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

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COLOMBIA

FINAL REPORT

(Adopted at the September 14, 2017 plenary session)

## SUMMARY

This report contains a comprehensive review of the implementation of the recommendations formulated to Colombia in the Second Round Report with respect to paragraphs 5 and 8 of Article III of the Inter-American Convention against Corruption. These provisions refer, respectively, to systems for hiring public servants and procurement of government goods and services and to protecting public servants and private citizens who in good faith report acts of corruption, as well as to legal characterization of the acts of corruption contemplated in Article VI of the Convention. The report also makes reference, where appropriate, to new developments in implementing those provisions.

The report also includes comprehensive analysis of the implementation in Colombia of paragraphs 3 and 12 of Article III, regarding, respectively, measures to establish, maintain, and strengthen instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, and the study of other preventive measures that take into account the relationship between equitable compensation and probity in public service, which were selected by the MESICIC Committee of Experts for the Fifth Round. Reference is also made to best practices reported by the State with respect to implementation of the provisions selected for the Second and Fifth Rounds.

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 Fifth 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 mainly taking into account Colombia's response to the questionnaire and information gathered during the on-site visit to that State from April 4 to 6, 2017, by representatives of Mexico and Paraguay as member countries in the Colombia review subgroup in which, with the support of the Technical Secretariat of MESICIC, the information furnished by Colombia was clarified and supplemented with the opinions of civil society and private sector organizations, and academics on the issues under review.

With regard to the implementation of the recommendations that were formulated to Colombia in the report from the Second Round which the Committee, in the Third Round report, found required additional attention, based on the methodology for the Fifth Round and bearing in mind the information provided in the response to the questionnaire and during the on-site visit, the Committee made a determination as to which of those recommendations had been satisfactorily implemented, which required additional attention, which should be reframed, and which were no longer valid.

Noteworthy progress made with the implementation of those recommendation includes: recognition of the competence of the National Civil Service Commission (CNSC) for overseeing and managing specific administrative career service systems; progress with holding competitions to fill career service positions; the issuance of new regulations, such as the Consolidated Regulatory Decree of the Civil Service Sector (Decree 1083 of 2015); the Electronic Government Procurement System (SECOP); and the drawing up of bills on government procurement and protection for whistleblowers reporting acts of corruption.

Some of the still valid Second Round recommendations are geared to making further progress with competitions to fill career service positions that are vacant or held on a provisional basis; issuing the administrative career statutes for the Legislative Branch; issuing the Ordinary Law [Tr. "Ley Ordinaria", i.e. statute that provides no privileges or exceptions] to govern careers in the Judiciary; consolidating government procurement regulation in a single corpus; adopting measures to guarantee that direct procurement of goods and services results from strict application of the exceptions provided for by law;

and adopting comprehensive regulations to protect public servants and private citizens who in good faith report acts of corruption.

In addition, based on its analysis of the new developments reported by Colombia with respect to implementation of the provisions of the Convention selected for the Second Round, the Committee also offered recommendations geared to such matters as the National Civil Service Commission (CNSC) being endowed with the staff it needs to perform its functions; reducing the time taken for selection processes run by the CNSC; avoiding the use of hiring through services contracts as a means of carrying out functions that should be performed by regular staff; having the Supreme Court of Justice and the Council of State regulate the time allowed for respectively electing Judges to each of those bodies, and making such regulatory changes as may be necessary to implement that fully; completing implementation of the special career service in the Office of the Attorney General of the Nations (FGN); conducting the competitions to fill career service positions in the Chamber of Deputies that are vacant or being held by provisional appointees; adopting such measures as are needed to ensure that personnel in the Senate are, as a general rule, appointed through public competition; adoption of the second phase of the Electronic Government Procurement System (SECOP II); ensuring that *Colombia Compra Eficiente* (CCE) has the resources it needs to expand the training it provides to public servants and suppliers; adopting the measures needed to ensure that contracts awarded by territorial entities using funds from royalties are offered to a plurality of bidders; conducting an analysis of the possible reasons why more government procurement-related litigation cases result in outcomes that are unfavorable to the State when they are heard by arbitration tribunals, than when such cases are resolved in actions brought under administrative law; amending Article 68A of the Criminal Code so that it expressly and clearly states what benefits may not be granted in cases of crimes against public administration and what crimes within that category may in fact be eligible for those benefits; and ensuring that the Judiciary may acquire the number of courts in needs to hear corruption cases, in addition to considering the establishment of courts specializing in such cases..

For the analysis of the first provision selected for the Fifth Round, which, as envisaged in Article III (3) of the Convention, concerns instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, in keeping with the methodology for this round, the country under review chose the personnel of the Civil Service Administrative Department (DAFP); *Colombia Compra Eficiente* (CCE); and the Transparency Secretariat (ST) of the Office of the President of the Republic.

This review sought to determine whether, in relation to those groups of personnel, provisions and/or measures have been adopted to ensure proper understanding of their responsibilities and the ethical rules that govern their activities, the manner and timing of that instruction, the programs envisaged for that purpose, the bodies with responsibilities in that regard, and objective results obtained from the application of those provisions and/or measures governing the activities of the personnel of the aforementioned institutions. At the same time it took note of any difficulties and/or shortcomings in accomplishing the object of that provision of the Convention.

Some of the recommendations offered to Colombia, for it to consider, regarding the above are geared to suggesting that persons hired to work in government entities under professional services and management support contracts, who perform activities proper to those entities' core missions, be given the training provided on induction; that a mechanism be adopted to ensure compliance with the obligation set forth in Article 7 of Decree Law 1567 of 1997 that each entity's institutional plans include induction and re-induction programs for their employees; that the country under review complete its implementation of the General Code of Integrity and Ethics for Public Servants; and that sufficient time and opportunities be allowed to ensure that newly hired personnel receive the guidance they need from colleagues in their

teams to ensure adequate understanding of their responsibilities or functions and of the ethical standards governing their activities.

In keeping with the above Methodology, the review of the second provision selected for the Fifth Round, envisaged in Article III (12) of the Convention, sought to determine whether the State has studied preventive measures that take into account the relationship between equitable compensation and probity in public service and whether it has established objective and transparent guidelines for determining civil servant remunerations. On that basis, it was recommended that Colombia consider, inter alia, adopting a general wage policy that makes mobility possible, generates merit-based incentives, and overcomes the sharp differences encountered by those working for the Colombian State, depending on the sector and specific entity hiring the public servant.

Finally, Colombia presented as a best practice the strengthening of its identification and prevention of risks of corruption thanks to the Integrated Management System - SIG, implemented by the National Civil Service Commission (CNSC). It reported, inter alia, that by using the CNSC processing model and, in particular, its procedures, risks were identified for each of the activities that public servants have to perform; that that identification made it possible to insert a sign (*una convención*) in each flow chart, indicating that that particular action could trigger a risk; and that the app selected contains an option to access and get to know all the information available regarding the risk, such as its assessment and how to handle it, and so on.

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

**DRAFT REPORT ON FOLLOW-UP ON IMPLEMENTATION IN THE REPUBLIC OF  
COLOMBIA OF THE RECOMMENDATIONS FORMULATED AND PROVISIONS  
REVIEWED IN THE SECOND ROUND, AND ON THE PROVISIONS OF THE CONVENTION  
SELECTED FOR REVIEW IN THE FIFTH ROUND<sup>1/</sup>**

**INTRODUCTION**

**1. Content of the Report**

[1] As agreed upon by the Committee of Experts (hereinafter “the Committee”) of the Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) at its Twenty-fourth Meeting,<sup>2</sup> this report will first refer to follow up on implementation of the recommendations formulated to Colombia in the report from the Second Round, which the Committee found required additional attention in the Third Round report. Those reports are posted on the following Internet website: <http://www.oas.org/juridico/spanish/col.htm>

[2] Second, where applicable, it will refer to new developments in Colombia with regard to the provisions of the Inter-American Convention against Corruption (hereinafter “the Convention”) selected for the Second Round, and regarding such matters as the legal framework, technological developments and results, and, if applicable, appropriate observations and recommendations will be formulated.

[3] Third, it will address implementation of the provisions of the Convention selected by the Committee for the Fifth Round. Those provisions are contained in paragraphs 3 and 12 of Article III regarding, respectively, measures to establish, maintain, and strengthen “*instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities*”, and “*the study of preventive measures that take into account the relationship between equitable compensation and probity in public service.*”

[4] Fourth, it will refer to the best practices that the country under review wished voluntarily to share regarding implementation of the provisions of the Convention selected for the Second and Fifth Rounds.

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

[5] According to official records of the OAS General Secretariat, Colombia ratified the Convention on January 19, 1999.

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

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<sup>1</sup> 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 14, 2017, at its Twenty-ninth meeting, held at OAS Headquarters, September 11 – 14, 2017.

<sup>2</sup> See the Minutes of the 24th Meeting of the Committee, available at: [http://www.oas.org/juridico/docs/XXIV\\_acta.doc](http://www.oas.org/juridico/docs/XXIV_acta.doc)

## I. SUMMARY OF INFORMATION RECEIVED

### 1. Response by Colombia

[7] The Committee wishes to acknowledge the cooperation that it received, throughout the review process, from Colombia and in particular from the Secretariat for Transparency of the Office of the President of the Republic and from the Ministry of Foreign Affairs, which was evidenced, inter alia, in the Response to the Questionnaire and in the constant willingness to clarify or complete its contents, and in the support for the on-site visit to which reference is made below. Together with its response, Colombia sent the provisions and documents it considered pertinent.<sup>3/</sup>

[8] The Committee also notes that Colombia gave its consent for the on-site visit, in accordance with item 5 of the *Methodology for Conducting On-site Visits*.<sup>4/</sup> As members of the preliminary review subgroup, the representatives of Mexico and Paraguay conducted the on-site visit from April 4 to 6, 2017, with the support of the MESICIC Technical Secretariat. The information obtained during that visit is included in the appropriate sections of this report, and the agenda of meetings is attached thereto, in keeping with provision 34 of the above-mentioned *Methodology*.

[9] For its review, the Committee took into account the information provided by Colombia up to April 6, 2017, as well as that furnished and requested by the Technical Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure<sup>5/</sup>; the *Methodology for Follow-up on the Implementation of the Recommendations Formulated and Provisions reviewed in the Second Round and for Analysis of the Convention Provisions Selected for the Fifth Round*<sup>6/</sup>; and the *Methodology for Conducting On-Site Visits*.

### 2. Documents and information received from civil society organizations and/or, inter alia, private-sector organizations, professional associations, academics, and researchers.

[10]The Committee also received, within the time period established in the schedule for the Fourth Round, some documents from the civil society organization “Funsocial Crecer Colombia”, that were remitted by that organization in accordance with Article 34(b) of the Committee’s Rules of Procedure.<sup>7</sup>

[11]Furthermore, in the course of the on-site visit conducted in the country under review from April 4 to 6, 2017, information was collected from other civil society and private sector organizations, academics, and researchers invited to participate in meetings to that end, in keeping with the provisions contained in provision 27 of the *Methodology for Conducting On-site Visits*. A list of those persons is included in the agenda for that visit, which is appended hereto. Pertinent parts of this information are reflected in the appropriate sections of this report.

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<sup>3</sup>. Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>4</sup>. Available at: [http://www.oas.org/juridico/english/met\\_onsite.pdf](http://www.oas.org/juridico/english/met_onsite.pdf)

<sup>5</sup>. Available at: [http://www.oas.org/juridico/english/mesicic\\_rules.pdf](http://www.oas.org/juridico/english/mesicic_rules.pdf)

<sup>6</sup>. Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_metodologia\\_sp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_metodologia_sp.pdf)

<sup>7</sup>. These documents were received in good time electronically and can be consulted on the MESICIC website, in the section corresponding to Colombia (Fifth Round), at the following link: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

## **II. FOLLOW UP ON IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE SECOND ROUND AND NEW DEVELOPMENTS WITH REGARD TO THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THAT ROUND**

[12] The Committee will first refer to progress made and new information and developments in Colombia with respect to the recommendations formulated and measures for their implementation suggested by the Committee in its Second Round report that were deemed to require additional attention in the report of the Third Round, and it will proceed to 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 Section V of the *Methodology* adopted by the Committee for the Fifth Round.

[13] In this section, the Committee will, where applicable, take note of any difficulties indicated by the country under review with implementing the recommendations and measures alluded to in the foregoing paragraph and of any technical cooperation requested by the State in that connection.

[14] Second, where applicable, it will refer to new developments in Colombia in respect of the provisions of the Convention selected for the Second Round regarding such matters as the regulatory framework, technological developments and outcomes, and will formulate any observations and recommendations that may be applicable.

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

#### **1.1. SYSTEMS FOR HIRING GOVERNMENT OFFICIALS**

##### **1.1.1. Follow up on Implementation of the Recommendations Formulated in the Second Round**

###### Recommendation 1.1.1:

*Strengthen systems for hiring public servants in the Executive Branch and territorial entities.*

Measure (a) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Continue to adopt appropriate measures to harmonize the different career systems with the general system in order to avoid the fragmentation of the special and specific career systems created by law with the general administrative career system, without prejudice to the cases expressly provided for in the Political Constitution, guided by the principles of openness, equity, and efficiency enshrined in the Convention.*

[15] In its Response to the Questionnaire,<sup>8</sup> the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that lead it to believe that it has been satisfactorily considered:

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<sup>8</sup> Response of Colombia to the questionnaire, pp. 40 to 41.

[16] - "...In Rulings C-1230 of 2005, C-175 of 2006, C-471 of 2013, and C-285 handed down in 2015, the Constitutional Court delegated to the National Civil Service Commission the task of administering and supervising the specific and special career services created by law, thereby harmonizing special and specific career systems with the general system. Accordingly, the Commission must carry out the necessary selection procedures to fill any vacancies."

[17] - "Based on the aforementioned rulings,<sup>9</sup> the National Civil Service Commission continues to apply them and for that reason is continuing to announce the following vacancies in specific careers: (...)"

[18] Referring to difficulties with implementing measure a), the country under review stated in its Response to the Questionnaire<sup>10</sup> that there had been legislative and budgetary constraints.

[19] During the on-site visit, the representative of the Civil Service Commission (CNSC) explained that as a result of Constitutional Court Rulings C-1230 of 2005, C-175 of 2006, C-471 of 2013, and C-285 of 2015, the specific systems regulated by law had been harmonized with the general career service system because, by virtue of those rulings, supervision and administration of the merit-based selection processes were conducted by the CNSC, which meant that it was possible to align criteria for filling vacancies and harmonize them with the criteria used in the general career service system. Therefore, there were no longer any implementation difficulties related to the regulatory framework.

[20] Although the country under review had previously -- in its Response to the Third Round Questionnaire (in the section corresponding to follow up on the recommendations formulated in the Second Round) -- mentioned Constitutional Court Ruling C-1230-2005, in which the highest Constitutional Court in the country determined that the National Civil Service Commission was responsible for supervision and administration of the specific administrative career system, as established in the Administrative Career Law, and that consequently those systems were governed by the same principles as those governing the general system, no detailed description was provided on that occasion (as opposed to the on-site visit, where it was provided) of the Constitutional Court's interpretation in respect of the specific career regimes regulated by law in Ruling C-1230-2005. Nor were that body's subsequent interpretations in Rulings C-471 of 2013 and C-285 of 2015 available at that time. These were remitted by the country under review as pertinent information for the present review round and they are relevant for an assessment of progress made in this area.

[21] In Ruling 1230 of 2005, the Constitutional Court determined that the specific systems regulated by law are constitutionally valid,<sup>11</sup> and set forth the reasons why competitive processes in those systems need to be administered and supervised by the National Civil Service Commission in order to comply with the constitutional requirements of Articles 125 and 130 of the Colombian Constitution.<sup>12</sup>

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<sup>9</sup> During the on-site visit, the country under review explained that it was referring to the Rulings of the Constitutional Court that assigned supervision and administration of specific career competitions to the National Civil Service Commission.

<sup>10</sup> Colombia's Response to the Questionnaire, p. 44.

<sup>11</sup> Cf. Constitutional Court, Ruling C-1230-2005. "*With respect to said specific systems, case law has made clear that they may exist, i.e., in principle, they are constitutionally admissible, inasmuch as their configuration and implementation are within the sphere of competence assigned to the legislator to regular all matters pertaining to the civil service and, in particular, the administrative career.*"

<sup>12</sup> Cf. Constitutional Court, Ruling C-1230-2005. "*The purpose of granting the National Civil Service Commission the status of an autonomous and independent entity and of assigning it the specific and general function of administering and supervising "civil servants career paths" involves excluding or separating the executive branch of government from intervening in the organization, development, and consolidation of said careers and thereby achieving the purpose pursued by the career system based on public competition, which is to shield government jobs from subjective assessment factors, such as patronage (clientelismo), favoritism, and nepotism, which thwart the proper exercise of public service.*"



[22] For its part, Ruling C-471/2013 of the Constitutional Court determined that specific career systems are not autonomous. Rather they form part of the general career service system and are governed by its general principles. In addition, the Legislature has to provide reasonable and commensurate grounds warranting the exclusion of certain entities from the regular regime and the need to apply more flexible special rules.<sup>13</sup>

[23] In Ruling C-285-2015, the Constitutional Court saw fit to establish that: "*Case law has regarded the career system as both a "constitutional principle" and an "essential pillar" geared to achieving (i) the fulfillment of State and administrative purposes; (ii) observance of the principle of equality of candidates seeking to enter government service; and (iii) the realization of other fundamental rights" and that "The presence of a national body of the highest level -- a National Civil Service Commission that is autonomous and independent vis-à-vis the other branches of government -- stems from the need to ensure that the introduction of the administrative career path and ongoing oversight of it are endowed with maximum guarantees of impartiality and transparency and shielded from the influence of other government organs. As of Ruling C-1230 of 2005, the Constitutional Court adopted a unified stance on the matter, which has since been peacefully and uniformly reiterated."*

[24] The Committee considers that, based on the Constitutional Court's interpretations in the aforementioned rulings, the country under review may be deemed to have satisfactorily implemented measure a) of this recommendation, given that supervision and administration of the competitive exams for the specific career systems have been constitutionally entrusted to the National Civil Service Commission. This makes compliance with the criteria of impartiality and transparency in the hiring of government officials more likely, given that the CNSC is an autonomous entity, while at the same facilitating harmonization of those systems with the general career system, since the CNSC is also responsible for regulating the career service as a whole. Moreover, since the specific regimes are not autonomous vis-à-vis the general regime -- according to the Constitutional Court's interpretation - the legislature is obliged, when designing specific systems, to observe the constitutional principles of the overall system, and has a duty to justify in a reasonable and commensurate manner, the need to apply more flexible special regulations.<sup>14</sup>

[25] The Committee takes note of the satisfactory consideration given by the country under review to measure a) of the recommendation contained in section 1.1.1 of Chapter II of this report.

Measure b) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Continue to move forward with implementation of the competitive selection process initiated by Call for Candidates 001 of 2005 to fill civil service positions occupied on a provisional and temporary basis, and to complete it.*

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<sup>13</sup> Cf. Constitutional Court, Ruling 471-2013, "[E]ven when the special systems created by the Legislature typically contain specific regulations as to how the career is practiced and implemented in certain government bodies, in reality they are not considered to be autonomous and independent regimes, but rather as part of the general career structure. As the Court said, the incorporation of special systems created by law into the general regime is a consequence of the fact that the latter is the general rule and hence of the obligation incumbent upon the legislature not only to abide by the basic postulates of the general career system but also to have to justify in a reasonable and commensurate manner the exclusion of certain entities from the regular regime and the need to apply more flexible special regulations."

<sup>14</sup> Cf. Judgment C-471/2013.

[26] In its response to the questionnaire,<sup>15</sup> the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[27] - "Continuing the Vacancy Announcement process (No. 001 of 2005), it was ascertained that between 2009 and 2013, 61,225 job offers were made, encompassing more than 90 percent of the total Vacancy Announcement."

[28] -"Thus, in that same period, 5,119 lists of eligible candidates were drawn up and 42,183 vacancies were declared void."

[29] -"On the other hand, it is important to mention that the Congress of the Republic issued Legislative Act 04 of July 7, 2011 promulgated and published in the Official Gazette (*Diario Oficial*) No. 48.123, of the same date, incorporating a Transitional Article in the Political Constitution of Colombia, that read as follows: "Article 1. In order to establish the qualifications of candidates desiring, pursuant to Article 125 of the Political Constitution of Colombia, to enter or be promoted in career positions currently filled on a provisional or assignment basis, the National Civil Service Commission shall standardize the knowledge tests set for the public competition, maintaining the merit principle with respect to experience and studies over and above those required for the position, rating the candidates as follows: (...)."

[30] -"On March 28, 2012, news came through of the ruling by the Constitutional Court declaring Legislative Act 04 of 2011 unconstitutional, because it represented a temporary and partial substitution of the 1991 Constitution and consequently amounted to a defective use of Congressional power to amend the Political Constitution in force."

[31] -"Thus, with the promulgation of Legislative Acts 01 of 2008 and 04 of 2011, the National Civil Service Commission found itself obliged to take the steps needed to comply with said mandates, so that it was not possible to form and finalize the Lists of Those Eligible corresponding to Vacancy Announcement No. 001 of 2005 until the Constitutional Court issued its declaration of unconstitutionality. These developments had a negative impact on the process."

[32] - "Finally, it is necessary to point out that under Vacancy Announcement 001 of 2005, a total of 64,706 vacancies were announced, of which 22,262 were filled. Finally, the selection process for that Announcement ended in June 2013, so that there are currently no more vacancies available nor lists to be drawn up. Thus, the competitive selection process is currently closed."

[33] In addition to the foregoing information provided in response to the questionnaire, during the on-site visit, the representative of the National Civil Service Commission (CNSC) pointed out that, due to the delay in connection with Vacancy Announcement No. 001 of 2005 caused by the promulgation of the aforementioned legislative acts and the subsequent declaration that they were unconstitutional, many candidates desisted from taking part in the competitive process and in numerous instances there were no candidates with the requisite qualifications, all of which led to a large number of vacancies being voided. Nevertheless, even though that vacancy announcement is now closed, the vacancies that were not filled by it are being offered through other vacancy announcements, namely those listed on pages 48 to 51 of the Response to the Questionnaire.

[34] Taking into account, the circumstances described by the country under review that impaired the proceedings and outcome of Vacancy Announcement No.001 of 2005 (the subject of measure b) in section 1.1.1 of Chapter II of this report), and the fact that, even though said Vacancy Announcement has

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<sup>15</sup> Response of Colombia to the questionnaire, pp. 45 to 51.

been closed, its unfilled vacancies are being advertised through other announcements, the Committee considers it appropriate to re-frame it so as to clearly reflect the above: (See recommendation 1.1.3.1 in Section 1.1.3 of Chapter II of this report).

[35] In its response to the questionnaire,<sup>16</sup> the country under review mentioned the following:

[36] "With respect to the need for technical cooperation to implement this measure, the National Civil Service Commission plans to conduct a national and international investigation into mechanisms to render selection processes more efficient and to enable public sector entities to hire suitable personnel and in record time. Likewise consideration has been given to commissioning international experts to transfer best international practices and methodology, especially as regards the use of tests, and to the possibility of conducting international missions to peer institutions that are leaders in the field of competitive exams to enter the public sector, so as to identify best international practices that could be adopted in Colombia."

[37] With respect to the above, the Committee takes note of the importance, for the purposes of the Convention relating to the hiring of civil servants, of the areas in which the country under review would like to receive technical cooperation and therefore deems it useful that the State is considering making arrangements with other States that might be interested in providing it with technical cooperation assistance in such areas. The Committee will offer a recommendation in this regard (See recommendation 1.1.3.2 in section 1.1.3 of Chapter II of this report).

[38] In addition, during the on-site visit, the National Civil Service Commission (CNSC) submitted in writing that:

[39] "Since 2005, with vacancy announcement 01, competitive processes began to fill career positions that were being held provisionally or on an assignment basis, and later on competitions were held to fill vacancies in both institutions with specific systems and general career systems."

[40] "Nevertheless, there are two circumstances beyond the CNSC's control that have prevented the continuity of this process. We are referring, specifically, to institutions' failure to report vacancies and the failure to allocate the resources needed to conduct selection processes."

[41] "It is therefore necessary to be very clear about the need to urge the National Government to demand, through the Ministry of Finance, the Administrative Department of the Civil Service, and the ministries that institutions both set aside the funds needed to conduct vacancy announcements and also provide information regarding non-temporary career service vacancies."

[42] From a CNSC standpoint, we need these two requirements to be mandatory for both national and territorial institutions and for the entities that generate policy within the government in respect of public sector employment and financial resources."

[43] Worth noting, too, is that, during the on-site visit, the CNSC also provided Circular No. 2016100000057 of September 22, 2016, regarding compliance with constitutional and legal provisions relating to the administrative career service, in which it instructs the legal representatives and personnel units of the agencies whose career systems are administered and supervised by the Commission to furnish the CNSC, by no later than November 30, 2016, with information regarding non-temporary career service vacancies so that it can use the SIMO app to construct the Public Offering of Career Jobs (*Oferta Pública de Empleos de Carrera - OPEC*), and also to allocate in their budgets the resources needed to co-finance and cover the costs of their vacancy announcement processes.

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<sup>16</sup> Response of Colombia to the questionnaire, pp. 44 and 45.

[44] Considering the information provided by the CNSC in the aforementioned Circular and even though the Commission has taken steps designed to achieve compliance with constitutional and legal provisions regarding the administrative career service, such as those contained in the Circular referred to in the foregoing paragraph, the Committee has decided, after taking into account that, according to information provided during the on-site visit, there are still agencies reluctant to report information regarding non-temporary career service vacancies to the CNSC as well as to set aside the funds needed to conduct the vacancy announcement processes, to offer a recommendation in this regard designed to ensure compliance with these two requirements (See recommendation 1.1.3.3 in section 1.1.3 of Chapter II of this report).

[45] During the on-site visit, the National Civil Service Commission (CNSC) also pointed out that although steps have been taken to strengthen its institutional capacity to perform its selection process-related functions, it still has only 83 full-time staff, as opposed to its envisaged potential staff of 140. The current number of staff is insufficient, given the large number of national and territorial entities in which it performs said functions.

[46] In light of the above, and given the importance of the National Civil Service Commission (CNSC) having the staff needed to perform its functions relating to selection processes, the Committee will offer the country under review a recommendation in this regard (See recommendation 1.1.3.4 in section 1.1.3 of Chapter II of this report).

Recommendation 1.1.2:

*Strengthen the systems for the hiring of public servants for the Legislative Branch of Government.*

Sole measure suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Adopt the relevant law to enact the Legislative Branch Civil Service Statutes, guiding itself to that end by the principles of openness, equity, and efficiency as provided for in the Convention, without prejudice to the application of the general civil service rules in force for the Executive Branch, subject to their compatibility, until said Statutes are adopted, as provided at article 384 of Law 5 of 1992.*

[47] In its response to the questionnaire,<sup>17</sup> the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[48] - "The paragraph contained in Article 384 of Law 5 of 1992 indicates in a sense that Congress must issue provisions regulating all aspects of the administrative career service in the Legislature. However, such provisions have not yet been issued. Instead, and as the same paragraph instructs, administrative steps have been taken based on Law 5 of 1992, Law 909 of 2004 and the other laws that implement and develop it, and on the administrative regulations issued on the subject by the Administrative Department of the Civil Service."

[49] - "Bills have been presented aimed at complying with Article 384 of Law 5 of 1995, that is to say, implementing a law for the administrative career service in the legislative branch. However, none of those bills has become a law of the Republic, for lack of the legislative majorities needed to pass them."

[50] The Committee takes note of the steps taken by the country under review to move ahead with implementation of the sole measure of the recommendation contained in section 1.1.2. of Chapter II of

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<sup>17</sup> Response of Colombia to the questionnaire, pp. 54 and 55.

this report, but since the Statute of the Administrative Career Service in the Legislative Branch of Government has not yet been issued, the Committee also notes the need for the country under review to continue to address this matter (See recommendation 1.1.3.5 in section 1.1.3 of Chapter II of this report).

Recommendation 1.1.3:

*Strengthen the systems for the hiring of public servants for the Judiciary.*

Measure (a) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Enact the statute governing the judicial career system referred to in Article 204 of Law 270 of 1996, guiding itself to that end by the principles of openness, equity, and efficiency as provided for in the Convention.*

[51] In its response to the questionnaire,<sup>18</sup> the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[52] - "The Higher Council of the Judiciary took part in the formulation and processing of a draft Statutory Act on Administration of Justice designed, inter alia, to regulate matters relating to the judicial career service. This draft was filed on September 30, 2015 with the secretariat of the Chamber of Representatives (*PL 130/2015 Cámara*). Initially, it comprised 139 articles, to which 53 more were added, plus 34 later on. Among other matters, they addressed requirements to be met by High Court Judges; differentiated lists for High Courts of Justice; a merit and promotion system geared to good performance of justice operators; amendment of the rules governing transfers of justice operators and administrative situations, among other topics related to the judicial career service. This bill did not complete the legislative process and was shelved in June 2016.

[53] The Committee takes note of the steps taken by the country under review to move ahead with implementation of measure a) of the recommendation contained in section 1.1.3. of Chapter II of this report, but since the ordinary law governing the judicial career, alluded to in Article 204 of Law 270 of 1996, has not yet been issued, the Committee also notes the need for the country under review to continue to address this matter (See recommendation 1.1.3.6 in section 1.1.3 of Chapter II of this report).

[54] With respect to the above, it is worth mentioning that, during the on-site visit, the civil society organization "Corporación Excelencia en la Justicia" pointed out that current judicial career service rules do not guarantee selection of the best attorneys to fill positions, a problem that starts with the training they receive at university that does not encourage the best students to become judges. Add to this the lack of a State exam for attorneys and the absence of any obligation to join a bar association and of any special training by the State for them to become judges. While there are training courses for judges, such training is still less than effective. The same civil society organization also pointed to rigidities in the judicial career service, in the sense that it difficult to remove officials once they form part of it, based on evaluation of their performance.

Measure b) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

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<sup>18</sup> Response of Colombia to the questionnaire, pp. 56 and 57.

*Adopt, through the appropriate authority, the necessary measures to complete the selection processes for “Employees of the Executive Judicial Administration Board” and “Employees of the Administrative Chamber of the Superior Judicature Council.”*

[55] In its response to the questionnaire,<sup>19</sup> the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[56] - "The competitive process for employees of the Executive Directorate of Judicial Administration began on August 28, 2012, when Decision (*Acuerdo*) 9664 of 2012 was issued, inviting candidates to apply to vacancies. 16,630 candidates applied, 8,230 of whom were admitted. The Records of Eligible Candidates have been issued already and 33 lists have been sent to fill 57 vacancies, according to reports prepared by this Directorate."

[57] - "The competition to fill employee positions in what was then the Administrative Division and is now the Higher Council of the Judiciary began on November 7, 2013, when Decision PSAA13-10037 was issued. There were 17,654 applicants, 11,031 of whom were admitted. Knowledge and psychotechnical tests were conducted on November 23, 2014 and the results published on March 17, 2015. Appeals against the knowledge tests have been processed and the National University has provided its additional scoring data, so that the Record of Eligible Candidates will be published this year."

[58] In addition to the aforementioned information provided in response to the questionnaire, during the on-site visit the representative of the Higher Council of the Judiciary pointed out, in respect of the selection process for employees of the Executive Directorate of Judicial Administration (the vacancy announcement corresponding to Decision 9664 of 2012), that the winners were already taking up their positions, so that this competition had concluded, and that, in respect of the selection process for employees of what was then the Administrative Division and is now the Higher Council of the Judiciary, the last procedure was performed on February 28, 2017, through Resolution PCSJSR17, which drew up 79 Records of Eligible Candidates. Still pending was publication of existing vacancies and the drawing up and remittance of the lists of those eligible to fill those positions.

[59] The Committee takes note of the satisfactory consideration of measure b) of the recommendation contained in section 1.1.3 of Chapter II of this report as regards the selection process for "Employees of the Executive Directorate of Judicial Administration." However, given that some actions have still to be taken to complete the selection process for employees of what was then the Administrative Division and is now the Higher Council of the Judiciary, the Committee also takes note of the need for the country under review to continue to address this measure referred to in the aforementioned recommendation, in respect of this last-mentioned selection process, and considers it appropriate to re-frame it so as to clearly reflect the above: (See Recommendation 1.1.3.7 in Section 1.1.3 of Chapter II of this report.)

**Recommendation 1.1.4:**

*Strengthen government hiring systems in the Office of the Attorney General.*

**Measure a) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:**

*Set, through the appropriate authority, a time limit on any provisional appointment made to fill a permanent vacancy, in order for the vacancy to be filled through competition in accordance with the rules in force for that purpose.*

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<sup>19</sup> Response of Colombia to the questionnaire, pp. 57 and 58.

[60] In its response to the questionnaire,<sup>20</sup> the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[61] - "...Decree Law 20 was issued on January 9, 2014, containing the Special Career rules for the Office of the Attorney General of the Nation (*Fiscalía General de la Nación*), as a complete, legally binding statute, for the first time in the history of the Office."

[62] - "The rules governing entry, tenure, retirement, and competition are matters for legislators to decide on ("*reserva legal*"), pursuant to Article 253 of the Political Constitution, which establishes: "*The law will determine matters relative to the structure and functioning of the Office of the Attorney General of the Nation at entry and retirement from the service for those who are unqualified or have incompatibilities with respect to appointment, qualifications, compensation, social benefits, and discipline of the officials and workers under his/her authority.*" ([https://www.constituteproject.org/constitution/Colombia\\_2005.pdf](https://www.constituteproject.org/constitution/Colombia_2005.pdf))

[63] - "That being so, it should be underscored that provisional appointment is defined in Decree Law 20 of 2014 as follows:" "*Provisional: To fill temporarily vacant career positions or positions subject to free appointment and removal, when the regular holder of that position is not receiving the wage, while the administrative situation persists. -Definitively vacant special career positions may also be filled provisionally by persons not selected through the merits system, until the position is filled through competition or the selection process. The Attorney General's Office may require a candidate for provisional appointment to a career position to take such tests as it considers necessary to assess whether the candidate's profile matches the requirement of the job to be performed and, if necessary, may call upon the support of the Administrative Department of the Civil Service.*"

[64] - "Along those same lines, the maximum time set by law for appointment on a provisional basis is until the position concerned is filled through merits-based competition and there is no leeway for the Office of the Attorney General to set a period of time that differs from that established by lawmakers."

[65] The Committee takes note of the steps taken by the country under review to move ahead with implementation of measure a) of the recommendation contained in section 1.1.4. of Chapter II of this report, but since no time limit has yet been set for provisional appointments made to fill a non-temporary vacancy, the Committee also notes the need for the country under review to continue to address this matter. The Committee understands that the competent authority to regulate this matter is the Legislative Branch of Government and not the Office of the Attorney General, according to the paragraph in the Response to the Questionnaire transcribed above, but it reiterates the need for the country under review to consider setting a time limit to provisional appointment, because such appointment constitutes a temporary way of filling career service positions, as stated in the Second Round report (See Recommendation 1.1.3.8 in section 1.1.3 of Chapter II of this report).

Measure b) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Adopt, through the appropriate authority, the measures pertinent to advance and complete the merit-based competition to staff the career service of the Office of the Attorney General of the Nation.*

[66] In its response to the questionnaire,<sup>21</sup> the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

<sup>20</sup> Response of Colombia to the questionnaire, pp. 60 and 61.

[67] - "In the past six years, 1,706 tenured appointments have been made, that is to say, 1,706 people have been publicly registered as entering the institution's career service, as follows:

YEARS	TENURE
2011	724
2012	67
2013	59
2014	48
2015	176
2016	632
Total	1,706

[68] - "To explain in greater detail the figures for 2015 and 2016, it should be pointed out that, with the completion of the 2008 Administrative Area Competition, along with other matters such as the normalization of career rights as a result of previous processes, in 2015 to 2016, 2,651 appointments were made on a trial basis, which resulted in 808 permanent (tenure) appointments and hence the entry of 808 people into the career service.

YEARS	TENURE	TRIAL PERIOD
2015	176	669
2016	632	1982
Total	1,706	2,651

[69] - "Currently, there are 6,445 public servants in the Attorney General's office with career service rights, compared to 203 in free appointment positions and 16,484 on a provisional appointment basis."<sup>22</sup>

[70] - "As regards compliance with established goals and targets, following is a list of the specific activities for which information was requested:"

[71] "1. Decree Law 20 of 2014, containing the legal statute of the institution's special career service, which sets a three-year deadline for implementing the career within the institution. That deadline was set with a view to ensuring gradual implementation of the service and avoiding disruption in justice-related services due to the sudden exit of all those serving who embody the experience and historical memory of the institution."

[72] "2. Establishment by law of the National Career Commission and the definition of its spheres of competence, and of the National Subdirectorate responsible for the Commission's operational aspects."<sup>23</sup> These measures boosted the structural arrangements for implementing and administering the career system in the institution, by establishing the specialized units needed, because traditionally the area in charge of the merits system had always been no more than a small group attached to Human Resources: a fact worth stressing."

<sup>21</sup> Response of Colombia to the questionnaire, pp. 61 a 63.

<sup>22</sup> This information was provided by Colombia in its response to the questionnaire and corresponds to the years 2015 and 2016. See footnote 27, which refers to the updated information furnished by Colombia on September 11, 2017.

<sup>23</sup> Ibid. Decree Law 20 of 2014



[73] “3. Likewise, in keeping with the measures discussed and adopted, and with a view to strengthening selection processes, the Office of the Attorney General established the Course-cum-Competition (*Curso - Concurso*) processes, an arrangement that combines training and evaluation and makes it possible to select candidates with the best performance not just in the knowledge tests but also in the corresponding training course.

[74] 4. The Public Career Service Roster was established, along with the design and implementation of the app for correctly administering it. This made merit-based procedures in the institution more transparent and efficient, because prior to 2015 the career service roster had been a simple and unreliable database with very little breakdown of the data. The I.T. app for administering the Public Roster of Persons Registered in the Career Service (RPIC) began operating on March 18, 2016.”

[75] “5. The Office of the Attorney General launched two competitive processes to fill 999 vacant positions in Public Prosecutors' offices created in 2014. One was a competition for promotion (Decision 0023 of 2015, amended by Decision 0042 of 2015) and the other was an open competition for entry into the service (Decision 0043 of 2015), amended by Decision 0045 of 2015).”

[76] “6. Between 2015 and 2016, a determination was made regarding the legal status of previous proceedings, without which it was difficult to make a reliable diagnostic assessment regarding the career service in the institution. For example, determinations were made regarding the Technical Investigative Corps (CTI) processes carried out in 1994 and 2006, which at the time had included some stages proper to public competitive processes but failed to meet all the requirements needed to be considered public competitive processes, so that they had remained in a kind of legal limbo ever since.”

[77] “7. In 2014, 2015, and 2016, the Career Roster has been edited and adjusted to take into account the special situation of individuals who might be entitled to career service status (some 300 cases).”

[78] “8. Reactivation of the competitive process of 2008 to fill 1,711 positions, which has been suspended. The definitive lists of eligible candidates were published on July 13, 2015 and vacancies began to be filled based on the corresponding rosters. Currently, more than 1,300 appointments have been made of persons in trial periods.

[79] “9. Through Public Tender No. 009 of 2015, bids were invited from contractors to conduct public competitions for 8,358 jobs in the Technical Investigative Corps (CTI) area of the judicial police. However, the call for tenders was, alas, declared void.”

[80] In addition to the foregoing information furnished in response to the questionnaire, during the on-site visit the Attorney General's Office (FGN) provided the following documents:

[81] - Strategic Objective # 11 of the 2016-2020 Strategic Plan, "*Public Prosecution Service of the people, for the people, and by the people:*" Developing Human Talent, *Specific Objective 139* reads: "Implement the Office of the Attorney General's special career service regime. *This objective seeks to bring in suitable and competent personnel to perform the work of the FGN through competitive entry or promotion processes.*"

[82] - "On this, the Plan indicates that "... in the more than 24 years since the institution was established, only 6,402 administrative career positions (27 percent of the total permanent staff) have been filled through merit-based processes, which means that 73% of all staff positions are being filled by public servants on a provisional basis. Implementing the career service is a response to the mandate contained in Articles 125 and 253 of the Constitution, which establishes that career service entry, tenure, and retirement should be the rule for public servants in the FGN," sending a clear signal of the

Administration's decision to make that process viable, given its importance for the public administration of justice.

