

## STATE PARTY GUATEMALA

### REPLY TO THE QUESTIONNAIRE OF THE COMMITTEE OF EXPERTS OF THE FOLLOW-UP MECHANISM FOR THE IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION AS REGARDS THE PROVISIONS SELECTED FOR THE FIRST ROUND

#### INTRODUCTION

The President of the Republic of Guatemala, Óscar Berger Perdomo, elected for the 2004-2008 period, in line with his policies and government plan,<sup>1</sup> based on transparency and fighting corruption, immediately addressed the country's international and national commitments in this area by creating the *Commission for Transparency and Against Corruption*,<sup>2</sup> currently overseen by Hugo Leonel Maúl Figueroa, and duly appointed the central authority for the purposes of the CICC. In addition, the lead expert was appointed, and she has attended the Committee's meetings since the start of the current administration. The government agreed to make the Questionnaire public in 2003, at the same time as it drew up this reply, which updates and provides objective information on the provisions selected for analysis. It is hoped that this will facilitate the work of the Committee of Experts and of civil society in drawing up the independent report. To update the Questionnaire and discuss the legal amendments and proposals, a High Level Follow-up Team was established, comprising the Ministry of Public Finance, Ministry of Foreign Affairs, Office of the Comptroller General of Accounts, Public Prosecution Service (MP), National Civil Service Office, and the Commissioner for Transparency and against Corruption.

In addition to the Annexes, this Questionnaire contains an extensive collection of legal provisions, in the form indicated by the Secretariat of the Mechanism on its webpage, called **Classification of National Laws Furnished by Guatemala**, and a selection of provisions related to Article III, paragraphs 1 and 11, of the Convention, with which we hope to facilitate its legal analysis and dissemination on the internet.

#### I. BRIEF DESCRIPTION OF THE LEGAL AND INSTITUTIONAL SYSTEM<sup>3</sup>

From a centralized view of the state (1965 Constitution), we have evolved to the current supreme legal framework of the Republic of Guatemala in Central America (the 1985 Constitution), which enshrines "*the primacy of the human person as the subject and purpose of social order*" (Preamble) as a response to humanist trends of thought.

Guatemala has a republican, democratic, and representative form of government (Art. 140). It follows the classical model of the separation of powers, whereby the people delegate their sovereignty to the following branches: Legislature (unicameral), composed of deputies elected by nontransferable universal suffrage for a renewable period of four years (Arts. 157 to 172). Executive, composed of a President of the Republic and a Vice President, elected for a non-extendable period of four years by the nontransferable votes of the citizenry. The president appoints his ministers, vice ministers, and secretaries (Arts. 182 to 202). Judiciary, with a Supreme Court of Justice elected by the Congress of the Republic, from a shortlist arrived at by a nominations committee composed of lawyers, law-school deans, and judge-electors (Arts. 203 to 222).

A number of oversight bodies exist, including: The Office of the Comptroller General of Accounts, the mandate of which is to oversee revenues, expenditure, and, in general, all financial interests of state agencies, municipalities, decentralized and autonomous entities, and any person receiving funds from the state or making public collections (Arts. 232 to 236); the Public Prosecution Service (Ministerio Público), responsible for prosecuting crimes on behalf of the state (Art. 251); and the Office of the Attorney General of the Nation, the function of which is to advise and consult with state organs and entities, and to represent the state (Art. 252).

The new constitutional model introduced three new mechanisms for exerting legal and political control over the state's actions. The first of these is the Supreme Electoral Tribunal, responsible for all matters relating to the right to vote, political rights, political organizations, electoral authorities and agencies, and the electoral process (Art. 223); the Constitutional Court, a permanent court, the basic function of which is to uphold the

<sup>1</sup> See communication from the [Mission of the United Nations in Guatemala \(MINUGUA\)](#).

<sup>2</sup> See: [Creation agreement](#), Legal Annex

<sup>3</sup> For further details, see the [Legal Annex, which includes the texts of all the legal provisions cited.](#)

constitutional order (Art. 268 to 272); and the Attorney for Human Rights (“Ombudsman”), as a commissioner of the Congress of the Republic, responsible for defending basic freedoms (Arts. 274 to 275).

In terms of its administrative division, the Republic’s territory is divided into departments and these, in turn, into municipalities; however, the right to adopt other forms of administrative subdivisions, in accordance with economic, social, and cultural criteria, exists (Art. 224). As an operational body, the National Council for Urban and Rural Development serves to organize and coordinate the public administration, and has offices in each department and region of the Republic (Arts. 225 and 226).

One of the state’s guiding principles is its recognition of municipal autonomy, with municipalities responsible for, *inter alia*: (a) electing their own authorities, (b) obtaining and allocating their resources, and (c) taking charge of local public services, organizing the territory under their jurisdiction, and pursuing their own goals.

Finally, as regards the financial and tax regimes: the Congress of the Republic has the power to decree taxes, duty, and special contributions (Art. 239). “Social justice” is also the foundation of the Republic’s economic and social regime, whereunder the state is obliged to direct the national economy to make good use of natural resources and human potential, to increase wealth, and to achieve full employment and the equitable distribution of national income (Art. 118).

## II. QUESTIONNAIRE CONTENTS

### CHAPTER ONE

#### Reference: ARTICLE III, PARAGRAPHS 1 AND 2, OF THE CONVENTION

##### 1. Standards of conduct and general mechanisms

a. Does your country have standards of conduct for the correct, honorable, and proper fulfillment of public functions?

Yes. These standards are to be generally complied with or enforced on a special basis in accordance with the level of constitutional independence. The following list cites provisions from the main standards according to the scope of their application, from the general to the specific:<sup>4</sup>

##### **Political Constitution of the Republic:** (*Articles 107, 108, 112, 113, 154, and 156*)

- State workers are at the service of the public administration and never at the service of any political party, group, organization, or individual.
- The right of Guatemalans to secure public office or employment and, in achieving that, attention will only be paid to reasons based on merits, capacity, suitability, and honesty.
- Relations between the state, its decentralized or autonomous entities, and their workers are governed by the Civil Service Law, except when the rules and laws of the individual agencies apply.
- Civil servants are entrusted with authority, legally responsible for their official actions, subject to the law, and at no time above it.
- It establishes public office and its submission to the law, together with the absence of an obligation to follow illegal orders.
- Regarding public office and its subordination to the law.

**Law on the Probity and Responsibility of Public Officials and Employees** (D. 89-2002), intended to create rules and procedures for *increasing the transparency of the public administration* and ensuring the strict observance of constitutional and legal provisions, *to prevent the diversion of public resources, assets, funds, and valuables*, to establish mechanisms for overseeing the net worth of public officials and employees during their tenure in those positions, *and to prevent personal gain or any other form of illegal enrichment*. It contains a chapter on the responsibilities of individuals in the service of the state (Articles 8 to 14) and other placing limitations on public officials

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<sup>4</sup> See Annex: [Standards of conduct for the correct, honorable, and proper fulfillment of public functions.](#)

(Articles 18 and 19) and setting the causes of disqualification from holding public office or employment (Article 16). The following are subject to this law (Article 4.a): *“Public dignitaries, authorities, officials, and employees who, through popular election, appointment, contract, or any other method render services to the state, its agencies, municipalities, corporations, and decentralized or autonomous entities,”* are entrusted with permanent or temporary public functions, either remunerated or *pro bono*, including beyond the country’s frontiers.<sup>5</sup>

**Civil Service Law** (Decree 1748): This contains rules to regulate relations between the public administration and its employees, with a view to ensuring efficiency, guaranteeing they are treated fairly and receive encouragement at work; it also contains rules on the obligations of public employees (Article 64), general restrictions (Article 66), and special restrictions (67); the corresponding Regulations (AG 18-98), Articles 75 to 79, set out obligations and restrictions, and the disciplinary regime (Articles 80-82).

**The Civil Service Law of the Judicial Branch** (D.48-99) governs labor relations between the judiciary and its employees and officers. It is also enforced with respect to judges and magistrates, as applicable, in accordance with the provisions of the Judicial Career Law. It deals with the career system, the system of competitive exams, the register of eligible candidates, training, appointments, promotions, transfers, and reassignments.

**Civil Service Law of the Legislative Branch** (D.44-86). This establishes that positions are to be awarded in consideration of the ability, honesty, and moral standing of the candidates, by means of a process of competitive examinations. In their employment, workers must abide by disciplinary provisions. Bans exist on the following: Employees using their authority or status to oblige their subordinates to pursue political activities at work or outside it, or allowing them to be so obliged; carrying out activities in favor of or against any political institution, including the use of insignia identifying them as members or supporters of a given party organization during working hours; coming to work in an inebriated state or under the influence of narcotic drugs; and requesting or receiving gifts from any person in exchange for performing, or for refraining from performing, the duties inherent to their positions.

**Law of the Executive Branch** (D.114-97): Article 4 defines the common good as the supreme goal of the state, together with the principles that govern administrative functions, including solidarity, subsidiarity, transparency, probity, efficiency, and effectiveness. It promotes decentralization and citizen participation.

**Ethical Standards of the Executive Branch:**<sup>6</sup> (AG 312-2002) These were handed down within the framework of the Inter-American Convention against Corruption, and must be obligatorily complied with by officers, employees, and *advisors* of the executive branch, while not excluding compliance with other applicable ethical, moral, and disciplinary standards. They regulate actions involving party-based favoritism, conflicts of interest, use of privileged information, public decorum and behavior, integrity and transparency, the reporting of improper acts, and values and duties to be observed. Similar general provisions are found in the Law of the Executive Branch (Article 4).

