delays in criminal investigations, because most of the reports are delivered a year and several months after they were requested, while others may take three years or more before they reach the judicial investigation authorities, even though the legal deadline for completing the investigation is supposedly six months (Article 2033 of the Judicial Code).”

[77] As regards the impact of the Disciplinary Council of the Office of the Attorney General, the body responsible for investigating violations committed by PGN personnel, the Committee was told during the on-site visit that, in the past five years, the Disciplinary Council investigated 193 officials in the Office of the Attorney General and recommended 8 suspensions in 2009; no punishments at all in 2010; 9 suspensions and 1 dismissal in 2011; five suspensions and three dismissals in 2012; and no punishment in January-March 2013. We were also told that, so far, all the sanctions recommended by the Disciplinary Council were applied by the authorities who appointed the officials concerned and who can opt to accept or reject the Disciplinary Council’s recommendation.39 We were further notified that: the remaining investigations were archived, for lack of a disciplinary violation or failure to prove one; or due to lack of jurisdiction, or in other cases theft of material and, in one case, by virtue of the statute of limitations.40

[78] For their part, the Anti-corruption Prosecutor’s Offices have instituted 14 criminal proceedings since 2008 against 24 officials in the Office of the Attorney General, including a senior circuit prosecutor, for crimes against public administration.

[79] The Committee considers that the foregoing information serves to demonstrate that in the country under review disciplinary investigations have been instituted against officials in the Office of the Attorney General. The Committee also takes note that the sanctions recommended by the Disciplinary Council of the Office of the Attorney General were in fact imposed by the respective authorities responsible for appointing the officials concerned.

37 See the presentation by Dr. Hipólito Gill, “Challenges for investigating, trying, and punishing acts of corruption in Panama.” Posted at: http://www.oas.org/juridico/ppt/mesicic4_pan_sc3.ppt
38 See the document presented by Alianza Ciudadana Pro Justicia, p. 4. Posted at: http://www.oas.org/juridico/pdfs/mesicic4_pan_sc4.pdf
39 See http://www.oas.org/juridico/PDFs/mesicic4_pan_pgn1.pdf
40 See http://www.oas.org/juridico/PDFs/mesicic4_pan_pgn2.pdf
1.4. Conclusions and recommendations

[80] Based on the comprehensive review of the Public Prosecution Service (PGN) in the foregoing sections, the Committee offers the following conclusions and recommendations:

[81] Panama has considered and adopted measures intended to maintain and strengthen the PGN, as indicated in Chapter II, Section 2 of this report.

[82] In light of the comments made in that Section, the Committee suggests that the country under review consider the following recommendations:

1.4.1. Consider the possibility of re-empowering the Public Prosecution Service to file complaints with the Supreme Court of Justice regarding offences allegedly committed by principal or substitute members of parliament. Also, consider eliminating those requirements placed on citizens that could curtail the possibility of filing complaints against members of parliament (See Chapter II, Section 1.2 of this report).

1.4.2. Promote the approval and enactment of the Organic Law of the Office of the Attorney General (See Chapter II, Section 1.2 of this report)

1.4.3. Establish the procedures referred to in Article 6 of the Career Law for the Office of the Attorney General, with a view to letting permanent staff, especially the “acting staff” (servidores en funciones) working in the Anti-Corruption Prosecutor’s Offices, access the career service in the Office of the Attorney General and the labor stability guarantees needed to enhance the performance of their duties (See Chapter II, Section 1.2 of this report).

1.4.4. Strengthen the Public Prosecution Service, especially its Anti-corruption Prosecutor’s Offices and the other circuit prosecutor’s offices handling these issues, by ensuring that they have the human and financial resources they need for the proper performance of their functions, bearing in mind the availability of resources. In connection with those efforts, ensure that wages, benefits, and promotion opportunities are sufficient to attract advisors and the other qualified staff needed to form a multidisciplinary team (See Chapter II, Section 1.2 of this report).

1.4.5. Provide ongoing and broader training to staff members of the Public Prosecution Service so that they become fully versed in the new Adversarial Criminal System, as well as in other facets of the investigation into acts of corruption. This could include the possibility of taking the measures needed to ensure that officials in the Public Prosecution Service, especially the members of the Anti-corruption Prosecutors’ Offices, can benefit from courses and activities organized by the Regional Anti-Corruption Academy (ARAC) for Central America and the Caribbean (See Chapter II, Section 1.2 of this report).

1.4.6. Check the website of the Office of the Attorney General and ensure that all the links in the “complaints” and “transparency” sections are working and are constantly updated (See Chapter II, Section 1.2 of this report).
1.4.7. Post the annual management reports of the office of the Attorney General on its website, along with the annual reports contemplated in Article 347.12 of the Judicial Code on developments in administration of justice (See Chapter II, Section 1.2 of this report).

1.4.8. Strengthen the internal oversight body in the Office of the Attorney General (the Control and Oversight Secretariat), guaranteeing it a permanent place in the organizational structure of the institution, as well as the human and financial resources it will need for the proper performance of its functions, bearing the availability of resources in mind (See Chapter II, Section 1.2 of this report).

1.4.9. Continue promoting progressive implementation of a new Code of Criminal Procedure, keeping to the schedule established in Law 8 of March 6, 2013, in order to ensure that the preliminary evidence requirement for offences involving civil servants is effectively phased out in the near future, with the exception of those cases in which specific legislation requires it (See Chapter II, Section 1.3 of this report).

1.4.10. Consider amending Law 59 of December 29, 1999, with a view to eliminating the need for preliminary evidence in cases of illicit enrichment and achieving better coordination of the work of the Public Prosecution Service and that of the Office of the Comptroller General of the Republic (CGR) in investigating these crimes. The PGN should be allowed to remit complaints to the CGR and appeal decisions taken to archive an investigation (See Chapter II, Section 1.3 of this report).

1.4.11. Strengthen, as appropriate, the coordination between the Public Prosecution Service and the Office of the Comptroller General of the Republic and with other institutions they need to be in contact with in order to optimize the performance of their functions in the fight against corruption. They should seek to harmonize rules and procedures and establish a consensus as to the parameters governing their actions and deadlines for the conclusion and presentation of CGR reports, on behalf of their common cause, which is to ensure that efforts to combat corruption and impunity are effective (See Chapter II, Section 1.3 of this report).

2. THE OFFICE OF THE COMPTROLLER GENERAL OF THE REPUBLIC (GCR)

2.1. Existence of a legal framework and/or other measures.

[83] The Office of the Comptroller General of the Republic (CGR) has a set of provisions in its legal framework, as well as other measures that refer, inter-alia, to the following:

[84] Articles 279 and 280 of the Political Constitution establish that the CGR is an independent state entity responsible for, inter alia, the following functions: “(...) 2. Inspecting and regulating, through prior or ex post controls, all movements of public funds and other public property, so that they are performed correctly in accordance with law (...); 3. Examining, taking over, and closing the accounts of public officials, entities, or persons that administer, handle or have custody of public funds or other public property (...); 4. Conducting inspections and investigations to determine the propriety or impropriety of operations affecting public property and, where applicable, file the respective complaints; 5. Eliciting from the appropriate public officials reports on the fiscal performance of public national, provincial, municipal, autonomous or semi-autonomous government units and of state-owned enterprises (...); 13. Submitting the accounts of public servants and
operators for scrutiny, through the Court of Accounts, whenever objections arise regarding alleged irregularities.\footnote{The CGR’s organizational chart as of September 2012 is posted on its website at: \url{http://www.contraloria.gob.pa/archivos_transparencia/Organigrama_ene2010.pdf}}

\[85\] The Organic Law of the Office of the Comptroller General of the Republic (Law 32 of November 8, 1984) establishes that the CGR is an independent, technical, State institution in charge of inspecting, regulating, and overseeing movements of public funds and property, and examining, taking over, and closing the accounts in question. Furthermore, Article 2 establishes that the CGR’s powers shall be exercised over all persons and entities responsible for having custody of or administering funds or property of the State, the municipalities, community councils, state-owned enterprises and autonomous and semi-autonomous entities in Panama or abroad. They also extend to persons or entities in which the State or public entities have a financial stake and to persons who receive a subsidy or financial assistance from those entities, as well as to persons who raise money for public purposes, although the extent of the CGR’s power to act shall be commensurate with the extent of the participation of said public entities. Outside the scope of actions by the CGR are: trade unions, cooperatives, and all other entities subject, by virtue of special legal provisions, to inspection, monitoring, and oversight by other government agencies.\footnote{Such as: The Superintendency of Banks, which regulates banking in the country; the Stock Market Superintendancy, which regulates securities firms and the Superintendancy of Insurance and Reinsurance of Panama, which regulates insurance. The Autonomous Panamanian Cooperative Institute oversees the activities of cooperatives; and the Ministry of Labor monitors the use of the Education Insurance funds allocated to trade unions.}

\[86\] Article 11 of the Organic Law of the CGR establishes its general functions, in conformity with Article 280 of the Political Constitution. Articles 12 to 54 describe its special functions.\footnote{Special functions include instituting accounting methods and systems; tasks relating to the rendering and examination of accounts; registering and overseeing the property of state entities or of assets entrusted to them; auditing of acts by management; oversight of guarantees; and running the national statistics system.} Law 59 of December 29 1999 also establishes special functions related to the reception and filing of notarized copies of public officials’ sworn declarations of their income and assets, as well as the investigation of allegations of unjustified enrichment (Law 59/2009, Articles 1 to 10).

\[87\] CGR decisions are signed by an individual official and can be the subject of an Appeal for Reconsideration, pursuant to Article 168 of Law 38 of July 31, 2000, a procedure that exhausts administrative remedy. Subsequently, an appellant may take the case to the Third Division of the Supreme Court, which deals with actions under administrative law.

\[88\] The CGR is headed by the Comptroller General, assisted by a Deputy Comptroller, both being appointed by the National Chamber of Deputies for a term equal to that of the President of the Republic,\footnote{Both appointments s shall take effect on the January 1 following the start of each ordinary Presidential term (Political Constitution, Article 279).} during which they may not be suspended from office or removed, except by the Supreme Court of Justice, on grounds established by law\footnote{According to Article 4 of the Organic Law of the CGR, grounds for dismissing the Comptroller- or Deputy Comptroller-General are: “a) commission of a crime against Public Administration, against property or public trust, or, in general, any crime punishable with imprisonment; b) commission of a crime of misuse of authority in breach of the duties of public servants; or c) blatant incompetence or negligence in the exercise of the office.”} (Political Constitution, Articles 161.5 and 279). Article 279.2 of the Political Constitution establishes the requirement and impediments for those
The function of the Comptroller and Deputy Comptroller-General are established in Articles 55 and 57 of the Organic Law of the CGR, respectively.

According to Article 5 of the Organic Law of the CGR, all its staff are appointed by and directly answerable to the Comptroller General who shall, through Rules of Procedure, determine the requirements for holding each position and the duties and responsibilities inherent therein.

Articles 8 and 9 of the Organic Law provide general indications regarding procedures for selecting, promoting, and granting job stability to the staff of the institution, whereby selection shall take into account both personal and professional merits. Likewise, the In-house Rules of Procedure of the CGR establish a job classification system (Article 28) and the selection system (Article 22); these Rules of Procedure are considered by the Third Division of the Supreme Court of Justice, which is responsible for hearing actions brought under Administrative Law, as a special human resources management regime established by a Special Law. Impediments to and requirements for entering public service in the CGR are determined by Articles 20 and 21 of its In-house Rules of procedure.

For a public servant in the CGR to enter the institution’s career service and enjoy job stability, consideration will be given to his or her suitability, loyalty, seniority, and morality in public service; in addition, he or she must have performed satisfactorily for at least five years. After acquiring that status, he or she may not be separated except on duly certified grounds established by law or in the In-house Rules of Procedure (Organic Law of the CGR, Article 9). During the on-site visit, representatives of the CGR told us that 1,863 members of staff pertain to the career service and enjoy job stability; 862 are staff, but do not form part of the career service; and 663 are on limited contracts (contratistas). Of the 320 staff members who respond to ex-post audits nationwide, 159 are auditors and 54 are audit supervisors.

As for discipline, all CGR personnel are required to abide by the institution’s Code of Ethics and Professional Conduct, as well as the In-house rules, which established their rights (Article 79), duties (Article 78), prohibitions (Article 80), and are subject to the corresponding disciplinary measures, which include verbal warning, written warning, temporary suspension from the job, and dismissal, without prejudice to any civil and criminal liabilities they may incur for the same behavior (Articles 81 to 90).

With regard to the job classification system, according to Panama’s Reply to the Fourth Round Questionnaire, “There is now a Job Description Manual, which describes the tasks to be carried out by staff, pursuant to the job profile described in the Job Structure in place in the Office of the Comptroller General of the Republic (…).” The Reply also states that the manuals are recurrently being updated in line with the Skills Management approach being implemented in the CGR.

The body responsible for training CGR officials is the Higher Institute for Supervision, Oversight and Public Management (Instituto Superior de Fiscalización, Control y Gestión Pública), established in 1999 by CGR Decree No. 284 of December 17, 1999 and restructured in 2010 by

46 The requirements for the position of Comptroller- or Deputy Comptroller-General of the Republic are: Panamanian citizenship by birth; a university degree; age 35 or over; not having been convicted, in a final judgment handed down a court of justice, of a felony punishable with five or more years of imprisonment.
48 Judgments of November 21, 2006 and February 2, 2009, handed down by the Third Division of the Supreme Court of Justice.
49 See Panama’s Reply to the Fourth Round questionnaire, p. 25.
CGR Decree No. 250-Leg. of June 25, 2010. During the on-site visit, information was provided on the training courses organized by the Institute and the total number of staff trained since its restructuring. According to those data, 25,799 staff members, including 21,628 from the CGR, benefited from a number of training courses taught at the Institute.50

[95] As for manuals describing the functions to be performed by its staff, the CGR has 226 handbooks on officially recognized administrative and supervisory procedures, 51 including the special audits manual establishing liabilities, 52 and the Procedures Manual for Performing the Basic Functions of the National Citizen’s Complaints Directorate.53

[96] Regarding the implementation of modern systems or technology to facilitate its work, in its Reply to the Fourth Round questionnaire, the country under review provided information on the technological tool known as the Monitoring, Access Control and Supervision of Documents System (Sistema de Seguimiento, Control Acceso y Fiscalización de Documentos - SCAFID).54 This is a unique I.T. system required to be used nationwide for registering correspondence submitted to and processed by the CGR in respect of in-house documents. 55

[97] In order to keep citizens abreast of its activities, the CGR has a website, 56 which, inter alia, includes a Press Section which posts the “Controlaría Comunica”57 [Office of the Comptroller General Communicates] bulletins, a newsletter called “Accountability”,58 a weekly column called “The Office of the Comptroller General Informs You,”59 and a weekly radio program. 60 Access is also provided to the “Follow me” File Management and Handling System (Sigueme),61 which allows a user who has any document in the CGR to know here it is at any one point of time. Also posted on the CGR website are its Strategic Plan for 2010-2014, 62 the reports of the Comptroller-General, 63 and complaint hotlines, such as the Citizens’ Complaints channel. 64

[98] The body responsible for overseeing accounting, financial, budgetary, operating and property-related matters at the CGR is the Institution’s Department of Internal Audit, which answers to the office of the Deputy Comptroller-General (Organic Law of the CGR, Article 57.ch and the In-house Rules of Procedure, Article 9).

[99] As regards guarantees for its funding, Article 10 of the Organic Law of the CGR establishes that the State Budget shall include sufficient appropriations to cover the entity’s expenses65 and that

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50 The complete list of training courses provided is contained in the document presented by the CGR during the on-site visit, which is posted at: http://www.oas.org/juridico/PDFs/mesicic4_pan_cgr1.pdf
51 The complete list of Procedures Manuals is posted in the Transparency Section of the CGR website at: http://www.contraloria.gob.pa/archivos_transparencia/ManualesdeProcedimientosOficializados.xls
54 See Panama’s Reply to the Fourth Round questionnaire, pp. 25 and 26.
55 Article 1 of CGR Decree No.72-Leg.of march 5, 2013.
56 http://www.contraloria.gob.pa/
61 http://www.contraloria.gob.pa/sicowebconsultas/
64 http://www.denunciaciudadana.gob.pa
65 In addition, in years in which national censuses are to be conducted, there will be additional special appropriations, depending on what those censuses cost (Organic law of the CGR, Article 10)
the budget of the Office of the Comptroller General shall increase in line with increases in the overall State Budget. The CGR prepares its own proposed budget, which is discussed with the Ministry of Economy and Finance before being included in the proposed State Budget. During the on-site visit, the CGR was asked to provide data on its budget for the past five years and its percentage of the national budget. 66 In 2009, the CGR budget amounted to 0.59% of the national budget; in 2010, 0.68%; in 2011, 0.68%; in 2012, 0.61% and in 2013, 0.50%. 67

[100] Regarding coordination mechanisms for harmonizing the CGR’s functions with those of other oversight bodies or government authorities, we were told during the on-site visit that the CGR has signed an inter-agency cooperation agreement with the Court of Accounts (Tribunal de Cuentas) and the Public Prosecutor’s Office for Financial Matters (Fiscalía de Cuentas). 68 We were also informed that the inter-agency coordination and cooperation ties that the CGR maintains with those jurisdictional and financial audit entities serve primarily to perform its ex-post supervisory function, which leads to special audits requested by the Office of the Attorney General. If, upon completion, those audits detect financial damage and links to it, they are forwarded to the Office of the Attorney General and the Court of Accounts (Tribunal de Cuentas). Furthermore, Article 11.5 of the Organic Law of the CGR provides that the CGR “shall collect from the office of the Attorney General reports on the status of preliminary investigations and of criminal proceedings originating in illicit acts against the public interest, in order to supplement the records kept on the subject by the Office of the Comptroller General. The Office of the Attorney General and the Office of the Comptroller General of the Republic shall coordinate in their work on said investigations and proceedings, so that each of them can comply with the mandates assigned to it.”

[101] As regards transparency and accountability, under Article 280.9 and 12 of the Political Constitution, the Comptroller General of the Republic has to present two reports on her/his work to the Executive and to the National Assembly: one on the financial standing of the Public Administration and an annual report on the CGR’s activities, both of which are published on the institution’s website. 69 In addition, on its website and, in particular, its section on Transparency, 70 the CGR renders account to citizens of the work it has done and provides information on its performance.

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

[102] The Office of the Comptroller General of the Republic has a set of provisions and/or other measures relevant to the purposes of the Convention, some of which were briefly described in Section 2.1 of this report. Nevertheless, the Committee deems it appropriate to make a number of observations in relation thereto:

[103] First, the Committee notes that Panama’s regulatory framework does not clearly establish a national internal audit system, nor does it determine that the CGR is the central organ or technical governing body for that system. During the on-site visit, the Committee was told that there are internal audit units in several state institutions and organs, which answer only to their own authorities. Thus, there appears to be at least no formal links between the internal audit units and the CGR.

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66 The information on the CGR budget as a percentage of Panama’s national budget is posted at: http://www.oas.org/juridico/PDFs/mesicic4_pan_crg1.pdf
67 It was explained during the on-site visit that the increases in 2010 and 2011 were due to the fact that censuses were conducted in both those years.
68 http://www.oas.org/juridico/pdfs/mesicic4_pan_cgr-acuerdo.pdf
69 The CGR reports are posted at: http://www.contraloria.gob.pa/index.php?opcion=InfContral
This major issue was identified in the CGR’s 2010-2014 Institutional Strategic Plan (Strategic Objective #2), 71 which states the following:

“The National Government, being committed to the promotion of transparency and the fight against corruption, has undertaken pro-active initiatives to improve public administration.

However, there is no formal system for internal auditing of public administration in the various central government entities, or in the decentralized and autonomous entities and state-owned enterprises, through which public policies can be defined and promoted in connection with governmental internal audits.

That state of affairs constitutes a risk factor for acts of corruption in the various entities comprising the public sector, because officials responsible for administering State property do not attach importance to best practices in internal management audits, as a result of which actions are reactive, i.e. taken only after the event when acts of corruption are denounced, and not preventively.” 72

In addition, the CGR Management Report for 2012 points out that the strategic objective is the one in which the least progress has been made (18%), of the four objectives established therein, because legal reforms to make substantial progress are still pending. 73

With the above in mind, the Committee will formulate a recommendation that legislative or other appropriate measures be adopted to establish an internal audit system in Panama centered on the CGR as its core organ or technical governing body, thereby regulating the functional and/or administrative dependency of the internal audit units in those entities on the CGR, meaning that those units will be subject to the guidelines and provisions issued by the CGR. (See Recommendation 2.4.1 in Section 2.4 of this report).

Second, the Committee notes that, although the CGR budget has increased in absolute terms from approximately B/.57,234,500 in 2009 to B/.81,460,750 in 2013, those Balboa amounts disguise a decline as a percentage of the total State Budget from 0.59% in 2009 to 0.50% in 2013.

During the on-site visit, representatives of the CGR also explained that fulfilling their responsibilities for combating corruption was hampered by lack of human and financial resources. For instance, they explained that they only had 159 auditors for ex-post audits and for preparing special, financial, and other audit reports requested by the Office of the Attorney General and by the Public Prosecutor’s Office for Financial Matters (Fiscalía de Cuentas). The Committee was also told that they had managed to double the initial salaries of auditors to B/.1,090, but that it remained too low, so that once auditors had acquired a little experience at the institution many of them left it to go to private companies or other institutions, such as the Panama Canal Authority, which offered far higher financial rewards.

In light of the above, and bearing in mind the importance of the work done by the CGR and its need to have the human and financial resources required to do its job, the Committee will

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71 See Objective #2 “Strengthen the Internal Control Framework through Internal Audit Units of the Public Sector” of the Institutional Strategic Plan of the CGR 2010-2014. Posted at: http://www.contraloria.gob.pa/archivos_informesdele/Plan_Estrat%C3%A9gico_CGR_2010-14_Final_V3_Rosa.pdf
72 CGR’s 2010-2014 Institutional Strategic Plan, pp. 10 and 11.
formulate a recommendation in that regard. (See Recommendation 2.4.2 in Section 2.4 of this report).

[113] Third, the Committee notes that neither the In-house Rules of Procedure nor CGR Decree No. 17-DDRH of January 22, 2004 establish the requirement of selection through open competitive examination referred to in that same Decree, which even allows direct hiring of officials with permission from the Comptroller General, thereby getting around the open competition procedure. According to what the Committee was told during the on-site visit, in practice, public invitations to apply for vacancies are not sent out. Rather curricula vitae are received and there is a list of interested parties. Based on the CGR’s needs, those people are contacted when a vacancy occurs.