[83] - "Against that backdrop, and as part of the corresponding planning process, the Institution is taking steps to ensure that over the next four (4) years competitions will be held to fill definitively vacant career service positions as follows:"

<b>Year</b>	<b>Type of competitive process</b>	<b>Group - Area</b>
2017	Promotion Entry	Public Prosecutor's Office
2018	Promotion Entry	Judicial police
2019	Promotion Entry	Management and Administrative Support

[84] - "We should take the opportunity to point out that the competitions referred to will depend on the allocation of budgetary resources by the Ministry of Finance and Public Credit."

[85] The Attorney General's Office also pointed out during the on-site visit that Decree Law 20 of 2014 provides for gradual implementation of the special career service in the FGN,<sup>24</sup> which is why the aforementioned time frame was adopted.<sup>25</sup>

[86] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure b) of the recommendation contained in section 1.1.4 of Chapter II of this report and of the need for the latter to continue to give attention thereto, bearing in mind the activities to be carried out to complete the process of implementing the special career service in the FGN. The Committee also notes the observation by the FGN to the effect that the competitive processes envisaged in the schedule will depend on the allocation of budgetary resources by the Ministry of Finance and Public Credit. The Committee considers it appropriate to re-frame the aforementioned recommendations so that it clearly reflects the above: (See Recommendation 1.1.3.9 in Section 1.1.3 of Chapter II of this report.)

[87] At the same time, the Response to the Questionnaire<sup>26</sup> pointed out one difficulty in implementing the special career service in the Office of the Attorney General (FGN), namely the shortcomings in establishing the number of definitively vacant positions. In that regard, the FGN stated during the on-site visit: "Screening of the Public Roster of Persons Registered in the Career Service is currently in its final stages. Once completed, it will provide certainty as to the total number of positions to be filled through

<sup>24</sup> The second paragraph of Article 118 of Decree Law 20 of 2014 establishes that "To guarantee continuity and the quality of service, competitions to fill jobs in the Office of Attorney General will be gradual and take place at different times, taking into consideration overall staffing in the areas in which positions are to be filled."

<sup>25</sup> On August 14, 2017, the country under review reported that: "Through Decree Law 898 of June 30, 2017, the President of the Republic, using the special powers vested in him for implementation of the Peace Agreement reached with the FARC, opted, inter alia, to alter the organizational and functional structure of the Office and its staff, eliminating some 5,000 jobs in the process. That means that a new diagnostic assessment will need to be made of the positions to be offered through merit-based competitive processes and of the functions and profiles proper to those positions, all of which may delay compliance with previously presented schedules." On September 11, 2017, the country under review clarified that the 5,000 eliminated jobs were all vacant positions and that they lacked the necessary budgetary allocation to keep them.

<sup>26</sup> Response of Colombia to the questionnaire, pp. 63

competition. The consolidated figures show that there are currently 28,505 special career service positions in the Office of the Attorney General, 6,398 of which are held by public servants with career service entitlements. The remaining 22,098 remaining positions should therefore be filled through competition or a selection process."<sup>27</sup>

[88] Bearing in mind the importance for implementation of the special career service in the FGN of completing the screening of the Public Roster of Persons Registered in the Career Service provided for in Article 52 of Decree Law 20 of 2014, the Committee will offer a recommendation in this regard (See recommendation 1.1.3.10 in section 1.1.3 of Chapter II of this report).

### **1.1.2. New developments in respect of the Convention provision on civil servant hiring systems**

#### **1.1.2.1. New developments in the regulatory framework**

##### *a) Scope*

- Statutory and other legal provisions applicable to public servants in the Executive Branch of Government and territorial entities including, in particular:

[89] - Article 2.2.1.1.1 of Decree No. 1083 of 2015,<sup>28</sup> regulating the Civil Service Sector, states that temporary positions are those established in personnel rosters for the amount of time determined in the technical study giving rise to them and in the notice of appointment. Pursuant to Article 2.2.1.1.3, they are to be filled from the lists of eligible candidates of the National Database of Lists of Eligible Candidates. Article 2.2.1.3.1 establishes that full time, half time, or part time positions can be established, according to the needs of the service and following a technical study demonstrating such need. Referring to the last two types of position, it provides that if they are established as permanent positions on the payroll, they shall be subject to free appointment or removal or else be administrative career positions, according to the classification established in Article 5 of Law 909 of 2004.<sup>29</sup>

[90] Title 2 of the above-mentioned Decree establishes the functions and general requirements for public sector positions at the various levels in the hierarchy of national agencies and entities (manager, advisor, professional, technical and support staff) and points out in Article 2.2.2.4.1 that they will serve as a basis for the agencies and entities to prepare their own specific manuals of functions and professional competencies for the different positions in their personnel structure.

[91] Article 2.2.5.1.3 of the aforementioned Decree provides that personnel serving in ministries, administrative departments, superintendencies, and public establishments and other government entities are government employees, while adding, however, that public works construction and maintenance workers are "official workers." Article 2.2.5.1.7 states that, except in respect of provisions in the law for

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<sup>27</sup> On September 11, 2017, the country under review reported that the Office of the Attorney General had completed the purging of the Roster of the Career Service on September 7, 2017 with respect to 6,321 public servants and that on that same date there were provisionally 16,781 employees out of a total of 23,102.

<sup>28</sup> On August 14, 2017, the State under review reported that on April 19, Decree 648 of 2017 was issued "amending and adding provisions to Decree 1083 of 2015, Consolidated Rules of the Civil Service Sector." That decree is not analyzed in this report because the Committee did not have access to it within the time limits mentioned in Section I "Summary of Information Received" of this report.

<sup>29</sup> Law 909 of 2004, which was analyzed in the report from the Second Round, states, in Article 5, that positions in agencies and entities regulated by the law shall be administrative career position, except for: 1. Elective positions, fixed-term positions under the Political Constitution and the law, official workers' positions, and positions whose functions are to be performed in indigenous communities in accordance with their legislation; 2. Positions subject to free appointment and removal corresponding to the criteria set forth in this law.

official workers, under no circumstances may services contracts be signed for the performance of public functions of a permanent nature. For them, the corresponding positions shall be established.

[92] Article 2.2.5.3.1 of the same Decree, referring to the filling of definitive (i.e. non-temporary) vacancies, provides that entry into the service shall be via regular appointment for positions subject to free appointment and removal, and via appointment on a trial period or provisional basis in the case of career service positions. Article 2.2.5.3.2, referring to the order in which career service positions are to be filled, establishes the following: "The definitive filling of career service positions shall be done in the following order: 1) With a person who, when he left, had career service entitlements and whose reincorporation into the service has been ordered by a court of law; 2) By transferring an employee with career service entitlements who can prove that he is a displaced person due to violence in the sense of Law 387 of 1997, once the order has been issued by the National Civil Service Commission; 3) With an administrative career person whose position was eliminated and who has opted for the right of first refusal (*derecho preferencial*) to be reincorporated in like or equivalent positions, pursuant to rules established in this Decree and as ordered by the National Civil Service Commission; 4) With the person who at the scheduled time of appointed is first on the list of those eligible for the job vacancy announced by the institution concerned. – If, after exhausting the foregoing options, it has not been possible to fill the position, a specific selection process must be conducted for the institution concerned."

[93] Title 6 of the aforementioned Decree regulates selection or competitive processes, indicating, in Article 2.2.6.1, that they shall be conducted by the National Civil Service Commission (CNSC) through inter-agency contracts or agreements entered into with public or private universities, university-level institutions and higher education establishments accredited by the Commission to that end. Article 2.2.6.3 establishes the following phases for said processes: vacancy announcement, recruitment, testing, the drawing up of a list of eligible candidates, and the trial period. The same Title also regulates aspects relating to those phases, such as dissemination of the vacancy announcement and how it must be publicized (Articles 2.2.6.5 and 2.2.6.6), the publishing of the lists of those admitted and not admitted, the appeals process (Articles 2.2.6.11 and 2.2.6.12), the exams or selection tools, results and appeals against them (Articles 2.2.6.13 to 2.2.6.17), the annulment of competitive processes (1) if no candidate applies or none accredits the required qualifications, or (2) if no candidate passes all the tests or achieves the predetermined total score needed to pass (Article 2.2.6.19), the drawing up of the lists of eligible candidates within no more than five months of the date the vacancy announcement was published, based on the results of the competitive process and in strict order of merit, their disclosure and transmission by the CNSC to the head of the entity for which the competition was organized, so that within ten (10) business days following the transmission of the list of eligible candidates and in strict order of merit a person is appointed on a trial basis to the position for which the competition was held and which, once the list of eligible candidates has been received, may not be filled in any other way (Articles 2.2.6.20 and 2.2.6.21).

[94] Article 2.2.7.1 of the aforementioned Decree provides that the National Civil Service Commission (CNSC) is the body responsible for administering, organizing, updating, and supervising the Public Administrative Career Service Roster, which shall comprise all currently registered employees and those that enter the administrative career regulated by Law 909 of 2004.

[95] Finally, Title 13 of the above-mentioned Decree regulates the filling of public sector management positions. Article 2.2.13.1.1 thereof establishes that positions subject to free appointment and removal that were classified by Law 909 of 2004 as Public Sector Management positions shall, without prejudice to the discretionary features peculiar to them, be filled on the basis of merit, capacity, and experience criteria, using any of the processes provided for in the aforementioned law. Article 2.2.13.1.5 establishes that the evaluation of such managers' performance shall be based on Management Agreements, i.e.,

written documents signed by a supervisor and the public sector manager concerned, based on the institution's current plans, programs, and projects.

[96] - Decree 4968 of December 27, 2007, Article 1 of which modifies the transitional paragraph of Article 8 of Decree 1227 of 2005, amended by Article 1 of Decree 3820 of 2005 and Article 1 of Decree 1937 of 2007, and provides that assignments or provisional appointments may be authorized without a prior call to compete, when the head of the institution substantiates the need to do so for reasons related to restructuring, merger, transformation or liquidation of the institution, or when imperative needs of the service so require. In these cases, the period of assignment or provisional appointment may not exceed six months, during which time a competitive process for the position must be announced. When special circumstances prevent said announcement within the time specified, an extension may be authorized of the assignments and provisional appointments until a competitive process can be conducted. - A provisional appointment may proceed as an exception to the rule provided that there are no career service employees who meet the requirements or match the profile to be assigned and provided that there is no up-to-date list of eligible candidates that can be used.

[97] National Civil Service Commission Circular No. 20161000000057 of September 22, 2016, regarding compliance with constitutional and legal provisions relating to the administrative career service, which instructs the legal representatives and personnel units of the agencies whose career systems are administered and supervised by the Commission to furnish the CNSC with information regarding non-temporary career service vacancies so that it can use the SIMO app to construct the Public Offering of Career Jobs (*Oferta Pública de Empleos de Carrera - OPEC*), and also to allocate in their budgets the resources needed to co-finance and cover the costs of their vacancy announcement processes.

[98] - There are also regulations regarding the hiring of public servants in the Executive Branch in Law 1780 of 2016, Article 14 of which provides that government institution that make changes to their staff must guarantee that at least ten (10) percent of new positions do not require professional experience, so that those positions can be filled by young people who have recently graduated from technical or technological programs or from undergraduate programs in higher education institutions. The corresponding paragraph states that in complying with this Article account shall be taken of the provisions of Law 909 of 2004.

- Statutory and other legal provisions applicable to public servants in the Legislative Branch of government, including, in particular:

[99] - Resolution 2370 of 2016, "Adopting the instructions for filling career positions through assignment in the staff of the Chamber of Representative," in which one of the preambular paragraphs notes that "as established in paragraph 2 of Article 3 of Law 909 of 2004, the provisions of the administrative career regulations are applicable to career service employees of the Congress of the Republic until such time as their career service rules are issued." The instructions adopted through the aforementioned resolution state that, pursuant to Article 24 of Law 909, assignment of a position is an administrative circumstance in which a public servant with career service entitlements finds himself when, by right of first refusal or, failing that, by optional decision of the appointer expressed through an administrative act, he is designated to take on all or some of the functions of another, hierarchically higher, career service position, that is temporarily and definitively vacant. Section 6.1.1 provides for the assignment going to the career service officer in the position immediately below that to be filled on a temporary basis. With regard to the duration of the assignment, these instructions also provide that, as indicated in Law 909 of 2004 and its implementing regulations, an assignment to a non-temporary (definitive) vacancy may be made for up to six months and extended for the same amount of time when duly substantiated circumstances so require and no National Civil Service Commission guideline exists for filling the position on a permanent basis.

[100] - Resolution 1095 of 2010, "Modifying Resolution No. MD 3155 of 2008 which adopts the Manual of Functions and Minimum Requirement for all staff positions and regulates the hierarchical classification of positions in the Honorable Chamber of Representatives."<sup>30</sup> The preambular paragraphs of that resolution state, inter alia, that Article 122 of the Political Constitution establishes that "*Every public occupation will have its functions detailed by law or regulation*"; that pursuant to Articles 1, 2, and 3 of Decree 770 of 2005, each institution must establish the labor skills, functions, and requirements for each position and its classification by hierarchical level; and that, pursuant to Article 4 thereof, the positions in entities referred to in the aforementioned Decree shall be classified as being one of the following levels: Senior Management level, Advisor level, Professional level, Technician level, and Assistant (support) level. Article 2 of this Resolution establishes that in performing the functions corresponding to the Chamber of Representatives a distinction shall be made between Legislative Area and Administrative Area functions; Article 3 states that the former comprises activities related to the constitutional function of law making, which is incumbent upon the Chamber of Representatives and the standing Constitutional Committees, while Article 4 states that the latter comprises activities relating to management of the Chamber's human, material, and financial resources. Article 5 lists the various dependencies of the Chamber; Article 6 defines the personnel pertaining to the Chamber; and Title II establishes the functions and minimum requirements for each position.

[101] - There are also regulations related to the hiring of public servants for the Legislative Branch in Law 1318 of 2009, "Amending Law 5<sup>a</sup> of 1992",<sup>31</sup> Article 3 of which establishes that section 1 of Law 5<sup>a</sup> of 1992 shall read as follows: "*Hiring*. The hiring of employees to the payrolls established by this law shall be done through a resolution of appointment issued by the Administrative Director in the Chamber of Representatives or the Administrative Director General of the Senate, signed by the respective Secretary General. - Employees on the payroll referred to in the articles of this law shall serve in the units where they were appointed, or wherever necessary for the service they provide, but not in the offices of members of Congress. Violations of this rule shall be deemed grounds for misconduct on the part of both the employee and the Administrative Director of the Chamber concerned, as the case may be, who shall be punished with the loss of their positions."

- Statutory and other legal provisions applicable to public servants in the Judiciary, including, in particular:

[102] - Legislative Act No. 02 of 2015, Article 11 of which provides that Article 231 of the Political Constitution shall read as follows: "The judges of the Supreme Court of Justice and the Council of State shall be appointed by the appropriate body after a public hearing from a list of ten eligible candidates drawn up by the Higher Council of the Judiciary<sup>32</sup> after a public notice of vacancy in accordance with law. - All selection processes for candidates to the position of judge of the Supreme Court of Justice and the Council of State shall abide by the criterion of a balance between those coming from professional, judiciary, and academic backgrounds. - The Supreme Court of Justice and the Council of State shall regulate the voting formula and the time frame for electing the judges to the body concerned."

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<sup>30</sup> This Resolution and the Manual of Functions and Minimum Requirements it adopts are posted on the Chamber of Representatives website.

<sup>31</sup> This Law, which contains the Rules of Procedure of Congress, the Senate, and the Chamber of Representatives, was already analyzed in the Second Round report.

<sup>32</sup> Judgment C-285-16 of the Constitutional Court declared that the references to the Judicial Governance Council (*Consejo de Gobierno Judicial*) contained in Articles 8, 11, and 19 of Legislative Act 02 of 2015 were invalid and consequently ordered that in the constitutional provisions referred to in those Articles the expression "Judicial Governance Council" be replaced by "Higher Council of the Judiciary."

[103] - Decision PSAA16-10553 of 2016, through which the Higher Council of the Judiciary regulates the public announcement for drawing up the lists of candidates to the position of judge of the Supreme Court of Justice and the Council of State. Article 2 thereof contemplates, among the principles governing the announcement, openness, transparency, citizen participation, and gender equity, while Article 3 states that the lists of candidates to the position of judge of the Supreme Court of Justice and the Council of State presented by the Higher Council of the Judiciary shall comprise citizens who meet the constitutional and legal requirements for the position.

[104] Article 4 of the aforementioned Decision discusses selection criteria and stipulates, inter alia, that selection shall be based on merit, which may be assessed quantitatively or qualitatively, that no considerations other than merit are allowed, and that those considerations may not include such factors as kinship, commercial ties or friendship, political affinity, regional proximity, or ideological or religious orientation. In addition, Article 5 states that all selection processes for candidates to the position of judge of the Supreme Court of Justice and the Council of State shall abide by the criterion of striking a balance between those coming from professional, judiciary, and academic backgrounds, whereby each list must contain three (3) candidates from one of the aforementioned sectors or groups, three (3) from another sector, and four (4) from the other sector.

[105] Article 6 of the above-mentioned Decision establishes the following phases in the public announcement process for inclusion in lists of candidates for the position of judge of the Supreme Court of Justice and the Council of State 1) Public invitation; 2) Publication of those in the provisional list and observations; 3) Pre-selection; 4) Interview in a public hearing; and 5) Drawing up of the list.

[106] Article 9 of the aforementioned Decision provides that once the time allowed in the invitation to apply has run out, the Higher Council of the Judiciary shall post the list of candidates on the Judiciary's website during five (5) business days, giving their full given and family names, their citizen's I.D. number, and the e-mail address of the Judicial Career Administrative Unit ([carjud@cendoj.ramajudicial.gov.co](mailto:carjud@cendoj.ramajudicial.gov.co)), with a view to receiving from citizens, within the following five (5) business days non-anonymous observations and appraisals of the candidates. Article 10 states that from the list of candidates to the position of judge of the Supreme Court of Justice and the Council of State the Higher Council of the Judiciary shall make a list of no fewer than fifteen (15) and no more than thirty (30) pre-selected candidates, which shall be published on the Judiciary website during five (5) business days, with the full names and citizen I.D. numbers of the pre-selected individuals.

[107] Finally, Article 11 of the aforementioned Decision provides that, once the abovementioned deadline has passed, within the following ten (10) days the pre-selected candidates will be heard and interviewed by the Higher Council of the Judiciary, in a public hearing, each for no fewer than ten (10) minutes; that said public hearing will be transmitted live over the Internet or other mass media; and that the hearing may be attended by the media and the general public. Article 12 states that once the interviews are over, the Higher Council of the Judiciary shall proceed to draw up the final list of candidates and disclose it at a public hearing.

- Statutory and other legal provisions applicable to public servants in the Office of the Attorney General (FGN), including, in particular:

[108] - Decree Law 020 of 2014, Article 2 of which states that the special career in the Attorney General's Office and the entities attached to it is the technical personnel administration system that, pursuant to the constitutional principles governing the civil service, seeks to ensure equal opportunity to accede to positions, once merit has been established; to protect the rights of civil servants to stability and tenure in those jobs; and to develop the technical and functional skills of civil servants through training, incentives, and promotion. Article 3 establishes that said career service shall be governed by the

following principles: 1) Merit; entry, promotion and tenure in career service positions will be established by demonstrating the academic qualifications, experience, and skills required to perform the jobs required in those positions. 2) Equal entry opportunities; everyone accrediting the requirements needed for the position may take part in the competitive processes conducted to fill career service positions, without discrimination of any kind, under the terms provided for in this Decree Law. 3) Openness: the announcements of calls to participate in competitive processes to fill career service positions should be disseminated through mechanisms permitting as many candidates as possible to apply. 4) Transparency: in managing the selection processes and in choosing the bodies responsible for executing them. 5) Guarantee of impartiality: the various stages of the process -- entry, tenure, promotion, and retirement of employees of the FGN and the entities attached to it -- must be conducted and executed with due process guarantees and objective selection. 6) Efficiency and effectiveness: the personnel administration process will ensure the entry and tenure of the most competent persons best suited to perform the functions assigned to the FGN and the entities attached to it.

[109] Article 5 of the above-mentioned Decree Law states, with respect to the FGN, that its positions are career service positions, except for the following positions that are classified as subject to free appointment and removal, given the special trust and “*intuitu personae*” element inherent in the performance of their functions: 1) Senior Management level positions: The Deputy Attorney-General of the Nation, Member of the Council of the Judiciary (*Consejero Judicial*), National Director, Strategic Director, Special Area Director (*Director Especializado*), National Deputy Director, Sectional Deputy Director, Department Head; 2) Positions attached to the Attorney General's Office; 3) The Public Prosecutor assigned to the Supreme Court of Justice and his assistant public prosecutors; 4) Advisor the Attorney General's Office positions; 5) Positions involving the administration and direct handling of the entity's assets, money, and securities. 6) Positions to ensure the protection and personal security of the Attorney General and Deputy Attorney General of the Nation. - Paragraph 1 All positions that may be created in the FGN with a denomination other than those indicated in subparagraph 1) of this Article shall also be subject to free appointment and removal, if those positions are at the senior management or advisor level.

[110] Article 6 of the above-mentioned Decree Law states that FGN positions shall fall into the following categories: 1) The public prosecutor group; 2) The Judicial Police group; 3) The Management and Administrative Support Group. Article 10 refers to vacancies and states that for the purpose of filling them, a position shall be considered definitively vacant when the person holding a position retires or withdraws from the service on any of the grounds established in the Constitution or in this Decree Law, or when the vacancy results from a change in staffing arrangements. Article 11 envisages the following types of appointment: 1) Regular: To fill positions subject to free appointment and removal; 2) For a trial period: To fill career service positions with the person in first place on the list of eligible candidates who have passed the section or competitive process conducted as prescribed in this Decree Law; 3) Provisional: To temporarily fill career service positions or positions subject to free appointment and removal, when the holder is not earning the wages for that position while the administrative situation persists. Definitively vacant special career service positions may also be filled through provisional appointments with persons who have not been selected via the merits-based system until it is filled via competition or selection process. The Attorney General's Office may require a candidate for provisional appointment to a career service position to take such tests as it considers necessary to assess whether the candidate's profile matches the requirement of the job to be performed and, if necessary, may call upon the support of the Administrative Department of the Civil Service; 4) Assignment (*encargo*): To fill temporarily or definitively vacant career service positions or positions subject to free appointment and removal under rules or FGN personnel developed in response to administrative situations.

[111] Chapter V of the above-mentioned Decree Law regulates competitions or selection processes. Article 22 thereof deals with those relating to entry and promotion. Article 23 states that anyone meeting



the requirements can take part in entry exams/processes. Article 24 indicates that promotion processes may be conducted in acknowledgment of the training and performance of staff in the special career ladder and to enable them to move up to the rung or category immediately above their current one within the same group or personnel section when: 1) The vacancy or vacancies to be filled pertain to the same personnel group or staff section and are professional or technical level positions; 2) When there are public servants on the special career service ladder one grade below on the payroll who meet the requirements and conditions for performing the positions opened up to competition; 3) When the number of public servant in the career service that match the requirements and conditions needed to perform the positions opened up to competition is greater than the number of positions to be filled. This provision also states that when the above requirements are met up to 30 percent of the vacancies to be filled may be filled through competitive promotion tests, while the other positions shall be filled via entrance exams.

[112] Article 6 of the aforementioned Decree law establishes that entry into special career service positions in the FGN shall be subject to the various kinds of exams or selection process envisaged in this Decree law, while Article 14 states that the FGN will have a Special Career Service Commission comprising: 1) The Attorney General of the Nation or his delegate, who shall chair the Commission; 2) The Director of Management Support or his delegate; 3) The Deputy Director of Human Resources (*Talento Humano*); and 4) Two (2) representatives of the public servants with career service entitlements, one for staff members and the other for employees. Article 17 lists that Commission's functions, which include: establishing policies, strategies, plans and projects for administering the special career service; administering the special career service and supervising compliance with the rules governing it, deciding on technical and operational matters, and adopting the instruments needed to conduct selection processes or exams; carrying out selection processes to fill career service positions directly or through inter-agency contracts as indicated in the present Decree Law; establishing the type of merit based-based process for each vacancy announcement and the screening and classification phases of the selection process and competition; establishing the types of text to be used in selection processes, bearing in mind the area to which the announced vacancy pertains, the nature of its functions and responsibilities and the requirements for performing them; settling any claims and appeals that may arise during selection processes or competition and with respect to registration in the Public Career Service Roster; declaring selection or competitive processes void when the circumstances indicated in this Decree law arise; drawing up, modifying, and adding to the list of persons eligible to fill special career service positions and sending the final lists to the appointer, so that he can proceed to make the trial period appointment.

[113] Article 27 of the aforementioned Decree Law states that the entry or promotion selection or exam process comprises the following stages: 1) Announcement; 2) Inscription; 3) Verification of compliance with the minimum requirements needed to do the job; 4) Publication of the list of candidates admitted to the text or competitive process; 5) The carrying out of the selection tests; 6) The drawing up of lists of eligible persons; 7) Security screening; 8) Trial period. Subsequent articles regulate each of those stages, with Article 30 stating that the announcement of an entrance exam must be posted on the website and published in one (1) advertisement in a national circulation newspaper at least ten (10) days prior to the start of the inscription stage, while Article 35 stipulates that the lists of eligible persons shall be drawn up on the basis of the exam or selection process results, in strict order of merit and with the candidates who pass the texts in the manner pre-established in the vacancy announcement. It further states that the definitive filling of the positions announced will be in strict descending order, one the list of eligible persons has been finalized and after the security screening referred to in the present Decree Law.

[114] Article 45 of the above-mentioned Decree Law refers to annulment of the selection or competitive process and indicates that the Special Career Service Commission must declare a selection or competitive process void within five (5) days of it ascertaining that no candidate was registered to take the test or undergo the selection process, or the number of inscribed participants was lower than that required in the case of a competition for promotion, or else that none of the registered candidates met the

requirements for the position, or none of them passed the screening tests. Chapter IV regulates appeals allowed on the grounds that someone was not admitted to a competitive or selection process and appeals against test results, while Chapter VII sets forth rules governing the Public Career Service Roster.

[115] Finally, Article 118 of the aforementioned Decree Law establishes that within three (3) years of the entry into force of the present Decree Law, competitions must be held for career service positions that are definitively vacant or filled through provisional appointment or assignment, and that to guarantee continuity of unimpaired service, the competitions to fill career service positions in the FGN shall be gradual and staggered, taking into account staffing levels in the areas of the positions to be filled.

[116] - Resolution 0021 of 2016, updating the Specific Manual of Functions and Requirements for employees working for the Office of the Attorney General of the Nation, as part of the "Human Resource Management" process.

b) Observations

[117] The Committee would like to recognize the new regulatory measures adopted by the country under review to continue to push forward with the creation, maintenance, and strengthening of its systems of government hiring as referred to in Article III (5) of the Convention.

[118] Nevertheless, some considerations are deemed appropriate regarding the advisability of supplementing, developing, and/or adjusting certain provisions referred to in these new developments, without prejudice to the observations put forward by the Committee in foregoing section 1.1.1 in relation to the follow-up to implementation of the recommendations made to the country under review in the Second Round report.

- With respect to public servants in the Executive Branch and territorial entities, the Committee has the following to say:

[119] The Committee notes, with respect to Article 1 of Decree 4968 of December 27, 2007 that, even though it sets a six-month limit on assignments and provisional appointments to career service positions, the same provision states that on grounds of a restructuring, merger, transformation, or winding down of an entity or when the head of the entity concerned deems it strictly necessary for the provision of services, an extension may be authorized of assignments and provisional appointments when special circumstances prevent the organization of a vacancy announcement process by the established deadline, until such time as that process becomes feasible.

[120] On that, it is worth bearing in mind that during the on-site visit the CNSC and the Civil Service Administrative Department (DAFP) pointed out that, due to the circumstances already mentioned in Section 1.1.1 of this report that meant that Vacancy Announcement No. 001 of 2005, in which 64,706 vacancies were announced, could not be completed until 2013, there had been provisional appointments lasting up to eight years and that even now, when such large vacancy announcements are no longer made, there are instances of provisional appointments lasting some two years on average, whereas ideally they should not last more than one year, which would allow reasonable time to arrange the competitive process for the position to be filled on merit.

[121] Bearing in mind that assignment and provisional appointment are inherently transitory and exceptional, as provided for in the same Article 1 of Decree 4968 of 2007, the Committee will make a recommendation to the country under review that it consider amending that provision to set a limit on extensions of assignments and provisional appointments to career service positions authorized by the National Civil Service Commission (See Recommendation 1.1.3.11 in section 1.1.3 of Chapter II of this report).

[122] Regarding the above, it is worth mentioning that during the on-site visit, the civil society organization “Corporación Transparencia por Colombia” gave a presentation on one of its instruments called the Transparency in Government Institutions Index (ITEP),<sup>33</sup> which revealed the existence of a large number of provisional appointments to career service positions.

[123] At the same time, during the on-site visit, the civil society organization “Funsocial Crecer Colombia” pointed out that, in practice, temporary hirings, such as provisional appointments, which are meant to be exceptions according to the Political Constitution and administrative career provisions, have become the rule in both national and territorial entities.

[124] For his part, an academic at the Advanced School of Public Education (ESAP) pointed out during the on-site visit that although approximately 90 percent of positions are administrative career position pursuant to Article 125 of the Political Constitution and the laws applying it, in practice, in some institutions up to half of all careers positions are being filled on a provisional basis.

- With respect to public servants in the Legislative Branch, the Committee has the following to say:

[125] While the Chamber of Representatives has a Manual of Functions and Minimum Requirements for its staff positions, adopted by Resolution No. 1095 of 2010, that is posted on its website, the Senate lacks such a Manual. Although, during the on-site visit, the Senate provided two documents plus a study it had commissioned from the Advanced School of Public Education (ESAP),<sup>34</sup> entitled "Manual of Functions and Labor Skills for the Legislative Area of the Senate of the Republic" and "Manual of Functions and Labor Skills for the Administrative Area of the Senate of the Republic," there is no indication in those documents that they have been adopted as manuals of functions and requirements for staff positions in the Senate, nor are they posted on its website.

[126] Bearing in mind that Article 122 of the Political Constitution establishes that "Every public occupation will have its functions detailed by law or regulation," and that pursuant to Articles 1, 2, and 3 of Decree 770 of 2005 each institution must establish the labor skills, functions, and specific requirements for each position, as clearly indicated also in Resolution No. 1095 of 2010 with regard to the Manual of Functions, Requisites and Competencies of the Chamber of Representatives, the Committee will offer a recommendation to the country under review that it consider adopting, through the appropriate authority, the Manual of Functions, Requisites and Competencies for staff positions in the Senate of the Republic, and posting it on the Senate website, in accordance with Articles 5.a, 7, and 9.b of Law 1712 of 2014, which provides that all general and regulatory provisions, policies, guidelines, and manuals shall be included in the minimum mandatory information that all public entities in any branch of government are required to post on their website (See Recommendation 1.1.3.12 in section 1.1.3 of Chapter II of this report).

- With respect to public servants in the Judiciary, the Committee has the following to say:

[127] The Committee notes that paragraph 3 of Article 11 of Legislative Act No. 02 of 2015 provides that the Supreme Court of Justice and the Council of State shall, respectively, regulate the voting formula and time frame for electing their judges.

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<sup>33</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>34</sup> Available at: <http://www.oas.org/juridico/spanish/col.htm>

[128] On this, the Higher Council of the Judiciary provided the General Rules of Procedure of the Supreme Court of Justice (Decision No. 006 of December 12, 2002, and approved addenda thereto)<sup>35</sup> and the Internal Rules of Procedure of the Council of State (Decision No. 58 of 1999, amended by Decision No. 110 of June 2, 2015).<sup>36</sup> The Committee was told that, bearing in mind that those Rules of Procedure and regulatory amendments predate the entry into force of Legislative Act No. 02 of (July 1) 2015, it is true to say that there is still no regulatory provision in either body that meets constitutional provision contained in Article 11 of Legislative Act No. 02 of 2015. The Committee was also told by the Higher Council of the Judiciary that the above does not mean that the regulations of each of those two bodies do not contemplate the voting system for electing their judges, because, as a glance at their regulations shows, there are indeed arrangements for elections; what still needs to be established is the specific time frame for holding them.

[129] Bearing in mind that, as the Higher Council of the Judiciary reports, the aforementioned regulatory provisions for both the Supreme Court of Justice and the Council of State predate the entry into force of Legislative Act No. 02 of 2015 and that, while they regulate the election of their judges,<sup>37</sup> the time frame for electing them is not regulated as required under Article 11 of that Legislative Act, the Committee will offer a recommendation in that regard to the country under review (See Recommendation 1.1.3.13 in section 1.1.3 of Chapter II of this report).

- With respect to public servants in the Office of the Attorney General of the Nation (FGN), the Committee has the following to say:

[130] First, the Committee observes that Article 11.3 of Decree Law No. 020 of 2014 provides that "Definitively vacant special career positions may also be filled provisionally by persons not selected through the merits system, until the position is filled through competition or the selection process," without a limit being set on the maximum amount of time said provisional appointment may last.

[131] On that, the Committee reiterates the recommendation it already made to the country under review in the Second Round report that it consider setting a time limit on a provisional appointment made to fill a definitive vacancy, because that appointment constitutes a transitory way of filling career service positions, as already stated in that report. Regarding that recommendation, in Section 1.1.3 of Chapter II of the present report the Committee has already analyzed the statements made in that regard by the country under review and pointed to the need for it to continue to heed that recommendation.

[132] Second, the Committee observes, in relation to Resolution 0021 of 2016, updating the Specific Manual of Functions and Requisites in respect of employees working for the Office of the Attorney General of the Nation (FGN) as part of the "Human Resource Management" process, that neither said Resolution nor the Specific Manual of Functions and Requisites it refers to have been posted on the FGN website.

[133] On this, bearing in mind that pursuant to Law 1712 of 2014, articles 5.b, 7, and 9.b of which include in the mandatory minimum information that all government entities, including autonomous oversight bodies, must post on their website, all their general and regulatory provisions, policies, guidelines, and manuals, the Committee will offer a recommendation to the country under review that it consider posting on the website of the Office of the Attorney General of the Nation (FGN) the Specific

<sup>35</sup> Available at: : <http://www.cortesuprema.gov.co/corte/index.php/reglamento-general-de-la-corporacion/>

<sup>36</sup> Available at: <http://www.consejodeestado.gov.co/documentos/nuestraentidad/Acuerdo110de2015.pdf>

<sup>37</sup> Articles 38 to 42 of Decision No. 006 of 2002, which contains the General Rules of Procedure of the Supreme Court of Justice, regulate the election of the judges of that body, while Article 1 of Decision No. 110 of 2015, amending Article 45 of Decision 58 of 1999, which contains the Internal Regulations of the Council of State, regulates the election of judges in that Council.

Manual of Functions and Requisites in respect of employees working for the FGN and updates thereto (See Recommendation 1.1.3.14 in section 1.1.3 of Chapter II of this report).

#### **1.1.2.2. New developments with respect to technological aspects**

[134] In its Response to the Questionnaire,<sup>38</sup> the country under review lists the following new developments of this kind in respect of the Executive Branch and territorial entities:

[135] - "The Government Employment Information and Management System (SIGEP) is the information system used by the Colombian State for its public classification of its civil servants and institutions and for making public policy decisions and guidelines. To fulfill that function, the System currently covers 83 percent of institutions and public servants (including contractors) in the National Executive Branch."

[136] "Starting in second half 2016, work has been done on designing and developing Version 2 of the SIGEP, which aims to make the app more flexible and improve both the gathering and quality of the information recorded."

[137] - "Supplementing that work, and with a view to generating technological tools to support the public sector manager selection process, the Civil Service Administrative Department has been working on the development and implementation of a Public Sector Manager Database. The idea behind this database is to provide Senior Public Sector Management with information on current and potential public sector managers who, thanks to their training and experience, are in a position to play leading roles in Public Administration in Colombia."

[138] "Currently, the Public Sector Manager Database lists 12,305 public sector managers or candidates to be public sector managers, nearly three-quarters of whom (74 percent) have postgraduate certificates or degrees (a specializations M.A. or Doctorate) and 70 percent are proficient in English."

[139] Furthermore, during the on-site visit, the Civil Service Administrative Department reported that, as of December 2016, the SIGEP had information on all (100 percent) public servants in the national Executive Branch, and that bidding documents are currently being prepared for the IGEP II tender (still missing are data for the territorial entities).

[140] At the same time, during the on-site visit, the National Civil Service Commission (CNSC) provided information regarding the System to Support Merit, Equality, and Opportunity (SIMO), which, as provided for in Numbered Section 3 of CNSC Circular No. 20161000000057 of September 22, 2016, is an I.T. tool posted on the CNSC website that seeks to centralize management of merit-based competitive processes: [www.cnsc.gov.co](http://www.cnsc.gov.co).

[141] The Committee takes note of the new developments reported by the country under review relating to technological aspects of public servant hiring systems for the Executive Branch and territorial entities and, bearing in mind with respect to the Government Employment Information and Management System (SIGEP) the importance of completing the design and development of the second version thereof, which, as the country under review points out in its Response to the Questionnaire, seeks to make the app more flexible, so as to improve both the gathering and quality of the information recorded, the Committee will offer a recommendation in this regard (See Recommendation 1.1.3.15 in section 1.1.3 of Chapter II of this report).

[142] Moreover, bearing in mind that, with respect to the SIGEP, it was pointed out during the on-site visit that the information for the territorial entities is still missing, the Committee will offer a recommendation to

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<sup>38</sup> Response of Colombia to the questionnaire, pp. 81 and 82.

the country under review that it consider adopting the measures needed to ensure that those entities provide said information in a timely manner (See Recommendation 1.1.3. 16 in Section 1.1.3 of Chapter II of this report).

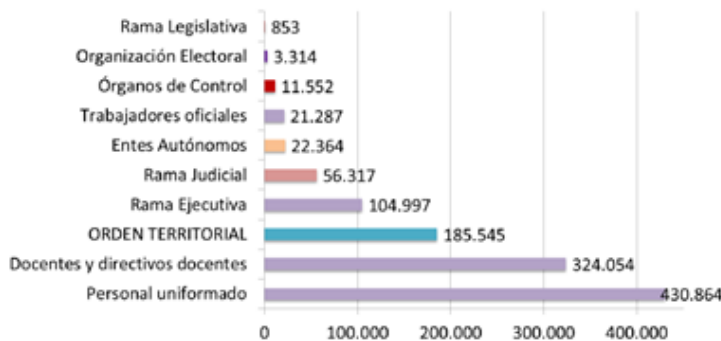
[143] Finally, as regards the System to Support Merit, Equality, and Opportunity (SIMO), it is worth mentioning that in Section 1.1.1 of this report the Committee already pointed to the importance of having the entities whose career systems are administered and supervised by the CNSC furnish timely information to it, through the SIMO, regarding definitive vacancies for career service positions vacancies, so as to be able to draw up the Public Offering of Career Service Jobs (OPEC), and in Section 1.1.3 of Chapter II of this report offered a recommendation in that regard to the country under review.

[144] The country under review also reported, in the section of its Response to the Questionnaire<sup>39</sup> regarding the hiring of public servants in the Office of the Attorney General (FGN), that on March 18, 2016, the app was launched for administering the Public Career Service Roster (RPIC). During the on-site visit, it added that the screening of the Roster was in its final stages and that once that process was completed there would be total certainty as to the number of vacancies to be announced. It should be pointed out, with regard to the above, that, in Section 1.1.1 of this report, the Committee already indicated the importance of completing that screening process and, in Section 1.1.3 of Chapter II of this report, offered a recommendation in that regard to the country under review.