**Ethical Standards of the Judicial Branch:**<sup>7</sup> (SCJ Agreement, 2001) Adopted in 2001, the document contains 41 articles that define the ethical standards of the judiciary, together with ethical values and principles, functions, relations and discipline, impartiality and independence, prohibited political activities, duties, private interviews, etc. Article 17 deals with the obligation of pursuing the corresponding procedures upon on colleagues or lawyers who learn of improper or dishonest acts committed by a judicial officer or any other employee. It also includes a number of restrictions dealing with employees of the judicial branch.

<sup>5</sup> Unconstitutionality was ruled as regards the observation of the private citizens identified in sections (b), (c), and (d) of Article 4, file 537-2003, published in the Official Journal on 27/10/2003.

<sup>6</sup> Governmental Agreement No. 197-2004 of July 13, 2004. See Legal Annex.

<sup>7</sup> Internal Agreement 7-2001, Supreme Court of Justice.

**b. Does your country have mechanisms for enforcing compliance with those standards of conduct?**

**The National Civil Service Office** is the body responsible for managing the human resources of the executive branch and of those decentralized or autonomous entities that do not have their own regimes; its job is to oversee due compliance with the Law and its Regulations. Currently, amendments are being negotiated to the Civil Service Law, Decree 1748 of the Congress of the Republic of 1969; as a part of this, a legislative bill put forward by the executive is currently being consulted with civil society and different state bodies and entities.<sup>8</sup>

**Offices of Ethics and Public Morals**

Within the justice system is the *Commission for Combating Corruption in the Judiciary*, created by Resolution 007-2002 from the Coordinating Unit for the Modernization of the Justice Sector, comprising the judicial branch, the Interior Ministry, the Public Prosecution Service, and the Public Criminal Defense Institute.

Additionally, each of the institutions of the justice sector have disciplinary and oversight offices, at which private citizens can lodge complaints, without requiring professional assistance. These are:

- Judicial Disciplinary Board (for judges and magistrates)
- Disciplinary Regime Unit (for secretaries, officers, rapporteurs, and commissioners)
- General Supervisory Office of the Public Prosecution Service (for prosecution agents, prosecution auxiliaries, and employees)
- General Supervisory Office of the Public Criminal Defense Institute (for public defenders)
- Professional Responsibility Office (officers of the National Civil Police)

The Office of Ethics and Public Morals, created by Internal Agreement 5-99 of the office of the Comptroller of Accounts, was converted into the Directorate of Ethics, Morals, and Legal Management, pursuant to Article 34 of the Regulations to the Organic Law of the Office of the General Comptroller of Accounts. The agency's Code of Ethics is pending final approval.

Finally, there exists the possibility of economic penalties as set forth in Chapter VI of the Organic Law of the Office of the General Comptroller of Accounts; and of penalties and dismissals, as provided for in the Civil Service Law (Articles 74 and 76).

**c. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

The available results from some of the mechanisms referred to are set out below:

**Office of the Comptroller General of Accounts / Sanctioned imposed and cancelled, Year 2003**

Noncompliance with the following laws:	No. of cases	Value in thousands of quetzales
Probity and Responsibility of Public Officials and Employees Decree Law 89-2002	463	472.4
Office of the Comptroller General of Accounts Decree Law 31 - 2002 and Law of the Court of Accounts Decree 1,126	160	152.9
State Procurement and Contracting Decree Law 57-92	259	812.2

Source: Work Report, Office of the Comptroller General of Accounts, 2003

**Complaints lodged by the office of the Comptroller General of Accounts  
from March 5 to July 31, 2004  
Value in quetzales (reference exchange rate: GTQ 7.78 per USD \$1)**

<sup>8</sup> See Annex: [Draft legislation](#).

Interior Ministry	1,604,513.00	SAT	31,868,000.00
Municipalities	32,806,797.00	Portuaria Quetzal	29,890.00
Executive Coordination Secretariat	25,203,078.00	Portuaria Sto. Tomás de Castilla	21,000,000.00
Ministry of the Economy	2,682,286.00	IGSS	237,462,991.00
ZOLIC	1,082,889.00		

Source: Management and Institutional Development Report CGC March 5 to July 31, 2004

**Fourth Judicial Disciplinary Board  
Statistics from August 21, 2003, to August 20, 2004.<sup>9</sup>**

Did not proceed	Proceeded	Withdrawal	To Supreme Court of Justice	To oversight	Total	Ungrounded	Warnings	Suspension	Justification	Declined	Total	Slight	Serious	Very serious
19	4	0	0	1	24	0	0	0	0		0	0	0	0
36	1	0	0	0	55	9	3	0	0		12	3	0	0
36	1	0	0	0	53	8	4	4	0		16	4	4	0
30	1	1	0	0	47	10	2	1	1		14	2	1	0
37	5	1	0	0	43	2	5	1	0		8	5	1	0
28	9	0	0	0	37	2	3	3	0		8	4	2	0
30	6	1	0	0	37	9	3	3	0		15	3	3	0
21	1	4	1	0	37	7	1	1	2		11	1	0	1
16	8	0	0	0	24	6	0	0	0		6	0	0	0
60	9	0	0	0	69	8	0	3	0		11	0	2	1
27	8	1	0	0	36	4	2	4	1	1	12	2	3	1
40	1	2	0	4	58	3	2	4	1		10	2	4	0
1	1	0	0	31	33	3	2	0	0		5	2	0	0
381	12	10	1	36	553	71	27	24	5	1	128	28	20	3

Source: Document No. 916-2004, Judicial Disciplinary Board of the Judicial Branch

**Disciplinary administrative case-files processed with respect to judicial branch employees,  
February 3 2000, to October 31, 2004<sup>10</sup>**

Year	Disciplinary administrative case-file	Ungrounded	Slight fault Art. 78 Collective Pact	Verbal warning	Written warning	Suspension without pay	Recommended dismissal	No proceedings per investigation
2004	716	198	47	4	37	154	14	222
2003	914	296	0	161	72	20	49	285

<sup>9</sup> See Annex: [Statistics and procedures of the Judicial Disciplinary Board](#)

<sup>10</sup> See Annex: [Statistics of the Disciplinary Regime Unit of the Judicial Branch](#)

2002	694	182	0	19	71	170	44	346
2001	912	307	0	81	161	134	37	373
2000	787	204	0	27	102	101	22	491

**Public Criminal Defense Institute<sup>11</sup>**  
**Sanctions imposed or ruled ungrounded, November 2003 to November 2004**

Against:	Verbal warning	Written warning	Suspensions	Ungrounded	Pending final judgment	Total
Public defenders	0	4	0	31	10	45
Defense lawyers' assistants	0	1	0	6	1	8
Administrative personnel	0	2	0	5	7	14
Social work graduates	0	0	0	4	1	5

Source: Report submitted by the Public Criminal Defense Institute

Also in operation is the **General Supervisory Office of the Public Prosecution Service** (Agreement 37-2004), which has to date processed 572 received complaints; if ruled grounded under the Organization and Functioning Regulations, administrative disciplinary proceedings follow. Additionally, there is the Internal Affairs Prosecution Unit, which pursues criminal charges against employees of the Public Prosecution Service.

Finally, there is the **Professional Responsibility Office** (ORP), created by General Order 13-04 in July 2001 and its Regulations (Agreement G. 585-97), which conducts investigations, when so instructed, into the actions of members of the National Civil Police that are deemed contrary to professional ethics. Between January and November 2004, the ORP reported a total of 1,895 complaints about actions of National Civil Police officers of 46 different kinds.<sup>12</sup>

- d. If no such mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain, and strengthen standards of conduct for the for the correct, honorable, and proper fulfillment of public functions, and mechanisms for enforcing them, in accordance with Article III (1 and 2) of the Convention.

Among the main reforms proposed by the executive and other public and social agencies, the urgent reforming of the Civil Service Regime is worthy of particular note. The office of the President has therefore ordered the *Presidential Commission for the Reform, Modernization, and Strengthening of the State and its Decentralized Entities* (COPRE) to carry out the studies and to prepare draft legislation.<sup>13</sup>

## 2. Conflicts of interest

- a. Does your country have standards of conduct to prevent conflicts of interest in the performance of public functions?

Yes. There are standards and provisions intended to prevent conflicts of interest in the performance of public functions in various arenas, including appointments or elections to strategic public positions, state procurement, participation in boards of directors and control bodies, and other provisions. (The annexed *Standards of Conduct for the Correct, Honorable, and Proper Fulfillment of Public Functions* contain articles with provisions for preventing conflicts of interest before, during, and after service in given public offices.)

<sup>11</sup> See Annex: [Public Criminal Defense statistics and procedures](#)

<sup>12</sup> See Annex: [Statistics of the PNC's Professional Responsibility Office.](#)

<sup>13</sup> See Annex: [COPRE, Annex Legal](#)

These provisions are based on the Constitution and emanate from specific laws, chiefly the Law on Probity and Responsibilities of Public Employees, the Organic Law of the Office of the Comptroller General of Accounts, the State Contracting Law, the Tax Code, the Organic Law of the Tax Administration Superintendency (SAT), civil service laws, codes of ethics, etc. These texts establish incompatibilities, restrictions, and bans for each case.<sup>14</sup>

For example, the Financial Supervision Law (D.18-2002) sets out: eligibility requirements for the Superintendent of Banks (Art. 6); impediments (Art. 7) and regulations for conflicts of interest: sections (a), (b) (c), (d), (e), (f), and (g); incompatibility with other positions (Art. 8) and general incompatibility (Art. 13).