[114] Furthermore, the Committee ascertained that neither the CGR’s Organizational and Functions Manual nor its Job Descriptions Manual are posted on the institution’s website. 74

[115] While bearing mind that the subject of systems of government hiring was discussed in the Report on the Second Review Round of the MESICIC, 75 on that occasion it was not analyzed specifically in relation to the system for hiring staff for the CGR. For that reason, the Committee will formulate a recommendation in that regard (See Recommendations 2.4.3. and 2.4.4 in section 2.4 of this report)

[116] Finally, in its response to the questionnaire, the country under review identifies late presentation of financial statements as one of the difficulties hampering its work. 76 In such cases, Articles 22 and 23 of the Organic Law authorize the Office of the Comptroller General of the Republic to impose a fine of between B/50 and B/.500, depending on the seriousness of the case, on those who either do not submit their statement on time or upon request. Repeat offenders can be fined double the amount if the second offense within one year of the date of the first fine and the CGR may request one month’s suspension of the official concerned. In cases of gross negligence or evident reluctance to comply with obligations, the Office of the Comptroller General is authorized to request the dismissal of the employee and such dismissal must be carried out once the facts have been ascertained.

[117] Nevertheless, for the aforementioned sanctions actually to be imposed, the CGR has to issue a Rule regulating the procedure and specifying how the breaches can be ascertained. The Committee will formulate recommendations in that regard (See Recommendations 2.4.5 and 2.4.6 in section 2.4 of this report).

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

[118] Based on the response of the country under review to the questionnaire and the on-site visit, information was gathered regarding the results obtained by the CGR, among which the following is noted:

[119] First, Panama’s response77 highlights the corruption prevention actions and programs undertaken by the CGR, in particular: “Programa Operativo Vehicular para el Control de Uso de

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74 As regards the CGR’s Job Description Manual, as reported in Section 2.1, it is currently being brought up to date in line with the Skills Management approach being introduced in the CGR.
76 See Panama’s Reply to the Fourth Round questionnaire, p. 31.
77 See Panama’s Reply to the Fourth Round questionnaire, pp. 28 and 29.
“Autos Oficiales” [Program regulating the use of official vehicles] and the T.V. campaigns targeting civil servants safeguarding State property, encouraging them to make proper use of office materials and warning them of the consequences of improper use.

[120] However, the Committee considers that the CGR could broaden its promotional campaigns and efforts to heighten understanding of the work done by the institution in order to achieve greater citizen participation in its oversight function, in line with Strategic Objective #4 of the Office’s Institutional Strategic Plan, which, according to the latest CGR Management Report, has only advanced 49%. The Committee will formulate a recommendation in that regard (See Recommendation 2.4.7 in section 2.4 of this report).

[121] Second, as regards the principal outputs of the CGR’s work, Panama’s response provides the following information:

[122] “As we have pointed out, by both constitutional and legal mandate it is incumbent upon the Office of the Comptroller General of the Republic to perform a series of functions, such as conducting inspections and investigations to ascertain the propriety or impropriety of operations that affect public property and, where applicable, to file the corresponding complaints. Those investigations may be initiated either as a result of a complaint or ex officio, when the Office of the Comptroller General deems it appropriate.”

[123] “Nevertheless, the authorities responsible for determining whether or not liabilities derived from those investigations or audits are the Court of Accounts (Tribunal de Cuentas) and the Judiciary.”

[124] Furthermore, the documents presented during the on-site visit show that the CGR does not possess accurate information regarding the results achieved under previous administrations, so that the information they submitted refers to the status of audits conducted in 2010 - 2012. The total number of audits currently under way is 208. The total number of audits pending a decision on the merits is 679 (320 in 2010, 191 in 2011, and 168 in 2012); and the total number of audits referred to competent bodies is 262 (63 in 2010, 84 in 2011, and 115 in 2012).

[125] The same document specifies the requests received during the CGR’s current administration from the Office of the Attorney General and the Public Prosecutor’s Office for Financial Matters. In total, 76 requests were filed by the Public Prosecutor’s Office for Financial Matters (29 in 2010, 26 in 2011, and 11 in 2012) and 618 were filed by the Office of the Attorney General (154 in 2010, 261 in 2011, and 203 in 2012).

[126] Regarding the foregoing matter, the CGR’s 2012 Management Report states: “The increase in the number of requests filed by the agencies of the Office of the Attorney General, which in terms of both volume and complexity exceed the capacity of the (General Audit) Directorate, means that more so-called special audits are being issued. (…), so that 85% (116)

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78 See the CGR’s 2012 Management Report, pp. 79 to 82. Posted at: [http://www.oas.org/juridico/PDFs/mesicic4_pan_contraloria.pdf](http://www.oas.org/juridico/PDFs/mesicic4_pan_contraloria.pdf)
79 See the CGR’s 2012 Management Report, p. 11. Posted at: [http://www.contraloria.gob.pa/archivos_informes/Plan_Estrat%C3%A9gico_CGR_2010-14_Final_V3_Rosa.pdf](http://www.contraloria.gob.pa/archivos_informes/Plan_Estrat%C3%A9gico_CGR_2010-14_Final_V3_Rosa.pdf)
are special audits, 6% (8) are financial audits, and the remaining 9% (13) are other audit
documents, such as internal audit supplements, expansions, and evaluations, and so on."

[127] The aforementioned Management Report also provides the following information” “The
average time it takes for presentation of the Auditor’s Reports, once the field audit itself has been
completed by the National General Audit Directorate, is seven months, depending on the
complexity, scope and period of the audit. Those that take longest are the special reports due to
the summons issued to persons involved in possible irregularities.”

[128] Generally speaking, the information presented reveals first that although the number of
audits pending decisions on the merits has declined in the past two years, the total number of
audits pending between 2010 and 2012 is almost 2.5 times higher than the total number of audits
forwarded to competent bodies in the same period.

[129] One of the reasons for that delay, noted in the aforementioned CGR Management report for
2012, is said to be the large number of requests for special audits filed by the Office of the
Attorney General. Accordingly, the Committee deems it important that the CGR receive the
human and financial resources needed to be able to meet the procedural deadlines that the Office
of the Attorney General is subject to and, as mentioned in section 1.3, that effective institutional
coordination and cooperation mechanisms be in place between the two institutions; the idea being
to establish parameters for action that both institutions have agreed upon for the sake of their
common goal, which is to combat corruption and impunity effectively. Likewise, to ensure
effective preparation of solid and robust auditors’ reports (be they special, financial, or of any
other kind), the two institutions could agree to establish – as one of the objectives of the
aforementioned inter-agency mechanisms or agreements -- a multidisciplinary forensic audit
team specializing in more complex financial or other audits. The Committee will formulate
recommendations in that regard (See Recommendation 1.4.13 in Section 1.4 of this report and
Recommendations 2.4.2 and 2.4.8 in section 2.4 of this report).

[130] Regarding the issue raised above, during the on-site visit, the civil society organization
“Alianza Ciudadana Pro Justicia” had the following to say:

[131] "Regarding the time it takes to prepare the auditors’ reports of the Office of the
Comptroller General of the Republic, we can say that there is considerable delay resulting in
unnecessary postponements of the criminal investigation, since most of the reports are delivered
one year and several months after they are requested and a significant number take more than
three years before they reach the judicial authorities responsible for preparing a case, even
though the legal deadline for concluding investigations is supposed to be six months (Article
2033 of the Judicial Code).”

[132] Third, during its on-site visit, the Committee was provided information regarding the
activities of the CGR’s Citizens’ Complaints Directorate, which received 8,636 files
Corresponding to citizens’ complaints that had been received, analyzed, attended to, and effectively

84 Ibid., p. 38.
85 See the document presented by Alianza Ciudadana Pro Justicia, p. 3. Posted at: http://www.oas.org/juridico/pdfs/mesicic4_pan_sc4.pdf
86 Complete information is available in the document presented by the CGR during the on-site visit, which is posted at:
http://www.oas.org/juridico/PDFs/mesicic4_pan_cgr1.pdf
processed between July 1, 2006 and March 31, 2013 (52% received between July 2006 and end-2009; 12% in 2010; 20% in 2011; 13% in 2012; and 3% through March 2013).

[133] 67% of the complaints received were anonymous, and 33% were fully identified. Most (55%) came via the website\(^7\) and by phone (32%).

[134] Half (4,399) of the complaints were discarded after being preliminarily checked for the following: lack of competence of the CGR for the complaint in question (in such cases, the complaints were referred to the competent authority); duplicated complaints; comments that did not amount to denunciations; lack of the specific data needed for processing; and complaints that were not about irregularities committed. According to the CGR representatives, this indicator has served to determine the shortcomings in the submission of citizens’ complaints which the institution can then attempt to remedy in its strategic programs and activities offering guidelines for improving the quality of the complaints submitted.

[135] 4,297 (50%) complaints were actually processed. Of those, 2,698 (63%) were property-related irregularities (funds, vehicles, land, equipment, accessories and materials); 826 (19%) were labor-related (dual functions, non-compliance, wage increases, hiring); 713 (18%) were sundry complaints; 38 (0%) had to do with procurement irregularities; and 22 (0%) were about alterations to documents.

[136] Of the 4,297 complaints processed, 259 (6%) were still being processed at March 31, 2013 and 4,038 (94%) had been completed in the sense of determining whether or not the alleged irregularity described in the citizen’s complaint had been confirmed, which then triggered audit reports by the oversight bodies in the institutions and Inspection Reports, with recommendations related to strengthening the government’s internal controls, imposition of fines, and administrative and disciplinary sanctions, and transfers of citizens’ complaints to the General Audit Directorate.\(^8\)

[137] Regarding the above information, the Committee considers that it serves to demonstrate that the CGR’s Directorate of Citizens’ Complaints has performed its job of receiving and processing citizens’ complaints. However, the Committee is unable to perform a thorough analysis of the subject because it does not have at its disposal information on follow-up to the communications sent by the CGR to the oversight bodies in the institutions. For instance, no information is available on whether the State institutions or the respective oversight office has begun their respective proceedings (investigation), or on whether or not fines and sanctions requested or recommended by the CGR were actually imposed. The Committee will formulate a recommendation in that regard (See Recommendation 2.4.9 in section 2.4 of this report)

[138] The Committee also notes that the number of irregularities relating to public procurement appears to be very low (38 complaints in almost 7 years). Accordingly, the Committee deems it appropriate that the country under review conduct studies needed to determine the reason(s) for such a low number of complaints, be it that citizens are possibly unfamiliar with the issue, fear of filing a complaints, or, for instance, the absence of specific regulations regarding official or reference prices in public tenders, as reported by civil society during the on-site visit.\(^9\)

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7 www.contraloria.gob.pa y www.denunciaciudadana.gob.pa

8 The numbers regarding notes sent to institutions regarding citizens’ complaints that have been followed up by notification of the competent authority for due processing are contained in the document presented by the CGR during the on-site visit, which is posted at: http://www.oas.org/juridico/PDFs/mesicic4.pan_cgr1.pdf

9 See the presentation by Fundación para el Desarrollo de la Libertad Ciudadana [Foundation for the Development of Citizen Freedom], “La Perspectiva de la Sociedad Civil sobre el Rol de los Órganos de Control y el Combate contra la
Committee also considers that the necessary measures should be taken to solve such obstacles as are identified. The Committee will formulate a recommendation in that regard (See Recommendation 2.4.10 in section 2.4 of this report).

[139] Finally, as for administrative/disciplinary liability, the CGR representatives reported that, in the past five years, 304 staff members of the institution were suspended (35 in 2008; 26 in 2009; 24 in 2010; 69 in 2011; 109 in 2012; and 41 through April 2013.). The total number of staff dismissed was 27 (8 in 2008; 9 in 2009; 8 in 2011, and 2 in 2012). They also reported that none of those suspensions or dismissals was reversed by an appeal to the Administrative tribunal. 90

[140] The Committee considers that the above information serves to demonstrate that disciplinary investigations have been initiated in the CGR that culminated in effective sanctions being imposed on the staff involved. However, the Committee lacked complete information on the number of investigations under way, how many were shelved, and how many prescribed. The Committee will formulate a recommendation in that regard (See Recommendation 2.4.11 in section 2.4 of this report).

2.4. Conclusions and recommendations

[141] Based on the comprehensive review of the Office of the Comptroller General (CGR) in the foregoing sections, the Committee offers the following conclusions and recommendations:

[142] **Panama has considered and adopted measures intended to maintain and strengthen the CGR, as indicated in Chapter II, Section 1 of this report.**

[143] In light of the comments made in that Section, the Committee suggests that the country under review consider the following recommendations:

- **2.4.1.** Consider adopting legislative or other appropriate measures to formally establish an internal audit system in public sector entities centered on the Office of the Comptroller General (CGR) as the core organ or technical governing body, thereby regulating the functional and/or administrative dependency of the internal audit units in those entities on the CGR, meaning that those units will be subject to the guidelines and provisions issued by the CGR (See Chapter II, section 2.2 of this report).

- **2.4.2.** Strengthen the Office of the Comptroller General of the Republic, ensuring that it has the human and financial resources needed for the proper fulfillment of its functions, with due consideration to the availability of resources (See Chapter II, section 2.2 of this report)

- **2.4.3.** Consider making the necessary regulatory adjustments to establish that selection to fill vacancies in the Office of the Comptroller General shall be done via open competition and to ensure that selection processes are widely advertised (See Chapter II, section 2.2 of this report.)

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90 See the document presented by the CGR after the on-site visit, posted at: [http://www.oas.org/juridico/pdfs/mesicic4_pan_cgr3.pdf](http://www.oas.org/juridico/pdfs/mesicic4_pan_cgr3.pdf)
2.4.4. Publish the Office of the Comptroller General’s Organization and Functions Manual and Job Description Manual on the institution’s website (See Chapter II, section 2.2 of this report.)

2.4.5. Issue the rule regulating the procedure established in Article 24 of the Organic Law of the Office of the Comptroller General of the Republic for imposing sanctions on those who do not submit financial statements to the CGR on time or upon request (See Chapter II, section 2.2 of this report.).

2.4.6. Consider reviewing the sanctions established in Articles 22 and 23 of the Organic Law of the Office of the Comptroller General of the Republic in order to determine whether they are sufficient to dissuade those who fail to comply with the obligation to submit financial statements to the CGR or do so late. (See Chapter II, section 2.2 of this report.)

2.4.7. Maintain and continue promotional campaigns and efforts to heighten understanding of the work done by the Office of the Comptroller General of the Republic in order to achieve greater citizen participation in its oversight function, seeking, where applicable, the support of the National Authority on Transparency and Access to Information. (See Chapter II, section 2.2 of this report.)

2.4.8. In coordination with the Public Prosecution Service (Procuraduría General de la Nación), consider establishing a multidisciplinary forensic audit team specializing in more complex financial or other audits. In connection with those efforts, ensure that wages, benefits, and opportunities for promotion for the unit’s personnel are sufficient to attract the auditors and other qualified experts it needs, taking the availability of resources into account (See Chapter II, Section 2.3 of this report).

2.4.9. Strengthen and ensure the implementation of the follow-up systems on the status of compliance with communications or notes sent by the Office of the Comptroller General of the Republic to the institutions notifying the competent authority for due processing of citizens’ complaints, in order to achieve complete, cross-cutting information on the status of each complaint filed, from its reception by the CGR to the final outcomes in the respective institutions or oversight offices (See Chapter II, Section 2.3 of this report).

2.4.10. Conduct studies needed to determine the reason(s) for such a low number of complaints processed by the Office of the Comptroller General of the Republic regarding irregularities in public procurement, and take the necessary measures to solve such obstacles as are identified. (See Chapter II, Section 2.3 of this report).

2.4.11. Prepare comprehensive statistical data on the outcomes of disciplinary investigation proceedings within the scope of the Office of the Comptroller General of the Republic, so that it is possible to know how many investigations were shelved and how many prescribed and thereby identify challenges and recommend corrective measures. (See Chapter II, Section 2.3 of this report).
3. COURT OF ACCOUNTS (TRIBUNAL DE CUENTAS)

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

[144] The Court of Accounts has a set of provisions in its legal framework, as well as other measures that refer, inter-alia, to the following:

[145] Article 281 of the Political Constitution establishes the Jurisdiction over Accounts with nationwide competence and powers to verify the accounts of agents and managers\(^{91}\) (agentes de manejo) whenever reservations are expressed regarding alleged irregularities.

[146] Article 1 of Law 67 of November 14, 2008, which develops the Jurisdiction of Accounts and amends the Organic Law of the CGR, grants the Court of Accounts autonomy, as follows: “The single-instance Court of Accounts is hereby established as a body that is functionally and administratively independent, and with respect to its budget, with its head office in Panama City and with jurisdiction and competence throughout the national territory.”

[147] According to Article 3 of Law 67 of 2008, the function of the Court of Accounts\(^{92}\) is to hear and pronounce on property-related proceedings submitted for consideration in the following circumstances:

[148] “1. Whenever objections are raised regarding the account rendered to the Office of the Comptroller General of the Republic by government-employed managers with respect to the receipt, collection, investment or payment of public funds or to the administration, care, custody, authorization, approval or control of public funds or property.

[149] 2. Whenever objections are raised regarding the account rendered to the Office of the Comptroller General of the Republic by managers with respect to the receipt, collection, investment or payment of public funds or to the administration, care, custody, authorization, approval or control of public funds or property.

[150] 3. Whenever objections are raised regarding the administration of accounts of government-employed managers and other managers (los empleados y los agentes de manejo) as a result of an inspection, audit, or investigation carried out by the Office of the Comptroller General of the Republic either ex officio or in light of information or a complaint filed by any private individual or civil servant.

[151] 4. Whenever public funds or property are impaired or lost due to fraud, a wrongful act, or negligence, illegal or improper use by civil servants due to fraud, a wrongful act, or negligence, illegal or improper use by civil servants, individuals, or legal entities receiving them for any reason, collecting them, paying them, or having administration, care, custody, or control over them, or distributing, investing, authorizing, approving or supervising them.

[152] 5. Whenever public funds or property are impaired or lost due to fraud, a wrongful act, or negligence, illegal or improper use by state-owned enterprises or mixed State- and privately owned

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\(^{91}\) According to Article 2 of Law 67 of 2008, “for the purposes of this Law, an “empleado de manejo” (government-employed manager) shall mean any civil servant who receives, collects, handles, administers, invests, has custody of, looks after, controls, approves, authorizes, pays or oversees public funds or property. For the same purposes, “agente de manejo” (manager) shall mean any individual or legal entity who receives, collects, handles, administers, invests, has custody of, looks after, controls, approves, authorizes, pays or for any reason public funds or property.”

enterprises and all those in which the State has a financial stake, an autonomous or semi-autonomous institution, a municipality or a community council (Junta communal).

[153] Whenever public funds or property are impaired or lost that were in the form of allowances, subsidies, loans, guarantees, donations, aid, or contributions delivered to individuals or legal entities for public purposes."

[154] Article 4 of Law 67 of 2008 also provides that the financial liability for the acts described in the foregoing paragraphs shall subsist independently of any administrative, criminal or disciplinary liability they may entail.

[155] As for the scope of the Court of Accounts’ functions, Panama’s response to the Fourth Round questionnaire 93 explains that the Political Constitution only empowers the Court of Accounts to exercise jurisdiction over accounts. The recovery of property found by the Court of Account’s judgments to have been misappropriated will be implemented through the coercive powers of the National Revenue Authority. 94

[156] As for the way it takes its decisions, the Court of Accounts is a collegiate body in which decisions are taken by a plenary meeting of the Chamber of Agreements (Sala de Acuerdo). Resolutions are also issued on a unitary basis (en Sala Unitaria). Articles 37 to 87 of Law 67 of 2008 establish the rules and detail the accounts auditing process. An appeal for reconsideration of the resolution issued can be filed with the Office itself within five business days of notification (Article 78 of Law 67 of 2008). Its decisions may also be challenged by taking the matter to the Third Division of the Supreme Court of Justice, which is responsible for hearing actions brought under Administrative Law (Articles 82 and 83 of Law 67 of 2008).

[157] Pursuant to Article 281 of the Political Constitution, the Court of Accounts comprises three magistrates, who are appointed for staggered 10-year terms: one by the Legislature, another by the Executive, and the third by the Supreme Court of Justice. For each principal magistrate, a deputy shall be appointed in the same way and for the same term (Law 67 of 2008, Article 6). 95 The Magistrates of the Court of Accounts shall enjoy the same rights, remuneration, and prerogatives as those afforded to Magistrates of the Supreme Court of Justice (Article 8 of Law 67 of 2008). Likewise, Magistrates of the Court of Accounts may only be suspended or removed from office by the Supreme Court of Justice sitting in banc for offenses or crimes committed in the performance of their functions and to which Articles 205, 210, 211, 213, and 216 of the Political Constitution apply (Article 9 of Law 67 of 2008).

[158] Law 67 of 2008 also established the Public Prosecutor’s Office for Financial Matters (Fiscalía de Cuentas), which performs its functions throughout the national territory and is headed by a Public Prosecutor for Financial Matters, who will have a deputy and is assisted by a Secretary General and as many civil servants as required for the performance of his or her functions (Articles 19 to 26 of Law 67 of 2008).

[159] The functions of the Public Prosecutor for Financial Matters, established by Article 26 of Law 67 of 2008, include:

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93 See Panama’s Reply to the Fourth Round questionnaire, p. 34.
95 Article 7 of Law 67 of 2008 establishes the requirements for holding the position of Magistrate of the Court of Accounts.
“1. Preparing the corresponding financial investigation once the Office of the Comptroller General of the Republic raises objections to the financial statements submitted by government-employed and other managers or detects irregularities that affect public funds or property.

2. Submitting the evidence and carrying out the investigations needed to confirm or throw light on the facts referred to in the objections to the financial statements or in the investigations conducted by the Office of the Comptroller General of the Republic regarding irregularities detrimental to public funds or property.

3. Requesting the Office of the Comptroller General of the Republic, whenever necessary, to broaden or supplement the inspection, report, or audit on which the objections were based, (…).

5. Instituting public prosecution at the plenary stage of property-related proceedings brought before the Court of Accounts. (…)

7. Seeking precautionary measures before the Court of Accounts. (…).

9. Notifying the Office of the Attorney General, if the Office of the Comptroller General of the Republic has not already done so, of the possible commission of crimes against public funds or property by a government-employee or other manager, whose financial statements were objected to by the Office of the Comptroller General of the Republic or by individual or civil servant.

As for the source of the Office’s human resources, Panama’s Reply to the Fourth Round questionnaire reports that “The staff of the Court of Accounts may be freely appointed and removed, with the exception of staff seconded from the Office of the Comptroller General of the Republic, who were granted job stability under Law 67 of 2008.

The staff is not selected via competitive examinations, even though, to be appointed, staff members have to meet the academic requirement of the position. Court of Accounts personnel are not allowed to practice party politics and the lawyers are not allowed to practice their profession or perform activities that contravene the functions they perform.”