### 1.1.2.3. Results

[145] First, in its Response to the Questionnaire regarding outcomes relating to the hiring of personnel in general,<sup>40</sup> the country under review noted, along with other information, the following: "Thanks to the strengthening of the SIGEP and the various measures adopted in order to obtain Government employment information, data are now available to facilitate classification and public policy decision making with respect to the administration of personnel serving the Colombian State. Following are some data on government employment in Colombia, with a cut-off date of June 2016:"

[146] "Distribution of Public Servants in Colombia:"<sup>41</sup> [Tr: Key to the chart below: Legislative Branch; Electoral Authority; Oversight Bodies; "Official workers" [see text]; Autonomous Entities; Judiciary; Executive Branch; AT THE TERRITORIAL LEVEL; Teachers and education system management; Personnel in uniform]



[147] "Colombia has 1,161, 148 public servants (2.38 percent of the population). Teachers (28 percent) and Men and Women in Uniform (37 percent) account for nearly two-thirds (65 percent) of the Government workforce."

<sup>39</sup> Response of Colombia to the questionnaire, pp. 62

<sup>40</sup> Response of Colombia to the questionnaire, pp. 83

<sup>41</sup> On August 14, 2017, the country under review reported that up-to-date information in that regard is available for consultation at the following link: <http://www.funcionpublica.gov.co/fichas-sectoriales1>

[148] Second, during the on-site visit, the country under review reported that "for the national Executive Branch, jobs are classified as follows:"

[149] "Number of jobs and their classification - National Executive Branch" [Tr. Key to the chart below: : Official Workers: 20,384; General Regime: Subject to Free Appointment and Removal: 23,413; Administrative Career: 77,315; Fixed-term: 28; Temporary Staff: 7,906; Teachers: Financed by the "General System of Participations" (Tr. national resources transferred to the territorial entities, i.e., departments, districts and municipalities) 324,253; Public Universities and Others: 4,026; Men and Women in Uniform: National Police: 176,870; Armed Forces: 233,373. TOTAL 867,568.]



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[150] During the on-site visit, the DAFP also reported that: In Colombia there are 134,756 vacant positions: National, approximately 29 percent (29,932), Territorial entities, approximately 65 percent (104,824)."<sup>42</sup>

[151] During the on-site visit, the DAPF also provided a statistical table on "government officials hired in career service positions through temporary or provisional appointments" in the National Executive Branch.<sup>43</sup> It shows that of the 29,932 vacant positions, 4,723 were in assignment, 5,384 had not been filled, and 19,825 were filled on a provisional basis.

[152] The DAPF also provided the document entitled "Annual Vacancy Plan - National and Territorial - September 2016," in which, in respect of the territorial entities reporting information on vacancies,<sup>44</sup> a table on page 21 shows that of the 61,117 vacancies reported, 10,829 were in assignment, 7,723 had not been filled, and 42,565 had been filled on a provisional basis.

[153] The National Civil Service Commission (CNSC) also provided information during the on-site visit regarding the number of vacancies reported in the Public Offering of Career Service Positions (OPEC), which includes information on the National Executive Branch and the territorial entities. According to that source, at February 28, 2017, the total number of vacancies was 92,549. Competitive processes were being conducted to fill 44,123 of them.

[154] For its part, during the on-site visit, the DAPF shared Draft 1, dated March 24, 2017, of a "CONPES document" called "Government Employment Policy Guidelines" to be processed by the National Economic

<sup>42</sup> Source: 2016 Annual Vacancy Plan, cut-off date for the information: December 31, 2015.

<sup>43</sup> Source: 2016 Annual Vacancy Plan, cut-off date for the information: December 31, 2015.

<sup>44</sup> According to information provided on page 21 of the 2016 Annual Vacancy Plan, 2,638 territorial entities out of a total number of 5,413 such entities, or 49 percent, provided information. That document is available at: Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

and Social Policy Council (CONPES). Inter alia, it notes the following: "Between 1999 and 2004 there were no selection processes for career civil servants, due to a judgment handed down by the Constitutional Court regarding the legality of selection processes. While recruitment resumed in 2005, there are still a large number of vacant positions. Moreover, the budget constraints continue. To the extent that demands on the State continued to grow during that period, workforce needs were met by hiring a significant number of off-payroll personnel."

[155] The aforementioned document also notes under "Recommendations": "REQUEST THE NATIONAL CIVIL SERVICE COMMISSION: 1. To make, in coordination with the Ministry of Finance and Public Credit (MHCP)<sup>45</sup> and the PADF, the necessary planning arrangements to cover the vacancies in National Executive Branch institutions within no more than five years.<sup>46</sup> - 2. To make, in coordination with the territorial entities and the PADF, the necessary arrangements to cover the vacancies in the Territorial Executive Branch entities within no more than five years."

[156] With respect to the above, it is to be noted that the Committee understands that due to the circumstances described in the aforementioned draft "CONPES document" there have been delays in organizing competitive processes to fill vacancies, so that many of those positions have been filled by assignment or provisional appointments. However, bearing in mind the purposes of the Convention with respect to the hiring of public servants and the provisions on that matter in force in Colombia,<sup>47</sup> the Committee will offer a recommendation to the country under review that it consider taking the steps needed to issue those vacancy announcements so that within no more than five years (indicated in the aforementioned "CONPES document") the positions that are currently vacant in national and territorial Executive Branch entities may be filled through public competitive processes (See Recommendation 1.1.3.17 in Section 1.1.3 of Chapter II of this report).

[157] During the on-site visit, the National Civil Service Commission (CNSC) also reported that the idea is to conduct the competitive processes in less time and at less cost by taking such steps as combining in a single vacancy announcement similar positions in different institutions and ensuring that the process is completed within one year (as opposed to the current average of two years).

[158] Bearing in mind the purposes pursued by the Convention with respect to the merit-based hiring of public servants, especially efficiency, and the provisions currently in force in Colombia in this regard, particularly Title 6 of Decree 1083 of 2015 regulating the different phases in selection processes, the Committee will offer a recommendation to the country under review that it consider adopting the measures needed to shorten selection processes, so that they can be completed within one year (See Recommendation 1.1.3.18 in Section 1.1.3 of Chapter II of this report).

[159] At the same time, the DAPF provided the following information during the on-site visit: "Contractors (*contratistas*), as opposed to public servant staff members, account for 66 percent of National Executive Branch positions. Contractors (*contratistas*), as opposed to public servant staff members, account for 86 percent of Executive Branch positions in territorial entities.

[160] Regarding the above, the Committee understands the statements by the country under review in the aforementioned draft "CONPES document" to the effect that "[t]o the extent that demands on the State continued to grow during that period, workforce needs were met by hiring a significant number of off-payroll

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<sup>45</sup> Ministry of Finance and Public Credit

<sup>46</sup> On August 14, 2017, the country under review reported that although the "CONPES Document" referred to in this paragraph mentioned a time frame of five years for carrying out the steps indicated in it, it is now considered that those steps will be completed in two years.

<sup>47</sup> Article 125 of the Political Constitution, in conjunction with Article 5 of Law 909 of 2004 and with Articles 2.2.2.5.3.1 and 2.2.2.5.3.2 of Decree 1083 of 2015.



personnel," but bearing in mind that, pursuant to Article 2.2.5.1.7 of Decree No. 1083 of 2015, except in respect of legal provisions for "official workers" no service contracts may be entered into for the performance of public functions of a permanent nature (in which case corresponding positions shall be created), the Committee will offer a recommendation to the country under review that it consider adopting such measures as are necessary to prevent the use of service contracts as a means for carrying out the functions or duties of permanent staff positions (See Recommendation 1.1.3.19 in Section 1.1.3 of Chapter II of this report).

[161] The Committee acknowledges the efforts being undertaken by the country under review with respect to the above-mentioned matter, reflected in Chapter 1 (Staff Jobs) of the Final Minutes of the Collective Bargaining Agreement with Government Employee Trade Unions, sent as an attachment to the response to the questionnaire. There the parties agree to drawing up a timetable for identifying the National Executive Branch institutions that have a significant number of services contracts or other forms of hiring, in order to see whether permanent position functions are being performed that should be performed by staff and to propose establishing the corresponding positions.

[162] Regarding the above, it is worth mentioning that during the on-site visit, the civil society organization "Corporación Transparencia por Colombia" gave a presentation on one of its instruments called the Transparency in Government Institutions Index (ITEP),<sup>48</sup> which revealed the existence of a large number of people hired through services contracts in government institutions.

[163] For its part, the civil society organization "Funsocial Crecer Colombia" also pointed out during the on-site visit that various forms of hiring, such as services contracts, are displacing administrative career jobs and generating injustice, as individuals hired in this way do not enjoy the same social welfare benefits as public servants. Such hiring methods also lend themselves to political favoritism.

[164] An academic from the Advanced School of Public Education (ESAP) pointed out, also during the on-site visit, that in some institutions the number of people hired via services contracts doubles the number of staff.

[165] The DAFP furnished the following information, during the on-site visit, regarding "Meritocracy as a Basic Pillar of Government Employment":

[166] - "132 Directors of State-owned Social Corporations (ESE)<sup>49</sup> evaluated in person and on-line due to changes in appointment."

[167] - "4,809 persons evaluated in public competitive processes conducted to fill slates (short lists) for the position of regional director of the ICBF,<sup>50</sup> ESAP,<sup>51</sup> INVIAS,<sup>52</sup> SENA,<sup>53</sup> ICA,<sup>54</sup> IGAC.<sup>55</sup>"

[168] - "5,195 persons evaluated through merit-based processes to hold positions subject to free appointment and removal positions filled through merit-based processes."

[169] - "121 Internal Audit Supervisors in the national Executive appointed by the President of the Republic, following open competition and merits-based processes."

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<sup>48</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>49</sup> State-owned Social Corporations

<sup>50</sup> Colombian Family Welfare Institute

<sup>51</sup> Advanced School of Public Education

<sup>52</sup> National Roads Institute

<sup>53</sup> National Training Service

<sup>54</sup> Colombian Agriculture and Livestock Institute

<sup>55</sup> Agustín Codazzi Geographical Institute

[170] - "4,680 candidates for the position of spokesperson were evaluated by ESAP."

[171] Finally, during the on-site visit, the DAFP pointed out that turnover is high among public sector managers, who last on average one to two years in their position, when at least three years would be more useful from a civil service perspective. Bearing in mind the efforts being made by the country under review to develop "meritocracy as the basic pillar of government employment" in hiring such officials, the costs associated with that, and the value for the civil service of attracting and retaining human talent, the Committee will offer a recommendation that the country under review consider taking the necessary steps to induce public sector managers to stay longer in public service, without prejudice to their status as officials subject to free appointment and removal (See Recommendation 1.1.3.20 in Section 1.1.3 of Chapter II of this report).

[172] Third, during the on-site visit, the country under review provided, inter alia, the following information on outcomes in respect of the hiring of personnel in the Legislative Branch:

[173] Regarding the Chamber of Representatives: [Tr: The following Table lists the "Number and percentage of public servants hired: through merit-based selection processes; through provisional appointment; to "free appointment and dismissal positions"; to elective positions (elected by the Plenary or a Commission); to career positions through exceptional appointment; on services contracts]

	2012		2013		2014		2015		2016	
	Numero	Porcentaje	Numero	Porcentaje	Numero	Porcentaje	Numero	Porcentaje	Numero	Porcentaje
Número y porcentaje de funcionarios públicos vinculados mediante el proceso de selección meritosa.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	9	44%
Número y porcentaje de funcionarios públicos vinculados en cargos de carrera, por medio de nombramiento provisional.	4	1,40%	11	3,86%	8	2,81%	11	3,86%	16	5,61%
Número y porcentaje de funcionarios públicos vinculados en cargos de libre nombramiento y remoción.	27	9,47%	21	7,37%	26	9,12%	24	8,42%	34	11,93%
Número y porcentaje de funcionarios públicos vinculados en cargos de elección, (elegidos por la Plenaria o Comisión).	3	1,05%	0	0	14	4,91%	0	0	2	0,70%
Número y porcentaje de funcionarios públicos vinculados en cargos de carrera mediante nombramiento de excepción.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Número y porcentaje de funcionarios públicos vinculados por prestación de servicios.	879	47,1%	1.107	59,3%	938	50,2%	761	40,8%	885	53,2%

[174] In addition to the foregoing statistical table, which forms part of the Power Point presentation given by the Chamber of Representatives during the on-site visit, the Committee was told during that visit that the number of people working in that body is approximately 2,000, about 1600 of whom correspond to the Legislative Work Units of the Representative. Of the 287 staff positions in the Chamber, 240 are administrative career position, 100 of which are held by career officers and 140 by provisional appointees. The remaining positions are either elective or held by senior management.

[175] Taking into consideration the large number of career positions being filled through provisional appointments in the Chamber of Representatives and the importance -- for full compliance with the purposes of the Convention regarding the hiring of public servants and with the provisions on the subject

in force in Colombia<sup>56</sup> -- of those positions being filled through public merit-based competitive processes, the Committee will offer a recommendation to the country under review that it consider taking the necessary steps to issue vacancy announcements so that career positions that are currently vacant or filled by provisional appointees or by assignment can be filled through public competition by a deadline to be determined in a schedule adopted to that end (See Recommendation 1.1.3.21 in Section 1.1.3 of Chapter II of this report).

[176] The Commission also notes that the figures in the statistical table provided by the Chamber of Representatives during the on-site visit show that the Chamber has a large number of people hired through service contracts. According to information provided by the representative of the Chamber during the on-site visit, this is due to the fact that the Chamber of Representatives is under-staffed and suffers from obsolete staffing arrangements, so that, to perform its functions, it has had to resort to service contracts. According to the same source, this situation may become more complicated after 2018, when 26 more Representatives are added to today's 167, without the Ministry of Finance having provided the funds needed to increase the number of staff positions.

[177] Bearing in mind the large number of people hired by the Chamber of Representatives using services contracts for the performance of functions in that body that should be performed by regular staff, and even though it understands the explanation afforded during the on-site visit that this is due to under-staffing, the Committee will offer a recommendation to the country under review that it consider taking the necessary steps to ensure that hiring through service contracts is not used as a means for carrying out functions or duties of permanent staff positions (See Recommendation 1.1.3.22 in Section 1.1.3 of Chapter II of this report).

[178] Regarding the above, it is worth mentioning, too, that a document provided by the Chamber of Representatives, containing an "Organization Proposal" by Fundación Creamos Colombia, which was commissioned by the Chamber to conduct a study, states, *inter alia*, that: "the widespread defects associated with under-staffing and positions that do not match the required profiles, mentioned by most of the personnel interviewed, and the existence of a large number of people on service contracts, have a detrimental effect both operationally and in terms of morale."

[179] Regarding the Senate of the Republic: [Tr. The following Table lists numbers and percentages for staff positions; persons hired through merit-based selection processes, through temporary or provisional appointments, through exceptional appointments; to free appointment and dismissal positions; to free appointment and dismissal positions in Legislative Work Units; under services contracts; appeals against hiring decisions.]

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<sup>56</sup> Article 125 of the Political Constitution, in conjunction with Article 384 of Law 5 of 1992 and with Article 5 of Law 909 of 2004.

DESCRIPCIÓN	2012	2013	2014	2015	2016
Número de Funcionarios de la Planta.	1188	1193	1153	1171	1203
Número y porcentaje de funcionarios públicos vinculados mediante procesos de selección meritatoria. (Funcionarios de elección).	2 0,16 %	0 0 %	11 1 %	2 0,16 %	2 0,16 %
Número y porcentaje de funcionarios públicos vinculados en cargos de carrera mediante nombramientos temporales o provisionales.	32 y 2E 3,7 %	12 y 13E 1 %	26 y 10E 2,2 %	31 2,64 %	13 1 %
Número y porcentaje de funcionarios públicos vinculados en cargos de carrera mediante nombramientos de excepción.	0 0 %	0 0 %	1 0,08 %	0 0 %	1 0,08 %
Número y porcentaje de funcionarios públicos vinculados en cargos de libre nombramiento y remoción.	37 3,1 %	35 2,93 %	27 2,34 %	30 2,56 %	37 3 %
Número y porcentaje de funcionarios públicos vinculados en cargos de libre nombramiento y remoción empleados de Unidades de Trabajo Legislativo.	899 75 %	898 75 %	862 74 %	875 74 %	898 74 %
Número y porcentaje de personas vinculadas mediante la utilización de regímenes de prestación de servicios profesionales a título personal, tales como contratos de asesoría o consultoría.	710 37 %	823 40 %	652 36 %	510 30 %	618 34 %
Número y porcentaje de recursos promovidos en contra de resoluciones dictadas en los procesos de reclutamiento y el estado procesal de las mismas.	0 0 %	0 0 %	0 0 %	1 0,01 %	0 0 %

[180] Considering that in the above statistical table, which forms part of the Power Point presentation given by the Senate during the on-site visit, as well as in a chart shown in that presentation on the "average percentage of public servants hired through selection processes" in 2012 to 2016, it transpires that one (1) percent of public servants were hired through a "merit-based selection process" and 99 percent through the "free appointment and removal" mechanism, and bearing in mind the purposes of the Convention concerning the hiring of public servants and that, according to provisions in force in Colombia,<sup>57</sup> all public servants must be appointed through public merit-based competitive processes, with the free appointment and removal arrangement being the exception, not the rule, the Committee will offer a recommendation to the country under review that it consider taking the necessary steps to ensure that the hiring of public servants to staff the Senate of the Republic is, as a general rule, done through public merit-based competitive processes and only exceptionally on a free appointment and removal basis (See Recommendation 1.1.3.23 in Section 1.1.3 of Chapter II of this report).

[181] The Committee also notes that, according to the figures in the statistical table provided by the Senate during the on-site visit, there are a large number of people in the Senate who were hired through service contracts. According to the person representing the Senate during the on-site visit, this is due to under-staffing, so that, not having enough staff to perform its functions, the Senate had had to resort to that form of hiring.

[182] Bearing in mind the large number of people hired by the Senate of the Republic using services contracts for the performance of functions in that body that should be performed by regular staff, and even though it understands the explanation afforded during the on-site visit that this is due to under-staffing, the Committee will offer a recommendation to the country under review that it consider taking the necessary steps to ensure that hiring through service contracts is not used as a means for carrying out functions or duties of permanent staff positions (See Recommendation 1.1.3.24 in Section 1.1.3 of Chapter II of this report).

[183] Fourth, during the on-site visit, the country under review provided, inter alia, the following information on outcomes in respect of the hiring of personnel in the Judiciary: [Tr. Key to Table below:

<sup>57</sup> Article 125 of the Political Constitution, in conjunction with Article 384 of Law 5 of 1992 and with Article 5 of Law 909 of 2004.

Positions; Units; Career staff. Magistrates/Judges. Divisions of Sectional Councils of the Judiciary. Disciplinary Divisions of Sectional Councils of the Judiciary. Administrative Tribunals. Higher Courts. Ordinary Jurisdiction. Actions under Administrative Law. Source: Judicial Career Administration Unit - Higher Council of the Judiciary. \* In 2015, the Higher Council of the Judiciary established 5,941 positions in the Judiciary, which altered the career positions percentage for the 2016 fiscal year. \*\* Position in municipal mixed-jurisdiction courts are difficult to fill because persons listed in the Registries do not opt for such courts. Public order problems.]

Cargos	Dependencias	En carrera	En carrera
		2015	2016*
Magistrados	Salas Consejos Seccionales de la Judicatura	100%	96.08%
	Consejos Seccionales de la Judicatura Salas Disciplinarias	100%	82.76%
	Tribunales Administrativos	100%	82.95%
	Tribunales Superiores	100%	92.52%
Jueces	Jurisdicción Ordinaria**	83.70%	56.74%
	Jurisdicción Contenciosa	99.61%	61.70%

Fuente: Unidad de Administración de la Carrera Judicial – Consejo Superior de la Judicatura

\*El Consejo Superior de la Judicatura durante el año 2015, realizó la creación de 5.941 cargos de servidores judiciales, lo cual afectó el porcentaje de cobertura de cargos de carrera para la vigencia 2016

\*\*Los juzgados promiscuos municipales son difíciles de proveer porque los integrantes de los registros no optan por esas sedes. Problemas de orden público.

[184] It should be noted that, in its Response to the Questionnaire,<sup>58</sup> the country under review mentioned the following difficulty regarding the selection processes that the Higher Council of the Judiciary (CSJ) is supposed to conduct:

[185] - "The Higher Council of the Judiciary is required to have Rosters of Eligible Candidates for all positions. However, given the shortage of personnel to conduct that task, 26 people at the central level (Judicial Career Administration Unit), which covers roughly 33,000 justice operator positions in the Judiciary, selection processes are not conducted as expeditiously as they should be, even though, currently, vacancies have been announced for all positions."

[186] Ministry of Finance and Public Credit support is needed in order to be able to expand the staff of the Judicial Career Administration Unit, because, although this year a budget allocation was added for permanent staff positions, it was only for the judicial part, not the administrative area providing support services for the Judiciary."

[187] Regarding the above information, the Committee understands that although, as shown in the statistical table on outcomes in respect of the hiring of personnel in the Judiciary, the creation of 5,942 justice operator positions affected the coverage of career positions in fiscal year 2016, bearing in mind the purposes of the Convention regarding the hiring of public servants and provisions on the subject in force in Colombia,<sup>59</sup> it is necessary to complete the corresponding selection processes, and for that reason, taking into consideration also the difficulty pointed out associated with under-staffing of the Judicial Career Administration Unit of the CSJ, the Committee will offer a recommendation to the country under review regarding this matter (See Recommendation 1.1.3.25 in Section 1.1.3 of Chapter II of this report).

[188] During the on-site visit, the Higher Council of the Judiciary also listed as a difficulty the increased number and complexity of complaints/appeals filed in respect of the competitive selection process announcements by candidates to government official and employee positions and judicial decisions

<sup>58</sup> Response of Cþombia to the questionnaire, pp. 58 and 59.

<sup>59</sup> Article 125 of the Political Constitution, in conjunction with Articles 130 and 132 of Law 270 of 1996.

suspending selection processes and competitive exams for said positions. Bearing that in mind, the Committee will offer a recommendation to the country under review that it consider conducting an analysis of the possible reasons for the increased number of complaints and judicial suspensions of selection processes and merit-based exams for government official and employee positions, with a view to taking any corrective measures needed (See Recommendation 1.1.3.26 in Section 1.1.3 of Chapter II of this report).

[189] At the same time, bearing in mind that the country under review did not provide information, in respect of the Judiciary, regarding officials hired for career positions through provisional or temporary appointments; appointments to positions subject to free appointment and removal; and public servants hired through professional services contracts, such as consultancy contracts, the Committee will offer a recommendation to the country under review in this regard (See Recommendation 1.1.3.27 in Section 1.1.3 of Chapter II of this report).

[190] Fifth, both in its Response to the Questionnaire and during the on-site visit, the country under review provided information in respect of outcomes for the hiring of personnel in the Office of the Attorney General of the Nation (FGN), which was recorded and analyzed by the Committee in Section 1.1.1 of the present report, and in section 1.1.3 of Chapter II thereof the Committee offered recommendations to the country under review that it take the necessary steps to complete the process of implementing the special career service of the FGN and the screening of the Public Career Service Roster (RPIC).

[191] In addition, bearing in mind that the country under review did not provide any information in respect of the FGN, regarding officials hired through professional services contracts, such as consultancy contracts, and that it said that under the institution's current policy there were no plans to do so, the Committee will offer a recommendation to the country under review to the effect that it consider compiling statistics in that regard in case that mode of hiring is used at the FGN in the future. (See Recommendation 1.1.3.28 in Section 1.1.3 of Chapter II of this report.)

### **1.1.3. Recommendations**

[192] In light of the comments made in Sections 1.1.1 and 1.1.2 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

- 1.1.3.1 Complete the competitive selection processes to fill in a transparent way the administrative career positions currently filled by means of provisional appointments or on an assignment basis that, due to a variety of circumstances, were not filled through Vacancy Announcement 001 of 2005 (see paragraph 34 in section 1.1.1 of Chapter II of this report).
- 1.1.3.2 Make appropriate arrangements with other States Parties that it considers could provide technical cooperation on mechanisms to make selection processes more efficient and enable public sector institutions to hire suitable personnel through processes that take less than one year to complete, as well as on the use of tests, and agree with those States on actions conducive to achieving those goals (see paragraph 37 in section 1.1.1 of Chapter II of this report).
- 1.1.3.3 Adopt, through the relevant authority and within available resources, such measures as are needed to ensure that institutions whose career service system is administered and supervised by the National Civil Service Commission (NNSC) provide that Commission in a timely manner, using the SIMO app, with information regarding definitive vacancies in career service positions, so that the Public Offering of Career Service Positions (OPEC) can be drawn up, and that they set aside in their budgets the resources needed to co-finance and cover the costs of the corresponding vacancy announcements (see paragraph 44 in section 1.1.1 of Chapter II of this report).

- 1.1.3.4 Adopt appropriate measures to ensure that the National Civil Service Commission (CNSC) has the staff needed to perform its functions relating to the selection processes it is responsible for, subject to the availability of funds (see paragraph 46 in section 1.1.1 of Chapter II of this report).
- 1.1.3.5 Consider issuing, through the corresponding law, the Administrative Career Statute of the Legislative Branch, based on the principles of openness, equity, and efficiency contemplated in the Convention, without prejudice to the application of the general standards governing the Administrative Career in the Executive Branch of Government, to the extent that they are compatible, until said Statute is issued, as provided for in Article 384 of Law 5 of 1992 (see paragraph 50 in section 1.1.1 of Chapter II of this report).
- 1.1.3.6 Consider issuing the ordinary law governing the Judiciary, referred to in Article 204 of Law 270 of 1996, based on the principles of openness, equity, and efficiency envisaged in the Convention. (See paragraph 53 in Section 1.1.1 of Chapter II of this report).
- 1.1.3.7 Adopt, through the appropriate authority, the suitable measures to continue moving forward the selection process regarding "Employees of what was formerly the Administrative Division and is now the Higher Council of the Judiciary" (See paragraph 59 in Section 1.1.1 of Chapter II of this report).
- 1.1.3.8 Consider setting, through the appropriate authority, a time limit on provisional appointments made in the Office of the Attorney General of the Nation (FGN) to fill a definitive vacancy, so that those vacancies are filled through competition, in accordance with the rules established to that end, and adopt a timetable for that purpose. (See paragraph 65 in Section 1.1.1 of Chapter II of this report).
- 1.1.3.9 Through the appropriate authority, adopt pertinent measures to complete implementation of the special career service in the Office of the Attorney General, gradually as provided for in Decree Law 20 of 2014<sup>60</sup> and in accordance with the timetable that is adopted to that end, subject to the budgetary allocation needed to carry out the corresponding competitive processes, within available resources. (See paragraph 86 in Section 1.1.1 of Chapter II of this report).
- 1.1.3.10 Complete the screening of the Public Career Roster of the Office of the Attorney General (FGN) provided for in Article 52 of Decree Law 20 of 2014 (See paragraph 88 in Section 1.1.1 of Chapter II of this report).
- 1.1.3.11 Consider establishing, through the appropriate authority, a time limit on the extensions of assignments and provisional appointments to career service positions, by virtue of Article 1 of Decree 4968 of 2007 (See paragraph 121 in Section 1.1.1 of Chapter II of this report).
- 1.1.3.12 Through the appropriate authority, adopt the Manual of Functions, Requisites and Competencies for staff positions in the Senate of the Republic and post it on the Senate website, pursuant to Law 1712 of 2014 (See paragraph 126 in Section 1.1.1 of Chapter II of this report).
- 1.1.3.13 Have the Supreme Court of Justice and the Council of State issue the regulations governing the time frame for the election of their respective judges, pursuant to Article 11 of Legislative Act No. 02 of 2015, and make such regulatory changes as are necessary to implement that provision fully. (See paragraph 129 in Section 1.1.1 of Chapter II of this report).

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<sup>60</sup> See footnote 24 in this report.

- 1.1.3.14 Post on the website of the Office of the Attorney General of the Nation (FGN) the Specific Manual of Functions and Requisites of employees on the staff of the FGN and updates thereto, pursuant to Law 1712 of 2014 (See paragraph 133 in Section 1.1.1 of Chapter II of this report).
- 1.1.3.15 Through the appropriate authority, adopt the measures needed for the design, completion, and development of Version II of the Government Employment Information and Management System (SIGEP II) (See paragraph 141 in Section 1.1.1 of Chapter II of this report).
- 1.1.3.16 Adopt such measures as are needed to ensure that territorial entities remit their information in good time to the Government Employment Information and Management System (SIGEP) (See paragraph 142 in Section 1.1.1 of Chapter II of this report).
- 1.1.3.17 Adopt the measures needed for vacancy announcements to cover, via public competition, career positions that are vacant or filled on a provisional appointment or assignment basis, corresponding to the backlog of positions that have not yet been announced for public competition and to the dynamics of labor mobility among administrative career staff in Colombia, in both the National Executive Branch and in the territorial entities, within no more than five years, subject to the availability of funds. (See paragraph 156 in Section 1.1.1 of Chapter II of this report).
- 1.1.3.18 Adopt such measures as are needed to shorten the section processes for which the National Civil Service Commission (CNSC) is responsible, in such a way that those processes can be completed within no more than one year (See paragraph 158 in Section 1.1.1 of Chapter II of this report).
- 1.1.3.19 Adopt the measures needed to ensure that in both the national Executive Branch and in the territorial entities, hiring through services contracts is not used as a means for carrying out the functions or duties of permanent staff positions (See paragraph 160 in Section 1.1.1 of Chapter II of this report).
- 1.1.3.20 Adopt such measures as are needed to encourage public sector managers to remain in public service for a longer period of time, without prejudice to their status as officials subject to free appointment and removal (See paragraph 171 in Section 1.1.1 of Chapter II of this report).
- 1.1.3.21 Adopt the measures needed for vacancy announcements to cover, via public competition, career positions that are vacant or filled on a provisional appointment or assignment basis, in the Chamber of Representatives, within a period of time to be established in a schedule adopted to that end (See paragraph 175 in Section 1.1.1 of Chapter II of this report).
- 1.1.3.22 Adopt the measures needed to ensure that in the Chamber of Representatives hiring through services contracts is not used as a means for carrying out the functions or duties of permanent staff positions (See paragraph 177 in Section 1.1.1 of Chapter II of this report).
- 1.1.3.23 Adopt such measures as are needed to ensure that, as a general rule, the hiring of public servants to join the staff of the Senate of the Republic is done through public merit-based competitive processes and only exceptionally by using the free appointment and removal mechanism (See paragraph 180 in Section 1.1.1 of Chapter II of this report).
- 1.1.3.24 Adopt the measures needed to ensure that in the Senate of the Republic hiring through services contracts is not used as a means for carrying out the functions or duties of permanent staff positions (See paragraph 182 in Section 1.1.1 of Chapter II of this report).
- 1.1.3.25 Through the appropriate authority and within available resources, adopt such measures as are needed to complete the selection processes for career service positions in the Judiciary not filled through competition, including measures to ensure that the Judicial Career Service Administration Unit of the



Higher Council of the Judiciary (CSJ) has the staff needed to perform its functions in respect of such selection processes (See paragraph 187 in Section 1.1.1 of Chapter II of this report).

1.1.3.26 Conduct an analysis to determine the possible causes of the increased number of complaints concerning merit-based competitions for government official and employee positions organized by the Higher Council of the Judiciary (CSJ) and of judicial decisions to suspend selection processes and exams for those positions, with a view to adopting any necessary corrective measures (See paragraph 188 in Section 1.1.1 of Chapter II of this report).

1.1.3.27 Compile detailed annual statistical information on personnel in the Judiciary hired to fill career service positions through provisional or temporary appointments; appointments made to positions subject to free appointment and removal; and public servants hired through professional services contracts, such as advisor and consultant contracts, in order to identify challenges and recommend corrective measures as needed (See paragraph 189 in Section 1.1.1 of Chapter II of this report).

1.1.3.28 Compile detailed annual statistics on officials hired by the Office of the Attorney General of the Nation (FGN) through professional services contracts, such as consultancy contracts, in case that mode of hiring is used at the FGN in the future, in order to identify challenges and recommend corrective measures as needed. (See paragraph 191 in Section 1.1.1 of Chapter II of this report).

## GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES

### 1.2.1. Follow up on Implementation of the Recommendations Formulated in the Second Round

#### Recommendation 1.2.1:

*Strengthen the systems for government procurement of goods and services.*

[193] Measures a) to i) of this recommendation were satisfactorily considered under the terms contemplated in the report from the Third Round and therefore do not require further attention.

Measure (j) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Continue with the actions necessary to consolidate the standards on government procurement in a single, concise and well-defined text, in order to make it easier to apply for the officials required to do so, and clearer and more comprehensible for everyone involved in government procurement as well as for the citizenry at large.*

[194] In its response to the questionnaire,<sup>61</sup> the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[195] - "Since 2013, *Colombia Compra Eficiente*, along with a group of experts and with the support of the Organisation for Economic Co-operation and Development (OECD) and the World Bank, has developed draft amendments to the Government Procurement System regulations.<sup>62</sup> The main objectives

<sup>61</sup> Response of Colombia to the questionnaire, pp. 64 and 65.

<sup>62</sup> The response of Colombia to the questionnaire contains a link to this draft on page 65: <http://www.colombiacompra.gov.co/transparencia/informacion-publica>

are: (i) consolidation of Government Procurement System rules; (ii) elimination of clauses about financial/economic equilibrium; (iii) definition of what constitutes a conflict of interest; (iv) new ways of selecting contractors; and (v) incorporating best international practices in government procurement in the Colombian system."

[196] "The draft amendments to Government Procurement System regulations prepared by *Colombia Compra Eficiente* were published on its website from June 30 to August 15, with a view to eliciting comments by civil society. In addition, *Colombia Compra Eficiente* has participated in academic forums in order to present the draft and receive feedback. The principal changes focus on: (i) obtaining greater value for money in government procurement; (ii) including, inter alia, the principles of planning, effectiveness, efficiency, cost-efficiency, sustainability, innovation, integrity, and transparency; (iii) regulating conflicts of interest on the part of those responsible for government purchases; (iv) making it mandatory to use the guidelines and manuals issued by *Colombia Compra Eficiente*; (v) eliminating the notion of financial/economic equilibrium in government contracts; and (v) establishing that contractual mechanisms are tied to the risks of contract implementation and to the general terms and conditions governing execution of the contract; among others. The proposed amendments seek to generate a Government Procurement System that includes the best practices identified and improves outcomes."

[197] In addition to the foregoing information provided in the response to the questionnaire, during the on-site visit the representative of *Colombia Compra Eficiente* (CCE) reiterated that one of the objectives of the draft amendments to Government Procurement System regulations is to consolidate those regulations in a single volume and that, for that, the amendments had to be comprehensive, so as not to continue making piecemeal changes to government contracting rules as had been the practice up to now. He said that the idea was to have a general legal statute that could readily be understood by all those engaged in procurement and by the general public.

[198] As regards the above, the Committee takes note of the steps taken by the country under review to move ahead with implementation of the recommendation made in section 1.2.1 of Chapter II of this report, and it reiterates the need for the State to continue to address this recommendation given that, while draft amendments to Government Procurement System regulations have been formulated in which one of the objectives is to consolidate those regulations in a single volume<sup>63</sup> and thereby provide a general and comprehensive legal statute on the subject, that reform has not yet come about. Moreover, bearing the above in mind and the fact that, subsequent to the formulation of said recommendation, other regulations on specific aspects of procurement rules have been issued, which have further dispersed the regulations on this subject, the Committee considers it appropriate to re-frame the aforementioned recommendation: (See Recommendation 1.2.3.1 in section 1.2.3 of Chapter II of this report).

[199] It is worth noting in connection with the foregoing recommendation that, during the on-site visit, the civil society organization "Corporación Transparencia por Colombia" pointed out that since the issuance of Law 80 of 1993, which is supposed to be the General Statute for Government Procurement, numerous (approximately 17) rules have been issued on the subject which have rendered that Statute less than general, so that now the regulations are too abundant and dispersed.

[200] Along similar lines, an academic from Xavier University said that numerous exceptions had been made to the General Statute for Government Procurement contained in Law 80 of 1993 through

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<sup>63</sup> On August 14, 2017, the country under review reported that: "With a view to consolidating the somewhat scattered plethora of regulations, the Colombian Government now has one decree for each sector, containing the regulations on this subject. The Regulatory Decree for the Planning Sector, which contains the decrees regulating the Government Procurement System, Public-Private Partnerships, the General System of Royalties, and so on, is Decree 1082 of 2015."

regulations governing specific procurement regimes, some of which may be warranted, as in the defense sector, others not.

Measure (k) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

*Adopt pertinent measures, through the appropriate authority, to ensure that direct procurement is employed as a consequence of the strict application of the exceptions provided in the Law.*

[201] In its response to the questionnaire,<sup>64</sup> the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[202] - "The grounds for using direct hiring/procurement (*contratación directa*) are currently set forth in the regulations.<sup>65</sup> What the draft amendments to the regulations did was to establish other grounds for direct hiring/procurement that are associated with what best international practices regard as direct hiring/procurement.<sup>66</sup> For example, the draft amendments eliminate the hiring of personnel and the inter-agency agreements of the Government Procurement System, which are generally recorded as direct hiring/procurement and which end up obscuring the real value of the system."

[203] - "*Colombia Compra Eficiente* has worked closely with the Office of the Comptroller General of the Republic to increase the use of tools at the disposal of the Government Procurement System for auditing the procurement processes of government institutions. Those tools include guides and manuals<sup>67</sup>; SECOP<sup>68</sup> (Electronic System for Government Procurement), in which government institutions are obliged by law to publish all their procurement processes and the corresponding documents; and the Service and Synthesis Panel.<sup>69</sup>"

[204] "- At the same time, the work of the Office of the Comptroller General of the Republic (CGR) has included lengthy day-long training courses in both the national and territorial Executive branches. These courses serve to present the tools and address government procurement as not just a procedure but also as an effort to obtain value for money and as strategically vital for the system and for government institutions. This has enabled the CGR to make use of the new version of the Government Procurement System that *Colombia Compra Eficiente* has worked on since it was first established and which, starting with audits, fosters the use of competitive types of procurement."

[205] - "*Colombia Compra Eficiente* launched SECOP II in March 2015. It is an entirely transactional platform that enables government institutions to conduct the whole purchasing and procurement management process on line. It also allows citizens to see the documents and changes to them in real time and it enables enterprises to create a profile of suppliers, free of charge. The platform conforms fully to the criteria contained in *Open Contracting Partnership*<sup>70</sup> and puts Colombia on the list of the few countries that have implemented these kinds of systems."

<sup>64</sup> Response of Colombia to the questionnaire, pp. 66 and 67.

<sup>65</sup> Article 3; Article 24; Article 29; Article 33 of Law 80 of 1993

(<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=304>) and Article 2 of Law 1150 of 2007

([http://www.secretariassenado.gov.co/senado/basedoc/ley\\_1150\\_2007.html](http://www.secretariassenado.gov.co/senado/basedoc/ley_1150_2007.html))

<sup>66</sup> Chapter 9, Article 51 (<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=304>)

<sup>67</sup> <http://www.colombiacompra.gov.co/manuales-guias-y-plegos-tipo/manuales-y-guias>

<sup>68</sup> <http://www.colombiacompra.gov.co/secop/secop-ii>

<sup>69</sup> <http://www.colombiacompra.gov.co/node/129>

<sup>70</sup> On August 14, 2017, the country under review reported that this name, not the originally noted "*Open Contracting Data Standard de Open Data*," is correct.

[206] - "Another strategy for improving the monitoring of procurement by government entities is the use of open data, which was developed to make Government Procurement System data available to civil society to enable it to keep track of procurement and to process it in a simple way for analytical purposes.

[207] - "These tools have been presented to the CGR at both the national and territorial level in support of the CCE, given the benefits they entail for its oversight activities."