The Organic Law of the SAT (D. 1-89), Article 41, places the following bans during the employment of the Superintendent, Intendants, and other personnel of the SAT: "(a) Pursue, on his own behalf or that of third parties, professional, technical, executive, or advisory activities, except as provided for in Article 112 of the Constitution of the Republic. (b) Serve as a director, officer, employee, advisor, external auditor, manager, customs agent, or processing agent for corporations or individuals. Neither may they serve as the legal representatives or commissioners of individuals or corporations for fiscal purposes, nor as partners or members of auditing companies. (c) Request or accept, either directly or indirectly, from tax payers, tax agents, or the users of customs services, gifts of any nature in connection with the performance of their duties. This ban also extends to their parents, spouses, and children. (d) Reveal the information referred to in Article 44 of this Law, the first paragraph of Article 96, and Article 101 of the Tax Code. Failure to observe these restrictions shall be considered a serious misdemeanor and shall cause the immediate dismissal of the perpetrator, irrespective of the corresponding criminal liability.

For elections of oversight bodies or the officials in charge of those bodies, there are nomination mechanisms designed to prevent conflicts of interest and facilitate organized citizen participation in the key phases of the selection process. Some of these are described below:

- **Comptroller General of Accounts:** Elected by the Congress of the Republic, for a period of four years, not concurrent with the term of office of the government or its municipalities, and not eligible for re-election. He/she is elected with the favorable votes of one-half plus one of the members of Congress, from a shortlist of six candidates put forward by a nominations committee. This committee is made up of a representative of the country's university rectors (who serves as its chairman), the deans of the economic science faculty of each university, and the same number again of representatives elected by the general assembly of the College of Economists, Public Accountants, and Auditors, and of the College of Company Management. He/she may only be removed by the Congress of the Republic, in the event of negligence, criminal conduct, or lack of suitability. (Arts. 233 and 234 of the Constitution).
- **Attorney General of the Republic:** The head of the Public Prosecution Service, selected by the President of the Republic from a list of six candidates. These names are put forward by a nominations committee, comprising: the chief justice of the Supreme Court of Justice (who serves as its chairman), the deans of the law faculties of the country's universities, the chairman of the board of the College of Lawyers and Notaries of Guatemala, and the chairman of that college's Court of Honor. The nominations committee selects the six candidates by the vote of two-thirds of its members; the position is held for a period of four years, which does not run concurrently with the national government or its municipalities. (Article 251 of the Constitution of the Republic).

**Attorney for Human Rights:** Elected every five years by the deputies in Congress from a shortlist of three candidates proposed by the congressional Human Rights Committee; this committee is in turn made up of one representative for each of the parties that secured

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<sup>14</sup> See Annex [Standards of Conduct for the correct, honorable, and proper fulfillment of public functions.](#)

representation in the legislature. The favorable vote of two-thirds of the deputies is needed, and the position is held for a five-year period. (Arts. 273 to 274, Constitution of the Republic).

**Supreme Court of Justice:** The Supreme Court is composed of 13 magistrates and is divided into chambers. The chief justice of the Supreme Court is the president of the judicial branch. The magistrates are elected for a five-year period, by Congress, from a shortlist of 26 candidates selected by a nomination committee. This committee is made up by a representative of the country's university rectors (who serves as its chairman), the deans of the faculties of each university, and the same number again of representatives elected by the general assembly of the College of Lawyers and Notaries of Guatemala and the same number again of representatives elected by the full magistrates of the Court of Appeals and other courts identified in Article 217 of the Constitution (Article 215 of the Constitution of the Republic).

A similar mechanism exists for selecting the members of the *Supreme Electoral Tribunal and the appeals chambers*.

The nominations committees were created to prevent conflicts of interest, to include civil society in the selection process, and to depoliticize the allocation of positions that are not popularly elected but do play a key role in the institutionality of the state. Over the course of the past decade, these committees and their proceedings have been watched and checked by civil society organizations, which enjoy increasing levels of involvement in upholding the transparency of selection processes like these. Currently before the Congress of the Republic is draft legislation for a *Law to guarantee the impartiality of nominations committees*, intended to regulate conflicts of interest in those participatory mechanisms whereby positions in oversight bodies are filled.<sup>15</sup>

**b. Does your country have mechanisms for enforcing compliance with these standards of conduct?**

As with the behaviors in which ethics are involved, the mechanisms come under the authority of the Civil Service Office and the various disciplinary and professional responsibility bodies described above. There are specific mechanisms, such as the disciplinary bodies described in the previous answer, and specific provisions: for example, the Organic Law of the Tax Administration Superintendency (SAT), Decree 1-98, establishes that employees who commit offenses or find themselves in situations of incompatibility, impediment, or restriction as set out in the law and the applicable regulations shall be punished in accordance with the rules set out in its own labor regulations.

Criminal channels are used to deal with the crimes against the public administration set out in the Criminal Code<sup>16</sup> and the procedures of the Code of Criminal Procedure, both of which are subject to the inclusion of new offenses and to modifications of the penalties applicable for corruption offenses.<sup>17</sup> In addition, the Code of Civil and Merchant Procedure, Decree 107, Article 40, establishes summary trials for ruling on the civil responsibility of public officials and employees.

The Office of the Comptroller General of Accounts is the state's oversight agency. It oversees probity, transparency, and honesty in the public administration, and it monitors quality in public spending. Its powers include promoting mechanisms for combating corruption (Art. 4, Organic Law of the Office of the General Comptroller of Accounts).

**c. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

<sup>15</sup> See Annex: [Draft legislation](#), Amendments to the Criminal Code and Code of Criminal Procedure

<sup>16</sup> See Annex [Legal Annex](#), Corruption Offenses,

<sup>17</sup> See Annex [Draft legislation](#) (preliminary draft legislation)

The oversight agencies and the judicial branch have statistics on the areas for which they are competent, and these were listed in section (c) of the previous reply. The only statistics that the Civil Service Office (ONSEC) has are those on processed cases within its competence (processing of requests for justified or unjustified dismissal, etc.). See Annexes for further statistics and procedures.<sup>18</sup>

- d. **If no such mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain, and strengthen standards for preventing conflicts of interest, and mechanisms for enforcing them, in accordance with Article III (1 and 2) of the Convention.**

The Commission for Transparency and against Corruption is working with the World Bank on an analysis and field study into transparency, governability, and corruption in Guatemala, and into the strengthening of prevention and oversight mechanisms, including forms of citizen participation.

In turn, the disciplinary bodies of the agencies of the judiciary have internal strengthening projects and programs, which are supported by international cooperation. Particularly noteworthy within the judicial branch is the *Project for Strengthening the General Supervisory Office of Courts*, which supports that unit and which has identified new instruments and redesigned procedures. This program is complemented with actions contained in other programs, such as institutional capacity-building, streamlining processes, improving technology, etc.<sup>19</sup>

A process of reform is underway in the Guatemalan Civil Service, based on studies prepared by civil society organizations and multisectoral consultation exercises, which were then taken on board by the executive through the Presidential Commission for the Reform, Modernization, and Strengthening of the State and its Decentralized Entities (COPRE) (Government Agreement 346-2004).<sup>20</sup> This Commission is intended to facilitate and promote social consensus for the democratization of the state and society; it is responsible for major legal and institutional reforms for increasing transparency and efficiency through electronic government.

### **3. Proper conservation and use of resources entrusted to public officials in the performance of their functions**

- a. **Does your country have standards of conduct geared toward ensuring the conservation and proper use of resources entrusted to public officials in the performance of their functions?**

***The Law on the Probity and Responsibility of Public Officials and Employees*** is intended (Art. 1): *“to create standards and procedures for increasing the transparency of the actions of the public administration and to ensure strict compliance with legal and constitutional provisions in the performance of state public functions; to prevent the diversion of public resources, assets, funds, and valuables to the detriment of the state’s interests; to establish oversight mechanisms for the net worths of public officials and employees during their tenure in such positions; and to prevent personal use or any form of illegal enrichment by individuals at the service of the state or by other individuals or bodies corporate that manage, administer, safeguard, collect, or invest public funds or valuables, pursuing the liabilities in which they may incur.”*

For its enforcement, the office of the Comptroller of Accounts has devised technical standards, which were approved in Internal Agreement No. 09-2003: General Standards for Internal Control, Governmental Auditing Standards, and Internal Governmental Auditing Standards, together with

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<sup>18</sup> For further information on results within the judicial branch, see Annex: [Response of the judicial branch to the Questionnaire](#)

<sup>19</sup> See Annex: Legal Annex.

<sup>20</sup> See Annex: Draft legislation (preliminary draft bills)

their own internal strengthening and training programs for government auditors.