During its on-site visit, the Committee was told that the Office currently has 113 staff members, 15 of whom are officials seconded from the Office of the Comptroller General (CGR). It was also told that the Court of Accounts is currently drafting the manual for a merit-based competitive selection process, with a view to ensuring that staff members entering the Office do so via this system.

The duties, rights and prohibitions that apply to civil servants in the Court of Accounts are established in Articles 72 to 674, respectively, of the Office’s In-house Rules of Procedure (Agreement 75 of 2009). They are also subject to the provisions of the Uniform Code of Ethics of Civil Servants working in Central Government institutions (Executive Decree No. 246 of December 15, 2004). Articles 75 to 89 of the In-house Rules of Procedure establish the Disciplinary Regime.

Sanctions are imposed gradually and are based on the seriousness of the offence committed (Article 89 of the In-house Rules of Procedure).

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96 See Panama’s Reply to the Fourth Round questionnaire, p. 35.
97 See the document presented by the Court of Accounts, posted at: http://www.oas.org/juridico/pdfs/mesici/4_pan_tc1.pdf
98 Ibid.
99 Annex A of the In-house Rules of Procedure of the Court of Accounts contains a Table indicating how sanctions are imposed.
As for manuals describing the functions performed by its personnel, the Court of Accounts has both a detailed manual\(^{100}\) and rules of procedure.\(^{101}\)

As regards training for staff, the Committee was told during its on-site visit that the Training Department of the Official Audit Office was working on a draft training manual setting forth the methodology and procedures for training courses. The Committee was also told that 146 officials received training in 2011 and 2012\(^{102}\) and that an inter-agency agreement had been signed with the National Vocational Training and Training for Human Development Institute (INADEH) regarding face-to-face training courses for the Official Audit Office’s personnel.\(^{103}\)

With respect to implementation of modern systems or technologies to facilitate its work, in its reply to the Fourth Round questionnaire, Panama writes: “As regards technology developed to facilitate its work, the Court of Accounts is negotiating the final phase of a contract for the supply of an institutional tool for digitally inputting, storing, and consulting files on Court of Accounts cases, which also records and keeps track of the various stages in the property-related cases it covers. We are also constantly purchasing new state-of-the-art equipment so as to provide civil servants in this Office with the mechanisms and tools they need for optimal performance of their functions.”\(^{104}\)

To inform the general public about its activities, the Court of Accounts has a website,\(^{105}\) posting, inter alia, a news section on the institution’s work.\(^{106}\) The Transparency Section of the Office’s website also contains information about its activities\(^{107}\) and includes statistics, the strategic plan, the Organization and Functions Manual and a flow chart on the various procedures carried out by the Office.\(^{108}\)

For accounting, financial, budgetary, operational and equity-related auditing, the Court of Accounts has an Internal Audit Office, which reports directly to the Plenary.\(^{109}\)

The Court of Accounts ensures that it receives the budgetary resources it needs for its operations, pursuant to Article 17 of Law 67 of 2008, by drafting its proposed budget for consideration, together with the proposed budget of the Public Prosecutor’s Office for Financial Matters (Fiscalía de Cuentas), within the proposed National Budget. During the Committee’s on-site visit, the CGR was asked to provide data on its budget for the past five years and its relation to the national budget.\(^{110}\) In 2009, the Court of Accounts’ budget amounted to approximately 0.017% of the [170] As for manuals describing the functions performed by its personnel, the Court of Accounts has both a detailed manual\(^{100}\) and rules of procedure.\(^{101}\)

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\(^{102}\) For the complete list and details of the courses, see the document presented by the Court of Accounts during the on-site visit, which is posted at: [http://www.oas.org/juridico/pdfs/mesicic4_pan_tc1.pdf](http://www.oas.org/juridico/pdfs/mesicic4_pan_tc1.pdf)

\(^{103}\) [http://www.oas.org/juridico/pdfs/mesicic4_pan_tc-inadeh.pdf](http://www.oas.org/juridico/pdfs/mesicic4_pan_tc-inadeh.pdf)

Furthermore, during the on-site visit the Committee was told that this Digitization System was based on two systems. The first is a Contents Management program called Epower, which enables the Court of Accounts to digitalize and manage its files. The second system being implemented is a Business Processing Management (BPM) tool called Bizagi, which will provide the institution with optimal control over the processing of equity-related proceedings, which will now be automated, by establishing more effective controls, such as warnings to users when a deadline is approaching within an equity-related proceeding that is under way. So far, more than 240 cases files from 2009, 2010, 2011, and 2012, with more than 310,000 images have been digitized.

\(^{104}\) [http://tribunaldecuentas.gob.pa/](http://tribunaldecuentas.gob.pa/)

\(^{105}\) [http://tribunaldecuentas.gob.pa/category/noticias](http://tribunaldecuentas.gob.pa/category/noticias)

\(^{106}\) [http://tribunaldecuentas.gob.pa/transparencia](http://tribunaldecuentas.gob.pa/transparencia)


\(^{108}\) See the Court of Account’s organizational chart and Organization and Functions manual.

\(^{109}\) Information on the Court of Account’s organizational chart and Organization and Functions manual.

\(^{110}\) Information on the Court of Account’s budget as a percentage of Panama’s national budget is posted at: [http://www.oas.org/juridico/pdfs/mesicic4_pan_tc1.pdf](http://www.oas.org/juridico/pdfs/mesicic4_pan_tc1.pdf)
national budget; in 2010, the figure was 0.025%; in 2011, 0.022%; in 2012, 0.022%; and 0.018% in 2013.

[176] Regarding coordination mechanisms for harmonizing its functions with those of other oversight bodies, the Court of Accounts has signed agreements with the CGR and with the Public Prosecutor’s Office for Financial Matters (Fiscalía de Cuentas) as well as with the Presidency through the Secretariat for Science, Technology, and Innovation and with the National Training and Human Development Institute (INADEH). In addition, during the on-site visit, the Committee was told how the Court of Accounts maintains ties with other entities, such as the CGR, the Office of the Attorney General, the Public Prosecutor’s Office for Financial Matters, and the Financial Analysis Unit, in order to achieve its institutional objectives.

[177] As regards transparency and accountability, Panama’s reply to the Fourth Round questionnaire states that: “Each year the Court of Accounts presents and substantiates its Annual Report to the Government Committee of the Assembly of Delegates, detailing the Office’s work during the previous year. In the transparency section on our website, we also post monthly information on the work of the Office. The Office issues a Judicial Record containing all the decisions taken by the Plenary. At the start of their term in office, the three Magistrates making up the Plenary and the institution’s nominating authority present a notarized sworn declaration of assets to the Office of the Comptroller General of the Republic”.

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

[178] The Court of Accounts (Tribunal de Cuentas) has a set of provisions and/or other measures relevant to the purposes of the Convention, some of which were briefly described in Section 3.1 of this report. Nevertheless, the Committee deems it appropriate to make a number of observations in relation thereto:

[179] First, the Committee notes the limited budget at the disposal of the Court of Accounts for the performance of its functions. In its Reply to the Fourth Round questionnaire, Panama writes that “the Court of Accounts lacks the budgetary resources it needs to perform its functions. This affects the appointment of experts and counsel for absent defendants, and support staff for the administration of justice in equity-related cases.” Moreover, both representatives of the institution and civil society stressed that, generally speaking, 33% of the funds requested by the Office are not approved by the Ministry of Economy and Finance. In 2013, the Court of Accounts requested a budget of 5.3 million balboas. However, the budget actually approved was for 3.05 million, 5% less than the originally authorized budget for 2012.

[180] Additionally, during the on-site visit, the representatives of the Court of Accounts pointed out that budget cuts had impaired the timely distribution of precautionary measures at the national level, because now only four or five dispatches a year to the provinces was possible, which delayed the process and undermined its effectiveness. They reported that, by way of comparison,
prior to the entry into force of Law 67 of 2008, when they were still part of the CGR (Directorate of Property-related Liability), they used to send two such dispatches per week.

[181] In light of the above and bearing in mind the importance of the work done by both the Court of Accounts and the Public Prosecutor’s Office for Financial Matters and hence the need for them to have the human and financial resources required for the fulfillment of their functions, the Committee will formulate a recommendation in that regard (See Recommendation 3.4.1 in section 3.4 of this report).

[182] Second, still on the subject of the effectiveness of precautionary measures, Panama’s reply to the Fourth Round questionnaire\(^{116}\) states that “another difficulty facing the Court of Accounts in property-related proceedings is the delay in receiving a reply from banks, municipal treasurers, the public registry office, and other institutions from which the Court of Accounts requires information in order to adopt the precautionary measures needed for the proceedings not to be illusory.” The subject was discussed in greater detail during the on-site visit, when it became clear that the generally lengthy period between the CGR investigation and the issuance of a precautionary measure by the Court of Accounts ordering the confiscation of property often thwarted the proceedings because the delay gave those under investigation time to have the property in question registered under other names.

[183] The Committee deems this to be a vital issue for the effectiveness of the Court of Accounts’ auditing work and for recoveries on behalf of the State. Accordingly, it will formulate a recommendation in this regard (See Recommendation 3.4.2 in Section 3.4 of this report).

[184] Third, the Committee notes that a distinction is made between staff of the CGR transferred to the Court of Accounts and the institution’s own personnel, who can be freely appointed and dismissed and do not enjoy the prerogatives of the CGR’s career staff members,\(^{117}\) which creates differential treatment for the staff within the same entity. For that reason, the Committee will formulate a recommendation in this regard (See Recommendation 3.4.3 in Section 3.4 of this report).

[185] Fourth, during the on-site visit, the Committee was told that, pursuant to Article 14 of Law 67 of 2008, which establishes that civil servants in the Court of Accounts shall enjoy the same rights, responsibilities, and impediments as officials in the Judiciary, the rules applicable to staff of the Court of Accounts are the Judicial Code and, in the event of lacunae, the Administrative Career Law.\(^{118}\)

[186] Accordingly, the Committee considers it important for the Court of Accounts to complete drafting of the competitive examination manual referred to earlier in Section 3.1, and ensure that staff joining the Official Audit Office does so via that system. However, the Committee will not make recommendations on the subject. Rather, it reiterates those contained in the Report of the Second Review Round of the MESICIC, regarding the need for the country to have a well-

\(^{116}\) See Panama’s Reply to the Fourth Round questionnaire, p. 41.

\(^{117}\) Law 67 of November 14, 2008, grants staff transferred from the Office of the Comptroller General, among other rights, job stability (Article 94) acquired by law, so that the 15 officials transferred from the CGR to the Court of Accounts enjoy job stability.

\(^{118}\) See the document presented by the Court of Accounts during the on-site visit, posted at: [http://www.oas.org/juridico/pdfs/mesicio4_pan_tc1.pdf](http://www.oas.org/juridico/pdfs/mesicio4_pan_tc1.pdf)
developed administrative career system, including detailed rules on selection processes for public offices.\textsuperscript{119}

\[187\] Fifth, the Committee did not ascertain the existence of a Positions Manual containing job profiles for the Court of Accounts. The Committee will formulate a recommendation in this regard (See Recommendation 3.4.4 in Section 3.4 of this report).

\[188\] Sixth, during the on-site visit, representatives of the Court of Accounts identified, as another obstacle to achieving its purposes, the need for “specialized training in property-related adjudication matters (jurisdicción patrimonial) that might serve to bring technological systems into line with the substantive law governing public administration and thereby achieve swift, effective, and efficient administration of justice.”\textsuperscript{120} Accordingly, the Committee considers that it would be possible to use the agreement with INADEH to expand the training provided for staff of the Court of Accounts. The Committee also considers that the Regional Anti-Corruption Academy (ARAC) for Central America and the Caribbean, inaugurated in Panama at end-2012, could be very useful for obtaining the specialized training that the Court of Accounts needs. The Committee will formulate a recommendation in this regard (See Recommendation 3.4.5 in Section 3.4 of this report).

\[189\] Seventh, the Committee did not ascertain any legal accountability requirement for the Court of Accounts, such as exists for the CGR and the Office of the Attorney General, in the form of publication of annual management reports describing the institution’s activities and results attained, as well as the institution’s in-house performance, goals, and achievements. Although Panama’s Reply to the Fourth Round questionnaire\textsuperscript{121} indicates that an annual report of the Court of Accounts is submitted each year to the Government Committee of the Assembly of Delegates, that information is not posted on the institution’s website.

\[190\] Furthermore, even if the Committee ascertains that the management statistics published in the Transparency section of the Court of Accounts’ website are up-to-date,\textsuperscript{122} the Committee deems it important that management statistics for earlier periods also be posted. Along the same lines, it would also be important to make the Judicial Registers issued by the Court of Accounts, which contain the decisions taken by the Plenary, available on the institution’s website.

\[191\] In light of the above and to place even more emphasis on the need for transparency and for enhancing the accountability of the Court of Accounts, the Committee will formulate the corresponding recommendations. (See Recommendations 3.4.6 and 3.4.7 in section 3.4 of this report.)\textsuperscript{124}

\begin{footnotes}
\item[120] See the document presented by the Court of Accounts during the on-site visit, posted at: http://www.oas.org/juridico/pdfs/mesicic4_pan_tc1.pdf
\item[121] See Panama’s Reply to the Fourth Round questionnaire, ps. 37 y 38.
\item[122] http://tribunalcuentas.gob.pa/透明度
\item[123] Panama informed that Law 67 on the Court of Accounts does not have a legal requirement provision. Nevertheless, the Court of Accounts does render accounts under the provisions of Law 6 on Transparency. It presents an Annual Report which can be consulted in the institution and which contains management reports.
\item[124] Panama informed that the Court of Accounts publishes Judicial Records in book form. That book is distributed to libraries and universities. It is not currently posted on the Web site.
\end{footnotes}
### 3.3. Results of the legal framework and/or other measures

[192] Based on the response of the country under review to the questionnaire and the on-site visit, information was gathered regarding the results obtained by the Court of Accounts, among which the following is noted:

[193] First, the document presented during the on-site visit to Panama contains the following Table showing the files delegated to the National Revenue Authority for Coercive Collection and the Resolutions issued ordering the deposit of money in the National Treasury as a result of payment agreements entered into by the defendants during the property-related proceedings, either before the Public Prosecutor’s Office for Financial Matters (Fiscalía de Cuentas), during the investigation, or before the Court of Accounts, or during the plenary phase.

<table>
<thead>
<tr>
<th>Item</th>
<th>Total</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of resolutions</td>
<td>Total amount</td>
<td>No. of resolutions</td>
</tr>
<tr>
<td>Total…</td>
<td>406</td>
<td>21,866,447.66</td>
<td>64</td>
</tr>
<tr>
<td>Files delegated to the Directorate-General of Revenue</td>
<td>160</td>
<td>20,193,066.01</td>
<td>39</td>
</tr>
<tr>
<td>for coercive collection</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Funds deposited in the National Treasury (Payment</td>
<td>246</td>
<td>1,673,381.65</td>
<td>25</td>
</tr>
<tr>
<td>Agreements)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>2011</th>
<th>2012</th>
<th>2013 / March</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of resolutions</td>
<td>Amount</td>
<td>No. of resolutions</td>
</tr>
<tr>
<td>Total…</td>
<td>121</td>
<td>11,076,456.28</td>
<td>106</td>
</tr>
<tr>
<td>Files delegated to the Directorate-General of Revenue</td>
<td>33</td>
<td>10,777,340.52</td>
<td>47</td>
</tr>
<tr>
<td>for coercive collection</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Funds deposited in the National Treasury (Payment</td>
<td>88</td>
<td>299,115.76</td>
<td>59</td>
</tr>
<tr>
<td>Agreements)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

[194] The office responsible for coercive collection is the Directorate-General of Revenue of the Ministry of Economy and Finance.

[195] Through payment agreements those involved in property-related proceedings can make the property loss payments and the case file is closed.

[196] The Committee considers that the above information demonstrates that the Court of Accounts has performed its functions and obtained the results shown therein. The Committee has ascertained that through payment agreements, recovery has averaged 7.5% in the past five years. The data show no clear trend regarding effective compensation through payment agreements to the State for

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125 See the document presented by the Court of Accounts during the on-site visit, posted at: [http://www.oas.org/juridico/pdfs/mesicic4_pan_tc1.pdf](http://www.oas.org/juridico/pdfs/mesicic4_pan_tc1.pdf)

126 Currently the National Revenue Authority, established by Law 24 of April 8, 2013.

the loss of assets. In 2009, recovery totaled 22.55% of the amount involved in that year’s proceedings; in 2010, recovery was 4.7%; in 2011, 2.7%; in 2012, 19.95%; and in January-March 2013, 5.67%.

[197] Accordingly, the Committee encourages the Court of Accounts to continue and expand its use of payment agreements as a more expeditious way of achieving compensation amounts ordered on behalf of the State. The Committee will formulate a recommendation in this regard. (See Recommendation 3.4.8 in section 3.4 of this report).

[198] Likewise, during the on-site visit, and with a view to conducting a comprehensive analysis of the matter, Panama was asked to submit National Revenue Authority data on effective recovery of funds through coercive collection. After the on-site visit, the Committee was told that the Court of Accounts had sent a note to the National Revenue Authority asking it to provide the requested information as soon as possible. Unfortunately, the National Revenue Authority did not send that information, which means that the Committee is unable to undertake a thorough analysis of the subject and to evaluate how effective the Authority has been in recovering the amounts assessed by the Court of Accounts or the existence or nature of any problems or difficulties that may have been encountered.

[199] In light of the above, the Committee suggests that the country under review maintain a complete statistical record of amounts paid to the Treasury in each of the past five years as a result of compliance with the Court of Accounts’ resolutions. That record should contain not just information regarding payment agreements, but also the amounts actually recovered through the coercive collection efforts of the National Revenue Authority, in order to be able to identify challenges and recommend corrective measures. The Committee will formulate a recommendation in this regard. (See Recommendation 3.4.9 in section 3.4 of this report).

[200] Finally, with respect to administrative/disciplinary liability, the representatives of the Court of Accounts reported, during the on-site visit, that in the past five years, there had been 17 administrative proceedings, with the following outcomes: seven dismissals; two resignations prior to adoption of decisions on the merits; five suspensions for disciplinary offences; and three written warnings. The Committee was also told that none of the suspensions and dismissals was reversed by an appeal to the Tribunal responsible for hearing actions under administrative law (Tribunal del Contencioso Administrativo).

[201] The Committee considers that the above information serves to show that disciplinary investigations have been undertaken in the Court of Accounts, culminating in effective sanctions for staff. However, the Committee lacked complete information on the number of investigations under way, how many were shelved, and how many prescribed. The Committee will formulate a recommendation in this regard. (See Recommendation 3.4.10 in section 3.4 of this report).

3.4. Conclusions and recommendations

[202] Based on the comprehensive review of the Court of Accounts (Tribunal de Cuentas) in the foregoing sections, the Committee offers the following conclusions and recommendations:

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128 See the document presented by the Court of Accounts after the on-site visit, posted at: http://www.oas.org/juridico/pdfs/mesici4_pan_te4.pdf


130 See the document presented by the Court of Accounts after the on-site visit, posted at: http://www.oas.org/juridico/pdfs/mesici4_pan_te4.pdf
Panama has considered and adopted measures intended to maintain and strengthen the Court of Accounts, as indicated in Chapter II, Section 1 of this report.

In light of the comments made in that Section, the Committee suggests that the country under review consider the following recommendations:

3.4.1. Strengthen the Court of Accounts and the Public Prosecutor’s Office for Financial Matters (Fiscalía de Cuentas), ensuring that they have the human and financial resources necessary for the proper fulfillment of their functions, taking the availability of resources into account (See Chapter II, Section 3.2 of this report).

3.4.2. Consider taking legislative and other steps to expedite audit proceedings and prevent their effects from being illusory, by seeking, as appropriate, to enter into cooperation agreements with institutions whose information is required for the Court of Accounts to adopt precautionary measures, and to establish appropriate administrative sanctions against public or private entities that put off delivering information requested by the Court of Accounts in connection with those proceedings. (See Chapter II, Section 3.2 of this report).

3.4.3. Consider the possibility of standardizing the working conditions for staff of the Court of Accounts by having all enjoy the job stability and benefits currently enjoyed by the officials transferred from the Office of the Comptroller General. (See Chapter II, Section 3.2 of this report).

3.4.4. Establish and publish on the institution’s website a Positions Manual with the job profiles for the Court of Accounts, including the title and grade, and the responsibilities and skills needed to perform the function. (See Chapter II, Section 3.2 of this report).

3.4.5. Broaden training opportunities for its staff either in the framework of the inter-agency agreement signed with the National Vocational Training and Training for Human Development Institute (INADEH) or through a new agreement with the Regional Anti-Corruption Academy (ARAC) for Central America and the Caribbean. (See Chapter II, Section 3.2 of this report).

3.4.6. Consider establishing in Law 67 of 2008 the obligation for the Court of Accounts to render accounts and to publish annual management reports, disclosing its activities and the results achieved, as well as the institution’s in-house performance, goals, and achievements. (See Chapter II, Section 3.2 of this report).

3.4.7. Post the Judicial Records issued by the Court of Accounts on its website, along with management statistics for earlier periods. (See Chapter II, Section 3.2 of this report).

3.4.8. Follow-up and expand use of payment agreements as a more expeditious way to achieve compliance with the resolutions of the Court of Accounts and effective payment of compensation amounts ordered on the State’s behalf for asset losses. (See Chapter II, Section 3.3 of this report).

3.4.9. Draw up a complete statistical record of amounts paid to the Treasury in each of the past five years as a result of compliance with the Court of Accounts’
resolutions. That record should contain not just information regarding payment agreements, but also the amounts actually recovered through the coercive collection efforts of the National Revenue Authority, in order to be able to identify challenges and recommend corrective measures. (See Chapter II, Section 3.3 of this report).

3.4.10. Prepare comprehensive statistics on the outcomes of disciplinary investigative proceedings in the Court of Accounts showing how many investigations are under way, how many have been shelved, and how many prescribed, in order to identify challenges and recommend corrective measures. (See Chapter II, Section 3.3 of this report).

4. SUPREME COURT OF JUSTICE (CSJ)

4.1. Existence of a legal framework and/or other measures.

[205] The Supreme Court of Justice (CSJ) has a set of provisions in its legal framework, as well as other measures that refer, *inter-alia*, to the following:

[206] Article 206 of the Political Constitution establishes that its purpose and functions include, among others, safeguarding the integrity of the Constitution; judicial review of administrative decisions; and investigating and trying members of parliament (*Diputados*). 131 Decisions of the Supreme Court in the exercise of the powers established in Article 206 are final, definitive, and binding.