[208] The Committee takes note of the steps taken by the country under review to move ahead with implementation of measure k) of the recommendation contained in section 1.1.2 of Chapter II of this report, but it reiterates the need to continue addressing the aforementioned recommendation (see Recommendation 1.2.3.2 in section 1.2.3 of Chapter II of this report) since the same recommendation was made to the country under review in the Second Round based on information regarding outcomes, from which it transpired that, although Article 24.1 of Law 80 of 1993 provides that, except in the cases it mentions expressly,<sup>71</sup> the choice of contractor will always be made via tender or public competitive process, in practice, direct procurement had been the preferred form of procurement during the period covered by that information (2007), a situation that has not changed because, during the on-site visit, the country under review provided statistics for the period between 2014 and 2016 showing that direct procurement continues to be more common than procurement via public tender, as can be seen in the following Table: [Tr. Key. Number, value, and percentages for the following types of appointment process: Public-Private Partnership; Competition; Direct Hiring; Minimum quota; Public Tender; Special Regime; Fast-track Selection; Auction; Total]

Modalidad	2014			2015			2016		
	# Contratos	Valor Contratos	% valor	# Contratos	Valor Contratos	% valor	# Contratos	Valor Contratos	% valor
Asociación Público Privada	13	\$ 8.714.819.279.951	9,2%	29	\$ 16.569.364.611.813	13,7%	15	\$ 158.361.893.947	0,2%
Concurso de Méritos	5.039	\$ 1.939.386.186.849	2,1%	4.077	\$ 1.808.169.865.715	1,5%	2.137	\$ 931.640.639.236	1,1%
Contratación Directa (Ley 1150 de 2007)	426.231	\$ 29.267.428.681.995	30,9%	491.392	\$ 43.448.960.864.091	35,8%	568.886	\$ 33.929.727.765.815	40,3%
Contratación Mínima Cuantía	137.215	\$ 1.940.745.949.377	2,1%	114.222	\$ 1.918.226.831.509	1,6%	104.954	\$ 2.063.251.006.072	2,5%
Licitación Pública	8.667	\$ 19.292.379.910.273	20,4%	6.323	\$ 14.816.149.561.021	12,2%	3.275	\$ 10.664.066.005.750	12,7%
Régimen Especial	160.474	\$ 26.081.885.299.817	27,6%	250.787	\$ 36.161.400.783.707	29,8%	327.508	\$ 30.310.114.809.455	36,0%
Selección Abreviada	15.529	\$ 4.589.239.183.805	4,9%	13.052	\$ 4.229.829.242.946	3,5%	10.348	\$ 3.732.934.763.386	4,4%
Subasta	7.463	\$ 2.764.228.390.955	2,9%	6.041	\$ 2.306.804.807.054	1,9%	6.171	\$ 2.371.374.673.247	2,8%
<b>Total</b>	<b>760.631</b>	<b>\$ 94.590.112.883.022</b>	<b>100,0%</b>	<b>885.923</b>	<b>\$ 121.258.906.567.856</b>	<b>100,0%</b>	<b>1.023.294</b>	<b>\$ 84.161.471.556.908</b>	<b>100,0%</b>

[209] In addition to the above information, *Colombia Compra Eficiente* (CCE) stated during the on-site visit that the large number of procurement arrangements using direct procurement was not necessarily a bad indicator for the Government Procurement System, because there are many services contracts and inter-agency agreements that are entered into directly, which has a considerable impact on the figures suggesting that direct hiring is more pervasive than other procurement processes, such as public tenders. For that reason, the draft amendments to the Government Procurement System regulations envisage excluding services contracts and inter-agency agreements from those regulations. Direct procurement/hiring accounted for 35.8 percent of the total in 2015 and 40.3 percent in 2016. However "direct procurement/hiring" includes services contracts and inter-agency agreements, which accounted for 75.7 percent of all direct procurement/hiring contracts in 2015. The figure in 2016 was 83.7 percent.

[210] Worth noting with regard to the above is that, in section 1.1.1 of the present report, the Committee already analyzed the issue of the hiring of personnel for government institutions using

<sup>71</sup> For its part, Article 2.1 of Law 1150 of 2007 provides that, as a rule, contractors shall be chosen via public tender, with certain exceptions detailed in that provision.

services contracts and in section 1.1.3 of Chapter II recommended that said contracts not be used as a means of covering those institutions' permanent staff positions, because in the legislation in force they are not considered a form of hiring governed by labor laws, but rather as contractual arrangements, and until the laws change should continue to be conceived as such.

[211] Finally, it is worth pointing out that the civil society organization “Corporación Transparencia por Colombia” stated, in a presentation it gave during the on-site visit,<sup>72</sup> that, according to its Transparency in Government Institutions Index (ITEP), direct procurement accounted for 70 percent of the total in institutions in the national Executive Branch, 56 percent in departments, and 41 percent in municipalities; and that one of the risks identified by means of that Index was the ongoing use of direct procurement as one of the preferred forms of procurement.

[212] Measure l) of this recommendation received satisfactory consideration under the terms contemplated in the Third Round report and therefore needs no further attention.

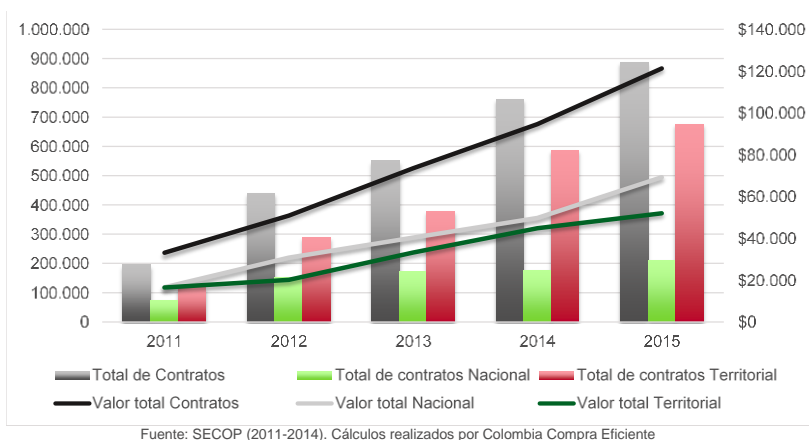
Measure (m) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

*Take the steps necessary to incorporate into the Single Contracting Portal those state agencies that are not already covered by it.*

[213] In its response to the questionnaire,<sup>73</sup> the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[214] - “ (...). All government institutions using public funds are obliged to publish everything in the SECOP. What we can guarantee thus far is that the national entities are doing so and that "openness" is much more widespread. However, the main backlog, associated with the regional entities, has also been reduced.”

[215] - "With support from the CGR and the Office of the Procurator-General (PGN) (the Procurator assigned to Decentralization and the Territorial Entities), *Colombia Compra Eficiente* has pushed for the use of the SECOP and making it mandatory at the subnational level which was lagging behind in published value terms. The following chart shows how openness has evolved in the SECOP."



<sup>72</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>73</sup> Response of Colombia to the questionnaire, pp. 68 to 70

[216] - "At the same time, visits to subnational entities, such as the 24 conducted this year jointly with the National Planning Department, including training courses, have served to stress the obligation and importance of posting procurement information in the SECOP and increasing the number of registered contracts.."

[217] - "The work done by the CGR and the PGN to ensure adoption of the SECOP, the training courses provided at the subnational level, the development of a new version of the SECOP (SECOP II),<sup>74</sup> which is fully transactional and therefore conducive to greater transparency, fewer information mismatches, and easier auditing and oversight by civil society. Also worth noting is the development of the open data app,<sup>75</sup> which seeks to ensure that the general public has access to the government procurement information stored in the SECOP and can more easily exercise social oversight."

[218] - "Current regulations make posting in the SECOP mandatory.<sup>76</sup> Government institutions in the national executive branch make use of the SECP. More effort is needed at the subnational level, an area in which the CGR and PGN have lent us support."

[219] In addition to the aforementioned information provided in the Response to the Questionnaire, during the on-site visit the representative of *Colombia Compra Eficiente* (CCE) pointed out that, even though progress has been made with regard to the posting of procurement activities in the SECOP, more insistence is needed on compliance with that requirement at the subnational level, since not all territorial entities upload all of their procurement process information to that system.

[220] The Committee takes note of the steps taken by the country under review to move ahead with implementation of measure m) of the recommendation contained in section 1.1.2 of Chapter II of this report, but bearing in mind that, as indicated in the Response to the Questionnaire and in the comments of the representative of *Colombia Compra Eficiente* (CCE) during the on-site visit, not all territorial entities upload into the Electronic Procurement System (SECOP)<sup>77</sup> (formerly the "Single Procurement Portal") all the information regarding their procurement processes that they are obliged to publish via that system, the Committee reiterates the need for the country under review to continue addressing the aforementioned recommendation, which, in its view, needs to be re-framed as follows, in order to clarify the name of the technological tool it refers to and to reflect the progress made with the posting of information via that tool by government entities in the national Executive branch: (See Recommendation 1.2.3.3 in Section 1.2.3 of Chapter II of this report.)

[221] It is worth mentioning, with regard to the foregoing recommendation, that the civil society organization "Corporación Transparencia por Colombia" pointed out during a presentation it gave during the on-site visit<sup>78</sup> that, according to one of its tools known as the Transparency in Government Institutions Index (ITEP), one of the risks identified by that Index is the scant publicity given to procurement management documents, especially in the territorial entities.

Measure (n) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

*Continue with the actions necessary to implement the Electronic Procurement System.*

<sup>74</sup> <https://community.secop.gov.co/STS/Users/Login/Index?SkinName=CCE>

<sup>75</sup> <http://www.colombiacompra.gov.co/transparencia/gestion-documental/datos-abiertos>

<sup>76</sup> Article 3 of Decree 1510 of 2013

<sup>77</sup> As indicated on page 70 of Colombia's Response to the Questionnaire, the Single Procurement Portal mentioned in measure m) of Recommendation 1.2.1 is the same Electronic System for Government Procurement (SECOP) as that mentioned in measure n) of said recommendation.

<sup>78</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

[222] In its response to the questionnaire,<sup>79</sup> the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as a step that contributes to progress in its implementation:

[223] - "SECOP was launched in 2007 and was implemented in full and successfully. The improvement and work involved translated into increased use of it, greater openness, and the development of SECOP II."

[224] In addition to the above information provided in the Response to the Questionnaire, during the on-site visit the representative of *Colombia Compra Eficiente* (CCE) pointed out that the transition is currently being made from SECOP I to SECOP II and that this has proved to be a difficult step because it requires a change of mindset of those involved in procurement, whereby it is no longer the paperwork that shows that a procurement procedure was properly executed. He pointed out that the personnel involved is receiving training on this and on procurement regulation; that the CCE is understaffed, and that resources are going to be needed to get SECOP II fully up and running.

[225] It should be added, with regard to the above, that during the on-site visit, CCE made available its "2017-2021 Strategic Plan,"<sup>80</sup> which states, in the section on "Evaluation of *Colombia Compra Eficiente* 2012-2016" that: "In 2015, *Colombia Compra Eficiente* began deploying SECOP II, to eventually replace SECOP I. It is a transactional platform for communicating via the web with other Colombian government I.T. platforms. The 2014-2018 National Development Plan establishes concrete targets for the use of SECOP II which currently pose a challenge for *Colombia Compra Eficiente* together with the other activities needed to complete operational interconnection between SECOP II and the Colombian State's Online Store and the Colombian State's I.T. platforms This interoperability began with an initial stage of interfacing with the Integrated Financial Information System (SIIF)."

[226] The same aforementioned document states, in the section on "Deployment of SECOP II":

[227] "SECOP II benefits government buyers and suppliers, reduces the costs of copies, submission of offers, and moves from one place to another, It makes it easier to keep track of government procurement processes and to oversee and settle disputes, because it permits detailed and real time monitoring of each stage in the government procurement process. SECOP II promotes competition and fosters equal treatment and transparency. It is easier and quicker to handle information in a transactional tool. Nevertheless, the massive use of technology and the changes in government administration procedures generate fear and uncertainty among those involved in the Government Procurement System."

[228] "*Colombia Compra Eficiente* needs to achieve maximum use of SECOP II to achieve the National Development Plan target. To that end, it must devise a plan for its deployment involving the entire organization and working on the following fronts: (a) functional; (b) technical; (c) education and training in the use of the platform; (d) support for the government entities using SECOP II; (e) promotion of SECOP II; (f) service panel (*mesa de servicio*); and (g) reports and management of the information that SECOP II produces. These seven fronts must be work in coordination with one another, share information, and manage their outcomes in an orderly fashion so as to achieve the objective established in the 2014-2018 National Development Plan."

[229] "*Colombia Compra Eficiente* must: (1) Consolidate the technical and functional applications of the platform so as to provide all those involved with reliable and secure service; (ii) Organize training materials and courses for the various kinds of users with different forms of access; (iii) Design support mechanisms for government institutions through the Service Panel and personalized forms of support; (v)

<sup>79</sup> Response of Colombia to the questionnaire, p. 70

<sup>80</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

Develop SECOP II usability indicators, keep them up to date, and monitor them with a view to continuously improving them; (v) Design SECOP II promotion plans to expand the use of it; and (vi) analyze the Government Procurement System information provided by SECOP II."

[230] "The deployment of SECOP II presupposes developing and managing the capacities of all those involved in the Government Procurement System, as well as knowledge management. In addition, SECOP II serves to highlight the strategic value of the Government Procurement System."

[231] "Extensive use of SECOP II will enable *Colombia Compra Eficiente* to manage the information provided by the System more effectively and more precisely. It may also produce diagnostic assessments and indicators that more accurately reflect what is going on in the Public Procurement System and serve to promote best practices."

[232] The Committee takes note of the steps taken by the country under review to move ahead with implementation of measure m) of the recommendation contained in section 1.1.2 of Chapter II of this report, but bearing in mind that, as shown by *Colombia Compra Eficiente* (CCE) during the on-site visit and its "2017-2020 Strategic Plan," some activities still remain for the adoption of the second phase of the Electronic Government Procurement System (SECOP II). The Committee reiterates the need for the country under review to continue addressing the aforementioned recommendation, which, in its view, needs to be re-framed, in order to clarify the name of the technological tool it refers to and its current phase of development: (See Recommendation 1.2.3.4 in Section 1.2.3 of Chapter II of this report.)

[233] It is to be noted, with respect to the foregoing recommendation, that, during the on-site visit, both a representative of the private sector organization "Federación Colombiana de Desarrollo - FEDESAROLLO" and an academic from Xavier University pointed to the need to transition from SECOP I to SECOP II, because the latter is a transactional procurement platform. For its part, the civil society organization "Corporación Transparencia por Colombia" stated that SECOP II is conducive to transparency in various aspects of procurement activity.

## **1.2.2. New developments in respect of the Convention provision on government systems for the procurement of goods and services**

### **1.2.2.1. New developments in the regulatory framework**

#### **a) Scope**

- Statutory and other legal provisions applicable to all government institutions, including, in particular:

[234] - Law 1150 of 2007, which introduces measures to enhance efficiency and transparency in Law 80 of 1993<sup>81</sup> and issues general provisions on procurement using government funds. Article 2 of Law 1150 provides that the choice of contractor shall be made in accordance with public tender selection procedures, fast-track selection (*selección abreviada*), merit-based competitive processes, and direct procurement, based on the following rules: 1) Public tender: a contractor shall normally be chosen through public tender, with the exception indicated in paragraphs 2, 3, and 4 of this Article. 2) Fast-track selection: fast-track ("abbreviated") selection is the objective form of selection envisaged for cases in which, because of the characteristics of the object to be procured, the circumstances surrounding the procurement, or the amount or final use to be made of the good, work, or service, simplified procedures can be used to guarantee procurement management efficiency. 3) Merit-based competition: used to select consultants or

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<sup>81</sup> This Law, which contains the General Statute governing Public Administration Procurement, was already analyzed in the Second Round report.



projects through open competition or pre-qualification systems. 4) Direct procurement: direct procurement is only admissible in the following cases: a) manifest urgency; b) the contracting of loans; c) inter-agency contracts (*contratos interadministrativos*), provided that the obligations derived therefrom are directly related to the purposes served by the executing entity, as established by law or in its regulations; d) the procurement of goods or services for the Defense sector; e) contracts to carry on scientific or technological activities; f) trustee assignment contracts (*contratos de encargo fiduciario*) entered into by territorial entities when they initiate the Liabilities Restructuring Agreements referred to in Law 550 of 1999, Law 617 of 2000, and the provisions amending or adding to them, provided that they are entered into with public sector financial institutions; g) when there is no more than one supplier in the market; h) for the provision of professional and management support services, or for the creation of works of art that can only be commissioned from certain individuals; i) the leasing or purchase of real estate.

[235] Article 2.1 of the aforementioned law provides that prior to initiating a selection process the institution must indicate the legal grounds for the type of selection process it proposes to use and Article 2.3 establishes that the National Government shall be entitled to standardize the general terms and bidding conditions for government entity tenders and contracts in cases involving the purchase or provision of goods and services with uniform technical characteristics that are widely used by a number of institutions.

[236] Article 3 of the aforementioned law, regarding electronic government procurement, provides as follows: Pursuant to Law 527 of 1999, proceedings, the issuance of administrative certificates, documents, contracts, and, in general, acts deriving from pre-procurement and procurement activities may be carried on using electronic media. Electronic software, media, and apps may be used to process, communicate, and publish such acts. The National Government shall indicate what mechanisms and instruments are to be used by institutions to comply with their procurement disclosure obligations. - To achieve the objectives referred to in the foregoing paragraph, the National Government will develop the Electronic Government Procurement System, SECOP, which shall: a) Have the technological capabilities needed to conduct electronic procurement processes using the selection methods indicated in Article 2 of this law, as defined by the regulations; b) Serve as the sole point of entry of information and for generating reports for government institutions and the general public; c) Have at its disposal official information on procurement conducted using public funds, for which it establish appropriate formats and see to their dissemination through electronic means; and d) Form part of the Single Business Roster (*Registro Único Empresarial*) of the Chambers of Commerce, the Single Daily Government Procurement Gazette (*Diario Único de Contratación Estatal*), and any other government procurement management systems.

[237] Article 4 of the above-mentioned law, regarding risk allocation in government contracts, provides that bidding conditions or their equivalents must include an assessment, characterization, and allocation of foreseeable risks entailed in a procurement transaction and that, in government tenders, the bidding conditions of government institutions must indicate the point at which, prior to the submission of bids, the bidders and the institution will review the allocation of risks with a few to finalizing their distribution.

[238] Article 5 of the aforementioned Law provides that a selection is objective when the choice made corresponds to the offer most favorable to the entity and the ends that it pursues, without consideration being given to factors of affection or personal interest and, in general, any kind of subjective motivation; and it adds the following: Consequently, this Law provides that the selection and grading factors that entities establish in bidding conditions or the equivalent thereof shall take the following guidelines into account: 1) The legal capacity and conditions as regards experience, financial capacity, and organization of bidders shall be verified as qualifying factors to be met in order to participate in the selection process and shall not be assigned a score, except as provided for in paragraph 4 of this Article. Such conditions must be appropriate and proportional to the nature of the contract to be signed and to its value. Documentary verification of the aforementioned conditions shall be performed by chambers of commerce pursuant to Article 6 of this law, and the appropriate

certification issued accordingly. 2) The most favorable bid shall be that which, based on the technical and economic selection factors and on the precise and detailed weighting thereof contained in the bidding conditions or their equivalent, is the most advantageous for the entity without that advantageousness being constituted by factors other than those contained in said documents. In public construction contracts the shortest delivery time shall not be evaluated. The entity shall perform the necessary comparisons by appraising the bids received and consulting the market prices or conditions as well as the studies and deductions of the entity or the consultants or advisory agencies designated for that purpose. 2) Without prejudice to paragraph 1 of this Article, in the bidding conditions for contracts for the purchase or supply of widely used goods and services with uniform technical characteristics, government entities shall include the lowest price bid as the only evaluation factor. 4) In selection processes for consultants grading factors shall be used that are designed to appraise the technical aspects of the bid or project. Subject to the conditions contained in the rules of procedure, the specific experience of the bidder and the work team in the field concerned may be used as criteria.

[239] Article 6 of the aforementioned law provides that all national or international individuals or juristic entities domiciled or with a branch in Colombia who wish to enter into contracts with government institutions shall register with the Single Roster of Bidders of the Single Business Roster of the Chamber of Commerce that has jurisdiction in the district of principal residence. Article 6.2, regarding information on contracts, fines, and sanctions on registered persons or entities, adds that each month state institutions shall send to the Chamber of Commerce in the district in which they are domiciled information concerning contracts, the amounts involved, compliance, fines, and sanctions relating to contracts awarded, be they in the process of execution or already executed.

[240] Finally, Article 9 of the aforementioned Law establishes that in the circumstance provided for in Article 273 of the Political Constitution and, in general, in public tender processes, contracts shall be awarded in a public hearing, by means of a resolution substantiating the award, which shall be regarded as communicated to the winning bidder in that hearing. During that same hearing, and before the final award decision is taken, interested parties may pronounce on the response provided by the procuring entity with respect to any observations presented in relation to the evaluation reports.

[241] - Article 1 of Decree Law 4170 of 2011, establishing the Special Administrative Unit known as the National Government Procurement Agency -- *Colombia Compra Eficiente* -- as a decentralized entity in the national Executive Branch, with juristic person status, its own capital, and administrative and financial autonomy, attached to the National Planning Department. Article 2 of the same Law states that, as a governing body, its objective is to develop and foster public policies and tools designed to organize and coordinate among participants in government procurement processes with a view to achieving greater efficiency, transparency, and optimal use of government resources.

[242] Article 3 of the aforementioned Law assigns, inter alia, the following functions to *Colombia Compra Eficiente*: proposing to the National Government public policies, plans, programs, and rules relating to government procurement and contracts aimed at effective matching of supply and demand in the market and based on regulatory rationalization criteria, so as to achieve greater efficiency, transparency, and optimization of government resources (paragraph 1); answering inquiries regarding the application of rules of a general nature and issuing external circulars on government procurement and contracts (paragraph 5); developing and administering the Electronic Government Procurement System (SECOP) or other system performing its functions, and arranging for new technological developments in areas within its sphere of competence, bearing in mind the parameters set by the Board of Directors (*Consejo Directivo*) (paragraph 8); developing support mechanisms for bidders to facilitate greater and better participation in government entities' procurement processes (paragraph 9); disseminating standards, rules, procedures, technological media and best practices for government procurement and contracts; and promoting and providing, with the support and coordination of other government entities entitled by their purpose to lend such support, such training as it

deems necessary to counsel participants in the procurement process (paragraph 10); and lending support to the territorial entities to ensure appropriate application of government procurement policies, instruments, and tools (paragraph 11).

[243] Finally, Chapter II of the aforementioned Decree Law establishes rules for the management and administration of *Colombia Compra Eficiente*, stipulating that it be run by a Director General and Board of Directors, while Chapter III establishes the structure and function of its various dependencies.

[244] - Decree 1510 of 2013,<sup>82</sup> which regulates the government procurement and contracts system. Title I, Chapter II, Article 2 of its General Provisions section states that, for the purposes of Decree Law No. 4170 of 2011, the participants in said system shall be: 1) The government institutions conducting procurement processes; 2) Colombia Compra Eficiente; 3) Bidders participating in procurement processes; 4) Contractors; 5) Supervisors; 6) Auditors; and 7) Civil society organizations and citizens exercising citizen participation as provided for in the Political Constitution and by law.

[245] Article 4 of the foregoing Decree provides that government entities must draw up an Annual Procurement Plan containing the list of goods, works, and services they intend to purchase during the year; Article 6 establishes that the government entity must post that Plan and updates thereto on its website and in SECOP, in the manner indicated by *Colombia Compra Eficiente* (CCE); Article 7 states that the government entity must update the aforementioned Plan at least once during the period it covers, in the manner and at the time indicated by the CCE; Article 14 stipulates that each month government entities have to remit to the Chamber of Commerce in the district in which they are domiciled a copy of the final version of any administrative acts through which they imposed fines and sanctions and any resulting disqualifications applicable to any contracts they signed, as well as of information regarding procurement processes as required by Article 6 of Law 1150 of 2007; that the record of any sanctions and disqualifications must remain in the Consolidated (Single) Register of Bidders (RUP) certificate<sup>83</sup> for the duration of the sanction or disqualification; and that the Chambers of Commerce must have an interoperability mechanism with SECOP so that a record is kept of the information referred to in this Article. Article 19 further provides, with respect to SECOP, that the government entity is obliged to post in that System all documents pertaining to the process and the administrative acts relating to the procurement process, within the three days following their issuance.

[246] Title II of the General Provisions section of the aforementioned Decree refers to the structure and documents for the procurement process and, in Chapter I, regulates matters relating to planning of the process, such as prior studies and documents and the contents of the announcement of the tender and of the bidding conditions, as well as observations on the draft bidding conditions submitted by interested parties (Articles 20 to 23); Chapter II regulates aspects relating to selection, such as the determination of the most favorable bid taking into account the rules applicable to each type of contractor selection process (Article 26), the evaluation committee (Article 27), and awarding of a contract when there is only one bid, in which case it provides that the government entity may award the contract when only one bid has been submitted provided that it meets all the published qualifying requirements and satisfies all the requirements in the bidding conditions, without prejudice to the special provisions established by law and in this Decree for reverse

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<sup>82</sup> On August 14, 2017, the country under review reported that Decree 1082 of 2015 compiles the standards contained in this decree and other rules on such matters.

<sup>83</sup> Consolidated Register of Bidders (*Registro Único de Proponentes*)

auctions, merit-based competitive processes, and the special rules for processes targeting only micro, small and medium-sized enterprises (MSMEs)<sup>84</sup> (Article 30).

[247] Title I of the Special Provisions section of the aforementioned Decree refers to types of selection process. Chapter I of that Title, on government tenders, regulates such matters as the hearings held as part of the tender, indicating, in that regard, that during the selection phase of the tender risk allocation and adjudication hearings are obligatory (Article 39). Chapter II, on fast track selection, regulates such aspects as the admissibility of a framework agreement on prices (Article 46), procurement of a smaller amount (Article 59), and other abbreviated/fast track processes (Articles 60 to 65). Chapter III, on merit-based competitive processes, regulates such aspects as their admissibility (Article 66). For its part, Chapter IV, on direct procurement, regulates such matters as that envisioned in Article 73, which provides that the government entity must furnish in an administrative act its justification for using the direct procurement method, stating: 1) the grounds invoked for using direct procurement; 2) the purpose of the contract; 3) the procurement budget and the conditions it will impose on the contractor; and 4) the venue where interested parties can consult the prior studies and documents.

[248] Article 81 of the aforementioned Decree refers in particular to direct procurement via professional services and management support contracts or for the creation of works of art that can only be commissioned from certain individuals. It provides that government entities may use direct procurement for professional and management support services from the individual or legal entity able to provide them, provided that the government entity concerned verifies their suitability or the experience required for and related to the area in question and that, in that case, it is not necessary for the government entity to have first obtained several bids. The authority authorizing the expenditure must certify in writing that these conditions have been met. The second paragraph of that Article adds that professional and management support services are those of an intellectual nature different from the consultant services derived from performance of the government entity's functions and services relating to operational, logistical, or medical/welfare-related activities (*actividades asistenciales*).

[249] Title V of the aforementioned decree refers to *Colombia Compra Eficiente* and provides, in Article 158, that that body must establish guidelines and design and implement the format to be used by government entities to draw up the Annual Procurement Plan within three (3) months following the issuance of the present decree.<sup>85</sup> It also provides, in Article 159, that without prejudice to the permanent function assigned to it by Decree Law 4170 of 2011, *Colombia Compra Eficiente* must design and implement the following standardized instruments tailored to the type of works, good, or service to be procured, as well as any other manual or guide considered necessary or requested by those involved in government procurement: 1) Manuals on the Use of Framework Agreements on Prices within two (2) months of the issuance of the present Decree.<sup>86</sup> 2) Manuals and Guides to: (a) risk identification and hedging;<sup>87</sup> (b) determination of residual capacity for public works contracts depending on their value;<sup>88</sup> (c) the drawing up and updating of the Annual Procurement Plan;<sup>89</sup> and (d) the use of the Goods and Services

<sup>84</sup> Micro, small and medium-sized enterprises according to applicable current law.

<sup>85</sup> This format can be found in External Circular No. 2 of 2013, issued by *Colombia Compra Eficiente*, and posted at: <https://www.colombiacompra.gov.co/circulares>

<sup>86</sup> This document is available at: <https://www.colombiacompra.gov.co/manuales-guias-y-pleigos-tipo/manuales-y-guias> (Guía para entender Acuerdos Marco de Precios - Versión G-EAMP-01)

<sup>87</sup> This document is available at: <https://www.colombiacompra.gov.co/manuales-guias-y-pleigos-tipo/manuales-y-guias> (Manual para la Identificación y Cobertura del Riesgo - Versión M-ICR-01)

<sup>88</sup> This document is available at: <https://www.colombiacompra.gov.co/manuales-guias-y-pleigos-tipo/manuales-y-guias> (Guía para determinar y verificar la Capacidad Residual del proponente en los Procesos de Contratación de Obra Pública)

<sup>89</sup> External Circular No. 2 of 2013, issued by *Colombia Compra Eficiente*, and posted at: <https://www.colombiacompra.gov.co/circulares>

Classifier;<sup>90</sup> all of which must be issued within two months of the issuance of the present Decree. 3) Standard bidding conditions for procurement within the six (6) months following the issuance of the present Decree,<sup>91</sup> and 4) Standard minutes of contracts within the six (6) months following the issuance of the present Decree.<sup>92</sup>

[250] Finally, Article 160 of the aforementioned Decree provides that government entities must have a procurement manual that conforms to guidelines set by *Colombia Compra Eficiente* within six (6) months of the issuance of the present Decree.<sup>93</sup>

[251] - External Circular No. 2 of 2013, issued by *Colombia Compra Eficiente* (CCE) and addressed to government entities, in which CCE, pursuant to its objectives as the governing body for the government procurement and contracts system and in accordance with Decree 1510 of 2013, establishes (i) guidelines for preparing the Annual Procurement Plan; (ii) the format for it; (iii) the manner in which government entities are to post it on their website and in SECOP; and (iv) how and when government entities must update it.

[252] Numbered section 5 of the aforementioned Circular provides that government institutions must publish their Annual Procurement Plan in SECOP by no later than January 31 of each year, identifying the good and services involved by using the United Nations Standard Products and Services Code (UNSPSC). Section 6 establishes that government entities must update their Annual Procurement Plan in July of each year, using the format indicated in that Circular, and that the updated version must be posted on the website and in SECOP, in such a way that only the updated Annual Procurement Plan can be accessed.

[253] - External Circular No. 9 of 2014, issued by *Colombia Compra Eficiente* (CCE) and addressed to government entities, in which CCE, pursuant to Article 160 of Decree 1510 of 2013, provides General Guidelines for the Issuance of Procurement Manuals,<sup>94</sup> and states that government entities, pursuant to the aforementioned Article, shall have until July 31, 2014 to adopt said Manual.

[254] - External Circular No. 21 of 2017, addressed to participants in the Government Procurement System, through which *Colombia Compra Eficiente* (CCE), as the governing body of the Government Procurement System, and the National Archive (*Archivo General de la Nación*), as the governing body for public records policy, establish the guidelines for generating, drawing up, and managing the electronic files for the procurement process in SECOP II.

[255] - External Circular No. 23 of 2017, issued by *Colombia Compra Eficiente* (CCE) and addressed to entities using government funds for procurement, through which CCE supplements External Circular 1 of 2013 to establish the conditions regarding the quality and timing of the information to be provided to the Electronic Government Procurement System (SECOP) regarding their procurement processes by government entities and entities governed by Law 1712 of 2014 that use government funds in their provisioning or procurement processes.

[256] Paragraph 2 of the aforementioned Circular states that SECOP has three (3) platforms for registering procurement activity: (i) SECOP I; (ii) SECOP II; and (iii) the Colombian State's Online Store, and it adds that SECOP I is just a platform to ensure openness (*publicidad*), while SECOP II and the Colombian State's Online Store are transactional platforms.

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<sup>90</sup>External Circular No. 2 of 2013, issued by *Colombia Compra Eficiente*, and posted at: <https://www.colombiacompra.gov.co/circulares>

<sup>91</sup> Available at: <https://www.colombiacompra.gov.co/manuales-guias-y-pliegos-tipo/pliegos-tipo>

<sup>92</sup> Available at: <https://www.colombiacompra.gov.co/manuales-guias-y-pliegos-tipo/contratos>

<sup>93</sup> Available at: <http://www.colombiacompra.gov.co/es/manuales>.

<sup>94</sup> Available at: <http://www.colombiacompra.gov.co/es/manuales>.

[257] Finally, Section 1 of the aforementioned Circular states that the information uploaded into SECOP I spreadsheets and forms needs to match that contained in the procurement process documents. Section 2 points out that information recorded by entities in SECOP II and in the Colombian State's Online Store is available in real time and that the entities still using SECOP I are obliged to post procurement process documents and administrative acts within three (3) days of their being issued. Section 3 indicates that entities must register their procurement process information in just one of SECOP's electronic platforms; that purchase orders derived from demand aggregation tools are recorded in the Colombian State's Online Store and that it is not necessary to post them on any of the other platforms; and that, likewise, procurement processes conducted in SECOP II are recorded in SECOP II and do not need to be published elsewhere. It adds that duplicating data impairs Government Procurement System information.

[258] Presidential Directive No. 03 of 2015, issued by the President of the Republic of Colombia and addressed to Cabinet Ministers, Administrative Department Directors, Superintendents, Directors, Managers, and Presidents of Centralized and Decentralized Entities in the national Executive Branch, Section 1 of which states that the signing of arbitration contracts, that is to say agreement to commitments and arbitration clauses in state contracts governed by Law 80 of 1993 and amendments thereto must derive from an explicit public sector management decision reached after evaluating the advisability of annulling in each concrete case the right to jurisdiction in respect of actions under administrative law, depending, inter alia, on the nature of the parties, the purpose (object) of the contract, and the amount involved. It adds that, consequently, every time an entity or agency in the national Executive Branch decides to sign a commitment and/or arbitration clause, after hearing the opinion of the heads of the legal department, legal directors, or equivalent, the directors of the entity or agency must document in the background (whereas) clauses of the contract the reasons justifying admissibility of the arbitration agreement, and, if they have any doubts about it, they may consult the Director of the National Agency for Legal Defense of the State.

b) Observations

[259] The Committee would like to recognize the new regulatory developments adopted by Colombia to continue to push forward with the establishment, maintenance, and strengthening of its systems for government procurement of goods and services as referred to in Article III (5) of the Convention.

[260] Nevertheless, some considerations are deemed appropriate regarding the advisability of supplementing, developing, and/or adjusting certain provisions referred to in these new developments, without prejudice to the observations put forward by the Committee in foregoing section 1.2.1 in relation to the follow-up to implementation of the recommendations made to the country under review in the Second Round report.

[261] First, the Committee notes that Article 2.4.h of Law 1150 of 2007 contemplates, as one of the grounds for direct procurement, the provision of professional and management support services and that the second paragraph of Article 81 of Decree 1510 of 2013 states that professional and management support services are those of an intellectual nature different from the consultant services derived from performance of the government entity's functions and services relating to operational, logistical, or medical/welfare-related activities (*actividades asistenciales*).

[262] In that regard, the Committee considers that the way in which professional and management support services contracts are conceived in the aforementioned provisions makes it more likely that persons will be performing activities in government entities that go beyond a contractual relationship with the State and are more like a regular job and should therefore be performed by staff, pursuant to the provisions on this matter in force in Colombia.<sup>95</sup> For that reason, the Committee will make a

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<sup>95</sup> Article 2.2.5.1.7 of Decree 1083 of 2015.

recommendation to the country under review regarding this matter (See Recommendation 1.2.3.5 in Section 1.2.3 of Chapter II of this report).

[263] In relation to the above, it should also be noted that, during the on-site visit, both the representative of *Colombia Compra Eficiente* (CCE) and the representative of the Administrative Department of the Civil Service (DAFP) stated that such contracts entailed performing civil servants' jobs rather than the services of a contractor, and the DAFP representative added that they had given rise to lawsuits against the State on the grounds that they involved a labor, and not a contractual, relationship.

[264] Second, the Committee observes that Article 159 of Decree 1510 of 2013 provides that, without prejudice to the permanent function assigned to it by Decree Law 4170 of 2011, *Colombia Compra Eficiente* (CCE) is required to design and implement standardized instruments tailored to the type of works, good, or service to be procured that are mentioned in the aforementioned Article, as well as any other manual or guide considered necessary or requested by those involved in government procurement; and that, based on that Article and the powers vested in it by Decree Law 4170 of 2011, the CCE has been issuing circulars, manuals, and guides on matters as important for the effectiveness of the principles of openness, equity, and efficiency contemplated in the Convention for procurement systems as framework agreements on prices, the identification and hedging of risk, the determination of residual capacity for public works contracts, and the drawing up and updating of the Annual Procurement Plan.

[265] As regards the mandatory application by government entities of the circulars, manuals, and guides issued by *Colombia Compra Eficiente* (CCE), during the on-site visit, that agency's representative pointed out that manuals and guides are not mandatory, but circulars are, although some government entities have questioned that and filed suits and are waiting for the mandatory nature of the circulars to be confirmed under administrative law.

[266] For his part, during the on-site visit the representative of the Office of the Comptroller General of the Republic (CGR) stated that the government entities audited by the CGR claimed that the circulars issued by *Colombia Compra Eficiente* (CCE) were not mandatory, so that their obligatory nature needed to be expressly established in the Procurement Statute.<sup>96</sup>

[267] Regarding this matter, the Committee considers that, given the importance—for the purposes of the principles of openness, equity, and efficiency contemplated in the Convention—of the procurement issues addressed in the circulars issued by *Colombia Compra Eficiente* (CCE) and of the best practices mentioned in its manuals and guides, it would be advisable for the country under review to adopt appropriate measures to ensure that state entities abide by those circulars and adopt those manuals and guides. The Committee will make a recommendation in this regard (See Recommendation 1.2.3.6. in Section 1.2.3. of Chapter II of this report).

[268] In relation to the above, it is worth noting that the country under review provided information in its Response to the Questionnaire to the effect that one of the issues to be addressed in draft amendments to government procurement regulations is that of the "mandatory use of the guides and manuals issued by *Colombia Compra Eficiente*."<sup>97</sup>

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<sup>96</sup> On September 11, 2017, the country under review reported that the CCE circulars are compulsory and that this was recognized in a recent decision by the Council of State, which on August 14, 2017 issued judgment No. 11001-03-26-000-2017-00031-00 (58820). This judgement is not analyzed in this report, because it was not available to the Committee within the time limits mentioned in Section I of this report, "Summary of Information Received".

<sup>97</sup>Response of Colombia to the questionnaire, p. 65

[269] Third, the "2017-2020 Strategic Plan"<sup>98</sup> issued by *Colombia Compra Eficiente* (CCE) notes: "In 2015, *Colombia Compra Eficiente* began deploying SECOP II, which is due to replace SECOP I." Although the Committee understands that the process of implementing SECOP II is gradual, the Committee believes that it would be advantageous for the country under review to consider adopting a schedule contemplating deadlines for government entities to start using SECOP II, after taking into account such factors as their technological infrastructure. The Committee will make a recommendation to the country under review regarding this matter. (See Recommendation 1.2.3.7 in Section 1.2.3 of Chapter II of this report.)

### 1.2.2.2. New developments with respect to technological aspects

[270] Under this heading, in its response to the questionnaire<sup>99</sup> the country under review lists the following developments:

[271] "The development of SECOP II, the transactional platform mentioned in Point B of Measure K.<sup>100</sup> The incorporation of open data criteria in SECOP and the creation of the 87 open data app mentioned in Point B of Measure K. It is also important to mention "Síntesis", an app developed to facilitate consultation of Government Procurement System regulations. Also worth noting are the app to look for codes in the UNSPSC, an on-line chat, and a virtual agent to answer questions."

[272] The Committee takes note of the technological developments relating to systems for the procurement of goods and services that the country under review lists in its response. It is worth noting that, with respect to SECOP II, the Committee already pointed, in section 1.2.2 of this report, to the importance of its development and of adopting a timetable for its use by government entities. In section 1.2.3. of Chapter II of this report, the Committee offered recommendations in that regard to the country under review.

### 1.2.2.3. Results

[273] First, in its Response to the Questionnaire, in connection with outcomes,<sup>101</sup> the country under review provided a statistical table on "composition by types of selection process through 2015," and during the on-site visit it provided more detailed and up-to-date information in that regard in a statistical table that the Committee already analyzed in Section 1.2.1 of this report. In that analysis it pointed out that direct procurement has been the most frequently used form of procurement and offered the country under review a recommendation in that regard.

[274] Second, during the on-site visit, *Colombia Compra Eficiente* (CCE) reported on outcomes with respect to the training provided to those involved with the Government Procurement System and provided its "2017-2020 Strategic Plan,"<sup>102</sup> which states that:

[275] It has also offered short courses for personnel engaged in fiscal, disciplinary, and criminal oversight activities.