The provisions contained in the Organic Budget Law, set out in Decree No. 101-97 of the Guatemalan National Congress, and its Regulations, Governmental Agreement No. 240-98, are binding on the following entities and individuals:

- I. State agencies, autonomous and decentralized entities.
- II. The country's municipalities and their corporations.
- III. Entities of the nonfinancial public sector.
- IV. Individuals or entities that receive, manage, or invest state funds, or funds in which the state has a capital interest, regardless of the denomination thereof.
- V. Contractors providing work and services to the entities subject to the oversight of the Office of the Comptroller General of Accounts.
- VI. Other persons and entities that, pursuant to the law, are subject to the oversight of the Office of the Comptroller General of Accounts.

Finally, there is the *Law on State Contracting*, Congressional Decree No. 57-92, and the *Organic Law of the Budget* (Decree 101-97, Art. 4), which contain several provisions related to accountability and standards for the conservation and proper use of resources assigned to public officials in the performance of their official duties.

**b. Does your country have mechanisms for enforcing compliance with these standards of conduct?**

Yes, there are mechanisms for enforcing compliance with these standards of conduct for the correct, honorable, and proper fulfillment of public functions identified under questions 1.2 and 3 of the Questionnaire.

The laws and regulations listed provide a legal framework that is binding on public officials and employees. Institutions such as the Office of the Comptroller General of Accounts, the National Civil Police, the judicial branch of government, and the Public Prosecution Service base their actions on those laws in order to monitor compliance with the standards of conduct by their employees and those of other state bodies. In that regard, the Office of the Comptroller General of Accounts, the Ministry of Public Finance, and the offices of professional responsibility identified above can act to prevent and punish; the Public Prosecution Service can coerce and investigate; and the judicial branch can impose penalties and execute judgments.

In turn, in various legal texts the legislation establishes administrative, civil, and criminal liability and levels of responsibility, responsibility for compliance with a superior's order, and joint responsibility.<sup>21</sup> Some of the mechanisms that exist are described below:

- Summary proceedings to establish civil responsibility against public officials and employees. Article 229 of Decree Law 107, Code of Civil and Merchant Procedure
- Procedure for imposing penalties set out in the Organic Law of the Comptrollership of Accounts and, when applicable, levying of fines.
- Accounts proceedings
- The Civil Service Law and its Regulations, in order to ensure good discipline among public servants and to punish any violations of the law or other breaches in which they might incur during their service, has established four types of punishments: verbal warning, written warning, suspension from work without pay. In certain cases, a person dismissed for good reason may rejoin the Civil Service; this does not, however, apply to those convicted of treason, breach of trust, misappropriation of public funds, fraud, making false use of and/of

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<sup>21</sup> Law on probity and the Responsibilities of Public Officials and Employees, Articles 8 to 13, See Legal Annex.

falsification of public documents, murder, and, in general, all crimes against the property of the state. Civil Service Law, Title IX, disciplinary regime.

- Article 52 of the Organic Law of the Public Prosecution Service provides details on the disciplinary authority of prosecutors over the members of police forces, as set out in Article 114 of the Code of Criminal Procedure. Penalties may be imposed by the following authorized officials: the Attorney General, the district prosecutors, and the section prosecutors.

Within the state's **modernization process**, progress has been made with implementing and publicizing mechanisms aimed at ensuring oversight, public access, transparency, and efficiency in recording data of national interest that can then be consulted in different ways; some of these are subject to social auditing agreements, as is the case with the procurement system, *Guatecompras*. The following tools [are worthy of note](#).<sup>22</sup>

- Integrated Administrative Systems: Contracts and Procurement ([Guatecompras](#)), warehouses, state property, human resources, administrative organization
- [Integrated Financial Administration System](#) (SIAFI): Budget, accounting, treasury, and public credit [the Integrated Accounting System](#) (SICOIN-WEB), Debt Management and Analysis System (SIGADE), and Project Management System (SIGEPRO).
- Government Auditing System (SAG): Internal and external oversight
- [National Public Investment System](#) (SNIP)
- Project Management System
- [Tax Administration System](#) (SAT)
- E-government
- [Fiscal Transparency Portal](#)
- Mechanisms and legal framework for accountability: the decentralization process has a modern legal framework that allows for citizen participation, accountability, and social auditing, which are practices that seek to ensure better use of public resources, principally under the aegis of the Development Councils.<sup>23</sup>

The Legal Annex lists the URLs of the tools listed.

**Office of the Comptroller General of Accounts / Special Auditing Examinations, Year 2003**  
(in thousands of quetzales)

Sectors Audited	No.	Amount Audited	Objections dissipated during the hearing	Objections formulated		
				Audit liquidations	Reported to the Public Prosecut'n Service	Total
Legislative branch	1	0	0	0	0	0
Judicial branch	0	0	0	0	0	0
Executive branch	23	179.9	1374.1	1106.5	101.1	1207.6
Oversight agencies	0	0	0	0	0	0
Decentralized entities	6	452.4	452.4	0	0	0
Municipalities	109	207.5	2557.9	6561.1	40310.8	46871.9
Other sectors	3	0	0	0	0	0
<b>Totals</b>	<b>142</b>	<b>839.8</b>	<b>4384.4</b>	<b>7667.6</b>	<b>40411.9</b>	<b>48079.5</b>

Source: Work Report, 2003, Office of the Comptroller General of Accounts (Exchange rate used: Q7.78: US\$1)

- c. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.

<sup>22</sup> See Annex: [Report, Ministry of Finance \(SIAF\)](#)

<sup>23</sup> See Annex: [Framework for citizen participation, accountability, and access to information](#)

The implementation of tools for transparency, efficiency, and oversight that has taken place as part of the state's modernization process has substantially improved the mechanisms and procedures for information oversight and access, as can be seen in the statistics and information furnished in this questionnaire. Efforts are currently underway to improve the enforcement of those tools and to publicize them across the nation, particularly within the municipalities.

With the new legal framework, the Office of the Comptroller General of Accounts has succeeded in improving its oversight, prevention, and sanctioning work, as documented in the previous two reports, attached hereto (Work Report 2003 and Management Report 2004). The work report sets out the results obtained by the various units and activities, namely:

Specific Advisory Unit, Special Audit Exams, Audits of Fiscal Income and Expenditure, Budget Audit, Oversight of Public Works, objections regarding audits of fiscal income and expenditure, complaints lodged with the Public Prosecution Service, and Probity Statements.

### **Economic Penalties**

Economic sanctions are imposed in accordance with Decree 1.126, "Law of the Court of Accounts"; Decree No. 31-2002, "Organic Law of the Office of the General Comptroller of Accounts"; Decree 57-92, "Law on State Contracting"; and Decree 89-2002, "Law on Probity and Responsibilities of Public Employees." These empower the Office of the Comptroller General of Accounts to impose economic penalties on public officials or employees of autonomous or decentralized agencies who commit acts of negligence or fail to abide by the applicable laws, regulations, and/or fiscal provisions.

Economic penalties are imposed and evaluated from two points of view: The first involves the penalties that the auditors suggest for the different violations of the oversight laws; these can be reduced or waived, if an appeal against the ruling is successful. The second covers penalties set out in other laws, which must be paid in the amounts set forth therein.

During 2003, 463 penalties for violations of the Law on Probity and Responsibilities of Public Officials and Employees were imposed and paid, in an amount totaling four hundred and seventy-two thousand, four hundred quetzales (Q 472,400.00); 160 violations of the Law of the Court of Accounts and the Law of the Office of the Comptroller General of Accounts in the amount of one hundred and fifty-two thousand, nine hundred quetzales (Q 152,900.00); and 259 violations of the Law on State Procurement and Contracting in the amount of eight hundred and twelve thousand, two hundred quetzales (Q 812,200.00).

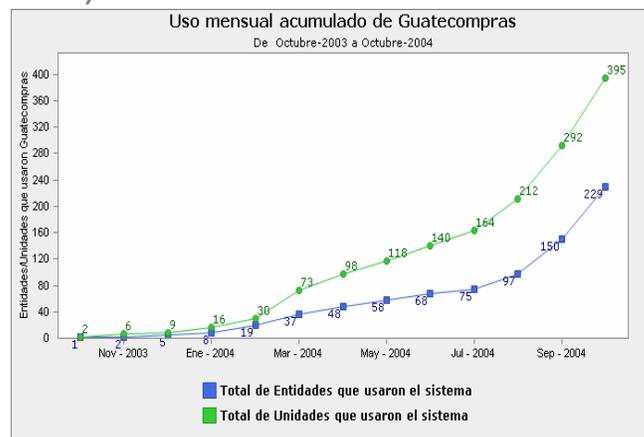
The Trials Section is responsible for reviewing the case-file documents received and for confirming the objections and findings contained therein. It is also responsible for conveying to the judicial branch's Court of Accounts the case documents containing final objections that could not be resolved during the hearings process, for them to be confirmed and collected in the amount that gave rise to the objection and to the initiation of the accounts proceedings.

It is also responsible for receiving and recording deeds of final objections, liquidations of final audits, and anomaly-free reports drawn up by the government's various auditing units; it also serves notice of the resolutions and rulings arrived at in connection therewith.

During 2003, the Trials Section conducted 936 economic/coercive trial actions, for the amount of thirty-four million, five hundred and twenty-one thousand, six hundred quetzales (Q 34,521,600.00). It also carried out 3,190 account trial activities worth nine billion, six hundred and forty million, eight hundred and seventy-five thousand, eight hundred quetzales (Q 9,640,875,800.00). A further 14,805 sundry activities accounted for forty-five million, six thousand, nine hundred quetzales (Q 45,006,900.00).