[207] Furthermore, Article 39 of the New Code of Criminal Procedure (Law 63 of August 28, 2008) 132 establishes that it is incumbent upon the Supreme Court sitting in banc to hear criminal and precautionary measure proceedings against members of parliament, the Attorney General (*Procurador General de la Nación*), the Chief Prosecutor for Administrative Matters (*Procurador de la Administración*), Ministers of State, Magistrates of the Electoral Tribunal or the Comptroller-General of the Republic, or regarding acts committed at any time by persons who, at the time of their trial, hold any of these positions.

[208] Pursuant to Article 72 of the Judicial Code, the CSJ comprises four divisions: the First, which hears civil law cases; the Second or criminal law division; the Third, which hears actions brought under administrative law; and the Fourth, or General Business, Division. Articles 86 to 100 of the Judicial Code establish the competencies of the Plenary and of the divisions.

[209] The Second (Criminal Law) Division of the CSJ hears appeals and reviews of criminal cases, consultations and appeals for review of facts as well as law against decisions handed down by Higher Judicial District Courts, in criminal matters (Article 95 of the Judicial Code). It also hears, in trial on first appeal (*segunda instancia*) remedies of appeal and reviews of facts and law and consultations

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131 For the purposes of the investigation, the Plenary of the Supreme Court shall commission a preliminary investigation attorney (*agente de instrucción*). Moreover, pursuant to Article 155 of the Political Constitution, the members of the National Assembly may be investigated and tried by the Supreme Court of Justice sitting in banc for the alleged commission of a crime or offence without the need for authorization by the National Assembly. The Plenary of the Supreme Court of Justice may also order remand in custody or any other precautionary measure it deems appropriate.

127 Since September 2, 2011, the rules of the New Code of Criminal Procedure apply to proceedings for which the Supreme Court of Justice is competent, sitting in banc and in the Criminal Division, as a single-instance Court of the National Assembly.
regarding appealable (first instance) decisions handed down by Judicial District courts, on criminal matters (Article 96 of the Judicial Code).  

[210] Article 69 of the Judicial Code establishes that the Supreme Court of Justice shall exercise its jurisdiction throughout the territory of the Republic and shall have its seat in Panama City. For serious public order reasons, it may itself transfer its seat to any other location in the national territory, after first notifying the Executive.  

[211] Article 203 of the Constitution establishes that the CSJ shall comprise an uneven number of Magistrates determined by law, appointed by an Agreement of the Cabinet Council subject to approval by the Legislature, for a ten-year term. Impediments and requirements for becoming a Magistrate of the CSJ are established in Articles 203 and 204 of the Political Constitution, respectively.  

[212] Pursuant to Articles 160 and 211 of the Political Constitution, magistrates and judges shall not be deposed or suspended or transferred in the exercise of their office, except in cases and subject to the formalities required by Law. It is incumbent upon the National Assembly to hear accusations or complaints against magistrates of the Supreme Court of Justice and to try them, if there are grounds for so doing, for acts committed in the performance of their functions to the detriment of the free exercise of public authority or in violation of the Constitution and the law.  

[213] As regards the manner in which the Court adopts its decisions, Article 113 of the Judicial Code establishes the need for an absolute majority of votes in any decision handed down by the Plenary or the Divisions. Furthermore, according to Article 114, if there is no majority of votes in favor of any item in the operative part of a resolution, the following procedure shall apply: in the case of the Plenary, the corresponding personal deputy or deputies shall be summoned. The Magistrates who cannot reach agreement shall indicate in the same resolution causing the dissent the points on which they agree and those regarding which they disagree, so that those who settle the matter restrict themselves to voting only on the items on which no agreement was reached.  

[214] According to Article 1 of Law 55 of September 21, 2012, it shall be incumbent upon the Plenary of the Supreme Court of Justice (CSJ) to investigate and try these cases. In addition, pursuant  

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133 As for the competence of the Criminal Division of the CSJ, Article 40 of the New Code of Criminal Procedure also establishes that “The Criminal Division shall have competence to hear: 1. Criminal proceedings against ambassadors, consuls, vice-ministers, magistrates of higher courts, the Ombudsperson, senior prosecutors, the director and deputy director of the National Police, directors and managers of autonomous and semi-autonomous entities, and those who occupy any other position with authority and jurisdiction throughout the national territory or in two or more provinces that do not form part of the same judicial district. 2. Appeals for annulment in criminal cases against judgments handed down by trial courts. 3. Appeals for review. 4. Questions of competence when a conflict arises between organs that have no common higher jurisdictional body. 5. Appeals for annulment of judgments in criminal cases handed down by Higher Juvenile Courts. 6. Appeals for annulment of decisions handed down in habeas corpus actions. 7. Extradition requests.”  

134 Pursuant to Article 70 of the Judicial Code, the CSJ comprises nine Magistrates. During the on-site visit, the Committee was told that the Labor Code provides for three more magistrates. However, they have not been appointed.  

135 Article 203 of the Political Constitution also establishes that “the absolute lack of a Magistrate shall be covered by a new appointment for the rest of the respective term. Each Magistrate shall have a deputy appointed in the same manner as the principal Magistrate and for the same term, who shall substitute for him during absences, in accordance with law. Only career officers in the Judiciary may be appointed deputies. Every two years, two Magistrates shall be appointed, except when, because of the number of magistrates making up the Court more than or fewer than two Magistrates are appointed. If the number of Magistrates of the Court is increased, the necessary appointments will be made for that purpose and the corresponding Law shall provide as needed to maintain the principle of staggered appointments.”  

136 This Article amends Article 487 of the New Code of Criminal Procedure.
to Article 2 of that Law, the accusation or complaint must be brought in writing, through an
attorney, and indicate the identity, address, and signature of the accuser or complainant and contain
appropriate evidence of the punishable act the accused is alleged to have committed. If the accusation
or complaint does not meet the requirements for evaluation, it shall be rejected outright. The Plenary
of the CSJ has up to ten days, from the corresponding notification, to issue its decision on admmissibility.

[215] Pursuant to Article 3 of Law 55 of 2012, if the accusation or complaint is admitted, the
Plenary shall, in that same decision, appoint one of its members to act as the Trial Prosecutor (Fiscal
de la Causa) and another to serve as the judge responsible for procedural safeguards (Juez de
Garantías).

[216] The time allowed to complete the Prosecuting Magistrate’s investigation is two months, with
a one-month extension if he or she requests it, according to Article 5 of Law 55 of 2012. However, the accused may request the Magistrate acting as the judge responsible for procedural
safeguards to allow an additional period of up to 10 days to complete the investigation. Should the
Prosecuting Magistrate not remit the investigation to the judge responsible for procedural safeguards
within the time allowed, the criminal action shall be deemed to have expired, a finding that shall be
decreed by the Supreme Court sitting in banc at the request of the accused or his counsel. The
decision taken may be the subject of an appeal for reconsideration.

[217] Pursuant to Article 6 of Law 55 of 2012, once the investigation has concluded, the
Prosecuting Magistrate shall issue his or her legal opinion in writing, requesting that the case be
brought to trial or definitively dismissed. Assessment of the investigation shall be conducted by the
Magistrate acting as the judge responsible for procedural safeguards. If the petition to go to trial is
admitted, the litigation shall go to the Plenary of the CSJ for trial.

[218] Regarding the manner in which the CSJ is assigned human resources and the regime they are
under, Article 270 of Book XII of the Judicial Code establishes that to enter the judicial career
service it is necessary to meet the legal requirements and comply with the regulations for the position
concerned and that, to that end, a classification of positions in the judiciary will be instituted to serve
as the basis for all matters relating to the selection, appointment, and promotion of career service
staff. Articles 43 to 69 of that Code establish the impediments and guarantees applicable to
judicial career positions. For its part, Article 199 establishes the general duties of magistrates and
judges. In addition, they are subject to the provisions of the Judicial Code of Ethics (Agreement 523
of September 4, 2008).

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137 This Article amends Article 488 of the New Code of Criminal Procedure.
138 This Article amends Article 489 of the New Code of Criminal Procedure.
139 The Prosecuting Magistrate shall conduct the investigations to throw light on the alleged fact and into the favorable
or unfavorable circumstances associating the accused or not associating the accused with that fact. If it is absolutely
necessary, the Prosecuting magistrate may commission an investigative attorney for the Office of the Attorney General
to conduct inquiries outside the office (Article 3 of Law 55 of 2012).
140 It is up to the Magistrate serving as the guarantor of judicial safeguards to pronounce on oversight of the
investigation and knowledge of the inquiries undertaken, as well as on other matters assigned to him by the New Code
141 This Article adds Article 491-A to the New Code of Criminal Procedure.
142 This Article amends Article 492 of the New Code of Criminal Procedure.
143 It is also incumbent upon the Magistrate responsible for procedural safeguards to order dismissal of the case, a
decision against which an appeal for reconsideration may be lodged with the Plenary (Article 6 of Law 55 of 2012).
144 As regards human resources, the Committee was told during its on-site visit that 3,718 people work in the Judiciary.
Of them, 904 pertain to the judicial career service.
145 The Judicial Ethics Office, established by Agreement 1088 of October 26, 2009, is responsible for receiving,
investigating, and processing complaints and inquiries relating to application of Panama’s Judicial Ethics Code.
Articles 286 to 301 of the Judicial Code establish the disciplinary regime. Disciplinary jurisdiction over judges and magistrates is exercised by the next highest level in the hierarchy (Article 289 of the Judicial Code). Upon completion of the procedure, that superior in the hierarchy shall either impose the disciplinary sanction or declare that there are no grounds for it (Article 291 of the Judicial Code). The sanctions contemplated for Magistrates and Senior Judicial District Prosecutors and Circuit Judges and Prosecutors are: a warning; a fine of not less than 10 balboas (B/.10.00) and no more than 100 balboas (B/.100.00); and suspension from office and non-payment of salary for a period not to exceed 30 days (Article 293 of the Judicial Code).

As for manuals describing the functions of staff, the Judiciary has an Organization and Functions Manual, covering, for instance, the General Organizational Chart, Basic Legal Provisions, and objectives and Functions of the various judicial and administrative units. It also has various manuals mentioned in Panama’s reply to the Fourth Round questionnaire, such as the Manual on Best Judicial Practices and the Manual on Best Administrative Law Practices.

As for training for staff, there is a Judicial Academy (Escuela Judicial), which is governed in its operations by Agreement 5 of January 11, 1993, handed down by the Plenary of the Supreme Court of Justice and amended by Agreement 378 of October 26, 2001. Training courses offered are posted on the Judicial Academy website. During the on-site visit, the Committee was also told about training courses provided each year since 2010, focused on training for the Adversarial Criminal System.

As for the way the CSJ ensures that it receives the budgetary appropriations it needs to operate, Article 214 of the Political Constitution establishes that “The Supreme Court of Justice and the Attorney General shall draw up the budgets of the Judiciary and the Office of the Attorney General, respectively, and shall remit them in good time to the Executive for inclusion in the proposed Public Sector Budget. The President of the Court and Attorney General may substantiate their respective budget at every stage. Combined, the budgets of the Judiciary and the Office of the Attorney General shall not amount to less than two percent of Central Government current revenue. However, should that amount exceed what is needed to cover the fundamental needs proposed by the Judiciary and the Office of the Attorney General, the Executive shall include the excess amount under other expense or investment headings in the proposed Central Government Budget, so that the National Assembly can decide on the best course of action.” According to the information requested and received during the on-site visit, the total budgets allocated to the Judiciary in the past five years were: B/.61,774,600 (2009); B/.74,175,500 (2010); B/.84,383,900 (2011); B/.104,707,137 (2012); and B/.108,185,985 (2013).

With respect to implementation of modern systems or technologies to facilitate its work, the Committee was told during its on-site visit about a new mechanism for electronic distribution of case

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146 According to information provided during the on-site visit, court magistrates are investigated, tried, and punished by the Plenary of the CSJ. Ranking officers are investigated by their respective supervisors. Lower-ranking officers are investigated by the Directorate of Human Resources and remitted to the Fourth Division of the CSJ for an opinion on their case.

148 See Panama’s Reply to the Fourth Round questionnaire, pp. 60 to 67.
149 http://www.oas.org/juridico/PDFs/mesicic4_pan_manual_bs.pdf
150 http://www.organojudicial.gob.pa/category/manuales/
151 http://www.organojudicial.gob.pa/escuela-judicial/
152 http://www.organojudicial.gob.pa/category/capacitacion/escuela-judicial/ofertas-academicas-ej/
154 http://www.oas.org/juridico/ppt/mesicic4_pan_escuela-sist.ppt
155 Posted at: http://www.oas.org/juridico/pdfs/mesicic4_pan_cuadro.pdf
files through a Single Record of Entry (Registro Único de Entrada -RUE), which has been in effect since 2012. As a means of endowing the Judiciary with greater transparency, this mechanism distributes case files entering the Judiciary in an equitable and random fashion, thereby avoiding their earmarking for particular courts. 156 This new Single Record system has been implemented in the civil law, maritime and criminal jurisdictions. 157

[224] For accounting, financial, budgetary, operational and property-related auditing, the Judiciary has an Internal Audit Directorate, established by Agreement 10 of October 27, 1995. 158 It also has a Judicial Audit Directorate, established by Agreement 364 of October 3, 2002, 159 which aims to guarantee the appropriate organization of and compliance with judicial management working procedures, without that entailing interference in the jurisdictional sphere.

[225] To keep citizens abreast of their activities, the CSJ and the Judiciary have a website, 160 which places the Automated Judicial Management System 161 at the disposal of the public, allowing it to inquire about the distribution of files, consult case files, see rulings, and consult judicial office statements. The website also allows the public to search for CSJ and Higher Court judgments. Among its other sections, there is one on transparency, which posts statistics and other information on the judiciary’s activities. 162

[226] The Judiciary also has a Center for Information and Attending to Citizens, established through Agreement 419 of December 7, 2001 and responsible for providing effective guidance for citizens, receiving complaints, claims, and suggestions, and passing them on to judicial bodies for appropriate follow-up. 163 In addition, the Judiciary has a program called JUDICIN for training citizens in such areas as teaching materials, justice and peace, rights, and guarantees. 164

[227] Furthermore, pursuant to Article 100.12 of the Judicial Code, the Fourth Division of the CSJ has to provide the reports requested by the Executive, the Legislative Assembly, and the Attorney General regarding the administration of justice, the organization and rules governing the courts, and their finances.

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

[228] The Supreme Court of Justice (CSJ) has a set of provisions and/or other measures relevant to the purposes of the Convention, some of which were briefly described in Section 4.1 of this report. Nevertheless, the Committee deems it appropriate to make a number of observations in relation thereto:

[229] First, the Committee notes that, pursuant to Article 482 of the New Code of Criminal Procedure, in criminal cases heard by the CSJ, the investigations will be conducted by the Attorney General, except for cases against members of the National Assembly. In such cases, Article 489 of

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156 The Committee was told during the on-site visit that identification of problems in the distribution of files through the RUE and the way to solve them arose out of concerns expressed to the President of the Supreme Court of Justice by the Executive Secretary of the national Council for transparency against Corruption and thanks to written complaints from users of the system.

157 For further information, see: http://www.organojudicial.gob.pa/noticias/ primer-paso-hacia-la-transparencia-y-contra-la-corrupcion/

158 http://www.organojudicial.gob.pa/administrativos/auditoria-interna/

159 http://www.organojudicial.gob.pa/administrativos/auditoria-judicial/

160 http://www.organojudicial.gob.pa/

161 https://oippanama.organojudicial.gob.pa/ index.php

162 http://www.organojudicial.gob.pa/transparencia/

163 http://goo.gl/KCha8

164 http://www.organojudicial.gob.pa/category/judicin/
the New Code of Criminal Procedure (amended by Article 3 of Law 55 of 2012) allows the Prosecuting Magistrate to commission, when absolutely necessary, a preliminary investigation attorney (agente de instrucción) from the Office of the Attorney General to conduct investigative proceedings outside the office.

[230] Bearing in mind the short (two-month) deadline for the Prosecuting Attorney to complete the investigation, especially when it is a question of complex criminal conduct, such as those involved in acts of corruption, the Committee considers that it would be beneficial that the Staff of the Supreme Court of Justice have the necessary training and infrastructure to fully support the Court in its investigation of corrupt acts allegedly committed by members of the National Assembly. The Committee will formulate a recommendation in this regard (See Recommendation 4.4.1 in Section 4.4 of this report).

[231] Second, the Committee observes that Article 491-A of the New Code of Criminal Procedure (added by Law 55 of 2012) allows a one-month extension of the original two-month deadline for the completion of the Prosecuting Magistrate’s investigation. However, if the accused member of the National Assembly considers that the deadline for completing the investigation has been improperly extended, he or she may request the Magistrate responsible for procedural safeguards to give the Prosecuting Attorney no more than an extra 10 days to finalize the investigation. If the completion deadline requested by the accused member of parliament is not established in that period or if the Prosecuting Magistrate does not deliver the investigation within the time allowed, the criminal action shall be deemed to have expired. That being so and considering the complexity normally associated with the investigation of corrupt acts, the Committee would be interested to know what impact the entry into force of Law 55 of 2012 might have had on the number of complaints of cases of corruption allegedly involving members of the National Assembly and on their processing by the CSJ and it would recommend conducting a study into this matter and, if necessary, consider extending the deadline for concluding the investigation (See Recommendation 4.4.6 in Section 4.4 of this report).

[232] Third, regarding the regime described in the foregoing section on how human resource needs are determined and met, the Committee considers it advisable to insist on the need for the country under review to continue strengthening the systems and processes used to select judges and civil servants in the Judiciary, basing them on merit and on the principles of equity, openness, and efficiency enshrined in the Convention. The Committee will not formulate recommendations on the subject, but rather reiterate its observations and those contained in the Report of the Second Review Round of the MESCIC, given that these matters were analyzed in depth therein. 165

[233] With respect to the aforementioned topic, during the on-site visit, both the representative of the Judiciary and the representative of Alianza Ciudadana Pro Justicia, 166 told the Committee about a bill to regulate the judicial career service 167 that has been pending in the National Assembly since 2009.

[234] Fourth, while the Committee notes the existence of a Judicial Audit Directorate and a Judicial Ethics Office, it did not ascertain the existence of a disciplinary body in the Judiciary. According to the Judicial Code, discipline shall be enforced by the next level up in the hierarchy. The Committee will formulate a recommendation for the country under review to consider taking

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166 See the document presented by Alianza Ciudadana Pro Justicia, p. 4. Posted at: http://www.oas.org/juridico/pdfs/mesicic4_pan_sc4.pdf

appropriate steps to establish a functionally autonomous disciplinary body in the Judiciary, capable of conducting preventive, concurrent, and ex-post oversight of magistrates, judges and other officers in the Judiciary (See Recommendation 4.4.2 in Section 4.4 of this report).168

[235] With respect to the aforementioned topic, during the on-site visit, the representative of Alianza Ciudadana Pro Justicia169 reported that: “In 2005, as part of the agreements reached by the State Justice Commission, the proposed new Law on the Judicial Career Service included the establishment of an Integrity and Transparency Court to investigate ethical lapses and corrupt acts by judges and magistrates in the Judiciary.”

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

[236] Through the on-site visit, information was gathered regarding the results obtained by the Supreme Court of justice, among which the following is noted:

[237] First, during the on-site visit, information was provided on the number of cases against public administration brought before and processed by the Second Criminal Division in 2010, 2011, and 2012.170 In 2010, 99 proceedings were initiated in the Division and 97 were resolved. In 2011, the corresponding figures were 103 and 87; in 2012, 76 and 66. Added to proceedings pending from earlier years, the total number of proceedings pending for the following period (2013) was 83. Based on that information, the Committee notes that the difference between proceedings initiated and resolved in the Division has increased in recent years and deems it important that the Second Criminal Division take steps to expedite the handling by the CSJ of cases concerning crimes against public administration. The Committee will formulate a recommendation in this regard. (See Recommendation 4.4.3 in Chapter II of this report.)171

[238] Second, during the on-site visit, the Committee was also presented with the following Table on cases of alleged crimes against public administration on which a judgment was reached in the Second Division of the CSJ in 2011.172

<table>
<thead>
<tr>
<th>Crime</th>
<th>Accused</th>
<th>Judgment Total</th>
<th>Acquit-</th>
<th>Convic-</th>
<th>Total</th>
<th>Dismissal Total</th>
<th>Prov-</th>
<th>Definitive</th>
<th>Other</th>
<th>Unspecified</th>
</tr>
</thead>
<tbody>
<tr>
<td>Against public administration</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Misuse of authority</td>
<td>850</td>
<td>99</td>
<td>41</td>
<td>58</td>
<td>610</td>
<td>496</td>
<td>114</td>
<td>108</td>
<td>33</td>
<td></td>
</tr>
<tr>
<td>Extortion and exaction</td>
<td>96</td>
<td>9</td>
<td>6</td>
<td>3</td>
<td>68</td>
<td>50</td>
<td>18</td>
<td>19</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Bribery of government officials</td>
<td>3</td>
<td>1</td>
<td>-</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Destruction of documents in govt. offices</td>
<td>79</td>
<td>9</td>
<td>3</td>
<td>6</td>
<td>43</td>
<td>39</td>
<td>4</td>
<td>6</td>
<td>21</td>
<td></td>
</tr>
<tr>
<td>Obstruction of authorities’ work</td>
<td>132</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>107</td>
<td>90</td>
<td>17</td>
<td>15</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Exceeding of functions</td>
<td>9</td>
<td></td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>8</td>
<td>5</td>
<td>3</td>
<td>1</td>
<td>-</td>
</tr>
</tbody>
</table>

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168 Panama informed that in the exercise of its powers to initiate legislation, the Judiciary submitted to the National Assembly what is now Draft Law No. 23, aimed at more extensive regulation of the judicial career. The current bill proposed establishing the Special Court of Integrity and Transparency with jurisdiction and competence throughout the national territory to hear and rule on disciplinary suits brought against officials in the Judiciary. This jurisdictional body shall comprise three (3) magistrates and be endowed, moreover, with a Special Integrity and Transparency Investigation Unit and a Special Office for the Defense of Integrity and Transparency.


170 See the document posted at: http://www.oas.org/juridico/pdfs/mesicic4_pan_sala.pdf

171 Panama reported that in many cases, the delay in handing down a decision is caused by the remedies filed by the defendants’ defense teams, which must be resolved prior to a final decision.

172 The complete Table is posted at: http://www.oas.org/juridico/pdfs/mesicic4_pan_resultados.pdf
Based on the information provided, it can be observed that of the 850 cases concluded in 2011, 11.6% resulted in a judgment (59% convictions, 41% acquittals). The Committee also notes the large number of cases dismissed (72% in all, including 19 definitive dismissals). However, the reasons why these cases ended in dismissal (which could include prescription and shelving) are not given. Consequently, and bearing in mind that the information provided refers only to the year 2011 and is not broken down sufficiently enough to show how many cases are under way, or have been suspended, prescribed, or been shelved without it being possible to reach a decision regarding them, or which are ready for a decision to be taken, the Committee will formulate a recommendation. (See Recommendation 4.4.4 in Chapter II of this report).