[276] "The service channels designed by *Colombia Compra Eficiente* to attend to participants in the Government Procurement System are the Service Panel and the Virtual Agent smart system. These channels attempt to monitor and effectively meet the needs of participants in government procurement, reduce government procurement costs, and improve the performance of the Government Procurement System. The

<sup>98</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>99</sup> Response of Colombia to the questionnaire, pp. 86 and 87.

<sup>100</sup> The reference is to measure k) formulated by the Committee in the Second Round report, implementation of which was analyzed in section 1.2.1 of the present report.

<sup>101</sup> Response of Colombia to the questionnaire, pp. 87 and 88.

<sup>102</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)



Service Panel attends to requests, queries, and complaints regarding electronic platforms and first-tier functions of the tools provided by *Colombia Compra Eficiente*.”

[277] "As *Colombia Compra Eficiente* expands its range of services, organizing them becomes a major challenge."

[278] "*Colombia Compra Eficiente* began implementing a program offering training in strategic procurement aimed at enhancing, developing, and managing the capacities of all those involved in the Government Procurement System. The training program was designed in 2015 and government buyer profiles were established. The training program for its first cohort was launched in 2016."

[279] "It is necessary to deploy the training program and ensure that it serves to transform the procurement function in government entities."

[280] During the on-site visit, the *Colombia Compra Eficiente* representative said that the CCE was understaffed and would need more resources to further expand training. He added that the training covered not just the Government Procurement System's technological platforms but also the regulations governing it.

[281] During the on-site visit, the participant for *Colombia Compra Eficiente* said that the Office of the Comptroller General of the Republic also lent support for the training effort. CGR representatives gave a presentation<sup>103</sup> during the visit on the outcomes of those efforts. According to that information, 432 civil servants at the senior management, advisor, executive, professional, and support [*asistencial*] services levels from Bogotá and the departments of Cesar, Antioquia, Bolivar, Santander, and Valle del Cauca received training.<sup>104</sup>

[282] Bearing in mind the importance of training participants in the Government Procurement System to make the most of the System's technological platforms and to be familiar with the regulations governing the System, and that *Colombia Compra Eficiente* needs resources in order to expand such training, the Committee will offer the country under review a recommendation in that regard (See Recommendation 1.2.3. 8 of section 1.2.3. of Chapter II of this report).

[283] It is worth noting that, with respect to the foregoing recommendation, the civil society organization “Corporación Transparencia por Colombia” pointed out, during a presentation it delivered during the one-site visit,<sup>105</sup> that according to one of its tools, called the Transparency in Government Institutions Index (ITEP), lack of familiarity with regulations was one of "pending issues in government procurement."

[284] Third, during the on-site visit, the National Legal Defense Agency pointed out that, in government procurement-related litigation, more outcomes unfavorable to the State occurred when such cases were resolved by arbitration tribunals, compared to cases resolved under administrative law. In a presentation it gave on government litigation activities, the Agency provided, inter alia, the following statistical table. [Tr. Key to chart below: Arbitration outcomes at February 28, 2017. Type of outcome. Award. Other. Result. Favorable. Unfavorable. Conciliation. Discontinuance. Other.\* Number of proceedings. Amounts sought. Amount awarded. Average duration of proceedings (months). \*Other includes outcome due to extinction of the arbitration clause, and cases thrown out.]

<sup>103</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>104</sup> In response to a question asked during the on-site visit, *Colombia Compra Eficiente* reported that the total number of public servants trained, including those in oversight bodies, was 1,600.

<sup>105</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

## Arbitramentos terminados a febrero 28 de 2017

Tipo de terminación	Resultado	# de procesos	Pretensiones (miles de millones)	Valor condena (miles de millones)	Duración promedio procesos (meses)
Laudo	Favorable	31	\$ 1.438,5	\$ 2,0	20,9
	Desfavorable	40	\$ 1.081,0	\$ 555,1	22,4
Otro tipo terminación	Conciliación	12	\$ 916,7	\$ 395,5	13,9
	Desistimiento	9	\$ 491,0	\$ -	11,9
	Otro (*)	13	\$ 643,0	\$ -	3,6
<b>Total</b>		<b>105</b>	<b>\$ 4.570,3</b>	<b>\$ 952,7</b>	<b>17,8</b>

\*Incluye los terminados por extinción de la cláusula compromisoria, las demandas rechazadas.

[285] During the on-site visit, the National Legal Defense Agency also provided a report on arbitration awards from 2012 to 2016,<sup>106</sup> Section III of which, on "Cases resulting in decisions adverse to the Nation's interests," states that: "Of the sample of 83 arbitration awards, in 50 the tribunals' decisions ran counter to the State's litigation interests, particularly since, it lost 38 of the cases in which it was the respondent (*la convocada*) and 12 of those which it initiated (*como convocante*); in other words, in 60 percent of the cases reviewed, arbitration awards were adverse to the interests of the Nation. The percentages of cases in which the State was found to be contractually liable and cases in which it failed to achieve its goals were as follows: [Tr. Key: Reason. Fulfillment of contract. Services performed without a contract; Financial imbalance in the contract. Issuance of a contractual administrative decision. Total or partial nullity of the contract.]

Causa	#	%
Cumplimiento del contrato	41	82%
Ejecución de prestaciones sin contrato	4	8%
Desequilibrio financiero del contrato	3	6%
Expedición de acto administrativo contractual	1	2%
Nulidad total o parcial del contrato	1	2%
<b>Total general</b>	<b>50</b>	<b>100%</b>

[286] In light of the above information, the Committee will recommend to the country under review that it consider conducting an analysis of the reasons that might explain why more procurement-related cases result in adverse decisions when they are resolved by arbitration tribunals than when they are resolved in actions brought under administrative law. Such a study could also serve to establish measures that might be adopted to avoid those unfavorable outcomes (See Recommendation 1.2.3.9 in section 1.2.3. of Chapter II of this report).

[287] Fourth, considering that, as regards the obligation established in Article 6 of Decree 1510 of 2013 for government entities to publish their Annual Procurement Plan and updates thereto on their website and in SECOP, *Colombia Compra Eficiente* pointed out during the on-site visit that even now some do not, the Committee will offer a recommendation to the country under review in that regard (See Recommendation 1.2.3.10 in section 1.2.3. of Chapter II of this report).

<sup>106</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

[288] It is worth noting that, with respect to the foregoing recommendation, the civil society organization “Corporación Transparencia por Colombia” pointed out, during a presentation it delivered during the one-site visit,<sup>107</sup> that according to one of its tools, called the Transparency in Government Institutions Index (ITEP), it is still not the case that all government entities publish their Procurement Plan, much less updates thereto.

[289] Fifth, according to information culled by the Committee's Technical Secretariat, a document written in October 2015 by the Office of the Comptroller General of the Republic (CGR), entitled "Map of Risks Associated with Procurement Funded by Royalties,"<sup>108</sup> states, as one of its "Conclusions" that:

[290] "The use of funds from royalties has, alas, been associated with irregularities in procurement. While the new -- SGR -- system established an institutional arrangement aimed at strengthening territorial entities through best governance practices, this documents reveals that the risks associated with procurement remain high."

[291] "This document shows that for the CGR the risks of corruption in the procurement carried on by territorial entities using funds derived from royalties remain high due, above all, to the highly discretionary nature of the decision-making associated with it."

[292] “• In value terms, procurement funded by royalties between 2012 and September 2015 totaled \$12.5 billion."

[293] “• Nearly two-thirds of procurement (65 percent) is carried out using competitive processes (public tender, merit-based competition, and fast-track selection), and 35 percent through direct procurement."

[294] “• In value terms, competitive procurement totals \$8.1 billion and direct procurement \$4.4 billion."

[295] “• However, 72 percent of the competitive procurement was carried on through contractual arrangements with a single bidder. That was what transpired from a review of a sample of 2,742 contracts worth \$6.2 billion, equal to 76.5 percent of competitive procurement). This means that procurement worth \$5.8 billion is done without a plurality of bidders; in other words, a basic principle of public procurement, i.e. objective selection, is not being respected."

[296] “• If one adds direct procurement to competitive procurement from a sole bidder, the total value of procurement conducted without a plurality of bidders comes to \$10.3 billion, or 82 percent of all government procurement."

[297] “• Outcomes by department show that in all of them procurement without a plurality of bidders exceeds 55 percent; in that sense, the situation is critical throughout the country."

[298] “• The reason for this cannot be attributed to non-existence of an ample gamut of bidders for the activities in which procurement is going on in the various regions. That transpired from a study in which the data were cross-checked against data taken from the Consolidated Register of Bidders, RUP, provided by Confecámaras. For 1,753 contracts with a single bidder, 832,484 potential bidders were identified.”<sup>109</sup>

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<sup>107</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>108</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>109</sup> On August 14, 2017, the country under review reported that: “Colombia Compra Eficiente does not consider it appropriate to identify all bidders (832,484) as potential bidders, because not all of them are in a position to submit a bid given the difficulties of accessing and providing construction services in geographical areas in which several government entities using funds from royalties are located.”

[299] “• What this situation basically means is that the State is not benefiting from competition among bidders to guarantee choice of the best price/quality option.”

[300] Based on the above information, the Committee will offer a recommendation to the country under review that it consider, after taking into account the principles of openness, equity, and efficiency contemplated in the Convention, adopting the measures needed to ensure that the contracts entered into by territorial entities using funds from royalties elicit a plurality of bidders, so that those entities can benefit from the competition among those bidders that guarantees the best price/quality choice (See Recommendation 1.2.3.11 in section 1.2.3 of Chapter II of this report).

[301] It is worth noting that, with respect to the foregoing recommendation, the civil society organization “Corporación Transparencia por Colombia” pointed out, during a presentation it delivered during the one-site visit,<sup>110</sup> that according to one of its tools, called the Transparency in Government Institutions Index (ITEP), for the territorial entities there are more contracts with a single bidder than contracts with two or more bidders. The figures break down as follows: Departments: with a single bidder: 53%; with 2 bidders: 20%; with 3 or more bidders: 27%. Municipalities: with a single bidder: 59%; with 2 bidders: 19%; with 3 or more bidders: 22%.

[302] Sixth, bearing in mind that the country under review did not submit information on outcomes in terms of penalties imposed for breaches of procurement rules, and since this would be useful for identifying challenges and recommending corrective measures, the Committee will offer a recommendation in that regard (See Recommendation 1.2.3.12 in section 1.2.3 of Chapter II of this report).

### **1.2.3. Recommendations**

[303] In light of the comments made in Sections 1.2.1 and 1.2.2 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

1.2.3.1. Consider taking steps to consolidate government procurement regulations in a single, general and comprehensive body of law, so as to facilitate their application by the competent government officials and make them clearer and easy to understand for all those involved in government procurement and for the general public (See paragraph 198 in Section 1.2.1 of Chapter II of this report).

1.2.3.2. Have the appropriate authority adopt measures to ensure that the direct procurement mode is employed pursuant to the strict application of the Law. (See paragraph 208 in Section 1.2.1 of Chapter II of this report).

1.2.3.3. Have the appropriate authority adopt suitable measures to ensure that territorial entities upload to the Electronic Government Procurement System (SECOP) the information regarding their procurement processes that they are required to post in that system (See paragraph 220 in Section 1.2.1 of Chapter II of this report).

1.2.3.4. Take appropriate measures to adopt the second phase of the Electronic Government Procurement System (SECOP II), including, as funds become available, ensuring that *Colombia Compra Eficiente* (CCE) has the resources it needs to carry out the activities that this entails (See paragraph 232 in Section 1.2.1 of Chapter II of this report).

1.2.3.5. Consider amending Article 2.4.h of Law 1150 of 2007 in keeping with the second paragraph in Article 81 of Decree 1510 of 2013, concerning the hiring of professional and management support

<sup>110</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

services in government entities, in such a way as to exclude these kinds of contracts from the government procurement system, given their similarity to regular jobs governed by labor relations (See paragraph 262 in Section 1.2.1 of Chapter II of this report).

- 1.2.3.6. Adopt appropriate measures to ensure that state entities abide by the circulars issued by Colombia Compra Eficiente (CCE) and adopt its manuals and guides. (See paragraph 267 in Section 1.2.2 of Chapter II of this report).
- 1.2.3.7. Adopt a schedule that, while taking such factors as technological infrastructure into account, sets deadlines for government entities to start making use of SECOP II (See paragraph 269 in Section 1.2.2 of Chapter II of this report).
- 1.2.3.8. Adopt appropriate measures, within available resources, to guarantee that *Colombia Compra Eficiente* (CCE) has the resources it needs to expand the training it provides to civil servants and suppliers in use of the technological platforms of the Government Procurement System and regarding the regulations governing it (See paragraph 282 in Section 1.2.2 of Chapter II of this report).
- 1.2.3.9. Conduct an analysis of the reasons that might explain why more procurement-related cases result in adverse decisions when they are resolved by arbitration tribunals than when they are resolved in actions brought under administrative law and establish measures that might be adopted to avoid those unfavorable outcomes (See paragraph 286 in section 1.2.2. of Chapter II of this report).
- 1.2.3.10. Adopt appropriate measures to ensure that government entities comply with the obligation established in Article 6 of Decree 1510 of 2013 to publish their Annual Procurement Plan and updates thereto on their website and in SECOP (See paragraph 287 in Section 1.2.2 of Chapter II of this report).
- 1.2.3.11. Take whatever steps are needed to ensure that the contracts entered into by territorial entities using funds derived from royalties elicit bids from a plurality of bidders, in such a way that said entities can benefit from the competition among the bidders need to guarantee choice of the best price/quality option (See paragraph 300 in Section 1.2.2 of Chapter II of this report).
- 1.2.3.12. Compile detailed annual statistics on sanctions imposed for breaches of procurement rules, so as to identify challenges and recommend corrective measures, as necessary (See paragraph 302 in Section 1.2.2 of Chapter II of this report).

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

### **2.1. Follow-up on implementation of the recommendations formulated in the Second Round**

#### Recommendation:

*Strengthen the systems to protect public officials and private citizens who, in good faith, report acts of corruption.*

Measure (a) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Expand, through the appropriate authority, the regulations on the “Program for Protection of Witnesses, Victims, and Persons Involved in Disciplinary Proceedings,” in order expressly to include persons who report acts of corruption among the beneficiaries of that program.*

[304] In its response to the questionnaire,<sup>111</sup> the country under review presented information with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[305] - The Transparency Secretariat of the Office of the President of Colombia has been working on a bill envisaging a series of protection measures for individuals (including public servants) who in good faith report an act of corruption.

[306] - "Colombian legislation includes, as we note below, a Consolidated Code of Discipline (Law 734 of 2002), which states in: "Article 48. VERY SERIOUS VIOLATIONS. The following are very serious violations: ("...64. <Paragraph added by Article 43 of Law 1474 of 2011. The new text reads as follows :> Without prejudice to adoption of the measures provided for in Law 1010 of 2006, committing, directly or indirectly, in the course of or exceeding one's functions, an arbitrary and unwarranted act against another public servant who has reported acts of corruption...)." "

[307] With regard to the above information, the Committee takes note of the steps taken by the country under review to move ahead with implementation of measure (a) suggested in recommendation 2.1 in Chapter II, Section 2.1 of this report, and reiterates the need for the State to continue giving the matter its attention, given that, although a bill exists that envisages various measures for everyone (including public servants) and a provision was issued (Article 43 of Law 1474 of 2011), which regards as a very serious offense any arbitrary and unwarranted act against another public servant who has reported acts of corruption, whistleblowers have not yet been expressly included in the Program of Protection for Witnesses, Victims, and Persons involved in Disciplinary Proceedings (See Recommendation 2.3.1 in section 2.3 of Chapter II of this report).

Measure (b) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Adopt, through the appropriate authority, measures pertinent to ensure the operations of the “Program for Protection of Witnesses, Victims, and Persons Involved in Disciplinary Proceedings,”*

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<sup>111</sup> Response of Colombia to the questionnaire, p. 72

[308] In its response to the questionnaire,<sup>112</sup> the country under review presented the following information on the above measure:

[309] - "The measures adopted for its implementation have consisted of persisting with requests for funding, which, however, met with answers to the effect that "funds have not been received for entity for that specific use."

[310] "... the biggest difficulty has been budgetary. So far funds have not been allocated for necessary actions under the program, despite requests for them."

[311] In addition, during the on-site visit, the representative of the Office of the Prosecutor General of the Nation (PGN) gave a presentation<sup>113</sup> in which she pointed out that, apart from the lack of funding for the program, there were other hurdles. She mentioned, in particular, the infrastructure for the program and the matter of witnesses appearing at disciplinary proceedings, because such proceedings were not governed by the principle of timeliness, so that when witnesses were reluctant to appear they were not made to, as permitted by a provision in the Consolidated Disciplinary Code (CUD),

[312] With respect to the above information, the Committee reiterates the need for the country under review to give further attention to implementation of measure (b) of the recommendation in section 2.1 of Chapter II of this report, given that the Committee had offered that recommendation in the Second Round report precisely because of the lack of funding for the "Program for the Protection of Witnesses, Victims, and Persons Involved in the Proceedings." Moreover, since the PGN had pointed out during the on-site visit that there were other problems with the program apart from the lack of budgetary funding, the Committee deems it appropriate to reframe that recommendation so that it clearly reflects the foregoing: (See Recommendation 2.3.2 in Section 2.3 of Chapter II of this report.)

Measure (b) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

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

*i. Mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it.*

*ii. Additional protection measures to protect not only the physical integrity of whistleblowers and their families, but also to provide protection in the workplace, especially when the person is a public official and the acts of corruption involve superiors or co-workers.*

[313] In its response to the questionnaire,<sup>114</sup> the country under review presented information with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[314] "Colombia has been working on a bill to promote and facilitate the reporting of acts of corruption and protection measures for whistleblowers. Thus, the bill provides that anyone (including public

<sup>112</sup> Response of Colombia to the questionnaire, p. 74

<sup>113</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>114</sup> Response of Colombia to the questionnaire, p. 72

servants) who finds himself exposed to any kind of retaliation for having reported an act of corruption shall be entitled to ask for protection measures.

[315] The Response to the Questionnaire<sup>115</sup> also pointed out that the bill is being crafted through an inter-agency process headed by the Transparency Secretariat of the Office of the President of the Republic, whereby it is being discussed within each institution and has not yet been submitted to Congress for debate.

[316] During the on-site visit, the Office of the Prosecutor-General (PGN) also gave a presentation<sup>116</sup> regarding its proposals for whistleblower protection in cases of acts of corruption. It mentioned, in particular, the protection program it is responsible for, as follows:

[317] "1. Legal aspects: We have Article 80 of Law 418 of 1997, which establishes protection for witnesses, victims, and persons involved in the disciplinary proceedings, as well as officials in the PGN. This Law has been continuously extended, the latest extension being through Law 1738 of 2014, for another four years. - 2. Regulatory aspects: Through resolution No. 0377 of September 5, 2003, the PGN regulated protection for witnesses in disciplinary proceedings, which has not been developed or even properly implemented in the 14 years it has been on the books."

[318] For its part, the Attorney General's Office (*Fiscalía General de la Nación* -FGN) gave a presentation<sup>117</sup> during the on-site visit on the protection program it is in charge of and pointed out, inter alia, that, pursuant to Article 250, 7 of the Constitution, Law 418 of 1997, resolution 570 of 2014, and resolution 1006 of 2016, the FGN runs a "Program to Protect Witnesses, Victims, Persons involved in Criminal Proceedings and Staff of the Attorney General's Office," the purpose of which is to provide comprehensive protection and social assistance to victims, witnesses, persons involved in criminal proceedings, as well as to their family members up to the fourth degree of consanguinity, the second degree of affinity, the first civil degree, and the spouse or permanent partner, whenever they are at risk of an attack or their lives are in danger by reason or in the context of their involvement in a criminal proceeding.

[319] In its presentation during the on-site visit, the FGN also pointed out that, thanks to the "Program to Protect Witnesses, Victims, Persons involved in Criminal Proceedings and Staff of the Attorney General's Office," various types of protection could be ordered, namely: Physical Protection 1.1. Ordinary. 1.2. Immediate and Qualified (exceptional) 1.3. Security Safeguards. 1.4. Change of workplace (measure for staff). 1.5. Reassignment of the Proceedings (measure for staff). 2. Change of address 3. Name Change (Change of identity, exceptional) 4. Transfer abroad (exceptional).

[320] With respect to the above, the Committee acknowledges the efforts of the country under review to develop a range of whistleblower protection programs, in accordance with the spheres of competence already in place in Colombia. At the same time, it underscores the importance of creating a comprehensive system that allows for protection of those who report acts of corruption, regardless of whether they are directly involved in a disciplinary or criminal proceeding or not. Accordingly, the Committee welcomes the report by the country under review that a bill is being drafted and deems it important that the State consider bearing in mind the "Model Law to facilitate and encourage the reporting of acts of corruption and to protect whistleblowers and witnesses," adopted by the Committee.<sup>118</sup>

[321] The Committee takes note of the steps taken by the country under review to move ahead with implementation of the recommendation contained in section 2.1 of Chapter II of this report and reiterates the

<sup>115</sup> Response of Colombia to the questionnaire, p. 73

<sup>116</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>117</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>118</sup> Available at: [http://www.oas.org/juridico/PDFs/ley\\_modelo\\_proteccion.pdf](http://www.oas.org/juridico/PDFs/ley_modelo_proteccion.pdf)



need for it to continue to heed the recommendation, taking into consideration for that purpose the criteria established in the "Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistle-blowers and Witnesses," adopted by the Committee (See Recommendation 2.3.3 of Section 2.3 of Chapter II of this report).

[322] It is worth noting, in connection with the above recommendation, that during the on-site visit, an academic from Rosario University gave a presentation,<sup>119</sup> in which he mentioned the subject of protection for whistleblowers and said, among other things, that although there are provisions regarding it, protection measures are very expensive. He said that financial compensation should be enough to cover both the whistleblower and his or her family. He added that it was important to offer financial incentives to report acts of corruption, such as those that had been proposed in a bill which envisaged giving the whistleblower up to 40 percent of any value recovered as a result of the reporting of an act of corruption.

## **2.2. New developments regarding the provision in the Convention on systems for protecting public servants and private citizens who, in good faith, report acts of corruption**

### **2.2.1. New developments in the regulatory framework**

[323] In its Response to the Questionnaire,<sup>120</sup> and as noted by the Committee already in Section 2.1 of Chapter II of this report, the country under review reported that the Transparency Secretariat of the Office of the President of Colombia is preparing a bill envisaging a series of protection measures for anyone who denounces acts of corruption.

### **2.2.2. New developments with respect to technological aspects**

[324] No new developments were reported with respect to technological aspects. The country under review referred in its response to the legislative bill alluded to in the preceding paragraph.

### **2.2.3. Results**

[325] First, the representative of the Office of the Prosecutor-General (PGN) reported, during the on-site meeting, that in the 14 years since the "Program to Protect Witnesses, Victims, Persons involved in Criminal Proceedings" was inaugurated, there had been five successful cases in which the measures stipulated in the Program has been applied.

[326] Second, the Office of the Attorney General (FGN), also during the on-site visit, gave a presentation<sup>121</sup> in which it indicated, inter alia, that between 2014 and 2017 there had been 176 requests for the FGN to grant protection measures under its program. They had been granted in 25 cases: 15 involved physical protection, 7 a change of address, and 3 security safeguards.

[327] The FGN also explained during the on-site visit that the other requests had been turned down due to failure to meet requirements. For instance, the person whose risk status had been assessed did not consent to measures, or no cause and effect connection could be established to justify protection, or else the applicant's risk level was deemed to be normal. It went on to say:<sup>122</sup>

[328] "It is important to point out that, once the protection process has begun and the activities associated with it are under way, the beneficiary signs a commitment with the Program on his or her duties, rights, and obligations. In order to accomplish the purpose of the protection provided, and prevent it from being

<sup>119</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>120</sup> Response of Colombia to the questionnaire, p. 72

<sup>121</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>122</sup> Document available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

terminated, the beneficiary's ethical, social, and moral behavior has to be exemplary. The three reasons for terminating protection measures are: the disappearance of the risk factors that prompted them, the end of criminal proceedings, or exclusion [Tr. for failure to comply with commitments]. Thus, of the 25 cases in which protection measures were granted, 11 are still being covered by the Program, which means that the criminal proceedings in those cases are still at the investigative or trial stage. In one (1) case, the protection changed from physical protection to a change of address due to a change in risk and security levels. Another (1) beneficiary who was receiving physical protection completed his participation in the criminal proceedings satisfactorily and the accused were convicted, so that definitive social relocation arrangements were made for the beneficiary, thereby finalizing all commitments vis-a-vis the program. Following evaluations, security safeguards for staff in the Attorney General's office are lifted as the causes that gave rise to them disappear. In one case, the Committee ordered that one (1) beneficiary be excluded for failure to meet commitments with the Program."

[329] In its presentation during the on-site visit, the FGN also reported that 31 percent of the corruption-related cases in which protection measures had been granted involved embezzlement (*peculado*), 15 percent malfeasance in office and bribery (*prevaricato y cohecho*), 13 percent illicit enrichment, 11 percent extortion (*concusión*), 10 percent contracts failing to meet legal requirements, and the remainder conflicts of interest and influence peddling.

[330] The Committee takes note of the above information, which shows that both the "Program to Protect Witnesses, Victims, Persons involved in Criminal Proceedings" run by the Office of the Prosecutor-General (PGN) and the "Program to Protect Witnesses, Victims, Persons involved in Criminal Proceedings and Staff of the Attorney General's Office", run by the FGN, have granted the aforementioned protection measures.

### 2.3. Recommendations

[331] In light of the comments made in Section 2.1 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

- 2.3.1 *Expand, through the appropriate authority, the regulations on the "Program for Protection of Witnesses, Victims, and Persons Involved in Disciplinary Proceedings," in order expressly to include persons who report acts of corruption among the beneficiaries of that program (See paragraph 307 in Section 2.1 of Chapter II of this report).*
- 2.3.2 *Adopt, through the appropriate authority, as funds become available, the budgetary, institutional, administrative or any other measures needed to guarantee that the "Program for the Protection of Witnesses, Victims, and Persons Involved in Disciplinary Proceedings" operates properly and effectively (See paragraph 312 in Section 2.1 of Chapter II of this report).*
- 2.3.3 *Through the appropriate authority and bearing in mind the criteria established in the "Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistle-blowers and Witnesses" approved by the Committee, adopt comprehensive regulations on the protection of public servants and private citizens who in good faith denounce acts of corruption, including protection of their identity, in accordance with the Constitution of the country under review and the fundamental principles upheld in its legal system. That could encompass, inter alia, the following aspects: (See paragraph 321 in Section 2.1 of Chapter II of this report).*
  - i. *Mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it.*

- ii. *Additional protection measures to protect not only the physical integrity of whistleblowers and their families, but also to provide protection in the workplace, especially when the person is a public official and the acts of corruption involve superiors or co-workers.*

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

#### 3.1. Follow up on Implementation of the Recommendations Formulated in the Second Round

The recommendation on this section was satisfactorily considered in the report from the Third Round and, therefore, does not require additional attention.

#### 3.2. New developments in respect of the Convention provision on acts of corruption

##### 3.2.1. New developments in the regulatory framework

###### a) Scope

[332] In its Response to the Questionnaire,<sup>123</sup> the country under review presented information regarding these new developments and, in particular, regarding Law 1474 of 2011 (Anti-Corruption Statute) containing provisions for strengthening mechanisms for preventing, investigating, and punishing acts of corruption and for more effective oversight of public sector management.

[333] In addition, during the on-site visit, the Office of the Attorney General of the Nation (FGN) provided further details on the provisions in the aforementioned law relating to the acts of corruption referred to in Article VI.1 of the Convention, as follows:<sup>124</sup>

[334] **With regard to all sub-paragraphs of Article VI.1 of the Convention:**

[335] "ARTICLE 13. EXCLUSION OF BENEFITS IN CORRUPTION-RELATED OFFENSES AGAINST PUBLIC ADMINISTRATION

[336] "Article 68A of the Criminal Code shall read as follows:

[337] Sentencing alternatives [*subrogados penales*] or alternatives to incarceration such as conditional suspension of execution of sentence or probation shall not be granted; nor shall house arrest be allowed in lieu of incarceration; nor shall there be any other kind of benefit or legal, judicial, or administrative alternative be granted, other than the benefits for collaboration with the authorities regulated by law, provided that said collaboration is effective, in cases in which a person has committed a willful or premeditated crime within the past five years."

[338] "Nor shall benefits or alternatives to incarceration be granted to persons convicted of crimes against public administration, fraud, and breach of trust to the detriment of State assets, improper use of insider information, money laundering, and transnational bribery."

[339] "The provisions of this Article shall not apply to substitutes for pre-trial detention or to substitutes for enforcement of sentence in the circumstances contemplated in subparagraphs 2, 3, 4, and 5 of Article 314 of Law 906 of 2004, or to cases involving application of the prosecutorial discretion principle, prior agreements and plea bargains, and acceptance of charges."

<sup>123</sup> Response of Colombia to the questionnaire, p. 90

<sup>124</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

[340] "ARTICLE 14. EXTENSION OF STATUTE OF LIMITATIONS Article 83.6 of the Criminal Code shall read as follows:"

[341] "6. For public servants who commit or participate in punishable conduct in the exercise of or in connection with the functions proper to their position, the statute of limitations shall be increased by half. The foregoing shall also apply to private persons performing government functions on a permanent or temporary basis or acting as withholding or collection agents."

[342] "ARTICLE 35. EXTENSION OF TIME ALLOWED FOR INVESTIGATION Article 175 of Law 906 of 2004 shall have one paragraph that reads as follows:"

[343] "PARAGRAPH. In criminal proceedings handled by specialized criminal court judges regarding crimes against public administration and property-related or financial offenses to the detriment of State assets for which pre-trial detention is allowed, the prescription period shall be doubled in cases in which three (3) or more accused are involved or three (3) or more offenses are under investigation."

[344] "ARTICLE 37. PRELIMINARY EVIDENCE. Article 284 of Law 906 of 2004 shall have a fourth paragraph that reads as follows:"

[345] "PARAGRAPH 1. In criminal proceedings by specialized criminal court judges regarding crimes against public administration and property-related or financial offenses to the detriment of State assets for which pre-trial detention is allowed, the testimony of anyone who has received threats against his life or that of family because of what he or she knows may be received as preliminary evidence; said preliminary evidence shall also be admissible when an extradition process has been opened against the witness that has been approved by the Criminal Division of the Supreme Court of Justice."

[346] The evidence shall be taken before the President of the Republic makes a final decision to allow extradition.

[347] "ARTICLE 39. RESTRICTIONS ON HOUSE ARREST. Paragraph 314 of Law 906 of 2004 shall read as follows:"

[348] "PARAGRAPH 1. The use of house arrest in lieu of pre-trial detention in a prison shall not be permitted in cases in which the accused is charged with the following offenses: Those handled by specialized criminal court judges or those acting as such; migrant smuggling (C.C. Article 188); sexual intercourse (*acceso carnal*) or sexual acts with a person incapable of resistance (C.C. Article 210); domestic violence (C.C. Article 229); aggravated larceny (C.C. Article 240); grievous theft (C.C. Article 241.7, 8, 11, 12, and 15); aggravated fraud (C.C. Article 247); use of false documents relating to stolen vehicles (C.C. Article 291); manufacturing, trafficking, and bearing of firearms or ammunition for personal use, when associated with the offense of conspiracy to commit crime (C.C. Articles 340 and 365) or when the accused's records show previous convictions for the same offenses; manufacturing, trafficking, and bearing of firearms or ammunition meant for the exclusive use of the armed forces (C.C. Article 366); manufacturing, importing, trafficking, possession, and use of chemical, biological, and nuclear weapons (C.C. Article 367); embezzlement involving the misappropriation of more than fifty (50) legal minimum monthly wages (C.C. Article 397); extortion (C.C. Article 404); bribery in which in exchange for a bribe the bribee commits acts that constitute a criminal offense (*cohecho propio*) (C.C. Article 405); bribery in which in exchange for a bribe the bribee commits acts that are not prohibited by law (*cohecho impropio*) (C.C. Article 406); giving or offering money or other benefit in either of the cases mentioned in Articles 405 and 406 (*cohecho por dar u ofrecer*) (C.C. Article 407); illicit enrichment (C.C. Article 412); transnational bribery (C.C. Article 433); conflict of interest in the conclusion of contracts (*interés indebido en la celebración de contratos*) (C.C. Article 409); concluding a contract that

fails to comply with legal requirements (C.C. Article 410); influence peddling (C.C. Article 411); continuous, repeated handling of stolen goods (C.C. Article 447.1 and 3); handling of stolen goods to hide or conceal aggravated theft in conjunction with conspiracy to commit a crime; handling of stolen motor vehicles or the essential parts thereof, or of merchandise or fuel carried thereby (C.C. Article 447.2)."

[349] **With regard to Article VI.1.a. and b. of the Convention:**

[350] "ARTICLE 33. CIRCUMSTANCES CALLING FOR HARSHER SENTENCES. The punishment for the offenses characterized in Articles 246, 250.3, 323, 397, 404, 405, 406, 408, 409, 410, 411, 412, 413, 414, and 433 of Law 599 of 2000 shall be increased by between one-sixth to one-half when the conduct is committed by a public servant working in a government oversight agency."

[351] "ARTICLE 40. PROSECUTORIAL DISCRETION PRINCIPLE (*PRINCIPIO DE OPORTUNIDAD*) FOR BRIBERY OFFENSES. Article 324 of Law 906 of 2004 shall have a paragraph 18 that reads as follows:"

[352] "18. When, in bribery cases, the perpetrator or accomplice files the complaint that prompts the criminal investigation, accompanies it with evidence that proves useful in the trial, and serves as a witness for the prosecution, provided that he makes voluntary and full reparation for the damage done."

[353] The effects of applying the prosecutorial discretion principle shall be revoked if the beneficiary of such application fails to fulfill his obligations in the trial hearing."

[354] "The prosecutorial discretion principle shall be applied to a public servant if he first reports the offense as required above."

[355] **With regard to Article VI.1.c of the Convention:**

[356] "ARTICLE 25. LIGHTER SENTENCES DUE TO EXTENUATING CIRCUMSTANCES. "Article 401 of the Criminal Code shall read as follows:"

[357] "If, before an investigation begins, a state agent, directly or through a third party, stops the improper behavior, makes good the harm done, corrects the incorrect use of funds collected for a different official purpose (*la aplicación oficial diferente*), or returns what was appropriated, lost, or misplaced, or its equivalent in value terms plus interest, the sentence shall be halved."

[358] If restitution is made before an appeals court judgment is handed down, the sentence shall be reduced by one third."

[359] If only partial restitution is made, the judge shall reduce the sentence proportionately, by up to one quarter."

[360] "ARTICLE 33. CIRCUMSTANCES CALLING FOR HARSHER SENTENCES. The punishment for the offenses characterized in Articles 246, 250.3, 323, 397, 404, 405, 406, 408, 409, 410, 411, 412, 413, 414, and 433 of Law 599 of 2000 shall be increased by between one-sixth to one-half when the conduct is committed by a public servant working in a government oversight agency."

[361] **With regard to Article VI.1.d of the Convention:**

[362] "ARTICLE 23. MISAPPROPRIATION BY USING SOCIAL SECURITY FUNDS FOR A DIFFERENT OFFICIAL PURPOSE. Law 599 of 2000 shall have an Article 399A that reads as follows:

The punishment provided for in Article 399 shall be increased by between one third and one half when funds earmarked for comprehensive social security are used for a different official purpose."

[363] "ARTICLE 24. WILLFUL MISAPPROPRIATION OF COMPREHENSIVE SOCIAL SECURITY FUNDS Law 599 of 2000 shall have an Article 400A that reads as follows: The punishments provided for in Article 400 shall be increased by between one third and one half when funds earmarked for comprehensive social security are used for a different official purpose."

b) Observations

[364] The Committee wishes to acknowledge the new regulatory developments in Colombia relating to the acts of corruption referred to in Article VI.1 of the Convention.

[365] Nevertheless, it considers that it would be worth assessing the advisability of adjusting some of the provisions contemplated in these new developments.

[366] First, as regards Article 68A of the Criminal Code, the criminal court judges representing the Judiciary during the on-site visit pointed out that the aforementioned Article had been amended not just by Article 13 of Law 1474 of 2011 (the Anti-Corruption Statute) but also by Article 32 of Law 1709 of 2014 and Article 4 of Law 1773 of 2016, so that it currently reads as follows:<sup>125</sup>

[367] "ARTICLE 68A. EXCLUSION FROM BENEFITS AND SENTENCING ALTERNATIVES (*SUBROGADOS PENALES*). <Paragraph amended by Article 32 of Law 1709 of 2014. No conditional suspension of execution of sentence or probation; house arrest in lieu of incarceration; or any other kind of judicial or administrative benefit shall be granted, other than the benefits for collaboration with the authorities regulated by law, provided that said collaboration is effective, in cases in which a person has been convicted of a willful offense within the past five (5) years."

[368] "<Paragraph amended by Article 4 of Law 1773 of 2016. The new wording is as follows :> Nor those convicted of willful offenses against public administration; offenses against persons and assets protected by international humanitarian law; offenses against liberty, integrity and sexual development; fraud and breach of trust to the detriment of State assets; large-scale and habitual embezzlement of funds [*captación masiva y habitual de dineros*]; improper use of insider information; aggravated conspiracy to commit crime; money laundering; transnational bribery; domestic violence; grievous theft; extortion; aggravated homicide as per Article 104.6; injuries inflicted using chemicals, acid, and/or similar substances; illicit tampering with communications; illicit tampering with communications or correspondence of an official nature; trafficking in persons; eulogy of genocide; bodily injuries involving the anatomical or functional loss of an organ or limb; forced displacement; smuggling of migrants; establishment of dummy corporations/straw man identities (*testaferrato*); illicit personal enrichment; seizure of fossil fuels, their byproducts, biofuels or compounds containing them; handling of stolen goods; incitement to commit crime; the use or launching of hazardous substances or objects; the manufacturing, import, trafficking in, possession or use of chemical, biological, or nuclear weapons; crimes related to narcotic drug trafficking and other offenses; spying; rebellion; and forced displacement; seizure of real estate; forgery of national or foreign currency; fictitious exporting or importing; tax evasion; refusal to reimburse; aggravated contraband; contraband in fossil fuels and their byproducts; aiding and abetting the use, production, and transfer of anti-personnel mines."

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<sup>125</sup> Document available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

[369] "The provisions of this Article shall not apply to substitutes for pre-trial detention or to substitutes for enforcement of sentence in the circumstances contemplated in subparagraphs 2, 3, 4, and 5 of Article 314 of Law 906 of 2004."

[370] "PARAGRAPH 1. The provisions of this Article shall not apply to the probation contemplated in Article 64 of this Code, nor to the provisions of Article 38G of this Code."

[371] "PARAGRAPH 2. The contents of the first subparagraph of this Article shall not apply to suspension of the enforcement of a sentence, when personal, social, and family data indicate that there is no possibility of the sentence being enforced."

[372] Second, as regards the current wording of Article 68A of the Criminal Code, transcribed above, the criminal court judges representing the Judiciary during the on-site visit, stated, first and foremost, that:<sup>126</sup>

[373] "...A reading of the Article in question shows that, of the offenses listed in Article VI of the Convention, conspiracy to commit crime is missing, as such, in Article 68A, because only aggravated conspiracy to commit crime is mentioned."

[374] Third, as regards the current wording of Article 68A of the Criminal Code, the criminal court judges representing the Judiciary during the on-site visit, stated, secondarily, that:<sup>127</sup>

[375] "Likewise, it is important to note that, as pointed out during the on-site visit, Article 68A does not include other offenses referring to punishable conduct related to acts of corruption, such as private sector corruption and malfeasance (*administración desleal*), to mention just two."

[376] Fourth, as regards the current wording of Article 68A of the Criminal Code, the criminal court judges representing the Judiciary during the on-site visit, stated, in third place, that:<sup>128</sup>

[377] "Now, the fact that Article 68A of the Criminal Code is located under the Title "Legal Consequences of Punishable Conduct" and in Chapter Three "Substitutes for Incarceration," suggests that the only benefits that may be denied a person convicted under the terms and for the offenses listed therein are conditional suspension of enforcement of the judgment, house arrest, and probation, although, with respect to probation, paragraph 1 points out that the provisions of that Article shall not apply to cases addressed in Article 64, which refers precisely to probation and also alludes to Article 38G, which mentions the possibility of house arrest once half the sentence has been served and subject to the conditions referred to in subparagraphs 3 and 4 of Article 38B, which require a demonstration of physical presence (*arraigo*) and a signed commitment to obey a court order (*diligencia de compromiso*)."