- d. If no such mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain, and strengthen standards for ensuring the conservation and proper use of resources assigned to public officials in fulfillment of their functions, and mechanisms for enforcing them, in accordance with Article III (1 and 2) of the Convention.

The State Contracts and Procurement System (GUATECOMPRAS) is an internet-based electronic market that the state of Guatemala uses to buy goods and contract services. Its goals include developing a framework of transparency, with clear and stable rules in order to secure the trust of domestic and foreign suppliers, streamline purchasing operations, avoid risks, and eliminate losses in operations carried out by the state. This system is audited by civil society, which monitors its appropriate use and the complaints of irregularities lodged by users and suppliers. Only one year after its implementation, the system has been put into place by the various public entities and by more than 50% of the country's municipalities; more than 3,000 users have received training; and, as of November 2004, 5,200 contracts worth a total of Q638 million had been awarded under conditions of transparency.



#### 4. Measures and systems requiring public officials to report to competent authorities regarding acts of corruption in public office of which they are aware

- a. Does your country have standards of conduct that establish measures and systems requiring public officials to report acts of corruption in the performance of public functions of which they are aware to the appropriate authorities?

Failing to report a crime is a punishable offense in Guatemala.<sup>24</sup> The Criminal Code (Article 457) deals with such failures to report crimes and states that any public official or employee who, by reason of his position, becomes aware of the commission of an action constituting a publicly actionable crime and who knowingly fails to or carries in making the corresponding report to the competent judicial authority shall be punished with a fine of between one hundred and one thousand quetzales. The same sanction applies to private citizens who fail to make such reports when legally obliged to do so. Chapter II of Title XIII of the Code deals with offenses committed by public officials and employees.<sup>25</sup>

The Law on the Probity and Responsibility of Public Officials and Employees, Article 6, sets out the following principles: (g) Support for efforts to detect instances of corruption through the implementation of mechanisms to encourage their being reported; (k) Establishment of administrative procedures that facilitate the reporting of acts of corruption. It also establishes the kinds of responsibility – administrative, civil, or criminal, at the different levels thereof – incurred in by individuals in the service of the state, together with joint responsibility in corporate bodies (Articles 8 to 13).

Government auditors who, in performing their duties, discover the commission of possible crimes against the property of the agencies, institutions, entities, and persons subject to oversight are obliged to lodge the corresponding report with the competent authority and to inform the Comptroller General of Accounts thereof, who must then join the action as a supporting

<sup>24</sup> Criminal Code, Decree 17-73, Article 457; and Code of Criminal Procedure, Decree 51-92, Article 298.

<sup>25</sup> For further information, see the Legal Annex.

complainant.<sup>26</sup> In addition, the Subcomptrollership of Probity of the Office of the Comptroller General of Accounts can file complaints about illicit actions committed by public officials and employees.

The Internal Regulations of the SAT (Agreement 2-98) stipulate that its officers and employees are obliged to report, to the competent authority, any illegal actions of which they become aware in performing their duties, and that failure to do so gives rise to the corresponding legal liability.

**b. Does your country have mechanisms for enforcing compliance with these standards of conduct?**

With reference to the criminal responsibility of public officials and employees, the corresponding complaint is lodged with the Public Prosecution Service. This Service, as the body responsible for prosecutions, must ensure that those guilty of crimes against the state coffers are punished; in addition, the following state agencies are also involved. The Office of the General Comptroller of Accounts, as the institution responsible for detecting acts of corruption and for documenting them so complaints can be lodged; the National Civil Police as the upholders of the law; and the judicial branch for the enforcement of the law and the execution of rulings handed down by the country's various courts of law.

Public entities or employees can lodge complaints with the Public Prosecution Service or the Office of the Comptroller General of Accounts, or to the disciplinary bodies identified above (1.b). The mechanisms are also used by private citizens, with complaints being lodged in person, through e-mail, or over the telephone.

**c. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

Attached hereto are the complaints relating to corruption offenses set out in the Inter-American Convention against Corruption:

**PUBLIC PROSECUTION SERVICE  
OFFENSES REPORTED – ANTICORRUPTION PROSECUTOR 2001-2003  
Annex: Crimes reported to the Anticorruption Prosecutor's Office  
and related to the Inter-American Convention against Corruption**

Offense	Year			
	2001	2002	2003	2004*
<b>Total</b>	<b>250</b>	<b>263</b>	<b>228</b>	<b>61</b>
Embezzlement	37	82	67	26
Material falsehood	-	53	37	14
Nonmaterial falsehood	17	19	28	10
Abuse of authority	116	46	28	6
Use of falsified documents	2	6	22	1
Noncompliance with duties	21	21	13	4
Fraud	0	2	2	
Disobedience	15	4	8	
Graft	-	5	7	
Passive bribery	16	11	5	
Impersonation	1	2	4	
Active bribery	4	3	4	
Fraud	-	2	2	

<sup>26</sup> Organic Law of the Office of the General Comptroller of Accounts: Articles 30 and 16(e)

Falsification of documents	3	2	1	
Collective abandonment of functions	1	1	-	
Usurpation of authority	5	4	-	
Illegal charges and levies	1	-	-	
Bribery of arbitrators, experts, or other officials	11	-	-	

**SOURCE:** Prosecutor's office, regular reports

\* **2004: First quarter of 2004**

Other related offenses	2003	2004
Money laundering	77	33

\* Offenses reported by the office of the Prosecutor for Money Laundering

See statistics on complaints lodged and processed by the various disciplinary bodies included in this questionnaire.

- d. If no such mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain, and strengthen standards for requiring public officials to inform the competent authorities of incidents of corruption within the administration of which they become aware, together with the mechanisms for enforcing them, in accordance with Article III (1 and 2) of the Convention.

Specific projects exist to facilitate the lodging of complaints and the fight against corruption within state agencies. Some of these are described below:

1. Project Supporting the Implementation of an **Anticorruption Commission for the Judicial Branch**. The creation and launch of an Anticorruption Commission, providing for citizen participation, was designed and placed before the Coordination Office for the Modernization of the Justice Sector. This Commission is in full operations, after having been sworn in by the current president of the judicial branch and chief justice of the Supreme Court of Justice on October 21, 2002. It is made up of lead and deputy representatives from the Public Prosecution Service, the Public Criminal Defense Institute, the Interior Ministry, the judicial branch, and the press associations. This Commission has begun to forge ties with the four institutions to encourage the processing and investigation of complaints and reports of corruption by workers in the justice sector.
2. Project to **Strengthen the Complaints System**: This involves the installation of offices for complaints and reports; the first of these has been set up in Huehuetenango. The cabin system, about to be launched, has a computer program that enables complaints to be lodged by means of recordings; this has been designed especially for people who cannot access the webpage and its section for complaints, and for those who have trouble writing. It will be installed in high-traffic areas in court buildings. The remodeling of the Justice Palace is underway, where the central complaints office will be located.
3. Project to install letterboxes at all offices of the executive branch: The Commissioner for Transparency and Against Corruption signed an agreement with the Public Prosecution Service (the sole authorized entity) to facilitate the adoption of a joint agenda. This included the placement of letterboxes for reporting acts of corruption in offices of the executive branch and public service offices, thus enabling users and public employees to lodge complaints in a simple and safe fashion. Work is also underway on devising systems that use e-mail and telephone hotlines.
4. The Office of the Comptroller General of Accounts has implemented an "Anticorruption Line," accessible over the telephone or the internet, for receiving complaints of improper actions by officers or employees of the Comptroller General's Office or of other public agencies.
5. In the legislative arena, the Law on Protecting Persons in Trials is generally applied. In connection with this, Deputy Ninth Montenegro submitted legislative bill 2632, *Model law*

on *Protecting Persons Reporting Acts of Corruption*; this bill, currently awaiting discussion, is intended to supplement the protective framework for allegations of this kind.

## CHAPTER TWO

### SYSTEMS FOR DECLARING INCOME, ASSETS, AND LIABILITIES (ARTICLE III, SECTION 4)

- a. Does your country have standards that establish systems for declarations of income, assets, and liabilities to be made by individuals performing public duties in the positions stipulated by law and, when applicable, for making those declarations public?

The Sworn Statement of Net Worth is a declaration of assets, interests, and obligations that public officials are required to submit, under oath, to the Office of the Comptroller General of Accounts as a prerequisite to holding such position or employment and, upon separation therefrom, as a prerequisite for the corresponding termination papers to be issued. This is regulated by the *Law on Probity and Responsibilities of Public Officials and Employees*, Decree 89-2002 (Articles 20 to 30).<sup>27</sup>

The Directorate of Probity is responsible for studying, analyzing, checking, and overseeing dossiers and statements related to assets and debt and for issuing the corresponding resolutions, pursuant to the Law on Probity and Responsibilities of Public Officials and Employees.