Finally, the Committee ascertained that no information was provided regarding the outcomes of corruption proceedings against the high-level authorities referred to in Article 39 of the New Code of Criminal Procedure (members of the National Assembly, the Attorney General, the Chief Prosecutor for Administrative Matters, Ministers of State, Magistrates of the Electoral Tribunal, the Comptroller-General of the Republic, and others), for which the CSJ sitting in banc is competent. Moreover, in light of the comments made in sections 1.3 and 3.3 of this report, the Committee would be interested to know what impact the entry into force of Law 55 of 2012 might have had on the number of complaints of cases of corruption allegedly involving members of the National Assembly and on their processing by the CSJ. The Committee will formulate recommendations in this regard (See Recommendations 4.4.5 and 4.4.6 in section 4.4 of this report).

As regards the foregoing topic, during the on-site visit the representative of Alianza Ciudadana Pro Justicia pointed out that “Far from enhancing the investigation in proceedings against members of parliament, amendments continue to be introduced with a view to establishing special prerogatives or procedural privileges in favor of such officials and members of PARLACEN. Law 55 of September 21, 2012 amended articles of the Code of Criminal procedure regarding proceedings against members of the National Assembly.”

4.4. Conclusions and recommendations

Based on the comprehensive review of the Supreme Court of Justice (CSJ) in the foregoing sections, the Committee offers the following conclusions and recommendations:

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Panama informed that in 2002, the Judiciary established the Judicial Statistics Center, which makes a huge effort to keep up-to-date statistics, a task that has to be done manually, because there is no computerized judicial management system covering all the jurisdictions and bodies making up the national administration of justice system. Add to that the complexity associated with the variety of appeals processes permitted by law, which mean that resolutions or judgments are not immediately enforceable or final, so that it is impossible in the short term to know whether a judgment may be considered definitive for statistical record purposes.

Panama has considered and adopted measures intended to maintain and strengthen the CSJ, as indicated in Chapter II, Section 1 of this report.

In light of the comments made in that Section, the Committee suggests that the country under review consider the following recommendations:

4.4.1. Strengthen the Staff of the Supreme Court of Justice so that they have the necessary training and infrastructure to fully support the Court in its investigation of corrupt acts allegedly committed by members of the National Assembly (See section 4.2 of Chapter II of this report).

4.4.2. Consider adopting measures aimed at establishing a functionally autonomous disciplinary body in the Judiciary, capable of conducting preventive, concurrent, and ex-post oversight of magistrates, judges and other officers in the Judiciary (See section 4.2 of Chapter II of this report).

4.4.3. Take appropriate measures to expedite the processing by the Supreme Court of Justice of proceedings relating to crimes against public administration (See section 4.3 of Chapter II of this report).

4.4.4. Compile statistics on proceedings before the Second Division of the Supreme Court of Justice regarding crimes of corruption in the past five years, that indicate how many cases are under way, have been suspended, prescribed, or been shelved without it having been possible to reach a decision regarding them, or which are ready for a decision to be taken, or for which a decision on the merits was made, and the decision (acquittal or conviction) that was taken, in order to identify challenges and recommend corrective measures (See section 4.3 of Chapter II of this report).

4.4.5. Compile statistics on proceedings before the Supreme Court of Justice sitting in banc regarding crimes of corruption that indicate how many cases are under way, have been suspended, prescribed, or been shelved without it having been possible to reach a decision regarding them, or which are ready for a decision to be taken, or for which a decision on the merits was made, and the decision (acquittal or conviction) that was taken, in order to identify challenges and recommend corrective measures (See section 4.3 of Chapter II of this report).

4.4.6. Conduct a study on the number of complaints of corruption cases allegedly involving members of the National Assembly actually received and processed by the Supreme Court of Justice in order to identify the impact of the entry into force of Law 55 of 2012 and, if necessary, consider extending the deadline for concluding the investigation (See sections 4.2 and 4.3 of Chapter II of this report).

III. BEST PRACTICE

In accordance with Section V of the Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round and the Format adopted by the Committee for the Reports of that Round, reference is made to the best practice identified by the country under review, which it has said it wishes to share with the other member States of the MESICIC, as it could be beneficial to them:

- Regarding the Public Prosecution Service (PGN):
[246] Use of the “IberRed”[^175]: The Ibero-American Network for International Legal Cooperation (IberRed) is a tool established by Central Authorities and contacts in ministries of justice, prosecutor’s offices, offices of the attorney general, and judiciaries in the 22 countries making up the Ibero-American Community of Nations and by the Puerto Rican Supreme Court. Its goal is to optimize civil and criminal judicial assistance instruments and strengthen ties of cooperation among our countries. Additionally, the PGN and the Ministry of the Interior (Ministerio de Gobierno) of Panama also form part of the OAS Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition (“Criminal Matters Network”).[^176]


IV. FOLLOW-UP ON PROGRESS AND NEW AND RELEVANT INFORMATION AND DEVELOPMENTS WITH REGARD TO THE IMPLEMENTATION OF RECOMMENDATIONS SUGGESTED IN THE COUNTRY REPORT IN THE FIRST ROUND OF REVIEW

[248] The Committee will refer below to the progress, information, and new developments made by Panama in relation to the recommendations and measures suggested by the Committee for implementation in the Report of the First Round, and with respect to which the Committee deemed that additional attention was required in the Reports from the Second and Third Rounds,[^177] and shall, as appropriate, take note of those that have been satisfactorily considered and those that require additional attention from the country under review. In addition, where appropriate, it will address the continued validity of those recommendations and measures and, as applicable, restate or reformulate them, in accordance with provisions contained in section VI of the Methodology adopted by the Committee for the Fourth Round of Review.[^178]

[249] The Committee will also take note in this section of the Report of the difficulties in implementing the aforementioned recommendations and the measures to which the country under review has drawn attention, as well as of its technical cooperation needs to that end.

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

1.1. Standards of conduct to prevent conflicts of interests and mechanisms to enforce them

Recommendation:

*Strengthen the implementation of laws and regulatory systems concerning conflicts of interest, so as to permit the practical and effective application of a system of public ethics.*

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

[^175]: [https://www.iberred.org/](https://www.iberred.org/)


[^177]: Available at: [http://www.oas.org/juridico/english/pan.htm](http://www.oas.org/juridico/english/pan.htm)

[^178]: The list of recommendations that still require additional attention or which have been reformulated following this analysis, have been included as Annex 1 to this Report.
- Consider the possibility of amending existing legislation to reflect a uniform concept of public servant or official, consistent with the definition of that term provided by the States Parties in Article I of the Convention.

[250] In its reply the country under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps which allow it to conclude that this measure has been satisfactorily considered, the following:

[251] –The adoption of Executive Decree No. 246 of December 15, 2004, “Issuing the Uniform Code of Ethics of Public servants Working in Central Government Entities.” Article 2 of that Code establishes that “Public Function” (“Función Pública”) shall be understood to mean any temporary or permanent, paid or honorary activity, performed by a natural person in the name of the State or in the service of the State or any of the institutions referred to in the foregoing article, at any level of its hierarchy.

[252] The Committee takes note of the satisfactory consideration by the country under review of measure (a) of the recommendation in Chapter IV, Section 1.1 of this report, bearing in mind that the definition of “Public Function” established in Article 2 of Executive Decree No. 246 of December 15, 2004 echoes the definition contained in Article I of the Inter-American Convention against Corruption.

[253] The Committee also takes note of the information provided regarding internal agencies that have participated in the implementation of the aforementioned measure and of the request made for technical cooperation.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Establish rules governing the system of incompatibilities, impediments, disqualification, and prohibitions with respect to the positions referred to in Articles 150, 152, 175, and 191 of the Political Constitution (in order: legislators and their alternates, President and Vice President of the Republic, and Ministers of State), recognizing the importance and the special features of those provisions, and providing mechanisms for enforcing them.

[254] In its reply, the country under review provides the following information regarding the aforementioned measure:

[255] “Panama’s legislation contemplates rules governing incompatibilities, impediments due to relationship, disqualification, and prohibitions for public servants that impede or disqualify them or outlaw the exercise of a public function, knowledge of a particular matter, or participation in some activity (…).”

[256] The reply also transcribes the articles in the current Political Constitution that relate to the positions indicated in the measure under review.

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179 See Panama's Reply to the Fourth Round questionnaire, pp. 75 and 76.
180 Ibid., pp. 76 and 77. They are: the Ministry of the Presidency and the Legislative Assembly.
181 Ibid., p. 77. “Cooperación Técnica: Solicitamos que los Estados Miembros nos faciliten la uniformidad del concepto de Servidor público en sus legislaciones.”[“Technical cooperation: We request that member states inform us of the standard concept of “public servant” used in their legislations.”]
182 Ibid., pp. 77 and 81.
At the same time, the Technical Secretariat also verified the existence of a Code of Ethics and Parliamentary Honor (Law 33 of October 27, 2005), Article 10 of which contains rules governing the incompatibilities of members of parliament (Diputados de la República) and of their alternates (suplentes) while holding office. However, that Parliamentary Code of Ethics does not establish rules regarding conflicts of interest, such as, for example, the impediment, during the exercise of office, against intervening in matters involving a direct conflict of interest expressly specified by law, nor does it establish the sanctions to which those who break the rules are liable.

In light of the above, and bearing in mind the absence of rules specifying conflicts of interest for senior positions in Panama’s public administration, the Committee notes the need for the country under review to continue addressing measure b) of the recommendation in section 1.1 of Chapter IV of this report. For that reason, the Committee deems it appropriate to reiterate that measure, as follows (See Annex I, recommendation 1.1, measure a):

a) Consider adopting rules that specifically regulate conflict of interest situations for senior positions in Panama’s public administration, as well as for members of the National Assembly and their alternates. Furthermore, regulate the prevention and resolution of said conflicts of interest, by establishing rules on incompatibilities, the corresponding sanctions, and appropriate mechanisms for imposing them.

At the same time, it is worth mentioning that the report submitted by the “Fundación para el Desarrollo de la Libertad Ciudadana - Capítulo Panameño De Transparencia Internacional” [Foundation for the Development of Citizen Liberty – Panamanian Chapter of Transparency International] notes the following: “No regulations have been issued on the system of incompatibilities, impediments, disqualification, and prohibitions with respect to legislators and their alternates, President and Vice President of the Republic, and Ministers of State. The recommendation should be adjusted to bring it into line with the new text of the Political Constitution, which was amended in 2004.”

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Give effect to the provisions of Article 27 of Law 6 of January 22, 2002, which requires “all State dependencies or agencies, including those belonging to the Executive, Legislative and Judicial branches, the decentralized, autonomous, and semiautonomous entities, municipalities, local governments, and community councils” to promulgate their codes of ethics.

In its reply, the country under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps which allow it to conclude that this measure has been satisfactorily considered, the following:

“In the years following the entry into force of Law 6 of January 22, 2002, all legislative and judicial institutions worked on developing their Codes of Ethics and most have published them on their institutional websites. The Secretariat for Transparency against Corruption has taken upon itself the task of enforcing this provision of Article 27 of the Transparency Law through intensive training and evaluation of compliance by all government institutions.”

185 See Panama’s Reply to the Fourth Round questionnaire, p. 83.
[263] At the same time, during the on-site visit, the Committee was informed that all State dependencies and agencies have promulgated their Codes of Ethics or use Uniform Code of Ethics for Public servants Working in Central Government entities (Executive Decree No. 246 of December 15, 2004). At the request of the members of the Sub-Group and the Secretariat, the representatives of the National Authority on Transparency and Access to Information submitted a complete list of approved Codes of Ethics.  

[264] With the above in mind, the Committee takes note of the satisfactory consideration by the country under review of measure c) of the recommendation made in Chapter IV, Section 1.1 of this report.

[265] The Committee also takes note of the information provided by the internal agencies participating in implementation of the aforementioned measure.  

Measure d) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- **Review and examine the possibility of achieving and ensuring greater consistency with respect to the applicable legal framework in the content of the codes of ethics, in order to guide public officials in the correct performance of their duties.**

[266] In its reply, the country under review provides, inter alia, the following information with respect to the foregoing measure,

[267] “(...) The Executive considered it essential for the proper performance of public functions in central government institutions, to have an instrument standardizing the rules and ethical and moral principles that must at all times guide the conduct of the public servants working in those entities and, for that reason, instituted the Public servant’s Uniform Code of Ethics through the aforementioned Decree (...)”

[268] Since 2002, through an inter-agency Charter, the foundations were laid for the establishment of a public ethics and transparency network coordinated by the Chief Prosecutor for Administrative Matters and comprising 104 State institutions committed to promoting and strengthening a culture of ethics in the public sector. Article 7.3 of Executive Decree 179 of 2004 calls for "supporting the formal establishment of the Inter-Agency Public Ethics Network coordinated by the Office of the Chief prosecutor for Administrative Matters as a coordination mechanism between the Council and government institutions.”

[269] Considering that it lacks more detailed information on the activities of the Inter-Agency Public Ethics Network coordinated by the Office of the Chief Prosecutor for Administrative Matters, particularly as regards efforts to ensure greater consistency in the contents of the Codes of Ethics of the various State dependencies and agencies, the Committee reiterates the need for the country under review to pay additional attention to implementing measure (d) of the recommendation in Chapter IV, Section 1.1 of this report.

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186 Formerly known as the “Secretaria Ejecutiva del Consejo Nacional de Transparencia Contra la Corrupción”[Executive Secretariat of the National Council for Transparency against Corruption]  
187 The document is posted at: [http://www.oas.org/juridico/pdfs/mesicic4_pan_inst.pdf](http://www.oas.org/juridico/pdfs/mesicic4_pan_inst.pdf)  
188 See Panama’s Reply to the Fourth Round questionnaire, p. 84. They are: the Ministry of the Presidency, the National Transparency Authority, the Judiciary, and the National Assembly of Delegates.  
At the same time, it is worth mentioning that the report presented by “Fundación para el Desarrollo de la Libertad Ciudadana - Capítulo Panameño De Transparencia Internacional,” 190 reported that “For three consecutive years our organization ran the “Public Institutions Integrity Index” project, measuring three factors: transparency, citizen participation, and institutionality (...)

Thus we were able to ascertain that most institutions adopted the Uniform Code of Ethics for Public servants Working in Central Government Entities (Executive Decree No. 246 of December 15, 2004).

Some entities have developed their own Codes of Ethics, such as the National Assembly, which has a very lax Code and for that reason received a grade of only 58.95 out of 100 in the 2008 Integrity Index, while the Panama Canal Authority, for instance, adopted a much more robust and strict Code, with, above all, effective mechanisms for imposing sanctions and scored 94.57 on the 2008 Integrity Index (...)

Measure e) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Consider the possibility of implementing the Single Curriculum Vitae Form for public servants as regulated by Law No. 39, Article 32 and concordant articles.

In its reply, 191 the country under review provides the following information regarding the foregoing measure:

“Currently, Executive Decree 232 of the National Transparency Council does not envisage using a standard format for public servants’ curricula vitae (...)

In light of the above and bearing in mind the fact that one of the requirements of that format is the inclusion of a sworn declaration that no fact or circumstance exists entailing a constitutional or legal disqualification or impediment to holding the job or position to which a public servant has been appointed or to signing a public services contract with the administration, the Committee takes note of the need for the country under review to give additional attention to implementing measure (e) of the recommendation in Chapter IV, Section 1.1 of this report. For that reason, the Committee deems it appropriate to reiterate that measure, as follows (See Annex I, recommendation 1.1, measure e):

c) Consider establishing the legal obligation to present the Declaration of Interests by public servants, taking into account the criteria established in the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions.”

Measure f) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Implement effective mechanisms for preventing conflicts of interest and ensuring the proper use of resources entrusted to public servants, pursuant to Article 37 of Law 39, which requires that, if grounds for incompatibility or disqualification should arise after a public

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191 See Panama’s Reply to the Fourth Round questionnaire, pp. 86 and 87.
192 Text posted at: http://www.oas.org/juridico/PDFs/ley_modelo_declaracion.pdf
servant is appointed or takes office, he must immediately report that fact to the entity for which he is working.

[277] In its reply, the country under review provides, inter alia, the following information regarding the foregoing measure:

[278] “It is important to point out that all State institutions have a program for introducing new public servants to the job when they first begin working for the State. Thus, all staff have to know the rules that apply to them, including prevention of conflicts of interest and appropriate use of the resources allocated to the public servant. This induction program is a very effective mechanism for transmitting knowledge of the rules applicable to government officials (...).”

[279] Other rules are also mentioned, such as the Uniform Code of Ethics for Public Servants Working in Central Government Entities (Executive Decree No. 246 of December 15, 2004)

[280] Since it lacks information on activities designed to ensure actual implementation of mechanisms for preventing conflicts of interest, and noting also the apparent lack of a competent authority responsible, among other things, for establishing consultation mechanisms that would allow public servants to dispel any doubts regarding their obligations in relation to conflict of interest situations, the Committee takes note of the need for the country under review to give additional attention to implementing measure (e) of the recommendation in Chapter IV, Section 1.1 of this report. For that reason, the Committee deems it appropriate to reiterate that measure, as follows (See Annex I, recommendation 1.1, measure d)

[281] d) Consider the possibility of establishing and implementing mechanisms to enable public servants to dispel doubts regarding their obligations with respect to conflict of interest situations and to be able to determine in concrete cases whether a person performing a public function is in a conflict of interest situation and to take such measures as are needed to protect the public interest, taking into account the criteria established in the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions.”

Measure g) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Implement mechanisms for monitoring and enforcing compliance with Article 298 of the Political Constitution, as well as articles 894 and following of the Administrative Code (prohibiting public servants from earning two or more salaries paid by the State, except in special cases determined by law), in such a way as to include officials under contract.

[282] In its reply, the country under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps which allow it to conclude that this measure has been satisfactorily considered, the following

[283] “A new development related to the subject of the recommendation is the Approval of Resolution No. 002 of July 21, 2006, “Establishing wire transfers as a means of payment in the Directorate-General of the Treasury in the Ministry of Economy and Finance.” In this way, the system detects whether an official is paid more than once.”

193 See Panama’s Reply to the Fourth Round questionnaire, pp. 88 to 90.
194 Text posted at: http://www.oas.org/juridico/PDFs/ley_modelo_declaracion.pdf
195 See Panama’s Reply to the Fourth Round questionnaire, pp. 92 and 93.
[284] Taking the foregoing into account, the Committee takes note of the satisfactory consideration by the country under review of measure g) of the recommendation made in Chapter IV, Section 1.1 of this report.

Measure h) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Ensure that penalties are applicable to public servants who violate the rules governing conflicts of interest.

[285] In its reply, the country under review provides information regarding Articles 39 (conflict of interests); 44 (sanctions), and 45 (procedure) of the Uniform Code of Ethics for Public Servants Working in Central Government Entities (Executive Decree No. 246 of December 15, 2004).

[286] The Committee reiterates the need for the country under review to give additional attention to implementing measure (h) of the recommendation in Chapter IV, Section 1.1 of this report, bearing in mind that that measure is designed to ensure that the State presents the results of the imposition of sanctions in cases in which the rules governing conflicts of interest are broken. During the on-site visit, information was requested regarding the number of administrative and criminal proceedings instituted on account of conflicts of interest and the outcomes of those proceedings. The CGR stated that it did not have those statistics, while the PGN said that no proceedings had been instituted in the Service since 2009.

Measure i) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Review and examine the possibility of incorporating rules and regulations to limit or prohibit participation by former officials in certain government matters, and in general to assist in preventing situations that could lead to inappropriate exploitation of a person's status as a former official.

[287] In its reply, the country under review provides, inter alia, the following information regarding the foregoing measure:

[288] “Current legislation does not contemplate rules prohibiting former public servants from participating in the processing of certain acts and in general in situations that might lead to taking improper advantage of their status as a former public servant (...) Technical cooperation is needed for a recommendation on implementing this measure.”

[289] The Committee reiterates the need for the country under review to give additional attention to implementing measure (i) of the recommendation in Chapter IV, Section 1.1 of this report.

[290] The Committee also takes note of the request for technical cooperation.

Measure j) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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196 Ibid., pp. 93 and 94.
197 See http://www.oas.org/juridico/pdfs/mesicic4_pan_cgr3.pdf
198 See http://www.oas.org/juridico/PDFs/mesicic4_pan_pgn2.pdf
199 See Panama’s Reply to the Fourth Round questionnaire, pp. 95 and 96.
200 Ibid., p. 96.
- Design and implement mechanisms to disseminate, and train all public servants in, standards of behavior, including rules governing conflicts of interest, and provide periodic further training and refresher courses in respect of those standards.

[291] In its reply, the country under review provides information and reports on new developments with respect to the foregoing measure, of which the Committee notes, as a step that contributes to progress in implementation of the recommendation, the following:

[292] — The organization by the National Council for Transparency against Corruption of a one-day training workshop, on March 30, 2011, at the National Secretariat for Children, Adolescents and the Family on issues to do with ethics, codes of conduct, and conflicts of interest.

[293] Information is also provided regarding various training activities and seminars in a number of institutions on other issues, such as Law 6 on Transparency. Mention is also made of the establishment of the Regional Anti-Corruption Academy (ARAC), which will offer specialized courses to provide prosecutors, judges, police officers and other government officials with the skills they need to prevent, detect, and handle corruption in government offices.

[294] The Committee takes note of the steps taken by the country under review to advance with implementation of measure (j) of the recommendation in Chapter IV, Section 1.1 of this report and of the need for the State to continue giving attention thereto, bearing in mind the importance of having specialized training on rules of conduct, especially in regard to conflicts of interest.

Measure k) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Gather information regarding cases of conflicts of interest with a view to establishing evaluation mechanisms that will make it possible to verify results in this area.

[295] As regards implementation of measure (k) of the recommendation in Chapter IV, Section 1.1 of this report, in its reply, the country under review does not provide any additional information beyond that already analyzed by the Committee in the Report from the Second Round, so that the Committee reiterates the need for the country under review to continue giving attention thereto.

Measure l) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Consider the possibility of giving new impetus to the National Integrity Plan with broad social participation.

[296] In its reply, the country under review provides, inter alia, the following information regarding the foregoing measure:

[297] The National Integrity Plan has not been advanced but the State does have programs such as Project 311 on Attention to Citizens, the Citizen Participation Program, and the Citizen Consensus-Building Office (Oficina de Concertación Ciudadana), which enjoys broad social participation (...)”

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201 Ibid., pp. 96 and 97.
202 Ibid., pp. 98 and 99.
204 See Panama’s Reply to the Fourth Round questionnaire, pp. 100 and 101.
The Committee reiterates the need for the country under review to give additional attention to implementing measure (l) of the recommendation in Chapter IV, Section 1.1 of this report.