[378] "Consequently, we consider that this provision contains technical legal errors when it states that: "*nor shall any other judicial or administrative benefit be admissible*," because, even though, from a teleological perspective, one might think that what the lawmaker wanted was not to allow reductions of sentences in exchange for work or studies, the Criminal Cassation Division of the Supreme Court ruled that sentence reductions for work or study were not benefits, but rights.<sup>129</sup>"

<sup>126</sup> Document available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>127</sup> Document available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>128</sup> Document available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>129</sup> "T-718 of 2015. REMISSION OF SENTENCES - Position taken by the Criminal Cassation Division of the Supreme Court of Justice. *With Law 1709 of 2014 in force, the Criminal Cassation Division of the Supreme Court of Justice adopted a new stance in the judgment under review with respect to remission of the sentence, because, in the*

[379] Fifth, as regards the current wording of Article 68A of the Criminal Code, the criminal court judges representing the Judiciary during the on-site visit, stated, in fourth place, that:<sup>130</sup>

[380] "It is also important to underscore the provisions of the second paragraph of the Article which set aside those of the first (the ban on granting benefits and substitute sentences), when personal, social and family data indicate that there is no possibility of enforcing the judgment. This means that the exclusion from benefits and substitute sentences is not absolute, but depends on who the sentenced person is. Thus, for example, a civil servant convicted of a corruption offense may not have to go to prison if he has no criminal record, is a head of household, or otherwise meets the conditions covered by subparagraphs 2, 3, 4, and 5 of Article 314 of Law 906 of 2004."

[381] In addition to the statements regarding the current text of Article 68A of the Criminal Code mentioned earlier by the criminal court judges taking part in the on-site visit meetings as representatives of the Judiciary, they also had the following to say:<sup>131</sup>

[382] "...It needs to be reiterated that benefits for submission to or acceptance of charges, the principle of prosecutorial discretion, and pleas bargains persist, even in the case of the offenses mentioned in Article VI of the Convention, because, despite the provisions of Article 349 of the Code of Criminal Procedure,, it is clear that, unless an increase in net worth has been proved, plea bargains are in no way prohibited."

[383] "The aforementioned Article establishes: "INADMISSIBILITY OF AGREEMENTS OR PLEA BARGAINS WITH ACCUSED PERSONS OR DEFENDANTS. *In crimes in which the perpetrator of the punishable conduct increases his or her net worth as a result of it, no bargain may be struck with the Public Prosecutor's Office until restitution is made of at least fifty percent of the perceived increase and collection of the remainder has been assured.*"

[384] Based on the observations made by the criminal court judges taking part in the on-site visit meetings as representatives of the Judiciary, it transpires that, in their view, the current text of Article 68A of the Criminal Code, resulting from the amendments introduced by Article 13 of Law 1474 of 2011, Article 32 of Law 1709 of 2014, and Article 4 of Law 1773 of 2016, contains errors of "legislative technique", particularly since, without prejudice to their being excluded from conditional suspension of the enforcement of a sentence and the use of house arrest in lieu of incarceration, corruption offenses are eligible for reductions of penalties in exchange for acceptance of the charges brought: cases that are not expressly identified in the aforementioned text. It also transpires that there are also other legally characterized offenses relating to acts of corruption that are not excluded from the benefits referred to in the current text of Article 68A of the Criminal Code.

[385] At the same time, the Transparency Secretariat (ST) maintains that the wording of the articles relating to benefits and substitute sentences is rather confusing, as a result of continuous amendments adding or deleting items in those articles

[386] Without attempting to adjudicate the proper interpretation to be made of the scope of the current text of Article 68A of the Criminal Code, with respect to the particular benefits from which crimes against

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*opinion of that body, introducing the new category of "right" settled the dispute as to the legal nature of what was involved in the remission; that is to say, it ceased to be an "administrative benefit" restricted by the lawmaker and became a "right" recognized by Law."*

<sup>130</sup> Document available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>131</sup> Document available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)



public administration are excluded and the specific offenses to which said benefits are in fact applied; and bearing in mind that, based on the statements of both the criminal court judges taking part in the on-site visit meetings and the Transparency Secretariat (TS), it appears to be clear that the wording of the current text is not clear enough with regard to the above-mentioned aspects, the Committee will make a recommendation in that regard to the country under review (See Recommendation 3.3.1 in section 1.1.3 of Chapter II of this report).

[387] It is worth noting that, with respect to the foregoing recommendation, the civil society organization “Corporación Excelencia en la Justicia” pointed out that criminal provisions, including those relating to acts of corruption, need to be clearly worded and easy to apply.

### **3.2.2. New developments with respect to technological aspects**

[388] The country under review did not provide information regarding these kinds of developments.

[389] Nevertheless, during the on-site visit, the criminal court judges representing the Judiciary, had the following to say:<sup>132</sup>

[390] "...It is important to point out that whereas both the Public Prosecutor's Office and the Defenders' Office have a large I.T. team and specialized training for corruption-related cases, judges have a staff of just two (2) people to help them process cases, who are not required to have any special training beyond their law degrees. Add to that the dearth of technological tools and the lack, for example, of a typist to transcribe oral proceedings and thereby facilitate the reaching of decisions that, in complex cases, may take up to two to three years from the start of oral proceedings."

[391] Regarding that assertion by the criminal court judges, the Transparency Secretariat (ST), which also took part in the on-site visit, stated that:<sup>133</sup>

[392] "We fully agree with that assertion and, in our view, in order to hand down rulings in cases as complex as those relating to corruption, there need to be judges who are specialists in the subject. Moreover, those judges must have all the technological support needed in such cases."

[393] Bearing in mind the statements by the criminal court judges who participated in the on-site visit meetings as representatives of the Judiciary, regarding the lack of technological tools to support their work, and the fact that the Transparency Secretariat (ST) of the Office of the President of the Republic concurs with that assessment, the Committee will make a recommendation in that regard to the country under review (See Recommendation 3.3.2 in section 1.1.3 of Chapter II of this report).

[394] Regarding the additional statements by the criminal court judges who participated in the on-site visit meetings as representatives of the Judiciary regarding the lack of training of their staff, it is worth noting that, in the Fourth Round report,<sup>134</sup> the Committee already made a recommendation to the country under review to the effect that officials and employees engaged in the administration of justice and in the investigation and prosecution of acts of corruption receive training specifically related to the subject.

[395] As regards the above, it is worth mentioning that during the on-site visit the civil society organization “Corporación Excelencia en la Justicia” pointed out that judges needed to receive more

<sup>132</sup> Document available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>133</sup> Document available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

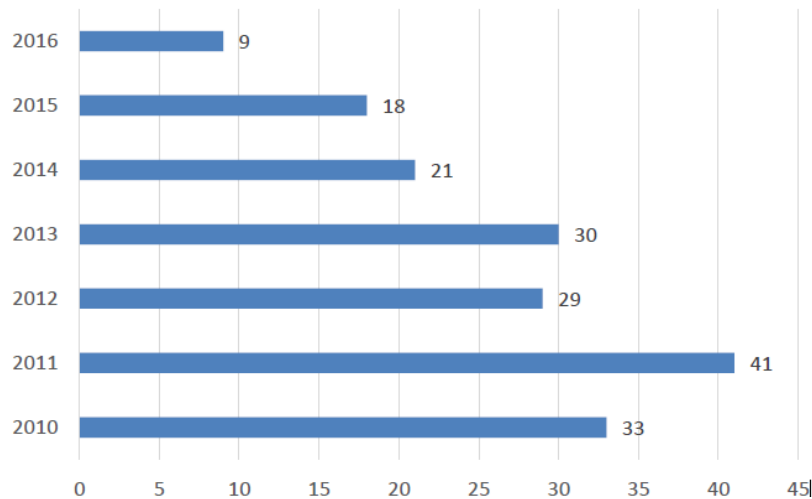
<sup>134</sup> Available at: <http://www.oas.org/juridico/spanish/col.htm>

technical training regarding highly sophisticated acts of corruption, for instance, those relating to the stock market and procurement/hiring.

### 3.2.3. Results

[396] In its Response to the Questionnaire,<sup>135</sup> the country under review first provided the following information regarding outcomes for the Specialized Anti-Corruption Directorate (DECC)<sup>136</sup> in the Office of the Attorney General (FGN), in respect of the acts of corruption referred to in Article VI.1 of the Convention:

[397] "Bearing in mind that, due to this Directorate's specific spheres of competence,<sup>137</sup> the only cases investigated are those specifically assigned by the Attorney General directly to the Specialized Anti-Corruption Directorate (DECC) or those previously recommended by the National Committee for Prioritizing Situations and Cases, without prejudice to their being initiated ex officio or for preventive purposes when circumstances so warrant; in the past five years, 181 reports of criminal acts have fallen with the scope of Article VI of the Convention, as indicated in the following chart."

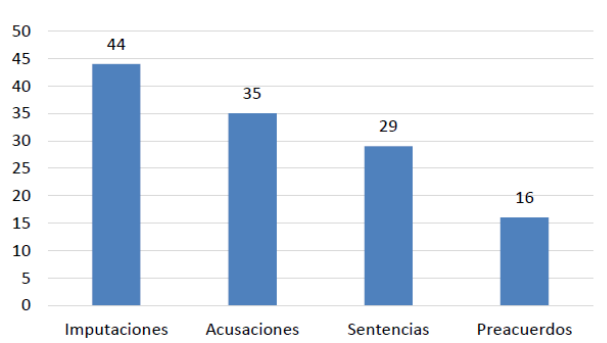


[398] "Likewise, through October 2016, it transpires that reports of criminal acts investigated by the Specialized Anti-Corruption Directorate (DECC) resulted in the following: [Tr. Key: Charges; Indictments; Judgments; Prior Agreements/Plea Bargains]

<sup>135</sup> Response of Colombia to the questionnaire, p. 90

<sup>136</sup> On August 14, 2017, the country under review reported that the agency of the FGN that deals specifically with corruption-related cases is now called the "Specialized Anti-Corruption Directorate (DECC)"; it was previously called the "National Directorate Specializing in the Prosecution of Corruption (DFNECC)."

<sup>137</sup> Resolution 057 of April 2, 2014 of the Office of the Attorney General of the Nation (FGN), posted at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)



[399] As regards the information contained in the first of the two statistical charts provided by the FGN (copied above), the Committee notes that the number of corruption cases relating to Article VI of the Convention assigned to the National Directorate Specializing in the Prosecution of Corruption (DFNECC) has been falling since 2011 (when 41 cases were assigned to it) through the last year covered by those data (2016), when only nine cases were assigned.

[400] It is worth noting in this regard that, while the criteria governing both the hearing of corruption cases by the DECC and the allocation of such cases to it, are regulated by FGN resolutions,<sup>138</sup> the FGN pointed out, during the on-site visit that, based on the criteria of the particular nature, need, complexity, and type of conduct investigated and of the alleged perpetrator and/or accomplice, the DECC takes on those proceedings that have the aforementioned characteristics either because they are directly assigned to it by the Attorney General of the Nation, or pursuant to [Tr. instructions from] prioritization committees, or preventively, paying particular attention to the aforementioned criteria.”

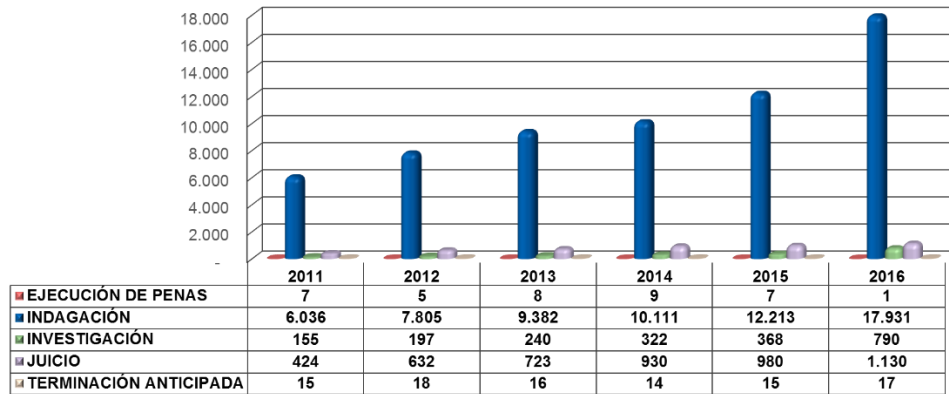
[401] Bearing in mind the findings shown in the first of the two statistical charts provided by the FGN and reproduced above, on the decline in the number of corruption-related cases assigned to the DECC, the Committee will offer a recommendation to the country under review in that regard (See Recommendation 3.3.3 in section 1.1.3. of Chapter II of this report).

[402] Second, during the on-site visit, the Office of the Attorney General of the Nation (FGN) provided the following details on outcomes relating to the acts of corruption listed in Article VI.1 of the Convention:<sup>139</sup>

[403] "In the following statistics, the investigative stage refers to inquiries into reports of criminal acts initiated between 2011 and 2016. Furthermore, the preliminary inquiry, investigation, and trial stages refer to reports of corruption-related criminal acts being processed by the Office of the Attorney General of the Nation. Likewise, it is worth noting that the investigations under way refer to proceedings likely to result in a ruling on the merits of the case being investigated. That said, the so-called "trial" phase refers to reports of criminal acts that have been processed to a point at which the competent authority can adopt such a ruling:"

<sup>138</sup> Resolution 057 of April 2, 2014 (hearing of cases) and various resolutions on criteria governing the allocation of cases, posted at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>139</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)



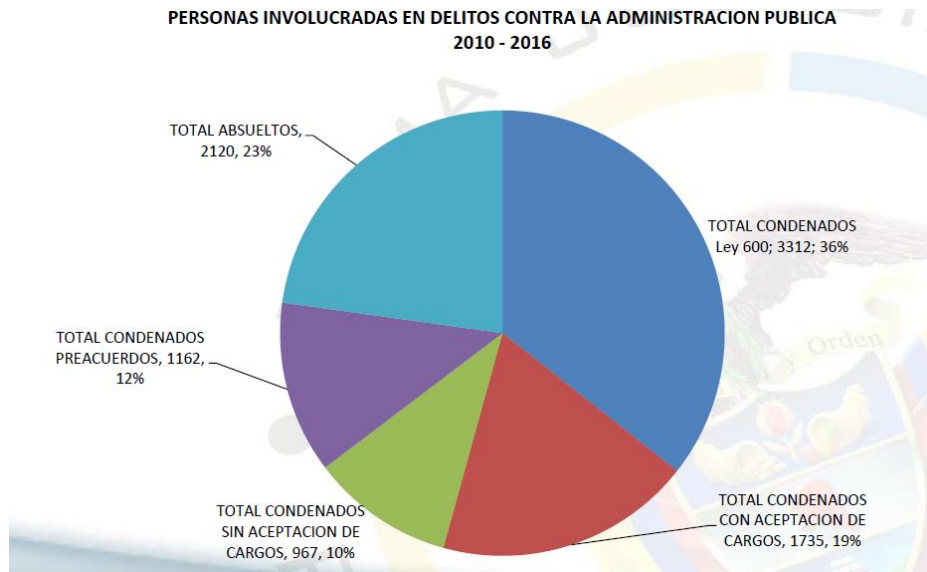
[404] "Actions triggered by reports of criminal acts that for some reason have been suspended are a reference to criminal report actions to which prosecutorial discretion may apply. At the archiving stage, one can also see criminal act reports that have been shelved for lack of ability to reach a decision on the merits of the case investigated.<sup>140</sup> Finally, it needs to be pointed out that the headings "Lapsing (expiration) of the action", "completion (discharge) of the action", "discontinuance", "death of the suspect", "estoppel", "acquittal", and "conviction" refer to the various ways in which the corruption-related criminal report inquiries and actions conducted by the Office of the Attorney General come to an end." [Tr. *These headings are repeated in the charts below*]

	2011	2012	2013	2014	2015	2016
ARCHIVO	8591	10610	12298	12700	12173	13840
PRINCIPIO DE OPORTUNIDAD	27	34	85	82	109	167
CADUCIDAD QUERELLA	41	66	74	77	67	64
CUMPLIMIENTO QUERELLA	32	43	31	30	20	21
DESESTIMIENTO	582	666	678	769	710	757
MUERTE INDICIADO	23	23	20	23	21	10
PRECLUSIÓN	1360	1272	1586	1518	1792	1748
SENTENCIA ABSOLUTORIA	71	71	106	142	206	278
SENTENCIA CONDENATORIA	473	590	611	849	963	1084

[405] Regarding the information contained in the foregoing statistical table, the Committee notes the large number of corruption-related criminal inquiries shelved or ended by estoppel. It will therefore offer the country under review a recommendation that it consider conducting an analysis of the possible causes of both these outcomes (See Recommendation 3.3.4 in section 1.1.3 of Chapter II of this report).

<sup>140</sup> On August 14, 2017, the State under review said: "In relation to the foregoing, it should be clarified that Article 79 of the Code of Criminal Procedure (Law 906 of 2004), concerning the archiving of proceedings, provides that the prosecutor's office shall order the proceeding to be set aside in cases where there are no grounds or circumstances of fact by which to characterize an act as a crime or to suggest that a crime has been committed. Having said that, the lawmaker included the provision that "if the investigation brings new evidence to light, the proceeding shall resume provided that the criminal action is not extinguished."

[406] Third, during the on-site visit, the Higher Council of the Judiciary (CSJ) furnished information regarding outcomes in the judiciary with respect to the acts of corruption listed in Article VI.1 of the Convention, most notably the following:<sup>141</sup>



[407] Concerning the statistical information contained in the above chart, the Committee considers that, while it indicates that decisions have been taken in the Judiciary in cases relating to the acts of corruption contemplated in Article VI.1 of the Convention, with the outcomes shown in the chart, it does not show how many of those cases are currently under way or have been suspended, have prescribed, have been shelved without a decision on the merits, or are now ready for a decision on the merits. The Committee therefore reiterates the recommendation it already offered the country under review in the Fourth Round report.<sup>142</sup>

[408] Fourth, bearing in mind that, during the on-site visit, both the Transparency Secretariat of the Office of the President of the Republic and the criminal court judges representing the Judiciary pointed out that for rulings on cases as complex as those dealing with acts of corruption specialized courts need to be established and that the aforementioned judges also stated that corruption cases were becoming more and more frequent and complex, so that the Judiciary already lacked sufficient staff and facilities to meet that demand, the Committee will offer the country under review a recommendation in that regard (See Recommendation 3.3.5 in section 1.1.3 of Chapter II of this report).

[409] With respect to the above, it is worth mentioning that, during the on-site visit, the civil society organization “Corporación Excelencia en la Justicia” pointed out that, whereas the Office of the Attorney General has prosecutors specializing in cases involving acts of corruption, the Judiciary lacks such specialists.

[410] Fifth, during the on-site visit, the Office of the Attorney General of the Nation (FGN) provided the following information on outcomes relating to its forfeiture proceedings in cases involving crimes against public administration:<sup>143</sup>

<sup>141</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>142</sup> Available at: <http://www.oas.org/juridico/spanish/col.htm>

<sup>143</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

[411] "Forfeiture proceedings currently being conducted by the National Public Prosecution Directorate Specializing in Forfeiture Proceedings (*Dirección de Fiscalía Nacional Especializada de Extinción del Derecho de Dominio*), in connection with crimes against public administration, involve 604 properties in all, worth a total of \$495 billion pesos."

[412] "Of the forfeiture proceedings currently being conducted by the National Public Prosecution Directorate Specializing in Forfeiture Proceedings in connection with crimes against public administration, six proceedings deemed admissible are at the judgment stage, involving 66 properties in all, worth a total of \$60.634 billion pesos."

[413] "In addition, judgments have been handed down in 13 forfeiture proceedings, involving 96 properties in all, worth a total of \$14 billion pesos."

[414] Nevertheless, the constitutional action for termination of ownership (forfeiture) is proceeding within this Directorate's remit."

[415] As regards the above, the criminal court judges representing the Judiciary during the on-site visit stated that:<sup>144</sup>

[416] "...very few precautionary measures are requested by the Office of the Attorney General of the Nation to ensure reparation of the harm done by corruption offenses to the state entities that are the victims of it, given the serious risk of the defendant being declared insolvent and the attendant consequences of such a declaration for the aforementioned financial reparation, with no guarantee that forfeiture will cover the damages caused by the punishable offense in question, because the money collected through this proceeding is earmarked for the "Rehabilitation, Social Investment, and Combating Organized Crime Fund" (FRISCO).

[417] With regard to the above, it is to be noted that, already in the Fourth Round report,<sup>145</sup> the Committee analyzed the FGN's forfeiture procedures in relation to crimes against public administration and offer a recommendation to the country under review concerning this matter.

[418] Sixth, during the on-site visit, the Office of the Attorney General of the Nation (FGN) provided information regarding its coordination and cooperation with other oversight organs concerned with acts of corruption, notably the following:<sup>146</sup>

[419] "Aware that corruption is a huge problem due to the fact that it cuts across all axes of the State's work, and pursuant to Article 113 of the Political Constitution and Article 6 of Law 489 of 1998, which establish the principles of coordination and collaboration among administrative authorities, among other considerations, national oversight organs have striven to work closely together to create efficient strategies for combating corruption."

[420] "One of the more recent efforts, lending continuity to these inter-agency attempts to fight corruption, is the *Framework Agreement for Inter-Agency Cooperation* signed on August 6, 2015 by the Office of the Attorney General (FGN), the Office of the Prosecutor-General (PGN), the Office of the Comptroller General of the Republic, and the Office of the President of the Republic, through the Transparency Secretariat. The purpose of that Agreement is "to define a framework for harmonious cooperation among the institutions by coordinating actions to elicit the support of specialists in the mechanisms needed to strengthen anti-corruption policy; tax, criminal, and disciplinary investigation;

<sup>144</sup> Document available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>145</sup> Available at: <http://www.oas.org/juridico/spanish/col.htm>

<sup>146</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

training for judicial police personnel; and cooperation with the technical/scientific and human resources in the institutions, so as to develop their constitutional and legal powers within their spheres of competence."

[421] "To that end, a Manual was established for "exchanges of information, sharing of evidence, and support and assistance for judicial proceedings" that function, in general terms, as follows: (...)."

[422] As regards coordination and cooperation among the various oversight bodies concerned with acts of corruption, it is to be noted that, already in the Fourth Round report,<sup>147</sup> the Committee analyzed this matter and offered the country under review recommendations on the subject.

### **3.3. Recommendations**

[423] In light of the comments made in Sections 3.1 and 3.2 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

- 3.3.1 Consider amending Article 68A of the Criminal Code so that it expressly and clearly states the benefits from which crimes against public administration are excluded and which offenses within that category are in fact eligible for said benefits (See paragraph 386 in Section 3.1 of Chapter II of this report).
- 3.3.2 Adopt appropriate measures to ensure that, within available resources, the courts within the Judiciary that hear cases dealing with acts of corruption have the technological resources they need to fully discharge their functions (See paragraph 393 in Section 3.1 of Chapter II of this report).
- 3.3.3 Analyze the potential causes for the decline in the number of corruption-related cases taken up by the Specialized Anti-Corruption Directorate (DECC) in order to identify challenges and recommend corrective measures, as necessary. (See paragraph 401 in Section 3.1 of Chapter II of this report).
- 3.3.4 Analyze possible reasons for the fact that a large number of investigations into corruption-related offenses are shelved or ended by estoppel, in order to identify challenges and recommend corrective measures, as necessary. (See paragraph 405 in Section 3.1 of Chapter II of this report).
- 3.3.5 Adopt appropriate measures to ensure that, within available resources, the Judiciary has as many courts as it needs to hear cases dealing with acts of corruption and consider establishing specialized courts to hear said cases (See paragraph 408 in Section 3.1 of Chapter II of this report).

## **4. GENERAL RECOMMENDATIONS**

Recommendation 4.2 suggested by the Committee, which requires further attention under the terms provided for in the report from the Third Round:

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

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<sup>147</sup> Available at: <http://www.oas.org/juridico/spanish/col.htm>

[424] Bearing in mind that sections 1, 2, and 3 of Chapter II of this report contain an up-to-date, detailed analysis both of the follow-up on the recommendations made to the Republic of Colombia in the Second Round and of the systems, standards, measures, and mechanisms to which the above recommendation refers, the Committee, reaffirms the contents of those sections and, therefore, considers that this recommendation is redundant.

### **III. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE FIFTH ROUND**

#### **1. INSTRUCTIONS TO GOVERNMENT PERSONNEL TO ENSURE PROPER UNDERSTANDING OF THEIR RESPONSIBILITIES AND THE ETHICAL RULES GOVERNING THEIR ACTIVITIES (ARTICLE III, PARAGRAPH 3 OF THE CONVENTION)**

[425] In keeping with the *Methodology* agreed upon by the Committee for its analysis of the provision selected for the Fifth Round, which is contained in Article III (3) of the Convention and concerns measures to create, maintain, and strengthen "*instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities*," the country under review chose the personnel of the Civil Service Administrative Department (DAFP); *Colombia Compra Eficiente* (CCE); and the Transparency Secretariat of the Office of the President of the Republic (ST), given their respective spheres of competence, which the State describes in its Response to the Questionnaire.<sup>148</sup>

[426] Following is a brief description of the three aforementioned public entities to be reviewed in this section, with respect to the activities they perform that relate to the Convention provision cited in the foregoing paragraph:

[427] - The Civil Service Administrative Department (DAFP) is responsible for administering government policies on government employment; institutional management, performance and improvement; democratization; and transparency throughout the national territory. For that, three institutional objectives were established, aimed at boosting citizens' trust in the Colombian State and its personnel. One of those objectives is to extol and strengthen the work done by public servants as representatives of State institutions vis-à-vis citizens and as key parts of the architecture of public administration.

[428] - *Colombia Compra Eficiente* (CCE) is the governing body for the Government Procurement System. Its function is to develop and foster the public policies and tools needed to organize and coordinate among all those involved in government procurement and hiring procedures with a view to achieving more efficient, transparent, and optimal use of State resources. At the same time, the CCE is in charge of aggregating demand (via Framework Agreements); administering the Colombian State's On-line Shop, where government institutions can apply the Framework Agreements; and administering the Electronic Government Procurement System (SECOP).

[429] - One of the functions of the Transparency Secretariat of the Office of the President of the Republic (ST) is to advise on the formulating and design of public policies and standards with regard to transparency and efforts to combat corruption. It is also responsible for establishing policies, strategies, and the implementation of transparency indicators in public administration institutions and, in coordination with government entities with related functions, for crafting instruments that detect and

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<sup>148</sup> Response of Colombia to the questionnaire, pp. 3 and 4.



analyze the corruption phenomenon and its indicators and facilitate the establishment of public policies; for coordinating and implementing mechanisms for fostering accountability by public administration institutions; proposing strategies for teaching and advancing a culture of respect for laws; for defining and promoting, in coordination with other competent public entities and agencies, joint strategic actions by the public and private sectors to combat corruption; and for coordinating the implementation of commitments undertaken by Colombia, inter alia, as a signatory to international anti-corruption instruments.

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

[430] Colombia has a set of provisions and/or measures on instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, notable among which are the following:

- Statutory and other legal provisions or measures that apply jointly to personnel of the Civil Service Administrative Department (DAFP); *Colombia Compra Eficiente* (CCE); and the Transparency Secretariat of the Office of the President of the Republic (ST), especially:

[431] - Decree Law 1567 of 1997, Article 2 of which establishes the National Training System (SNC), defined as the coherent set of policies, plans, legal provisions, agencies, training schools, units, and resources organized for the common purpose of generating greater capacity to learn and act in government employees and State institutions, with a view to achieving efficient and effective administration by working in coordination and following uniform criteria.

[432] Article 3 of the aforementioned Decree Law lists the components of the SNC and points out, inter alia, that through the Continuing Education and Training Plan (*Plan Nacional de Formación y Capacitación* - PNFC),<sup>149</sup> the National Government will steer the formulation of institutional plans to be drawn up by government institutions; that, with a view to organizing in-house training programs, each institution shall submit its training program at least once a year; that each institution will receive budget allocations for training, in addition to its own physical and human resources; and that, in addition to their internal management responsibilities, the following entities shall be vested with powers to perform special training-related functions: (1) *Civil Service Administrative Department (DAFP)*: as the governing body for public administration, it is responsible for establishing general policies; for formulating and updating the PNFC jointly with the Advanced School of Public Administration, and coordinating implementation of the Plan; for issuing rules, counseling, and designing and adopting methodologies; and for dissemination and monitoring activities.<sup>150</sup> (2) *Advanced School of Public Administration (ESAP)*: In addition to the functions prescribed in its Statutes, ESAP helps prepare, update, and monitor the PNFC, in addition to advising any entities that so request on implementation of the Plan. ESAP is also responsible for designing the basic curriculum for induction and refresher programs in accordance with guidelines set by the DAFP. (3) *Institutions*: each institution is required to implement, in-house, the policies set by the

<sup>149</sup> During the on-site visit, the country under review produced the 2017 PNFC, which is posted at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>150</sup> In this regard, Article 67 of Decree Law 1227 of 2005 provides that the DAFP shall, with the help of the ESAP, conduct the annual PNFC evaluation, to assess government institutions' compliance with its guidelines and priorities; that it shall likewise establish the mechanisms to be used to monitor compliance with the Institutional Training Plans they adopt; and that said assessment and monitoring shall attempt, in particular, to measure the impact and outcomes of the training provided, studying organizational changes as a way to gauge impact and studying changes in employees' performance within their areas as a result of training activities as a way to gauge outcomes.

National Government, formulate its internal plans, and participate with other agencies in joint programs aimed at optimizing the use of resources. (4) *Government Continuing Education and Training Schools*: Units of government entities designed to provide ongoing education and training to government employees and which conduct pedagogical and academic activities to that end.

[433] Article 4 of the aforementioned Decree Law defines training as the whole set of organized non-formal and informal education activities envisaged in the General Education Act that are designed to extend and supplement initial education by generating knowledge, developing skills, and changing attitudes in such a way as to enhance individual and collective capacity to contribute to fulfillment of an institution's mission, improved services to the community, effective job performance, and all-round personal development. It adds that this definition includes training, in the sense of processes specifically designed to develop and strengthen a public service ethic based on the principles governing public administration.

[434] Article 5 of the aforementioned Decree Law refers to the objectives pursued by training, which include promoting integral development of human resources, finding ways to finance a public service ethic (subparagraph b), and strengthening both individual and collective capacity to use knowledge, skills, and attitudes to improve workplace performance and achieve institutional goals (subparagraph d).

[435] Article 6 of the same Decree Law refers to the guiding principles governing training, including the preferential treatment to be accorded career service personnel (subparagraph d), in the sense that when the purpose of the training offered is to acquire and establish installed capacity beyond a medium-term horizon career service staff shall have preference. Given the short-term nature of their employment, employees hired on a provisional basis shall only benefit from induction programs and in-service training.

[436] Article 7 of the above-mentioned Decree Law deals with induction and re-induction programs and states that each entity's institutional plans must make provision for them. They are defined as continuing education and training processes designed to facilitate and strengthen an employee's identification with the culture of the organization, boost his or her managerial and public service skills, and furnish the information needed for the employee to enhance her or his knowledge of public service and of the institution itself, by encouraging individual and organizational learning and development, as part of a flexible, comprehensive, practical and participatory approach.

[437] Regarding the Induction Program, subparagraph (a) of the aforementioned provision states: It is a process designed to initiate the employee's integration into the cultural of the organization within the first four months of employment. For employees hired for a trial period, one factor to be considered in their evaluation is the extent to which they take advantage of the program. The program's objectives with respect to the employee are: 1) To initiate his or her integration into the system selected by the entity and to reinforce the employee's ethical training; 2) To familiarize the employee with public service, with the way the State is organized, and with the general functions it performs; 3) To instruct the employee regarding the entity's purpose and the functions performed by her or his unit, as well as the employee's individual responsibilities, duties, and rights; 4) To inform the employee of standards and decisions aimed at preventing and suppressing corruption, and of the disqualifications and incompatibilities that apply to public servants; 5) To foster identification and involvement with the entity;

[438] Regarding Re-induction Programs, subparagraph (b) of the aforementioned provision states: These courses are designed to integrate an employee in the culture of the organization following changes in matters relating to any of its objectives (see below). They shall be taught to all employees at least once every two years or earlier, when the aforementioned changes are introduced, and shall include updates on the rules governing disqualifications and incompatibilities and ethics within the institution. The specific objectives of re-induction programs are to: 1) Inform employees regarding reforms in the organizational

structure and functions of the State; 2) Inform employees about changes in the institution's goals, as well as about changes to the functions performed by its various units and by the positions they hold; 3) Adjust the process whereby employees are incorporated into the value system adopted by the organization and reinforce their ethical training; 4) Strengthen employees' identification and involvement with the entity; 5) Through updates, familiarize employees with provisions and decisions aimed at preventing and suppressing corruption and inform them of any changes to the rules governing disqualifications from and incompatibilities with public office; 6) Inform employees of new human resource management provisions.

[439] Article 8 of the above-mentioned Decree Law provides that ESAP shall design the curricular content for induction and re-induction programs, in line with policies set by the DAFP; while Article 9 establishes that, for training organization purposes, both diagnostic assessments of what is needed and the corresponding plans and programs shall be organized with two functional areas in mind: a) the technical or mission-related area, comprised of units whose [Tr. goods?] or services constitute the *raison d'être* of the institution and whose clients or users are external to it; and b) management: an area comprised of the units designed to provide the internal goods and services that the institution needs to function properly.

[440] Article 11 of the aforementioned Decree Law lists, as obligations incumbent upon government entities with respect to training, first the obligation to identify training needs by applying technical tools that detect collective and individual shortcomings based on achievement of the institution's objectives (paragraph a); second, formulation, in conjunction with the Personnel Commission, of the institution's training plan, pursuant to the general guidelines set by the National Government and abiding by the institution's overall planning procedures (paragraph b); third, the establishment of internal rules of procedure defining the criteria and conditions for access to training programs (paragraph c); fourth, inclusion in the budget of sufficient funds for the training plans and programs, in accordance with applicable budgetary provisions (paragraph d); fifth, the scheduling of training activities and provision of the facilities needed for employees to take part in them (paragraph e); sixth, evaluation, in conjunction with the Personnel Commission, of the impact of the training plan, using appropriate technical tools for that purpose and involving employees in the evaluation process (paragraph h); seventh, the submission of any reports requested by the DAFP and ESAP (paragraph i); eighth, implementation of the institution's plans and programs with the help of its and other entities' human resources, its training centers or those of its administrative sector, of ESAP, or of legally authorized public or private establishments, or with individuals or legal entities of recognized standing (paragraph j); and, ninth, the design of the induction and re-induction programs referred to in this Decree law and their delivery to staff in accordance with the curricular guidelines set by ESAP and as counseled by the DAFP.

[441] Finally, Article 12 of the aforementioned Decree Law lists the following obligations of employees with regard to training: a) Participation in the identification of the training needs of their unit or team; b) Participation in the training activities selected for them and the submission of any required reports; c) Application of the knowledge and skills acquired to improve the services for which the entity is responsible; d) Acting as a trainer within or outside the entity, as required; f) Active participation in the evaluation of the entity's training plans and programs, as well as of the training activities they take part in; f) Participation in the entity's induction or, where applicable, re-induction programs.

[442] - Article 2.2.2.6.1 of Decree 1083 of 2015 establishes that agencies and entities shall issue their own specific manual of functions and spheres of competence, describing the functions performed by staff and determining the requirements for exercise of those functions; while Article 2.2.5.7.2 establishes that no employee shall take up his or her position without first swearing, in writing, to respect, comply with, and enforce the Constitution and the laws of the country, as well as to perform her or his duties.

[443] Article 2.2.5.8.1 of the aforementioned Decree states that the personnel manager in administrative agencies, or in any department thereof, shall receive new employees with a view to helping them perform their functions. To that end, the manager's duties shall include: (i) explaining how the agency operates, the newcomer's functions, his or her place in the hierarchy, and where he or she will be working; and (2) delivering the manuals of the agency or entity and those pertaining to the new employee's position. Article 2.2.5.8.2 (induction) provides that the head of the unit where the new employee will work must (1) explain how that unit works, any procedures specific to it, the functions he or she will be expected to perform, and ways to perform them. Article 2.2.5.8.3 establishes that the agency's staff shall be required to provide new employees with any explanations and information they may need to do their job.

[444] Article 22 of the Consolidated Disciplinary Code (Law 734 of 2002) on the "Civil Service Guarantee" establishes that, in order to safeguard moral standards (*la moralidad pública*) and ensure the transparency, objectivity, legality, honesty, loyalty, equality, impartiality, expeditiousness, openness, cost effectiveness, neutrality, effectiveness, and efficiency required for the performance of their jobs, responsibilities, or function, individuals subject to the Disciplinary Code shall exercise their rights, fulfill their duties, abide by prohibitions, and submit to the rules governing disqualifications, incompatibilities, ineligibilities, and conflicts of interest established in the Political Constitution and in laws.

[445] - Paragraph 1.1.1 of the Standard Internal Control Standard (MECI 2014), issued pursuant to Article 5 of Law 87 of 1993 (Internal Control System), deals with agreements, commitments, and ethical protocols and states, inter alia, that "...the entity must seek to establish participatory mechanisms that make it possible to forge an organizational culture with respect to ethical matters and provide reasonable guarantees to ensure that: • Public servants are familiar with the rules in effect governing their conduct in the performance of their functions; • Emphasis is placed on the importance of integrity and ethical conduct, as well as respect for certain codes of conduct even though they may not be in writing; • There is a document summarizing the values and ethical principles fostered by the Organization. • Said document is constantly brought to the attention of all personnel involved and their understanding of it verified; • The Organization's employees do actually abide by the rules of conduct set by the entity. • Previously established values are periodically checked for ongoing relevance and updated or altered depending on the outcomes of such revision." The aforementioned paragraph in MECI 2014 also provides for the issuance by entities of an administrative certification of adoption of the document setting forth the entity's principles and values (a decalogue or code of ethics, etc.).

- Statutory and other legal provisions applicable, in particular, to personnel of the Civil Service Administrative Department (DAFP), including:

[446] - DAFP Resolution No. 312 of 2013 establishing the parameters for drawing up Training and Incentives Programs for DAFP employees. Article 9 of said resolution provides that training programs shall include Induction and Re-Induction Programs and the Institutional Training Plan (PIC), based on Team Learning, On-the-Job Training, and Institutional Network projects; while Article 10, on beneficiaries of the programs, states: All employees subject to free appointment and dismissal and all career staff are entitled to participate in institutional ongoing education and training programs. Education for Work and Human Development programs shall be geared to administrative career staff and employees subject to free appointment and dismissal. Given the transitory nature of their employment, provisional and temporary personnel shall only be entitled to take part in induction, re-induction, and on-the-job training programs.

[447] - The Manual of Civil Service Functions and Competencies (*Manual de Funciones y Competencias Laborales de la Función Pública*),<sup>151</sup> adopted through Resolution 157 of March 22,

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<sup>151</sup> Available at: <http://www.funcionpublica.gov.co/gestion-humana>

2016;<sup>152</sup> "Modifying the Specific Manual of Functions and Competencies for Staff Members of the Civil Service Administrative Department" to bring it into line with the provisions of Consolidated Regulatory Decree 1083 of May 26, 2015.

[448] - The Manual of Temporary Staff Functions,<sup>153</sup> adopted through Resolution 082 of February 1, 2017, adjusting the "Specific Manual of Functions and Competencies for Temporary Personnel of the Civil Service Administrative Department" pursuant to Decree 2779 of December 28, 2012.

[449] - The DAFP Decalogue of Ethics and Good Governance,<sup>154</sup> adopted through Resolution No. 636 of 2014, which aims to set forth the principles, values, and policies governing the Entity's internal and external workings in such a way as to ensure that its activities meet efficiency, transparency, and integrity criteria and the Organization's conduct is ethical (paragraph 4). The Decalogue applies to all public servants and contractors serving the DAFP, who must adopt and consciously and responsibly abide by its principles, values, and ethical guidelines.