The responsible subjects identified in Article 4, section (a), of the Probity Law are subject to the obligation of filing Sworn Statements. By a Constitutional Court judgment of September 2, 2003, the other subjects described in that article are exempt; thus, the responsible subjects are all those individuals trusted with public functions, be they permanent or temporary, remunerated or *pro bono*, particularly: (a) dignitaries, authorities, public officials and employees who, by popular election, appointment, contract, or under any other form of ties provide services to the state, its agencies, municipalities, corporations, and decentralized and autonomous entities, with the exception of those whose monthly salary amounts to less than eight mil quetzales and who do not manage or administer public funds. Also obliged to do so are all public officials and employees who work at customs stations, border posts, in the General Migration Directorate, ports and airports in the country, or who are temporarily assigned to those places, together with any other person indicated in Article 4 of this Law when the investigations indicate that they may have participated in crimes or offenses against the property protected by this law (Articles 4 and 20).

Article 23, dealing with the requirements of the statement, stipulates that it must contain the following data for both the declarer, his/her spouse or companion, and their dependent children: positions as members of boards and/or councils in corporations, companies, and associations; income during the last year; current and savings accounts in Guatemala and abroad; assets and interests (real estate and personal property, valuables, funds, and credits), amounts owed, debts, and obligations. It must be extended following the acquisition of real estate in any way or for any amount and property or debts in excess of Q 50,000.00, even when acquired by the spouse or dependent children. (Article 26)

The Directorate of Probity of the Office of the Comptroller General of Accounts applies and enforces the legal provisions governing probity; and it calculates and proposes economic penalties for failing to submit sworn statements of net worth within the time and in the fashion and format stipulated by law. It also establishes the requirement of systematically controlling and recording the statements of assets and liabilities presented by public officials and employees. To check the information, data from public offices and private entities is available, along with data from the individuals identified as debtors or creditors. When a sworn statement of net worth is submitted following the conclusion of a

<sup>27</sup> See Annex: [Classification of domestic laws furnished by Guatemala](#)

labor relationship, the Office of the Comptroller General of Accounts is required to compare the assets and liabilities indicated in the various historical statements in order to identify any possible illegal enrichment or other actions that might give rise to responsibility (Articles 27 and 29).

Information on Sworn Statements is provided under guarantees of confidentiality, and the publication thereof is prohibited. The deadline for submission is 30 days following effective assumption of the position or post and within 30 days following separation therefrom. Failure to abide with the applicable filing or update gives rise to administrative responsibility, punishable in accordance with the Law on the Comptrollership of Accounts (Article 39).

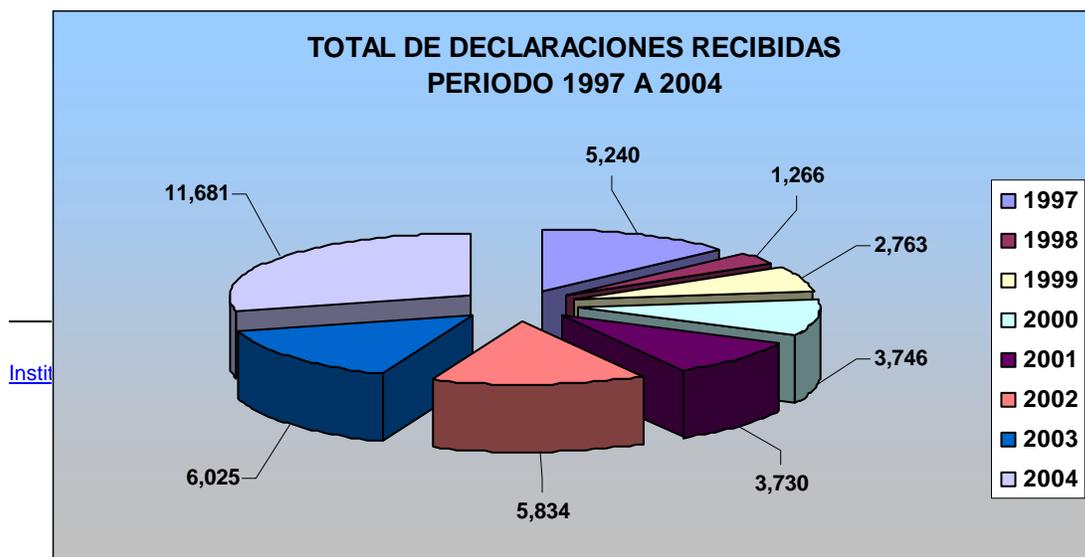
Complementing this, Article 42 of the Organic Law of the Tax Administration Superintendency (Decree 1-98), in addition to the terms of the provision described, stipulates that all SAT personnel must present, prior to commencing employment and annually thereafter, to the Board of the SAT, a comparative statement of net worth, indicating the cause of changes in their assets, in accordance with the guidelines set out in that agency's employment regime.

**b. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

The Office of the Comptroller of Accounts analyzes responsibilities as indicated in its Organic Law (Article 27 of the Probity Law and Articles 38 and 39 of the Organic Law of the Office of the General Comptroller of Accounts). Failing to submit a Sworn Statement of Net Worth in the timeframe, form, and conditions indicated is punishable by a sanction equal to multiplying the individual's monthly wage or salary by the number of months delivery of the statement was delayed.

The Probity Section, during 2003, received 4,707 requests for first statements of assets and debts; 1,086 requests for additional information; 631 second statements; 1,083 dossiers with suggested penalties; 417 dossiers received with resolved penalties; 19,529 items of correspondence received; 48,134 items of correspondence sent; and summonses served on 244 individuals for various reasons. The suggested penalties totaled ninety-three million, five hundred and ninety-four thousand quetzales (Q 93,594.000.00). Additionally, the dossiers received by the Section with resolved penalties totaled four hundred and fifty-two thousand, one hundred quetzales (Q 452,100.00).<sup>28</sup>

A historical comparison of the statistics for Sworn Statements presented and updated is not appropriate on account of the major changes in the law introduced in 2002, which modified the authority and scope of the Office of the Comptroller General of Accounts, the individuals required to lodge statements, and the conditions thereof, with the enactment of the new Law on Probity and Responsibilities of Public Officials and Employees. Prior to these changes in the law, there were no penalties or procedures to persuade employees to comply with this requirement, which meant that the rule was not enforceable. The improvement of the legal framework, together with the favorable disposition of the current authorities, has led to a substantial increase in the submission of first statements, updates, and final declarations, as can be seen in the enclosed statistics.



**Directorate of Probity  
Department of Net Worth Analysis, Verification, and Investigation  
Statistics on Statements Received, 1997 to 2004**

## CHAPTER THREE

### OVERSIGHT BODIES

- a. **Does your country have oversight bodies responsible for functions related to compliance with the provisions set forth in sections 1, 2, 4, and 11 of Article III of the Convention?**

The Law on the Probity and Responsibility of Public Officials and Employees (Decree 89-2002) is a public instrument that requires general observance; its purpose (Article 1) is: “to create standards and procedures for increasing the transparency of the actions of the public administration and to ensure strict compliance with legal and constitutional provisions in the performance of state public functions; to prevent the diversion of public resources, assets, funds, and valuables to the detriment of the state’s interests; to establish oversight mechanisms for the net worths of public officials and employees during their tenure in such positions; and to prevent personal use or any form of illegal enrichment by individuals at the service of the state or by other individuals or bodies corporate that manage, administer, safeguard, collect, or invest public funds or valuables, pursuing the liabilities in which they may incur.”

The Law (Art. 6) sets out the following principles of probity:

- (a) Strict compliance with constitutional and legal provisions.
- (b) Transparency in the performance of administrative functions.
- (c) Primacy of the public interest over private concerns.
- (d) Prudence in the administration of state agencies’ resources, and those of its decentralized and autonomous entities.
- (e) The promotion and implementation of training programs and the dissemination of values, impartiality and transparency in the business of government.
- (f) Publicizing its actions to create a multiplying effect, leading to the adoption of ethical values among the citizenry.
- (g) Supporting efforts to detect instances of corruption through the implementation of mechanisms to encourage their being reported.
- (h) Behaving with honesty and loyalty in discharging a position or post or in providing a service.
- (i) Introducing a system of incentives to ensure that the most suitable individuals enter, are promoted within, and remain inside the public administration, evaluating performance in public position by means of strengthening the qualifications, remunerations, and recognition systems.
- (j) Strengthening procedures for establishing the responsibility of civil servants.
- (k) Establishing administrative procedures that facilitate the reporting of acts of corruption.

To monitor these principles and the other legal provisions, the following state bodies are defined (Article 14) as the lead agencies:

- (a) Guatemalan National Congress, in accordance with the powers set forth in the Constitution of the Republic and its Organic Law.
- (b) Public Prosecution Service (MP) which, pursuant to the Constitution of the Republic and specific laws, is responsible for bringing criminal actions.
- (c) Office of the Attorney General of the Nation which, pursuant to the Constitution of the Republic and specific laws, is the legal representative of the state and, consequently, responsible for overseeing its property.
- (d) Office of the Comptroller General of Accounts which, pursuant to the Constitution of the Republic and its Organic Law, is responsible for overseeing income, expenditure, and, in general, all treasury interests of state agencies, municipalities, and decentralized and autonomous entities.
- (e) Authorities in charge of the various entities of the state, municipalities, their corporations, and decentralized or autonomous entities.

- b. Briefly state the results that these agencies have obtained in performing the above functions, attaching the pertinent statistical information, if available.

The above sections contain the statistical results of the Public Prosecution Service, the Office of the Comptroller General of Accounts, and the different named disciplinary bodies.

## CHAPTER FOUR

### PARTICIPATION BY CIVIL SOCIETY (ARTICLE III, 11)

#### 1. General questions on the mechanisms for participation

- a. Are there in your country a legal framework and mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption?