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

Recommendation 1.2.1.: 

[299] This recommendation was satisfactorily considered and, therefore, does not require additional attention.

Recommendation 1.2.2.:

Design and implement mechanisms to disseminate, and train all public servants in, the standards of behavior referred to in this section, and to respond to their queries regarding them, and provide periodic further training and refresher courses in respect of those standards.

[301] In its reply, the country under review provides information and reports on new developments with respect to the foregoing recommendation, of which, the Committee notes, as a step that contributes to progress in implementation of the recommendation, the following:

— The organization by the National Council for Transparency against Corruption of a one-day training workshop, on March 30, 2011, at the National Secretariat for Children, Adolescents and the Family on issues to do with ethics, codes of conduct, and conflicts of interest.

[302] Information is also provided regarding various training activities and seminars in a number of institutions on other issues, such as Law 6 on Transparency. Mention is also made of the establishment of the Regional Anti-Corruption Academy (ARAC), which will offer specialized courses to provide prosecutors, judges, police officers and other government officials with the skills they need to prevent, detect, and handle corruption in government offices.

[303] The Committee takes note of the steps taken by the country under review to advance with implementation of Recommendation 1.2.2 of Chapter IV, Section 1.2 of this report and of the need for the State to continue giving attention thereto, bearing in mind the importance of specialized training on the subject of rules of conduct, especially regarding the conservation and appropriate use of the resources assigned to government officials.

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

Recommendation 1.3.1.:

Strengthen existing mechanisms in the Republic of Panama for requiring government officials to report to the competent authorities any acts of corruption in the performance of public office of which they may become aware.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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205 Ibid., pp. 96 and 97.
- Issue regulations to facilitate such reporting, and establish requirements that will not inhibit potential whistleblowers. Regulate and implement mechanisms for protecting those who report acts of corruption.

[304] In its reply, the country under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps that contribute to progress in implementation of the measure, the following:

[305] –The approval of the New Code of Criminal Procedure (Law 63 of 2008), Article 82 of which establishes that complaints need not follow any formalities or official procedures of any kind and may be anonymous. A complaint may be submitted orally or in writing; in the latter case with, if possible, minimal requirements such as: a circumstantial account of the incident, indicating who the perpetrators or participants were, those affected, witnesses and any other information needed to ascertain the facts and make a legal assessment. Furthermore, Articles 332 and 404 also establish protective measures to safeguard the integrity of the victims, witnesses, experts, and other persons involved with the criminal proceedings.

[306] The Committee takes note of the steps taken by the country under review to advance with implementation of measure a) of Recommendation 1.3.1 of Chapter IV, Section 1.3 of this report and of the need for the State to continue giving attention thereto, bearing in mind that the Code of Criminal Procedure is not yet in force throughout the country, and that additional difficulties – mentioned earlier, in Chapter II, section 1.2 of this report -- were established by Law 55 of 2012 with respect to filing complaints about crimes alleged to have been committed by principal or alternate members of the National Assembly (diputados de la República).

[307] Moreover, in its reply, the country under review mentioned the following as an obstacle to implementation of the foregoing measure:

[308] “The main difficulty encountered in efforts to implement the recommendation is financial, if we bear in mind that the budget of our institution [the Office of the Attorney General] has declined, a fact that affects the extent to which we can execute and complete plans and programs that were previously adopted on the basis of annual goals for optimizing the service we owe to the community of users, particularly now that we face the challenge of effectively fulfilling the tasks required of us by the law and the Political Constitution under a new adversarial type of criminal procedure.”

[309] At the same time, it is worth mentioning that the report presented by the “Fundación para el Desarrollo de la Libertad Ciudadana - Capítulo Panameño De Transparencia Internacional” states that “(...) Both articles [332 and 404 of the new Code of Criminal Procedure] represent progress, but the Office of the Attorney General still needs to be better funded if it is to provide appropriate protection to victims, witnesses, and experts. It is also necessary to develop a

206 Ibid., pp. 107 and 108.
207 The New Code of Criminal Procedure is currently applied in two judicial districts (the Second and the Fourth) and in proceedings for which the Supreme Court of Justice (sitting in banc and in the Criminal Division, as a sole-instance Court) and the National Assembly are competent (Article 556 of the New Code of Criminal Procedure). Application to the other districts was postponed by Law 8 of March 6, 2013 and will conclude with implementation in the First Judicial District (Panama, Colón, and Kuna Yala) on September 2, 2016.
208 See Panama’s Reply to the Fourth Round questionnaire, p. 109.
law that protects whistleblowers denouncing acts of corruption, using the model law developed by the Organization of American States (OAS) as a benchmark.”

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Facilitate such reporting through the use of appropriate electronic and other means of communication they deem appropriate.

[310] In its reply, 210 the country under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps which allow it to conclude that this measure has been satisfactorily considered, the following:

[311] – The “3-1-1 Program” (http://www.311.gob.pa/registro-de-casos): a dedicated hotline which anyone may use quickly and easily to file complaints that will be channeled to the government entities responsible for follow-up.


[313] The Committee takes note of the satisfactory consideration by the country under review of measure (b) of Recommendation 1.3.1 formulated in Chapter IV, Section 1.3 of this report.

[314] Furthermore, in its reply, 211 the country under review pointed to the following difficulty with respect to implementing the foregoing measure:

[315] “The main difficulty encountered in efforts to implement this recommendation is financial, if we bear in mind that the budget of the Office of the Attorney General was cut, which impairs its ability to execute and publicize to the community its duty to denounce incidents and corrupt practices in public administration.”

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Train government officials in their responsibility to report to the competent authorities any acts of corruption in the performance of public office of which they may become aware.

[316] In its reply, 212 the country under review provides information and reports on new developments with respect to the foregoing recommendation, of which, the Committee notes, as steps that contribute to progress in implementation of the recommendation, the following:

[317] “As for information and new developments regarding training in the filing of complaints about acts of corruption in public office, we have Article 24 of Section 6 of Chapter Four of Law No. 1/2009, on the training and all-round development of officials in the Office of the Attorney General, establishing that the Office of the Attorney General pledges to provide training programs for its staff, using a Training Unit of the Department of Training and Development established by Resolution No. 29 of January 18, 2012 (…”

210 See Panama’s Reply to the Fourth Round questionnaire, pp. 110 and 111.
211 Ibid., p. 112.
212 Ibid., pp. 113 and 116.
[318] Information is also provided on training activities in which pertinent members of the Office of the Attorney General participated. Mention is also made of the establishment of the Regional Anti-Corruption Academy (ARAC), which will offer specialized courses for furnishing prosecutors, judges, police officers and other government officials with the skills needed to prevent, detect, and prosecute corruption in government offices.

[319] The Committee takes note of the steps taken by the country under review to advance with implementation of measure c) of Recommendation 1.3.1 of Chapter IV, Section 1.3 of this report and of the need for the State to continue giving attention thereto, bearing in mind that no information was provided on training activities in this field for other government officials.

Recommendation 1.3.2:

*Take the necessary decisions to expand the existing rules, and make it an explicit, punishable offense for public servants to fail to report to the competent authorities acts of corruption in the performance of public office of which they become aware. Ensure that the scope of this obligation refers not only to punishable acts of which they become aware by reason of, on the occasion of, or in the exercise of public office, but also acts of corruption of which they become aware even without such exercise.*

[320] In its reply, the country under review provides information and reports on new developments with respect to the foregoing recommendation, of which, the Committee notes, as steps that contribute to progress in implementation of the recommendation, the following:

[321] "In addition to Law 9 of 1994 on the Administrative Career Services, Chapter I of which deals with the disciplinary system and offences, Law 14/2007 was adopted in the new Criminal Code, which establishes as a separate criminal offence Breaches of the Duty of a Public Servant, whereby a public servant who refuses to take, omits, or delays an act proper to his or her position shall be punished with a sentence of between 6 months and 1 year, its equivalent in fines, or arrests during the weekend, as well as the duty to denounce a criminal act."

[322] The Committee takes note of the steps taken by the country under review to advance with implementation of Recommendation 1.3.2 of Chapter IV, Section 1.3 of this report and of the need for the State to continue giving attention thereto, bearing in mind that no information was provided on an amendment to the rule in the sense of providing that the scope of this obligation extends not only to punishable acts of which they become aware by reason of, on the occasion of, or in the exercise of public office, but also acts of corruption of which they become aware even without such exercise.

[323] Furthermore, in its reply, the country under review pointed to the following difficulty with respect to implementing the foregoing measure:

[324] “The main difficulty encountered in efforts to implement this recommendation is financial, if we bear in mind that the budget of the Office of the Attorney General was cut, which impairs its ability to execute and publicize to the community its duty to denounce incidents and corrupt practices in public administration.”

Recommendation 1.3.3:

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213 Ibid., p. 118.
214 Ibid., p. 118.
This recommendation was satisfactorily considered and, therefore, does not require additional attention.

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

Recommendation 2.1:

Create and establish a mechanism for publication of declaration of income, assets and liabilities.

Sole measure suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Issue regulations governing the conditions, procedures, and other appropriate aspects of public disclosure, where necessary, of sworn statements of income, assets, and liabilities.

In its reply, the country under review reports that “there are no laws making it compulsory to publish sworn statements.”

The Committee reiterates the need for the country under review to give additional attention to implementing the measure in recommendation 2.1 in Chapter IV, Section 2 of this report.

At the same time, it is worth mentioning that, during the on-site visit, the representative of Fundación para el Desarrollo de la Libertad Ciudadana - Capítulo Panameño De Transparencia Internacional pointed out the existence of a judgment of May 12, 2009, which establishes that the CGR may not report whether an official required to submit a sworn statement did so or not.

Recommendation 2.2:

Take the necessary decisions to ensure that the obligation of public officials pursuant to Article 299 of the national Constitution and Law 59 of December 29, 1999, regulating those declarations, as well as the enforcement mechanisms established in Article 3 and following of that Law, are applicable to other important officials; or that provisions similar to those of Article 299 of the National Constitution are established, and that they cover all persons performing public functions, together with effective mechanisms for punishing violations.

In its reply, the country under review provides the following information regarding the foregoing recommendation:

“To comply with Article 4 of Law 59 of December 29, 1999, the Office of the Comptroller-General shall issue circulars and notes to the heads of the institutions instructing that wages be withheld from any government-employed manager (empleado de manejo) who fails to comply with presentation of his or her sworn statement of wealth, until such statement is submitted.”

Moreover, during the on-site visit, the Committee was told that no amendment had been made to Law 59 of 1999, in the sense of broadening the scope of those required to file a sworn statement of wealth (income, assets, and liabilities).

Accordingly, and bearing in mind the recent adoption by the Committee of Experts of the MESICIC of the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of

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215 Ibid., p. 120.
216 Ibid., p. 121.
**Persons Performing Public Functions,** Article 3 of which contains a list of those required to present the declaration, the Committee deems it appropriate to reiterate said measure, as follows (see Annex 1, Recommendation 2.2):

[333] Consider the possibility of amending Law No. 59 of December 29, 1999 to include other important officials on the list of persons required to present the sworn declaration, bearing in mind Article 3 of the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions.”

**Recommendation 2.3.**

Establish systems for effectively and efficiently reviewing the content of sworn statements of income, assets, and liabilities, establishing the relevant deadlines and circumstances, and measures for overcoming obstacles to access to the sources of information required; and take the necessary decisions to ensure cooperation between the Comptroller General’s Office and other sectors, such as the financial and taxation sectors, so as to facilitate the exchange of information for verifying the contents of such statements.

[334] In its reply, the country under review provides the following information regarding the foregoing recommendation:

[335] “When a notarized copy of a Sworn Statement of Wealth is submitted, the Office of the Comptroller-General of the Republic shall check the particulars of the declarant against the payroll.”

[336] However, during the on-site visit, the representatives of the CGR clarified that information and explained that the CGR restricts itself solely to verifying whether the official required to present a declaration did so or not. The CGR does not check the contents of the declarations, except when authorized to do so by a judicial authority.

[337] Furthermore, in its reply, the country under review pointed to the following difficulty with respect to implementing the foregoing measure:

[338] “Where the Office of the Comptroller-General encountered difficulties was with the decentralized entities, financial intermediaries, and other entities that draw up their own payrolls, because the administration does not tell its inspectors who the government-employed managers (empleados de manejo) are who are supposed to present the sworn statement of wealth (Declaración Jurada de Bienes Patrimoniales).

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217 This Model Law is the result of an extensive consultation process carried out in the framework of a cooperation program developed by the OAS General Secretariat, through the Department of Legal Cooperation of the Secretariat for Legal Affairs in its capacity as Technical Secretariat of the MESISIC, which, with the support of an international consultant in drafting the first version, was discussed at a workshop held in Buenos Aires in May 2011, with the participation of officials from Argentina, Brazil, Chile, Colombia, Spain, the United States and Mexico, as well as the World Bank. The results of this workshop were presented at the Second Conference on the Progress and Challenges in Hemispheric Cooperation against Corruption, held in Cali, Colombia, in June the same year. This Model Law was later brought to the consideration of the members of the Committee of Experts of the MESISIC and civil society organizations for their comments and observations, which are incorporated in this latest version and endorsed by the Committee, at the March 22, 2013 plenary session, within the framework of the Twenty-First Meeting of the Committee, held at OAS headquarters in Washington, D.C., from March 18 to 22, 2013. For further information, see: [http://www.oas.org/juridico/spanish/ley_declaracion.htm](http://www.oas.org/juridico/spanish/ley_declaracion.htm)

218 Text posted at: [http://www.oas.org/juridico/PDFs/ley_modelo_declaracion.pdf](http://www.oas.org/juridico/PDFs/ley_modelo_declaracion.pdf)

219 See Panama’s Reply to the Fourth Round questionnaire, p. 122.

Accordingly, and bearing in mind the recent adoption by the Committee of Experts of the MESICIC of the "Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions," the Committee deems it appropriate to reiterate this measure, as follows (see Annex 1, Recommendation 2.3):

Establish systems for effectively and efficiently reviewing the content of sworn statements of income, assets, and liabilities, establishing the relevant deadlines and circumstances, and measures for overcoming obstacles to access to the sources of information required, bearing in mind the pertinent articles of the "Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions," and take the necessary decisions to ensure cooperation between the Office of the Comptroller-General of the Republic and other sectors, such as the financial and taxation sectors, so as to facilitate the exchange of information for verifying the contents of such statements.

In addition, the Committee takes note of the request for technical cooperation. Recommendation 2.4:

Make use of sworn statements of income, assets, and liabilities to detect and punish illicit acts.

In its reply, the country under review provides the following information regarding the foregoing recommendation:

"The Office of the Comptroller General may order an investigation ex officio or a complaint regarding unjustified enrichment if preliminary evidence is attached regarding the possession of assets deemed to exceed what was declared. However, we cannot punish because the outcome of the investigation has to be remitted to the competent legal authority, for it to initiate proceedings and issue a final judgment."

Furthermore, during the on-site visit, the representatives of the CGR explained that it would be necessary to amend Law 59 of 1999 to grant the Institution power to verify the contents of the sworn statements and monitor the wealth status of public servants.

Accordingly, and bearing in mind the recent adoption by the Committee of Experts of the MESICIC of the "Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions," the Committee deems it appropriate to reiterate this measure, as follows (see Annex 1, Recommendation 2.4):

Consider amending Law No. 59 of December 29, 1999 to empower the Office of the Comptroller-General of the Republic to effectively verify the contents of sworn statements of income, assets, and liabilities and to allow them to be used to detect and punish illicit acts, taking into account the verification procedures and other relevant aspects established in the "Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions." Recommendation 2.5:

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221 Text posted at: [http://www.oas.org/juridico/PDFs/ley_modelo_declaracion.pdf](http://www.oas.org/juridico/PDFs/ley_modelo_declaracion.pdf)

222 See Panama’s Reply to the Fourth Round questionnaire, p. 123. “There is a need for technical cooperation to observe how other States Parties establish systems for effective and efficient verification of the contents of the sworn statement of income, assets, and liabilities.”

223 Ibid., p. 123.

224 Posted at: [http://www.oas.org/juridico/PDFs/ley_modelo_declaracion.pdf](http://www.oas.org/juridico/PDFs/ley_modelo_declaracion.pdf)
Use the sworn statements of income, assets, and liabilities to detect and avoid conflicts of interest, as well as to detect illicit enrichment.

[347] In its reply, the country under review provides the following information regarding the foregoing recommendation:

[348] “The Office of the Comptroller-General of the Republic may, either ex officio or based on a complaint accompanied by preliminary evidence, order an investigation on account of unjustified enrichment and, depending on the outcome, may remit the investigation to the competent legal authority to initiate proceedings and determine whether or not a crime has been committed.”

[349] However, during the on-site visit, the representatives of the CGR explained that it would be necessary to amend Law 59 of 1999 to empower the Institution to verify the contents of the sworn statements and monitor the wealth status of public servants.

[350] Accordingly, and bearing in mind the recent adoption by the Committee of Experts of the MESICIC of the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions,” the Committee deems it appropriate to reiterate said measure, as follows (see Annex 1, Recommendation 2.5):

[351] Consider amending Law No. 59 of December 29, 1999 to empower the Office of the Comptroller-General of the Republic to effectively verify the contents of the sworn statement of income, assets, and liabilities and to enable them to be used to detect and avoid conflicts of interests, as well as to detect and verify significant and unjustified changes in the wealth of the officials required to file declarations, taking into account the verification procedures and other relevant aspects established in the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions.”

Recommendation 2.6:

Install a registry of those required to present a sworn statement of income, assets, and liabilities, ensuring that there are mechanisms for periodically updating it.

[352] In its reply, the country under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps which allow it to conclude that this measure has been satisfactorily considered, the following:

[353] “The Office of the Comptroller-General has a Sworn Declaration System, which contains an up-to-date list of centralized entities based on the government payroll, and with that a record is kept of public servants required to present their sworn statement. Currently, we are working on updating the list of decentralized entities, state-owned enterprises, financial intermediaries, and others.”

[354] The Committee takes note of the satisfactory consideration by the country under review of Recommendation 2.6 formulated in Chapter IV, Section 2 of this report.

[355] The Committee also takes note of the information provided on internal agencies participating in the implementation of the foregoing measure.

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225 See Panama’s Reply to the Fourth Round questionnaire, p. 124.
226 Posted at: http://www.oas.org/juridico/PDFs/ley_modelo_declaracion.pdf
227 See Panama’s Reply to the Fourth Round questionnaire, p. 125.
At the same time, it is worth mentioning that the report presented by the “Fundación para el Desarrollo de la Libertad Ciudadana - Capítulo Panameño De Transparencia Internacional”\(^{229}\) states: “In respect of recommendation 2.6, the Office of the Comptroller-General of the Republic has developed a mechanism for checking that public servants required to meet this obligation do so, otherwise their wages are withheld; however, periodic updating is not guaranteed. This was the only recommendation on this matter that was taken notice of.”

Recommendation 2.7:

Implement the procedures needed for effective monitoring of compliance, in accordance with item 2.6.

In its reply,\(^{230}\) the country under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps which allow it to conclude that this measure has been satisfactorily considered, the following:

“Through the General Secretariat, the Office of the Comptroller General of the Republic has access to a computerized system that allows it to keep a record and up-to-date oversight of the information regarding sworn statements submitted. That system will record the information that the Office of the Comptroller-General requires in respect of each declarant.”

The Comptroller-General of the Republic shall notify all government entities, through circulars, of the importance of providing information concerning public servants occupying management positions. The message will be reiterated in all entities as often as necessary.

The Office of the Comptroller-General of the Republic will tap existing institutional I.T. systems (Sworn Statements of Wealth, the System for Administering Official Bank Account Signatures, Payroll and Discount systems), that make more in-depth investigation and scrutiny possible and make it possible to know which government-appointed managers have not presented their sworn statements of income, assets, and liabilities.

Finally, the heads of the various government entities shall be notified by a signed note of the Comptroller-General of the management-level staff in their entity who have not complied with law 59 of 1999. In cases in which that note must be delivered to the public servant in person, the same procedure shall apply through the entity’s communication channels.

Once it has issued the communication (circular) regarding the sworn statement of wealth required of public servants holding government-appointed managerial positions (empleados de Manejo), and once it has investigated those who fail to comply with the requirement, the Office of the Comptroller-General of the Republic shall proceed to withhold payment of their salaries.”

In light of the above, the Committee takes note of the satisfactory consideration by the country under review of Recommendation 2.7 formulated in Chapter IV, Section 2 of this report.

The Committee also takes note of the information provided on the internal agency participating in the implementation of the aforementioned measure.\(^{231}\)

\(^{228}\) See Panama’s Reply to the Fourth Round questionnaire, p. 84. They are: the Office of the Comptroller-General of the Republic, centralized and decentralized entities, state-owned enterprises, financial intermediaries.


\(^{230}\) See Panama’s Reply to the Fourth Round questionnaire, pp. 126 and 127.
Recommendation 2.8:

Implement an appropriate set of sanctions and penalties for those who fail to comply with this obligation; including, furthermore, the possibility of punishing failure to comply with this obligation by a former public servant, whose failure to comply with obligations established occurs after he has left office.

[365] In its reply, the country under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps that contribute to progress in implementation of the measure, the following:

[366] The effective implementation of the mechanism for temporarily withholding the remuneration of public servants who fail to comply with their obligation to present a sworn statement pursuant to Article 4 of law 59 of 1999.

[367] During the on-site visit, the representatives of the CGR presented the results obtained and the number of public servants in each institution that had their salaries withheld in 2011, 2012, and 2013 (through March).

[368] In addition, the reply of the country under review provides the following information:

[369] “We must point out that the Political Constitution and Law 59 of 1999 does not indicate the fine to be levied to punish a public servant who fails to present a sworn statement of income, assets, and liabilities. Consequently, we are unable to establish a set of punishments for former public servants who, after they have left the position or ceased to perform their functions, are supposed to submit said statement.”

[370] The Committee takes note of the steps taken by the country under review to advance with implementation of Recommendation 2.8 of Chapter IV, Section 2 of this report, which suggests that an appropriate system of violations and punishments has been implemented for those who fail to comply with the obligation to present the sworn statement. However, bearing in mind the impossibility of punishing former public servants who fail to meet that obligation after they have ceased to perform their functions, the Committee deems it appropriate to reiterate the aforementioned measures as follows (See Annex I, Recommendation 2.6):

[371] Consider amending Law No. 59 of December 29, 1999 to include the establishment of sanctions on former civil servants who, after leaving office, fail to comply with their obligation to present a sworn statement of income, assets, and liabilities, bearing in mind the sanctions established in the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions.”