[450] - The DAFP Institutional Training Plan (PIC 2017), which addresses such matters as the structure of the DAFP's ongoing education and training program (paragraph 7); a diagnostic assessment of training needs (paragraph 8); monitoring and evaluation (paragraph 11), using indicators to assess management of the PIC (paragraph 11.1) and the impact of the training provided (paragraph 11.2); and the Format for Assessing the Impact of Training (Annex 9).

[451] In addition to the provisions described earlier that apply to all government entity personnel and the DAFP's own regulations, the following aspects were singled out in the section of the questionnaire corresponding to the DAFP<sup>155</sup> and during the on-site visit:

[452] In relation to the way in which personnel are informed of their official responsibilities and functions, the Committee was told that this was done using the Functions Manual; that when someone is hired, he or she is assigned a colleague in the same area to lend support during the adaptation stage; that said colleague's responsibilities include accompanying and advising the newcomer on matters to be addressed and activities to be undertaken, instructing her or him with regard to the Quality Management System to the entity's objective, mission, vision, values, principles, and so on, as well as about the part played by that particular area in the Quality Management process (process and risk mapping). The Committee was also told that, for feedback purposes and to evaluate the initial support exercise, the newly hired employee is asked to fill in an on-line questionnaire, containing questions about the functions and responsibilities of the position and of the unit. The information provided is then consolidated into a "support matrix", which is used for ongoing monitoring of the employee's progress.

[453] The Committee was further told that the newcomer then receives the institutional induction envisaged in the Functions Manual and is told to check out the information provided in the link to the on-line induction program, which is: <http://mdonado3.wixsite.com/-inducccion-dafp>

[454] As for the timing with which newly hired personnel are informed of their responsibilities and functions, the Committee was told that: "The process (of familiarization with responsibilities and functions) begins when each public servant takes up his or her post and continues for a period of time during which she or he is expected to perform certain activities. The first is an on-line induction program, during which the newly hired employee is shown the Functions Manual (corresponding to the position and the

<sup>152</sup> On August 14, 2017, the country under review reported that: "The Manual has been amended through Resolutions 818 and 1148 of 2016 and through Resolutions 049 and 309 of 2017."

<sup>153</sup> Available at: <http://www.funcionpublica.gov.co/gestion-humana>

<sup>154</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>155</sup> Response of Colombia to the questionnaire, pp. 12 to 20.

moment when it is taken up) and his or her grasp of it is then tested. New personnel are also required to attend induction courses, in which staff explain general aspects of the way the entity operates (mission, vision, management model, information systems, and so on). Then comes the drafting of a performance evaluation, as a joint exercise between the newly hired employee and his or her boss. The DAPF established a Performance Evaluation System, aimed at reaching agreement on the public servant's workplace commitments and ensuring that they are in line with the functions assigned to his or her position, institutional targets and goals, operating plans, and so on. That information is adjusted or updated whenever the public servant moves to a new position, takes on new functions, or changes unit.

[455] As regards the existence of induction and training courses or instructions to personnel about how to perform their responsibilities and functions and, in particular, to increase their awareness of the risks of corruption inherent in the work they do, reference was made to Article 2.2.5.8.2 of Decree 1083 of 2015 and Article 7 of Decree Law 1567 of 1998, both of which were described above. The Committee was told that an Institutional Training Plan is drawn up every year; that it contains the dates for in-person induction and re-induction activities and includes training of general interest to all personnel in the institution, aimed at enhancing their skills in cross-cutting areas, such as efforts to combat corruption and increase transparency; that the Plan consolidates the training needs of the entity's personnel, in anti-corruption and other matters; and that, in addition, the DAPF has identified possible risks of corruption and steps for mitigating them that are posted on the entity's website and, thanks to those dissemination efforts, familiar to personnel. <https://www.funcionpublica.gov.co/mapa-de-riesgo>.

[456] Concerning the use of modern communication technologies to advise personnel of their responsibilities and of the functions they are supposed to perform and to counsel them on the best way to discharge them, reference was made to aforementioned Article 7 of Decree Law 1567 of 1998. The Committee was also told that in 2016 the Human Resource Group in the General Secretariat began implementing its online induction and re-induction course,<sup>156</sup> designed to familiarize personnel in the DAFP, in a flexible, easy-to-grasp, and even playful way with the core topics a public servant needs to know upon joining the entity (principles, values, mission, vision, the activities of the different areas, the Functions Manual, and so on).

[457] As regards the existence of bodies to which personnel can resort to obtain information or resolve queries on the most appropriate ways to discharge their responsibilities and functions, mention was made of the designated supervisor (the aforementioned Article 2.2.5.8.2 of Decree 1083 of 2015), the General Secretariat and the Human Resource Group.

[458] Regarding the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of their responsibilities or functions, and for seeing that this task is fully carried out, and the steps such bodies can take to enforce the norms and/or measures in force in this regard, reference should be made to the provisions on the DAPF contained in Article 3 of Decree Law 1567 of 1967, in conjunction with Article 67 of Decree 1227 of 2005, both of which were mentioned earlier.

[459] With respect to the ways in which personnel are advised of the ethical standards governing their activities, account should be taken of aforementioned Article 7 of Decree Law 1567 of 1997, which provides for familiarization with those standards via induction and re-induction programs. The standards themselves are to be found in, inter alia, the Consolidated Disciplinary Code and in the DAFP's Decalogue of Ethics and Good Governance, both of which were mentioned above.

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<sup>156</sup> Induction link: <http://mdonado3.wixsite.com/-inducccion-dafp>.

[460] As for the timing with which newly hired personnel are informed of the ethical standards governing their activities, the Committee was told that: "Pursuant to Article 2 of resolution No. 636 of 2014: The Group to Promote and Strengthen Values shall disclose and disseminate the Decalogue of Ethics and Good Governance, through playful activities and personalized learning experiences designed to raise awareness, internalization, consolidation of those values. The same purpose is also served by a module included in the induction course taught when an employee first joins the entity. The Wellbeing and Incentives Program also contains activities designed to increase "ownership" of the Decalogue of Ethics and Good Governance, including the posting of notices on the intranet bulletin and of briefings in screen savers and other audiovisual aids used in the entity."

[461] As regards the existence of induction and training courses and instruction to personnel on the ethical rules governing their activities and, in particular, on the consequences of failure to comply with them for public service and for transgressors, the Committee was told, inter alia, that the Human Resources Group in the General Secretariat has begun implementing the on-line induction and re-induction course designed to familiarize personnel in a lively, easy-to-grasp, and even playful way with topics relating to the principles and ethical values pursued by the Entity. The presentation given by the Entity also refers to Law 734 of 2002, which is the Consolidated Disciplinary Code, containing the consequences of failure to abide by those values and rules.

[462] Concerning the use of modern communication technologies to apprise personnel of the ethical rules governing their activities and to provide guidance as to their scope or interpretation, the following information was provided: "The Institutional Training Plan contains the induction program which includes the on-line induction and re-induction course, one module of which is the decalogue of the values pursued by the Entity. At the same time, notices are posted on the intranet bulletin and information campaigns are conducted using briefings in screen savers and other audiovisual aids at the entity's disposal."

[463] As regards the existence of bodies to which personnel can resort to obtain information or resolve queries on the scope or correct interpretation of the ethical standards governing their activities, mention was made of the General Secretariat or the Group to Promote and Strengthen Values, or, as a last resort, the Institutional Committee for Administrative Development.

[464] Finally, with respect to the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to enforce the norms and/or measures in force in this regard, the country under review mentioned the General Secretariat, the Group to Promote and Strengthen Values and the DAFP's Institutional Committee for Administrative Development.

- Statutory and other legal provisions applicable, in particular, to personnel of *Colombia Compra Eficiente* (CCE), including:

[465] - Resolution No. 1183 of 2016, of *Colombia Compra Eficiente* (CCE),<sup>157</sup> amending resolution 701 of 2015 and resolutions 934 and 960 of 2016, and modifying and consolidating the Specific Manual of Functions and Competencies for Staff Members of *Colombia Compra Eficiente*.

[466] - The *Colombia Compra Eficiente* (CCE) Code of Ethics,<sup>158</sup> section III of which states, inter alia, that administrative management of CCE is based on the constitutional principles of equality, integrity (*moralidad pública*), effectiveness, cost-effectiveness, expeditiousness, impartiality, and openness and on the legal principles of good faith, efficiency, participation, accountability, and transparency as ways to

<sup>157</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>158</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

serve the general interest; and that, founded upon those principles, the entity's ethical approach seeks to establish a comprehensive set of values encompassing both public servants discharging their duties and contractors abiding by their contractual obligations; sections IV, V, and VI contain the ethical principles, ethical values, and guidelines for such comprehensive ethical management of the CCE.

[467] - The CCE's Institutional Training Plan (PIC 2017), which refers to such matters as who is covered by it (it is applicable to all CCE employees, according to Section III) and its various stages (according to Section IV, the four stages are: diagnostic assessment of training needs, design, implementation, and evaluation. It also contains monitoring and evaluation indicators (paragraph D).

[468] In addition to the provisions described earlier that apply to all government entity personnel and the CCE's own regulations, the following aspects were singled out in the section of the questionnaire corresponding to the CCE<sup>159</sup> and during the on-site visit:

[469] In relation to the way in which personnel are informed of their official responsibilities and functions, the country under review said that this was done in an oral introduction to the job, through dovetailing arrangements between the outgoing and incoming incumbents, and the presentation showing the responsibilities pertaining to each staff position in the Decree establishing the Entity.

[470] As for the timing with which personnel are informed of their responsibilities and functions, in its Response to the Questionnaire the country under review reported that: "Specific functions are explained during the induction process familiarizing new employees with the State entity and during the handover by the employee leaving the post. The general framework covering the new employee's functions are built into the specific functions of his or her subdirectorato mentioned in Decree 4170<sup>160</sup>. Special functions have to do with requirement of the position and the established profile. They are not established by decree, but rather by the profile drawn up when the entity was created and rules set by the DAPF." During the on-site visit, the Committee was given Resolution No. 1183 of 2016 on the abovementioned Specific Manual of Functions and Competencies for Staff Members of *Colombia Compra Eficiente* (CCE).

[471] As to the existence of induction, training, or instruction programs and courses for personnel on the proper performance of their responsibilities and functions, and, in particular, to make them aware of the inherent corruption risks in their performance, the country under review mentioned in its response to the questionnaire that: "...the timing for induction is geared to general knowledge of the entity through its various departments, the idea being to get to know its strategy, objectives, and principles. A second stage consists of training in specific functions through handover arrangements. Finally, the Code of Ethics and Annual Anti-Corruption Plan is presented, which describe the principal risks inherent in corruption and measures and channels for addressing them." During the on-site visit, the Committee received a copy of the CCE Institutional Training Plan (PIC 2017), described above.

[472] Concerning the use of modern communication technologies to advise personnel of their responsibilities and of the functions they are supposed to perform and to counsel them on the best way to discharge them, the Response to the Questionnaire indicated that there were none. During the on-site visit, the Committee was told that there was no technological training tool, but that the Human Resources Group was working on it.

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<sup>159</sup> Response of Colombia to the questionnaire, pp. 20 a 22.

<sup>160</sup> Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Normal1.jsp?i=44643>



[473] As regards the existence of bodies to which personnel can resort to obtain information or resolve queries on the most appropriate ways to discharge their responsibilities and functions, mention was made of the director of each subdirectorate and the department of human resources.

[474] Regarding the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of their responsibilities or functions, and for seeing that this task is fully carried out, and the steps such bodies can take to enforce the norms and/or measures in force in this regard, reference should be made to the DAPF (Article 3 of Decree Law 1567 of 1967, in conjunction with Article 67 of Decree 1227 of 2005, both of which were mentioned earlier).

[475] As to the manner in which personnel are informed of the ethical rules governing their activities, the Committee was told that, in addition to the aforementioned Article 7 of Decree Law 1567 of 1997, personnel receive such information during in-person training sessions and in the on-line presentation of the Code of Ethics.

[476] As to when personnel are informed of the ethical rules governing their activities the Committee was told that "like any other guideline an employee needs to know about, this is done during his or her induction into the State entity."

[477] As to the existence of programs and induction, training or instruction courses for personnel on the ethical rules governing their activities and, particularly, on the consequences of failure to abide by them for public service and for wrongdoers, the country under review reported that, during their induction, employees were familiarized with the Code of Ethics, the Annual Anti-Corruption Plan, and with the effects of noncompliance with them. In addition, training courses are offered during the year on a variety of topics, including ethics.

[478] Concerning the use of modern communication technologies to apprise personnel of the ethical rules governing their activities and to provide guidance as to their scope or interpretation, information was provided regarding the on-line Code of Ethics.<sup>161</sup>

[479] As regards the existence of bodies to which personnel can resort to obtain information or resolve queries on the scope or correct interpretation of the ethical standards governing their activities, mention was made of the CCE's human resources department.

[480] As regards the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to enforce the norms and/or measures in force in this regard, mention was made of the Civil Service Administrative Department (DAFP).

- Statutory and other legal provisions applicable, in particular, to personnel of the Transparency Secretariat (TS) of the Office of the President of the Republic, notably:

[481] - Resolution No. 1751 of 2013, of the Administrative Department of the Office of the President of the Republic (DAPRE),<sup>162</sup> which includes the Transparency Secretariat (TS) of the Office of the President of the Republic, amending the Specific Manual of Functions, Competencies, and Requirements for Career Staff Positions of the Administrative Department of the Office of the President of the Republic.

<sup>161</sup> <http://www.colombiacompra.gov.co/sites/default/files/normativas/20130413codigoetica.pdf>

<sup>162</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

[482] - Resolution No. 0943 of 2015, of the Administrative Department of the Office of the President of the Republic (DAPRE),<sup>163</sup> which includes the Transparency Secretariat (TS) of the Office of the President of the Republic, adopting the Specific Manual of Functions, Competencies, and Requirements for Staff Positions of the Administrative Department of the Office of the President of the Republic, with a view to bringing it into line with the new structure of the DAPRE.

[483] - The Manual of Ethics and Good Governance of the Office of the President of the Republic,<sup>164</sup> which includes the Transparency Secretariat (ST) of the Office of the President of the Republic. Paragraph 1.1 of the Manual states that one of its objectives is to establish guidelines for ethical behavior and self-regulation provisions for Good Governance to ensure efficient, honest, and transparent administrative management by DAPRE staff. Paragraph 1.2, on the scope of the Manual, states that it applies to all activities of senior management and other DAPRE employees, which need to comply, with the legal and regulatory provisions in force, the commitments envisaged in good governance policies, and the stipulations set forth in the Manual. Paragraph 3 contains ethical directives. Paragraph 4.8.1 discusses ethical management policies. Paragraph 14.2 refers to policies with respect to risks, whereby paragraph 14.2.1 points out that the Entity is exposed to risks that may vary in their impact on management, so that it undertakes to adopt whatever mechanisms or actions are needed for integral risk management purposes, in the sense of preventing or minimizing their impact. They are to include mechanisms for identifying, analyzing, assessing, and managing both the risks inherent in the Entity's activities and corruption-related risks. The Entity will assess the impact of each risk with a view to prioritizing the appropriate response and will produce guidelines for decision-making with respect to their effects.

[484] - The Induction and Re-Induction Manual of the Office of the President of the Republic (DAPRE),<sup>165</sup> which includes the Transparency Secretariat (ST) of the Office of the President of the Republic. Paragraph 1 thereof states that one of its objectives is to establish provisions and guidelines for induction courses for all new personnel entering the Entity and for re-induction courses for already existing personnel following organizational changes. Paragraph 2, on the scope of the manual, states that the directives and guidelines established in the Manual apply to the planning, implementation, and evaluation of the induction and re-induction activities carried out in DAPRE.

[485] - The Annual Wellbeing and Training Plan of the Office of the President of the Republic (DAPRE) - 2017,<sup>166</sup> which includes the Transparency Secretariat (ST) of the Office of the President of the Republic, adopted through Resolution No. 0225 of 2017. It addresses such matters as the budget envisaged for training, identification of training needs, implementation of training courses, and their evaluation (Section A).

[486] In addition to the provisions described earlier that apply to all government entity personnel and the regulations of the Administrative Department of the Office of the President of the Republic (DAPRE), which includes the above-mentioned Transparency Secretariat (ST) of the Office of the President of the Republic, the following aspects were singled out in the section of the questionnaire corresponding to the DAPRE<sup>167</sup> and during the on-site visit:

[487] In relation to the way in which personnel are informed of their official responsibilities and functions, mention was made of Article 7 of Decree Law 1567 of 1997, referred to earlier, and to the -- also aforementioned -- Induction and Reinduction Manual used by the DAPRE. The country under review

<sup>163</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>164</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>165</sup> Available in Colombia's response to the questionnaire (p. 23, footnote 11).

<sup>166</sup> Available at [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>167</sup> Response of Colombia to the questionnaire, pp. 22 a 30.

reported, inter alia, that the induction process begins with notification of the administrative act of appointment of the candidate, who is required to state whether or not she or he accepts the position; that if the appointee accepts, the Human Resources Department informs her or his immediate supervisor of the appointment and gives instructions regarding induction into the job: a process that is undertaken in four stages: (i) Induction into the Entity; (ii) Induction into the position; (iii) Reaching a consensus on commitments that go with the job; and (iv) Support and Follow-up.

[488] As for the timing with which personnel are informed of their responsibilities and functions, in its Response to the Questionnaire the country under review referred to aforementioned Article 2.2.5.8.1 of Decree 1083 of 2015 and to the provisions contained in section 5 of the Induction and Re-induction Manual of the DAPRE, which states, regarding re-induction that it is imparted to all existing personnel in the Entity and consists of guidance to enable them to feel part of a new organizational culture following changes in regulations, processes, values or any other major changes that might affect the normal performance of their functions. It adds that re-induction is to be undertaken every two years or she never the aforementioned changes come about.

[489] As regards the existence of induction and training courses or instructions to personnel about how to perform their responsibilities and functions and, in particular, to increase their awareness of the risks of corruption inherent in the work they do, reference was made in the Response to the Questionnaire to Article 7 of Decree Law 1567 of 1998, described above. The country under review also referred to the provisions on risks of corruption in section 14.2.1 of the above-mentioned Ethics Manual of the DAPRE and, with respect to induction into a position, that this procedure uses DAPRE's Form F-TH-50 "Induction into the Position," a copy of which was provided.

[490] Concerning the use of modern communication technologies to advise personnel of their responsibilities and of the functions they are supposed to perform and to counsel them on the best way to discharge them, the Response to the Questionnaire indicated that: "Article 9.d of Law 1712 of 2014, "Establishing the Transparency and Right of Access to National Public Information Act," provides that all general and regulatory provisions, policies, guidelines, and manuals must be published through the State's information systems. Pursuant to that provision, government entities used information technologies to disclose and public their information, posting on their websites the information relating to the functions they perform. For instance, each entity posts its Specific Functions Manual on its website." Reference was also made to the DAFP's On-line Counseling Forum (*Espacio Virtual de Asesoría - EVA*) and to the Government Employment Information and Management System (SIGEP), both of which have been described in this report.

[491] As regards the existence of bodies to which personnel can resort to obtain information or resolve queries on the most appropriate ways to discharge their responsibilities and functions, mention was made of DAPRE's Human Resources Office and to the Civil Service Administrative Department (DAFP).

[492] Regarding the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of their responsibilities or functions, and for seeing that this task is fully carried out, and the steps such bodies can take to enforce the norms and/or measures in force in this regard, reference should be made to the DAPF (Article 3 of Decree Law 1567 of 1967, in conjunction with Article 67 of Decree 1227 of 2005, both of which were mentioned earlier).

[493] With respect to the ways in which personnel are advised of the ethical standards governing their activities, referenced was made to the aforementioned Article 7 of Decree Law 1567 of 1997.

[494] As for the timing with which newly hired personnel are informed of the ethical standards governing their activities, in its Response to the Questionnaire the country under review referred to Article 7 of Decree

Law 1567 of 1997 and during the on-site visit, it produced a copy of the above-mentioned Manual of Ethical Excellence and Good Governance of the Office of the President of the Republic (DAPRE).

[495] As to the existence of programs and induction or instruction courses for personnel on the ethical rules governing their activities and, particularly, on the consequences of failure to abide by them for public service and for the wrongdoers, the country under review referred in its response to the questionnaire to aforementioned Article 7 of Decree Law 1567 of 1997 and, during the on-site visit, it provided a copy of the, also aforementioned, Annual Wellbeing and Training Plan of the Office of the President of the Republic (DAPRE),

[496] Concerning the use of modern communication technologies to apprise personnel of the ethical rules governing their activities and to provide guidance as to their scope or interpretation, information was provided regarding the above-mentioned On-line Counseling Forum (EVA) of the DAFP.

[497] As regards the existence of bodies to which personnel can resort to obtain information or resolve queries on the scope or correct interpretation of the ethical standards governing their activities, mention was made of DAPRE's Human Resources Office and to the Civil Service Administrative Department (DAFP).

[498] Finally, as regards the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to enforce the norms and/or measures in force in this regard, mention was made of the Civil Service Administrative Department (DAFP) and of the National Civil Service Commission (CNSC).

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

[499] Based on its examination of the constitutional, legal and other provisions on measures for providing instructions to government personnel at the public-sector entities selected by the country under review in order to ensure proper understanding of their responsibilities and the ethical rules governing their activities, the Committee finds that they are relevant for the purposes of the Convention.

[500] However, the Committee believes it timely to make a number of observations in relation thereto:

[501] First, the Committee observes that, while Article 6 of Decree Law 1567 of 1997 allows employees hired under provisional appointment arrangements to benefit from induction and on-the-job training programs, despite the temporary nature of their contract, it does not contain a similar provision allowing said training to be provided to persons hired through professional services and management support contracts.

[502] On this, the Committee considers that it should be borne in mind that, as noted in sections 1.1 and 1.2 of Chapter II of this report, people have been hired to work in government entities via professional services and management support contracts in order to make up for shortages of staff, whereby, despite the similarity of the work they do with the activities proper to the missions fulfilled by those entities, they are denied access to induction programs and on-the-job training. For persons hired to work in this way in government entities, this is detrimental to their ability to achieve a proper grasp of their responsibilities and of ethical standards. With the above in mind, the Committee will offer the country under review a recommendation in that regard (See recommendation 1.4.1 in Chapter III of this Report).

[503] It is worth noting, in regard to the above, that during the on-site visit the participant from *Colombia Compra Eficiente* (CCE) pointed out that 40 of CCE's 120 public servants were on services contracts and that, in his view, the legal framework could be improved so as to allow for training of both contractors and regular staff.

[504] It is also worth mentioning, in connection with the above, that during the on-site visit the civil society organization “Corporación Transparencia por Colombia” that persons hired by government entities under services contracts did not receive training, despite the fact that their activities formed part of those entities' core missions. Some entities were, however, beginning to train them.

[505] Also in relation to the above, during the on-site visit, an academic from the Advanced School of Public Administration (ESAP) also pointed out that, although some government entities were beginning to train persons hired under services contracts, that had caused problems because the Office of the Comptroller General of the Republic (CGR) had taken the view that, because such contracts were governed by the General Statute governing Hiring in Public Administration (Law 80 of 1993) and not by the provisions regarding the hiring of public servants, training could not be provided for them.

[506] Second, the Committee notes that, although Article 7 of Decree Law 1567 of 1997 provides that each entity's institutional plan must contain induction and re-induction programs for its employees, no mechanism is envisaged for enforcing compliance with this obligation. With the above in mind, the Committee will offer the country under review a recommendation in that regard (See Recommendation 1.4.2 in Chapter III of this Report).

[507] It is worth noting in that regard that, during the on-site visit, the Civil Service Administrative Department (DAFP) pointed out that it is not empowered to oversee compliance with the aforementioned obligation under Article 7 of Decree Law 1567 of 1997 and that what it does, jointly with ESAP, is monitor compliance with the obligation to draw up said Plan by measuring the Consolidated Management Progress Report Form (FURAG).

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

[508] First, in its Response to the Questionnaire,<sup>168</sup> the country under review presented the following information on outcomes in respect of training given to personnel of the Civil Service Administrative Department (DAFP) in order to ensure appropriate understanding of their responsibilities and functions.

[509] - "The DAFP's Institutional Training Plan provides for an Induction and Re-Induction Program for all employees, and for updates thereof."

[510] "Consequently, it establishes the following timetable." [Tr. Key to the Charts below: Month/Week. January to December. Institutional induction. Workshop: the New Management Model and I. Updating of Regulations. Restructuring. Training in the use of the Proactivanet System. Document Management. Comments on Induction. – To be provided to public servants joining the entity (pursuant to Article 7.a of Decree 1567) within their first four months of employment. Reinduction dates and topics may be subject to change, depending on the circumstances. Comments on Re-induction. This program aims to reintegrate employees in the culture of the institution following changes in the State and the functions it performs, within the institution, in the unit, position, or the process it feeds into. The idea is to enhance a sense of belonging to/identifying with the DAFP. Reinduction dates and topics may be subject to change, depending on the circumstances and changes madewith respect to the Entity.]

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<sup>168</sup> Response of Colombia to the questionnaire, pp. 30 and 31.

Mes Semana	Enero	Febrero	Marzo	Abril	Mayo	Junio	Julio	Agosto	Septiembre	Octubre	Noviembre	Diciembre
1												
2												
3												
4												

	Inducción Institucional
	Taller: el nuevo Modelo de Gestión y yo
	Actualización Normativa
	Reestructuración
	Capacitación en el Sistema de Proactivanet
	Gestión Documental

**\* OBSERVACIONES INDUCCION**  
 - La inducción se realizará de acuerdo a los servidores que ingresen a la Entidad, (Según el Decreto 1567 Art.7 literal a)...este proceso se puede iniciar durante los cuatros meses siguientes a su vinculación.  
 - Las fechas y temas de re inducción pueden estar sujetos a cambio, según las circunstancias .

**\* OBSERVACIONES REINDUCCION**  
 El programa de REINDUCCIÓN está dirigido a reorientar la integración del empleado a la cultura organizacional en virtud de los cambios producidos en el estado y sus funciones, al interior de la entidad, en la dependencia donde labora, en el puesto de trabajo y al proceso que alimenta; facilitando con ello un mayor sentido de pertenencia e identidad de los funcionarios con respecto al DAFP. Las fechas y temas de re inducción pueden estar sujetas a cambio, según las circunstancias y los cambios establecidos para la Entidad.

[511] "This timetable envisions an institutional induction day for employees of the Department. This is done, as per the regulations, with the first four months of employment. For the current fiscal year, three induction days were organized and attended by 48 employees."

[512] In addition, the on-line induction and re-induction program was established, to enable employees to familiarize themselves with everything the Institution has to offer, its mission, vision, management model, and so on. Once the link to the on-line induction and re-induction course has been provided and checked, a record of meetings is signed and evaluation is transmitted, aimed at verifying knowledge acquired as a result of the course."

[513] "Based on the foregoing, and as an innovative suggestion, the information provided cost-free on the WIX.com page will be posted in the On-line Counseling Forum (EVA) portal, with a view to institutionalizing the information contained in the on-line induction and re-induction course. Likewise, the idea is for other government entities to be able to consult the information provided in the DAPF induction and re-induction program and replicate content they may find useful. All new employees in the Department have been covered thanks to this initiative."

[514] In addition, during the on-site visit, the DAPF reported that the on-line induction and re-induction course was already being implemented and that it is posted in the On-line Counseling Forum - - EVA <http://www.funcionpublica.gov.co/eva/es/induccion>.

[515] Second, in its Response to the Questionnaire,<sup>169</sup> the country under review presented information on outcomes in respect of training given to personnel of the Civil Service Administrative Department (DAFP) in order to ensure appropriate understanding of the ethical standards governing the Department. The Committee notes the following information, in particular:

[516] - The “ValorArte” awareness campaign, in which 125 employees participated, sought to reinforce and assess the extent to which the Department’s employees were familiar with its principles and values."

<sup>169</sup> Response of Colombia to the questionnaire, pp. 33 and 34.

[517] Complementing that effort, as expressed in the title of the Department as a policy-maker, the Directorate of Participation, Transparency, and Service to Citizens, together with the Cultural Change Group, have been working on establishing a Consolidated General Code of Integrity and Ethics for Public Servants."

[518] In addition, during the on-site visit, the DAFP representative reported, in connection with the establishment of a Consolidated General Code of Integrity and Ethics for Public Servants, that the idea was for it to overcome difficulties with grasping honest values and behavior (*valores y comportamiento íntegros*) and that implementation of the Code was at a pilot stage in which it was being tested in 10 entities, starting with the DAFP. This pilot phase is designed to find the most effective mechanisms for familiarization with and 'ownership' of the Code within government entities and, in that way, to transmit that now consolidated experience to the whole of public administration using a Toolbox for its replication and ongoing tweaking of the process in all national and territorial entities.

[519] Regarding the above, and bearing in mind the importance of implementing the Consolidated General Code of Integrity and Ethics for Public Servants to ensure proper understanding of the ethical standards in effect for personnel of the DAFP, the CCE, the ST, and government entities in general, the Committee will offer a recommendation to the country under review that it consider taking appropriate steps to complete its implementation (See Recommendation 1.4.3 in Chapter III of this Report).

[520] Furthermore, as a result of the on-site visit, the DAFP provided the following information: [Tr. Key to the Table below: No. of induction courses (incl. Code of Ethics). No. of public servants attending induction courses. Incl. Code of Ethics. "CD" archive. Schedule. Periodicity of induction courses. 3 inductions a year pursuant to Article 7.a of Decree Law 1567 of 1998, which stipulates: "Induction program. To introduce employees to the culture of the organization within his or her first four months." [Repeated in Columns 3 and 4]. Procedures, Guides, and Manuals (incl. Code of Ethics). \*Training procedure. \*Draft Induction and Re-induction guidelines. \*Website:... Training procedure. Induction leaflet. [Repeated in Column 4]. Verify achievement of the purpose, with respect to responsibilities and functions. Performance evaluations of 233 employees of the entity. Information kept in employee records and a report. Performance evaluations of 245 employees of the entity. Information kept in employee records and a report. Performance evaluations of 245 employees of the entity. Information kept in employee records. Code of Ethics activities. Pursuant to Article 2.4 of Resolution 1645 of 2013. This Committee will replace others relating to the Integrated Planning and Management Model that are not mandated by law. The "Value Star" activity was developed with the support of the Wages Fund (*Caja de Compensación*) and the participation of all employees in the entity. The Human Resources Group implements the "Wall of Value" on each floor of the entity. 3 inductions a year pursuant to Article 7.a of Decree Law 1567 of 1998, which stipulates: "Induction program. To introduce employees to the culture of the organization within his or her first four months. [Repeated: See above. Last line: September is responsibility evaluation month, in which the most responsible employee in each area is elected. The "ethics in public affairs" seminar is conducted with support from ESAP.

Actividad	2016 *	2015	2014
N° de cursos de Inducción (incluyendo Código de ética)	3	3	3
N° de servidores asistentes a las inducciones (incluyendo Código de ética)- archivo CD - cronograma	54	57	22
Periodicidad de los cursos de Inducción	3 inducciones al año, de conformidad con el Artículo 7° del Decreto Ley 1567 de 1998, el cual señala: "Programa de Inducción. Es un proceso dirigido a iniciar al empleado en su integración a la cultura organizacional durante <u>los cuatro meses siguientes a su vinculación</u> ".	3 inducciones al año, de conformidad con el Artículo 7° del Decreto Ley 1567 de 1998, el cual señala: "Programa de Inducción. Es un proceso dirigido a iniciar al empleado en su integración a la cultura organizacional durante <u>los cuatro meses siguientes a su vinculación</u> ".	3 inducciones al año, de conformidad con el Artículo 7° del Decreto Ley 1567 de 1998, el cual señala: "Programa de Inducción. Es un proceso dirigido a iniciar al empleado en su integración a la cultura organizacional durante <u>los cuatro meses siguientes a su vinculación</u> ".
Procedimientos, Guías y Manuales (incluyendo Código de ética)	* Procedimiento de Capacitación * Proyecto de Guía de Inducción y Reinducción * Pagina WEB: <a href="http://mdonado3.wix.com/-induccion-dafp">http://mdonado3.wix.com/-induccion-dafp</a>	* Procedimiento de Capacitación * Folleto de Inducción	* Procedimiento de Capacitación * Folleto de Inducción
Verificar si se ha logrado el propósito de sus responsabilidades y funciones	Evaluaciones del Desempeño a 233 servidores de la Entidad. la información reposa en la Historia Laboral del servidor y en un informe ***	Evaluaciones del Desempeño a 245 servidores de la Entidad. la información reposa en la Historia Laboral del servidor y en un informe.	Evaluaciones del Desempeño a 245 servidores de la Entidad. la información reposa en la Historia Laboral del servidor.
Actividades Código de ética	Según Resolución No.1645 de 2013 Artículo 2. PARÁGRAFO 4. Este comité sustituirá los demás comités que tengan relación con el modelo Integrado de Planeación y Gestión y que no sean obligatorios por mandato legal.	Con apoyo de la Caja de Compensación y contando con la participación de todos los servidores de la entidad, se desarrolló la actividad "Estrella de valor".	El Grupo de Gestión Humana, implementa en cada piso de la entidad "El muro de valor".

2013**	2012
3	3
43	43
3 inducciones al año, de conformidad con el Artículo 7° del Decreto Ley 1567 de 1998, el cual señala: "Programa de Inducción. Es un proceso dirigido a iniciar al empleado en su integración a la cultura organizacional durante <u>los cuatro meses siguientes a su vinculación</u> ".	3 inducciones al año, de conformidad con el Artículo 7° del Decreto Ley 1567 de 1998, el cual señala: "Programa de Inducción. Es un proceso dirigido a iniciar al empleado en su integración a la cultura organizacional durante <u>los cuatro meses siguientes a su vinculación</u> ".
* Procedimiento de Capacitación * Folleto de Inducción	* Procedimiento de Capacitación * Folleto de Inducción
Evaluaciones del Desempeño a 245 servidores de la Entidad. la información reposa en la Historia Laboral del servidor.	Evaluaciones del Desempeño a 245 servidores de la Entidad. la información reposa en la Historia Laboral del servidor.
En septiembre se conmemoro el Valor de la Responsabilidad, eligiendo al servidor más responsable por cada área.	Con apoyo de la ESAP, se desarrolló el seminario "Ética de lo público"

[521] As regards the above information, the Committee considers that it serves to establish that personnel in the Civil Service Administrative Department (DAFP) have received training designed to ensure a proper grasp of their responsibilities and functions and of the ethical standards governing their activities, as indicated in said information.

[522] At the same time, bearing in mind that, in the section of the Response to the Questionnaire corresponding to the DAFP,<sup>170</sup> the country under review pointed out -- as difficulties and/or shortcomings with respect to the instructions to ensure that employees acquire a proper grasp of their responsibilities and of ethical standards -- support from colleagues in the same team and the lack of opportunities and time allowed for it, the Committee will offer the country under review a recommendation in that regard (See Recommendation 1.4.4 in Chapter III of this Report).

[523] With regard to the above, it is worth noting that, during the on-site visit, the DAFP reported in a presentation it gave<sup>171</sup> that the Human Resource Management Group works with Team Learning Projects,

<sup>170</sup> Response of Colombia to the questionnaire, p. 35

<sup>171</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)



which enable the different areas to craft strategies for overcoming difficulties they may encounter, including support for new employees and helping them to achieve a sound understanding of ethical standards. It added that implementation of the General Code of Integrity was expected to help overcome such hurdles.

[524] Third, in its Response to the Questionnaire,<sup>172</sup> the country under review presented the following information on outcomes in respect of training given to personnel of *Colombia Compra Eficiente* (CCE) in order to ensure appropriate understanding of their responsibilities and functions.

[525] "An in-house training strategy has been developed that encompasses all departments and enables staff to become fully acquainted with the structure of the entity, their respective functions,<sup>173</sup> the code of ethics, the Action Plan,<sup>174</sup> and the Annual Anti-Corruption Plan.<sup>175</sup> This has made it possible to have internal feedback from a number of angles. In addition, training has been provided through a workshop-based strategy aimed at integrating personnel and reviewing work plans and the objective, strategies, internal guidelines, and functions of the entity, with a view to improvements."

[526] During the on-site visit, the CCE representative also explained that the training provided for each area is designed to ensure that all CCE employees know the functions corresponding to each department and that the workshop-based training is geared toward familiarization with the cross-cutting aspects of those functions.

[527] Fourth, in its Response to the Questionnaire,<sup>176</sup> the country under review presented the following information on outcomes in respect of training given to personnel of *Colombia Compra Eficiente* (CCE) in order to ensure appropriate understanding of ethical standards governing its work:

[528] "The strategies deployed have made it possible to identify factors that can be improved in a number of areas and to incorporate a series of training mechanisms tailored to specific areas when new personnel are brought in. Thus far, the area-based induction mechanism has been used to train 15 employees, while all 110 employees of the CCE have benefited from workshop-based training. Employees can also find the supporting documentation they need posted on the entity's website, including the Code of Ethics, the Annual Anti-Corruption Plan, and the guidelines issued by the Government Procurement System.

[529] In addition, during the on-site visit, the CCE representative explained that there were in fact 120 employees of the CCE, all of whom had received workshop-based training.

[530] With regard to the aforementioned information, the Committee considers that it serves to establish that personnel in *Colombia Compra Eficiente* (CCE), have received training designed to ensure a proper grasp of their responsibilities and functions and of the ethical standards governing their activities, as indicated in said information. However, given that detailed annual data were not provided on the number of induction, instruction, and/or training courses taught to that end, nor on the periodicity of such courses, the number of public servants participating in them each year, the preparation of guidelines for them, or the activities conducted to verify whether the goal of their developing a proper grasp of their responsibilities or functions and of the ethical standards governing their activities was actually achieved, the Committee will offer the country under review a recommendation in that regard (See Recommendation 1.4.5 in Chapter III of this report).

[531] At the same time, bearing in mind that, in the section of the Response to the Questionnaire corresponding to the CCE,<sup>177</sup> the country under review pointed out -- as difficulties and/or shortcomings

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<sup>172</sup> Response of Colombia to the questionnaire, pp. 31 and 32.

<sup>173</sup> <http://www.colombiacompra.gov.co/colombia-compra/colombia-compra-eficiente/estrategia>

<sup>174</sup> <http://www.colombiacompra.gov.co/transparencia/plan-de-accion>

<sup>175</sup> <http://www.colombiacompra.gov.co/transparencia/contratacion/anticorrupcion>

<sup>176</sup> Response of Colombia to the questionnaire, p. 34

with respect to the instructions to ensure that employees acquire a proper grasp of their responsibilities or functions -- coordination of the time needed for each area to provide induction training and for all employees to receive workshop-based training, the Committee will offer the country under review a recommendation in that regard (See Recommendation 1.4.6 in Chapter III of this Report).

[532] Furthermore, bearing in mind that in both the section of the questionnaire relating to CCE,<sup>178</sup> and during the on-site visit, it was pointed out that said entity does not use modern technologies to advise personnel of their responsibilities and of the functions they are supposed to perform or to counsel them on the best way to discharge them, the Committee will offer the country under review a recommendation in that regard (See Recommendation 1.4.7 in Chapter III of this Report).

[533] Fifth, in its Response to the Questionnaire,<sup>179</sup> the country under review provided information on outcomes in respect of training given to personnel of the Transparency Secretariat (ST) of the Office of the President of the Republic in order to ensure appropriate understanding of their responsibilities and function. The Committee notes in particular that:

[534] - "With respect to training courses, there is an Annual Training Plan. Guidelines have also been developed, such as the Specific Manual of Functions, the Performance Evaluation Manual, and the Excellence and Good Governance Manual to counsel personnel regarding the commitment to public service and to achieve sound, transparent, efficient, and effective administration."

[535] "As part of its duties, the Human Resources Office undertakes to resolve queries regarding the performance of functions. Likewise, the Civil Service Administrative Department (DAFP), the body responsible for civil service policy, provides advice and opinions regarding citizens' rights."

[536] - "Similarly, there is an On-line Counseling Forum, called EVA, within the Civil Service Administrative Department, which provides specialized counseling on specific civil service-related issues."

[537] - "In addition, there is an app, known as the Government Employment Information and Management System (SIGEP)."

[538] - "In order to verify compliance with assigned functions, performance evaluations are conducted based on a form setting out the tasks an employee is required to perform over one year. The employee's immediate supervisor conducts such an evaluation twice a year."