Yes, there is a legal framework that enables and encourages citizen participation in various arenas, including the fight against corruption. With the recent passage of the Law on Urban and Rural Development Councils (D.11-2002), the General Law on Decentralization (D.12-2002), and the Municipal Code (D. 14-2002), channels for citizen participation, civic consultation, and social auditing in the fields of public policy and social investment have been opened up. For example, Article 17 of the Municipal Code empowers citizens to participate actively and voluntarily in the formulation, planning, implementation, and evaluation of public, municipal, and community policies. In addition, citizens are called on to form the Civic Social Auditing Commission, and they are authorized to request a Popular Municipal Consultation regarding matters of importance to the municipality. In addition, municipal governments are required to pursue a process of transparency in their municipal administrations, and Article 36 requires the creation of a Probity and Citizen Participation Commission within local governments.

The Law on Urban and Rural Development Councils includes aspects not covered by the previous law, such as:<sup>29</sup>

- The definition of the Development Councils System as “the chief channel for participation by the Maya, Xinca, Garifuna, and non-indigenous population in the business of government.”
- The six general principles of the Development Councils System, relating to: (a) respect for the culture of the peoples that coexist in the country; (b) promoting harmony within intercultural relations; (c) optimizing the effectiveness and efficiency of the public administration; (d) the allocation of functions at each level of the public administration and the promotion of processes of participatory democracy; (e) conservation and maintenance of environmental balance and human development; and (f) gender equality and equity.
- Reincorporation into the Community Development Council System.
- Establishment of second-level Community Councils.
- The inclusion of representatives of indigenous peoples, of associations of microenterprises and small and medium businesses, campesino organizations, women’s organizations, etc.
- Structural and functional differentiation between the Municipal Development Councils and the Municipal Councils (Corporations).
- Redefinition of functions at different levels of the Urban and Rural Development Council System.
- The creation of Indigenous Advisory Councils to “to provide advisory services to the Coordination Agency of the Community Development Council and to the Municipal Development Council.”
- Deciding on administrative and technical support for the operation of the Development Councils.
- Requiring resources from social funds to be assigned in accordance with the policies, plans, and programs as prioritized by the Development Council System at its various levels.

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<sup>29</sup> See additional information on the operations of the [Development Councils](#); independent consultants’ report, attached.

Social auditing is provided for in several of the country's laws, from the Constitution of the Republic to the recent laws passed to strengthen local power and the role of citizens in various spheres of interest.

Enclosed herewith is the document Legal Framework for citizen participation and accountability, which gathers together nine laws and two sets of regulations dealing with the standards and mechanisms described in Chapter IV of this questionnaire.

**b. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

Citizen participation in consulting and overseeing the business of government, facilitating access to information, and accountability efforts to social auditing have been designed on the basis of the decentralization process. This mechanism guarantees that participation, from the community to national levels, is viable; its main result can be seen in the state's approval of projects and policies designed within the Development Councils,<sup>30</sup> *under the aegis of the broadest possible citizen participation in the public administration, the prioritization and execution of works projects, the organization and provision of public services, and the maintenance of social oversight over the government's activities and the use of state resources.*<sup>31</sup> Although the existing laws are not explicit regarding participation in the fight against corruption, they do allow a comprehensive strategy of prevention and oversight, ranging from policy and investment project design to oversight of matters of public interest at all stages in the process.

In turn, the presidential Secretariat for Planning and Programming (SEGEPLAN) has been working, since 2003, on the creation of a *Network for Transparency and Quality in Public Investment*, comprising nongovernmental organizations that specialize in social auditing and anticorruption efforts, along with relevant government agencies. The Secretariat's webpage provides information on all the projects from the development councils and the public agencies (National Public Investment System, SNIP). Several nongovernmental organizations have developed anticorruption projects,<sup>32</sup> and they maintain cooperation arrangements with oversight bodies; this is the case with the national chapter of Transparency International, [Acción Ciudadana](#), and the Coalition for Transparency and the Public Works Monitoring System ([SIMOP](#)), which have entered into agreements with the [Public Prosecution Service](#), the Anticorruption Prosecutor's Office, the Office of the Comptroller General of Accounts, the Interior Ministry and the National Police, the Probity Commission of the Congress of the Republic, Guatecompras, and the Commissioner for Transparency and Against Corruption. This open-door policy on the part of the government has facilitated interaction with organized civil society in this arena.

Finally, the creation and launch of an Anticorruption Commission, providing for citizen participation, was designed and placed before the Coordination Office for the Modernization of the Justice Sector.<sup>33</sup>

## 2. Mechanisms for access to information

**a. Are there in your country mechanisms that regulate and facilitate the access of civil society and non-governmental organizations to information under the control of public institutions? If so, briefly describe them, indicating, *inter alia*, the agencies before which the mechanisms can be pursued and what guidelines are used to assess petitions so lodged, and list and attach a copy of the related provisions and documents.**

<sup>30</sup> See Annex: [Report of SEGEPLAN](#)

<sup>31</sup> Article 2, General Law on Decentralization, Decree 14-2002.

<sup>32</sup> See Annex: [NGO Anticorruption Projects](#)

<sup>33</sup> See Annex: [Response of the judicial branch to the Questionnaire](#)

### **Guatemalan Constitution:**

**a. Article 28. Right of petition:** Residents of the Republic of Guatemala have the right to direct, either individually or collectively, petitions to the authorities, which are then required to process them and resolve them in accordance with law.

**b. Article 30. Making Administrative Actions Public:** All acts of the administration are considered public. Interested parties have the right to obtain reports, copies, reproductions or certifications upon request, and to access any records they may wish to consult, except when military or diplomatic matters related to national security or information provided by individuals under a guarantee of confidentiality are involved.

**c. Article 29. Free Access to the Courts and State Agencies:** All individuals shall have free access to the courts and to state offices and agencies, to pursue legal actions and to assert their rights in accordance with law.

**d. Article 31. Access to State Archives and Records:** All individuals have the right to know what is said about them in archives, files, or any other form of state records, and the use made of that information, together with the right to correct, rectify, and update it. The keeping of registers or files on political affiliation is prohibited, except when done by election officials or political parties.

Guatemala has developed these constitutional principles in the following laws: Municipal Code (Articles 38, 60, 62, and 139); accountability in the Constitution (Articles 134, 171, 183, 233, 241, 274), General Law on Decentralization (Article 12), Municipal Code (Articles 37, 117, and 135); Social Auditing in the General Law on Decentralization (Article 19) and its Regulations (Articles 20 and 21), Municipal Code (Articles 17, 135, and 139).

Additionally, executive branch initiative 2594, "Consultation with civil society," is being promoted, pending its processing by the Congress of the Republic. Passage of this set of standards would facilitate access to information, as reflected by obstacles indicated in the independent report.

**b. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

No statistics are available, except through consulting the electronic communications media for disseminating official information as described in question 3(b) of this questionnaire, and in the institutional legal annex.

### **3. Mechanisms for consultation**

**a. Are there mechanisms in your country for those who perform public functions to consult civil society and non-governmental organizations on matters within their sphere of competence, which can be used for the purpose of preventing, detecting, punishing, and eradicating public corruption? If so, briefly describe them, and list and attach a copy of the related provisions and documents.**

In addition to the system that operates through the Development Councils, supported and promoted by the presidential Executive Secretariat and SEGEPLAN, there are other mechanisms for consultation about public policies, such as those described in the judicial branch's reply to the Questionnaire and the Report of SEGEPLAN, attached hereto.

**b. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

See Annex, Report of SEGEPLAN.

#### **4. Mechanisms to encourage active participation in public administration**

- a. Are there mechanisms in your country to facilitate, promote, and obtain the active participation of civil society and non-governmental organizations in the process of public policy making and decision making, in order to meet the purposes of preventing, detecting, punishing and eradicating acts of public corruption? If so, briefly describe them, and list and attach a copy of the related provisions and documents.

The corresponding information is set out in the two previous sections. The legal mechanisms for allowing citizen participation are set out in the Constitution (Articles 98, 173, and 280), and in the Municipal Code, in the shape of community mayoralties and consultations with local residents (Articles 56, 63, 64, 65, and 66).

Community or auxiliary mayoralties are headed by a community mayor, who is the link between the community mayoralty and the Development Council; they are defined as entities intended to represent communities, particularly in decision-making. The community mayor is appointed by the municipal mayor, based on the appointment or election made by each community in accordance with its principles, values, procedures, and traditions (Article 56 of the Municipal Code).

To consult with local inhabitants on matters of importance, with the two-thirds vote of its members the Municipal Council can resolve to call an open lobbying session (Article 38 of the Municipal Code).

The municipality is the basic unit of the state's territorial organization and the immediate forum for citizen participation in public affairs. It is chiefly characterized by its permanent ties of shared coexistence, multiethnicity, multiculturalism, and multilingualism, organized in pursuit of the common good of all inhabitants of the area it covers. (Article 2, Municipal Code). Local residents can be consulted in three fashions:

- Consultation of local residents at the initiative of the Municipal Council
- Consultation at the request of the local residents
- Consultation of indigenous authorities or communities

- b. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.

The corresponding information is set out in the two previous sections.