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

Recommendation 3.1:

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231 Ibid., p. 128.
232 Ibid., pp. 96 and 97.
233 See the presentation by the CGR during the on-site visit, Slide 30. Posted at: http://www.oas.org/juridico/ppt/mesicic4_pan_cgr2.ppt
234 See Panama’s Reply to the Fourth Round questionnaire, pp. 96 and 97.
235 Posted at: http://www.oas.org/juridico/PDFs/ley_modelo_declaracion.pdf
Strengthen the oversight bodies, and, as appropriate, harmonize and coordinate their functions with respect to monitoring effective enforcement of the provisions of paragraphs 1, 2, 4 and 11 of the Convention.

Recommendation 3.2:

[372] This recommendation was satisfactorily considered and, therefore, does not require additional attention.

Recommendation 3.3:

Ensure that the National Anticorruption Directorate (or its successor institution), the Ombudsman’s Office, the Public Ministry, the Comptroller General’s Office and its Government Property Directorate, and the Attorney General’s Office have, where appropriate, greater support in the performance of their duties, and establish, in appropriate cases, mechanisms for the coordination and continuing assessment and monitoring of their efforts to develop modern mechanisms for preventing, detecting, punishing, and eradicating corrupt practices.

Recommendation 3.4:

Draw up information about the functions performed by oversight bodies, with a view to establishing evaluation mechanisms in this area.

[373] In its reply, the State advises that “The Oversight Bodies, such as the Comptroller-General of the Republic, the Court of Accounts, the Supreme Court of Justice and the Public Prosecution Service (PGN), for instance, have sufficient budgetary resources to oversee effective compliance with the provisions of paragraphs 1, 2, 4, and 11 of the Convention. In each of those oversight bodies, the budget and staff are sufficient for the proper coordination of functions.”

[374] Considering that Chapter II of this report conducted an updated review regarding strengthening and inter-agency coordination with respect to the oversight bodies mentioned in Recommendations 3.1, 3.3, and 3.4, the Committee adheres to what was said in that chapter regarding each of them and therefore considers that Recommendations 3.1, 3.3, and 3.4 are redundant.

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

4.1. General participation mechanisms

Recommendation:

Design and put in place programs to disseminate mechanisms for participating in monitoring public administration and, where appropriate, providing training to civil society, nongovernmental organizations, and government officials and employees, along with the tools they need to use those mechanisms. Included in these programs would be education and training of civic leaders to boost the use of those mechanisms and generate public awareness of the importance of reporting acts of corruption in the public sector.

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236 See Panama’s Reply to the Fourth Round questionnaire, pp. 130 a 139.
In its reply, 237 the country under review provides information and reports on new developments with respect to the foregoing recommendation, of which, the Committee notes, as steps that contribute to progress in implementation of the recommendation, the following:

The implementation of the Citizen Participation Program, 238 aimed at promoting a culture of citizen participation and co-responsibility in all members of Panamanian society, with a view to reaching agreements for enhancing their well-being and quality of life and resolving problems faced by citizens.

The “Attention to Citizens 3-1-1 Project” (Proyecto 3-1-1 de Atención Ciudadana), 239 which allows swift and easy access for registering complaints, denunciations, petitions, and suggestions, to facilitate and expedite response to citizens.

The adoption of Law 33 of April 25, 2013, which established the National Authority on Transparency and Access to Information, one of whose functions is to “boost the teaching of ethical, civic, and moral values through periodic campaigns carried out with business associations, clubs, and civil society.”

Panama’s Reply 240 also provides the following information regarding the status of the bill on Citizen Participation: “At the same time, the civil society organization ‘Fundación para el Desarrollo de la Libertad Ciudadana’ states: “In 2008, a comprehensive bill on Citizen Participation was presented to the Assembly of Delegates (Diputados). However, it was only admitted to debate for the first time in 2009, when discussion ceased, among other reasons, due to lack of consensus between the government and the civil society organizations, many of which considered that the bill did not go far enough. It is to be noted that adoption of a Citizen Participation Law is one of the commitments undertaken by Concertación Nacional para el Desarrollo’.

The Committee takes note of the steps taken by the country under review to advance with implementation of the recommendation of Chapter IV, Section 4.1 of this report and of the need for the State to continue giving attention thereto, bearing in mind that no information was forthcoming about the education and training of civic leaders to foster the use of participatory mechanisms in monitoring public administration and the creation of awareness among citizens of the importance of denouncing acts of corruption in public service.

The Committee also takes note of the information provided on the internal agency that participated in the implementation of the aforementioned measure. 241

4.2. Mechanisms for access to information

Recommendation 4.2.1.:

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

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

237 Ibid., pp. 140 to 146.
238 http://www.participa.gob.pa/
239 http://www.311.gob.pa/
240 See Panama’s Reply to the Fourth Round questionnaire, p. 146.
241 Ibid., p. 146.
Develop procedures for receiving requests, for responding to them in a timely manner, and for handling appeals in cases where such requests are denied, and establish penalties for failure to observe the obligation to provide information, while making more general use of consultation offices and so-called information kiosks.

[382] After the on-site visit, Law 33 of April 25, 2013 was adopted, establishing the National Authority on Transparency and Access to Information, as the functionally and administratively autonomous policy-making body in the area of the right to petition and access public information.

[383] Article 7 of Law 33 of 2013 provides that the Authority shall coordinate implementation of the liaison unit with all State institutions. The head of that unit shall be called an Information Officer and it shall be incumbent upon each institution to appoint one. For its part, Article 8 establishes that his or her functions shall include receiving and registering all petitions and requests for information submitted to the Authority and monitoring the status of responses to those petitions and requests.

[384] In addition, Article 36 provides that “Anyone may appeal to the Authority in the event of a failure to comply with the procedures and terms established for effective exercise of the right to petition and access public information in the possession of the State, contemplated in legal provisions, within 30 days of the date on which such failure to comply occurred. For the Authority to process a claim of non-compliance with the effective exercise of the right to petition and access public information in the possession of the State, the interested party must prove that he or she submitted a petition to the institution.”

[385] The decisions of the Authority (known as Opinions) are binding and enforceable for everyone (aplicación general)(Article 31) and the Authority shall be empowered to fine those who fail to comply with the obligations set forth in Law 6 of 2002 (Article 40).

[386] In light of the above, the Committee deems it appropriate to reiterate this measure, as follows (See Annex 1, Recommendation 4.2., measures a), b), and c):

[387] a) Ensure that all institutions subject to Law 6 of 2002 have a unit or at least an information officer and that they also have the resources and training needed to perform the functions established in Article 8 of Law 33 of 2013.

[388] b) Consider the possibility of establishing a computerized system for receiving and keeping track of requests for access to information.

[389] c) Develop more robust archiving policies for State institutions, as a way of ensuring that requests for information are not simply turned down due to non-existence of information that the State should produce and keep.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Introduce a broader definition of active legitimization for the subjective scope of application of Law 6 of January 22, 2002. Consider eliminating the restrictive definition of the term “interested person” contained in Article 8 of Executive Decree 124 of May 21, 2002, recognizing: the importance of providing citizens with the broadest possible access to information; the apparently restrictive rule of Article 11 of that decree; the juridical supremacy of a law over a decree; and the frequency of acts of corruption with respect to “information on the contracting and appointment of public officials, payrolls, representation
expenses, travel costs, per diem and other allowances or payments to public officials at any level, or to other persons performing public functions,” covered by Article 11.

[390] In its reply,\textsuperscript{242} the State under provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps which allow it to conclude that this measure has been satisfactorily considered, the following:

[391] “Executive Decree 124 of May 21, 2002 was repealed by Executive Decree 335 of 2004 because it was deemed to annul the principles of public access and disclosure upheld in Law 6 of January 22, 2002.”

[392] The Committee takes note of the satisfactory consideration by the country under review of Recommendation 4.2.1 made in Chapter IV, Section 4.2 of this report.

[393] The Committee also takes note of the information provided on the internal agencies that participated in the implementation of the aforementioned measure.\textsuperscript{243}

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Consider revising the provision of Article 5 of Executive Decree 124, whereby the remuneration of public servants is considered privileged information, to bring it into line with Law 6, in Article 11 which characterizes as public, and provides free access to persons interested in, “information regarding the hiring and designation of public officials ... payment for per diem subsistence allowances and others of public officials regardless of their rank...” and Article 14, which expressly defines which information must be considered confidential or restricted, as discussed in section 4.2.2.

[394] In its reply,\textsuperscript{244} the country under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps which allow it to conclude that this measure has been satisfactorily considered, the following:

[395] “Executive Decree 124 of May 21, 2002 was repealed by Executive Decree 335 of 2004 because it was deemed to annul the principles of public access and disclosure upheld in Law 6 of January 22, 2002.”

[396] The Committee takes note of the satisfactory consideration by the country under review of measure (c) of Recommendation 4.2.1 formulated in Chapter IV, Section 4.2 of this report.

Measure d) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Strengthen the guarantees for exercising the right to public information, so that access to such information cannot be denied for reasons or criteria other than those stipulated by law.

[397] After the on-site visit, Law 33 of April 25, 2013 was adopted, establishing the National Authority on Transparency and Access to Information, as the functionally and administratively autonomous policy-making body in the area of the right to petition and access public information.

\textsuperscript{242} Ibid., p. 150.
\textsuperscript{243} Ibid., p. 150. They are: The National Council for Transparency on Corruption (currently, the National Transparency Authority), higher courts, and the Supreme Court.
\textsuperscript{244} Ibid., p. 151.
The Committee takes note of the steps taken by the country under review to advance with implementation of measure d) of Recommendation 4.2.1 of Chapter IV, Section 4.2 of this report and of the need for the State to continue giving attention thereto, bearing in mind the recent establishment of the Authority and, consequently, the lack of results in terms of sanctions imposed on those who deny a request for information on grounds other than those established by Law 6 of 2002 or based on criteria different from those established in that law.

Measure e) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- **Conduct a comprehensive assessment of the use and effectiveness of the recourse of habeas data, identifying the reasons why so few appeals are accepted, and, in light of that assessment, adopt measures to promote, facilitate, consolidate or ensure the effectiveness of that recourse.**

In its reply, the country under review provides, inter alia, the following information regarding the foregoing measure:

"It is important to point out that it is impossible to generalize on the basis that a small number of Habeas Data are allowed or not allowed, because each case differs on the merits. For example, we might mention the Judgment of the Supreme Court of Justice sitting in banc on August 29, 2012 which did not allow the action brought by Ms. Joana Abrego against the National Environmental Authority. In this particular case the action was not allowed because, after evaluating the case, it was determined that the petitioner had asked the government institution for notarized copies and upon being charged for those copies as contemplated in Article 4 of Law 6 on Transparency, which states that the requester must defray the costs of reproduction of the information, the attorney refused to pay them and filed a Habeas Data suit with the Plenary of the Supreme Court of Justice without rhyme or reason.

At the same time, it is important to emphasize that the right to file a Habeas Data suit is granted to anyone who deems it necessary. Random sources selected for 2005 and 2008 show, for instance, that all Habeas Data cases were attended to (...)

The Committee reiterates the need for the country under review to give additional attention to implementing measure e) of recommendation 4.2.1 in Chapter IV, Section 4.2 of this report, bearing in mind that no information was provided on the results of a comprehensive evaluation of the use made and effectiveness of the habeas data remedy that would make it possible to know whether the problem identified in the report on the First Round – that only a small number of those remedies were admitted -- still subsists.

**Recommendation 4.2.2.:**

This recommendation was satisfactorily considered and, therefore, does not require additional attention.

### 4.3. Mechanisms for consultation

**Recommendation:**

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Establish procedures, as appropriate, to allow for public consultation prior to the approval of new legal measures.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Increase the publication and dissemination of draft legal measures, and institute transparent proceedings for consulting interested sectors of society during the preparation of draft laws, decrees, and resolutions of the Executive branch.

[404] In its reply, 246 the country under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps that contribute to progress in implementation of the measure, the following:

[405]– The promulgation of Law 20 of February 25, 2008, approving the mechanism for verifying and following up on the agreements and targets of the national consensus for development. That Law established the National Consensus-Building for Development Council (Consejo de la Concertación Nacional para el Desarrollo) as a national public-private body for citizen participation in consultation, verification, recommendation and proposals regarding transparent compliance with the agreements and targets established in the national consensus-building-for-development process. (Article 5)

[406] The Committee takes note of the steps taken by the country under review to advance with implementation of measure a) of the recommendation in Chapter IV, Section 4.3 of this report and of the need for the State to continue giving attention thereto, bearing in mind that no information was provided on the effective publication and dissemination of bills (draft laws), or regarding other transparent procedures that facilitate consultation with stakeholders concerning the preparation of draft laws, decrees, or resolutions by the Executive.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Hold public hearings or use other suitable mechanisms for obtaining public feedback in other areas than those already covered.

[407] In its reply, 247 the country under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps that contribute to progress in implementation of the measure, the following:

[408] “www.participa.gob.pa which shall be the tool or vehicle enabling citizens to exchange opinions on national issues.

[409] Thanks to the benefits of the Internet, www.participa.gob.pa shall be the virtual platform enabling civil society to have access to documentation on national issues, photographs, videos, infographs, and concepts with multimedia applications for discussion about them.

[410] At the same time, the National Assembly of Deputies has a National Directorate for the Promotion of Citizen Participation which can receive proposals or initiatives submitted by our country’s citizens with a view to turning them into laws of the Republic.

246 Ibid., pp. 160 and 161.
247 Ibid., p. 164.
The Committee takes note of the steps taken by the country under review to advance with implementation of measure b) of the recommendation in Chapter IV, Section 4.3 of this report and of the need for the State to continue giving attention thereto, bearing in mind that no information was provided regarding the holding of public hearings or the development of other suitable mechanisms to facilitate consultations with the public in additional areas.

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

**Recommendation:**

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

**Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:**

- Give effect to Article 4 of Executive Decree 99 of September 13, 1999, which empowers the National Anticorruption Directorate to create mechanisms for encouraging participation by civil society and nongovernmental organizations in efforts to prevent corruption.

In its reply, the country under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps that contribute to progress in implementation of the measure, the following:

“In the National Environmental Authority, Executive Decree No. 123 of August 14, 2009, amended by Executive Decree No. 155 of August 5, 2011, lists under Title IV, Chapters I to IV, ON CITIZEN PARTICIPATION IN ENVIRONMENTAL IMPACT ASSESSMENTS, the mechanisms and procedures established to ensure that the promoter of an activity, works, or project is obliged to involve the citizenry from the very first stage of preparing an Environmental Impact Assessment.

Promoters of activities, works, or projects, be they public or private, shall ensure actual citizen participation in the process of preparing and evaluating the environmental impact assessment.

All projects involving the execution of mega works must prepare their Environmental Impact Assessments, which, pursuant to Executive Decree No. 123 of August 14, 2009, amended by Executive Decree No. 155 of August 5, 2011, are regarded as Category III studies and must comply with all the aforementioned disclosure requirements, as channels of information to the communities to be impacted by those projects.”

The Committee takes note of the steps taken by the country under review to advance with implementation of measure a) of the recommendation in Chapter IV, Section 4.4 of this report and of the need for the State to continue giving attention thereto. Furthermore, bearing in mind that Executive Decree No. 99 of 1999 is not in force and that Law 33 of April 25, 2013 was adopted, establishing the National Authority on Transparency and Access to Information, the Committee deems it appropriate to reiterate the aforementioned measure as follows (see Annex I, recommendation 4.4, measure a):

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248 Regarding the on-line platform [www.participa.gob.pa](http://www.participa.gob.pa), Panama reported that it has now been implemented.

[418] a) Implement Article 4 of Law 33 of April 25, 2013 which assigns to the National Authority on Transparency and Access to Information the goal of coordinating responsible citizen participation in government.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Order the publication of draft official acts, where their importance so warrants, prior to their adoption, so that, within a specified time limit, civil society and nongovernmental organizations may make comments and recommendations, which must be evaluated by the competent authorities.

[419] In its reply, the country under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps that contribute to progress in implementation of the measure, the following:

[420] “As a new development, we cite the website http://www.asamblea.gob.pa/main/ with its “LEGISLATIVE WORK” section, which provides citizens with full access to information on the plenary’s agenda, preliminary bills, bills, and committee minutes and schedules.”

[421] We also have the following website: http://www.asamblea.gob.pa/main/Escondidos/Participaci%C3%B3nCiudadana.aspx

[422] The National Directorate for the Promotion of Citizen Participation is the unit responsible for receiving proposals or initiatives submitted by the citizens of our country, with a view to converting them into laws of the Republic.”

[423] The Committee takes note of the steps taken by the country under review to advance with implementation of measure b) of the recommendation in Chapter IV, Section 4.4 of this report and of the need for the State to continue giving attention thereto, bearing in mind that no information was provided on actual publication of draft laws or other official acts of a general nature (Executive Decrees, for instance), with a view to civil society and nongovernmental organizations being able, within that timeframe, to formulate observations and recommendations to be evaluated by the competent authorities.

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Establish mechanisms for strengthening participation by civil society and nongovernmental organizations in efforts to prevent corruption and to develop a public awareness of the issue.

[424] In its reply, the country under review provides the following information regarding the foregoing recommendation:

[425] “Citizen Participation, Participa.gob.pa, and Law 6 on Transparency strengthen the participation of civil society organizations and nongovernmental organizations in efforts to prevent corruption and raise civic awareness of the issue.”

[426] The Committee reiterates the need for the country under review to pay additional attention to implementation of measure c) of the recommendation in Chapter IV, section 4.4 of this report,

250 Ibid., pp. 167 and 168.
251 Ibid., pp. 169 to 171.
bearing in mind that no information was provided regarding the aforementioned mechanisms that was directly related to efforts to prevent corruption and raise public awareness of the issue.

Measure d) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Design and implement programs to publicize mechanisms for encouraging participation in public administration and, when appropriate, provide the necessary facilitation tools and training in their use to civil society and nongovernmental groups, as well as public officials and employees.

[427] In its reply, the country under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps that contribute to progress in implementation of the measure, the following:


[429] The Committee takes note of the steps taken by the country under review to advance with implementation of measure d) of the recommendation in Chapter IV, Section 4.4 of this report and of the need for the State to continue giving attention thereto, bearing in mind that, apart from that one-off training, no information was provided on programs for disseminating, and training citizens in, existing mechanisms for encouraging participation in governance.

4.5. Participation mechanisms for follow-up of public administration

Recommendation:

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

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Provide means whereby persons performing public functions can enable, facilitate, or help civil society and nongovernmental organizations to participate in monitoring their management of public affairs.

[430] In its reply, the country under review does not provide information that was not already analyzed by the Committee in its report from the First Round.

[431] Accordingly, the Committee reiterates the need for the country under review to pay additional attention to implementing measure a) of the recommendation in Chapter IV, section 4.5 of this report.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

- Implement dissemination programs for civil society and nongovernmental organizations regarding the matters addressed in sections 4.1 to 4.5.

252 Ibid., pp. 172 to 174.
253 Ibid., p. 175 and 176.
In its reply, the country under review provides information and reports on new developments with respect to the foregoing recommendation, of which, the Committee notes, as steps that contribute to progress in implementation of the recommendation, the following:

–The implementation of the Citizen Participation Program, aimed at promoting a culture of citizen participation and co-responsibility in all members of Panamanian society, with a view to reaching agreements for enhancing their well-being and quality of life and resolving problems faced by citizens.

–The “Attention to Citizens 3-1-1 Project” (Proyecto 3-1-1 de Atención Ciudadana), which allows swift and easy access for registering complaints, denunciations, petitions, and suggestions, to facilitate and expedite response to citizens.

The Committee takes note of the steps taken by the country under review to advance with implementation of measure b) of the recommendation in Chapter IV, Section 4.5 of this report. However, bearing in mind that this recommendation is very similar to that in section 4.1., the Committee considers that only this latter recommendation should remain in place.

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

Recommendations formulated by the Committee that require additional attention within the Framework of the Second and Third Rounds:

Recommendation 5.1:

Identify and prioritize specific areas in which the Republic of Panama feels it needs technical cooperation from other States Parties for strengthening its capacities to prevent, detect, investigate, and punish acts of corruption.

In addition, the Republic of Panama could identify and prioritize requests for reciprocal assistance in the investigation and prosecution of corruption cases.

In its reply, the country under review provides the following information regarding the foregoing recommendation:

“Specific areas in which the Republic of Panama considers that it needs technical cooperation from other States Parties to strengthen its abilities to prevent, detect, investigate, and punish acts of corruption would be in relation to banking issues, kidnapping, requests for information on individuals and accounts, and other requirements affecting fundamental rights, formal requests to judicial authorities, empowering them to process such petitions or requests.”

In light of the above, the Committee deems it appropriate to reiterate the measure, as follows (see Annex I, recommendation 5.):

Implement a strategy for obtaining technical cooperation from other States in order to strengthen its capacity to prevent, detect, investigate, and punish acts of corruption in matters relating to banks, kidnapping, requests for information on individuals and accounts, and other requirements affecting fundamental rights, formal requests to judicial authorities, empowering them

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254 Ibid., pp. 140 to146.
255 http://www.participa.gob.pa/
256 http://www.311.gob.pa/
257 See Panama’s Reply to the Fourth Round questionnaire, p. 179.
to process such petitions or requests, taking into consideration the possibility of using the Regional Anti-Corruption Academy (ARAC) for Central America and the Caribbean for such purposes.

Recommendation 5.2:

Design and implement a comprehensive program of familiarization and training targeted specifically at competent authorities, to ensure that they understand and can apply, in the investigation and prosecution of corruption cases, the provisions concerning mutual legal assistance found in the Convention and other treaties that Panama has signed.

[440] In addition, the reply of the country under review provides the following information regarding the foregoing recommendation:

[441] “Through Note No. 830 of October 30, 2012, the Training Department of the Public Prosecution Service (PGN) reports that no supervisory and oversight mechanism has yet been crafted regarding compliance with rules of conduct, prevention, and proper use of the resources assigned to government officials in the institution. However, the Anti-Corruption Prosecutor’s Office have received training regarding crimes within their sphere of competence.”

[442] Accordingly, the Committee reiterates the need for the country under review to give additional attention to the implementation of recommendation 5.2 in Chapter IV, Section 5 of this report.

[443] Furthermore, in its reply, the country under review pointed to the following obstacle to implementing the foregoing measure:

[444] “The main difficulty encountered in efforts to implement this recommendation is financial, if we bear in mind that the budget of our institution was cut, which impairs its ability to execute and publicize to the community its duty to denounce incidents and corrupt practices in public administration.”

Recommendation 5.3:

Design and implement an information program that would enable authorities of the Republic of Panama to permanently follow up on requests for legal assistance regarding acts of corruption and in particular those acts envisaged in the Inter-American Convention against Corruption.

[445] In its reply, the country under review provides the following information regarding the foregoing recommendation:

[446] “The PGN confirms that there is still no information program that enables our authorities to monitor attention to requests for judicial assistance, or their outcomes, according to information provided by International Affairs. However, the information is available in each office in which judicial assistance was processed.”