[539] - "There are evaluations to measure fulfillment of functions, such as the FURAG or 'Consolidated Governance Progress Report Form,' which forms part of the Integrated Planning and Management Model. In it, national Executive Branch entities account for their performance in the year just ended. One of the aspects evaluated is Human Resource policy."

[540] Sixth, in its Response to the Questionnaire,<sup>180</sup> the country under review provided information on outcomes in respect of training given to personnel of the Transparency Secretariat (ST) of the Office of the President of the Republic in order to ensure appropriate understanding of the ethical standards governing their activities. The Committee notes in particular that:

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<sup>177</sup> Response of Colombia to the questionnaire, p. 35

<sup>178</sup> Response of Colombia to the questionnaire, p. 21

<sup>179</sup> Response of Colombia to the questionnaire, p. 32

<sup>180</sup> Response of Colombia to the questionnaire, pp. 34 and 35.

[541] "Worth noting, in particular, are the practices carried out on June 27, Civil Servant Day, and August 18, National Anti-Corruption Day, which seek to raise awareness among personnel regarding public ethics issues."

[542] "In addition, an agreement has been signed containing ten (10) ethical commitments and replicated in all entities in the national and territorial executive branches."

[543] In response to a request for information during the on-site visit, the Transparency Secretariat (ST) of the Office of the President of the Republic also reported that: As regards the statistical information requested, we confirm that detailed information on the Transparency Secretariat's participation in personnel induction and re-induction activities is not provided in any particular report, given that Institutional Training Plan indicators are measured on the basis of general information regarding training, not in terms of attendance at training courses in each unit. Hence, the information requested is not available." With the above in mind, the Committee will offer the country under review a recommendation in that regard (See Recommendation 1.4.8 in Chapter III of this Report).

[544] At the same time, in the section of the Response to the Questionnaire corresponding to the ST,<sup>181</sup> the country under review pointed out -- as difficulties and/or shortcomings with respect to the instructions to ensure that employees acquire a proper grasp of their responsibilities and of ethical standards -- that, sometimes, during induction, new employees are not given a detailed explanation of the functions fulfilled by the entity nor of those he or she is to perform, due to lack of personnel and the heavy workload in the entities; that the former employee does not always transmit information regarding functions to the new employee taking over the position, mainly because in many cases the new employee takes over well after the old one has left; and that training is not given in a timely fashion that would enable employees to keep up with changes in her or his day-to-day tasks. With the above in mind, the Committee will offer the country under review a recommendation in that regard (See Recommendation 1.4.9 in Chapter III of this Report).

#### **1.4. Conclusions and recommendations**

[545] On the basis of the analysis conducted in foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article III (3) of the Convention:

**[546] Colombia has considered and adopted certain measures intended to establish, maintain, and strengthen in the selected public-sector entities instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, as indicated in Chapter III, Section 1 of this report.**

[547] In view of the comments made in that section, the Committee suggests that the country under review consider the following recommendations:

1.4.1. Have the appropriate authority adopt suitable measures to ensure that those hired by public-sector entities under professional services or management support contracts who perform activities proper to the purpose of those entities can receive training through induction (See paragraph 502 in section 1.2 of Chapter III of this report).

1.4.2. Adopt a mechanism to ensure compliance with the obligation established in Article 7 of Decree Law 1567 of 1997 that each entity's institutional plans must include induction and re-induction programs for its employees (See paragraph 506 in section 1.2 of Chapter III of this report).

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<sup>181</sup> Response of Colombia to the questionnaire, pp. 35 and 36.

- 1.4.3. Have the appropriate authority adopt suitable measures to complete implementation of the General Code of Integrity and Ethics for Public Servants (See paragraph 519 in section 1.3 of Chapter III of this report).
- 1.4.4. Have the appropriate authority adopt suitable measures to overcome the difficulties indicated by the Civil Service Administrative Department (DAFP) by, inter alia, allowing sufficient time and opportunity to ensure that support provided by colleagues in an employee's team can really guarantee adequate understanding by that employee of his or her responsibilities or functions and of the ethical standards that must govern her or his activities (See paragraph 522 in section 1.3 of Chapter III of this report).
- 1.4.5. In connection with *Colombia Compra Eficiente* (CCE) personnel, compile detailed annual statistics on the number of induction, instruction, and/or training courses provided to ensure adequate understanding of their responsibilities and functions and the ethical norms governing their activities; the periodicity of such courses; the number of public servants who have taken part in them each year; the preparation of guidelines for counseling them with respect to such courses; and on activities undertaken to verify whether those courses achieved their purpose of transmitting understanding of responsibilities and functions and of the required ethical standards, so as to identify challenges and recommend corrective measures, as necessary (See paragraph 530 in section 1.3 of Chapter III of this report).
- 1.4.6. Have the appropriate authority adopt suitable measures to overcome the difficulties pointed to by *Colombia Compra Eficiente* (CCE), including coordinating with the various departments within the entity to ensure that sufficient time is allowed for induction and workshop-based training (See paragraph 531 in section 1.3 of Chapter III of this report).
- 1.4.7. Have *Colombia Compra Eficiente* (CCE) use modern technology to inform its personnel of their responsibilities and functions and guide them as to the best way to discharge them (See paragraph 532 in section 1.3 of Chapter III of this report).
- 1.4.8. In connection with personnel in the Transparency Secretariat (ST) of the Office of the President of the Republic, compile detailed annual statistics, by the Administrative Department of the Office of the President of the Republic (DAPRE), on the number of induction, instruction, and/or training courses provided to ensure adequate understanding of their responsibilities and functions and the ethical norms governing their activities; the periodicity of such courses; the number of public servants who have taken part in them each year; the preparation of guidelines for counseling them with respect to such courses; and on activities undertaken to verify whether those courses achieved their purpose of transmitting understanding of responsibilities and functions and of the required ethical standards, so as to identify challenges and recommend corrective measures, as necessary (See paragraph 543 in section 1.3 of Chapter III of this report).
- 1.4.9. Have the DAPRE adopt suitable measures to overcome the difficulties pointed to by the Transparency Secretariat (ST) of the Office of the President of the Republic, including ensuring that new employees are given detailed explanations of their functions during induction training; keeping institutional records of those functions in case no overlapping is possible with the previous incumbent in that position; and schedule refresher training courses so that they can be provided in good time (See paragraph 544 in section 1.3 of Chapter III of this report).

## **2. STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE (ARTICLE 11, PARAGRAPH 12 OF THE CONVENTION)**

### **2.1. STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE**

[548] The country under review did not provide any studies regarding measures that take into account the relationship between equitable compensation and probity in public service, but it did provide one study on reduction of wage levels and another on wages and public-sector employment in Colombia (see section 2.2.2 below).

### **2.2. ESTABLISHMENT OF OBJECTIVE AND TRANSPARENT GUIDELINES FOR DETERMINING CIVIL SERVANT REMUNERATIONS**

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

[549] Colombia has a set of provisions on establishing objective and transparent guidelines for determining civil servant remunerations, in particular:

[550] - The Political Constitution, Article 150.19.e of which establishes that one of the functions of the National Congress is to issue general provisions pointing to the objectives and criteria to be followed by the Government in determining wage and benefits regimes for government employees, members of the National Congress, and members of the security forces (*Fuerza Pública*).

[551] - Law 4 of 1992, article 1 of which states that the National Government shall, subject to the provisions, criteria, and objectives set forth in this Law, establish the wage and benefits regimes for: a) Government employees in the National Executive Branch, regardless of sector, denomination, or legal system; b) Employees of the National Congress, the Judiciary, the Public Prosecutors' Office (*Ministerio Público*), the Office of the Attorney General of the Nation, the Electoral Authority, and the Office of the Comptroller General of the Republic; c) Members of the National Congress, and d) Members of the security forces.

[552] Article 2 of the aforementioned Law states that in establishing the wages and benefits regime for the public servants referred to in the foregoing Article, the National Government shall bear the following objectives and criteria in mind: a) Respect for the acquired rights of public servants (those covered by the general regime and those subject to special regimes). Under no circumstances may their wages or benefits be lowered; b) Respect for the administrative career service and expansion of its coverage; c) Consensus-building as the mechanism for improving the State's provision of services and working conditions; d) Modernization, technification, and efficiency in public administration; e) Efficient use of human resources; f) Competitiveness, in the sense of capacity to adjust to prevailing terms and conditions in the labor market; g) The obligation of the State to foster ongoing training for its personnel; h) Subjection to the general macroeconomic and fiscal policy framework; i) Rational use of government resources, as available, i.e., budgetary constraints for each agency or entity; j) Hierarchy, i.e., the nature of each position's functions, responsibilities, and the qualifications needed to perform them; k) The establishment of salary ranges for positions at the professional, advisor, and executive levels for agencies and entities in the Executive and Electoral Branches of Government; l) Adoption of evaluation and promotion systems based on general and/or specific tests/exams. In designing those systems, attention will be paid to the following criteria: equity, productivity, efficiency, performance, and seniority; ll) Recognition of representation and health expenses and allowances for relocation, housing, and moving when circumstances so warrant, for the Legislative Branch.

[553] Article 3 of the aforementioned Law provides that the remuneration system for public servants shall comprise the following: the job structure, in accordance with the functions to be performed and the scale and type of remuneration for each position or position category; Article 4 states that, based on the criteria and objectives set forth in Article 2, the National Government shall, in the first ten days of January of each year, adjust the remuneration system for employees listed in Article 1.a., b., and d., by increasing their compensation, and that, in addition, it shall adjust the per diem, representation expenses, and commission rates for the same employees; and it adds that any increases ordered by the National Government pursuant to this Article shall, for tax purposes, be effective as of January 1st of the year in question. Article 4 provides, in addition, that no national-level employee of Central Government, or of the territorial entities pertaining to Central Government, with the exception of the President of the Republic, members of the Colombian Diplomatic Corps accredited abroad, or personnel of the Ministry of Defense posted abroad, shall receive compensation higher than that paid to members of the National Congress.

[554] Article 8 of the aforementioned law provides that, in implementing the present law, the National Government shall determine within ten (10) days of its entry into force, the monthly remuneration of the members of the National Congress; from then on Article 187 of the Political Constitution shall apply,<sup>182</sup> and Article 9 established that the legal representatives of government-owned industrial and commercial enterprises and public-private or similar companies shall abide, in their collective bargaining, by the directives and policies issued by their boards and governing bodies and the general guidelines set by CONPES,<sup>183</sup> without prejudice to full observance of the right to collective hiring (*contratación colectiva*)

[555] Finally, Article 10 of the aforementioned Law states that any wages or benefits regime that is established that contravenes the provisions of the Law or of the decrees issued by the National Government to implement it shall be null and void and shall not establish acquired rights; Article 11 provides that the benefits regime for public servants in territorial entities shall be established by the National Government, based on the provisions, criteria, and objectives contained in the present Law and that the Government shall set the maximum salary level for said public servants in line with salaries for similar National Government positions; and Article 19 states that nobody may simultaneously perform more than one public-sector job, or receive more than one remuneration from the Public Treasury, or from enterprises or institutions in which the State has a majority share, with the exceptions indicated in said provision.<sup>184</sup>

[556] Law 909 of 2004, Article 14.f of which stipulates that one of the functions of the Civil Service Administrative Department (DAFP) is to establish, with the consent of the President of the Republic, civil service resource management policies in the Executive Branch within the framework of the Constitution and the Law, with regard to such matters as incentives for personnel, the wage and benefits system, and job nomenclature and classification.

[557] Decree 430 of 2016, Article 2.8 of which stipulates that one of the functions of the Civil Service Administrative Department (DAFP) is -- in coordination with the Ministry of Labor -- to encourage and

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<sup>182</sup> This provision stipulates that the allocation for members of Congress shall be adjusted every year by an amount equal to the weighted average of changes in the remuneration of Central Government employees, on the basis of a certification to that end issued by the Comptroller General of the Republic.

<sup>183</sup> National Economic and Social Policy Council

<sup>184</sup> a) Those received by university professors serving as advisors to the Legislature; b) Those received by personnel with retirement allowances or military or police (security forces) pensions; c) Those received in lieu of a pension (*por concepto de sustitución pensional*); d) academic honoraria [*por concepto de hora-cátedra*]; e) fees received for professional health-related services; f) directors' fees for attending board of director meetings, provided that not more than two boards are involved; g) those that, when the present Law enters into force, benefit official teaching staff in retirement (*servidores oficiales docentes pensionados*).

promote the development of a labor relations culture that fosters dialogue, conciliation, and the conclusion of agreements to consolidate social and economic development, increased productivity, and direct settlement of individual and collective labor disputes, as well as consensus-building with respect to public sector wage and labor policies.

[558] The decrees issued every year by the President of the Republic pursuant to the general provisions indicated in Law 4 of 1992,<sup>185</sup> such as Decree No. 995 of 2017, setting salary ceilings for Governors, Mayors, and public servants in the territorial entities; Decree 999 of 2017, establishing basic salary scales for jobs performed by public servants in the Executive Branch, Regional Autonomous and Sustainable Development Enterprises and the States' social interest enterprises [*Empresas Sociales del Estado*] at the national level; Decree 1035 of 2017, setting the salary scale for public-sector jobs in the Congress of the Republic; and Decree 1003 of 2017, containing provisions on salaries and benefits for jobs in the Judiciary and Military Criminal Justice system.

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

[559] With respect to the provisions on the establishment of objective and transparent guidelines for determining civil servant remunerations, the Committee notes that, on the basis of the information available to it, they are pertinent for the purposes of the Convention.

[560] However, the Committee believes it timely to make a number of observations in relation thereto:

[561] First, the Committee considers that note should be taken of the fact that, in its reply to the questionnaire,<sup>186</sup> the country under review stated that: "...currently, the Public Sector Employment Directorate is conducting a study designed to determine -- based on current salary scales -- the process required to narrow salary gaps and grades in the public sector and to identify the costs associated with that process; the idea being to establish more precise ranges within those scales, while, in addition, reducing possible inequalities between positions with similar functions. - This study, which encompasses 172 entities in the National Executive Branch, or 134,465 public servants spread over 24 administrative sectors, has detected greater salary dispersion in the director, advisor, and support staff levels, with lower gaps between administrative sectors when it comes to professional and technical level personnel."

[562] In a presentation it gave during the on-site visit, the Civil Service Administrative Department (DAFP)<sup>187</sup> also said that it was working on changes to the rules governing public sector employment and that the most critical regulatory aspects of current salary regimes in Colombia that needed to be repealed, amended, or supplemented, had to do with narrowing salary differentials in such a way as to foster mobility and motivate public servants. For that, more differentiated scales were needed, for tax and budgetary purposes.

[563] It is also worth noting that the study provided by the country under review, called "Wages and Public Sector Employment in Colombia,"<sup>188</sup> and prepared by the Public Sector Employment Directorate of the DAFP, states that: "The document concludes, broadly speaking, that the range of public sector salary regimes in Colombia is vast, among both sectors and individual entities, and exhibits huge wage distribution inequalities. This dispersion is found by comparing the wage allocations of all the entities, be they those included in the database of all registered entities or those of the administrative career service. Inequality is

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<sup>185</sup>These decrees are posted on the regulations page of the DAFP website, at: <http://www.funcionpublica.gov.co/sisjur/home/Normal.jsp?i=62257>.

<sup>186</sup> Response of Colombia to the questionnaire, pp. 36 and 37.

<sup>187</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>188</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

found at all levels, although the data suggest that it is greater at the higher (manager and management advisor) levels than lower down, at the technical staff/advisor levels.

[564] In light of the statements made by the country under review in both its Response to the Questionnaire and during the on-site visit, as well as the contents of the aforementioned study it provided, which highlight the need to narrow salary gaps with a view to encouraging mobility and to motivating public servants, the Committee will offer the country under review a recommendation in this regard (See Recommendation 2.2.3.1 in section 2.2.3 of Chapter III of this report).

[565] Second, the Committee considers that it is worth bearing in mind that in its Response to the Questionnaire,<sup>189</sup> the country under review reported that "...the DAFP has been working on amending the regulations governing public sector employment in Colombia with a view to being able to establish and determine how variations in compensation can be linked to public servant performance."

[566] In a presentation it gave during the on-site visit, the Civil Service Administrative Department (DAFP)<sup>190</sup> also stated that it was working on amendments to the regulations governing public sector employment and that, within the scope of the proposal it was working on, the idea was to find in the medium and long-term a way of tying wages to public servant productivity.

[567] Worth noting, too, in a DAFP study provided by the country under review, on the reduction of salary levels (*grados salariales*),<sup>191</sup> is the following comment: "Law 4 of 1992 increases (*da desarrollo a*) salary regimes "for the public sector, based on bonuses, allowances, and extra months' salaries [*sobresueldos*] (Hernández, 2004), unrelated to any tangible performance outcomes on the part of government employees."

[568] With regard to the above and in light of the statements made by the country under review in both its Response to the Questionnaire and during the on-site visit, as well as the contents of the aforementioned study it provided, which highlight the need to develop over the medium to long term arrangements for adjusting public servants' compensation to match their productivity, the Committee will offer the country under review a recommendation in this regard (See Recommendation 2.2.3.2 in section 2.2.3 of Chapter III of this report).

[569] Third, the Committee considers that it is worth noting the observation contained in the conclusions to the study provided by the country under review, entitled "Wages and Public Sector Employment in Colombia,"<sup>192</sup> produced by the DAFP Public Sector Employment Directorate, to the effect that: "According to the information available, the wages structure in Colombia is dispersed and inequitable and does not appear to follow a general public policy guideline. On the contrary, what the data show is how various entities have managed separate themselves from the general regime and that, even within that regime some sectors and/or entities are better off than others in terms of wages. In short, the data confirm the dispersion and inequity of Colombia's public sector wage structure and the need to revamp it through a general policy geared to mobility opportunities and appropriate merit-based incentives, as well as to overcoming the sharp differences that arise for personnel working for the Colombian State, depending on the sector and specific entity employing them." With the above in mind, the Committee will offer the country under review a recommendation in that regard (See Recommendation 2.2.3.3 in section 2.2.3 of Chapter III of this Report).

[570] Regarding the above, it is worth noting that, during the on-site visit, the DAFP representative brought along a draft of the CONPES document to be submitted to the National Economic and Social Policy

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<sup>189</sup> Response of Colombia to the questionnaire, p. 37

<sup>190</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>191</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>192</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)



Council,<sup>193</sup> and said that it envisages adoption of a comprehensive public sector employment policy. He said it was an important paper, the first of its kind on this subject.

### 2.2.3. Conclusions and recommendations

[571] On the basis of the analysis conducted in foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article III (12) of the Convention:

**[572] Colombia has considered and adopted measures aimed at establishing objective and transparent criteria to determine compensation for public servants in keeping with what is stated in section 2 of Chapter III of this report.**

[573] In view of the comments made in that section, the Committee suggests that the country under review consider the following recommendations:

2.2.3.1 Have the appropriate authority adopt suitable measures, as funds become available, to narrow wage gaps in entities in the National Executive Branch (See paragraph 564 in section 1.2 of Chapter III of this report).

2.2.3.2 Have the appropriate authority adopt suitable measures, as funds become available, to develop a scheme whereby public servant's compensation varies according to productivity (See paragraph 568 in section 1.2 of Chapter III of this report).

2.2.3.3 Adopt and implement a general wage policy geared to mobility opportunities and appropriate merit-based incentives, as well as to overcoming the sharp differences that arise for personnel working for the Colombian State, depending on the sector and specific entity employing them (See paragraph 569 in section 1.2 of Chapter III of this report).

## IV. BEST PRACTICES

[574] In keeping with section VI of the *Methodology* adopted by the Committee for follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round and for the review of the provisions of the Convention selected for the Fifth Round, the following describes a best practice identified by Colombia that it has wished to share with the other member countries of the MESICIC in the belief that it could be of benefit to them:

**[575] Strengthening the identification and prevention of risks of corruption by using the Integrated Management System (SIG)** implemented by the National Civil Service Commission (CNSC).<sup>194</sup> On this, the country under review reported in the standard form attached to its Response to the Questionnaire,<sup>195</sup> inter alia, that:

[576] "Using the CNSC processing model and, in particular, its procedures, risks were identified for each of the activities that public servants have to perform. That identification made it possible to insert a sign (*una convención*) in each flow chart, indicating that that particular action could trigger a risk. In addition, the app selected contains an option to access and get to know all the information available regarding the risk, such as its assessment and how to handle it, and so on."

<sup>193</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic5\\_col.htm](http://www.oas.org/juridico/spanish/mesicic5_col.htm)

<sup>194</sup> More information can be found on the CNSC website: [www.cnsc.gov.co](http://www.cnsc.gov.co)

<sup>195</sup> Response of Colombia to the questionnaire, pp. 51 a 53.

[577] "It is considered a best practice because public servants have all the information at their fingertips and have advance warning of the risk factors involved. That enables them to determine in advance what actions are best suited to ensure clear and transparent performance of their functions."

## APPENDIX

**AGENDA FOR THE ON-SITE VISIT TO THE REPUBLIC OF COLOMBIA**

<b><u>Monday, April 3, 2017</u></b>	
4:30 p.m. – 5:00 p.m. <i>Hotel Tequendama</i>	<b>Coordination meeting between representatives of the member states of the subgroup and the Technical Secretariat</b>
5:00 p.m. 5:30 p.m. <i>Hotel Tequendama</i>	<b>Coordination meeting of representatives of the country under review, the member states of the subgroup, and the Technical Secretariat</b>
<b><u>Tuesday, April 4, 2017</u></b>	
8:00 a.m. – 8:30 a.m. <i>Ministry of Foreign Affairs (Cancillería)</i>	<b>Opening remarks</b>
	<p><b><u>Speakers:</u></b></p> <ul style="list-style-type: none"> <li>- Mauricio Gonzales López <i>Director of Multilateral Political Affairs at the Ministry of Foreign Affairs</i></li> <li>- Camilo Cetina <i>Transparency Secretary</i></li> <li>- Jorge García González <i>Director of the Department of Legal Cooperation of the OAS General Secretariat</i></li> </ul>
8:30 a.m. – 12:00 p.m. <i>Ministry of Foreign Affairs (Cancillería)</i>	<b>Meetings with civil society organizations and/or, inter alia, private sector organizations, academics or researchers.<sup>196</sup></b>

<sup>196</sup> The civil society organization "Funsocial Crecer Colombia" took part in these meetings by virtue of provision 26 of the *Methodology for Conducting On-Site Visits*. It presented documents relating to the Questionnaire for the Fifth Round of Review, pursuant to Article 34.b of the Committee's *Rules of Procedure*. It is suggested that other organizations and individuals be invited to participate pursuant to provision 27 of the aforementioned Methodology, which provides for the possibility of inviting civil society organizations and/or, inter alia, private sector organizations, professional organizations, academics or researchers to take part in these meetings.

<p><b>First meeting</b> 8:30 - 9:40 a.m.</p>	<p><b>Topic:</b> Public servant hiring systems and training to enable them to fulfill their responsibilities and comply with ethical standards.</p> <p><b><u>Participants:</u></b></p> <p><i>Corporación Transparencia por Colombia:</i></p> <ul style="list-style-type: none"> <li>- Adriana Muñoz (Senior Professional)</li> <li>- Karina Cruz (Senior Professional)</li> </ul> <p><i>Funsocial Crecer Colombia:</i></p> <ul style="list-style-type: none"> <li>- José L. Gamba Martínez (Director)</li> <li>- Armando Avellaneda (Legal Representative)</li> <li>- Jorge Eliécer Hernández Albarracín (Director of the Legal Department)</li> </ul> <p><i>An academic from the Advanced School of Public Administration (ESAP):</i></p> <ul style="list-style-type: none"> <li>- Humberto Espinosa (Expert on the administrative career)</li> </ul> <p><i>Corporación Excelencia para la Justicia:</i></p> <ul style="list-style-type: none"> <li>- Gloria María Borrero (Director)</li> </ul>
<p><b>Second Meeting</b> 9:40 a.m. – 10:40 a.m.</p>	<p><b><u>Topics:</u></b> Legal characterization of acts of corruption and systems for protecting those who report them</p> <p><b><u>Participants:</u></b></p> <p><i>Corporación Transparencia por Colombia:</i></p> <ul style="list-style-type: none"> <li>- Adriana Muñoz (Senior Professional)</li> <li>- Karina Cruz (Senior Professional)</li> </ul> <p><i>An academic from Universidad de los Andes:</i></p> <ul style="list-style-type: none"> <li>- Daniel Rodríguez Bravo (A partner in the law firm of CMS – Rodríguez Azuero Contexto Legal Abogados)</li> </ul> <p><i>Corporación Excelencia para la Justicia:</i></p> <ul style="list-style-type: none"> <li>- Gloria María Borrero (Director)</li> </ul>
<p><b>Third meeting</b> 10:40 a.m. - 12:00 p.m.</p>	<p><b><u>Topic:</u></b> Systems for government procurement of goods and services</p> <p><b><u>Participants:</u></b></p>

	<p><i>Corporación Transparencia por Colombia:</i></p> <ul style="list-style-type: none"> <li>- Adriana Muñoz (Senior Professional)</li> <li>- Karina Cruz (Senior Professional)</li> </ul> <p><i>An academic from Xavier University:</i></p> <ul style="list-style-type: none"> <li>- Felipe Piquero Villegas (A partner in Esguerra Asesores Jurídicos)</li> </ul> <p><i>Fedesarrollo:</i></p> <ul style="list-style-type: none"> <li>- Víctor Saavedra (former Vice Minister of Education and a Researcher at Fedesarrollo)</li> </ul>
12:00 p.m. – 2:00 p.m.	Luncheon (open)
2:00 p.m. – 5:30 p.m. <i>Ministry of Foreign Affairs (Cancillería)</i>	<b>Meetings with public officials on systems for hiring public servants and their remuneration</b>
2:00 p.m. – 5:30 p.m.	<p><b><u>Panel 1:</u></b></p> <ul style="list-style-type: none"> <li>- <b>Government hiring systems</b></li> <li>- Progress with implementation of the recommendations formulated in the Second Round, difficulties, new developments, and results.</li> </ul> <p><b><u>Participants:</u></b></p> <p><b><u>Executive Branch:</u></b></p> <p><b><u>National Civil Service Commission</u></b></p> <ul style="list-style-type: none"> <li>- Pedro Rodríguez Tobo (Commissioner)</li> <li>- Sonia Cruz (Director, Administrative Career Service Administration)</li> <li>- María Deissy Castiblanco (Advisor)</li> <li>- Diana Carolina Montaña (Strategic Partnerships)</li> </ul> <p><b><u>Administrative Department of the Civil Service</u></b></p> <ul style="list-style-type: none"> <li>- Francisco Camargo Salas (Director of Public Sector Employment)</li> </ul> <p><b><u>Transparency Secretariat</u></b></p> <ul style="list-style-type: none"> <li>- Alice Berggrun Comas (Coordinator of the International Affairs Group and Alternate Expert of the MESICIC)</li> </ul>
6:00 p.m. – 7:00 p.m. <i>Hotel Tequendama</i>	<b>Informal meeting between the representatives of the member states of the Subgroup and the Technical Secretariat</b>
<b><u>Wednesday, April 5, 2017</u></b>	
8:30 a.m. – 12:00 p.m. <i>Ministry of Foreign</i>	<b>Meetings with public officials on systems for hiring public servants</b>

<i>Affairs (Cancillería)</i>	
8:30 a.m. – 12:00 p.m.	<p><b><u>Panel 2:</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>Government hiring systems:</b> <ul style="list-style-type: none"> <li>- Progress with implementation of the recommendations formulated in the Second Round, difficulties, new developments, and results.</li> </ul> </li> </ul> <p><b><u>Participants:</u></b></p> <p><b><u>Legislative Branch:</u></b></p> <p><b><u>Congress of the Republic</u></b></p> <ul style="list-style-type: none"> <li>• <b><u>Chamber of Deputies</u></b> <ul style="list-style-type: none"> <li>- Virgilio Farfán Rojas (Head of the Personnel Division)</li> <li>- Maria Carolina Carrillo (Director of Administrative Affairs)</li> <li>- Renate Seidel (Advisor, Personnel Division)</li> <li>- Tatiana Alvarado (Advisor, Level I)</li> </ul> </li> <li>• <b><u>Senate of the Republic</u></b> <ul style="list-style-type: none"> <li>- Yuri Garcia (Head of Human Resources in the Senate)</li> <li>- Alex Hernandez Oyola (Head of Internal Oversight)</li> <li>- Natalia Albañil (Advisor to the Office of the President of the Senate)</li> </ul> </li> </ul> <p><b><u>Judiciary:</u></b></p> <p><b><u>Higher Council of the Judiciary (CSJd)</u></b></p> <ul style="list-style-type: none"> <li>- Wilfredo Rincón Guevara (Division Chief, Career Unit)</li> <li>- Francisco Boada (Ancillary Judge) [<i>Magistrado Auxiliar</i>]</li> <li>- Claudia Granados (Director of the Judicial Career Unit)</li> <li>- Jesus Padilla (Ancillary Judge) [<i>Magistrado Auxiliar</i>]</li> </ul> <p><b><u>Office of the Attorney General of the Nation (FGN)</u></b></p> <ul style="list-style-type: none"> <li>- José Tobias Betancourt Ladino (National Director, Management Support)</li> <li>- Blanca Clemencia Romero Acevedo (National Deputy Director, Support for the Special Career Service Commission)</li> <li>- Julian Ruiz (Advisor)</li> </ul>
12:00 p.m. – 2:00 p.m.	Luncheon (open)
2:00 p.m. – 5:30 p.m. <i>Ministry of Foreign Affairs (Cancillería)</i>	<b>Meetings with public authorities: Systems for government procurement of goods and services</b>

2:00 p.m. – 5:30 p.m.	<p><b><u>Panel 3:</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>Systems for government procurement of goods and services:</b></li> <li>- Progress with implementation of the recommendations formulated in the Second Round, difficulties, new developments, and results.</li> </ul> <p><b><u>Participants:</u></b></p> <p><i>Colombia Compra Eficiente:</i></p> <ul style="list-style-type: none"> <li>- Camilo Andrés Gutiérrez Silva (Expert advisor)</li> <li>- Nicolás Penagos (Deputy Director of Business)</li> </ul> <p><i>Transparency Secretariat</i></p> <ul style="list-style-type: none"> <li>- Alice Berggrun Comas (Coordinator of the International Affairs Group and Alternate Expert of the MESICIC)</li> </ul> <p><i>Office of the Comptroller General of the Republic:</i></p> <ul style="list-style-type: none"> <li>- Tania Violeta Vargas Luna (Director, Tax Studies Center)</li> <li>- Hans Ramírez Professional at the Tax Studies Center)</li> <li>- Luisa Fernanda Morales (Manager, Human Resources)</li> <li>- Edna Velez (Advisor)</li> <li>- Juan Carlos Arenas (Advisor to the Office of the Comptroller General)</li> </ul> <p><i>National Agency for Legal Defense of the State:</i></p> <ul style="list-style-type: none"> <li>- Salomé Naranjo Lujan (Director of Information Management)</li> </ul>
6:00 p.m. – 7:00 p.m. <i>Hotel Tequendama</i>	<b>Informal meeting between the representatives of the member states of the Subgroup and the Technical Secretariat</b>
<b><u>Thursday, April 6, 2017</u></b>	
8:30 a.m. – 12:00 p.m. <i>Ministry of Foreign Affairs (Cancillería)</i>	<b>Meetings with public authorities: Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities</b>
8:30 a.m. – 12:00 p.m.	<p><b><u>Panel 4:</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities</b></li> <li>- Legal framework, programs, competent bodies, and technology use</li> <li>- Outcomes</li> <li>- Difficulties</li> </ul> <p><b><u>Participants:</u></b></p> <p><i>Administrative Department of the Civil Service</i></p> <ul style="list-style-type: none"> <li>- Fernando Augusto Segura Restrepo (Director of Participation, Transparency, and Service to Citizens) He was sent a</li> </ul>

	<p>confirmation e-mail.</p> <ul style="list-style-type: none"> <li>- Ángela María González (General Secretariat)</li> </ul> <p><i>Colombia Compra Eficiente:</i></p> <ul style="list-style-type: none"> <li>- Camilo Andrés Gutiérrez Silva (Expert advisor)</li> </ul> <p><i>Transparency Secretariat:</i></p> <ul style="list-style-type: none"> <li>- Laura Galindo Romero (Advisor)</li> <li>- Martha Ligia Ortega (Advisor)</li> <li>- Albert Cuesta Gómez (Advisor)</li> </ul>
12:00 p.m. – 2:00 p.m.	Luncheon (open)
2:00 p.m. – 5: 30 p.m. <i>Ministry of Foreign Affairs (Cancillería)</i>	<b>Meetings with government officials: public servant remuneration panels; legal characterization of acts of corruption; and systems for protecting those who report them</b>
2:00 p.m. – 3: 30 p.m.	<p><b><u>Panel 5:</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>Study of prevention measures that give due consideration to the relationship between equitable remuneration and probity in public service</b></li> </ul> <ul style="list-style-type: none"> <li>- Study or studies carried out</li> <li>- Objective and transparent guidelines for determining civil servant remunerations</li> </ul> <p><b><u>Participants:</u></b></p> <p><i>Administrative Department of the Civil Service</i></p> <ul style="list-style-type: none"> <li>- Francisco Camargo Salas (Director of Public Sector Employment)</li> </ul> <p><i>Transparency Secretariat:</i></p> <ul style="list-style-type: none"> <li>- Alice Berggrun Comas (Coordinator of the International Affairs Group and Alternate Expert)</li> </ul>
3:30 p.m. – 4:30 p.m.	<p><b><u>Panel 6:</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>Legal characterization of acts of corruption:</b></li> </ul> <ul style="list-style-type: none"> <li>- new developments and results</li> </ul> <p><b><u>Participants:</u></b></p> <p><i>Office of the Attorney General of the Nation (FGN)</i></p> <ul style="list-style-type: none"> <li>- Juan Sebastián Villamil Rodríguez (Advisor)</li> <li>- Mario Fernando Parra Guzmán (Prosecutor attached to [<i>Fiscal Delegado ante</i>] the District Court)</li> <li>- María Alejandra Cruz Zuluaga (Prosecutor's assistant)</li> <li>- Luisa Fernanda Salazar Chavarro (Prosecutor's assistant)</li> </ul>



	<ul style="list-style-type: none"> <li>- Andrés Eduardo Jiménez Camargo (Director of the Judicial Police)</li> </ul> <p><u>Transparency Secretariat:</u></p> <ul style="list-style-type: none"> <li>- Alice Berggrun Comas (Coordinator of the International Affairs Group and Alternate Expert)</li> </ul> <p><u>Higher Council of the Judiciary (CSJd)</u></p> <ul style="list-style-type: none"> <li>- Juana Catalina Reyes (Municipal Criminal Court Judge, Bogotá)</li> <li>- María Teresa Vergara Gutiérrez (Municipal Criminal Court Judge, Bogotá)</li> </ul> <p><u>Criminal court judges:</u></p> <ul style="list-style-type: none"> <li>- Clara Milena Higuera Guio (Division Chief -Development and Statistical Analysis Unit)</li> <li>- Luis Fernando Ramírez (Judge of the Higher Court of Bogotá, Criminal Division)</li> <li>- Francisco Boada (Ancillary Judge [<i>Magistrado Auxiliar</i>] of the Higher Council of the Judiciary -CSJd)</li> <li>- Horacio García Cuéllar (Head of the Municipal Prison [<i>Jefe Penal Municipal</i>])</li> <li>- Carlos Eduardo Velázquez (Enforcement of Sentences and Security Measures Judge, Bogotá)</li> </ul>
4:30 p.m. – 5:30 p.m.	<p><b><u>Panel 7:</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>Protection systems for those who report acts of corruption (whistleblowers):</b></li> <li>- Progress with implementation of the recommendations formulated in the Second Round, difficulties, new developments, and results.</li> </ul> <p><b><u>Participants:</u></b></p> <p><u>Office of the Attorney General of the Nation (Witness Protection Program)</u></p> <ul style="list-style-type: none"> <li>- Jaime Enrique Pinillos Ramírez (Director)</li> <li>- Mónica Velasco Cabrera (Advisor, Level I - National Protection and Assistance Directorate)</li> <li>- Yomaira Reyes Urrego (Technical Investigator, Level IV)</li> </ul> <p>Office of the Procurator General of the Nation (Witness Protection Program)</p> <ul style="list-style-type: none"> <li>- Paula Andrea Ramírez Barbosa (Procurator attached to the Public Prosecutors' Office in Criminal Matters [<i>Procuradora Delegada para el Ministerio Público en Asuntos Penales</i>])</li> <li>- Giancarlo Marcenaro Jiménez (Prosecutor, Level 2, assigned to administrative surveillance [<i>Procurador segundo Delegado para la vigilancia administrativa</i>])</li> <li>- Carmen Maritza González Manrique (Prosecutor assigned to</li> </ul>

	<p>[<i>Procuradora Delegada para</i>] Public Sector Ethics (e))</p> <ul style="list-style-type: none"> <li>- Jaime Enrique Bautista (Advisor to the National Directorate of Special Investigations)</li> <li>- Bertha Patricia Alemán Parra (Head of Coordination, International Cooperation Group)</li> </ul> <p><i>Transparency Secretariat:</i></p> <ul style="list-style-type: none"> <li>- Alice Berggrun Comas (Coordinator of the International Affairs Group and Alternate Expert)</li> </ul>
5:30 p.m. – 6:00 p.m.	<b>Informal meeting between the representatives of the member states of the Subgroup and the Technical Secretariat</b>
6:00 p.m. – 6:30 p.m.	<b>Final meeting<sup>197</sup> / between the representatives of the country under review, the member states of the subgroup, and the Technical Secretariat.</b>

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<sup>197</sup>- 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 to support him in accordance with provision 10, second paragraph, of this Methodology. That meeting shall identify, if necessary, the information that, exceptionally, 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.”

**OFFICIALS WHO ACTED AS CONTACTS IN THE COUNTRY UNDER REVIEW IN  
COORDINATING THE ON-SITE VISIT, AS WELL AS REPRESENTATIVES OF THE  
MEMBER STATES OF THE SUBGROUP AND OF THE MESICIC TECHNICAL  
SECRETARIAT WHO TOOK PART IN THE VISIT**

**COUNTRY UNDER REVIEW:**

**COLOMBIA**

Alice Berggrun Comas

Coordinator of the International Affairs Group of the Transparency Secretariat of the Office of the President of the Republic and Alternate Expert of the Committee of Experts of the MESICIC

Daniel Cruz Cárdenas

Crime Prevention Coordinator of the Directorate of Multilateral Political Affairs at the Ministry of Foreign Affairs

Ana María Cristancho Rocha

Advisor to the Crime Prevention Coordination Office of the Directorate of Multilateral Political Affairs at the Ministry of Foreign Affairs

**MEMBER STATES OF THE REVIEW SUBGROUP:**

**MEXICO**

Pablo Villarreal Soberanes

Deputy Director General of International Affairs of the Civil Service Secretariat and Alternate Expert of the Committee of Experts of the MESICIC

Jacqueline Arteaga Fernández

Deputy Director General of Planning and Human Resource Policies of the Civil Service Secretariat

Marco Antonio Rafael Román Sánchez

Deputy Director, Supplier Management, in the Civil Service Secretariat

Rafael Beltrán Ramos

Director of the General Inspectorate Area of the Office of the Procurator General of the Republic

Ileana Lizbeth Muñoz Solís

Department Head

Office of the Procurator General of the Republic

Deputy Director of the Directorate General of International Cooperation

**PARAGUAY**

Federico Espinoza Espínola

Deputy Prosecutor in the Public Prosecutors' Office (*Ministerio Público*) and Lead Expert on the Committee of Experts of the MESICIC

**TECHNICAL SECRETARIAT OF THE MESICIC:**

Jorge García González

Director of the Department of Legal Cooperation of the  
Secretariat for Legal Affairs of the OAS General Secretariat

Enrique Martínez Ramón

Principal Legal Officer of the Department of Legal Cooperation of the  
Secretariat for Legal Affairs of the OAS General Secretariat

Eduardo Parada Deutsch

Legal Officer of the Department of Legal Cooperation of the  
Secretariat for Legal Affairs of the OAS General Secretariat