#### **5. Participation mechanisms for the follow-up of public administration**

- a. Does your country have mechanisms that allow participation by civil society and nongovernmental organizations in monitoring the public administration in order to prevent, detect, punish, and eradicate acts of public corruption? If so, briefly describe them, and list and attach a copy of the related provisions and documents.

The corresponding information is set out in the two previous sections, and in question 3(b), dealing with the state's efforts to facilitate access to information and the monitoring of the administration's actions.

- b. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.

The corresponding information is set out in the previous sections.

## CHAPTER FIVE

### ASSISTANCE AND COOPERATION (ARTICLE XIV)

#### 1. Mutual Assistance

- a. Briefly describe your country's legal framework, if any, that establishes mechanisms for mutual assistance in processing requests from the authorities of other states that, in accordance with their domestic law, are empowered to investigate or prosecute corruption offenses, and that seek evidence and other formalities necessary to assist in the investigation and prosecution of acts of corruption. Attach a copy of the provisions that contain such mechanisms.

The executive branch and the oversight agencies have, in their organic laws, mechanisms for entering into mutual assistance or mutual technical cooperation agreements.

Thus, the Organic Law of the Public Prosecution Service (Articles 87 and 88) stipulates that:

As indicated in the Law of the Executive Branch, the Ministry of Foreign Affairs is responsible for all matters relating to the Republic's foreign policy and the negotiation, signature, extension, amendment, and withdrawal from treaties, pacts, conventions, and other international agreements. The Ministry contributes to the coordination and exchanging of information between the international arena and the state's agencies responsible for implementing internationally acquired commitments in their respective fields of competence.

Guatemala currently has bilateral treaties with several countries dealing with extradition, together with extradition agreements and multilateral instruments; these are described in the Annex: Classification of domestic laws furnished by Guatemala Some of the instruments dealt with in the annex are detailed below:

- Treaties for investigations and criminal prosecutions, preventive efforts, and money laundering, referred to in Article VI, paragraph d, dealing with the illicit use or concealment of assets arising from any of the actions set out in this article.
- The Code of Private International Law, adopted by the Legislative Assembly by means of Decree No. 1575 in force since 1929, Articles 388 to 393 of which deal with rogatory commissions and petitions.
- The Inter-American Convention on Mutual Assistance in Criminal Matters, approved by the Congress of the Republic in Decree 53-96, in force since June 4, 2003, which is intended to commit the states parties to providing mutual assistance in criminal matters in accordance with the provisions of the Convention.
- Treaty of Mutual Legal Assistance in Criminal Affairs, between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama, passed by the Congress of the Republic in Decree 17-96, in force since December 1997. This terms of this treaty require its states parties to render legal assistance to each other in criminal cases involving any punishable offense defined as such by both the requesting state and the state on which the request is served; for Guatemala, the Supreme Court of Justice serves as the central authority.
- Treaty of Cooperation between the Government of the Republic of Guatemala and the Government of the United Mexican States on Mutual Legal Assistance, passed by Congress in Decree 52-97, in force since February 1998. This treaty states that the parties will cooperate with each other, taking appropriate steps legally available to them in order to provide mutual assistance in criminal matters, in accordance with its terms and within the constraints of their respective internal legislations.

- United Nations Convention against Corruption, signed in December 2003, pending ratification.
  - b. **Has your government presented or received requests for mutual assistance under the Convention?**

According to information requested from the Public Prosecution Service, the Office of the Comptroller General of Accounts, and the Ministry of Foreign Affairs, no requests regarding mutual assistance as provided for in the Convention have been made or received.

## **2. Mutual technical cooperation**

- a. **Does your country have mechanisms to permit the widest measure of mutual technical cooperation with other States Parties regarding the most effective ways and means of preventing, detecting, investigating, and punishing acts of public corruption, including the exchange of experiences by way of agreements and meetings between competent bodies and institutions, and the sharing of knowledge on methods and procedures for citizen participation in the fight against corruption?**

The different state agencies and oversight bodies have signed agreements for cooperation and institutional strengthening with other states and bilateral and multilateral organizations, some of which are listed in the annexes and in this questionnaire.<sup>34</sup>

- b. **Has your government made requests to other States Parties or received requests from them for mutual technical cooperation under the Convention? If so, briefly describe the results.**

There are no unified or centralized records of requests for mutual technical cooperation as provided for in the Convention. However, no such requests have been recorded by the Ministry of Foreign Affairs or by the Commissioner for Transparency and Against Corruption, the central authority for this Convention.

- c. **Should such mechanisms not exist, briefly indicate how your country plans to implement the commitment set out in Article XIV, paragraph 2, of the Convention.**
- d. **Has your country developed technical cooperation programs or projects on aspects that are referred to in the Convention, in conjunction with international agencies or organizations?**

The Public Prosecution Service has signed Amendment No. 2 to the Financial Year 2000 Letter of Cooperation for the drug-related prosecutors' program, of January 19, 2000, between the Public Prosecution Service of Guatemala and the government of the United States, in order to support projects designed for technical support, operations, and modernization plans. The amount earmarked for developing an Anticorruption Unit was USD \$700,000.00.<sup>35</sup> This questionnaire and the annexes refer to the cooperation agreements signed by the Office of the Comptroller General of Accounts with the IDB, together with others entered into by the judicial branch.

## **CHAPTER SIX**

### **CENTRAL AUTHORITIES (ARTICLE XVIII)**

#### **1. Designation of Central Authorities**

<sup>34</sup> See Annex: [Classification of domestic laws furnished by Guatemala](#) Mutual Assistance

<sup>35</sup> See Annex: [Report of the Public Prosecution Service](#), of the [Office of the Comptroller General of Accounts](#), and [expansion of Reply, judicial branch](#)

- a. **Has your country designated a central authority for the purposes of channeling requests for mutual assistance as provided under the Convention?**

The current Vice-President of the Republic appointed, through official channels, the Commissioner for Transparency and Against Corruption, the current incumbent of which office is Hugo Maúl Figueroa.

- b. **Has your country designated a central authority for the purposes of channeling requests for mutual technical cooperation as provided under the Convention?**

Yes. That responsibility falls to the Commissioner for Transparency and Against Corruption, in coordination with the Ministry of Foreign Affairs.

- c. **Should your country have appointed such central authority or authorities, please indicate information necessary for their identification, such as the name of the agency or agencies and of the officer or officers in charge, the positions they hold, telephone and fax numbers, and e-mail addresses.**

**CENTRAL AUTHORITY**

Commissioner for Transparency and Against Corruption.

**Hugo Maúl Figueroa**, Tel. (502) 2239-0000, Fax (502) 2239-0077

E-mail: [comisionadoptc@yahoo.com](mailto:comisionadoptc@yahoo.com) / [comisionadoptc@spp.gob.gt](mailto:comisionadoptc@spp.gob.gt)

**2. Operation of Central Authorities**

- a. **Does the central authority have the necessary human, financial and technical resources to enable it to properly make and receive requests for assistance and cooperation under the Convention?**

Yes. The powers of the Commission for Transparency and against Corruption include monitoring the Inter-American Convention against Corruption, for which the Commission receives support from the Private Secretariat of the office of the President of the Republic and the Ministry of Foreign Affairs. This Commission is set up for a renewable period of one year, with the framework indicated in the Law of the Executive Branch.

- b. **Has the central authority, since its designation, made or received requests for assistance and cooperation under the Convention?**

No. After the appointment of the central authority, the Ministry of Foreign Affairs has neither made nor received requests for assistance and cooperation as provided for in the Convention.

**III. INFORMATION ON THE AUTHORITY RESPONSIBLE FOR FILLING OUT THIS QUESTIONNAIRE**

Please furnish the following information:

- (a) State party: Guatemala  
 (b) The official who may be contacted in connection with the replies given in this questionnaire is:

**( ) Ms Violeta Mazariegos Zetina de Vásquez**

**Title/position: Executive Director, Lead Expert**

Agency/office: Commission for Transparency and Against Corruption

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**ELECTRONIC ANNEXES:**

- 1. Legal Annex.**
- 2. Classification of furnished domestic laws**
3. Sundry Annexes
  - 3.1 Statistics from the Public Prosecution Service
  - 3.2 Statistics and Procedures of the Disciplinary Regime Unit of the Judicial Branch
  - 3.3 Report of SEGEPLAN
  - 3.4 Response of the judicial branch to the Questionnaire
  - 3.5 Letter from MINUGUA
  - 3.6 Statistics from the Office of Professional Responsibility (ORP) of the National Civil Police (PNC)
  - 3.7 Statistics and procedures of the Judicial Disciplinary Board
  - 3.8 Statistics from the Public Criminal Defense Institute
  - 3.9 Probity charts, 1997-2004
  - 3.10 Amendments of the Law on Elections and Political Parties
  - 3.11 Consultancy, Development Councils
  - 3.12 NGO Anticorruption Projects
4. Reference Documents of the Legal Annex.
  - 4.1 Reply of the Public Prosecution Service
  - 4.2 Management Report of the Office of the Comptroller General, 2004
  - 4.3 Report of the Office of the Comptroller General, 2003
  - 4.4 Legal framework for citizen participation and accountability
  - 4.5 Fiscal Transparency
  - 4.6 Draft legislation
  - 4.7 Report of the Ministry of Public Finance (SIAF)
  - 4.8 Standards of conduct for the correct, honorable, and proper fulfillment of public functions