[447] Accordingly, the Committee reiterates the need for the country under review to give additional attention to implementing recommendation 5.3 in Chapter IV, Section 5 of this report.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

258 Ibid., p. 180.
259 Ibid., p. 180.
260 Ibid., pp. 181 and 182.
The Committee did not formulate recommendations in this section.

7. GENERAL RECOMMENDATIONS

Recommendations formulated by the Committee that require additional attention within the Framework of the Second and Third Rounds:

Recommendation 7.1:

Design and implement, when appropriate, training programs for public servants responsible for applying the systems, standards, measures, and mechanisms considered in this report, in order to ensure that they are thoroughly understood and properly applied.

In its reply, the country under review provides information and reports on new developments with respect to the foregoing measure, of which, the Committee notes, as steps that contribute to progress in implementation of the measure, the following:

–The establishment in Panama, in December 2012, of the Regional Anti-Corruption Academy (ARAC) for Central America and the Caribbean, the purpose of which will be to establish a comprehensive and interdisciplinary approach to training in the fight against corruption and to foster education and research, the establishment of social networks, and the quest for partnerships with citizens. The Academy will offer specialized courses to provide prosecutors, judges, police officers and other government officials with the skills they need to prevent, detect, and handle corruption in government offices.

The Committee takes note of the steps taken by the country under review to advance with implementation of Recommendation 7.1 of Chapter IV, Section 7 of this report and of the need for the State to continue giving attention thereto, bearing in mind that ARAC was only recently established and that therefore information is lacking regarding the training programs carried out in relation to the issues reviewed in the First Round of the MESICIC.

Recommendation 7.2:

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

Recommendation 7.3:

Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, as well as the recommendations contained in this report.

In its reply, the country under review reported with respect to Recommendations 7.2 and 7.3 that it did not have the procedures and indicators required to monitor follow-up to the recommendations formulated in the first report. Therefore, the Committee reiterates the need for the country under review to give additional attention to their implementation.

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261 Ibid., pp. 107 and 108.
262 Ibid., pp. 185 and 186.
ANNEX I

OUTSTANDING AND REFORMULATED RECOMMENDATIONS REGARDING THE TOPICS REVIEWED IN THE FIRST ROUND

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

1.1. Standards of conduct to prevent conflicts of interests and mechanisms to enforce them

Recommendation:

Strengthen the implementation of laws and regulatory systems concerning conflicts of interest, so as to permit the practical and effective application of a system of public ethics.

Suggested measures:

a) Consider adopting rules that specifically regulate conflict of interest situations for senior positions in Panama’s public administration, as well as for members of the National Assembly and their alternates. Furthermore, regulate the prevention and resolution of said conflicts of interest, by establishing rules on incompatibilities, the corresponding sanctions, and appropriate mechanisms for imposing them.

b) Review and examine the possibility of achieving and ensuring greater consistency with respect to the applicable legal framework in the content of the codes of ethics, in order to guide public officials in the correct performance of their duties.

c) Consider establishing the legal obligation to present the Declaration of Interests by public servants, taking into account the criteria established in the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions.” 263

d) Consider the possibility of establishing and implementing mechanisms to enable public servants to dispel doubts regarding their obligations with respect to conflict of interest situations and to be able to determine in concrete cases whether a person performing a public function is in a conflict of interest situation and to take such measures as are needed to protect the public interest, taking into account the criteria established in the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions.”

e) Ensure that penalties are applicable to public servants who violate the rules governing conflicts of interest.

f) Review and examine the possibility of incorporating rules and regulations to limit or prohibit participation by former officials in certain government matters, and in general to assist in preventing situations that could lead to inappropriate exploitation of a person's status as a former official.

g) Design and implement mechanisms to disseminate, and train all public servants in, standards of behavior, including rules governing conflicts of interest, and provide periodic further training and refresher courses in respect of those standards.

263 Text posted at: http://www.oas.org/juridico/PDFs/ley_modelo_declaracion.pdf
h) Gather information regarding cases of conflicts of interest with a view to establishing evaluation mechanisms that will make it possible to verify results in this area.

i) Consider the possibility of giving new impetus to the National Integrity Plan with broad social participation.

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

Recommendation:

Design and implement mechanisms to disseminate, and train all public servants in, the standards of behavior referred to in this section, and to respond to their queries regarding them, and provide periodic further training and refresher courses in respect of those standards.

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

Recommendation 1.3.1.:

Strengthen existing mechanisms in the Republic of Panama for requiring government officials to report to the competent authorities any acts of corruption in the performance of public office of which they may become aware.

Suggested measures:

a) Issue regulations to facilitate such reporting, and establish requirements that will not inhibit potential whistleblowers. Regulate and implement mechanisms for protecting those who report acts of corruption.

b) Train government officials in their responsibility to report to the competent authorities any acts of corruption in the performance of public office of which they may become aware.

Recommendation 1.3.2.:

Take the necessary decisions to expand the existing rules, and make it an explicit, punishable offense for public servants to fail to report to the competent authorities acts of corruption in the performance of public office of which they become aware. Ensure that the scope of this obligation refers not only to punishable acts of which they become aware by reason of, on the occasion of, or in the exercise of public office, but also acts of corruption of which they become aware even without such exercise.

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

Recommendation 2.1.:

Create and establish a mechanism for publication of declaration of income, assets and liabilities.

Suggested measure:
- Issue regulations governing the conditions, procedures, and other appropriate aspects of public disclosure, where necessary, of sworn statements of income, assets, and liabilities.

Recommendation 2.2:  
Consider the possibility of amending Law No. 59 of December 29, 1999 to include other important officials on the list of persons required to present the sworn declaration, bearing in mind Article 3 of the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions.”

Recommendation 2.3:  
Establish systems for effectively and efficiently reviewing the content of sworn statements of income, assets, and liabilities, establishing the relevant deadlines and circumstances, and measures for overcoming obstacles to access to the sources of information required, bearing in mind the pertinent articles of the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions;” and take the necessary decisions to ensure cooperation between the Office of the Comptroller-General of the Republic and other sectors, such as the financial and taxation sectors, so as to facilitate the exchange of information for verifying the contents of such statements.

Recommendation 2.4:  
Consider amending Law No. 59 of December 29, 1999 to empower the Office of the Comptroller-General of the Republic to effectively verify the contents of sworn statements of income, assets, and liabilities and to allow them to be used to detect and punish illicit acts, taking into account the verification procedures and other relevant aspects established in the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions.”

Recommendation 2.5:  
Consider amending Law No. 59 of December 29, 1999 to empower the Office of the Comptroller-General of the Republic to effectively verify the contents of the sworn statement of income, assets, and liabilities and to enable them to be used to detect and avoid conflicts of interests, as well as to detect and verify significant and unjustified changes in the wealth of the officials required to file declarations, taking into account the verification procedures and other relevant aspects established in the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions.”

Recommendation 2.6:  
Consider amending Law No. 59 of December 29, 1999 to include the establishment of sanctions on former civil servants who, after leaving office, fail to comply with their obligation to present a sworn statement of income, assets, and liabilities, bearing in mind the sanctions established in the “Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions.”

264 Text posted at: [http://www.oas.org/juridico/PDFs/ley_modelo_declaracion.pdf](http://www.oas.org/juridico/PDFs/ley_modelo_declaracion.pdf)
265 Text posted at: [http://www.oas.org/juridico/PDFs/ley_modelo_declaracion.pdf](http://www.oas.org/juridico/PDFs/ley_modelo_declaracion.pdf)
3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11, OF THE CONVENTION)

The Committee considered that the recommendations made in connection with this section are no longer valid and, therefore, do not require additional attention.

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

4.1. General participation mechanisms

Recommendation:

Design and put in place programs to disseminate mechanisms for participating in monitoring public administration and, where appropriate, providing training to civil society, nongovernmental organizations, and government officials and employees, along with the tools they need to use those mechanisms. Included in these programs would be education and training of civic leaders to boost the use of those mechanisms and generate public awareness of the importance of reporting acts of corruption in the public sector.

4.2. Mechanisms for access to information

Recommendation:

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

Suggested measures:

a) Ensure that all institutions subject to Law 6 of 2002 have a unit or at least an information officer and that they also have the resources and training needed to perform the functions established in Article 8 of Law 33 of 2013.

b) Consider the possibility of establishing a computerized system for receiving and keeping track of requests for access to information.

c) Develop more robust archiving policies for State institutions, as a way of ensuring that requests for information are not simply turned down due to non-existence of information that the State should produce and keep.

d) Strengthen the guarantees for exercising the right to public information, so that access to such information cannot be denied for reasons or criteria other than those stipulated by law.

e) Conduct a comprehensive assessment of the use and effectiveness of the recourse of habeas data, identifying the reasons why so few appeals are accepted, and, in light of that assessment, adopt measures to promote, facilitate, consolidate or ensure the effectiveness of that recourse.

4.3. Mechanisms for consultation

Recommendation:
Establish procedures, as appropriate, to allow for public consultation prior to the approval of new legal measures.

**Suggested measures:**

a) Increase the publication and dissemination of draft legal measures, and institute transparent proceedings for consulting interested sectors of society during the preparation of draft laws, decrees, and resolutions of the Executive branch.

b) Hold public hearings or use other suitable mechanisms for obtaining public feedback in other areas than those already covered.

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

**Recommendation:**

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

**Suggested measures:**

a) Implement Article 4 of Law 33 of April 25, 2013 which assigns to the National Authority on Transparency and Access to Information the goal of coordinating responsible citizen participation in government.

b) Order the publication of draft official acts, where their importance so warrants, prior to their adoption, so that, within a specified time limit, civil society and nongovernmental organizations may make comments and recommendations, which must be evaluated by the competent authorities.

c) Establish mechanisms for strengthening participation by civil society and nongovernmental organizations in efforts to prevent corruption and to develop a public awareness of the issue.

d) Design and implement programs to publicize mechanisms for encouraging participation in public administration and, when appropriate, provide the necessary facilitation tools and training in their use to civil society and nongovernmental groups, as well as public officials and employees.

**4.5 Participation mechanisms for follow-up of public administration**

**Recommendation:**

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

**Suggested measure:**

- Provide means whereby persons performing public functions can enable, facilitate, or help civil society and nongovernmental organizations to participate in monitoring their management of public affairs.
5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

Recommendation 5.1:

Implement a strategy for obtaining technical cooperation from other States in order to strengthen its capacity to prevent, detect, investigate, and punish acts of corruption in matters relating to banks, kidnapping, requests for information on individuals and accounts, and other requirements affecting fundamental rights, formal requests to judicial authorities, empowering them to process such petitions or requests, taking into consideration the possibility of using the Regional Anti-Corruption Academy (ARAC) for Central America and the Caribbean for such purposes.

Recommendation 5.2:

Design and implement a comprehensive program of familiarization and training targeted specifically at competent authorities, to ensure that they understand and can apply, in the investigation and prosecution of corruption cases, the provisions concerning mutual legal assistance found in the Convention and other treaties that Panama has signed.

Recommendation 5.3:

Design and implement an information program that would enable authorities of the Republic of Panama to permanently follow up on requests for legal assistance regarding acts of corruption and in particular those acts envisaged in the Inter-American Convention against Corruption.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

The Committee did not offer any recommendations in this section.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1:

Design and implement, when appropriate, training programs for public servants responsible for applying the systems, standards, measures, and mechanisms considered in this report, in order to ensure that they are thoroughly understood and properly applied.

Recommendation 7.2:

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

Recommendation 7.3:

Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, as well as the recommendations contained in this report.
### ANNEX II

#### AGENDA OF THE ON-SITE VISIT TO THE REPUBLIC OF PANAMA

<table>
<thead>
<tr>
<th>Tuesday, April 16, 2013</th>
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<tbody>
<tr>
<td><strong>16:00 hrs. – 16:45 hrs.</strong></td>
<td><strong>Coordination meeting between the representatives of the Subgroup Member States and the Technical Secretariat.</strong></td>
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<tr>
<td><strong>Place:</strong> Hotel Country Inn Suites Panama Canal</td>
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<tr>
<td><strong>17:00 hrs. – 18:00 hrs.</strong></td>
<td><strong>Coordination meeting between the representatives of the country under review, the Subgroup Member States, and the Technical Secretariat.</strong></td>
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<td><strong>Place:</strong> National Council of Transparency against Corruption</td>
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<th>Wednesday, April 17, 2013</th>
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<tr>
<td><strong>8:30 hrs. – 10:40 hrs.</strong></td>
<td><strong>Meetings with civil society organizations and/or, <em>inter alia</em>, private sector organizations, professional organizations, academics or researchers.</strong>[^266]</td>
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<tr>
<td><strong>Place:</strong> National Council of Transparency against Corruption</td>
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<tr>
<td><strong>Topic: Oversight bodies</strong></td>
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<td></td>
<td>• Civil society’s views on the role of oversight agencies and anticorruption efforts in Panama.</td>
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<td></td>
<td>• Challenges facing the investigation, prosecution, and punishment of acts of corruption in Panama.</td>
</tr>
<tr>
<td><strong>Participants:</strong></td>
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[^266]: The civil society organization “Foundation for the Development of Civic Freedom – Panamanian Chapter of Transparency International” participates in these meetings pursuant to the provisions of item 26 of the Methodology for Conducting On-Site Visits, inasmuch as it presented a document related to the Questionnaire for the Fourth Round of Review, as provided in Article 34 b) of the Committee’s Rules of Procedure. It is suggested that other organizations and individuals be invited to attend, as envisaged in item 27 of the above Methodology, which permits the invitation to these meetings of civil society organizations and/or, *inter alia*, private sector organizations, professional associations, academics, or researchers.
<table>
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<tr>
<th>Time</th>
<th>Activity</th>
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<tbody>
<tr>
<td>10:45 hrs. – 12:30 hrs.</td>
<td>Meetings with civil society organizations and/or, <em>inter alia</em>, private sector organizations, professional organizations, academics or researchers. (Cont.)</td>
</tr>
</tbody>
</table>

**Place:** National Council of Transparency against Corruption

**Topic:** Follow-up on first-round recommendations

- Conflicts of interest.
- Sworn statements.
- Access to public information.

**Participants:**
- Angélica Maytín Justiniani, Executive President, Foundation for the Development of Civic Freedom, Panamanian Chapter of Transparency International.
- Temístocles Rosas, Board Member, Panamanian Association of Business Executives (APEDE).

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>12:30 hrs. – 14:00 hrs.</td>
<td>Lunch</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>14:00 hrs. – 15:45 hrs.</td>
<td>Panel 1: Public Prosecution Service (PGN)</td>
</tr>
</tbody>
</table>

**Place:** Public Prosecution Service

**Topics:**

- Institutional introduction (10 minutes).
- Exceptions to the jurisdiction of the PGN.
- Rules governing spheres of competence and inter-institutional coordination mechanisms.
- Human resources.
- Training.
- Internal control mechanisms.
- Accountability mechanisms.

**Participants:**
- Ramsés Barrera, Secretary General, PGN
- Mercedes de Mendizábal, Director of Human Resources, PGN
16:00 hrs. – 17:45 hrs. | **Panel 2: Public Prosecution Service (PGN)**

**Place:** Public Prosecution Service

**Topics:**
- Budgetary regime.
- Results in relation to the fulfillment of its responsibilities.
- Difficulties in attaining its goals.
- Follow-up to Recommendations from the First Round.

**Participants:**
- Ramsés Barrera, *Secretary General, PGN*
- Mercedes de Mendizábal, *Director of Human Resources, PGN*
- Victor Barrios Puga, *First Anticorruption Prosecutor, PGN*
- Lissette Chevalier, *Second Anticorruption Prosecutor, PGN*
- Lorena Coronell, *Third Anticorruption Prosecutor, PGN*
- William Parodi, *Fourth Anticorruption Prosecutor, PGN*
- Luis Herrera, *Director, Sociolegal Analysis and Development, PGN*

17:45 hrs. – 18:15 hrs. | **Informal Meeting**\(^{267}\) between the representatives of the Subgroup Member States and the Technical Secretariat.

**Thursday, April 18, 2013**


**Place:** Office of the Comptroller General of the Republic

**Topics:**
- Institutional introduction (10 minutes).
- Exceptions to the jurisdiction of the CGR.
- Hiring regime for staff and high-level authorities.

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\(^{267}\) The second paragraph of provision 20 of the *Methodology for Conducting On-site Visits* states: “At the conclusion of the meetings on each day of the on-site visit, the Technical Secretariat shall organize an informal meeting with the members of the Subgroup, to exchange preliminary points of view on the topics addressed at those meetings.”
<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>10:30 hrs. – 12:30 hrs.</td>
<td><strong>Panel 4: Office of the Comptroller General of the Republic (CGR)</strong></td>
</tr>
<tr>
<td>Place</td>
<td>Office of the Comptroller General of the Republic</td>
</tr>
<tr>
<td>Topics</td>
<td>• <strong>Internal control mechanisms.</strong></td>
</tr>
<tr>
<td></td>
<td>• <strong>Budgetary regime.</strong></td>
</tr>
<tr>
<td></td>
<td>• <strong>Results in relation to the fulfillment of its responsibilities.</strong></td>
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<td></td>
<td>• <strong>Difficulties in attaining its goals.</strong></td>
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<td></td>
<td>• <strong>Follow-up to Recommendations from the First Round.</strong></td>
</tr>
<tr>
<td>Participants</td>
<td>- Edwin Raúl Herrera, <em>Secretary General, CGR</em></td>
</tr>
<tr>
<td></td>
<td>- Manuel Salvador Herrera, <em>Director of the Special Enforcement Unit, CGR</em></td>
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<td></td>
<td>- Eric Pérez, <em>Executive Assistant, CGR</em></td>
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<tr>
<td>12:30 hrs. – 14:00 hrs.</td>
<td>Lunch</td>
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<tr>
<td>14:00 hrs. – 15:30 hrs.</td>
<td><strong>Panel 5: Court of Accounts (TC)</strong></td>
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<tr>
<td>Place</td>
<td>Court of Accounts</td>
</tr>
<tr>
<td>Topics</td>
<td>• <strong>Institutional introduction (10 minutes).</strong></td>
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<tr>
<td></td>
<td>• <strong>Human resources.</strong></td>
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<td></td>
<td>• <strong>Training.</strong></td>
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<td>• <strong>Technological systems.</strong></td>
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<td></td>
<td>• <strong>Internal control mechanisms.</strong></td>
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<td>Time</td>
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<tr>
<td>16:00 hrs. – 17:45 hrs.</td>
<td><strong>Panel 6: Court of Accounts (TC)</strong></td>
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<tr>
<td>Place: Court of Accounts</td>
<td>Topics:</td>
</tr>
<tr>
<td></td>
<td>• Budgetary regime.</td>
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<td></td>
<td>• Rules governing spheres of competence and inter-institutional</td>
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<td>coordination mechanisms.</td>
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<td></td>
<td>• Results in relation to the fulfillment of its responsibilities.</td>
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<tr>
<td></td>
<td>• Difficulties in attaining its goals.</td>
</tr>
<tr>
<td>Participants:</td>
<td>- Justina Pérez, <em>Head of Budget, Court of Accounts</em></td>
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<td></td>
<td>- Virginia Osorio, <em>Chief Legal Advisor, Court of Accounts</em></td>
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<td>- Eyra Jiménez, <em>Magistrate Assistant, Court of Accounts</em></td>
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<tr>
<td></td>
<td>- Jaime Ordoñez, <em>Magistrate Assistant, Court of Accounts</em></td>
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<tr>
<td>17:45 hrs. – 18:15 hrs.</td>
<td><strong>Informal meeting</strong> between the representatives of the Subgroup Member States and the Technical Secretariat.</td>
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<tr>
<td>9:00 hrs. – 10:30 hrs.</td>
<td><strong>Panel 7: Supreme Court of Justice (SCJ)</strong></td>
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<tr>
<td>Place: Supreme Court of Justice</td>
<td>Topics:</td>
</tr>
<tr>
<td></td>
<td>• Institutional introduction (10 minutes).</td>
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<td>• Hiring regime for staff and high-level authorities.</td>
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<td>• Human resources.</td>
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<td>• Accountability mechanisms.</td>
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<tr>
<td>Time</td>
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<tr>
<td>10:45 hrs. – 12:30 hrs.</td>
<td>Panel 8: Supreme Court of Justice (SCJ)</td>
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<tr>
<td>12:30 hrs. – 14:00 hrs.</td>
<td>Lunch</td>
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<tr>
<td>14:00 hrs. – 15:00 hrs.</td>
<td>Panel 9: Follow-up on first-round recommendations</td>
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<tr>
<td>15:15 hrs. – 15:45 hrs.</td>
<td>Panel 10: Follow-up on first-round recommendations</td>
</tr>
<tr>
<td>Time</td>
<td>Event Description</td>
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<tr>
<td>16:00 hrs. – 16:30 hrs.</td>
<td>Informal Meeting between the representatives of the Subgroup Member States and the Technical Secretariat.</td>
</tr>
<tr>
<td>16:45 hrs. – 17:15 hrs.</td>
<td>Final meeting between the representatives of the country under review, the Subgroup Member States, and the Technical Secretariat.</td>
</tr>
</tbody>
</table>


COUNTRY UNDER REVIEW:

PANAMA

Abigail Benzadón Cohen  
Lead Expert of Panama on the Committee of Experts of the MESICIC  
Executive Secretary  
National Council of Transparency against Corruption

Antonio M. Lam  
Legal Advisor  
Executive Secretariat  
National Council of Transparency against Corruption

Elida Caballero Cabrera  
Legal Counselor  
Permanent Mission of Panama to the OAS

MEMBERS STATES OF THE PRELIMINARY REVIEW SUBGROUP:

BOLIVIA

Jessica Saravia Atristain  
Vice-Minister of Fight against Corruption  
Ministry of Transparency and Fight against Corruption

Alexandra Miranda Miranda  
Head  
Legal Affairs Unit  
Ministry of Transparency and Fight against Corruption

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268. The third paragraph of provision 20 of the Methodology for Conducting On-site Visits states: “At the end of the on-site visit, a meeting shall be held, to be attended by the Subgroup experts, the Technical Secretariat, and the Lead Expert of the country under review and/or the official appointed in his stead in accordance with rule 10, second paragraph, of this Methodology. That meeting shall identify, if applicable, the information that, for whatever reason, the country under review is still to submit through the Technical Secretariat and the deadline within which it is to do so, and it shall also coordinate any other pending matters arising from the on-site visit.”
Marcia Gabriela Fernández Willer
Transparency Professional
Ministry of Transparency and Fight against Corruption

TRINIDAD Y TOBAGO

Joan R. Furlonge
Legal Advisor
Office of the Attorney General

TECHNICAL SECRETARIAT OF THE MESICIC

Luiz Marcelo Azevedo
Legal Officer
Department of Legal Cooperation
OAS Secretariat for Legal Affairs